

Part 2A. Voluntary Admissions and Discharges; Incapable Adults; Facilities for Individuals
With Mental Illness and Substance Use Disorder.

§ 122C-216. Voluntary admission of individuals determined to be incapable.

(a) An individual in need of treatment for mental illness and who is incapable, as defined in G.S. 122C-3 and G.S. 122C-72, may be admitted to and treated in a facility pursuant to an advance instruction for mental health treatment executed in accordance with Part 2 of Article 3 of this Chapter or pursuant to the authority of a health care agent named in a valid health care power of attorney executed in accordance with Article 3 of Chapter 32A of the General Statutes.

(b) Except as otherwise provided in this Part, G.S. 122C-211 applies to admissions of incapable adults under this Part.

(c) An advance instruction for mental health treatment shall be governed by Part 2 of Article 3 of this Chapter.

(d) When a health care power of attorney authorizes a health care agent pursuant to G.S. 32A-19 to make mental health treatment decisions for an incapable individual, the health care agent shall act for the individual in applying for admission and consenting to treatment at a facility, consistent with the extent and limitations of authority granted in the health care power of attorney for as long as the individual remains incapable.

(e) A 24-hour facility may not hold an individual under a voluntary admission who is determined to be incapable at the time of admission and who is admitted pursuant to an advance instruction for mental health treatment for more than 15 days, except as provided in G.S. 122C-211(b); provided, however, that an individual who regains sufficient understanding and capacity to make and communicate mental health treatment decisions may elect to continue his or her admission and treatment pursuant to the individual's informed consent in accordance with G.S. 122C-211. A 24-hour facility may file a petition for involuntary commitment pursuant to Article 5 of this Chapter if an individual meets applicable criteria at the conclusion of this 15-day period.

(f) For purposes of this section, if an incapable adult in need of treatment has no health care power of attorney or advance instruction for mental health treatment that addresses the needed treatment, and the incapable adult has not been adjudicated incompetent under Chapter 35A of the General Statutes, the legally responsible person for the incapable adult shall be one of the persons listed in subdivisions (3) through (7) of subsection (c) of G.S. 90-21.13, to be selected based on the priority order indicated in said subdivisions (3) through (7); provided that the persons listed in subdivisions (4) through (7) of subsection (c) of G.S. 90-21.13 shall not have the authority to admit an incapable adult to a 24-hour facility where the adult will be subject to the same or similar restrictions on freedom of movement present in the State facilities for the mentally ill. (2018-33, s. 14; 2019-240, s. 26(e).)