House Engrossed Senate Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 268

SENATE BILL 1169

AN ACT

AMENDING SECTIONS 14-5101, 14-5312.01, 14-5312.02, 36-3201, 36-3202, 36-3231, 36-3281, 36-3282, 36-3283, 36-3284, 36-3285 AND 36-3286, ARIZONA REVISED STATUTES; RELATING TO MENTAL HEALTH CARE POWERS OF ATTORNEY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 14-5101, Arizona Revised Statutes, is amended to read:

14-5101. Definitions

In this title, unless the context otherwise requires:

1. "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. In cases of limited guardianship only, a person is not deemed an incapacitated person for purposes of voting if the person files a petition~~,~~ AND has a hearing and the judge determines by clear and convincing evidence that the person retains sufficient understanding to exercise the right to vote pursuant to section 14-5304.02.

2. "INPATIENT PSYCHIATRIC FACILITY" MEANS A HOSPITAL THAT CONTAINS AN ORGANIZED PSYCHIATRIC SERVICES UNIT OR A SPECIAL HOSPITAL THAT IS LICENSED TO PROVIDE PSYCHIATRIC SERVICES.

~~2.~~ 3. "Investigator" means a person who is appointed by the court under section 14-5308.

~~3.~~ 4. "Physician" means a person licensed pursuant to title 32, chapter 13 or 17.

~~4.~~ 5. "Protected person" means a minor or any other person for whom a conservator has been appointed or any other protective order has been made.

~~5.~~ 6. "Protective proceeding" means a proceeding under ~~the provisions of~~ section 14-5401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.

~~6.~~ 7. "Psychologist" means a person licensed pursuant to title 32, chapter 19.1.

~~7.~~ 8. "Registered nurse" has the same meaning as prescribed in section 32-1601.

~~8.~~ 9. "Ward" means a person for whom a guardian has been appointed. "Minor ward" means a minor for whom a guardian has been appointed solely because of minority.

Sec. 2. Section 14-5312.01, Arizona Revised Statutes, is amended to read:

14-5312.01. Inpatient treatment; rights and duties of ward and guardian

A. Except as provided in subsection B of this section, a guardian of an incapacitated person may consent to psychiatric and psychological care and treatment, including the administration of psychotropic medications, if the care and treatment take place outside ~~a level one behavioral health~~ AN INPATIENT PSYCHIATRIC facility licensed by the department of health services.

B. On clear and convincing evidence that the ward is AN incapacitated ~~as a result of a mental disorder as defined in section 36-501,~~ PERSON and is likely to be in need of inpatient mental health care and treatment within the period of the authority granted pursuant to this section, the court may authorize a guardian appointed pursuant to this title to give consent for the ward to receive inpatient mental health care and treatment, including placement in ~~a level one behavioral health~~ AN INPATIENT PSYCHIATRIC facility licensed by the department of health services and medical, psychiatric and psychological treatment associated with that placement. The evidence shall be supported by the opinion of a mental health expert who is either a physician licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1.

C. In making its decision to grant authority to a guardian pursuant to subsection B of this section, the court shall consider the cause of the ward's disability and the ward's foreseeable clinical needs. The court shall limit the guardian's authority to what is reasonably necessary to obtain the care required for the ward in the least restrictive treatment alternative. The court may limit the duration of the guardian's authority to consent to inpatient mental health care and treatment and include other orders the court determines necessary to protect the ward's best interests.

D. Within forty-eight hours after placement of the ward pursuant to this section, the guardian shall give notice of this action to the ward's attorney. When the attorney receives this notice the attorney shall assess the appropriateness of the placement pursuant to section 36-537, subsection B and section 36-546, subsection H. If requested by the attorney, the court shall hold a hearing on the appropriateness of the placement within three days after receiving that request.

E. The ~~behavioral health treatment~~ INPATIENT PSYCHIATRIC facility shall assess the appropriateness of the ward's placement every thirty days and shall provide a copy of the assessment report to the ward's attorney ON REQUEST. The ward's attorney may attend the ward's evaluation, staffing, treatment team and case management meetings.

F. When the ward is admitted to ~~a level one behavioral health treatment~~ AN INPATIENT PSYCHIATRIC facility pursuant to this section, the guardian shall provide the facility with the name, address and telephone number of the ward's attorney. The facility shall include this information in the ward's treatment record.

G. Within twenty-four hours after the facility receives any writing in which the ward requests release from the facility, any change in placement or a change in the type or duration of treatment, the facility shall forward this information to the ward's attorney.

H. All health care providers, treatment facilities and regional behavioral health authorities shall allow the ward's attorney access to all of the ward's medical, psychiatric, psychological and other treatment records.

I. The ward's guardian shall place the ward in a least restrictive treatment alternative within five days after the guardian is notified by the medical director of the inpatient facility that the ward no longer needs inpatient care. The ward, a representative of the inpatient treatment facility, the ward's attorney, the ward's physician or any other interested person may petition the court to order the facility to discharge the ward to a least restrictive treatment alternative if the guardian does not act promptly to do so.

J. If the ward is in ~~a behavioral health treatment~~ AN INPATIENT PSYCHIATRIC facility at the time of the initial hearing on the petition for appointment of a guardian, the court investigator and the ward's attorney shall advise the court of the appropriateness of the placement.

K. An attorney appointed pursuant to section 14-5303, subsection C remains the attorney of record until the attorney is discharged by the court. The court shall ensure that a ward whose guardian has been granted INPATIENT mental health treatment authority is represented by an attorney at all times the guardian has that authority. Unless the court finds that the ward has insufficient assets to meet the ward's reasonable and necessary care and living expenses, the ward shall pay the attorney's reasonable fees.

L. If deemed necessary to adequately assess a request for INPATIENT mental health treatment authority or to review the ward's placement in ~~a behavioral health treatment~~ AN INPATIENT PSYCHIATRIC facility, the court may order an independent evaluation by either a physician who is licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1. If the ward has insufficient funds to pay the total cost of this evaluation, the court may deem all or any part of the evaluator's fee to be a county expense after determining the reasonableness of that fee.

M. Instead of ordering an independent evaluation pursuant to subsection L of this section, the court may accept a report conducted on behalf of the ~~behavioral health treatment~~ INPATIENT PSYCHIATRIC facility if the court finds that the report meets the requirements of an independent evaluation.

N. The court may decide that the ward's right to retain or obtain a driver license and any other civil right that may be suspended by operation of law is not affected by the appointment of a guardian.

O. If the court grants the guardian the authority to consent to inpatient mental health care and treatment pursuant to this section, the medical director of ~~a level one behavioral health~~ AN INPATIENT PSYCHIATRIC facility licensed by the department of health services may admit the ward at the guardian's request.

P. A guardian who is authorized by the court to consent to inpatient mental health care and treatment pursuant to this section shall file with the annual report of the guardian required pursuant to section 14-5315 an evaluation report by a physician or a psychologist who meets the requirements of subsection B of this section. The evaluation report shall indicate if the ward will likely need inpatient mental health care and treatment within the period of the authority granted pursuant to this section. If the guardian does not file the evaluation report or if the report indicates that the ward will not likely need inpatient mental health care and treatment, the guardian's authority to consent to this treatment ceases on the expiration of the period specified in the prior court order. If the report supports the continuation of the guardian's authority to consent to inpatient treatment, the court may order that the guardian's authority to consent to this treatment continues. If the report supports the continuation of the guardian's authority to consent to this treatment, the ward's attorney shall review the report with the ward. The ward may contest the continuation of the guardian's authority by filing a request for a court hearing within ten business days after the report is filed. The court shall hold this hearing within thirty calendar days after it receives the request. The guardian's authority continues pending the court's ruling on the issue. At the hearing the guardian has the burden of proving by clear and convincing evidence that the ward is likely to be in need of inpatient mental health care and treatment within the period of the authority granted pursuant to this section.

Q. The court may discharge an attorney who was appointed pursuant to section 14-5303, subsection C subsequent to the appointment of a guardian if it clearly appears from specific facts presented by affidavit or verified petition that continued representation of the ward is no longer necessary or desirable. The factual basis must include, at a minimum, consideration of the following:

1. The nature and history of the ward's illness.
2. The ward's history of hospitalization.
3. The ward's current and anticipated living arrangements.
4. Whether the ward's inpatient treatment is anticipated to be a one-time hospitalization for the purpose of stabilizing the ward's condition and further hospitalizations are not likely to be necessary.
5. Whether the ward's current and anticipated living arrangements are the least restrictive alternatives possible.

Sec. 3. Section 14-5312.02, Arizona Revised Statutes, is amended to read:

14-5312.02. <u>Admission for evaluation or treatment by guardian; duties of physician or mental health care provider</u>

A. Notwithstanding the procedures and requirements prescribed in title 36, chapter 5, articles 4 and 5 relating to involuntary court-ordered

evaluation or treatment, if the guardian who is granted the authority to consent to inpatient mental health care or treatment pursuant to section 14-5312.01 has reasonable cause to believe that the ward is in need of evaluation or treatment, the guardian may apply for admission of the ward for evaluation or treatment at any ~~level one behavioral health~~ INPATIENT PSYCHIATRIC facility. The guardian must present the facility with a certified copy, or a photocopy of the certified copy, of the guardian's letters of guardianship ~~and with a sworn statement under penalty of perjury that the guardian has presented to the facility a certified copy, or a true and correct copy of a certified copy, of letters of guardianship with mental health authority that authorize the guardian to admit the ward to a level one behavioral health facility issued pursuant to 14-5312.01, subsection B and that the letters of guardianship are currently effective and have not been revoked, terminated or rescinded~~.

B. If the guardian requests admission, the facility to which the guardian applies may admit the person if ~~prior to~~ BEFORE admission a physician who is licensed pursuant to title 32, chapter 13 or 17 does all of the following:

1. Conducts an investigation that carefully probes the ward's psychiatric and psychological history, diagnosis and treatment needs.

2. Conducts a thorough interview with the ward and the guardian.

3. Obtains the guardian's informed consent. For the purposes of this paragraph, "informed consent" has the same meaning prescribed in section 36-501.

4. Makes a written determination that the ward needs an evaluation or will benefit from inpatient care and treatment of a mental disorder or other personality disorder or emotional condition and that the evaluation or treatment cannot be accomplished in a less restrictive setting.

5. Documents in the ward's medical chart a summary of the doctor's findings and recommendations for treatment.

C. After admission, if the ward refuses treatment or requests discharge and the treating physician believes that further inpatient treatment is necessary or advisable, the facility may rely on the consent of the guardian for treatment, release and discharge decisions pursuant to the guardian's authority under the guardianship.

Sec. 4. Section 36-3201, Arizona Revised Statutes, is amended to read:

36-3201. <u>Definitions</u>

In this chapter, unless the context otherwise requires:

1. "Agent" means an adult who has the authority to make health care treatment decisions for another person, referred to as the principal, pursuant to a health care power of attorney.

2. "Artificially administered" means providing food or fluid through a medically invasive procedure.

3. "Attending physician" means a physician who has the primary responsibility for a principal's health care.

4. "Comfort care" means treatment given in an attempt to protect and enhance the quality of life without artificially prolonging that life.

5. "Health care directive" means a document drafted in substantial compliance with this chapter, including a mental health care power of attorney, to deal with a person's future health care decisions.

6. "Health care power of attorney" means a written designation of an agent to make health care decisions that meets the requirements of section 36-3221 and that comes into effect and is durable as provided in section 36-3223, subsection A.

7. "Health care provider" means a natural person who is licensed under title 32, chapter 13, 15, 17 or 25, a hospice as defined in section 36-401 that is licensed under chapter 4 of this title or an organization that is licensed under this title, that renders health care designed to prevent, diagnose or treat illness or injury and that employs persons licensed under title 32, chapter 13, 15, 17 or 25.

8. "INPATIENT PSYCHIATRIC FACILITY" MEANS A HOSPITAL THAT CONTAINS AN ORGANIZED PSYCHIATRIC SERVICES UNIT OR A SPECIAL HOSPITAL THAT IS LICENSED TO PROVIDE PSYCHIATRIC SERVICES.

~~8.~~ 9. "Interested person" means the patient, a person listed under section 36-3231, subsection A, a health care provider directly involved in the patient's medical care or an employee of a health care provider.

~~9.~~ 10. "Living will" means a statement written either by a person who has not written a health care power of attorney or by the principal as an attachment to a health care power of attorney and intended to guide or control the health care treatment decisions that can be made on that person's behalf.

~~10.~~ 11. "Mental health care power of attorney" means a written designation of an agency to make mental health care decisions that meets the requirements of section 36-3281.

~~11.~~ 12. "Physician" means a doctor of medicine licensed pursuant to title 32, chapter 13 or doctor of osteopathy licensed pursuant to title 32, chapter 17.

~~12.~~ 13. "Principal" means a person who is the subject of a health care power of attorney.

~~13.~~ 14. "Surrogate" means a person authorized to make health care decisions for a patient by a power of attorney, a court order or the provisions of section 36-3231.

Sec. 5. Section 36-3202, Arizona Revised Statutes, is amended to read:

36-3202. Revocation of health care directive; disqualification of surrogate

EXCEPT AS PROVIDED IN SECTION 36-3285 IN REGARD TO A MENTAL HEALTH CARE POWER OF ATTORNEY, a person may revoke ~~his~~ THE PERSON'S own health care directive or disqualify a surrogate by doing any of the following:

1. Making a written revocation of a health care directive or a written statement to disqualify a surrogate.

2. Orally notifying the surrogate or a health care provider.

3. Making a new health care directive.

4. Any other act that demonstrates a specific intent to revoke or to disqualify a surrogate.

Sec. 6. Section 36-3231, Arizona Revised Statutes, is amended to read:

36-3231. Surrogate decision makers; priorities; limitations

A. If an adult patient is unable to make or communicate health care treatment decisions, a health care provider shall make a reasonable effort to locate and shall follow a health care directive. A health care provider shall also make a reasonable effort to consult with a surrogate. If the patient has a health care power of attorney that meets the requirements of section 36-3221, the patient's designated agent shall act as the patient's surrogate. However, if the court appoints a guardian for the express purpose of making health care treatment decisions, that guardian shall act as the patient's surrogate. If neither of these situations applies, the health care provider shall make reasonable efforts to contact the following individual or individuals in the indicated order of priority, who are available and willing to serve as the surrogate, who then have the authority to make health care decisions for the patient and who shall follow the patient's wishes if they are known:

1. The patient's spouse, unless the patient and spouse are legally separated.

2. An adult child of the patient. If the patient has more than one adult child, the health care provider shall seek the consent of a majority of the adult children who are reasonably available for consultation.

3. A parent of the patient.

4. If the patient is unmarried, the patient's domestic partner.

5. A brother or sister of the patient.

6. A close friend of the patient. For the purposes of this paragraph, "close friend" means an adult who has exhibited special care and concern for the patient, who is familiar with the patient's health care views and desires and who is willing and able to become involved in the patient's health care and to act in the patient's best interest.

B. If the health care provider cannot locate any of the people listed in subsection A of this section, the patient's attending physician may make health care treatment decisions for the patient after the physician consults with and obtains the recommendations of an institutional ethics committee. If this is not possible, the physician may make these decisions after consulting with a second physician who concurs with the physician's decision. For the purposes of this subsection, "institutional ethics committee" means a standing committee of a licensed health care institution appointed or elected to render advice concerning ethical issues involving medical treatment.

C. A person who makes a good faith medical decision pursuant to this section is immune from liability to the same extent and under the same conditions as prescribed in section 36-3205.

D. A surrogate may make decisions about mental health care treatment on behalf of a patient if the patient is found incapable. However, a surrogate who is not the patient's agent or guardian shall not make decisions to admit the patient to ~~a level one behavioral health~~ AN INPATIENT PSYCHIATRIC facility licensed by the department of health services, except as provided in subsection E of this section or section 14-5312.01, 14-5312.02 or 36-3281.

E. If the admitting officer for a mental health care provider has reasonable cause to believe after examination that the patient is incapable as defined in section 36-3281~~, subsection D~~ and is likely to suffer serious physical harm or serious illness or to inflict serious physical harm on another person without immediate hospitalization, the patient may be admitted for inpatient treatment in ~~a level one behavioral health~~ AN INPATIENT PSYCHIATRIC facility based on informed consent given by any surrogate identified in subsection A of this section. The patient shall be discharged if a petition for court ordered evaluation or for temporary guardianship requesting authority for the guardian to consent to admission to ~~a level one behavioral health~~ AN INPATIENT PSYCHIATRIC facility has not been filed within forty-eight hours of admission or on the following court day if the forty-eight hours expires on a weekend or holiday. The discharge requirement prescribed in this section does not apply if the patient has given informed consent to voluntary treatment or if a mental health care provider is prohibited from discharging the patient under federal law.

Sec. 7. Section 36-3281, Arizona Revised Statutes, is amended to read:

36-3281. Mental health care power of attorney; scope; definition

A. An adult, known as the principal, pursuant to section 36-3282 may designate another adult or adults, known as the agent, to act as an agent and to make mental health care decisions on that person's behalf. The principal may also designate an alternate adult or adults to act as agent if the original designated agent or agents are unwilling or unable to act.

B. An agent under section 36-3283 may make decisions about mental health treatment on behalf of the principal if the principal is found incapable. If an adult does not have a mental health care power of attorney pursuant to this section, an agent with a health care power of attorney under section 36-3221 may make decisions about mental health treatment on behalf of the principal if the principal is found incapable, except as provided in section 36-3283, subsection F. These decisions shall be consistent with any wishes the principal has expressed in the mental health care directive, mental health care power of attorney, health care power of attorney or other advance directive.

C. An agent shall not be a person who is directly involved with the provision of health care to the principal at the time the mental health care power of attorney is executed.

D. For the purposes of this section, "incapable" means that in the opinion of a physician who is licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in NEUROLOGY OR psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1, a ~~person's inability~~ PERSON LACKS THE ABILITY to give informed consent as defined in section 36-501.

Sec. 8. Section 36-3282, Arizona Revised Statutes, is amended to read:

36-3282. Execution requirements

A. To be valid, a mental health care power of attorney shall:

1. Be executed by a principal who is not incapable, as defined in section ~~32-3281~~ 36-3281.

2. Be in writing.

3. Contain language that clearly indicates that the principal intends to create a mental health care power of attorney.

4. Except as provided pursuant to subsection C of this section, be dated and signed or marked by the principal.

5. Be notarized or witnessed in writing by at least one adult who affirms that the notary or witness was present when the principal dated and signed or marked the mental health care power of attorney and that the principal appeared to be of sound mind and free from duress, fraud or undue influence at that time.

B. If a mental health care power of attorney expressly provides that the agent can admit the principal to ~~a level one behavioral health~~ AN INPATIENT PSYCHIATRIC facility licensed by the department of health services, each paragraph that grants this authority must be separately initialed by the principal at the time the mental health care power of attorney is signed and witnessed.

C. If the principal is physically unable to sign or mark a mental health care power of attorney, the notary and each witness shall verify on the document that the principal indicated to the notary or witness that the mental health care power of attorney expressed the principal's wishes and that the principal intended to adopt the mental health care power of attorney at that time.

D. A notary or witness shall not be any of the following:

1. A person designated to make medical decisions on the principal's behalf.

2. A professional care provider directly involved with the provision of care to the principal at the time the mental health care power of attorney is executed.

E. If a mental health care power of attorney is witnessed by only one person, that person shall not be either:

1. Related to the principal by blood, marriage or adoption.

2. Entitled to any part of the principal's estate by will or by operation of law at the time that the power of attorney is executed.

F. A mental health care power of attorney may be used as part of or independent of a health care power of attorney as defined in section 36-3201.

Sec. 9. Section 36-3283, Arizona Revised Statutes, is amended to read:

36-3283. Powers and duties of an agent

A. An agent may make mental health care decisions for the principal while the principal is incapable, as defined in section 36-3281.

B. Except as limited by subsection F of this section, an agent's authority to make mental health care decisions is limited only by the express language of the mental health care power of attorney or by a court order pursuant to section 36-3206.

C. The appointment of a person to act as an agent is effective until that authority is revoked by the principal or by a court order.

D. An agent has the same right as the principal to receive information and to review the principal's medical records regarding proposed mental health treatment and to receive, review and consent to the disclosure of medical records relating to that treatment.

E. An agent shall act consistently with the wishes of the principal as expressed in the mental health care power of attorney. Except as limited by subsection F of this section, if the principal's wishes are not expressed in the mental health care power of attorney and are not otherwise known by the agent, the agent shall act in accordance with what the agent in good faith believes to be in the principal's best interests.

F. An agent may consent to admit the principal to ~~a level one behavioral health~~ AN INPATIENT PSYCHIATRIC facility licensed by the department of health services if this authority is expressly stated in the mental health care power of attorney or health care power of attorney under section 36-3221.

G. An agent is not subject to criminal or civil liability for decisions made in good faith ~~and~~ pursuant to ~~a mental health care power of attorney or health care power of attorney~~ SUBSECTION E OF THIS SECTION.

Sec. 10. Section 36-3284, Arizona Revised Statutes, is amended to read:

36-3284. Operation of mental health care power of attorney; admission for evaluation and treatment by agent; duties of physician or mental health care provider

A. A mental health care power of attorney is effective when it is executed and remains in effect until it is revoked by the principal pursuant to section 36-3285 or by court order.

B. Notwithstanding the procedures and requirements prescribed in chapter 5, articles 4 and 5 of this title relating to involuntary court-ordered evaluation or treatment, if the mental health care power of attorney specifically authorizes the agent to admit the principal to ~~a level one behavioral health~~ AN INPATIENT PSYCHIATRIC facility and the agent has reasonable cause to believe that the principal is in need of an evaluation or treatment, the agent may apply for admission of the principal for evaluation or treatment at ~~a level one behavioral health~~ AN INPATIENT PSYCHIATRIC facility. The agent must present the facility with a copy of the power of

attorney that specifically authorizes the agent to admit the principal to ~~a level one behavioral health facility and execute a sworn statement under penalty of perjury that the agent has presented to the facility a true and correct copy of a current power of attorney that specifically authorizes the agent to admit the principal to a level one behavioral health facility pursuant to this section and that the power of attorney is currently effective and has not been revoked, terminated or rescinded~~ AN INPATIENT PSYCHIATRIC FACILITY. If admission is requested by the agent, the facility to which the agent applies may admit the principal if ~~prior to~~ BEFORE admission a physician who is licensed pursuant to title 32, chapter 13 or 17 does all of the following:

1. Conducts an investigation that carefully probes the principal's psychiatric and psychological history, diagnosis and treatment needs.

2. Conducts a thorough interview with the principal and the agent.

3. Obtains the agent's informed consent, as defined in section 36-501.

4. Makes a written determination that the principal needs an evaluation or will benefit from inpatient care and treatment of a mental disorder or other personality disorder or emotional condition and that the evaluation or treatment cannot be accomplished in a less restrictive setting.

5. Documents in the principal's medical chart a summary of the doctor's findings and recommendations for treatment.

C. IF A PATIENT ADMITTED TO OR BEING TREATED IN AN INPATIENT PSYCHIATRIC FACILITY UNDER THE AUTHORITY OF AN AGENT PURSUANT TO A MENTAL HEALTH CARE POWER OF ATTORNEY MANIFESTS THE DESIRE TO DISQUALIFY AN AGENT OR TO REVOKE A MENTAL HEALTH CARE POWER OF ATTORNEY AND REQUESTS IN WRITING TO BE DISCHARGED FROM THE FACILITY, THE FACILITY SHALL EITHER DISCHARGE THE PATIENT OR INITIATE PROCEEDINGS FOR COURT ORDERED EVALUATION OR TREATMENT PURSUANT TO CHAPTER 5 OF THIS TITLE:

1. WITHIN FORTY-EIGHT HOURS AFTER THE FACILITY RECEIVES THIS REQUEST, EXCLUDING WEEKENDS AND LEGAL HOLIDAYS.

2. ON THE FOLLOWING COURT DAY IF THE FORTY-EIGHT-HOUR PERIOD EXPIRES ON A WEEKEND OR HOLIDAY.

D. THE DISCHARGE REQUIREMENT PRESCRIBED IN SUBSECTION C OF THIS SECTION DOES NOT APPLY IF THE FACILITY IS PROHIBITED FROM DISCHARGING THE PERSON UNDER FEDERAL LAW OR IF THE PRINCIPAL HAS BEEN DETERMINED TO BE INCAPABLE AS DEFINED IN SECTION 36-3281, THE TREATING PHYSICIAN BELIEVES THAT FURTHER INPATIENT TREATMENT IS NECESSARY OR ADVISABLE AND THE AGENT UNDER THE POWER OF ATTORNEY HAS CONSENTED TO THE CONTINUED TREATMENT.

~~C.~~ E. After admission, if the patient refuses treatment or requests discharge and the treating physician believes that further inpatient treatment is necessary or advisable, the facility may rely on the consent of the agent for treatment, release and discharge decisions pursuant to the agent's authority under the power of attorney.

~~D.~~ F. The ~~level one behavioral health~~ INPATIENT PSYCHIATRIC facility licensed by the department of health services shall conduct a review of the principal's condition and need for admission into the facility and assess the appropriateness of the principal's placement at least once every thirty days. The agent may participate in each review. If possible the agent shall participate in person.

Sec. 11. Section 36-3285, Arizona Revised Statutes, is amended to read:

36-3285. Revocation; disqualification of agent

A. EXCEPT DURING TIMES WHEN THE PRINCIPAL HAS BEEN FOUND TO BE INCAPABLE AS DEFINED IN SECTION 36-3281, A PRINCIPAL UNDER A MENTAL HEALTH CARE POWER OF ATTORNEY MAY DISQUALIFY AN AGENT OR REVOKE ALL OR ANY PORTION OF THE POWER OF ATTORNEY.

~~A.~~ B. Unless ~~limited by the express authority in the document,~~ a principal ~~even if~~ IS incapable~~,~~ as defined in section 36-3281, A PRINCIPAL may revoke all or any part of the principal's mental health care power of attorney by doing any of the following:

1. Making a written revocation of the mental health care power of attorney or a written statement to disqualify an agent.

2. Orally notifying the agent or a mental health care provider.

3. Making a new mental health care power of attorney.

4. Any other act that demonstrates a specific intent to revoke a mental health care power of attorney or disqualify an agent.

~~B. Unless a facility has instituted proceedings pursuant to section 36-533, if a principal who is a patient in a mental health facility revokes a mental health care power of attorney and requests a discharge in writing, the facility shall discharge that person within twenty-four hours after it receives this request, excluding weekends and legal holidays. The discharge requirement prescribed in this section does not apply if a mental health care provider is prohibited from discharging the person under federal law.~~

Sec. 12. Section 36-3286, Arizona Revised Statutes, is amended to read:

36-3286. Sample mental health care power of attorney

A person may use any writing that meets the requirements of sections 36-3281 and 36-3282 to create a mental health care power of attorney. The following form is offered as a sample only and does not prevent a person from using other language or another form: ~~.~~

Mental Health Care Power of Attorney

I, _____, being an adult of sound mind, voluntarily make this declaration for mental treatment. I want this declaration to be followed if I am incapable, as defined in section 36-3281, Arizona Revised Statutes. I designate _____ as my agent for all matters relating to my mental health care including, without limitation, full power to give or refuse consent to all medical care related to my mental

health condition. If my agent is unable or unwilling to serve or continue to serve, I appoint _____, as my agent. I want my agent to make decisions for my mental health care treatment that are consistent with my wishes as expressed in this document or, if not specifically expressed, as are otherwise known to my agent.

If my wishes are unknown to my agent, I want my agent to make decisions regarding my mental health care that are consistent with what my agent in good faith believes to be in my best interests. My agent is also authorized to receive information regarding proposed mental health treatment and to receive, review and consent to disclosure of any medical records relating to that treatment.

This declaration allows me to state my wishes regarding mental health care treatment including medications, admission to and retention in a health care facility for mental health treatment and outpatient services.

~~(initial one of the following)~~

~~_____ This mental health care power of attorney is irrevocable if I am unable to give informed consent.~~

~~_____ This mental health care power of attorney is revocable at all times.~~

THIS MENTAL HEALTH CARE POWER OF ATTORNEY OR ANY PORTION OF IT MAY NOT BE REVOKED AND ANY DESIGNATED AGENT MAY NOT BE DISQUALIFIED BY ME DURING TIMES THAT I AM FOUND TO BE UNABLE TO GIVE INFORMED CONSENT. HOWEVER, AT ALL OTHER TIMES I RETAIN THE RIGHT TO REVOKE ALL OR ANY PORTION OF THIS MENTAL HEALTH CARE POWER OF ATTORNEY OR TO DISQUALIFY ANY AGENT DESIGNATED BY ME IN THIS DOCUMENT.

The following are my wishes regarding my mental health care treatment if I become incapable, as defined in section 36-3281, Arizona Revised Statutes:

I consent to the following mental health treatments:

_____

_____

_____

_____

By initialing here, I consent to giving my agent the power to admit me to an inpatient or partial psychiatric hospitalization program, please initial here: ____ (initial if you consent)

I do not consent to the following mental health treatments:

_____

_____

_____

_____

Additional information about my mental health care treatment needs (consider including mental or physical health history, dietary requirements, religious concerns, people to notify and any other matters that you feel are important):

_____

_____

_____

This mental health care power of attorney is made pursuant to title 36, chapter 32, article 6, Arizona Revised Statutes, and continues in effect for all who may rely on it except to those I have given notice of its revocation pursuant to section 36-3285, ARIZONA REVISED STATUTES.

_____

(signature of principal)

Address of agent_____

_____

Telephone number of agent_____

Address of backup agent_____

_____

Telephone number of backup agent_____

Affirmation of witnesses:

I affirm that the person signing this mental health care power of attorney:

1. Is personally known to me.

2. Signed or acknowledged by his or her signature on this declaration in my presence.

3. Appears to be of sound mind and not under duress, fraud or undue influence.

4. Is not related to me by blood, marriage or adoption.

5. Is not a person for whom I directly provide care as a professional.

6. Has not appointed me as an agent to make medical decisions on his or her behalf.

Witnessed by:

_____ (signature and date)

_____ (signature and date)

Acceptance of appointment as agent: (optional)

I accept this appointment and agree to serve as agent to make mental health treatment decisions for the principal. I understand that I must act consistently with the wishes of the person I represent, as expressed in this mental health care power of attorney, or if not expressed, as otherwise known by me. If I do not know the principal's wishes, I have a duty to act in what I in good faith believe to be that person's best interests. I understand that this document gives me the authority to make decisions about mental health treatment only while that person has been determined to be incapable as that term is defined in section 36-3281, Arizona Revised Statutes.

_____

(signature of agent)

_____

(printed name of agent)

APPROVED BY THE GOVERNOR MAY 17, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 17, 2016.

Passed the House March 30, 2016,

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting

Speaker of the House

Acting

Pro tempore

Chief Clerk of the House

Passed the Senate February 11, 2016,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1169

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate May 4, 2016

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

4th day of May, 2016

at 4:26 o'clock P. M.

Secretary to the Governor

Approved this 17th day of

May

at 1:18 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 17th day of May, 2016

at 4:31 o'clock P M.

Secretary of State

S.B. 1169