

11.3 Admission Pursuant to Advance Instruction

A. Public Policy

Statutory provisions govern advance instruction for mental health treatment. G.S. 122C-71 through 122C-77. The statutes codify as public policy a person's right to control decisions concerning mental health care. *See* G.S. 122C-71. Advance instruction could be particularly helpful for a person with a cyclical illness, characterized by periods of remission followed by relapse.

B. Criteria

The individual must be "of sound mind" at the time the advance instruction is signed, witnessed, and notarized. G.S. 122C-72(1). The advance instruction is employed, however, only when a physician or eligible psychologist determines that the person has become "incapable." G.S. 122C-74(d).

C. Revocation and Effectiveness

The advance instruction is revocable at any time that the person is not "incapable," by any manner that communicates the intent to revoke. G.S. 122C-74(j). The statute also directs the treatment provider to continue to obtain informed consent so long as the person is "capable." G.S. 122C-74(e).

It is easily foreseeable that a person who previously consented to treatment by advance instruction, but who now refuses the treatment, may state the intention to revoke the advance instruction. In that case, the treatment provider must determine whether the person has capacity to refuse the treatment or is incapable and must receive the treatment previously consented to by advance instruction.

D. Limitation on Inpatient Admission

An admission to a 24-hour facility pursuant to advance instruction may not exceed ten days, subject to the facility's right to hold the person up to seventy-two hours to pursue involuntary commitment. G.S. 122C-211(f1); *see also* G.S. 122C-77 (statutory form).

E. Statutory Form

Chapter 122C of the North Carolina General Statutes provides a statutory form for advance instruction for mental health treatment. *See* G.S. 122C-77. The statute states that an otherwise valid advance instruction executed prior to January 1, 1999, is not to be construed as invalid. G.S. 122C-77(a). Use of the statutory form is not required as long as the advance instruction conforms with the statutory requirements for an advance instruction.