



STATE OF NEW JERSEY

NJLRC

NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

Relating to

PEJORATIVE TERMS REGARDING MENTAL CAPACITY

December 2008
Current as of 12/31/09

John M. Cannel, Esq., Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 973-648-3123
Email: njlrc@njlrc.org
Web site: <http://www.njlrc.org>

Introduction

The following amendment to the New Jersey Constitution was approved at the last election:

Amend Article II, Section I, paragraph 6 to read as follows:

6. No [idiot or insane] person who has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting shall enjoy the right of suffrage.

The change in the Constitution reflects the realization that the words “idiot” and “insane” are inappropriate in our statutes. These words no longer convey clear enough meaning to permit application of the statutes in which they are found.

In keeping with the spirit and intent of the constitutional amendment, the Commission undertook this project to eliminate all pejorative language relating to mental capacity found in the New Jersey statutes. Language in the affected statutes that is anachronistic, gender specific and unclear, or that references nonexistent entities and institutions, has also been modified accordingly.

The project evolved in the following manner. First, references to “idiot” and “insane”, derivations thereof, and other related terms initially deemed pejorative,¹ were culled from the New Jersey statutes. Once identified, however, not all culled terms were treated equally.

Terms obviously pejorative were replaced with appropriate language to reflect the meaning intended by the statutory reference. Other terms as used in a criminal context, such as the term “insane” and its derivations, were determined not to be pejorative.² Additional terms, such as “unsound mind” and “sound mind”, though often not used pejoratively, were sometimes defined unclearly.³ Where the words “unsound mind” appeared to add nothing to the meaning of the statutory reference, they were eliminated. References to “of sound mind” in statutes with a specific probate purpose, such as those found in N.J.S. 3B:3-1, pertaining to testamentary capacity, and in N.J.S. 3B:3-4, pertaining to making a will self-proved, were viewed not to be pejorative and therefore

¹ Words culled included “idiot” (and variations such as “idiocy” and “idiotic”), “insane” (and variations such as “insanity”), “lunatic” (and variations such as “lunacy”), and “feeble-minded” (and variations such as “feeble-mindedness.”) These words, when found, were replaced as discussed later in the text of this report. For purposes of thoroughness, other pejorative terms referring to mental capacity (e.g., “imbecile”, and the like), were searched for but not found in the statutes. The words “unsound mind” and “sound mind”, and “competency” and “incompetency”, and their variations, were also made part of the search and are addressed later in the text of this report.

² The use of “insane” or “insanity” in the criminal law context, for example, appeared correct and not pejorative. Therefore, these terms appearing in the criminal statutes (Title 2C) and statutes that reference criminal standards (interspersed throughout Titles 30, 40 52, 53 and 2A) were not replaced and are not included in this final report.

³ For example, N.J.S.3B:14-21 (e) provides that a court may remove a fiduciary from office when he is of “unsound mind or mentally incapacitated for the transaction of business”. Since “unsound mind” is not otherwise defined in the statute, its meaning is unclear. Further examples of undefined uses of “sound mind” appear in other non-probate contexts (e.g. N.J.S. 40:11A-22.2).

not included in this report.⁴ All other references to “unsound mind” and “sound mind” were replaced with words more appropriate in the statutory context (see, *e.g.*, section 30:6B-1). Similarly, the words “sane mind”, “sanity” or simply the word, “sane”, as it relates to mental capacity, also were replaced for purposes of consistency.

To determine replacements for the pejorative terms, the Commission first looked at the definition of “incapacitated individual” as used in Title 3B, the revised Administration of Estates – Decedents and Others (the New Jersey Probate Code).

Section 3B:1-2 defines “incapacitated individual” as:

an individual who is impaired by reason of mental illness or mental deficiency to the extent that he lacks sufficient capacity to govern himself and manage his affairs.

but further states that:

The term incapacitated individual is also used to designate an individual who is impaired by reason of physical illness or disability, chronic use of drugs, chronic alcoholism or other cause (except minority) to the extent that he lacks sufficient capacity to govern himself and manage his affairs.

The terms incapacity and incapacitated individual refer to the state or condition of an incapacitated individual as hereinbefore defined.

Because the Probate Code definition is intended to have a broader meaning and also include the physically disabled or ill, the Commission does not use the terms “incapacitated individual” as a replacement for the pejorative terms. Instead, the words “mentally incapacitated”, or their variation, are used, as they present a neutral alternative consistent with the amended constitutional language. For purposes of this report, and consistent with the Probate Code, “mentally incapacitated” is defined as *impaired by reason of mental illness or mental deficiency to the extent that the person lacks sufficient capacity to govern the person’s own body and manage personal affairs.*

References to “incompetent” “incompetency”, “competent”, “competency”, “mental incompetent”, “mentally incompetent”, or “mental incompetency”, where found, are also changed to “mentally incapacitated”, or its appropriate variation, for purposes of consistency.⁵

⁴ The statutes not altered are N.J.S. 3B:3-1 (Individuals competent to make a will and appoint a testamentary guardian); 3B:3-4 (Making will self-proved at time of execution); and 3B:3-5 (Making will self-proved subsequent to time of execution).

⁵ References in a criminal context, or in a context unrelated to mental capacity such as the use of the word “incompetent” to describe careless or negligent conduct, have not been altered and are not included in this report. A very few references to “incompetent” that pertain to general “disabilities” also are not included. See, *e.g.*, N.J.S. 2A:62-8 and 2A:62-10. In addition, N.J.S. 3A:25-42, though specifically referencing mental incompetency, is not included in this report as the section is part of a block of sections that were neither repealed nor saved from repeal by section 3B:29-1.

In those provisions otherwise altered to eliminate pejorative language, the Commission made the following additional modifications:

- a. the provisions are made gender neutral;
- b. references to “under the age of 21” or “under the age of 18” or “infancy”, or their variations, are replaced with the word “minor”, or corresponding language, and all references to reaching the ages of 21 or 18 with the words “reaching majority”, or corresponding language;
- c. other unclear or anachronistic language is eliminated or refined; and
- d. institution and agency names are made current.

In a few instances, the Commission also recommends repeal of those statutory provisions that are now entirely anachronistic or irrelevant.

Certain statutes that use pejorative terms are also not included in this report because the statutes are addressed in other Commission projects. Thus, provisions of the Married Women’s Property Acts containing references to “lunatic” and “lunacy”, and pejorative terms appearing in Title 22A – Fees and Costs; Title 44 – Poor Law; and Title 9 – Children, are not part of this report.

In addition, as a result of this project, other problematic areas requiring revision have been identified. For example, references to the words “mental retardation” and its derivatives are also pejorative and appear throughout the statutes. The Commission purposely did not diverge in this project from its singular goal of addressing the concerns raised by the constitutional amendment. However, other pejorative terms identified as a result of this project will be considered in one or more separate Commission projects at a later time.

Finally, the Commission also soon realized that as a result of revision of an outdated and anachronistic portion of a current statutory section, the remaining unrevised sections of the same Title became more cumbersome and less comprehensible. Titles 2A and 30, for example, contain lengthy paragraphs, grammatical errors and awkward language. The contrast of the new language, as proposed in this report, alongside the existing language within the same Titles, underscores the need for revision of these Titles as well as other Titles similarly affected.

The references to pejorative terms with recommended replacement language and revision are set out below in separate sections chronologically ordered by Title number.

Title 2A:

2A:4A-39. Right to counsel

a. A juvenile shall have the right, as provided by the Rules of Court, to be represented by counsel at every critical stage in the proceeding which, in the opinion of the court may result in the institutional commitment of the juvenile.

b. During every court proceeding in a delinquency case, the waiving of any right afforded to a juvenile shall be ~~done~~ accomplished in the following manner:

(1) A juvenile who is found not to be competent mentally incapacitated may not waive any rights except in the presence of and after consultation with counsel, and unless a parent has first been afforded a reasonable opportunity to consult with the juvenile and the juvenile's counsel regarding this decision. The parent or guardian may not waive the rights of a ~~competent~~ juvenile found not to be mentally incapacitated.

(2) Any such waiver shall be executed in writing or recorded. Before the court may accept a waiver, the court shall question the juvenile and ~~his~~ the juvenile's counsel to determine if the juvenile is knowingly, willingly and voluntarily waiving ~~his~~ any right. If the court finds after questioning the juvenile that the waiver is not being made voluntarily and intelligently, the waiver shall be denied.

(3) ~~An incompetent~~ mentally incapacitated juvenile may not waive any right. A guardian ad litem shall be appointed for the juvenile who may waive rights after consultation with the juvenile and the juvenile's counsel ~~for the juvenile, and the juvenile.~~

(4) Waivers shall be executed in the language regularly spoken by the juvenile.

2A:14-21. Disabilities affecting limitations; prescribed by articles 1 and 2

If ~~any a~~ person entitled to ~~any of the~~ commence an actions or proceedings specified in N.J.S. 2A:14-1 to 2A:14-8 or N.J.S. 2A:14-16 to 2A:14-20 or to a right or title of entry under N.J.S. 2A:14-6, ~~is or shall be,~~ is a minor or mentally incapacitated at the time ~~of any~~ such cause of action or right or title ~~accruing accrues,~~ under the age of 21 years, or insane, such person may commence ~~such~~ the action or make ~~such~~ the entry, within ~~such~~ the time as limited by those statutes; after ~~his coming to or being of full age~~ reaching majority or ~~of sane mind~~ returning to mental capacity. Notwithstanding the provisions of this section to the contrary, an action by or on behalf of a minor that has accrued for medical malpractice for injuries sustained at birth shall be commenced prior to the minor's 13th birthday, as provided in N.J.S.2A:14-2.

2A:14-32. Disabilities affecting right to enforce right or title to real estate

If any person having a right or title to real estate is a minor or has been adjudicated mentally incapacitated or is outside the United States for purposes other than a military tour of duty shall, at the time ~~such~~ the right or title first accrued or descended, ~~be either not of sound mind or under the age of 21 years, or without the United States,~~ he, and his heirs may, that person may, notwithstanding the fact that the periods of time

~~mentioned specified in sections N.J.S. 2A:14-30 and N.J.S. 2A:14-31 of this title~~ have expired, bring ~~his or their~~ an action to enforce ~~the his or their~~ right or title, if ~~such provided the~~ action ~~shall be~~ is commenced within 5 years after ~~his the~~ disability is removed or ~~he the person comes is~~ physically present within the United States, ~~but not thereafter.~~

2A:15-1. Actions in person or by attorney

~~Every person of full age and sound mind who has reached majority and is not mentally incapacitated~~ may prosecute or defend any action in any court, in person or through another duly admitted to the practice of law in this sState.

2A:16-7. Judgment for conveyance of land; effect

When a judgment of the sSuperior eCourt ~~shall be~~ is entered for a conveyance, release or acquittance of real estate or an interest therein, and the party against whom the judgment ~~shall be~~ is entered ~~shall not~~ has failed to comply ~~therewith~~ by the time ~~appointed~~ specified in the judgment, or within 15 days after entry of the judgment if no time ~~be appointed~~ is specified therein, the judgment shall ~~be considered and taken, in all courts of the state to~~ have the same operation and effect in all courts, ~~and to~~ be available as if the conveyance, release or acquittance had been executed ~~conformably to~~ in conformance with the judgment, ~~and this notwithstanding any disability of such the party by infaney because of minority, lunacy mental incapacity everture or otherwise.~~

2A:16-55. Declaration of rights or legal relations of interested parties in relation to estates, wills and other writings

A person interested as or through an executor, administrator, trustee, guardian, receiver, assignee for the benefit of creditors or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust or the estate of a decedent, ~~an infant a minor, lunatic~~ mentally incapacitated person, insolvent or other person may have a declaration of rights or legal relations in respect thereto, to:

- a. Ascertain any class of creditors, devisees, legatees, heirs, next of kin or others;
or
- b. Direct the executor, administrator, trustee, guardian, receiver, assignee for the benefit of creditors or other fiduciary to do or abstain from doing any particular act in ~~his~~ a fiduciary capacity; or
- c. Determine any question arising in the administration of the estate, trust or guardianship, including the construction of wills and other writings.

2A:41-1. Arrest or imprisonment in civil action prohibited; discharge on habeas corpus

No ~~idiot or lunatic, during the time of his~~ lunacy mentally incapacitated person shall, ~~during the period of incapacity,~~ be committed or detained in prison for want of bail, or ~~his body~~ taken in execution of a writ in any a civil action or in any action for a penalty.

~~In case any~~ A mentally incapacitated person ~~idiot or lunatic shall be~~ who is arrested and detained in custody in ~~any~~ a civil action, contrary to this section, ~~he~~ shall be discharged, on motion, by the court out of which the process ~~on which he is so held~~ issued, or upon a writ of habeas corpus.

2A:48-2. Limitation of action against municipality or county

No action under this article shall be instituted unless commenced within 3 months after the loss of or injury to the property. If any person entitled to such an action is at the time of ~~any such cause of the~~ action accruing ~~accrues, under the age of 21 years or insane, a minor or mentally incapacitated, he~~ the person may commence ~~such the~~ the action within 3 years after ~~his coming to or being of full age~~ reaching majority or ~~of sane mind returning to mental capacity.~~

2A:67-13. Who may prosecute writ

Except as provided in section 2A:67-14 ~~of this title, any~~ the following persons ~~hereinafter specified~~ may prosecute a writ of habeas corpus, ~~according to the provisions of~~ in accordance with this chapter, to inquire into the cause of ~~his~~ the person's imprisonment or restraint:

a. ~~Any~~ A person committed, detained, confined or restrained of ~~his~~ his liberty, within this ~~s~~State, for ~~any~~ a criminal or supposed criminal matter;

b. ~~Any~~ A person in custody by virtue of civil process issued out of ~~any~~ a court in this ~~s~~State;

c. ~~Any~~ A person committed, detained, confined or restrained of ~~his~~ his liberty, within this ~~s~~State, under any pretense whatsoever;

d. ~~Any~~ A person in confinement on a charge of a criminal offense, which is of a bailable nature, for the purpose of ~~putting in such~~ posting bail;

e. ~~Any~~ A person confined in ~~any~~ a ~~State~~ hospital ~~for the insane, within this state,~~ for the purpose of determining ~~his sanity or insanity~~ whether the person is mentally incapacitated;

f. ~~Any~~ A person lawfully committed to ~~any~~ a ~~State~~ institution ~~of this state, pursuant to law,~~ but not for a fixed period of time, for the purpose of determining whether the refusal of the chief executive officer thereof to discharge ~~him~~ the person ~~therefrom~~ is justified;

g. ~~Any~~ A person who has left ~~any~~ a ~~State~~ charitable institution ~~of this state~~ without having been finally and lawfully discharged ~~therefrom pursuant to law~~ and who was lawfully committed or admitted to such institution, ~~pursuant to law,~~ for a permanent or determinable period of time, for the purpose of determining whether such person should be released from the commitment;

h. A superintendent or chief executive officer of ~~any~~ a ~~State~~ charitable institution ~~of this state,~~ for the purpose of obtaining the release from custody or restraint of a person

specified in subsection g. of this section and ~~his~~ that person's return to the custody of ~~such~~ the institution.

If sufficient cause appears, the complaint may be filed and the writ may be prosecuted by another on behalf of the person entitled to prosecute the writ.

2A:67-27. Time of hearing; notice

When the writ is returned, the court may hold the hearing immediately unless the validity of a detention on any civil process, or the ~~sanity or insanity~~ mental capacity of the party is to be determined, and may, in any case, set a date for the hearing which shall be not more than 5 days after the return of the writ unless for good cause additional time is allowed.

Notice of the time and place set for a later hearing shall be served at least 2 days ~~prior thereto~~ before the hearing or ~~at such~~ earlier, time as the court may order, by the applicant upon the defendant, and (a) if the party is in custody on any criminal matter, upon the county prosecutor of the county ~~wherein~~ in which the alleged offense was committed, or (b) if the party is in custody on any civil process, upon each person having an interest in continuing the confinement or restraint or upon ~~his~~ the party's attorney, or (c) if the party is in custody of any psychiatric hospital ~~for the insane~~ or other institution, ~~service shall be made~~ upon the person or persons ~~upon~~ whose application ~~he~~ was the basis for ~~committed~~ commitment to the hospital or institution, and upon the medical director or other head officer of the hospital or institution.

2A:67-28. Hearing; jury

In all cases in which the ~~sanity or insanity~~ mental capacity of the party is to be determined, the testimony shall be taken orally and the judge may hear the matter without a jury or may direct that the action be tried by a jury called from the general panel or, if ~~such a jury~~ is not available, by a jury specially summoned as in other actions.

In all other cases, the judge may hear the matter summarily on the complaint, return and answer to the return, ~~if any,~~ or ~~may~~ require that testimony be offered orally ~~as in other actions~~ and, on its own motion, may summon witnesses and require any person to produce ~~any~~ documents, records or other writings.

In ~~any~~ a proceeding under subsection d. of section 2A:67-13 ~~of this title,~~ the judge may take testimony concerning the truth of ~~the affidavit or affidavits~~ and proofs upon which the order for process, ~~under which the defendant therein is held,~~ was made and ~~said~~ the process issued.

2A:67-29. Judgment

In any proceeding under subsections a., b. or c. of section 2A:67-13 ~~of this title,~~ if no cause is shown for the imprisonment or restraint or for the continuation thereof, the judge shall discharge the party from the confinement or restraint ~~under which he is held.~~ If the party is not entitled to a discharge and is not bailed, the party shall be remanded by ~~the judge shall remand him~~ to the custody or placed him under the restraint from which

~~he was taken, so long as such custody or restraint is lawful, if the person under whose custody he was is legally entitled thereto, and i~~ If not so entitled, such custody or restraint is not lawful, such party shall be committed by the judge shall commit the party to the custody of such other the officer or person who by law is lawfully entitled thereto.

In any proceedings under subsections a., b., c. or d. of section 2A:67-13 ~~of this title, if it appears that the prisoner person is entitled to be bailed, the judge shall forthwith discharge the prisoner person immediately from his imprisonment, upon taking his a secured or bonded recognizance in such sum and with such surety or sureties an amount as the judge may determine approve for his appearance, as the circumstances may require, and the judge shall then certify the writ with the return and the recognizance to the court where the appearance is to be made.~~

In any proceeding under subsection d. of section 2A:67-13 ~~of this title, the judge shall discharge the party in custody if the process was improperly or improvidently mistakenly issued, or should not have been issued against such party.~~

In any proceeding under subsection e. of section 2A:67-13 ~~of this title, the inmate person shall not be discharged unless he is found not to be mentally incapacitated, to be sane either by the judge, if the hearing is held without a jury, or by the unanimous verdict of the jury.~~

In any proceeding under subsection f. of section 2A:67-13 ~~of this title, the inmate person shall not be discharged from the commitment unless the judge finds he is the person not afflicted as stated in the order of commitment.~~

In any proceeding under subsection g. or subsection h. of section 2A:67-13 ~~of this title, the judge, in his shall have the discretion, may to discharge the person committed from the commitment, or if such person is under confinement or restraint, to release him therefrom the person and order his the person's return to the institution to which he was where previously committed or admitted, depending upon the best interests of such person and his the person's parents, guardians or custodians.~~

No person shall be entitled to a discharge because of any informality or insufficiency in the original arrest or commitment.

2A:81-2. Transactions with ~~lunatic~~ mentally incapacitated person or decedent; proof required

When ~~+~~ a mentally incapacitated party to ~~any~~ a civil action is ~~a lunatic suing or defending~~ sues or defends by guardian or ~~when + party~~ sues or is sued in a representative capacity, any other party who asserts a claim or an affirmative defense against ~~such the lunatic mentally incapacitated person or representative, that is supported by oral testimony of a promise, statement or act (i) of the lunatic mentally incapacitated person while of sound mind before the onset of mental incapacity, or (ii) of the decedent, shall be required to establish the same by clear and convincing proof.~~

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

2A:84A-20. Lawyer-client privilege

Rule 26. [N.J.R.E. 504]

(1) General rule. Subject to Rule 37 [N.J.R.E. 530] and except as otherwise provided by paragraph 2 of this rule communications between lawyer and ~~his~~ client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (a) to refuse to disclose any such communication, and (b) to prevent ~~his~~ the lawyer from disclosing it, and (c) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably to be anticipated, or (iii) as a result of a breach of the lawyer-client relationship, or (iv) in the course of a recognized confidential or privileged communication between the client and such witness. The privilege shall be claimed by the lawyer unless otherwise instructed by the client or ~~his~~ the client's representative; the privilege may be claimed by the client in person, or if ~~incompetent~~ mentally incapacitated or deceased, by ~~his~~ the client's guardian or personal representative. Where a corporation or association is the client having the privilege and it has been dissolved, the privilege may be claimed by its successors, assigns or trustees in dissolution.

(2) Exceptions. Such privilege shall not extend (a) to a communication in the course of legal service sought or obtained in aid of the commission of a crime or a fraud, or (b) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction, or (c) to a communication relevant to an issue of breach of duty by the lawyer to ~~his~~ client, or by the client to ~~his~~ lawyer. Where 2 or more persons have employed a lawyer to act for them in common, none of them can assert such privilege as against the others as to communications with respect to that matter.

(3) Definitions. As used in this rule (a) "client" means a person or corporation or other association that, directly or through an authorized representative, consults a lawyer or the lawyer's representative for the purpose of retaining the lawyer or securing legal service or advice from ~~him~~ the lawyer in ~~his~~ a professional capacity; and includes an ~~incompetent~~ mentally incapacitated person whose guardian so consults the lawyer or the lawyer's representative in behalf of the ~~incompetent~~ mentally incapacitated person, (b) "lawyer" means a person authorized, or reasonably believed by the client to be authorized to practice law in any State or nation the law of which recognizes a privilege against disclosure of confidential communications between client and lawyer. A communication made in the course of relationship between lawyer and client shall be presumed to have been made in professional confidence unless knowingly made within the hearing of some person whose presence nullified the privilege.

2A:84A-22. Marital privilege - Confidential communications

Rule 28. [N.J.R.E. 509]

No person shall disclose any communication made in confidence between such person and ~~his or her~~ that person's spouse unless both shall consent to the disclosure or unless the communication is relevant to an issue in an action between them or in a

criminal action or proceeding in which either spouse consents to the disclosure, or in a criminal action or proceeding coming within ~~Rule 23(2)~~ section 2A:84A-17. When a spouse is ~~incompetent~~ mentally incapacitated or deceased, consent to the disclosure may be given for such spouse by the guardian, executor or administrator. The requirement for consent shall not terminate with divorce or separation. A communication between spouses while living separate and apart under a divorce from bed and board shall not be a privileged communication.

2A:84A-22.1. Definitions; patient-physician privilege

As used in this act, (a) "patient" means a person who, for the sole purpose of securing preventive, palliative, or curative treatment, or a diagnosis preliminary to such treatment, of his physical or mental condition, consults a physician, or submits to an examination by a physician; (b) "physician" means a person authorized or reasonably believed by the patient to be authorized, to practice medicine in the State or jurisdiction in which the consultation or examination takes place; (c) "holder of the privilege" means the patient while alive and not under the guardianship or the guardian of the person of an ~~incompetent~~ mentally incapacitated patient, or the personal representative of a deceased patient; (d) "confidential communication between physician and patient" means such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

2A:84A-22.15. Victim counselor's privilege

Subject to Rule 37 ~~of the Rules of Evidence~~ [N.J.R.E. 530], a victim counselor has a privilege not to be examined as a witness in any civil or criminal proceeding with regard to any confidential communication. The privilege shall be claimed by the counselor unless otherwise instructed by prior written consent of the victim. When a victim is ~~incompetent~~ mentally incapacitated or deceased consent to disclosure may be given by the guardian, executor or administrator except when the guardian, executor or administrator is the defendant or has a relationship with the victim ~~such that he has an interest~~ results in an interest in the outcome of the proceeding. The privilege may be knowingly waived by a juvenile. In any instance where the juvenile is, in the opinion of the judge, incapable of knowing consent, the parent or guardian of the juvenile may waive the privilege on behalf of the juvenile, provided that the parent or guardian is not the defendant and does not have a relationship with the defendant ~~such that he has an interest~~ results in an interest in the outcome of the proceeding. A victim counselor or a victim cannot be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location, or telephone number of a domestic violence shelter or any other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

Title 3B:

3B:11-5. Trustee's death or failure to act; appointment of new trustee by court; powers

When a trustee appointed by a will probated in the surrogate's court of any county or a trustee appointed under a trust inter vivos as to real or personal property situate in any county fails or refuses to act or dies before the execution or completion of the trust ~~committed to him~~ or absconds or removes from this State, is adjudicated a mentally ~~incompetent~~ incapacitated, or becomes in any manner legally incapable of executing the trust, the Superior Court may remove the trustee, ~~if he be alive~~, and appoint a suitable person or persons to execute the trust, and the trustee or trustees so appointed shall be entitled to the trust estate as fully and in the same manner as the original trustee was and shall have all the power and discretion of the original trustee.

3B:11-21. Purposes and policies; liberal construction

This act shall be liberally construed and applied to promote its underlying purposes and policies, which are among others to:

a. encourage the orderly establishment of community trusts for the benefit of persons with severe chronic disabilities;

b. ensure that community trusts are administered properly and that the managing boards of the trusts are free from conflicts of interest, except that an unpaid member of the managing board of a nonprofit corporation provider shall not be deemed to be in conflict as a member of the managing board of a trust;

c. facilitate sound administration of trust funds for persons with severe chronic disabilities by allowing family members and others to pool resources in order to make professional management investment more efficient;

d. provide parents of persons with severe chronic disabilities peace of mind in knowing that a means exists to ensure that the interests of their children who have severe chronic disabilities are properly looked after and managed after the parents die or become incapacitated;

e. help make guardians available for persons with severe chronic disabilities who are ~~incompetent~~ mentally incapacitated when no other family member is available for this purpose;

f. encourage the availability of private resources to purchase for persons with severe chronic disabilities goods and services that are not available through any governmental or charitable program and to conserve these resources by limiting purchases to those which are not available from other sources;

g. encourage the inclusion, as beneficiaries of community trusts, of persons who lack resources and whose families are indigent, in a way that does not diminish the resources available to other beneficiaries whose families have contributed to the trust; and

h. remove the disincentives which discourage parents and others from setting aside funds for the future protection of persons with severe chronic disabilities by ensuring that the interests of beneficiaries in community trusts are not considered assets or income which would disqualify them from any governmental or charitable entitlement program with an economic means test.

3B:11-22. Definitions

As used in this act:

a. "Beneficiary" means any person with a severe chronic disability who has qualified as a member of the community trust program and who has the right to receive those services and benefits of the community trust program as provided in this act.

b. "Board" means the board of trustees or the group of persons vested with the management of the business and affairs of a corporation, formed for the purpose of managing a community trust, irrespective of the name by which the group is designated.

c. "Community trust" means a nonprofit organization which offers the following services:

(1) administration of special trust funds for persons with severe chronic disabilities;

(2) follow-along services;

(3) guardianship for persons with severe chronic disabilities who are ~~incompetent~~ mentally incapacitated, when no other immediate family member or friend is available for this purpose; and

(4) advice and counsel to persons who have been appointed as individual guardians of the persons or estates of persons with severe chronic disabilities.

d. "Follow-along services" means those services offered by community trusts which are designed to insure that the needs of each beneficiary are being met for as long as may be required and may include periodic visits to the beneficiary and to the places where the beneficiary receives services, participation in the development of individualized plans being made by service providers for the beneficiary, and other similar services consistent with the purposes of this act.

e. "Severe chronic disability" means a physical or mental impairment which is expected to give rise to a long-term need for specialized health, social, and other services, and which makes the person with such a disability dependent upon others for assistance to secure these services.

f. "Trustee" means any member of the board of a corporation, formed for the purpose of managing a community trust, whether that member is designated as a trustee, director, manager, governor, or by any other title.

g. "Surplus trust funds" means funds accumulated in the trust from contributions made on behalf of an individual beneficiary, which, after the death of the beneficiary, are determined by the board to be in excess of the actual cost of providing services during the

beneficiary's lifetime, including the beneficiary's share of administrative costs, and of any amounts provided to a remainderman.

3B:13-2. Definitions

As used in this chapter:

a. "Federal agency" means any bureau, office, board or officer of the United States by whatever name known, now or hereafter charged by Congress:

(1) With payment of pensions, bounties and allowances to veterans of the military service of the United States, their widows, widowers, children, mothers and fathers, or

(2) With the administration of the affairs of any of the aforesaid persons who may be minors or mentally ~~incompetent~~ incapacitated or to manage pensions, bounties and allowances payable to them;

b. "Military" has reference to the army, navy, marine, air and coast guard services;

c. "Estate" and "income" include only moneys received by the guardian from a Federal agency and earnings, interest and profits derived therefrom;

d. "Benefits" means moneys payable by the United States to the aforesaid persons or their guardians through a Federal agency;

e. "Chief officer" means an officer of a Federal agency, charged by the laws of the United States with the particular duty in connection with which the term is used;

f. "Ward" means a beneficiary of a Federal agency;

g. "Guardian" means a person acting as fiduciary for a ward.

3B:13-6. Determination of ~~incompetency~~ mental incapacity by Superior Court

For the purpose of appointing a guardian pursuant to this chapter, the mental ~~incompetency~~ incapacity of a beneficiary of a Federal agency shall be determined by the Superior Court.

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

3B:13-7. Guardians; when and how appointed

When, pursuant to any law of the United States or regulation of a Federal agency, the chief officer of the agency requires, prior to payment of benefits, that a guardian be appointed for a ward, the appointment for a mentally incapacitated person shall be made in the Superior Court ~~in the case of a mental incompetent, and in the~~ appointment for a minor shall be made in the Superior Court or in the surrogate's court ~~or in the Superior Court in the case of a minor.~~

3B:13-8. Guardian to have no more than five wards; exceptions

Except as provided in this section, no person shall accept appointment as guardian of a ward if ~~he~~ ~~be~~ acting as guardian for five wards.

In an action brought by an attorney of a Federal agency, establishing that a guardian is acting in a fiduciary capacity for more than five wards, the Superior Court shall require a final accounting forthwith from the guardian and shall discharge ~~him~~ the guardian.

The limitation of this section shall not apply where the guardian is a bank or trust company or a public guardian of ~~incompetent~~ mentally incapacitated veterans, and an individual may be guardian of more than five wards if they are all members of the same family.

3B:13-18. Authorization for guardian of ~~incompetent~~ mentally incapacitated ward to receive additional personal property not exceeding \$10,000.00

When an ~~incompetent~~ mentally incapacitated ward for whom a guardian has been appointed becomes entitled to personal property amounting to not more than \$10,000.00 from any source other than the United States Government, the court may authorize ~~him~~ the guardian to receive the personal property for conservation and administrative care. On payment of any money or delivery of property to the guardian, a release executed by ~~him~~ the guardian to the person or persons paying the money or delivering the property shall be valid and effective.

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

3B:13-21. Appointment of public guardian for veterans

There may be appointed in each county a person to be known as "public guardian of ~~incompetent~~ mentally incapacitated veterans for the county of (naming county)" , who shall be appointed by the Assignment Judge of the Superior Court in the county. ~~He~~ The person appointed shall hold office for the term of 5 years from the date of ~~his~~ appointment and until ~~his~~ a successor is appointed and qualified.

3B:13-22. Guardian's bond

Before entering upon the duties of ~~his~~ office, a public guardian of ~~incompetent~~ mentally incapacitated veterans shall execute a bond to the Superior Court in an amount and with sureties as shall be approved by the Superior Court, conditioned for the faithful discharge of all duties imposed by law upon ~~him~~ the person appointed public guardian.

The bond shall be renewed annually and shall, from time to time, be increased or reduced as the court may direct.

The expense of procuring the bond shall be paid by the county treasurer upon presentation of a proper voucher approved by the Assignment Judge of the Superior Court in the county.

3B:13-23. Salary of public guardian

A public guardian of ~~incompetent~~ mentally incapacitated veterans shall receive an annual salary to be fixed by the Assignment Judge of the Superior Court of the county for which the guardian is appointed, with the approval of the board of freeholders or governing body of the county.

The salary shall be paid by the county treasurer in semimonthly payments and shall be in lieu of all other charges, compensation and commissions. A guardian shall not accept any other money whatsoever by way of fee, compensation, gratuity or present for any ~~of his~~ services.

3B:13-24. Duties of public guardian as adviser of other guardians

The public guardian of ~~incompetent~~ mentally incapacitated veterans shall, in each county, assist, supervise, advise and otherwise aid the duly appointed guardians of ~~incompetent~~ these veterans and give help as may be necessary in preparing and drawing papers and documents, and also help them to work in conjunction with the United States Department of Veterans' Administration Affairs, so that their wards may be fully protected.

COMMENT

The Veterans Administration has changed its name to the Department of Veterans Affairs.

3B:13-25. Discharge and removal of public guardian

The public guardian of ~~incompetent~~ mentally incapacitated veterans shall be subject to discharge or removal, by the court, on the grounds and in the manner in which other guardians of mental ~~incompetents~~ incapacitated persons are discharged or removed.

3B:13-26. Public guardian may be appointed general guardian for veteran

Where an action is brought in the Superior Court for the appointment of a guardian for a person who, while in the military, naval, marine, air or coast guard service of the United States, or after discharge therefrom, is ~~or shall have been~~ determined to be mentally ~~incompetent~~ incapacitated, whether or not ~~he is or shall have been~~ committed or confined to an institution for the care of mentally ~~incompetent~~ incapacitated persons, and the heirs of the person are unwilling, unable or unqualified for the appointment, ~~or in case it shall appear that~~ or if the best interests of the person require it, the Superior Court may appoint the public guardian of the county in which the person resides as ~~his~~ guardian of the person.

3B:13-27. Powers of public guardian as guardian of veterans' estates

The public guardian of ~~incompetent~~ mentally incapacitated veterans shall have, in respect of any veteran and the estate of any veteran for whom ~~he has been~~ the appointed guardian, the same power and authority as any other duly appointed guardian of a mentally ~~incompetent~~ incapacitated person.

3B:13-28. Settlement of accounts

The public guardian shall settle ~~his~~ accounts in each estate in which ~~he has been~~ the guardian is appointed ~~guardian~~ at the times and in the same manner as other guardians of mentally ~~incompetents~~ incapacitated persons.

3B:13-29. Termination of guardianship; settlement of account

Upon the termination of a guardianship, by death of ~~his~~ the ward or otherwise, the public guardian shall settle ~~his~~ the account as ~~guardian~~ in the same manner as other guardians of mentally ~~incompetents~~ incapacitated persons.

3B:13-31. Counsel to represent public guardian; compensation

The public guardian of ~~incompetent~~ mentally incapacitated veterans may, when authorized by the Superior Court, employ counsel to represent ~~him~~ the public guardian. The compensation of counsel shall be fixed by the court and paid from moneys in the guardian's ~~hands~~ control belonging to the estate involved in litigation.

3B:13A-1. Definitions

As used in this chapter:

a. "Conservatee" means a person who has not been ~~judicially declared incompetent~~ adjudicated mentally incapacitated but who by reason of advanced age, illness or physical infirmity, is unable to care for or manage ~~his~~ property or has become unable to provide support for ~~himself~~ the conservatee or others who dependent upon ~~him~~ for such support;

b. "Conservator" means a person appointed by the court to manage the estate of a conservatee.

3B:13A-16. Limitations on appointment of conservator

The appointment of a conservator shall not:

a. Be evidence of the ~~competency~~ mental capacity or ~~incompetency~~ incapacity of a conservatee; or

b. Transfer title of the conservatee's real and personal property to the conservator;
or

c. Deprive or modify any civil right of the conservatee, including but not limited to civil service status and appointment or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law.

3B:13A-34. Termination of conservatorship upon death or ~~incompetency~~ mental incapacity of conservatee

A conservatorship shall terminate upon the death of the conservatee or upon ~~his having been adjudicated to be~~ adjudication of the conservatee ~~incompetent~~ as mentally incapacitated as provided by law, but the termination shall not affect the conservator's liability for prior acts nor ~~his~~ obligation to account funds and property of the conservatee.

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

3B:13A-36. Conservator's compensation

A conservator shall be compensated for ~~his~~ services in the same manner as a guardian for a minor or mentally ~~incompetent~~ incapacitated person.

3B:14-21. Removal for cause

The court may remove a fiduciary from office when the fiduciary:

a. After due notice of an order or judgment of the court so directing, ~~he~~ neglects or refuses, within the time fixed by the court, to file an inventory, render an account or give security or additional security;

b. After due notice of any other order or judgment of the court made under its proper authority, ~~he~~ neglects or refuses to perform or obey the order or judgment within the time fixed by the court; or

c. ~~He has~~ embezzleds, wasteds or misapplieds any part of the estate ~~committed to his custody for which the fiduciary is responsible~~, or ~~has~~ abuseds the trust and confidence reposed in ~~him~~ the fiduciary; or

d. ~~He has removed from~~ No longer resides nor has an office in the sState or does not reside therein and neglects or refuses to proceed with the administration of the estate and perform the duties required and trust devolving upon him; or

e. ~~He is of unsound mind or~~ Becomes mentally incapacitated for the transaction of business; or

f. ~~One of two or more fiduciaries has n~~ Neglected or refuseds, as one of two or more fiduciaries, to perform ~~his~~ the required duties or to join with the other fiduciary or fiduciaries in the administration of the estate ~~committed to their care for which they are responsible~~ whereby the proper administration and settlement of the estate is or may be hindered or prevented.

3B:14-23. Powers.

In the absence of contrary or limiting provisions in the judgment or order appointing a fiduciary, in the will, deed or other instrument or in a subsequent court judgment or order, every fiduciary shall, in the exercise of good faith and reasonable discretion, have the power:

a. To accept additions to any estate or trust from sources other than the estate of the decedent, minor, mentally ~~incompetent~~ incapacitated person or the settlor of a trust;

b. To acquire the remaining undivided interest in an estate or trust asset in which the fiduciary, in ~~his~~ a fiduciary capacity, holds an undivided interest;

c. To invest and reinvest assets of the estate or trust under the provisions of the will, deed or other instrument or as otherwise provided by law and to exchange assets for investments and other property upon terms as may seem advisable to the fiduciary;

d. To effect and keep in force fire, rent, title, liability, casualty or other insurance to protect the property of the estate or trust and to protect the fiduciary;

e. With respect to any property or any interest therein owned by an estate or trust, including any real property belonging to the fiduciary's decedent at death, except where the property or any interest therein is specifically disposed of:

(1) To take possession of and manage the property and to collect the rents therefrom, and pay taxes, mortgage interest and other charges against the property;

(2) To sell the property at public or private sale, and on terms as in the opinion of the fiduciary shall be most advantageous to those interested therein;

(3) With respect to fiduciaries other than a trustee, to lease the property for a term not exceeding three years, and in the case of a trustee to lease the property for a term not exceeding 10 years, even though the term extends beyond the duration of the trust, and in either case including the right to explore for and remove mineral or other natural resources, and in connection with mineral leases to enter into pooling and unitization agreements;

(4) To mortgage the property;

(5) To grant easements to adjoining owners and utilities;

(6) A fiduciary acting under a will may exercise any of the powers granted by this subsection e. notwithstanding the effects upon the will of the birth of a child after its execution;

f. To make repairs to the property of the estate or trust for the purpose of preserving the property or rendering it rentable or saleable;

g. To grant options for the sale of any property of the estate or trust for a period not exceeding six months;

h. With respect to any mortgage held by the estate or trust to continue it upon and after maturity, with or without renewal or extension, upon terms as may seem advisable to the fiduciary and to foreclose, as an incident to collection of any bond or note, any mortgage and purchase the mortgaged property or acquire the property by deed from the mortgagor in lieu of foreclosure;

i. In the case of the survivor or survivors of two or more fiduciaries to administer the estate or trust without the appointment of a successor to the fiduciary or fiduciaries who have ceased to act and to exercise or perform all of the powers given unless contrary to the express provision of the will, deed or other instrument;

j. As a new, alternate, successor, substitute or additional fiduciary or fiduciaries, to have or succeed to all of the powers, duties and discretion of the original fiduciary or fiduciaries, with respect to the estate or trust, as were given to the original fiduciary or fiduciaries named in or appointed by a will, deed or other instrument, unless the exercise of the powers, duties or discretion of the original fiduciary or fiduciaries is expressly prohibited by the will, deed or other instrument to any successor or substitute fiduciary or fiduciaries;

k. Where there are three or more fiduciaries qualified to act, to take any action with respect to the estate or trust which a majority of the fiduciaries shall determine; a fiduciary who fails to act through absence or disability, or a dissenting fiduciary who joins in carrying out the decision of a majority of the fiduciaries if ~~his~~ the dissent is expressed promptly in writing to ~~his~~ the cofiduciaries, shall not be liable for the consequences of any majority decision, provided that liability for failure to join in administering the trust or to prevent a breach of trust may not thus be avoided;

l. To employ and compensate attorneys for services rendered to the estate or trust or to a fiduciary in the performance of ~~his~~ duties;

m. To compromise, contest or otherwise settle any claim in favor of the estate, trust or fiduciary or in favor of third persons and against the estate, trust or fiduciary, including transfer inheritance, estate, income and other taxes;

n. To vote in person or by proxy, discretionary or otherwise, shares of stock or other securities held by the estate or trust;

o. To pay calls, assessments and any other sums chargeable or accruing against or on account of shares of stock, bonds, debentures or other corporate securities in the ~~hands~~ control of a fiduciary, whenever the payments may be legally enforceable against the fiduciary or any property of the estate or trust or the fiduciary deems payment expedient and for the best interests of the estate or trust;

p. To sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers or liquidations, and to consent to corporate sales or leases and encumbrances, and, in the exercise of those powers, the fiduciary is authorized to deposit stocks, bonds or other securities with any custodian, agent, protective or other similar committee, or trustee under a voting trust agreement, under terms and conditions respecting the deposit thereof as the fiduciary may approve;

q. To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust;

r. In the case of a trustee:

(1) To hold two or more trusts or parts of trusts created by the same instrument, as an undivided whole, without separation as between the trusts or parts of the trusts, provided that separate trusts or parts of trusts shall have undivided interests and provided further that no holding shall defer the vesting of any estate in possession or otherwise;

(2) To divide a trust, before or after its initial funding, into two or more separate trusts, provided that such division will not materially impair the accomplishment of the

trust purposes or the interests of any beneficiary. Distributions provided for by the governing instrument may be made from one or more of the separate trusts;

s. To distribute in kind any property of the estate or trust as provided in article 1 of chapter 23 of this title;

t. To join with the surviving spouse, the executor of ~~his or her~~ the spouse's will or the administrator of ~~his or her~~ the spouse's estate in the execution and filing of a joint income tax return for any period prior to the death of a decedent for which ~~he has not filed a~~ no return or a gift tax return on gifts made by the decedent's surviving spouse was filed, and to consent to treat the gifts as being made one-half by the decedent, for any period prior to a decedent's death, and to pay taxes thereon as are chargeable to the decedent;

u. To acquire or dispose of an asset, including real or personal property in this or another state, for cash or on credit, at public or private sale, and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

v. To continue any business constituting the whole or any part of the estate for so long a period of time as the fiduciary may deem advisable and advantageous for the estate and persons interested therein;

w. In the case of a qualified bank as defined in section 1 of P.L.1948, c.67 (C.17:9A-1), and an out-of-State bank as defined in section 1 of P.L.1948, c.67 (C.17:9A-1), which has established a trust office in this State to purchase, sell and maintain for any fiduciary account, securities issued by an investment company which is operated and maintained in accordance with the "Investment Company Act of 1940," 15 U.S.C.s.80a-1 et seq., and for which the qualified bank or out-of-State bank is providing services as an investment advisor, investment manager, custodian or otherwise, including those for which it receives compensation, if:

(1) The investment is otherwise in accordance with applicable fiduciary standards; and

(2) The investment is authorized by the agreement or instrument creating the fiduciary account that gives the qualified bank or out-of-State bank investment authority, or by court order; or

(3) The qualified bank or out-of-State bank provides written notice not less than annually by prospectus, account statement or otherwise, disclosing to any current income beneficiaries of the trust the services provided by the qualified bank or its affiliate or out-of-State bank to the investment company, and the rate, formula, or other method by which compensation paid to the qualified bank or its affiliate or out-of-State bank is determined and the qualified bank or out-of-State bank does not receive a written objection from any current income beneficiary within 30 days after receipt of this notice. If a written objection is received from any current income beneficiary pursuant to this paragraph (3), no such investment of the trust assets of that fiduciary account shall be made or maintained.

Such investment shall not be deemed self-dealing or a fiduciary conflict; nor shall the fact that other beneficiaries of fiduciary accounts of the qualified bank or out-of-State

bank have similar investments be deemed to be an improper commingling of assets by the qualified bank or out-of-State bank.

For purposes of this subsection, "fiduciary account" shall include a trust, estate, agency or other account in which funds, property, or both, are held by a qualified bank pursuant to section 28 of P.L.1948, c.67 (C.17:9A-28), or an account for which a qualified bank or out-of-State bank acts as investment advisor or manager or an account held by an out-of-State bank as defined in section 1 of P.L.1948, c. 67 (C.17:9A-1);

x. To employ and compensate accountants from the fiduciary fund for services rendered to the estate or trust or to a fiduciary in the performance of the fiduciary's duties, including the duty of a corporate or other fiduciary with respect to the preparation of accountings, without reduction in commissions due to the fiduciary, so long as such accountings are not the usual, customary or routine services provided by the fiduciary in light of the nature and skill of the fiduciary. In evaluating the actions of the fiduciary under this subsection, the court shall consider the size and complexity of the fiduciary fund, the length of time for which the accounting is rendered, and the increased risk and responsibilities imposed on fiduciaries as a result of revisions to laws affecting fiduciaries including, but not limited to, the "Uniform Principal and Income Act," P.L.2001, c.212 (C.3B:19B-1 et seq.) and the "Prudent Investor Act," P.L.1997, c.26 (C.3B:20-11.1 et seq.) provided that such revisions of the laws affecting fiduciaries were enacted after the fiduciary responsibilities under the corresponding will, deed or other instrument, or court judgment or order, were imposed on, and assumed by, the fiduciary. For purposes of this subsection, "Accountant" means a person who is registered as a certified public accountant pursuant to the provisions of P.L.1997, c.259 (C.45:2B-42 et seq.), or an accounting firm which is organized for the practice of public accounting pursuant to the provisions of P.L.1997, c.259 (C.45:2B-42 et seq.) and P.L.1969, c.232 (C.14A:17-1 et seq.); and

y. The powers set forth in this section are in addition to any other powers granted by law, and by a will, deed or other instrument.

3B:15-1. Bonds of fiduciaries

The court or surrogate appointing a fiduciary in any of the instances enumerated below shall secure faithful performance of the duties of ~~his~~ the office by requiring the fiduciary thereby authorized to act to furnish bond to the Superior Court in a sum and with proper conditions and sureties, having due regard to the value of the estate ~~in his charge~~ and the extent of ~~his~~ the fiduciary's authority, as the court shall approve:

a. When an appointment is made upon failure of the will, or other instrument creating or continuing a fiduciary relationship, to name a fiduciary;

b. When a person is appointed in the place of the person named as fiduciary in the will, or other instrument creating or continuing the fiduciary relationship;

c. When the office to which the person is appointed is any form of administration, except (1) administration ad litem which may be granted with or without bond; or (2) administration granted to a surviving spouse where the decedent's entire estate is payable to the surviving spouse;

d. When the office to which the person is appointed is any form of guardianship of a minor or mentally ~~incompetent~~ incapacitated person, except as otherwise provided in N.J.S. 3B:12-16 or N.J.S. 3B:12-33 with respect to a guardian appointed by will;

e. When letters are granted to a nonresident executor, except in cases where the will provides that no security shall be required of the person named as executor therein;

f. When an additional or substituted fiduciary is appointed;

g. When an appointment is made under chapter 26 of this title, of a fiduciary for the estate or property, or any part thereof, of an absentee; or

h. When a fiduciary moves from the State, the court may require ~~him to~~ the fiduciary give such security as it may determine.

Nothing contained in this section shall be construed to require a bond in any case where it is specifically provided by law that a bond need not be required.

3B:15-7. Conditions of bonds of guardians of minors and mentally incompetents incapacitated persons

The bond required of a guardian of a minor or mentally ~~incompetent~~ incapacitated person shall be conditioned substantially as follows:

a. To well and truly administer the ward's estate, and to take proper care of the ward if the guardian is the guardian of the ward's person;

b. To make a just and true account of ~~his~~ the administration of the guardianship, and, if required by the court, to settle ~~his~~ accounts therein within the time so required.

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

3B:15-17.1. Estate of minor consisting of judgment proceeds; payment

Where the estate of a minor consists of the proceeds of a judgment recovered in favor of the minor in any court of this State and the funds recovered are placed under the control of the county surrogate, the funds shall be paid over to the person when the person reaches ~~the age of 18 years~~ majority, unless the court finds the person ~~incompetent~~ mentally incapacitated.

3B:16-8. Inventory of guardian of the estate of a minor or mentally incompetent incapacitated person

Every guardian of the estate of a minor or mentally ~~incompetent~~ incapacitated person may, and if required by the court shall, file with the surrogate of the proper county or the clerk of the Superior Court, ~~as the case may be~~, an inventory, under oath, of all the real and personal property which ~~has come to his hands~~, is in the control, possession or knowledge of the guardian or ~~into the hands of~~ any other person ~~for him~~ on the guardian's behalf. The court shall not require an inventory and appraisal to be filed until 3 months have elapsed after the grant of letters.

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

3B:17-1. Fiduciary filing release by ward or cestui que trust

A fiduciary need not render or settle ~~his~~ an account if ~~he~~ the fiduciary files with the court a release or discharge from the beneficiary, ward or cestui que trust who ~~is of full age~~ has reached majority and is not mentally ~~competent~~ incapacitated.

The release or discharge shall be executed and acknowledged as provided for deeds of real estate to be recorded.

3B:23-21. Unclaimed estate assets

When a fiduciary states ~~his~~ a final account and there remains in ~~his hands~~ the fiduciary's control a balance, devise, distributive share, dividend or sum of money to be paid to a person and the person, or ~~his~~ that person's guardian, if ~~he be an infant a minor~~ or mentally ~~incompetent~~ incapacitated person, fails to claim the balance, devise, distributive share, dividend or sum of money within the period of time set forth in R.S.46:30B-37.1, then the property shall be disposed of as provided in N.J.S.3B:23-19 if it is part of an intestate estate or otherwise presumed abandoned and handled in accordance with the "Uniform Unclaimed Property Act (1981)," R.S.46:30B-1 et seq.

3B:23-34. Conditions precedent to suit for devise

An action to recover a devise may not be maintained until:

- a. The devise becomes due and payable;
- b. Reasonable demand for payment is made upon the personal representative; and

c. A refunding bond in substantially the form prescribed in N.J.S. 3B:23-26 is (i) tendered to the personal representative by the devisee, or the guardian of ~~his~~ the devisee's estate if the devisee is ~~an infant a minor~~ or a mentally ~~incompetent~~ incapacitated; and, if ~~he refuses to~~ (ii) if not accepted by the personal representative, ~~the refunding bond~~, is filed with the clerk of the court, prior to the commencement of the action.

3B:23-39. Deposit with court; effect

When a devise charged by will upon real estate is wholly or in part limited over:

a. To ~~infants~~ minors, ~~the mentally incompetents~~ incapacitated or persons not in esse; or

b. To persons who cannot be ascertained until the happening of an event named in the will; or

c. In a manner that the vesting of the devise may be contingent —, ~~then~~ the Superior Court may, in a summary or other action by the executor, or a person interested in the real estate, direct the devise paid into court together with any additional sums as the court may deem reasonable to cover the expense of investing and taking charge of the

devise. Upon payment into court, the real estate shall be wholly clear and discharged from the lien created by the will.

Title 10:

10:4-12. Meetings open to public; exclusion of public; subject matter of discussion

a. Except as provided by subsection b. of this section all meetings of public bodies shall be open to the public at all times. Nothing in this act shall be construed to limit the discretion of a public body to permit, prohibit or regulate the active participation of the public at any meeting, except that a municipal governing body and a board of education shall be required to set aside a portion of every meeting of the municipal governing body or board of education, the length of the portion to be determined by the municipal governing body or board of education, for public comment on any governmental or school district issue that a member of the public feels may be of concern to the residents of the municipality or school district.

b. A public body may exclude the public only from that portion of a meeting at which the public body discusses:

(1) Any matter which, by express provision of federal law or State statute or rule of court shall be rendered confidential or excluded from the provisions of subsection a. of this section.

(2) Any matter in which the release of information would impair a right to receive funds from the Government of the United States.

(3) Any material the disclosure of which constitutes an unwarranted invasion of individual privacy such as any records, data, reports, recommendations, or other personal material of any educational, training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance and similar program or institution operated by a public body pertaining to any specific individual admitted to or served by such institution or program, including but not limited to information relative to the individual's personal and family circumstances, and any material pertaining to admission, discharge, treatment, progress or condition of any individual, unless the individual concerned (or, in the case of a minor or ~~incompetent~~ mentally incapacitated person, ~~his~~ the guardian) shall request in writing that the same be disclosed publicly.

(4) Any collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body.

(5) Any matter involving the purchase, lease or acquisition of real property with public funds, the setting of banking rates or investment of public funds, where it could adversely affect the public interest if discussion of such matters were disclosed.

(6) Any tactics and techniques utilized in protecting the safety and property of the public, provided that their disclosure could impair such protection. Any investigations of violations or possible violations of the law.

(7) Any pending or anticipated litigation or contract negotiation other than in subsection b. (4) herein in which the public body is, or may become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise ~~his~~ ethical duties as a lawyer.

(8) Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.

(9) Any deliberations of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act or omission for which the responding party bears responsibility.

Title 12A:

12A:3-308. Proof of signatures and status as holder in due course

a. In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or ~~incompetent~~ mentally incapacitated at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under subsection a. of 12A:3-402.

b. If the validity of signatures is admitted or proved and there is compliance with subsection a. of this section, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under 12A:3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

Title 17:

17:4-9.1. Substitution of "successor" company for "liquidating" company as fiduciary; account; bond

a. For purposes of this section, the term "successor company" includes "successor bank" or "successor savings bank"; and the term "predecessor company" includes "liquidating company" or "predecessor bank" or "predecessor savings bank".

~~b. Whenever a "successor company" has been or may hereafter be~~ A successor company formed under and by virtue of the provisions of section 17:4-9, repealed and replaced by section 17:9A-16, and has qualified to act as a fiduciary as provided for in by section 17:4-41, repealed and now replaced by section 17:9A-30, subject to the exception hereinafter made, in order to facilitate and hasten the orderly liquidation and the winding up of the affairs of the "liquidating company" predecessor company, it shall and may be lawful for such the "successor company" shall be permitted from time to time, to take over and become to be substituted as fiduciary in any or all those matters in which said "liquidating company" the predecessor company has qualified;

~~c. in any and all matters w~~Where in the sound judgment of the "liquidating company" predecessor company and the "successor company" successor company, such substitution of fiduciary is deemed advisable, in the best interests of the trust or relation, and in aid of the winding up of the affairs of the "liquidating company," liquidation, the "liquidating company", predecessor company may file its account to date with the court having the jurisdiction thereof, and upon approval of such account thereof and upon the discharge of the "liquidating company" from such the trust or relation the said "successor company" shall succeed to all such the rights, relations and trusts and the associated duties connected therewith, and shall execute and perform each and every such the trust or relation in the same manner as if such the "successor company" had itself originally assumed the trust or relation; provided, however, that the "successor company" shall not assume no the liabilities which may have been incurred by the "liquidating company" predecessor company incident to its administration of such the trust or relation.

~~d. Subject to subsection c., t~~The "successor company" shall as to such matters succeed to all the rights and duties of the "liquidating company" predecessor company and to all fiduciary capacities, whether as administrator, coadministrator, executor, coexecutor, trustee or cotrustee, guardian, coguardian, assignee, coassignee, receiver, coreceiver, committee or committeeman of estates of lunatics or in any other fiduciary capacity of or in respect to any estate or trust or other matter being administered under the laws of New Jersey, or as transfer agent or registrar of stocks and bonds;

~~e. such relations as well as any other or similar fiduciary relations and all rights, privileges and duties connected therewith shall remain unimpaired, subject as aforesaid~~ Subject to subsections c. and d., all fiduciary rights, privileges and duties shall remain unimpaired and shall continue into and in the said "successor company" from and as of the date of discharge by the court of the "liquidating company" predecessor company from such the trust or relation, by the court, irrespective regardless of the date when (i) such the relationship may have been was created or established; and irrespective of the date of said (ii) the trust agreement was created; relating thereto or the date of death of any or (iii) the trustor or decedent or lunatic mentally incapacitated person or minor died, whose estate is being so administered or managed, and it shall not be necessary for said "successor company" without the need for the successor company to seek appointment in said the person's estates, by any court of this State; provided, further, that in all cases where the instrument under which the "liquidating company" predecessor company qualified to act did not require the "liquidating company" to furnishing of a bond, no such bond shall be required of the "successor company" as provided for in section 17:4-41, or otherwise. The terms "successor company" and "liquidating company" as used herein

~~shall apply to and be construed to have the same meaning as is placed on said terms by section 17:4-9.~~

COMMENT

Section 17:4-9 has since been repealed and replaced by section 17:9A-16. Section 17:4-41 has since been repealed and replaced by section 17:9A-30. Subsections have been added for clarity.

Title 17B:

17B:30B-9. Information required before entering into viatical settlement contracts; right of rescission; contract changes; consideration; inquiries concerning health status of insured

a. (1) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(a) If the viator is the insured, a written statement from a licensed attending physician that the viator ~~is of sound mind~~ has the mental capacity and is under no constraint or undue influence to enter into a viatical settlement contract; and

(b) A document in which the insured consents to the release of ~~his~~ medical records to a viatical settlement provider, life insurance producer and, if the policy was issued less than two years from the date of application for a viatical settlement contract, to the insurance company that issued the policy covering the life of the insured.

(2) The insurer shall respond to a request for verification of coverage submitted by a viatical settlement provider not later than 30 calendar days after the date the request is received. The request for verification of coverage shall be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at that time regarding the validity of the insurance contract.

(3) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness was diagnosed after the life insurance policy was issued.

(4) If a life insurance producer performs any of the activities required of the viatical settlement provider, the viatical settlement provider is deemed to have fulfilled the requirements of this section.

b. All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of State law relating to confidentiality of medical information.

c. All viatical settlement contracts entered into in this State shall provide the viator with an unconditional right to rescind the contract before the earlier of 30 calendar days after the date upon which the settlement contract is executed by all parties or 15 calendar days after the receipt of the viatical settlement proceeds by the viator. If exercised by the viator, rescission is effective only if both notice of the rescission is given and a full repayment of all proceeds and any premiums, loans and loan interest to the settlement provider is made within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of (i) all viatical settlement proceeds, and (ii) any premiums, loans and loan interest that have been paid by the settlement provider.

d. The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the documents (or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider), the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a State or federally-chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership or designation of beneficiary from the insurance company, the escrow agent shall pay the viatical settlement proceeds to the viator.

e. Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed pursuant to paragraph (6) of subsection a. of section ~~17B:30B-8 of this act~~ renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

f. Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider after the viatical settlement has occurred shall only be made by the settlement provider licensed in this State or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider shall explain to the insured the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers shall be responsible for the actions of their authorized representatives.

g. If the insured is not terminally or chronically ill, viatical settlement providers shall pay an amount greater than the cash surrender value or accelerated death benefit then available.

Title 18A:

18A:66-184. Disability benefits; payment; total disability; exceptions

a. The disability benefits provided under such group policy or policies for all eligible participants in the alternate benefit programs shall provide a monthly income if the participant becomes totally disabled from occupational or nonoccupational causes for a period of at least 6 consecutive months following the effective date of the coverage. The monthly disability benefit may be paid by the insurance company so long as the participant remains disabled up to ~~his~~ the person's ~~seventieth~~ 70th birthday, provided the disability commenced prior to ~~his~~ the person's ~~sixtieth~~ 60th birthday. The benefit will terminate when the participant is no longer considered totally disabled or begins to receive retirement benefits.

b. The participant will be considered totally disabled if ~~he is~~ unable to perform each duty of ~~his~~ the person's occupation and is under the regular care of a physician. After the 12 months following the commencement of such disability benefit payments, ~~he~~ the person must be unable to engage in any gainful occupation for which ~~he is~~ reasonably fitted by education, training or experience. Total disability is not considered to exist if ~~he~~ the person is gainfully employed. However, following an agreement with the insurance company and the policyholder, the participant can continue to receive disability benefits for a limited time while performing some type of work. During the period of rehabilitation the monthly benefit will be the regular payment less 80% of the participant's earnings from such rehabilitative position.

c. For purposes of this section a participant shall be deemed to be in service and covered by the disability benefit insurance provisions for a period of no more than 6 months while on official leave of absence without pay if satisfactory evidence is presented to the Division of Pensions and Benefits that such leave of absence without pay is due to illness and that the member was not actively engaged in any gainful occupation during such period of leave of absence without pay.

d. Disability benefit insurance provisions of the group policy or policies shall not cover disability resulting from or contributed to by pregnancy, act of war, intentionally self-inflicted injury, or attempted suicide ~~whether or not sane~~ regardless of mental capacity. For purposes of such disability insurance the participant will not be considered to be disabled while ~~he is~~ imprisoned or while outside the United States, its territories or possessions, or Canada.

e. If the participant has recovered from the disability for which ~~he had~~ benefits were received ~~benefits~~ and again becomes totally disabled while insured, the later disability will be regarded as a continuation of the prior one unless the participant has returned to full-time covered employment for at least 6 months. However, if the later absence is due to an unrelated cause and the participant had returned to full-time work, it will be considered a new disability. The disability benefit insurance cannot be converted to an individual policy.

f. No person shall be covered by the disability benefit provision of the group policy or policies except upon the completion of one year of full-time continuous employment in a position eligible for participation in the alternate benefit program.

COMMENT

Subsections have been added for clarity. The Division of Pensions is now called the Division of Pensions and Benefits.

Title 19:

19:4-1. Constitutional qualifications; persons not having right of suffrage; right to register

~~Except as provided in sections 19:4-2 and 19:4-3 of this Title, E~~every person possessing the qualifications required by Article II, paragraph 3, of the Constitution of the State of New Jersey and having none of the disqualifications ~~hereinafter~~ hereafter stated and being duly registered as required by this Title, shall have the right of suffrage and shall be entitled to vote in the polling place assigned to the election district in which ~~he~~ the person actually resides, and not elsewhere.

No person shall have the right of suffrage—

(1) ~~Who is an idiot or is insane~~ has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting; or

(2) (Deleted by amendment.)

(3) (Deleted by amendment.)

(4) (Deleted by amendment.)

(5) (Deleted by amendment.)

(6) Who has been convicted of a violation of any of the provisions of this Title, for which criminal penalties were imposed, if such person was deprived of such right as part of the punishment therefor according to law unless pardoned or restored by law to the right of suffrage; or

(7) Who shall be convicted of the violation of any of the provisions of this Title, or which criminal penalties are imposed, if such person shall be deprived of such right as part of the punishment therefor according to law, unless pardoned or restored by law to the right of suffrage; or

(8) Who is serving a sentence or is on parole or probation as the result of a conviction of any indictable offense under the laws of this or another state or of the United States or a territory thereof.

A person who will have on the day of the next general election the qualifications ~~to entitle him~~ to vote shall have the right to be registered for and vote at such general election and register for and vote at any election, intervening between such date of registration and such general election, if ~~he shall be~~ a citizen of the United States and ~~shall meet~~ having met the age and residence requirements prescribed by the Constitution

of this State and the laws of the United States, when such intervening election is held, as though such qualifications were met before registration.

COMMENT

Sections 19:4-2 and 19:4-3 have since been repealed.

Title 26:

26:2H-54. Legislative findings

The Legislature finds and declares that:

a. ~~Competent a~~ Adults who are not mentally incapacitated have the fundamental right, in collaboration with their health care providers, to control decisions about their own health-care. This State recognizes, in its law and public policy, the personal right of the individual patient to make voluntary, informed choices to accept, to reject, or to choose among alternative courses of medical and surgical treatment.

b. Modern advances in science and medicine have made possible the prolongation of the lives of many seriously ill individuals, without always offering realistic prospects for improvement or cure. For some individuals the possibility of extended life is experienced as meaningful and of benefit. For others, artificial prolongation of life may seem to provide nothing medically necessary or beneficial, serving only to extend suffering and prolong the dying process. This State recognizes the inherent dignity and value of human life and within this context recognizes the fundamental right of individuals to make health care decisions to have life-prolonging medical or surgical means or procedures provided, withheld, or withdrawn.

c. In order that the right to control decisions about one's own health care should not be lost in the event a patient loses decision making capacity and is no longer able to participate actively in making ~~his own~~ such health care decisions, this State recognizes the right of ~~competent~~ adults who are not mentally incapacitated to plan ahead for health care decisions through the execution of advance directives, such as living wills and durable powers of attorney, and to have the wishes expressed therein respected, subject to certain limitations.

d. The right of individuals to forego life-sustaining measures is not absolute and is subject to certain interests of society. The most significant of these societal interests is the preservation of life, understood to embrace both an interest in preserving the life of the particular patient and a related but distinct interest in preserving the sanctity of all human life as an enduring social value. A second, closely related societal interest is the protection of individuals from direct and purposeful self-destruction, motivated by a specific intent to die. A third interest is the protection of innocent third parties who may be harmed by the patient's decision to forego therapy; this interest may be asserted to prevent the emotional and financial abandonment of the patient's minor children or to protect the paramount concerns of public health or safety. A fourth interest encompasses safeguarding the ethical integrity of the health care professions, individual professionals, and health care institutions, and maintaining public confidence and trust in the integrity and caring role of health care professionals and institutions. Finally, society has an interest in ensuring the soundness of health care decision making, including both

protecting vulnerable patients from potential abuse or neglect and facilitating the exercise of informed and voluntary patient choice.

e. In accordance with these State interests, this State expressly rejects on both legal and moral grounds the practice of active euthanasia. No individual shall have the right to, nor shall any physician or other health care professional be authorized to engage in, the practice of active euthanasia.

f. In order to assure respect for patients' previously expressed wishes when the capacity to participate actively in decision making has been lost or impaired; to facilitate and encourage a sound decision making process in which patients, health care representatives, families, physicians, and other health care professionals are active participants; to properly consider patients' interests both in self-determination and in well-being; and to provide necessary and appropriate safeguards concerning the termination of life-sustaining treatment for ~~incompetent~~ mentally incapacitated patients as the law and public policy of this State, the Legislature hereby enacts the New Jersey Advance Directives for Health Care Act.

26:2H-55. Definitions

As used in this act:

"Adult" means an individual ~~18 years of age or older~~ who has reached the age of majority.

"Advance directive for health care" or "advance directive" means a writing executed in accordance with the requirements of this act. An "advance directive" may include a proxy directive or an instruction directive, or both.

"Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

"Decision making capacity" means a patient's ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of each, and alternatives to any proposed health care, and to reach an informed decision. A patient's decision making capacity is evaluated relative to the demands of a particular health care decision.

"Declarant" means an ~~competent~~ adult who is not mentally incapacitated and who executes an advance directive.

"Do not resuscitate order" means a physician's written order not to attempt cardiopulmonary resuscitation in the event the patient suffers a cardiac or respiratory arrest.

"Emergency care" means immediate treatment provided in response to a sudden, acute and unanticipated medical crisis in order to avoid injury, impairment or death.

"Health care decision" means a decision to accept or to refuse any treatment, service or procedure used to diagnose, treat or care for a patient's physical or mental condition, including life-sustaining treatment. "Health care decision" also means a decision to accept or to refuse the services of a particular physician, nurse, other health

care professional or health care institution, including a decision to accept or to refuse a transfer of care.

"Health care institution" means all institutions, facilities, and agencies licensed, certified, or otherwise authorized by State law to administer health care in the ordinary course of business, including hospitals, nursing homes, residential health care facilities, home health care agencies, hospice programs operating in this State, mental health institutions, facilities or agencies, or institutions, facilities and agencies for the developmentally disabled. The term "health care institution" shall not be construed to include "health care professionals" as defined in this act.

"Health care professional" means an individual licensed by this State to administer health care in the ordinary course of business or practice of a profession.

"Health care representative" means the individual designated by a declarant pursuant to the proxy directive part of an advance directive for the purpose of making health care decisions on the declarant's behalf, and includes an individual designated as an alternate health care representative who is acting as the declarant's health care representative in accordance with the terms and order of priority stated in an advance directive.

"Instruction directive" means a writing which provides instructions and direction regarding the declarant's wishes for health care in the event that the declarant subsequently lacks decision making capacity.

"Life-sustaining treatment" means the use of any medical device or procedure, artificially provided fluids and nutrition, drugs, surgery or therapy that uses mechanical or other artificial means to sustain, restore or supplant a vital bodily function, and thereby increase the expected life span of a patient.

"Other health care professionals" means health care professionals other than physicians and nurses.

"Patient" means an individual who is under the care of a physician, nurse or other health care professional.

"Permanently unconscious" means a medical condition that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term "permanently unconscious" includes without limitation a persistent vegetative state or irreversible coma.

"Physician" means an individual licensed to practice medicine and surgery in this State.

"Proxy directive" means a writing which designates a health care representative in the event the declarant subsequently lacks decision making capacity.

"State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"Terminal condition" means the terminal stage of an irreversibly fatal illness, disease or condition. A determination of a specific life expectancy is not required as a

precondition for a diagnosis of a "terminal condition," but a prognosis of a life expectancy of six months or less, with or without the provision of life-sustaining treatment, based upon reasonable medical certainty, shall be deemed to constitute a terminal condition.

26:2H-56. Executing an advance directive

A declarant may execute an advance directive for health care at any time. The advance directive shall be signed and dated by, or at the direction of, the declarant in the presence of two subscribing adult witnesses, who shall attest that the declarant ~~is of sound mind~~ has the mental capacity to make the advance directive and is free of duress and undue influence. A designated health care representative shall not act as a witness to the execution of an advance directive. Alternatively, the advance directive shall be signed and dated by, or at the direction of, the declarant and ~~be~~ acknowledged by the declarant before a notary public, attorney at law, or other person authorized to administer oaths. An advance directive may be supplemented by a video or audio tape recording. A female declarant may include in an advance directive executed by her, information as to what effect the advance directive shall have if she is pregnant.

26:2H-57. Reaffirming, modifying and revoking an advance directive

a. A declarant may reaffirm or modify either a proxy directive, or an instruction directive, or both. The reaffirmation or modification shall be made in accordance with the requirements for execution of an advance directive pursuant to section ~~4 of this act~~ 26:2H-56.

b. A declarant may revoke an advance directive, including a proxy directive, or an instruction directive, or both, by the following means:

(1) Notification, orally or in writing, to the health care representative, physician, nurse or other health care professional, or other reliable witness, or by any other act evidencing an intent to revoke the document; or

(2) Execution of a subsequent proxy directive or instruction directive, or both, in accordance with section ~~4 of this act~~ 26:2H-56.

c. Designation of the declarant's spouse as health care representative shall be revoked upon divorce or legal separation, and designation of the declarant's domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) as health care representative shall be revoked upon termination of the declarant's domestic partnership, unless otherwise specified in the advance directive.

d. ~~An incompetent~~ mentally incapacitated patient may suspend an advance directive, including a proxy directive, an instruction directive, or both, by any of the means stated in paragraph (1) of subsection b. of this section. ~~An incompetent~~ mentally incapacitated patient who has suspended an advance directive may reinstate that advance directive by oral or written notification to the health care representative, physician, nurse or other health care professional of an intent to reinstate the advance directive.

e. Reaffirmation, modification, revocation or suspension of an advance directive is effective upon communication to any person capable of transmitting the information including the health care representative, the attending physician, nurse or other health care professional responsible for the patient's care.

26:2H-58. Advance directives for health care

a. A declarant may execute a proxy directive, pursuant to the requirements of section ~~26:2H-56~~ ~~4 of this act~~, designating ~~an competent~~ an adult who is not mentally incapacitated to act as ~~his~~ the declarant's health care representative.

(1) ~~An competent~~ an adult who is not mentally incapacitated, including, but not limited to, a declarant's spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), adult child, parent or other family member, friend, religious or spiritual advisor, or other person of the declarant's choosing, may be designated as a health care representative.

(2) An operator, administrator or employee of a health care institution in which the declarant is a patient or resident shall not serve as the declarant's health care representative unless the operator, administrator or employee is related to the declarant by blood, marriage, domestic partnership or adoption.

This restriction does not apply to a physician, if the physician does not serve as the patient's attending physician and the patient's health care representative at the same time.

(3) A declarant may designate one or more alternate health care representatives, listed in order of priority. In the event the primary designee is unavailable, unable or unwilling to serve as health care representative, or is disqualified from such service pursuant to this section or any other law, the next designated alternate shall serve as health care representative. In the event the primary designee subsequently becomes available and able to serve as health care representative, the primary designee may, insofar as then practicable, serve as health care representative.

(4) A declarant may direct the health care representative to consult with specified individuals, including alternate designees, family members and friends, in the course of the decision making process.

(5) A declarant shall state the limitations, if any, to be placed upon the authority of the health care representative including the limitations, if any, which may be applicable if the declarant is pregnant.

b. A declarant may execute an instruction directive, pursuant to the requirements of section ~~4-26:2H-56~~ ~~of this act~~, stating the declarant's general treatment philosophy and objectives; or the declarant's specific wishes regarding the provision, withholding or withdrawal of any form of health care, including life-sustaining treatment; or both. An instruction directive may, but need not, be executed contemporaneously with, or be attached to, a proxy directive.

26:2H-105. Advance directive; execution, reaffirmation, modification, revocation or suspension; requirements; witnesses

a. A declarant may execute, reaffirm, modify, revoke or suspend an advance directive for mental health care at any time, except as provided in subsection f. of section ~~5 26:2H-~~ of this act.

(1) The advance directive shall be signed and dated by, or at the direction of, the declarant in the presence of at least one subscribing adult witness, who shall attest that ~~the declarant is of sound mind~~ has the mental capacity to do that act specified in subsection a. and is free of duress and undue influence.

(2) The advance directive may be supplemented by a video or audio tape recording.

b. The following persons shall not act as a witness to the execution of an advance directive for mental health care:

- (1) a designated mental health care representative; and
- (2) the responsible mental health care professional responsible for, or directly involved with, the patient's care at the time that the advance directive is executed.

c. A person shall not act as a sole witness to the execution of an advance directive for mental health care if that person is:

- (1) related to the declarant by blood, marriage or adoption, or is the declarant's domestic partner or otherwise shares the same home with the declarant;
- (2) entitled to any part of the declarant's estate by will or by operation of law at the time that the advance directive is executed; or
- (3) an operator, administrator or employee of a rooming or boarding house or a residential health care facility in which the declarant resides.

Title 30:

30:1-18. Jurisdiction of Superior Court over ~~incompetent or mentally ill~~ or incapacitated not affected

No provisions of this Title shall restrain or abridge the power and authority of the Superior Court over the persons and property of the ~~incompetent or mentally ill~~ or incapacitated.

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

[30:3-5(2). Use of moneys provided for by this act; order of precedence as to institutions

The moneys raised by this act shall be devoted exclusively to the acquisition of sites for and the constructing, reconstructing, development, extending and equipping of

state charitable, hospital, relief, training, correctional, reformatory and penal institutions and appurtenances thereto, in the order of precedence set forth in this section.

Third State Hospital for Mental Diseases—

Third unit, including patient housing, employees' housing,
psychopathic building, administration building and
service lines \$1,250,000.00

Woodbine Colony for Feeble-Minded Males—

Housing for inmates 85,000.00
Reconstruction and repairs to service lines 21,000.00
Laundry building 44,000.00

State Institution for Feeble-Minded, Vineland—

Building for defective delinquents 120,000.00

State Hospital, Trenton—

Completion of building for housing tubercular insane 150,000.00
Housing for employees 50,000.00

State Hospital, Greystone Park—

Fireproofing buildings for patients 150,000.00
Fire protection, water lines, etc..... 145,000.00
Completion of attendants' housing 90,000.00

New Jersey Reformatory, Annandale—

Housing for inmates 215,000.00

Completion of administration unit, assembly hall, chapel

and hospital 160,000.00

Housing for guards and employees 100,000.00

New Jersey Reformatory, Rahway—

Industrial building 30,000.00
Completion of new wing for housing prisoners 150,000.00
Housing for officers and employees 45,000.00

New Lisbon Colony for Feeble-Minded Males—

Assembly and recreation building 45,000.00

New Jersey Reformatory for Women, Clinton—

Detention building and hospital 85,000.00

State Home for Boys, Jamesburg—

New dormitory, housing for inmates	65,000.00
State Prison—	
Housing for prisoners (industrial colonies)	250,000.00
Village for Epileptics, Skillman—	
Continuation of repairs, to buildings	12,000.00
Ground lighting, conduits, etc.....	75,000.00
North Jersey Training School, Totowa—	
Water supply, including water tank and tower	20,000.00
Roads, walks and grading	7,500.00
Detention building	50,000.00
State Home for Girls, Trenton—	
Repairs and reconstruction of buildings	50,000.00
Sanatorium for Tuberculous Diseases, Glen Gardner—	
Replacing steam line	9,000.00]

COMMENT

This appropriations statute is now moot and therefore recommended for repeal.

30:4-1. Boards of trustees; appointment; terms; vacancies; removal; compensation; organization

a. The State board, with the approval of the Governor, shall appoint a board of trustees for each State institution or agency ~~within the department~~ or for each group or class thereof as it may determine, from residents of the State without respect to political affiliation or belief.

b. The State board, with the approval of the Governor, may appoint a board of trustees or authorize or designate an existing board of trustees ~~Whenever the establishment or assumption of jurisdiction over an additional institution, or the acquisition of a~~ an institutional site therefor, is authorized by the Legislature, ~~the State board, with the approval of the Governor, may appoint a board of trustees therefor or may authorize or designate any existing board of trustees to assume jurisdiction thereof.~~

c. Each board of trustees of an institution shall be known as "the board of trustees" naming the institution or group or class for which the board is appointed. The State board, with the approval of the Governor, shall ~~determine the names of~~ the boards of noninstitutional agencies.

d. Except as otherwise specifically provided by statute, the boards of trustees shall consist of not less than five nor more than seven members, ~~appointed with the approval of the Governor from residents of the State at large without respect to political affiliation or belief.~~ At least two women shall be members of each board in charge of ~~the Training School for Boys, Jamesburg, the Veterans Memorial Homes for Disabled Soldiers,~~

~~Sailors, Marines and their Wives and Widows, and the institutions or agencies for the blind, feebleminded, the epileptic and the insane~~ mentally incapacitated and developmentally disabled, and at least two members of the Commission for the Blind and Visually Impaired shall themselves be legally blind but ~~they shall not be employees, or related to an employee related by blood, marriage or adoption, to any employee, of said commission.~~ At least a majority of the members of each board in charge of the Training School for Girls, Trenton, and the women's reformatory shall be women.

e. The term of each board member shall be ~~3~~ three years commencing on July 1 and ending on June 30, of the third year thereafter. A vacancy shall be filled by the State board, with the approval of the Governor, for the unexpired term only.

f. The members of new or additional boards of trustees shall at the time of their appointment be divided into groups so that the terms of two members shall expire on June 30 of the year next succeeding appointment; the terms of two others on June 30 of the second year succeeding appointment; the term of the fifth member and in case of larger boards the term of the sixth member, on June 30 of the third year succeeding appointment; the term of the seventh member of a board having seven members, on June 30 of the fourth year succeeding appointment. Their successors shall be appointed for ~~3~~ three-year terms.

g. The members of ~~such~~ boards of trustees shall receive no compensation for services but shall be reimbursed for actual expenditures incurred in the performance of duty. They shall be subject to removal by the State board, with the approval of the Governor, at any time for good and sufficient cause.

h. ~~Annually, On or before July 1, of each year~~ each ~~such~~ board of trustees shall ~~reorganize by the election~~ elect from among its members ~~of a chairman and vice chairman~~ and shall appoint a secretary, with the approval of the chief executive officer of the institution, who shall be an employee of the ~~department~~ institution or agency and ~~shall~~ serve at the pleasure of the board without additional compensation. The term of office of the ~~chairman and vice chairman~~ shall be until June 30 of the following year or until ~~their~~ successors are elected and qualified.

COMMENT

State board is defined by section 30:1-1 as the State Board of Human Services. The Training School for Boys, Jamesburg, is now known as the New Jersey Training School for Boys and, since 1976, when the Juvenile Justice Commission of the Department of Law & Public Safety (JJC) was formed, has been under JJC jurisdiction. The New Jersey Training School for Boys, however, has not been governed by a Board of Trustees as referred to in this statute since the JJC assumed control. The statutory authority for and responsibilities of the JJC are found in N.J.S. 52:17B-170 through 180. The Training School for Girls, Trenton, and the women's reformatory no longer exist. The Veterans Memorial Homes have no gender requirements for their Boards. Changes to the names of other institutions are appropriately noted. Subsections have been added for clarity.

30:4-7.1. ~~Incompetent~~ mentally incapacitated patients; medical, psychiatric, surgical and dental treatment

It is hereby declared to be the public policy of this State to make maximum provision for the health, safety and welfare of ~~incompetent~~ mentally incapacitated patients and residents in State and county institutions for the mentally ill and

developmentally disabled, for developmentally disabled residents in community-based alternate living arrangements in the State or in private facilities both in and outside the State, and for minor inmates ~~under age 18~~ in State and county penal and correctional institutions, by permitting the chief executive officer of such institution or the regional administrator of a Division of Developmental Disabilities community services region to consent to the utilization of appropriate medical, psychiatric, surgical and dental treatment for such patients, inmates and residents where prescribed by a licensed physician or dentist as provided for herein.

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

30:4-7.2. Consent for treatment for certain patients, inmates, residents, or juveniles

The chief executive officer of a State or county institution for the mentally ill or developmentally disabled, ~~of~~ a State or county penal or correctional institution, ~~of~~ or a juvenile facility or detention center, or the regional administrator of a Division of Developmental Disabilities community services region is hereby authorized to give consent for medical, psychiatric, surgical or dental treatment to ~~incompetent~~ mentally incapacitated patients, inmates or minor juveniles ~~under age 18~~, or residents, hospitalized, confined or placed by the Division of Developmental Disabilities in community-based alternate living arrangements in the State or in private facilities both in and outside the State, under circumstances where it appears that

(a) Such patients, inmates, juveniles or residents, because of ~~incompetency~~ mental incapacity or nonage, are legally prevented from giving consent to such treatment, and

(b) Either: (i) there is no parent or guardian known to such officer or administrator, after reasonable inquiry, who ~~is competent~~ has the mental capacity to give consent for the treatment of patients, minor inmates ~~under the age of 18~~ or residents, or (ii) where a parent or guardian, after reasonable notice of the proposed treatment and a request for consent, and prior to the date fixed in such notice for the rendering of said treatment, refuses or neglects to execute and submit to such officer or administrator a writing expressing either the grant or denial of such consent, and

(c) Where a licensed physician, psychiatrist, surgeon or dentist certifies that the treatment to be performed is essential and beneficial to the general health and welfare of such patient, inmate or resident, or will improve ~~his~~ the opportunity for recovery or prolong or save ~~his~~ the person's life.

30:4-24.2. Rights of patients

a. Subject to any other provisions of law and the Constitutions of New Jersey and the United States, no patient shall be deprived of ~~any~~ civil rights solely ~~by reason of his~~ because of receiving treatment under the provisions of this Title nor shall such treatment modify or vary any legal or civil right of any ~~such~~ patient including but not limited to the right to register for and to vote at elections, or rights relating to the granting, forfeiture, or denial of a license, permit, privilege, or benefit pursuant to ~~any~~ law.

b. Every patient in treatment shall be entitled to all rights set forth in this act and shall retain all rights not specifically denied him under this Title. A notice of the rights set forth in this act shall be given to every patient within 5 days of his admission to treatment. Such notice shall be ~~in writing and~~ written in ~~simple understandable~~ plain language. ~~It shall be in a language the patient understands and if the patient cannot read the notice,~~ it shall be read to the patient ~~him~~. ~~In the case of an~~ If a patient is adjudicated ~~incompetent~~ mentally incapacitated patient, the notice shall be given to the patient's guardian. ~~such procedure shall be followed for the patient's guardian.~~ Receipt of this notice shall be acknowledged in writing with a copy placed in the patient's file. If the patient or guardian refuses to acknowledge receipt of the notice, the person delivering the notice shall state this in writing with a copy placed in the patient's file.

c. No patient may be presumed ~~to be incompetent~~ incapacitated because ~~he has been examined or treated of an examination or treatment~~ for mental illness, regardless of whether ~~such~~ the evaluation or treatment was voluntarily or involuntarily received. ~~Any~~ A patient who leaves a mental health program following evaluation or treatment for mental illness, regardless of whether that evaluation or treatment was voluntarily or involuntarily received, shall be given a written statement of the substance of this act.

d. Each patient in treatment shall have the following rights, a list of which shall be prominently posted in all facilities providing such services and otherwise brought to ~~his~~ the patient's attention by ~~such~~ additional means as the department may designate:

(1) To be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a physician. Notation of each patient's medication shall be kept in ~~his~~ the treatment records. At least weekly, the attending physician shall review the drug regimen of each patient under ~~his~~ the physician's care. All physician's orders or prescriptions shall be written with a termination date, which shall not exceed 30 days. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program. Voluntarily committed patients shall have the right to refuse medication.

(2) Not to be subjected to experimental research, shock treatment, psychosurgery or sterilization, without the express and informed consent of the patient after consultation with counsel or interested party of the patient's choice. Such consent shall be ~~made~~ in writing, a copy of which shall be placed in the patient's treatment record. If the patient has been adjudicated ~~incompetent~~ mentally incapacitated, a court of ~~competent jurisdiction~~ shall ~~hold a hearing to~~ determine the necessity of such procedure at a hearing ~~at which~~ where the client is physically present, represented by counsel, and provided the right and opportunity to be confronted with and to cross-examine ~~all~~ witnesses alleging the necessity of ~~such~~ the procedures. In such proceedings, the burden of proof shall be on the party alleging the necessity of ~~such~~ the procedures. ~~In the event that~~ If a patient cannot afford counsel, the court shall appoint an attorney not less than 10 days before the hearing. An attorney so appointed shall be entitled to a reasonable fee to be determined by the court and paid by the county from which the patient was admitted. Under no circumstances may a patient in treatment be subjected to experimental research ~~which is~~ not directly related to the specific goals of ~~his~~ the patient's treatment program.

(3) To be free from physical restraint and isolation. Except for emergency situations, in which a patient has caused substantial property damage or ~~has~~ attempted to cause self-harm himself or harm to others and in which less restrictive means of restraint are not feasible, a patient may be physically restrained or placed in isolation, only on a medical director's written order or that of ~~his~~ the director's physician designee ~~which explains with~~ the rationale for such action. The written order may be entered only after the medical director or ~~his~~ physician designee has personally seen the patient ~~concerned~~, and evaluated ~~whatever the episode or situation is said to require~~ causing the need for restraint or isolation. Emergency use of restraints or isolation shall be for no more than ~~4~~ an hour, by which time the medical director or ~~his~~ physician designee shall have been consulted and shall have entered an appropriate written order, in writing. ~~Such~~ The written order shall be effective for no more than 24 hours and shall be renewed if restraint and isolation are continued. While in restraint or isolation, the patient must be bathed every 12 hours and checked by an attendant every 2 hours, ~~with a notation in writing of such checks placed~~ which must be noted in the patient's treatment record along with the order for restraint or isolation.

(4) To be free from corporal punishment.

e. Each patient receiving treatment pursuant to this Title, shall have the following rights, a list of which shall be prominently posted in all facilities providing such services and otherwise brought to ~~his~~ the patient's attention by ~~such~~ additional means as the commissioner may designate:

(1) To privacy and dignity.

(2) To the least restrictive conditions necessary to achieve the purposes of treatment.

(3) To wear ~~his~~ the patient's own clothes; to keep and use ~~his~~ personal possessions including ~~his~~ toilet articles; and to keep and be allowed to spend a reasonable sum of ~~his own~~ money for canteen expenses and small purchases.

(4) To have access to individual storage space for ~~his~~ private use.

(5) To see visitors each day.

(6) To have reasonable access to and use of telephones, both to make and receive confidential calls.

(7) To have ready access to letter writing materials, including stamps, and to mail and receive unopened correspondence.

(8) To regular physical exercise several times a week, the facilities and equipment for which the hospital has a duty to provide. ~~It shall be the duty of the hospital to provide facilities and equipment for such exercise.~~

(9) To be outdoors at regular and frequent intervals, in the absence of medical considerations.

(10) To suitable opportunities for social interaction with members of the opposite or same gender ~~opposite sex, with~~ adequately supervised ~~ion~~.

(11) To practice the religion of his choice or abstain from religious practices. Provisions for such worship shall be made available to each person on a nondiscriminatory basis.

(12) To receive prompt and adequate medical treatment for any physical ailment.

f. Rights designated under subsection d. ~~of this section~~ may not be denied under any circumstances.

g. (1) A patient's rights designated under subsection e. ~~of this section~~ may be denied for good cause ~~in any instance in which the~~ when the director of the patient's treatment program in which the patient is receiving treatment feels it is imperative to do so ~~deny any of these rights~~; provided, however, under no circumstances shall a patient's right to communicate with his an attorney, physician or the courts be restricted. Any such denial of a patient's rights shall take effect only after a written notice of the denial has been filed in the patient's treatment record ~~and shall include~~ including an explanation of the reason for the denial.

(2) A denial of rights shall be effective for a period not to exceed 30 days and shall be renewed for additional 30-day periods only by a written statement entered by the director of the program in the patient's treatment record ~~which indicates~~ indicating the detailed reason for ~~such~~ renewal of the denial.

(3) In each instance of a denial or a renewal, the patient, ~~his~~ the patient's attorney, and ~~his guardian~~, if the patient has been adjudicated ~~incompetent~~ mentally incapacitated, the patient's guardian, and the department shall be given written notice of the denial or renewal and the reason ~~therefor~~.

h. ~~Any individual~~ A patient subject to this Title shall be entitled to a writ of habeas corpus upon proper petition by ~~himself~~ the patient, by a relative, or a friend to any court ~~of competent jurisdiction~~ in the county in which ~~he~~ the patient is detained and shall further be entitled to enforce any of the rights herein stated by civil action or other remedies otherwise available by common law or statute.

30:4-27.11a. Legislative findings and declaration

The Legislature finds and declares that:

a. It is of paramount public interest to ensure the rights of all patients in inpatient psychiatric facilities, including those persons being assessed or receiving treatment on an involuntary basis in screening services and short-term care facilities as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2);

b. The rights set forth in section 10 of P.L.1965, c.59 (C.30:4-24.2) apply to any person who has been involuntarily committed to a State or county psychiatric hospital, a psychiatric unit of a county hospital or a special psychiatric hospital in accordance with the laws of this State;

c. Because involuntary assessment and treatment in a screening service and involuntary commitment to a short-term care facility involve the deprivation of a patient's liberty, it is necessary to specify and guarantee by statute the rights to which that patient is entitled, in a manner similar to that provided for a patient who is involuntarily

committed to a State or county psychiatric hospital, a psychiatric unit of a county hospital or a special psychiatric hospital, while recognizing the administrative, structural and staffing features of screening services and short-term care facilities which are different from State or county psychiatric hospitals, psychiatric units of county hospitals or special psychiatric hospitals, as well as recognizing differences between the administrative, structural and staffing features of screening services and short-term care facilities by providing a separate guarantee of rights for patients in each of these settings; and

d. All patients who are receiving assessment or treatment on an involuntary basis in screening services and short-term care facilities as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2) are entitled to receive professional treatment of the highest standard and, unless ~~incompetent~~ mentally incapacitated to participate in their treatment and discharge planning to the fullest extent possible.

30:4-27.11c. Legal and civil rights of psychiatric patients in inpatient facilities protected; no presumption of ~~incompetence~~ mental incapacity; patients entitled to writ of habeas corpus upon proper petition

a. Subject to any other provisions of law and the Constitutions of New Jersey and the ~~Constitution of the~~ United States, a patient shall not be deprived of a civil right solely by reason of his receiving assessment or treatment under the provisions of P.L.1987, c.116 (C. section 30:4-27.1 et seq.), nor shall the assessment or treatment modify or vary a legal or civil right of that patient, including, but not limited to, the right to register for and to vote at elections, or rights relating to the granting, forfeiture, or denial of a license, permit, privilege, or benefit pursuant to any law.

b. A patient shall be entitled to all rights set forth in this act and shall retain all rights not specifically denied ~~him~~ under P.L.1987, c.116 (C.30:4-27.1 et seq.) and P.L.1989, c.170 (C.26:2H-12.7 et seq.).

c. A patient shall not be presumed to be ~~incompetent~~ mentally incapacitated solely because ~~he has been~~ of an examination or treatment for mental illness.

d. A patient shall be entitled to a writ of habeas corpus upon proper petition by ~~himself~~ the patient, a relative, or a friend to a court ~~of competent jurisdiction~~ in the county in which ~~he~~ the patient is detained and shall further be entitled to enforce, by civil action or other remedies otherwise available by common law or statute, any of the rights provided in this act.

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

30:4-27.11d. Rights of psychiatric patients in short-term care facilities; list of rights to be posted conspicuously; denial of rights for good cause only; written notice of denial required

a. A patient in a short-term care facility shall have the following rights, which shall not be denied under any circumstances. A list of these rights shall be posted in a conspicuous place in each room designated for use by a patient and otherwise brought to the patient's attention pursuant to subsection d. of this section:

(1) To be free from unnecessary or excessive medication. Medication shall not be administered unless at the written or verbal order of a physician. A verbal order shall be valid only for a period of 24 hours, after which a written order for the medication shall be completed. At least weekly, the attending physician shall review the drug regimen of each patient under ~~his~~ the physician's care. Medication shall be administered in accordance with generally accepted medical standards as part of a treatment program. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program.

(A) In an emergency in which less restrictive or appropriate alternatives acceptable to the patient are not available to prevent imminent danger to the patient or others, medication may be administered over a patient's objection at the written order of a physician, which shall be valid for a period of up to 72 hours, in order to lessen the danger.

(B) A patient's right to refuse medication when imminent danger to the patient or others is not present may be overridden by a written policy which has been adopted by the short-term care facility to protect the patient's right to exercise informed consent to the administration of medication. The written policy shall, at a minimum, provide for appropriate procedures that ensure notice to the patient of the decision by the attending physician or other designated physician to administer medication, the right to question the physician about ~~his~~ the physician's decision to administer medication and to provide information to the physician regarding that decision. The written policy shall also provide for review of the patient's decision to object to the administration of medication by a psychiatrist who is not directly involved in the patient's treatment. The psychiatrist shall not override the patient's decision to object to the administration of medication unless the psychiatrist determines that: the patient is incapable, without medication, of participating in a treatment plan that will provide a realistic opportunity of improving ~~his~~ the patient's condition; or, although it is possible to devise a treatment plan that will provide a realistic opportunity of improving the patient's condition without medication, a treatment plan which includes medication would probably improve the patient's condition within a significantly shorter time period, or there is a significant possibility that, without medication, the patient will cause self-harm ~~himself~~ or harm others before improvement of ~~his~~ the condition is realized.

(C) An adult who has been voluntarily committed to a short-term care facility shall have the right to refuse medication.

(2) Not to be subjected to psychosurgery or sterilization, without the express and informed, written consent of the patient after consultation with counsel or interested party of the patient's choice. A copy of the patient's consent shall be placed in the patient's treatment record. If the patient has been adjudicated ~~incompetent~~ mentally incapacitated, a court of ~~competent jurisdiction~~ shall hold a hearing to determine the necessity of the procedure. The patient shall be physically present at the hearing, represented by counsel, and provided the right and opportunity to be confronted with and to cross-examine all witnesses alleging the necessity of the procedure. In these proceedings, the burden of proof shall be on the party alleging the necessity of the procedure. In the event that a

patient cannot afford counsel, the court shall appoint an attorney not less than 10 days before the hearing. An attorney so appointed shall be entitled to a reasonable fee to be determined by the court and paid by the State.

(3) To be free from unnecessary physical restraint and seclusion. Except for an emergency in which a patient has caused substantial property damage or has attempted to cause self-harm himself or harm to others, or in which ~~his~~ the patient's behavior threatens to cause self-harm himself or harm to others, and in which less restrictive means of restraint are not feasible, a patient may be physically restrained or placed in seclusion only on an attending physician's written order or that of another designated physician which explains the rationale for that action. The written order may be given only after the attending physician or other designated physician has personally seen the patient, and evaluated the episode or situation that is said to require restraint or seclusion.

(A) In an emergency, the use of restraints or seclusion may be initiated by a registered professional nurse and shall be for no more than one hour. Within that hour, the nurse shall consult with the attending physician or other designated physician and, if continued restraint or seclusion is determined to be necessary, shall obtain an order from the attending physician or other designated physician to continue the use of restraints or seclusion. If an order is given, the patient shall be reevaluated by the nurse or the attending physician or other designated physician as to the patient's physical and psychiatric condition and the need for continuing the restraints or seclusion at least every two hours until the use of restraints or seclusion has ended.

(B) The patient's attending physician or other designated physician shall enter a written order approving the continued use of restraints or seclusion no later than 24 hours after the time that physical restraint or seclusion began, and only after the physician has personally seen the patient. A written order by the physician for the continued use of restraints or seclusion shall be effective for no more than 24 hours and shall be renewed if restraint and seclusion are continued. A medical examination of the patient shall be conducted every 12 hours by a physician.

(C) While a patient is in restraints or seclusion, nursing personnel shall check the patient's hygienic, toileting, food-related and other needs every 15 minutes. A notation of these checks shall be placed in the patient's medical record along with the order for restraints or seclusion. A patient in restraints shall be permitted to ambulate every four hours, except when the patient's psychiatric condition would make a release from restraints dangerous to the patient himself or others, and shall be permitted to ambulate at least once every 12 hours regardless of the patient's psychiatric condition.

(4) To be free from any form of punishment.

(5) Not to receive electroconvulsive treatment or participate in experimental research without the express and informed, written consent of the patient. The patient shall have the right to consult with counsel or interested party of the patient's choice. A copy of the patient's consent shall be placed in the patient's treatment record. If the patient has been adjudicated ~~incompetent~~ mentally incapacitated, a court of ~~competent jurisdiction~~ shall hold a hearing to determine the necessity of the procedure. The patient shall be physically present at the hearing, represented by counsel, and provided the right and opportunity to be confronted with and to cross-examine all witnesses alleging the

necessity of the procedure. In these proceedings, the burden of proof shall be on the party alleging the necessity of the procedure. In the event that a patient cannot afford counsel, the court shall appoint an attorney not less than 10 days before the hearing. An attorney so appointed shall be entitled to a reasonable fee to be determined by the court and paid by the State.

b. A patient receiving treatment in a short-term care facility shall have the following rights, which may only be denied pursuant to subsection c. ~~of this section~~. A list of these rights shall be posted in a conspicuous place in each room designated for use by a patient and otherwise brought to the patient's attention pursuant to subsection d. ~~of this section~~:

(1) To privacy and dignity.

(2) To the least restrictive conditions necessary to achieve the purposes of treatment.

(3) To wear ~~his~~ the patient's own clothes; to have access to and use ~~his~~ nondangerous personal possessions including ~~his~~ toilet articles; and to have access to and be allowed to spend a reasonable sum of ~~his own~~ money for expenses and small purchases.

(4) To have access to individual storage space for ~~his~~ private use.

(5) To see visitors each day.

(6) To have reasonable access to and use of telephones, both to make and receive confidential calls.

(7) To have ready access to letter writing materials, including stamps, and to mail and receive unopened correspondence.

(8) To regular physical exercise or organized physical activities several times a week.

(9) To be outdoors at regular and frequent intervals, in the absence of medical considerations, commencing two weeks after admission, except where the physical location of the short-term care facility precludes outdoor exercise or would render the supervision of outdoor exercise too onerous for the facility.

(10) To suitable opportunities for social interaction with members of the opposite or same gender ~~sex, with~~ adequately supervised.

(11) To practice the religion of ~~his~~ choice or abstain from religious practices. Provisions for worship shall be made available to each patient on a nondiscriminatory basis.

(12) To receive prompt and adequate medical treatment for any physical ailment.

(13) To be provided with a reasonable explanation, in terms and language appropriate to the patient's condition and ability to understand, of:

(a) the patient's general mental and physical condition;

(b) the objectives of the patient's treatment;

- (c) the nature and significant possible adverse effects of recommended treatments;
- (d) the reasons why a particular treatment is considered appropriate; and
- (e) the reasons for the denial of any of the patient's rights pursuant to subsection c. ~~of this section.~~

c. (1) A patient's rights designated under subsection b. ~~of this section~~ may be denied only for good cause when the attending physician feels it is imperative to deny any of these rights; except that, under no circumstances shall a patient's right to communicate with ~~his~~ an attorney, physician or the courts be restricted. The denial of a patient's rights shall take effect only after a copy of the written notice of the denial has been filed in the patient's treatment record and shall include an explanation of the reason for the denial.

(2) A denial of rights shall be effective for a period not to exceed 10 days and shall be renewed for additional 10-day periods only by a written statement entered by the attending physician or other designated physician in the patient's treatment record ~~which indicates~~ indicating the detailed reason for the renewal of the denial.

(3) In each instance of a denial or a renewal, the patient, ~~his~~ the patient's attorney, and ~~his~~ the patient's guardian, if the patient has been adjudicated ~~incompetent mentally incapacitated~~, shall be given written notice of the denial or renewal and the reason ~~therefor~~.

d. A notice of the rights set forth in this section shall be given to a patient in a short-term care facility upon admission. The notice shall be ~~in writing and written~~ in simple understandable plain language. ~~It shall be in a language the patient understands and if the patient cannot read the notice, it shall be read to the patient him. In the case of an~~ If a patient is adjudicated incompetent mentally incapacitated patient, the notice shall be given to the patient's guardian. ~~this procedure shall be followed for the patient's guardian.~~ Receipt of this notice shall be acknowledged in writing with a copy placed in the patient's file. If the patient or guardian refuses to acknowledge receipt of the notice, the person delivering the notice shall state this in writing with a copy placed in the patient's file.

30:4-27.11e. Rights of psychiatric patients during first 24 hours of involuntary assessment provided at a screening service; list of rights to be provided to patient; denial of rights for good cause only; written notice of denial required

a. A patient in a screening service shall have the following rights, which shall apply during the first 24 hours of involuntary assessment and care provided at a screening service and which shall not be denied under any circumstances. A list of these rights shall be posted in a conspicuous place in the screening service and otherwise brought to the patient's attention pursuant to subsection d. of this section:

(1) To be free from unnecessary or excessive medication. Medication shall not be administered unless at the order of a physician. Medication shall be administered in accordance with generally accepted medical standards as part of a treatment program. Medication shall not be used as punishment, for the convenience of staff, as a substitute

for a treatment program, or in quantities that interfere with the patient's treatment program.

(A) In an emergency in which less restrictive or appropriate alternatives acceptable to the patient are not available to prevent imminent danger to the patient or others, medication may be administered over a patient's objection at the written order of a physician, which shall be valid for a period of up to 24 hours, in order to lessen the danger.

(2) Not to be subjected to experimental research, psychosurgery or sterilization, without the express and informed, written consent of the patient. The patient shall have the right to consult with counsel or interested party of the patient's choice. A copy of the patient's consent shall be placed in the patient's treatment record.

(3) To be free from unnecessary physical restraint and seclusion. Except for an emergency, in which a patient has caused substantial property damage or has attempted to cause self-harm himself or harm to others, or in which ~~his~~ the patient's behavior threatens to cause self-harm himself or harm to others, and in which less restrictive means of restraint are not feasible, a patient may be physically restrained or placed in seclusion only on an attending physician's written order or that of another designated physician which explains the rationale for that action. The written order may be given only after the attending physician or other designated physician has personally seen the patient, and evaluated the episode or situation that is said to require restraint or seclusion.

In an emergency, the use of restraints or seclusion may be initiated by a registered professional nurse and shall be for no more than one hour. Within that hour, the nurse shall consult with the attending physician or other designated physician and, if continued restraint or seclusion is determined to be necessary, shall obtain an order from the physician to continue the use of restraints or seclusion. If an order is given, the patient shall be reevaluated by the nurse or the attending physician or other designated physician as to the patient's physical and psychiatric condition and the need for continuing the restraints or seclusion at least every two hours until the use of restraints or seclusion has ended.

The patient's attending physician or other designated physician shall enter a written order approving the continued use of restraints or seclusion no later than 12 hours after the time that physical restraint or seclusion began, after the physician has personally seen the patient. A written order by the physician for the continued use of restraints or seclusion shall be effective for no more than 24 hours and shall be renewed if restraint and seclusion are continued. A medical examination of the patient shall be conducted every 12 hours by a physician.

While a patient is in restraints or seclusion, nursing personnel shall check the patient's hygienic, toileting, food-related and other needs every 15 minutes. A notation of these checks shall be placed in the patient's medical record along with the order for restraints or seclusion. A patient in restraints shall be permitted to ambulate every four hours, except when the patient's psychiatric condition would make a release from restraints dangerous to ~~himself~~ the patient or others, and shall be permitted to ambulate at least once every 12 hours regardless of the patient's psychiatric condition.

(4) To be free from any form of punishment.

b. A patient receiving treatment in a screening service shall have the following rights, which may only be denied pursuant to subsection c. ~~of this section~~. A list of these rights shall be posted in a conspicuous place in the screening service and otherwise brought to the patient's attention pursuant to subsection d. ~~of this section~~:

(1) To privacy and dignity.

(2) To the least restrictive conditions necessary to achieve the purposes of treatment.

(3) To wear ~~his~~ the patient's own clothes, except as necessary for medical examination.

(4) To see visitors.

(5) To have reasonable access to and use of telephones, both to make and receive confidential calls.

(6) To practice the religion of ~~his~~ choice or abstain from religious practices.

(7) To receive prompt and adequate medical treatment for any physical ailment.

(8) To be provided with a reasonable explanation, in terms and language appropriate to the patient's condition and ability to understand, of:

(a) the patient's general mental condition, and ~~his~~ physical condition if the screening service has conducted a physical examination of the patient;

(b) the objectives of the patient's treatment;

(c) the nature and significant possible adverse effects of recommended treatments;

(d) the reasons why a particular treatment is considered appropriate; and

(e) the reasons for the denial of any of the patient's rights pursuant to subsection c. ~~of this section~~.

(9) To have a discharge plan prepared ~~for him~~ and to participate in the preparation of that plan.

c. (1) A patient's rights designated under subsection b. ~~of this section~~ may be denied only for good cause when the attending physician feels it is imperative to deny any of these rights; except that, under no circumstances shall a patient's right to communicate with ~~his~~ the patient's attorney, physician or the courts be restricted. The denial of a patient's rights shall take effect only after a copy of the written notice of the denial has been filed in the patient's treatment record and shall include an explanation of the reason for the denial.

(2) A denial of rights shall be effective only for the period of time that the patient is in the screening service.

d. A notice of the rights set forth in this section shall be given to a patient as soon as possible upon admission to the screening service. The notice shall be in writing and written in simple understandable plain language. ~~It shall be in a language the patient~~

~~understands and if~~ the patient cannot read the notice, it shall be read to the patient ~~him~~. ~~In the case of an~~ If the patient is adjudicated incompetent mentally incapacitated patient, ~~this procedure shall be followed for~~ the notice shall be given to the patient's guardian. Receipt of this notice shall be acknowledged in writing with a copy placed in the patient's file. If the patient or guardian refuses to acknowledge receipt of the notice, the person delivering the notice shall state this in writing with a copy placed in the patient's file.

30:4-101. Married couples not to be separated; exceptions

Married or civil union couples who are inmates of ~~in~~ a public institution maintained in whole or in part by the ~~s~~State, or a county, municipality or subdivision thereof, ~~married couples and inmates of the same institution,~~ shall not be separated or maintained in separate quarters. This provision shall not apply to psychiatric hospitals or institutions for the insane or feeble minded mentally incapacitated or developmentally disabled, or to correctional institutions, or ~~to cases~~ where the health or mental condition of the persons concerned warrants separation.

[30:4-127. Visitation of certain institutions; application to Superior Court judge

An assignment judge of the Superior Court may grant, on a written application to him of a majority of the board of managers of the State Charities Aid Association of New Jersey, to such person as may be named in such application an order enabling such person to visit, inspect and examine, in behalf of such association, any of the county, town, township or city poorhouses, prisons, jails, penitentiaries, reformatories, and lunatic or orphan asylums, located within any of the counties of which he is the assignment judge. Every such order shall specify the institutions to be visited, inspected and examined, and the name of the person by whom the visitation, inspection and examination are to be made, and shall be in force for one year from the date on which it shall have been granted, unless sooner revoked.]

COMMENT

This statute is anachronistic and therefore recommended for repeal.

30:4A-7. Admission of unconfined person; hearing

If the person for whom the diagnosis is sought by any court or agency of the State, ~~or of a county,~~ or municipal government, desiring to utilize the services of the diagnostic center, is not under confinement or process of ~~any nature whatsoever,~~ then admission to the diagnostic center shall be secured upon application to the Superior Court upon forms to be provided by the Department of Human Services. The county adjuster shall be the official ~~in the county~~ charged with the responsibility of assisting with processing of such applications and shall perform functions similar to those set forth in Title 30, Revised Statutes. In connection with each such application, the court shall order a hearing to be held, which may be in camera at the discretion of the court. At least ten days' notice of the time, date and place of such hearing shall be served upon the person, and if ~~he be~~ a minor or ~~incompetent~~ mentally incapacitated person, upon the parent, guardian, person standing in loco parentis or person having custody and control of such minor or ~~incompetent~~ mentally incapacitated person. At such hearing, the court shall

determine whether the services of the diagnostic center shall be made available to the said person and may order the person's confinement ~~of such person~~ in the center for a period not to exceed ninety days, which order shall be provided ~~and shall cause a copy of said order of confinement to accompany the said person to the center.~~

30:6B-1. Commitment by court or judicial officer to Department of Veterans Affairs Administration or other agency of United States

~~Whenever, a. If it is determined in any a court proceeding in any court of competent jurisdiction or before a judicial officer, having jurisdiction thereof, under the laws of this State for the commitment of a person alleged to be of unsound mind mentally incapacitated or otherwise in need of confinement in a psychiatric hospital or other institution for the person's his proper care, treatment or safekeeping, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution that commitment is necessary for safekeeping or treatment and it appears that such and that the person is eligible for care or treatment by the Department of Veterans Administration Affairs or other agency of the United States Government, the said court or judicial officer, the court may commit the person to the Department of Veterans Affairs or other agency instead of to a State institution, upon receipt of a certificate from the Department of Veterans Administration Affairs or such other agency showing that facilities are available and that such the person is eligible for care or treatment therein, may, subject to the provisions of this act, ~~commit such person to said Veterans Administration or other agency instead of to an institution of this State.~~~~

b. Upon ~~any such~~ commitment, such person, and when admitted to any a facility operated by any such agency ~~within or without this State~~, the person shall be subject to the rules and regulations of the Department of Veterans Administration Affairs or other agency. The chief officer of any a facility of the Department of Veterans Administration Affairs or institution operated by any the other agency ~~of the United States~~ to which the person is ~~so~~ committed shall, ~~with respect to such person~~, with respect to the retention of the person's custody, transfer, parole or discharge, be vested with the same powers as that of the chief officer of a State institution ~~would have~~ if such person had been committed to a State institution. ~~, with respect to the retention of custody, transfer, parole or discharge of such person.~~

COMMENT

The Veterans Administration has changed its name to the Department of Veterans Affairs. Given the change in name, the Commission recommends the change to the section's descriptor as underlined. Subsections are also added for clarity.

30:6B-4. Transfer of eligible persons to Department of Veterans Administration Affairs or other agency of United States

Upon receipt of a certificate of the Department of Veterans Administration Affairs or such other agency of the United States that facilities are available for the care or treatment of any a person heretofore committed to ~~any hospital for the an institution for care and treatment of insane the mentally incapacitated or other institution for the care or treatment of persons similarly afflicted~~ and that such person is eligible for care or

treatment, the chief officer of the institution may, subject to the approval of the Commissioner of ~~Institutions and Agencies~~ Human Services or of the court or ~~judicial officer~~ having jurisdiction of ~~over such the~~ person, ~~cause the transfer of such~~ transfer the person to the Department of Veterans Administration Affairs or other agency of ~~the United States~~ for care or treatment.

~~Any~~ A person transferred as provided in this section shall be deemed ~~to be~~ committed to the Department of Veterans Administration Affairs or other agency of ~~the United States~~, pursuant to the original commitment, but may be subject to a change of venue to the Department of Veterans Affairs site where the commitment hearings take place.

COMMENT

The Veterans Administration has changed its name to the Department of Veterans Affairs. Given the change in name, the Commission recommends the change to the section's descriptor as underlined.

30:6D-4. Admission to or residence at facility or receipt of service; prohibition of presumption of mental incapacity ~~incompetence~~, discrimination against or deprivation of constitutional, civil or legal rights

No developmentally disabled person shall be presumed ~~to be incompetent~~ mentally incapacitated or shall be discriminated against or shall be deprived of any constitutional, civil or legal right solely by reason of admission to or residence at a facility or solely by reason of receipt of any service for developmentally disabled persons. No such admission, residence or receipt of services shall modify or vary any constitutional, civil or legal right of such person, including, but not necessarily limited to;

- a. Register and vote at elections;
- b. Free exercise of religion;
- c. Receive and send unopened correspondence and, upon request, to obtain assistance in the writing and reading of such correspondence;
- d. Private visitations and private telephone conversations without prior notice to the facility during such reasonable hours as may be established by the facility with parents, guardians, representatives of guardian services, relatives, friends, physicians, attorneys, government officials, and any other persons;
- e. Reasonable opportunities for social interaction with members of the same or opposite gender ~~sex~~;
- f. Confidential handling of personal and medical records.

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

30:6D-5. Rights of person receiving services for developmentally disabled at facility

a. No person receiving services for the developmentally disabled at any facility shall:

- (1) be subjected to any corporal punishment;

(2) be administered any medication or chemical restraint, except upon the written authorization of a physician when necessary and appropriate as an element of the service being received or as a treatment of any medical or physical condition in conformity with accepted standards for such treatment. The nature, amount of, and reasons for the administration of any medication or chemical restraint shall be promptly recorded in such person's medical record;

(3) be physically or chemically restrained or isolated in any manner, except in emergency situations for the control of violent, disturbed or depressed behavior which may immediately result in or has resulted in harm to such person or other person or in substantial property damage.

The chief administrator of the facility, or ~~his~~ chief administrator's designee, shall be notified immediately upon the application of any such restraint or isolation, and thereafter such restraint or isolation shall be continued only upon the written order of the administrator or designee. Such order shall be effective for not more than 24 hours, and may be renewed for additional periods of not more than 24 hours each if the administrator or designee shall determine that such continued restraint or isolation is necessary. While in restraint or isolation, such person shall be checked by an attendant every 15 minutes, and bathed every 24 hours. Such restraint or isolation shall be terminated at any time if an attending physician shall find such restraint or isolation to be medically contraindicated. The nature, duration of, reasons for and notation of attendant checks shall be promptly recorded in such person's medical record;

(4) be subjected to shock treatment, psychosurgery, sterilization or medical behavioral or pharmacological research without the express and informed consent of such person, if an ~~an~~ competent adult not mentally incapacitated, or of such person's guardian ad litem specifically appointed by a court for the matter of consent to these proceedings, if a minor or an ~~an incompetent~~ mentally incapacitated adult or a person administratively determined to be mentally deficient. Such consent shall be made in writing and shall be placed in such person's record.

Either the party alleging the necessity of such procedure or such person or such person's guardian ad litem may petition a court of competent jurisdiction to hold a hearing to determine the necessity of such procedure at which the client is physically present, represented by counsel, and provided the right and opportunity to be confronted with and to cross-examine all witnesses alleging the necessity of such procedure. In such proceedings, the burden of proof shall be on the party alleging the necessity of such procedure. In the event that a person cannot afford counsel, the court shall appoint an attorney not less than 10 days before the hearing. An attorney so appointed shall be entitled to a reasonable fee to be determined by the court and paid by the county from which the person was admitted. Under no circumstances may a person in treatment be subjected to hazardous or intrusive experimental research which is not directly related to the specific goals of his treatment program.

b. Every developmentally disabled person in residence at any facility shall be provided with a nutritionally adequate and sufficient diet and shall receive appropriate and sufficient medical and dental care on a regular basis and whenever otherwise necessary.

c. Every developmentally disabled person between the ages of 5 and 21, inclusive, in residence or full-time attendance at any facility shall be provided a thorough and efficient education suited to such person's age and abilities.

30:9-1. Superintendents and physicians of county hospitals in counties of first class; appointment; terms of office

The ~~boards of chosen freeholders in~~ counties of the first class shall appoint a superintendent for each county hospital and the physicians for the several county hospitals. The term of office of ~~such appointees~~ the physicians shall be two years, except that of the superintendents of the county hospitals for the insane whose terms of office shall be The term of office of the superintendents of the county hospitals shall be as provided by section 30:9-12. ~~of this title, shall be two years.~~

[30:9-1.1. Bonds for erection of county lunatic asylum

The board of chosen freeholders of a county by resolution adopted by a vote of not less than three-fourths of all its members may issue bonds in the corporate name of the county in an amount not exceeding two hundred thousand dollars for the purpose of erecting a suitable county lunatic asylum.]

COMMENT

This statute is anachronistic and therefore recommended for repeal.

[30:9-2. Architect appointed by Superior Court; duties

The erection of a county lunatic asylum shall be under the direct supervision of a competent architect who shall be appointed by the assignment judge of the Superior Court of the county. He shall prepare or approve the plans, specifications and contracts; certify to the correctness of all payments or approve them in writing before they shall be made; report in writing to the said judge and board of chosen freeholders from time to time the progress of the work; report in writing whenever the judge or board may require it, the condition of the work or any portion thereof. The board may direct the attention of the judge to any part of the work of which complaint may be made.

The architect's compensation shall be fixed by the judge and paid by the board from time to time as the judge shall direct. He may be removed and a successor appointed at the pleasure of such assignment judge.]

COMMENT

This statute is anachronistic and therefore recommended for repeal.

30:9-3.1. Commissary or store; establishment; cost; profits

~~Boards of chosen freeholders~~ Counties are empowered to maintain a commissary or store for the sale of commodities to patients, patients' visitors and employees of any county psychiatric hospital for the insane under rules to be adopted by the ~~board~~ county. The cost of establishing the commissary or store may be defrayed out of ~~any~~ funds appropriated for current maintenance. Any profit ~~accruing~~ may be used ~~by the board~~ for recreational entertainment of the patients or ~~any~~ another like purpose.

30:9-4. Enlargement of or additions to ~~asylum~~ psychiatric facilities

~~Wherever in any county in this State~~ If a lunatic asylum psychiatric facility is owned and maintained by the county, and it becomes necessary ~~from time to time~~ either to enlarge ~~such asylum~~ the facility by the building of additions or extensions ~~thereto~~, or to erect additional buildings ~~or pavilions~~ for the accommodation of ~~the insane patients~~, the board of chosen freeholders or governing body of any such of the county may, ~~from time to time~~, upon resolution to be adopted by the affirmative votes of two-thirds of ~~the its~~ members ~~of such board~~, build such additions, extensions, additional building or buildings, ~~pavilion or pavilions~~, and properly fit, furnish and equip ~~the same~~ them.

COMMENT

Adding the terms “governing body” as well as “board of chosen freeholders” reflects the fact that now not all counties are governed by boards of freeholders. The use of the terms “governing body” is also consistent with other parts of Title 30, *e.g.*, sections 30:8-42 (wages for prisoners) and 30:9-3 (adoption of bylaws, rules and regulations for management of county psychiatric facilities). The Commission also recommends the change to the section’s descriptor as underlined.

30:9-5. Bonds for additions, repairs, or furnishing county ~~lunatic asylum~~ psychiatric facility

The county may issue bonds in the corporate name of the county ~~To~~ meet the expense of erecting new buildings, additions or accommodations at a county ~~lunatic asylum~~ psychiatric facility, and making repairs to or otherwise properly fitting, furnishing and equipping such buildings, ~~providing proper furniture or apparatus for lighting, heating or otherwise fitting up the same~~, ~~the board of chosen freeholders may issue bonds in the corporate name of the county.~~

COMMENT

The Commission recommends the change to the section’s descriptor as underlined.

30:9-6. Consolidation of county ~~insane~~ psychiatric hospitals

The board of chosen freeholders or governing body of a county by resolution adopted by the affirmative vote of two-thirds of its members may consolidate its county psychiatric hospitals ~~for the insane~~ in one place on suitable lands owned by the county and erect, furnish and maintain suitable hospital buildings thereon. County bonds for such purpose may be issued to an amount not exceeding six-tenths of one per cent of the ratables of the county.

COMMENT

Adding the terms “governing body” as well as “board of chosen freeholders” reflects the fact that now not all counties are governed by boards of freeholders. The use of the terms “governing body” is also consistent with other parts of Title 30, *e.g.*, sections 30:8-42 (wages for prisoners) and 30:9-3 (adoption of bylaws, rules and regulations for management of county psychiatric facilities). The Commission also recommends the change to the section’s descriptor as underlined.

30:9-7. Sale of unnecessary lands and buildings on consolidation; disposition of proceeds

~~Whenever~~ If county psychiatric hospitals ~~for the insane shall be~~ are consolidated as ~~authorized~~ provided by section 30:9-6 of this title, ~~the board of chosen freeholders of such the county may sell any its lands and buildings owned by such county and used for the purposes of~~ used for a psychiatric hospital for the insane which are located in a part of the county remote from the site of the hospital buildings so consolidated, and which that are rendered unnecessary to be used for such hospital purposes, and the sale and conveyance of such the lands by such board shall vest in the purchaser title in fee to the premises so sold. The proceeds of such sale shall be applied by such board to the sinking funds of such the county or to the redemption of county bonds, and not otherwise.

30:9-8. Change of location of county insane psychiatric hospital within county

~~Whenever in any~~ If the county of this state ~~the board of chosen freeholders or the governing body of the county thereof shall~~ determine, by a resolution ~~which shall receive adopted by the affirmative votes of at least two-thirds of all its members, that any a county psychiatric hospital for the insane under its management and control is unsuitably located, and that it is expedient and desirable that the location thereof should be changed to some other place in its county, such the board county may make such change.~~

COMMENT

Adding the terms “governing body” as well as “board of chosen freeholders” reflects the fact that now not all counties are governed by boards of freeholders. The use of the terms “governing body” is also consistent with other parts of Title 30, *e.g.*, sections 30:8-42 (wages for prisoners) and 30:9-3 (adoption of bylaws, rules and regulations for management of county psychiatric facilities). The Commission also recommends the change to the section’s descriptor as underlined.

30:9-9. Relocation of county insane psychiatric hospital in another county; agreement with other county; powers and duties of boards of chosen freeholders or other governing body; eminent domain; bond issues

a. ~~If the county, in the judgment of a board of chosen freeholders~~ desiring to change the location of a county psychiatric hospital ~~for the insane under authority of section 30:9-8 of this title, determines~~ there is no suitable location ~~within its county~~ at which ~~such the~~ hospital might be relocated, and ~~such board~~ desires to locate in ~~some other~~ another county of this sState, it may do so by entering into an agreement with the ~~board of chosen freeholders of such other county, either to jointly build and maintain such hospital jointly, or that the board of one county may to build and maintain the same by one county with the right in the other board county to commit its patients therein, at a sum per week per patient to be agreed upon.~~

b. ~~If both of such boards~~ counties agree to ~~jointly~~ build and maintain ~~such the~~ hospital jointly, they shall ~~jointly agree~~ concur upon the site ~~thereof~~, appoint an architect, and approve ~~of~~ plans and specifications, and do and perform ~~everything other~~ necessary ~~act and thing~~ for the completion of the work ~~herein~~ authorized and the maintenance ~~of the same after completion thereafter~~, including the employment of physicians and other necessary employees. ~~in and about the institution.~~

c. ~~If by their agreement between such boards, one board is to~~ one county builds and maintains ~~such the~~ hospital, that ~~board county~~ shall select the site ~~therefor~~, appoint the architect, and approve ~~of~~ the plans and specifications, and do and perform ~~everything~~ other necessary ~~act and thing~~ for the completion of the work ~~herein~~ authorized, and the maintenance ~~thereafter of the same after completion~~, including the employment of physicians and other necessary employees. ~~in and about the institution.~~

d. ~~If any board concludes a county decides to change the location of its hospital, as aforesaid, the joint boards if they agree to undertake the work, or the single board, if it is to do the work alone, either within or without its county, one or more counties depending upon their agreement shall have full power and authority to acquire lands within or without the county by gift, devise, purchase or condemnation, and to erect suitable buildings thereon, and to fit, furnish and equip the same buildings, lay out the grounds, make provision for a water supply utilities and railroad mass transit connections, and do and perform such other things as may be whatever is necessary or proper to be done in order appropriate to establish a modern psychiatric hospital for the insane.~~

e. ~~The moneys wherewith funds to acquire such the lands, erect such the buildings, and to do and perform all perform the work and things, including the purchase of materials and fittings, furnishings and equipment herein authorized, except that which might consist in maintenance only, for maintenance only, shall be raised and obtained by the board of chosen freeholders of the county if one only undertakes the doing of the work, or the boards of chosen freeholders of the two counties undertaking the doing of the work, by one or more counties doing the work, each to the extent of its share, by the issue and sale of bonds therefor and in the manner and by the methods prescribed by chapter 1 of the title Municipalities and Counties (s. 40:1-1 et seq.), and shall be paid out by the county treasurer or treasurers, in accordance with the counties' agreement. as the case may be on the order of the board of chosen freeholders, as the case may be.~~

COMMENT

The Commission recommends the change to the section's descriptor as underlined. Section 40:1-1 *et seq.* has been repealed. Subsections also have been added for clarity.

30:9-11. Contracts for county ~~insane asylums~~ psychiatric facilities

~~If the cost of Where any work is to be done work performed and materials to be furnished in the erection and construction, furnishing and equipping of such buildings county psychiatric hospitals, or in the fitting, furnishing and equipping of the same, or in and about the grounds, as provided by section 30:9-9, of this title, where the cost thereof shall exceed the sum of exceeds one thousand dollars \$1,000.00, the same work shall be done performed and materials furnished on contract to be awarded to the lowest responsible bidder who shall furnish satisfactory security to the board or boards county or counties undertaking such the work, on bids duly advertised for in the county or counties, engaged in the work, and also where the If buildings are to be erected, the advertisement shall be published for at least two weeks, once in each week; and if joint counties undertake the work be undertaken by joint boards, they shall appoint a committee to advertise for and receive such bids, which committee shall and to report the bids to their governing bodies such boards at their next meetings.~~

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

30:9-12. Superintendents of psychiatric hospitals ~~for insane~~ in counties of first class; terms of office

~~The board of chosen freeholders in e~~Counties of the first class, in appointing superintendents for the county psychiatric hospitals ~~for the insane~~, may designate and prescribe the terms of office of such superintendents, which shall not be ~~for a longer time~~ than five years.

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

[30:9-29. County aid to hospitals caring for communicable diseases

The board of chosen freeholders of a county which has no county hospital permanently maintaining a building or pavilion for communicable diseases other than the sick ward of the county poor home or the county institutions for the insane, may appropriate not more than \$50,000.00 in any 1 year, to any one hospital which permanently maintains and operates a building or pavilion for communicable diseases, or, for the purpose of contracting with any such hospital for payment for care and treatment of residents of such county who are afflicted with communicable diseases.]

COMMENT

This statute is anachronistic and moot and therefore recommended for repeal.

30:13-6. Discharge or transfer of resident

Any nursing home resident may arrange for the resident's own discharge himself from a nursing home upon presentation of a written release and if the resident is ~~an~~ adjudicated mentally ~~incompetent~~ incapacitated, upon the written consent of ~~his~~ the person's guardian. In such case, the nursing home is free from any responsibility for the resident upon ~~his~~ release. When a nursing home wishes to transfer or discharge on a nonemergency basis a ~~competent or an adjudicated mental incompetent~~ resident who is either not mentally incapacitated or is adjudicated mentally incapacitated ~~on a nonemergency basis~~, it may do so for medical reasons or for ~~his~~ the person's welfare or that of other residents upon receiving a written order from the attending physician, or for nonpayment ~~of his stay~~, except as prohibited by Title XVIII or Title XIX of the Social Security Act, as amended, and such action shall be recorded in the resident's medical record. When a transfer or discharge on a nonemergency basis of a resident is requested by a nursing home, the resident or, in the case of ~~an~~ a resident adjudicated mentally ~~incompetent~~ incapacitated ~~resident~~, the guardian, shall be given at least 30 days advance notice of such transfer or discharge.

Title 34:

34:15-27. Modification of agreement; review of award, determination, ~~rule for~~ judgment or order approving settlement

An agreement for compensation may be modified at any time by a subsequent agreement. Upon the application of any party, a ~~A~~ formal award, determination, ~~and rule~~ for judgment or order approving settlement may be reviewed within 2 years from the date when the injured person last received a payment ~~upon the application of either party~~ on the ground that the incapacity of the injured employee has subsequently increased. If ~~any~~ a party entitled to a review under this section shall become ~~insane~~ mentally incapacitated within the aforesaid 2-year period, ~~his insanity~~ the incapacity shall constitute grounds for tolling the unexpired balance of the 2-year period, which shall only begin to run again after ~~his coming to or being of same mind~~ the party returns to mental capacity. An award, determination ~~and rule for~~ or judgment or order approving settlement may be reviewed at any time on the ground that the ~~disability~~ incapacity has diminished. In such case the provisions of section 34:15-19 ~~of this Title~~ with reference to medical examination shall apply.

COMMENT

The Commission recommends the change to the section's descriptor as noted.

Title 37:

37:1-6. Consent of parents or guardian of minor; when required

a. A marriage or civil union license shall not be issued to a minor ~~under the age of 18 years~~, unless the parents or guardian of the minor, if ~~there be~~ any, first certify ~~under their hands and seals~~, in the presence of two reputable witnesses, ~~their~~ consent thereto, which ~~consent~~ shall be delivered to the licensing officer issuing the license. ~~If the parents, or either of them, or guardian of any such minor shall be of unsound mind~~ Consent to the proposed marriage or civil union by a parent or guardian that is mentally incapacitated, the consent of such parent or guardian to the proposed marriage or civil union shall not be required.

b. When a minor is under the age of 16 years, the consent required by this section must be approved in writing by ~~any~~ judge of the Superior Court, Chancery Division, Family Part. ~~Said approval shall be~~ and filed with the licensing officer.

c. The licensing officer shall transmit ~~to the State Bureau of Vital Statistics~~ all such consents, orders, and approvals to the State Bureau of Vital Statistics and Registration ~~so received by him in the same manner~~ and subject to the same penalty as in the case of marriage or civil union certificates ~~of marriage or civil union and marriage or civil union~~ or licenses.

COMMENT

Subsections have been added for clarity. The name of the State Bureau of Vital Statistics has been changed to the State Bureau of Vital Statistics and Registration.

37:1-9. When issuance of license prohibited

No marriage license shall be issued when, at the time of making an application ~~therefor~~, either applicant is infected with a venereal disease in a communicable stage, or is a person currently adjudicated mentally ~~incompetent~~ incapacitated.

Title 40:

40:11A-22.2. Qualifications

No person may be appointed as a parking enforcement officer unless the person:

- a. is a resident of this State during the term of appointment;
- b. is able to read, write and speak the English language ~~well and intelligently~~;
- c. ~~is of sound mind~~ is not mentally incapacitated and ~~in good health~~ is physically able to perform the tasks of parking enforcement officer;
- d. ~~is of good moral character~~;
- e.d. has not been convicted of any offense involving dishonesty or which would make ~~him~~ the person unfit to perform the duties of ~~his~~ the office.

Title 40A:

40A:9-154.9. Minimum qualifications

No person may be appointed as a parking enforcement officer unless, at a minimum, the person:

- a. Is a resident of this State during the term of appointment;
- b. Is able to read, write and speak the English language ~~well and intelligently~~;
- c. ~~Is of sound mind~~ Is not mentally incapacitated and ~~in good health~~ is physically able to perform the tasks of parking enforcement officer; and
- d. ~~Is of good moral character; and~~
- e.d. Has not been convicted of any offense involving dishonesty or which would make the person unfit to perform the duties of ~~his~~ the office.

Title 42:

42:2A-8.2. Resignation of registered agent

Resignation of registered agent. a. The registered agent of a domestic limited partnership or a foreign limited partnership authorized to transact business in this State may resign by complying with the provisions of this section.

b. The registered agent, or, in the case of a registered agent who is deceased or has been declared ~~incompetent~~ mentally incapacitated by a court ~~of competent jurisdiction~~, his the agent's legal representative, shall serve a notice of resignation by certified mail, return receipt requested, upon a general partner or general partners of the

limited partnership at the address last known to the agent, and shall make an affidavit of such service. If service cannot be made, the affidavit shall so state, and shall state briefly why service cannot be made. The affidavit, together with a copy of notice of resignation, shall be filed in the Office of the Secretary of State.

c. The resignation shall become effective 30 days after the filing in the office of the Secretary of State of the affidavit of service or upon the designation by the limited partnership of a new registered agent pursuant to this act, whichever is earlier. If the limited partnership fails to designate a new registered agent within the 30 day period, the limited partnership shall thereafter be deemed to have no registered agent or registered office in this State, until the limited partnership files a certificate of change of address of registered office and registered agent indicating the new registered office and registered agent.

d. If any certificate of change replacing a resigned agent is not filed, the limited partnership shall, after written demand therefor by the Secretary of State, forfeit to the State a penalty of \$200.00 for each year or part thereof until an agent is appointed. The Secretary of State may issue a certificate to the Clerk of the Superior Court that the limited partnership is indebted for the payment of this penalty. This certificate shall be entered by the Clerk as a judgment docketed in the Superior Court, and shall have the same form as a docketed judgment.

42:2A-31. Events of withdrawal of a general partner

Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

a. The general partner withdraws from the limited partnership as provided in section 39 of P.L.1983, c. 489(C. 42:2A-40);

b. The general partner ceases to be a member of the limited partnership as provided in section 46 of P.L.1983, c. 489 (C. 42:2A-47);

c. The general partner is removed as a general partner in accordance with the partnership agreement;

d. Unless otherwise provided in the certificate of limited partnership, the general partner: (1) makes an assignment for the benefit of creditors; (2) files a voluntary petition in bankruptcy; (3) is adjudicated a bankrupt or insolvent; (4) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation; (5) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding set forth in (4) above; or (6) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;

e. Unless otherwise provided in the certificate of limited partnership, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or

similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;

f. In the case of a general partner who is a natural person, ~~his death or the entry by a court of competent jurisdiction of a judgment adjudicating him~~ the partner incompetent lacking mental capacity to manage ~~his~~ person or estate;

g. In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of new trustee);

h. In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

i. In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

j. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

42:2A-50. Power of personal representative of deceased or ~~incompetent~~ mentally incapacitated person; representative or successor of corporation, trust or other entity

If a partner who is an individual dies or a court ~~of competent jurisdiction~~ adjudges ~~him to be the partner incompetent~~ lacking the mental capacity to manage ~~his~~ person or ~~his~~ property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling ~~his~~ the partner's estate or administering ~~his~~ the partner's property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

42:2B-7. Resignation of a registered agent; procedures

a. The registered agent of a domestic limited liability company or a foreign limited liability company authorized to transact business in this State may resign by complying with the provisions of this section.

b. The registered agent of a foreign or domestic limited liability company may resign and appoint a successor registered agent by filing a certificate in the office of the Secretary of State, stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement executed by the affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent

of each limited liability company which has ratified and approved the substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each limited liability company's registered office in this State. The Secretary of State shall furnish to the successor registered agent upon request a certified copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the certificate of formation of the limited liability company affected thereby and the limited liability company shall not be required to take any further action with respect thereto, to amend its certificate of formation under this act.

c. The registered agent of a limited liability company may resign without appointing a successor registered agent by complying with the following provisions:

(1) The registered agent, or, in the case of a registered agent who is deceased or has been declared ~~incompetent~~ mentally incapacitated by a court of ~~competent jurisdiction~~, his the agent's legal representative, shall serve a notice of resignation by certified mail, return receipt requested, upon the limited liability company at the address last known to the agent, and shall make an affidavit of such service. If service cannot be made, the affidavit shall so state, and shall state briefly why service cannot be made. The affidavit, together with a copy of notice of resignation, shall be filed in the office of the Secretary of State.

(2) The resignation shall become effective 30 days after filing the affidavit of service in the office of the Secretary of State or upon the designation by the limited liability company of a new registered agent pursuant to this act, whichever is earlier. If the limited liability company fails to designate a new registered agent within the 30-day period, the limited liability company shall thereafter be deemed to have no registered agent or registered office in this State, until the limited liability company files a certificate of change of address of registered office and registered agent indicating the new registered office and registered agent.

42:2B-47. Exercise of a member's rights upon death or ~~incompetence~~ mental incapacity

If a member who is an individual dies or a court of ~~competent jurisdiction~~ adjudges ~~him~~ the member to be incompetent lacking the mental capacity to manage his person or his property, the member's executor, administrator, guardian, conservator or other legal representative may exercise all of the member's rights for the purpose of settling ~~his~~ the member's estate or administering ~~his~~ the member's property, including any power under an operating agreement of an assignee to become a member and the power given to an assignee under subsection d. of section 46 of P.L.1993, c.210 (C.42:2B-46). If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may, in addition to the powers given to an assignee under subsection d. of section 46 of P.L.1993, c.210 (C.42:2B-46), be exercised by its legal representative or successor.

COMMENT

The Commission recommends the change to the section's descriptor as underlined.

42:4-13. Dissolution authorized; application; order of dissolution

~~When~~ If a member of a partnership ~~has been or shall be adjudged a lunatic is adjudicated mentally incapacitated~~, the court may ~~in an action and~~ on application of ~~any of the other~~ another partners or ~~such~~ other person as the court shall determine to be entitled to make the application, dissolve the partnership. The court may proceed in the action in a summary manner or otherwise.

42:4-14. Powers and duties of guardian in general

When a partnership is dissolved as provided by section 42:4-13 ~~of this Title~~, or is otherwise lawfully dissolved ~~by due course of law~~, and a ~~member thereof~~ partner has been ~~or shall be adjudged a lunatic~~, adjudicated mentally incapacitated, the guardian of ~~such lunatic~~, the mentally incapacitated person in the name and on behalf of ~~his ward that partner~~, may ~~join and~~ concur with the other ~~members of the partnership~~ partners or other persons interested in disposing of all the partnership property, ~~in such manner and upon such terms as the court may direct~~ as directed by the court.

42:4-15. Conveyances by guardian; disposition of mental incompetent's share of partnership

The guardian mentioned in section 42:4-14 ~~of this Title~~ may make and execute all such conveyances and do all things necessary to effectuate the provisions of this article ~~as the court may direct~~. ~~He shall~~ and shall also dispose of all money or property ~~by him~~ received for, from or on account of the ~~lunatic's~~ mentally incapacitated person's share or interest in the partnership as the court may direct.

Title 43:

43:15C-13. Disability benefit coverage payments; conditions upon payment; payments during rehabilitation; exclusions

a. The disability benefit coverage provided under a group policy or policies shall provide a monthly income if the participant becomes totally disabled from occupational or nonoccupational causes for a period of at least six consecutive months following the effective date of the coverage. The monthly disability benefit may be paid by the insurance company so long as the participant remains disabled up to the ~~seventieth~~ 70th birthday, provided the disability commenced prior to the ~~sixtieth~~ 60th birthday. The benefit shall terminate when the participant is no longer considered totally disabled or begins to receive retirement benefits.

b. The participant shall be considered totally disabled if the participant is unable to perform each duty of the participant's occupation and is under the regular care of a physician. After the 24 months following the commencement of such disability benefit payments, the participant shall be unable to engage in any gainful occupation for which the participant is reasonably fitted by education, training or experience. Total disability shall not be considered to exist if the participant is gainfully employed. Following an agreement with the insurance company and the policyholder, the participant may

continue to receive disability benefits for a limited time while performing some type of work. During the period of rehabilitation, the monthly benefit shall be the regular payment less 80% of the participant's earnings from such rehabilitative position.

c. A participant shall be deemed to be in service and covered by the disability benefit insurance provisions for a period of no more than six months while on official leave of absence without pay if satisfactory evidence is presented to the Division of Pensions and Benefits that such leave of absence without pay is due to illness and that the participant was not actively engaged in any gainful occupation during such period of leave of absence without pay.

d. Disability benefit insurance provisions of the group policy or policies shall not cover disability resulting from or contributed to by pregnancy, act of war, intentionally self-inflicted injury, or attempted suicide ~~whether or not sane~~ regardless of mental capacity. For purposes of such disability benefit coverage, the participant shall not be considered to be disabled while the participant is imprisoned or while outside the United States, its territories or possessions, or Canada.

e. If the participant has recovered from the disability for which the member had received benefits and again becomes totally disabled while insured, the later disability shall be regarded as a continuation of the prior one unless the participant has returned to full-time covered employment for at least six months. If the later absence is due to an unrelated cause and the participant had returned to full-time work, it shall be considered a new disability. The disability benefit insurance cannot be converted to an individual policy.

f. No participant shall be covered by the disability benefit provision of the group policy or policies except upon the completion of one year of full-time continuous employment in a position eligible for participation in the Defined Contribution Retirement Program. For a member who is a participant pursuant to paragraph (5) of subsection a. of section 2 of P.L.2007, c.92 (C.43:15C-2) as amended by section 12 of P.L.2007, c.103, completion of one year of full-time continuous employment in a position eligible for membership in the Teachers' Pension and Annuity Fund or the Public Employees' Retirement System shall also be considered in determining if the participant met the requirements of this paragraph.

COMMENT

Subsections have been added for clarity.

Title 45:

45:14B-36. Disclosure authorization; contents

A valid authorization for the purpose of this act shall:

a. Be in writing;

b. Specify the nature of the information to be disclosed, the person authorized to disclose the information, to whom the information may be disclosed, the specific purposes for which the information may be used, both at the time of disclosure and at any time in the future;

c. Specify that the patient is aware of the statutory privilege accorded by section 28 of P.L. 1966, c. 282 (C. 45:14B-28) to confidential communications between a patient and a licensed psychologist;

d. State that the consent is subject to revocation at any time;

e. Be signed by the patient or the person authorizing the disclosure. If the patient is adjudicated ~~incompetent~~ mentally incapacitated or is deceased, the authorization shall be signed by the patient's legally authorized representative. When the patient is more than 14 years of age but has not yet reached the age of majority, the authorization shall be signed by the patient and by the patient's parent or legal guardian. When the patient is less than 14 years of age, the authorization shall be signed only by the patient's parent or legal guardian; and

f. Contain the date upon which the authorization was signed.

Title 47:

47:3-9. Removal and destruction of certain papers and records on file in offices of county clerks and registers of deeds and mortgages

Whenever papers ~~of the character hereinafter~~ as described herein have been on file in the office of ~~any~~ county clerk or register of deeds and mortgages for more than the number of years specified, the county clerk or register of deeds and mortgages, ~~as the case may be,~~ having charge thereof, may direct ~~such~~ the papers ~~to~~ be removed and destroyed ~~or the records therein otherwise effectively obliterated,~~ subject, however, to the limitations imposed herein, ~~in respect to said papers.~~ The following ~~are the papers which~~ may be removed and destroyed ~~or the records therein effectively obliterated~~ pursuant to the provisions of this act:

(a) Admissions to the bar, notices of intention to apply for such admissions, after one year;

(b) Appeals, notices of from local criminal courts, and other papers incidental thereto, where such appeals were not heard and disposed of by specific court action, after five years;

(c) Bills of sale upon condition and other papers in the nature of conditional bills of sale, after six years; provided their expiration dates occurred prior to said six years; and further provided, if their expiration dates shall have been extended by the acts of the parties and notice of such acts shall have been given to the county recording officer, then after six years from their expiration dates as so extended; and further provided, that bills of sale under seal, after twenty-two years instead of after six years;

(d) Bonds given as bail and recognizances in connection with or in lieu of bail, and discharges of the same, after six years; provided notations thereof have been entered on the dockets;

(e) Bonds under orders of filiation, after twenty years;

(f) Certificates of authority filed by insurance and bonding companies, after six years;

(g) Chattel mortgages, after six years; provided their expiration dates occurred prior to said six years; and further provided, if their expiration dates shall have been extended by the acts of the parties and notice of such acts shall have been given to the county recording officer, then after six years from their expiration dates as so extended; and further provided, that chattel mortgages under seal, after twenty-two years instead of after six years;

(h) Contracts, plans and specifications for the construction of buildings and other structures except for public buildings, after ten years;

(i) Convictions of disorderly persons, after five years;

(j) Costs, bills of costs taxed by the clerk, both civil and criminal, after twenty years; provided notations thereof have been entered on the dockets;

(k) Depositions, which are not within the scope of any applicable court rule and which do not pertain to any pending court action or proceeding, after ten years;

(l) Delinquent municipal tax returns for real and personal property and discharges therefor, after twenty years;

(m) Elections returns, certificates of, and all other papers relating to elections, including primary petitions, returns for primary and general elections and statements of candidates' campaign managers and treasurers, after five years;

(n) Executions returned by the sheriff, both satisfied and unsatisfied, after twenty years; provided notations thereof have been entered on the dockets;

(o) Extradition papers including applications for writs of habeas corpus, except judgments thereon, after five years;

(p) Indictments, accusations, informations and complaints in the nature thereof, if nolle prossed, or if the defendant charged thereby has been convicted or acquitted, or if the court has otherwise disposed of the same, after five years;

(q) Inquests conducted by the coroners, and their reports, and other papers relating to sudden deaths, after ten years;

(r) Insolvency proceedings, assignments for the benefit of creditors, inventories in such proceedings, discharges of insolvents, and other papers relating or incidental to insolvency proceedings, after twenty years;

(s) Institutions and agencies, commitments other than in criminal or ~~lunacy~~ mental incapacity cases, reports and other papers relating to institutions and agencies, after thirty years;

(t) Judgment transcripts for docketing, after twenty years; provided notations thereof have been entered on the dockets;

(u) Judgments, satisfactions and discharges and releases of judgments, after twenty years; provided notations thereof have been entered on the dockets;

(v) Juries, lists of Grand and petit juries, and other papers relating to summoning, impaneling and the charging of such juries, after five years;

- (w) Justices of the peace bonds, dockets, files and papers, after twenty years;
- (x) Licenses for hunting, including applications, after two years;
- (y) Lien notices and claims other than mechanics' lien claims, and other than lien notices or notices in the nature of lien notices filed by any State, county or municipal agency, after six years;
- (z) Lists of causes for trial calendars, including notices of trial, after one year;
- (aa) ~~Lunacy~~ Proceedings for commitments to psychiatric institutions including medical and other reports relating thereto, after thirty years;
- (bb) Mechanics' lien and construction lien claims, notices of intention, notices of unpaid balance and right to file lien, stop notices and all papers relating to mechanics' lien and construction lien claims, other than proceedings and actions in the courts brought to enforce such lien claims, after six years;
- (cc) Notary public certificates and qualifying papers, after five years;
- (dd) Notices and other papers, authorized or required by law to be filed but not recorded and not involving title to real or personal property or to proceedings or actions in any court, after ten years;
- (ee) Oaths of office of persons whose incumbency in office has ceased, after five years; provided the term of office of such person expired prior to said five years;
- (ff) Permits to carry firearms, which have expired, including the applications therefor, after two years;
- (gg) Prison records and reports and papers relating thereto, after five years;
- (hh) Probation reports and papers relating thereto, after five years;
- (ii) Referees' reports, not forming a part of the record of a proceeding or action in court, after six years;

The ~~said~~ several periods of time shall be computed from the date of the filing of ~~said~~ the papers.

The county clerk and the register of deeds and mortgages, ~~respectively, in his discretion,~~ may retain on file ~~in his office~~ any of ~~said~~ the papers as a part of the permanent records of such office.

Title 52:

[52:14-13. Insanity of state officer to vacate office

Whenever an officer of this state or a member of a state board or commission appears to be insane and is committed to an institution for the insane pursuant to law, the commission or appointment of such officer or member shall become vacated and void, and a vacancy shall thereupon exist in such office, the same as though the officer or member had resigned or died.]

COMMENT

This statute is anachronistic and therefore recommended for repeal.

52:4B-7. Hearings on appeals; procedural requirements

Hearings on appeals from decisions of the Victims of Crime Compensation Agency involving issues of victim compensation shall be conducted by the Victims of Crime Compensation Review Board in the following manner:

a. Upon an application made to the board under the provisions of P.L.1971, c.317, the board shall fix a time and place for a hearing on such application and shall cause notice thereof to be given to the applicant.

b. For the purpose of carrying out the provisions of P.L.1971, c.317, the board, or any member thereof, may hold such hearings, sit and act at such times and places, and take such testimony as the board or such member may deem advisable. Any member of the board may administer oaths or affirmations to witnesses. The board shall have full powers of subpoena and compulsion of attendance of witnesses and production of documents, except that no subpoena shall be issued except under the signature of a member of the board, and application to any court for aid in enforcing such subpoena may be made in the name of the board by any member thereof. Subpoenas shall be served by any person designated by the board.

c. In any case in which the person entitled to make an application is a child, the application may be made ~~on his behalf~~ by his the child's parent, guardian, or advocate. on the child's behalf. In any case in which the person entitled to make an application is ~~mentally incompetent~~ incapacitated, the application may be made on ~~his~~ the person's behalf by ~~his~~ guardian, advocate, or such other individual authorized to administer ~~his~~ the person's estate.

d. Any person having a substantial interest in a proceeding may appear, produce evidence and cross-examine witnesses in person or by ~~his~~ attorney.

e. The board may receive in evidence any statement, document, information, or matter that may in the opinion of the board contribute to its functions under P.L.1971, c.317, but the board shall not be bound by the rules of evidence.

f. If any person has been convicted of any offense with respect to an act or omission on which a claim under P.L.1971, c.317 is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or any proceeding with regard thereto is pending.

52:27G-21. Legislative findings and declarations

The Legislature finds and declares that private guardianship for ~~an incompetent~~ mentally incapacitated elderly adult may not be feasible where there are no willing and responsible family members or friends to serve as guardian, that this act establishes a public guardianship program for elderly adults for the purpose of furnishing guardianship services to elderly persons at reduced or no cost when appropriate, and that this act intends to promote the general welfare by establishing a public guardianship system that

permits elderly persons to determinatively participate as fully as possible in all decisions that affect them.

Title 54:

54:4-3.6. Exemption of property of nonprofit organizations

a. The following property shall be exempt from taxation under this chapter:

(1) All buildings actually used for colleges, schools, academies or seminaries, provided that if any portion of such buildings are leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, said portion shall be subject to taxation and the remaining portion only shall be exempt;

(2) ~~a~~All buildings actually used for historical societies, associations or exhibitions, when owned by the State, county or ~~any~~ political subdivision thereof or when located on land owned by an educational institution which derives its primary support from State revenue;

(3) ~~a~~All buildings actually and exclusively used for public libraries;

(4) All buildings actually and exclusively used for ~~asylum~~ hospitals, institutions or schools for ~~feebleminded or idiotic~~ mentally incapacitated persons and children;

(5) ~~a~~All buildings used exclusively by any association or corporation formed for the purpose and actually engaged in the work of preventing cruelty to animals;

(6) ~~a~~All buildings actually and exclusively used and owned by volunteer first-aid squads; ~~which squads are or shall be~~ incorporated as associations not for pecuniary profit;

(7) ~~a~~All buildings (i) actually used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children provided that if any portion of a building used for that purpose is leased to profit-making organizations or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt; and all buildings (ii) owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in the work of two or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children.

(8) ~~a~~All buildings (i) actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes, provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation, and provided further that if any portion of a building is used for a different exempt use by an exempt entity, that portion shall also be exempt from taxation; and all buildings (ii) owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which

associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them;

(9) aAll buildings actually used in the work of associations and corporations organized exclusively for hospital purposes, provided that if any portion of a building used for hospital purposes is leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt; As used in this section, "hospital purposes" includes health care facilities for the elderly, such as nursing homes; residential health care facilities; assisted living residences; facilities with a Class C license pursuant to P.L. 1979, c. 496 (C.55:13B-1 et al.) the "Rooming and Boarding House Act of 1979", similar facilities that provide medical, nursing or personal care services to their residents; and that portion of the central administrative or service facility of a continuing care retirement community that is reasonably allocable as a health care facility for the elderly;

~~all buildings owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in the work of two or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children.~~

~~all buildings owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them;~~

(10) the buildings, not exceeding No more than two buildings, actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State, together with the accessory buildings located on the same premises;

b. With regard to the buildings specified in subsection a., the following shall be exempt from taxation:

(i)The land, not to exceed five acres, upon which any of the buildings necessary for fair enjoyment thereof of the land are erected so long as the land is devoted to the purposes specified in subsection a. only; whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed five acres in extent;

(ii)The furniture and personal property in said such buildings if used in and devoted to for the purposes above mentioned in subsection a.;

c. aAll property owned and used by any nonprofit corporation in connection with its curriculum, work, care, treatment and study of feebleminded, mentally retarded, developmentally disabled or idiotic or mentally incapacitated men, women, or children shall also be exempt from taxation, provided that such corporation conducts and maintains research or professional training facilities for the care and training of feebleminded, mentally retarded, or idiotic these men, women, or children;

d. The foregoing buildings, lands on which they stand, and the associations, corporations or institutions using and occupying them are exempt from taxation provided, in case of all the foregoing, that the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, they are not used or conducted for profit, except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided so long as the building is wholly controlled by and the entire income therefrom is used for said the charitable, benevolent or religious purposes.

e. The foregoing exemption set forth in subsection d. shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of for which the exemption is claimed or where an educational institution, as provided herein in this statute, has leased said the property to an historical society, or association, or to a corporation organized for such purposes and created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes.

~~As used in this section “hospital purposes” includes health care facilities for the elderly, such as nursing homes; residential health care facilities; assisted living residences; facilities with a Class C license pursuant to P.L. 1979, c. 496 (C.55:13B-1 et al.), the “Rooming and Boarding House Act of 1979”; similar facilities that provide medical, nursing or personal care services to their residents; and that portion of the central administrative or service facility of a continuing care retirement community that is reasonably allocable as a health care facility for the elderly.~~

COMMENT

Subsections have been added for clarity.

54:5-84. Infants Minors and mental incompetents mentally incapacitated

If a delinquent owner or lienor ~~shall be,~~ is a minor or has been adjudicated mentally incapacitated at the time of the upon expiration of the time limited for the redemption of the real estate in which ~~he is interested~~ that person has an interest, an infant under the age of twenty-one years, or an idiot, or ~~then shall have been judicially adjudged a person of unsound mind,~~ the right to redeem shall not be barred by service of notice as provided in this article so long as ~~such impediment shall~~ the incapacity continues, but shall be barred only by an action to foreclose brought in the Superior Court.

COMMENT

The Commission recommends the change to the section’s descriptor as underlined.

Title 59:

59:8-8. Time for presentation of claims

A claim relating to a cause of action for death or for injury or damage to person or to property shall be presented as provided in this chapter not later than the ~~ninety~~ 90th day after accrual of the cause of action. After the expiration of six months from the date notice of claim is received, the claimant may file suit in an appropriate court of law. The claimant shall be forever barred from recovering against a public entity or public employee if:

- a. ~~He~~ The claimant failed to file ~~his~~ the claim with the public entity within 90 days of accrual of ~~his~~ the claim except as otherwise provided in section 59:8-9; or
- b. Two years have elapsed since the accrual of the claim; or
- c. The claimant or ~~his~~ claimant's authorized representative entered into a settlement agreement with respect to the claim.

Nothing in this section shall prohibit ~~an infant or incompetent~~ a minor or mentally incapacitated person from commencing an action under this act within the time limitations contained herein, after ~~his coming to or being of full age~~ reaching majority or ~~sane mind~~ returning to mental capacity.