

[First Reprint]

SENATE, No. 2224

STATE OF NEW JERSEY
215th LEGISLATURE

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District 37 (Bergen)

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SYNOPSIS

Changes pejorative terminology referring to mental capacity of individuals.

CURRENT VERSION OF TEXT

As reported by the Senate Health, Human Services and Senior Citizens Committee on December 17, 2012, with amendments.



(Sponsorship Updated As Of: 6/21/2013)

1 AN ACT concerning terminology referring to the mental capacity of
2 individuals and revising various parts of statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 20 of P.L.1982, c.77 (C.2A:4A-39) is amended to
8 read as follows:

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

13 b. During every court proceeding in a delinquency case, the
14 waiving of any right afforded to a juvenile shall be **[done]**
15 accomplished in the following manner:

16 (1) A juvenile who is found to **[be competent]** have mental
17 capacity may not waive any rights except in the presence of and
18 after consultation with counsel, and unless a parent has first been
19 afforded a reasonable opportunity to consult with the juvenile and
20 the juvenile's counsel regarding this decision. The parent or
21 guardian may not waive the rights of a **[competent]** juvenile found
22 to have mental capacity.

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

30 (3) **[An incompetent]** A juvenile who is found to lack mental
31 capacity may not waive any right. A guardian ad litem shall be
32 appointed for the juvenile who may waive rights after consultation
33 with the juvenile and the juvenile's counsel **[for the juvenile, and**
34 **the juvenile]**.

35 (4) Waivers shall be executed in the language regularly spoken
36 by the juvenile.
37 (cf: P.L.1982, c.77, s.20)

38
39 2. N.J.S.2A:14-21 is amended to read as follows:

40 2A:14-21. If **[any]** a person entitled to [any of the actions or
41 proceedings] commence an action or proceeding specified in
42 N.J.S.2A:14-1 to 2A:14-8 or N.J.S.2A:14-16 to 2A:14-20 or to a
43 right or title of entry under N.J.S.2A:14-6 is **[or shall be,]** under the
44 age of 18 years or a person who has a mental disability that

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted December 17, 2012.

1 prevents the person from understanding his legal rights or
2 commencing a legal action at the time **【of any such】** the cause of
3 action or right or title **【accruing, under the age of 21 years, or**
4 **insane, such】** accrues, the person may commence **【such】** the action
5 or make **【such】** the entry, within **【such】** the time as limited by
6 those statutes, after **【his coming to or being of full age or of sane**
7 **mind】** reaching majority or having the mental capacity to pursue the
8 person's lawful rights. Notwithstanding the provisions of this
9 section to the contrary, an action by or on behalf of a minor that has
10 accrued for medical malpractice for injuries sustained at birth shall
11 be commenced prior to the minor's 13th birthday, as provided in
12 N.J.S.2A:14-2.

13 (cf: P.L.2004, c.17, s.4)

14

15 3. N.J.S.2A:14-32 is amended to read as follows:

16 2A:14-32. If any person having a right or title to real estate
17 **【shall,】** is under the age of 18, or has been adjudicated
18 incapacitated, or is outside the United States for purposes other than
19 a military tour of duty at the time **【such】** the right or title first
20 accrued or descended, **【be either not of sound mind or under the age**
21 **of 21 years, or without the United States, he, and his heirs,】** that
22 person may, notwithstanding the fact that the periods of time
23 **【mentioned】** specified in **【sections 2A:14-30 and 2A:14-31 of this**
24 **title】** N.J.S.2A:14-30 and N.J.S.2A:14-31 have expired, bring **【his**
25 **or their】** an action to enforce **【his or their】** the right or title, **【if**
26 **such】** provided the action **【shall be】** is commenced within **【5】** five
27 years after **【his】** the disability is removed or **【he comes】** the person
28 is physically present within the United States**【, but not thereafter】**.

29 (cf: N.J.S.2A:14-32)

30

31 4. N.J.S.2A:15-1 is amended to read as follows:

32 2A:15-1. Every person **【of full age and sound mind】** who has
33 reached the age of majority pursuant to section 3 of P.L.1972, c.81
34 (C.9:17B-3) and has the mental capacity may prosecute or defend
35 any action in any court, in person or through another duly admitted
36 to the practice of law in this **【state】** State.

37 (cf: N.J.S.2A:15-1)

38

39 5. N.J.S.2A:16-7 is amended to read as follows:

40 2A:16-7. When a judgment of the **【superior court shall be】**
41 Superior Court is entered for a conveyance, release, or acquittance
42 of real estate or an interest therein, and the party against whom the
43 judgment **【shall be】** is entered **【shall not】** has failed to comply
44 **【therewith】** by the time **【appointed】** specified in the judgment, or
45 within 15 days after entry of the judgment if no time **【be**
46 **appointed】** is specified therein, the judgment shall **【be considered**
47 **and taken, in all courts of the state to】** have the same operation and

1 effect in all courts **[**, and be available**]** as if the conveyance,
2 release, or acquittance had been executed **[conformably to]** in
3 conformance with the judgment, **[and this]** notwithstanding any
4 disability of **[such]** the party **[by infancy, lunacy, coverture]**
5 because of not having reached the age of majority pursuant to
6 section 3 of P.L.1972, c.81 (C.9:17B-3), mental incapacity, or
7 otherwise.

8 (cf: N.J.S.2A:16-7)

9

10 6. N.J.S.2A:16-55 is amended to read as follows:

11 2A:16-55. A person interested as or through an executor,
12 administrator, trustee, guardian, receiver, assignee for the benefit of
13 creditors, or other fiduciary, creditor, devisee, legatee, heir, next of
14 kin, or cestui que trust, in the administration of a trust or the estate
15 of a decedent, **[an infant, lunatic,]** a minor, a person who is
16 mentally incapacitated, a person who is insolvent, or other person,
17 may have a declaration of rights or legal relations in respect thereto,
18 to:

19 a. Ascertain any class of creditors, devisees, legatees, heirs,
20 next of kin, or others; or

21 b. Direct the executor, administrator, trustee, guardian,
22 receiver, assignee for the benefit of creditors, or other fiduciary to
23 do or abstain from doing any particular act in his fiduciary capacity;
24 or

25 c. Determine any question arising in the administration of the
26 estate, trust, or guardianship, including the construction of wills and
27 other writings.

28 (cf: N.J.S.2A:16-55)

29

30 7. N.J.S.2A:48-2 is amended to read as follows:

31 2A:48-2. No action under this article shall be instituted unless
32 commenced within **[3]** three months after the loss of or injury to
33 the property. If any person entitled to such an action is, at the time
34 **[of any such cause of]** the action **[accruing, under the age of 21**
35 **years or insane, he]** accrues, under the age of 18 or a person who
36 has a mental disability that prevents the person from understanding
37 his legal rights or commencing a legal action, the person may
38 commence **[such]** the action within **[3]** three years after **[his**
39 **coming to or being of full age or of sane mind]** reaching majority or
40 having the mental capacity to pursue the person's lawful rights.

41 (cf: N.J.S.2A:48-2)

42

43 8. N.J.S.2A:62-8 is amended to read as follows:

44 2A:62-8. If a defendant was, either at the time of the entry of a
45 default against **[him]** the defendant or at the time of the entry of the
46 judgment, **[an infant]** a minor or an **[incompetent]** incapacitated
47 person, **[he]** the defendant, or **[his]** the defendant's heirs, may,

1 unless **[he]** the defendant was represented in the action by a
2 guardian or a guardian ad litem **[appearing for him]**, at any time
3 within **[2]** two years after the termination of **[his]** the defendant's
4 disability, appear in the action and apply for relief from the
5 judgment.

6 (cf: N.J.S.2A:62-8)

7

8 9. N.J.S.2A:62-10 is amended to read as follows:

9 2A:62-10 If the title to the lands which is the subject of the
10 judgment sought to be opened pursuant to **[sections]** N.J.S.2A:62-8
11 and N.J.S.2A:62-9 **[of this title]**, has, by **[such]** the judgment or in
12 consequence thereof, been conveyed to a purchaser for value or
13 mortgaged to a mortgagee for value, the **[same]** title shall not be
14 affected by either the opening or vacation of the judgment. The
15 vacation of the judgment shall operate only against the plaintiff
16 named in the judgment, **[his]** the plaintiff's heirs, executors, and
17 administrators, to compel compensation to the **[infant]** minor, or
18 **[incompetent]** incapacitated person to the extent of the value of
19 **[his]** the plaintiff's interest in the affected **[lands]** real property at
20 the time the **[same were]** property was so conveyed or mortgaged.

21 (cf: N.J.S.2A:62-10)

22

23 10. N.J.S.2A:62-19 is amended to read as follows:

24 2A:62-19. The final determination and judgment in an action
25 authorized by **[section]** N.J.S.2A:62-17 **[of this title]** shall fix and
26 settle the rights of all the parties in **[said]** the estate in remainder in
27 **[said]** the lands or in **[said]** the remainder interest in **[said]** the
28 personalty, and **[the same]** shall be binding and conclusive on all
29 the parties to the action; but if any defendant to **[such]** the suit
30 **[shall be]** is either at the time of the entry of a default or of
31 judgment against **[him]** the defendant, **[an infant]** a minor or an
32 **[incompetent]** incapacitated person, **[such]** the defendant, **[his]**
33 the defendant's heirs or assigns may, unless **[he]** the defendant was
34 represented in the action by a guardian or a guardian ad litem
35 **[appearing for him]**, at any time within **[2]** two years after the
36 termination of **[such]** the disability, appear in **[such]** the action and
37 apply for relief from the judgment.

38 (cf: N.J.S.2A:62-19)

39

40 11. N.J.S.2A:67-13 is amended to read as follows:

41 2A:67-13. Except as provided in **[section]** N.J.S.2A:67-14 **[of**
42 this title, any] , a person **[hereinafter specified]** may prosecute a
43 writ of habeas corpus, **[according to the provisions of]** in
44 accordance with this chapter, to inquire into the cause of **[his]** the
45 person's imprisonment or restraint, if the person is:

- 1 a. **【Any person】** committed, detained, confined, or restrained
2 of **【his】** liberty, within this **【state】** State, for **【any】** a criminal or
3 supposed criminal matter;
- 4 b. **【Any person】** in custody by virtue of civil process issued
5 out of **【any】** a court in this **【state】** State;
- 6 c. **【Any person】** committed, detained, confined, or restrained
7 of **【his】** liberty, within this **【state】** State, under any pretense
8 **【whatsoever】**;
- 9 d. **【Any person】** in confinement on a charge of a criminal
10 offense, which is of a bailable nature, for the purpose of **【putting in**
11 **such】** posting bail; or
- 12 e. **【Any person】** confined in **【any hospital for the insane,**
13 **within this state】** a psychiatric facility, for the purpose of
14 determining **【his sanity or insanity;】** whether the person is in need
15 of commitment to treatment.
- 16 f. **【Any person committed to any institution of this state,**
17 **pursuant to law, but not for a fixed period of time, for the purpose**
18 **of determining whether the refusal of the chief executive officer**
19 **thereof to discharge him therefrom is justified;】** (Deleted by
20 amendment, P.L. , c.) (pending before the Legislature as this
21 bill)
- 22 g. **【Any person who has left any charitable institution of this**
23 **state without having been finally discharged therefrom pursuant to**
24 **law and who was committed or admitted to such institution,**
25 **pursuant to law, for a permanent or determinable period of time, for**
26 **the purpose of determining whether such person should be released**
27 **from the commitment;】** (Deleted by amendment, P.L. , c.)
28 (pending before the Legislature as this bill)
- 29 h. **【A superintendent or chief executive officer of any**
30 **charitable institution of this state, for the purpose of obtaining the**
31 **release from custody or restraint of a person specified in subsection**
32 **g. of this section and his return to the custody of such institution.】**
33 (Deleted by amendment, P.L. , c.) (pending before the
34 Legislature as this bill)
- 35 If sufficient cause appears, the complaint may be filed and the
36 writ may be prosecuted by another on behalf of the person entitled
37 to prosecute the writ.
38 (cf: N.J.S.2A:67-13)

39
40 12. N.J.S.2A:67-27 is amended to read as follows:

41 2A:67-27. When the writ is returned, the court may hold the
42 hearing immediately, unless the validity of a detention on any civil
43 process, or the **【sanity or insanity】** mental capacity of the party is to
44 be determined, and may, in any case, set a date for the hearing,
45 which shall be not more than **【5】** five days after the return of the
46 writ unless for good cause additional time is allowed.

1 Notice of the time and place set for a later hearing shall be
2 served at least **[2] two days [prior thereto] before the hearing** or
3 **[at such] earlier [time]**, as the court may order, by the applicant
4 upon the defendant, and (a) if the party is in custody on any
5 criminal matter, upon the county prosecutor of the county
6 **[wherein] in which** the alleged offense was committed, or (b) if the
7 party is in custody on any civil process, upon each person having an
8 interest in continuing the confinement or restraint or upon **[his] the**
9 **party's attorney**, or (c) if the party is in custody of any **[hospital for**
10 **the insane] psychiatric facility** or other institution, **[service shall be**
11 **made] upon the person or persons [upon] whose application [he]**
12 **was [committed] the basis for commitment** to the **[hospital]**
13 **facility** or institution, and upon the medical director or other head
14 officer of the **[hospital] facility** or institution.
15 (cf: N.J.S.2A:67-27)
16

17 13. N.J.S.2A:67-28 is amended to read as follows:

18 2A:67-28. In all cases in which the **[sanity or insanity] mental**
19 **capacity** of the party is to be determined, the testimony shall be
20 taken orally and the judge may hear the matter without a jury or
21 may direct that the action be tried by a jury called from the general
22 panel or, if **[such a jury is]** not available, by a jury specially
23 summoned as in other actions.

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

29 In **[any] a** proceeding under subsection d. of **[section]**
30 **N.J.S.2A:67-13 [of this title]**, the judge may take testimony
31 concerning the truth of **[the affidavit or] affidavits and proofs upon**
32 **which the order for process[, under which the defendant therein is**
33 **held,] was made and [said] process issued.**

34 (cf: N.J.S.2A:67-28)
35

36 14. N.J.S.2A:67-29 is amended to read as follows:

37 2A:67-29. In any proceeding under subsections a., b., or c. of
38 **[section] N.J.S.2A:67-13 [of this title]**, if no cause is shown for
39 the imprisonment or restraint or for the continuation thereof, the
40 judge shall discharge the party from the confinement or restraint
41 **[under which he is held]**. If the party is not entitled to a discharge
42 and is not bailed, the **party shall be remanded by the judge [shall**
43 **remand him]** to the custody or **[place him] placed** under the
44 restraint from which **[he was] the party was** taken, **[if the person**
45 **under whose custody he was is legally entitled thereto, and if not so**
46 **entitled, such party shall be committed by] so long as custody or**

1 restraint is lawful. If the custody or restraint is not lawful, the
2 judge shall commit the party to the custody of **such other** the
3 officer or person **who by law is** lawfully entitled thereto.

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

13 In any proceeding under subsection d. of **section** N.J.S.2A:67-
14 13**of this title**, the judge shall discharge the party in custody if the
15 process was improperly or improvidently issued **or should not**
16 have been issued against such party.

17 In any proceeding under subsection e. of **section** N.J.S.2A:67-
18 13 **of this title**, the **inmate** person shall not be discharged
19 unless **he is** found not to be **sane** dangerous to self or
20 dangerous to others or to property, either by the judge, if the
21 hearing is held without a jury, or by **the** unanimous verdict of the
22 jury.

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

27 In any proceeding under subsection g. or subsection h. of section
28 2A:67-13 of this title, the judge, in his discretion, may discharge the
29 person committed from the commitment, or if such person is under
30 confinement or restraint, release him therefrom and order his return
31 to the institution to which he was committed or admitted, depending
32 upon the best interests of such person and his parents, guardians or
33 custodians.]

34 No person shall be entitled to a discharge because of any
35 informality or insufficiency in the original arrest or commitment.
36 (cf: N.J.S.2A:67-29)

37

38 15. N.J.S.2A:81-2 is amended to read as follows:

39 2A:81-2. **When 1 party to any** In a civil action **is a lunatic**
40 **suing or defending** that is commenced or defended by a guardian
41 on behalf of a person who is mentally incapacitated or **when 1**
42 **party sues or is sued in** by a personal representative **capacity** on
43 behalf of a decedent, any other party who asserts a claim or an
44 affirmative defense against **such lunatic** the person who is
45 mentally incapacitated or against the personal representative, that is
46 supported by oral testimony of a promise, statement, or act of the

1 **【lunatic while of sound mind】** person who is mentally incapacitated
2 before the onset of mental incapacity, or of the decedent, shall be
3 required to establish the same by clear and convincing proof.
4 (cf: P.L.1960, c.52, s.45)

5
6 16. Section 20 of P.L.1960, c.52 (C.2A:84A-20) is amended to
7 read as follows:

8 21. Rule 26.

9 (1) General rule. Subject to Rule 37 and except as otherwise
10 provided by paragraph 2 of this rule communications between
11 lawyer and his client in the course of that relationship and in
12 professional confidence, are privileged, and a client has a privilege
13 (a) to refuse to disclose any such communication, and (b) to prevent
14 his lawyer from disclosing it, and (c) to prevent any other witness
15 from disclosing such communication if it came to the knowledge of
16 such witness (i) in the course of its transmittal between the client
17 and the lawyer, or (ii) in a manner not reasonably to be anticipated,
18 or (iii) as a result of a breach of the lawyer-client relationship, or
19 (iv) in the course of a recognized confidential or privileged
20 communication between the client and such witness. The privilege
21 shall be claimed by the lawyer unless otherwise instructed by the
22 client or his representative; the privilege may be claimed by the
23 client in person, or if **【incompetent】** the client is incapacitated or
24 deceased, by his guardian or personal representative. Where a
25 corporation or association is the client having the privilege and it
26 has been dissolved, the privilege may be claimed by its successors,
27 assigns, or trustees in dissolution.

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

39 (3) Definitions. As used in this rule (a) "client" means a person
40 or corporation or other association that, directly or through an
41 authorized representative, consults a lawyer or the lawyer's
42 representative for the purpose of retaining the lawyer or securing
43 legal service or advice from him in his professional capacity; and
44 includes **【an incompetent】** a person who is incapacitated whose
45 guardian so consults the lawyer or the lawyer's representative **【in】**
46 on behalf of the 【incompetent】 person who is incapacitated, (b)
47 "lawyer" means a person authorized, or reasonably believed by the
48 client to be authorized to practice law in any State or nation the law

1 of which recognizes a privilege against disclosure of confidential
2 communications between client and lawyer. A communication
3 made in the course of the relationship between lawyer and client
4 shall be presumed to have been made in professional confidence
5 unless knowingly made within the hearing of some person whose
6 presence nullified the privilege.

7 (cf: P.L.1960, c. 52, s.20)

8

9 17. Section 22 of P.L.1960, c.52 (C.2A:84A-22) is amended to
10 read as follows:

11 22. ule 28. Marital privilege--Confidential communications.

12 No person shall disclose any communication made in confidence
13 between such person and his or her spouse unless both shall consent
14 to the disclosure or unless the communication is relevant to an issue
15 in an action between them or in a criminal action or proceeding in
16 which either spouse consents to the disclosure, or in a criminal
17 action or proceeding coming within **【Rule 23(2)】** section 17 of
18 P.L.1960, c.52 (C.2A:84A-17). When a spouse is **【incompetent】**
19 incapacitated or deceased, consent to the disclosure may be given
20 for such spouse by the guardian, executor, or administrator. The
21 requirement for consent shall not terminate with divorce or
22 separation. A communication between spouses while living
23 separate and apart under a divorce from bed and board shall not be a
24 privileged communication.

25 (cf: P.L.1992, c.142, s.2)

26

27 18. Section 1 of P.L.1968, c.185 (C.2A:84A-22.1) is amended to
28 read as follows:

29 1. As used in this act, (a) "patient" means a person who, for the
30 sole purpose of securing preventive, palliative, or curative
31 treatment, or a diagnosis preliminary to such treatment, of **【his】** the
32 patient's physical or mental condition, consults a physician, or
33 submits to an examination by a physician; (b) "physician" means a
34 person authorized or reasonably believed by the patient to be
35 authorized, to practice medicine in the State or jurisdiction in which
36 the consultation or examination takes place; (c) "holder of the
37 privilege" means the patient while alive and not under the
38 guardianship or the guardian of the person of **【an incompetent】** a
39 patient who is incapacitated, or the personal representative of a
40 deceased patient; (d) "confidential communication between
41 physician and patient" means such information transmitted between
42 physician and patient, including information obtained by an
43 examination of the patient, as is transmitted in confidence and by a
44 means which, so far as the patient is aware, discloses the
45 information to no third persons other than those reasonably
46 necessary for the transmission of the information or the
47 accomplishment of the purpose for which it is transmitted.

48 (cf: P.L.1968, c.185, s.1)

1 19. Section 4 of P.L.1987, c.169 (C.2A:84A-22.15) is amended
2 to read as follows:

3 4. Subject to Rule 37 of the Rules of Evidence, a victim
4 counselor has a privilege not to be examined as a witness in any
5 civil or criminal proceeding with regard to any confidential
6 communication. The privilege shall be claimed by the counselor
7 unless otherwise instructed by prior written consent of the victim.
8 When a victim is **【incompetent】** incapacitated or deceased consent
9 to disclosure may be given by the guardian, executor, or
10 administrator except when the guardian, executor, or administrator
11 is the defendant or has a relationship with the victim such that **【he】**
12 the guardian, executor, or administrator has an interest in the
13 outcome of the proceeding. The privilege may be knowingly
14 waived by a juvenile. In any instance where the juvenile is, in the
15 opinion of the judge, incapable of knowing consent, the parent or
16 guardian of the juvenile may waive the privilege on behalf of the
17 juvenile, provided that the parent or guardian is not the defendant
18 and does not have a relationship with the defendant such that he has
19 an interest in the outcome of the proceeding. A victim counselor or
20 a victim cannot be compelled to provide testimony in any civil or
21 criminal proceeding that would identify the name, address, location,
22 or telephone number of a domestic violence shelter or any other
23 facility that provided temporary emergency shelter to the victim of
24 the offense or transaction that is the subject of the proceeding
25 unless the facility is a party to the proceeding.
26 (cf: P.L.1987, c.169, s.4)

27
28 20. Section 4 of P.L.1979, c.484 (C.3A:25-42) is amended to
29 read as follows:

30 4. A disclaimer on behalf of a decedent, minor, or **【mentally-**
31 **incompetent】** incapacitated person may be made by the personal
32 representative of the decedent or the guardian of the estate of the
33 minor or **【mentally-incompetent】** incapacitated person. Such
34 disclaimer shall not be effective unless, prior thereto, the personal
35 representative or guardian has been authorized to disclaim by the
36 court having jurisdiction of the estate of the decedent, minor, or
37 **【mentally-incompetent】** incapacitated person, after finding that it is
38 advisable and will not materially prejudice the rights of creditors,
39 devisees, heirs, or beneficiaries of the decedent, the minor, or
40 **【mentally-incompetent】** incapacitated person or his creditors, as the
41 case may be.
42 (cf: P.L.1979, c.484, s.4)

43
44 21. N.J.S.3B:1-2 is amended to read as follows:

45 3B:1-2. "Incapacitated individual" means an individual who is
46 impaired by reason of mental illness or **【mental deficiency】**
47 intellectual disability to the extent that **【he】** the individual lacks
48 sufficient capacity to govern himself and manage his affairs.

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

7 The terms incapacity and incapacitated **[individual]** refer to the
8 state or condition of an incapacitated individual as hereinbefore
9 defined.

10 "Intellectual disability" means a significant subaverage general
11 intellectual functioning existing concurrently with deficits in
12 adaptive behavior which are manifested during the development
13 period.

14 "Issue" of an individual means a descendant as defined in
15 N.J.S.3B:1-1.

16 "Joint tenants with the right of survivorship" means co-owners of
17 property held under circumstances that entitle one or more to the
18 whole of the property on the death of the other or others, but
19 excludes forms of co-ownership in which the underlying ownership
20 of each party is in proportion to that party's contribution.

21 "Local administration" means administration by a personal
22 representative appointed in this State.

23 "Local fiduciary" means any fiduciary who has received letters
24 in this State and excludes foreign fiduciaries who acquire the power
25 of local fiduciary pursuant to this title.

26 "Minor" means an individual who is under 18 years of age.

27 "Nonresident decedent" means a decedent who was domiciled in
28 another jurisdiction at the time of his death.

29 "Parent" means any person entitled to take or who would be
30 entitled to take if the child, natural or adopted, died without a will,
31 by intestate succession from the child whose relationship is in
32 question and excludes any person who is a stepparent, resource
33 family parent, or grandparent.

34 "Per capita." If a governing instrument requires property to be
35 distributed "per capita," the property is divided to provide equal
36 shares for each of the takers, without regard to their shares or the
37 right of representation.

38 "Payor" means a trustee, insurer, business entity, employer,
39 government, governmental agency or subdivision, or any other
40 person authorized or obligated by law or a governing instrument to
41 make payments.

42 "Person" means an individual or an organization.

43 "Per Stirpes." If a governing instrument requires property to be
44 distributed "per stirpes," the property is divided into as many equal
45 shares as there are: (1) surviving children of the designated
46 ancestor; and (2) deceased children who left surviving descendants.
47 Each surviving child is allocated one share. The share of each
48 deceased child with surviving descendants is divided in the same

1 manner, with subdivision repeating at each succeeding generation
2 until the property is fully allocated among surviving descendants.

3 "Personal representative" includes executor, administrator,
4 successor personal representative, special administrator, and
5 persons who perform substantially the same function under the law
6 governing their status. "General personal representative" excludes
7 special administrator.

8 "Representation; Per Capita at Each Generation." If an applicable
9 statute or a governing instrument requires property to be distributed
10 "by representation" or "per capita at each generation," the property
11 is divided into as many equal shares as there are: (1) surviving
12 descendants in the generation nearest to the designated ancestor
13 which contains one or more surviving descendants; and (2)
14 deceased descendants in the same generation who left surviving
15 descendants, if any. Each surviving descendant in the nearest
16 generation is allocated one share. The remaining shares, if any, are
17 combined and then divided in the same manner among the surviving
18 descendants of the deceased descendants, as if the surviving
19 descendants who were allocated a share and their surviving
20 descendants had predeceased the designated ancestor.

21 "Resident creditor" means a person domiciled in, or doing
22 business in this State, who is, or could be, a claimant against an
23 estate.

24 "Security" includes any note, stock, treasury stock, bond,
25 mortgage, financing statement, debenture, evidence of indebtedness,
26 certificate of interest or participation in an oil, gas, or mining title
27 or lease or in payments out of production under the title or lease,
28 collateral, trust certificate, transferable share, voting trust certificate
29 or, in general, any interest or instrument commonly known as a
30 security or as a security interest or any certificate of interest or
31 participation, any temporary or interim certificate, receipt or
32 certificate of deposit for, or any warrant or right to subscribe to or
33 purchase, any of the foregoing.

34 "Stepchild" means a child of the surviving, deceased, or former
35 spouse who is not a child of the decedent.

36 "Successor personal representative" means a personal
37 representative, other than a special administrator, who is appointed
38 to succeed a previously appointed personal representative.

39 "Successors" means those persons, other than creditors, who are
40 entitled to real and personal property of a decedent under **[his]** a
41 decedent's will or the laws governing intestate succession.

42 "Testamentary trustee" means a trustee designated by will or
43 appointed to exercise a trust created by will.

44 "Testator" includes an individual and means male or female.

45 "Trust" includes any express trust, private or charitable, with
46 additions thereto, wherever and however created. It also includes a
47 trust created by judgment under which the trust is to be
48 administered in the manner of an express trust. "Trust" excludes
49 other constructive trusts, and it excludes resulting trusts,

1 guardianships, personal representatives, trust accounts created
2 under the "Multiple-party Deposit Account Act," P.L.1979, c.491
3 (C.17:16I-1 et seq.), gifts to minors under the "New Jersey Uniform
4 Gifts to Minors Act," P.L.1963, c.177 (C.46:38-13 et seq.), or the
5 "New Jersey Uniform Transfers to Minors Act," R.S.46:38A-1 et
6 seq., business trusts providing for certificates to be issued to
7 beneficiaries, common trusts, security arrangements, liquidation
8 trusts, and trusts for the primary purpose of paying debts, dividends,
9 interest, salaries, wages, profits, pensions or employee benefits of
10 any kind, and any arrangement under which a person is nominee or
11 escrowee for another.

12 "Trustee" includes an original, additional or successor trustee,
13 whether or not appointed or confirmed by court.

14 "Ward" means an individual for whom a guardian is appointed or
15 an individual under the protection of the court.

16 "Will" means the last will and testament of a testator or testatrix
17 and includes any codicil and any testamentary instrument that
18 merely appoints an executor, revokes or revises another will,
19 nominates a guardian, or expressly excludes or limits the right of a
20 person or class to succeed to property of the decedent passing by
21 intestate succession.

22 (cf: P.L.2005, c.160, s.1)

23

24 22. N.J.S.3B:11-5 is amended to read as follows:

25 3B:11-5. When a trustee appointed by a will probated in the
26 surrogate's court of any county or a trustee appointed under a trust
27 inter vivos as to real or personal property situate in any county fails
28 or refuses to act or dies before the execution or completion of the
29 trust **【committed to him】**, or absconds or removes from this State,
30 or is adjudicated **【a mental incompetent】** an incapacitated
31 individual or becomes in any manner legally incapable of executing
32 the trust, the Superior Court may remove the trustee**【**, if he be
33 alive,**】** and appoint a suitable person or persons to execute the trust,
34 and the trustee or trustees so appointed shall be entitled to the trust
35 estate as fully and in the same manner as the original trustee was
36 and shall have all the power and discretion of the original trustee.

37 (cf: P.L.1981, c.405, s.3B:11-5)

38

39 23. Section 3 of P.L.1985, c.424 (C.3B:11-21) is amended to
40 read as follows:

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

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

45 b. ensure that community trusts are administered properly and
46 that the managing boards of the trusts are free from conflicts of
47 interest, except that an unpaid member of the managing board of a

- 1 nonprofit corporation provider shall not be deemed to be in conflict
2 as a member of the managing board of a trust;
- 3 c. facilitate sound administration of trust funds for persons
4 with severe chronic disabilities by allowing family members and
5 others to pool resources in order to make professional management
6 investment more efficient;
- 7 d. provide parents of persons with severe chronic disabilities
8 peace of mind in knowing that a means exists to ensure that the
9 interests of their children who have severe chronic disabilities are
10 properly looked after and managed after the parents die or become
11 incapacitated;
- 12 e. help make guardians available for persons with severe
13 chronic disabilities who are **incompetent** incapacitated, when no
14 other family member is available for this purpose;
- 15 f. encourage the availability of private resources to purchase
16 for persons with severe chronic disabilities goods and services that
17 are not available through any governmental or charitable program
18 and to conserve these resources by limiting purchases to those
19 which are not available from other sources;
- 20 g. encourage the inclusion, as beneficiaries of community
21 trusts, of persons who lack resources and whose families are
22 indigent, in a way that does not diminish the resources available to
23 other beneficiaries whose families have contributed to the trust; and
- 24 h. remove the disincentives which discourage parents and
25 others from setting aside funds for the future protection of persons
26 with severe chronic disabilities by ensuring that the interests of
27 beneficiaries in community trusts are not considered assets or
28 income which would disqualify them from any governmental or
29 charitable entitlement program with an economic means test.

30 (cf: P.L.1993, c.224, s.1)

31

32 24. Section 4 of P.L.1985, c.424 (C.3B:11-22) is amended to
33 read as follows:

34 4. As used in **this act** P.L.1985, c.424 (C.3B:11-19 et seq.):

35 a. "Beneficiary" means any person with a severe chronic
36 disability who has qualified as a member of the community trust
37 program and who has the right to receive those services and benefits
38 of the community trust program as provided in **this act** P.L.1985,
39 c.424.

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

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

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

48 (2) follow-along services;

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

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

7 d. "Follow-along services" means those services offered by
8 community trusts which are designed to insure that the needs of
9 each beneficiary are being met for as long as may be required and
10 may include periodic visits to the beneficiary and to the places
11 where the beneficiary receives services, participation in the
12 development of individualized plans being made by service
13 providers for the beneficiary, and other similar services consistent
14 with the purposes of **[this act]** P.L.1985, c.424.

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

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

24 g. "Surplus trust funds" means funds accumulated in the trust
25 from contributions made on behalf of an individual beneficiary,
26 which, after the death of the beneficiary, are determined by the
27 board to be in excess of the actual cost of providing services during
28 the beneficiary's lifetime, including the beneficiary's share of
29 administrative costs, and of any amounts provided to a
30 remainderman.

31 (cf: P.L.1993, c.224, s.2)

32
33 25. N.J.S.3B:13-2 is amended to read as follows:

34 3B:13-2. As used in this chapter:

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

38 (1) With payment of pensions, bounties, and allowances to
39 veterans of the military service of the United States, their widows,
40 widowers, children, mothers, and fathers**[,]** ; or

41 (2) With the administration of the affairs of any of the aforesaid
42 persons who may be minors or persons who are **[mentally**
43 **incompetent]** incapacitated or **[to manage]** with the management of
44 pensions, bounties, and allowances payable to them**[;]** .

45 b. "Military" has reference to the army, navy, marine, air, and
46 coast guard services**[;]** .

- 1 c. "Estate" and "income" include only moneys received by the
2 guardian from a Federal agency and earnings, interest, and profits
3 derived therefrom[;] .
- 4 d. "Benefits" means moneys payable by the United States to the
5 aforesaid persons or their guardians through a Federal agency[;] .
- 6 e. "Chief officer" means an officer of a Federal agency,
7 charged by the laws of the United States with the particular duty in
8 connection with which the term is used[;] .
- 9 f. "Ward" means a beneficiary of a Federal agency[;] .
- 10 g. "Guardian" means a person acting as fiduciary for a ward.
11 (cf: P.L.1981, c.405, s.3B:13-2)

12

13 26. N.J.S.3B:13-6 is amended to read as follows:

14 3B:13-6. For the purpose of appointing a guardian pursuant to
15 this chapter, the [mental incompetency] incapacity of a beneficiary
16 of a Federal agency shall be determined by the Superior Court.
17 (cf: P.L.1981, c.405, s.3B:13-6)

18

19 27. N.J.S.3B:13-7 is amended to read as follows:

20 3B:13-7. When, pursuant to any law of the United States or
21 regulation of a Federal agency, the chief officer of the agency
22 requires, prior to payment of benefits, that a guardian be appointed
23 for a ward, the appointment for a person who is incapacitated shall
24 be made in the Superior Court [in the case of a mental
25 incompetent], and [in] the appointment for a minor shall be made
26 in the Superior Court or in the surrogate's court [or in the Superior
27 Court in the case of a minor].
28 (cf: P.L.1981, c.405, s.3B:13-7)

29

30 28. N.J.S.3B:13-8 is amended to read as follows:

31 N.J.S.3B:13-8. Except as provided in this section, no person
32 shall accept appointment as guardian of a ward if [he be] acting as
33 guardian for five wards.

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

39 The limitation of this section shall not apply where the guardian
40 is a bank or trust company or a public guardian of [incompetent]
41 veterans who are incapacitated, and an individual may be guardian
42 of more than five wards if they are all members of the same family.
43 (cf: P.L.1981, c.405, s.3B:13-8)

44

45 29. N.J.S.3B:13-18 is amended to read as follows:

46 3B:13-18. When [an incompetent] a ward for whom a guardian
47 has been appointed is incapacitated and becomes entitled to
48 personal property amounting to not more than \$10,000.00 from any

1 source other than the United States Government, the court may
2 authorize **【him】** the guardian to receive the personal property for
3 conservation and administrative care. On payment of any money or
4 delivery of property to the guardian, a release executed by **【him】**
5 the guardian to the person or persons paying the money or
6 delivering the property shall be valid and effective.

7 (cf: P.L.1981, c.405, s.3B:13-18)

8

9 30. N.J.S.3B:13-21 is amended to read as follows:

10 3B:13-21. There may be appointed in each county a person to be
11 known as "public guardian of **【incompetent】** veterans who are
12 incapacitated for the county of (naming county)", who shall be
13 appointed by the Assignment Judge of the Superior Court in the
14 county. **【He】** The person appointed shall hold office for the term of
15 **【5】** five years from the date of **【his】** appointment and until **【his】** a
16 successor is appointed and qualified.

17 (cf: P.L.1981, c.405, s.3B:13-21)

18

19 31. N.J.S.3B:13-22 is amended to read as follows:

20 3B:13-22. Before entering upon the duties of **【his】** office, a
21 public guardian of **【incompetent】** veterans who are incapacitated
22 shall execute a bond to the Superior Court in an amount and with
23 sureties as shall be approved by the Superior Court, conditioned for
24 the faithful discharge of all duties imposed by law upon **【him】** the
25 person appointed public guardian.

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

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

31 (cf: P.L.1981, c.405, s.3B:13-22)

32

33 32. N.J.S.3B:13-23 is amended to read as follows:

34 3B:13-23. A public guardian of **【incompetent】** veterans who are
35 incapacitated shall receive an annual salary to be fixed by the
36 Assignment Judge of the Superior Court of the county for which the
37 guardian is appointed, with the approval of the board of freeholders
38 or governing body of the county.

39 The salary shall be paid by the county treasurer in semimonthly
40 payments and shall be in lieu of all other charges, compensation,
41 and commissions. A guardian shall not accept any other money
42 whatsoever by way of fee, compensation, gratuity, or present for
43 any **【of his】** services provided by the guardian.

44 (cf: P.L.1981, c.405, s.3B:13-23)

45

46 33. N.J.S.3B:13-24 is amended to read as follows:

47 3B:13-24. The public guardian of **【incompetent】** veterans who
48 are incapacitated shall, in each county, assist, supervise, advise, and

1 otherwise aid the duly appointed guardians of **【incompetent】** these
2 veterans and give help as may be necessary in preparing and
3 drawing papers and documents, and also help them to work in
4 conjunction with the United States **【Veterans' Administration】**
5 Department of Veterans Affairs, so that their wards may be fully
6 protected.

7 (cf: P.L.1981, c.405, s.3B:13-24)

8

9 34. N.J.S.3B:13-25 is amended to read as follows:

10 3B:13-25. The public guardian of **【incompetent】** veterans who
11 are incapacitated shall be subject to discharge or removal, by the
12 court, on the grounds and in the manner in which other guardians of
13 **【mental incompetents】** persons who are incapacitated are
14 discharged or removed.

15 (cf: P.L.1981, c.405, s.3B:13-25)

16

17 35. N.J.S.3B:13-26 is amended to read as follows:

18 3B:13-26. Where an action is brought in the Superior Court for
19 the appointment of a guardian for a person who, while in the
20 military, naval, marine, air, or coast guard service of the United
21 States, or after discharge therefrom, is **【or shall have been】**
22 determined to be **【mentally incompetent】** incapacitated, whether or
23 not **【he is or shall have been】** committed or confined to an
24 institution for the care of persons who are **【mentally incompetent**
25 **persons】** incapacitated, and the heirs of the person are unwilling,
26 unable, or unqualified for the appointment, or **【in case it shall**
27 **appear to the court that】** if the best interests of the person require it,
28 the Superior Court may appoint the public guardian of the county in
29 which the person resides as **【his】** guardian of the person.

30 (cf: P.L.1981, c.405, s.3B:13-26)

31

32 36. N.J.S.3B:13-27 is amended to read as follows:

33 3B:13-27. The public guardian of **【incompetent】** veterans who
34 are incapacitated shall have, in respect of any veteran and the estate
35 of any veteran for whom **【he has been】** the public guardian is
36 appointed **【guardian】**, the same power and authority as any other
37 duly appointed guardian of a **【mental incompetent】** person who is
38 incapacitated.

39 (cf: P.L.1981, c.405, s.3B:13-27)

40

41 37. N.J.S.3B:13-28 is amended to read as follows:

42 3B:13-28. The public guardian shall settle **【his】** accounts in
43 each estate in which **【he has been】** the guardian is appointed
44 **【guardian】** at the times and in the same manner as other guardians
45 of **【mental incompetents】** persons who are incapacitated.

46 (cf: P.L.1981, c.405, s.3B:13-28)

1 38. N.J.S.3B:13-29 is amended to read as follows:

2 3B:13-29. Upon the termination of a guardianship, by death of
3 **【his】** the ward or otherwise, the public guardian shall settle **【his】**
4 the account **【as guardian】** in the same manner as other guardians of
5 **【mental incompetents】** persons who are incapacitated.

6 (cf: P.L.1981, c.405, s.3B:13-29)

7

8 39. N.J.S.3B:13-31 is amended to read as follows:

9 3B:13-31. The public guardian of **【incompetent】** veterans who
10 are incapacitated may, when authorized by the Superior Court,
11 employ counsel to represent **【him】** the public guardian.

12 The compensation of counsel shall be fixed by the court and paid
13 from moneys in the guardian's **【hands】** control belonging to the
14 estate involved in litigation.

15 (cf: P.L.1981, c.405, s.3B:13-31)

16

17 40. N.J.S.3B:13A-1 is amended to read as follows:

18 3B:13A-1. As used in this chapter:

19 a. "Conservatee" means a person who has not been **【judicially**
20 **declared incompetent】** adjudicated incapacitated but who by reason
21 of advanced age, illness, or physical infirmity, is unable to care for
22 or manage **【his】** property or has become unable to provide **【for**
23 **himself】** self-support or support for others **【dependent】** who
24 depend upon **【him for】** that support【;】.

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

27 (cf: P.L.1983, c.192, s.3B:13A-1)

28

29 41. N.J.S.3B:13A-16 is amended to read as follows:

30 3B:13A-16. The appointment of a conservator shall not:

31 a. Be evidence of the **【competency】** capacity or
32 **【incompetency】** incapacity of a conservatee; or

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

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

39 (cf: P.L.1983, c.192, s.3B:13A-16)

40

41 42. N.J.S.3B:13A-34 is amended to read as follows:

42 3B:13A-34. A conservatorship shall terminate upon the death of
43 the conservatee or upon **【his having been adjudicated】** adjudication
44 of the conservatee to be **【incompetent】** incapacitated as provided by
45 law, but the termination shall not affect the conservator's liability

1 for prior acts nor **【his】** obligation to account funds and property of
2 the conservatee.

3 (cf: P.L.1983, c.192, s.3B:13A-34)

4

5 43. N.J.S.3B:13A-36 is amended to read as follows:

6 3B:13A-36. A conservator shall be compensated for **【his】**
7 services in the same manner as a guardian for a minor or **【mental**
8 **incompetent】** for a person who is incapacitated.

9 (cf: P.L.1983, c.192, s.3B:13A-36)

10

11 44. N.J.S.3B:14-21 is amended to read as follows:

12 3B:14-21. The court may remove a fiduciary from office when
13 the fiduciary:

14 a. After due notice of an order or judgment of the court so
15 directing, **【he】** neglects or refuses, within the time fixed by the
16 court, to file an inventory, render an account, or give security or
17 additional security;

18 b. After due notice of any other order or judgment of the court
19 made under its proper authority, **【he】** neglects or refuses to perform
20 or obey the order or judgment within the time fixed by the court;
21 **【or】**

22 c. **【He has embezzled, wasted or misapplied】** Embezzles,
23 wastes, or misapplies any part of the estate **【committed to his**
24 **custody】** for which the fiduciary is responsible, or **【has abused】**
25 abuses the trust and confidence reposed in **【him】** the fiduciary;
26 **【or】**

27 d. **【He has removed from the state or does not reside therein】**
28 No longer resides nor has an office in the State and neglects or
29 refuses to proceed with the administration of the estate and perform
30 the duties **【and trust devolving upon him】** required; **【or】**

31 e. **【He is of unsound mind or mentally】** Is incapacitated for the
32 transaction of business; or

33 f. **【One of two or more fiduciaries has neglected or refused】**
34 Neglects or refuses, as one of two or more fiduciaries, to perform
35 **【his】** the required duties or to join with the other fiduciary or
36 fiduciaries in the administration of the estate **【committed to their**
37 **care】** for which they are responsible whereby the proper
38 administration and settlement of the estate is or may be hindered or
39 prevented.

40 (cf: P.L.1981, c.405, s.3B:14-21)

41

42 45. N.J.S.3B:14-23 is amended to read as follows:

43 3B:14-23. Powers. In the absence of contrary or limiting
44 provisions in the judgment or order appointing a fiduciary, in the
45 will, deed, or other instrument or in a subsequent court judgment or
46 order, every fiduciary shall, in the exercise of good faith and
47 reasonable discretion, have the power:

- 1 a. To accept additions to any estate or trust from sources other
2 than the estate of the decedent, the minor, **mental incompetent** the
3 person who is incapacitated, or the settlor of a trust;
- 4 b. To acquire the remaining undivided interest in an estate or
5 trust asset in which the fiduciary, in **his** a fiduciary capacity,
6 holds an undivided interest;
- 7 c. To invest and reinvest assets of the estate or trust under the
8 provisions of the will, deed, or other instrument or as otherwise
9 provided by law and to exchange assets for investments and other
10 property upon terms as may seem advisable to the fiduciary;
- 11 d. To effect and keep in force fire, rent, title, liability, casualty,
12 or other insurance to protect the property of the estate or trust and to
13 protect the fiduciary;
- 14 e. With respect to any property or any interest therein owned
15 by an estate or trust, including any real property belonging to the
16 fiduciary's decedent at death, except where the property or any
17 interest therein is specifically disposed of:
 - 18 (1) To take possession of and manage the property and to collect
19 the rents therefrom, and pay taxes, mortgage interest, and other
20 charges against the property;
 - 21 (2) To sell the property at public or private sale, and on terms as
22 in the opinion of the fiduciary shall be most advantageous to those
23 interested therein;
 - 24 (3) With respect to fiduciaries other than a trustee, to lease the
25 property for a term not exceeding three years, and in the case of a
26 trustee to lease the property for a term not exceeding 10 years, even
27 though the term extends beyond the duration of the trust, and in
28 either case including the right to explore for and remove mineral or
29 other natural resources, and in connection with mineral leases to
30 enter into pooling and unitization agreements;
 - 31 (4) To mortgage the property;
 - 32 (5) To grant easements to adjoining owners and utilities;
 - 33 (6) A fiduciary acting under a will may exercise any of the
34 powers granted by this subsection e. notwithstanding the effects
35 upon the will of the birth of a child after its execution;
- 36 f. To make repairs to the property of the estate or trust for the
37 purpose of preserving the property or rendering it rentable or
38 saleable;
- 39 g. To grant options for the sale of any property of the estate or
40 trust for a period not exceeding six months;
- 41 h. With respect to any mortgage held by the estate or trust to
42 continue it upon and after maturity, with or without renewal or
43 extension, upon terms as may seem advisable to the fiduciary and to
44 foreclose, as an incident to collection of any bond or note, any
45 mortgage and purchase the mortgaged property or acquire the
46 property by deed from the mortgagor in lieu of foreclosure;
- 47 i. In the case of the survivor or survivors of two or more
48 fiduciaries to administer the estate or trust without the appointment
49 of a successor to the fiduciary or fiduciaries who have ceased to act

- 1 and to exercise or perform all of the powers given unless contrary to
2 the express provision of the will, deed, or other instrument;
- 3 j. As a new, alternate, successor, substitute, or additional
4 fiduciary or fiduciaries, to have or succeed to all of the powers,
5 duties, and discretion of the original fiduciary or fiduciaries, with
6 respect to the estate or trust, as were given to the original fiduciary
7 or fiduciaries named in or appointed by a will, deed, or other
8 instrument, unless the exercise of the powers, duties, or discretion
9 of the original fiduciary or fiduciaries is expressly prohibited by the
10 will, deed, or other instrument to any successor or substitute
11 fiduciary or fiduciaries;
- 12 k. Where there are three or more fiduciaries qualified to act, to
13 take any action with respect to the estate or trust which a majority
14 of the fiduciaries shall determine; a fiduciary who fails to act
15 through absence or disability, or a dissenting fiduciary who joins in
16 carrying out the decision of a majority of the fiduciaries if **his** the
17 dissent is expressed promptly in writing to **his** the cofiduciaries,
18 shall not be liable for the consequences of any majority decision,
19 provided that liability for failure to join in administering the trust or
20 to prevent a breach of trust may not thus be avoided;
- 21 l. To employ and compensate attorneys for services rendered
22 to the estate or trust or to a fiduciary in the performance of **his**
23 the fiduciary's duties;
- 24 m. To compromise, contest, or otherwise settle any claim in
25 favor of the estate, trust, or fiduciary or in favor of third persons
26 and against the estate, trust, or fiduciary, including transfer
27 inheritance, estate, income, and other taxes;
- 28 n. To vote in person or by proxy, discretionary or otherwise,
29 shares of stock or other securities held by the estate or trust;
- 30 o. To pay calls, assessments, and any other sums chargeable or
31 accruing against or on account of shares of stock, bonds,
32 debentures, or other corporate securities in the **hands** control of a
33 fiduciary, whenever the payments may be legally enforceable
34 against the fiduciary or any property of the estate or trust or the
35 fiduciary deems payment expedient and for the best interests of the
36 estate or trust;
- 37 p. To sell or exercise stock subscription or conversion rights,
38 participate in foreclosures, reorganizations, consolidations, mergers,
39 or liquidations, and to consent to corporate sales or leases and
40 encumbrances, and, in the exercise of those powers, the fiduciary is
41 authorized to deposit stocks, bonds, or other securities with any
42 custodian, agent, protective or other similar committee, or trustee
43 under a voting trust agreement, under terms and conditions
44 respecting the deposit thereof as the fiduciary may approve;
- 45 q. To execute and deliver agreements, assignments, bills of
46 sale, contracts, deeds, notes, receipts, and any other instrument
47 necessary or appropriate for the administration of the estate or trust;
- 48 r. In the case of a trustee:

- 1 (1) To hold two or more trusts or parts of trusts created by the
2 same instrument, as an undivided whole, without separation as
3 between the trusts or parts of the trusts, provided that separate trusts
4 or parts of trusts shall have undivided interests and provided further
5 that no holding shall defer the vesting of any estate in possession or
6 otherwise;
- 7 (2) To divide a trust, before or after its initial funding, into two
8 or more separate trusts, provided that such division will not
9 materially impair the accomplishment of the trust purposes or the
10 interests of any beneficiary. Distributions provided for by the
11 governing instrument may be made from one or more of the
12 separate trusts;
- 13 s. To distribute in kind any property of the estate or trust as
14 provided in article 1 of chapter 23 of this **[title]** Title;
- 15 t. To join with the surviving spouse, partner in a civil union, or
16 domestic partner, the executor of **[his or her]** the decedent's will,
17 or the administrator of **[his or her]** the decedent's estate in the
18 execution and filing of a joint income tax return for any period prior
19 to the death of a decedent for which **[he has not filed a]** no return
20 or **[a]** gift tax return on gifts made by the decedent's surviving
21 spouse, partner in a civil union, or domestic partner was filed, and
22 to consent to treat the gifts as being made one-half by the decedent,
23 for any period prior to a decedent's death, and to pay taxes thereon
24 as are chargeable to the decedent;
- 25 u. To acquire or dispose of an asset, including real or personal
26 property in this State or another state, for cash or on credit, at
27 public or private sale, and to manage, develop, improve, exchange,
28 partition, change the character of, or abandon an estate asset;
- 29 v. To continue any business constituting the whole or any part
30 of the estate for so long a period of time as the fiduciary may deem
31 advisable and advantageous for the estate and persons interested
32 therein;
- 33 w. In the case of a qualified bank as defined in section 1 of
34 P.L.1948, c.67 (C.17:9A-1), and an out-of-State bank as defined in
35 section 1 of P.L.1948, c.67 (C.17:9A-1), which has established a
36 trust office in this State to purchase, sell, and maintain for any
37 fiduciary account, securities issued by an investment company
38 which is operated and maintained in accordance with the
39 "Investment Company Act of 1940," 15 U.S.C.s.80a-1 et seq., and
40 for which the qualified bank or out-of-State bank is providing
41 services as an investment advisor, investment manager, custodian,
42 or otherwise, including those for which it receives compensation, if:
43 (1) The investment is otherwise in accordance with applicable
44 fiduciary standards; and
45 (2) The investment is authorized by the agreement or instrument
46 creating the fiduciary account that gives the qualified bank or out-
47 of-State bank investment authority, or by court order; or

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

14 Such investment shall not be deemed self-dealing or a fiduciary
15 conflict; nor shall the fact that other beneficiaries of fiduciary
16 accounts of the qualified bank or out-of-State bank have similar
17 investments be deemed to be an improper commingling of assets by
18 the qualified bank or out-of-State bank.

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

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

1 1997," P.L.1997, c.259 (C.45:2B-42 et seq.) and "The Professional
2 Service Corporation Act," P.L.1969, c.232 (C.14A:17-1 et seq.);
3 and

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

7 (cf: P.L.2003, c.33, s.1)

8

9 46. N.J.S.3B:15-1 is amended to read as follows:

10 3B:15-1. The court or surrogate appointing a fiduciary in any of
11 the instances enumerated below shall secure faithful performance of
12 the duties of **【his】** the office by requiring the fiduciary thereby
13 authorized to act to furnish bond to the Superior Court in a sum and
14 with proper conditions and sureties, having due regard to the value
15 of the estate **【in his charge】** and the extent of **【his】** the fiduciary's
16 authority, as the court shall approve:

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

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

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

28 d. When the office to which the person is appointed is any form
29 of guardianship of a minor or a person who is incapacitated
30 **【person】**, except as otherwise provided in N.J.S.3B:12-16 or
31 N.J.S.3B:12-33 with respect to a guardian appointed by will;

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

35 f. When an additional or substituted fiduciary is appointed;

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

39 h. When a fiduciary moves from the State, in which case the
40 court may require **【him】** the fiduciary to give such security as **【it**
41 may determine】 the court determines; or

42 i. (1) When an appointment is made, regardless of any
43 direction in a last will and testament relieving a personal
44 representative, testamentary guardian, or testamentary trustee or
45 their successors from giving bond, that person shall, before
46 receiving letters or exercising any authority or control over the
47 property, provide bond to secure performance of **【his】** the person's
48 duties with respect to property to which a **【developmentally**

1 disabled] person with a developmental disability as defined in
2 section 3 of P.L.1985, c.145 (C.30:6D-25) is, or shall be entitled, if:

3 (a) the testator has identified that a devisee or beneficiary of
4 property of the decedent's estate is [such] a [developmentally
5 disabled] person with a developmental disability; or

6 (b) the person seeking appointment has actual knowledge that a
7 devisee or beneficiary of property of the decedent's estate is [such]
8 a [developmentally disabled] person with a developmental
9 disability.

10 (2) No bond shall be required pursuant to paragraph (1) of this
11 subsection if:

12 (a) the court has appointed another person as guardian of the
13 person or guardian of the estate for the [developmentally disabled]
14 person with a developmental disability;

15 (b) the person seeking the appointment is a family member
16 within the third degree of consanguinity of the [developmentally
17 disabled] person with a developmental disability; or

18 (c) the total value of the real and personal assets of the estate or
19 trust does not exceed \$25,000.

20 (3) A personal representative, testamentary guardian, or
21 testamentary trustee who is required to provide bond pursuant to
22 paragraph (1) of this subsection shall file with the Superior Court an
23 initial inventory and a final accounting of the estate in [his] that
24 person's charge containing a true account of all assets of the estate.
25 [Such] That person shall file an interim accounting every five
26 years, or a lesser period of time if so ordered by the Superior Court,
27 in the case of an extended estate or trust administration.

28 (4) A personal representative, testamentary guardian, or
29 testamentary trustee who is required to provide bond pursuant to
30 paragraph (1) of this subsection may make application to the court
31 to waive the bond or reduce the amount of bond for good cause
32 shown, including the need to preserve assets of the estate.

33 This subsection shall not apply to qualified financial institutions
34 pursuant to section 30 of P.L.1948, c.67 (C.17:9A-30) or to non-
35 profit community trusts organized pursuant to P.L.1985, c.424
36 (C.3B:11-19 et seq.).

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

40 (cf: P.L.2010, c.34, s.3)

41

42 47. N.J.S.3B:15-7 is amended to read as follows:

43 3B:15-7. The bond required of a guardian of a minor or [mental
44 incompetent] a person who is incapacitated shall be conditioned
45 substantially as follows:

46 a. To [well and truly] administer the ward's estate to the best
47 of the guardian's ability, and to take proper care of the ward if the
48 guardian is the guardian of the ward's person;

1 b. To make a just and true account of **【his】** the administration
2 of the guardianship, and, if required by the court, to settle **【his】** the
3 accounts therein within the time so required.

4 (cf: P.L.1981, c.405, s.3B:15-7)

5
6 48. Section 1 of P.L.1987, c.28 (C.3B:15-17.1) is amended to
7 read as follows:

8 1. Where the estate of a minor consists of the proceeds of a
9 judgment recovered in favor of the minor in any court of this State
10 and the funds recovered are placed under the control of the county
11 surrogate, the funds shall be paid over to the person when the
12 person reaches the age of 18 years, unless the court finds the person
13 **【incompetent】** to be incapacitated.

14 (cf: P.L.1987, c.28, s.1)

15
16 49. N.J.S.3B:16-8 is amended to read as follows:

17 3B:16-8. Every guardian of the estate of a minor or **【mental**
18 **incompetent】** a person who is incapacitated may, and if required by
19 the court shall, file with the surrogate of the proper county or the
20 clerk of the Superior Court**【, as the case may be,】** an inventory,
21 under oath, of all the real and personal property which **【has come to**
22 **his hands】** is in the control, possession, or knowledge of the
23 guardian or **【into the hands of】** any other person **【for him】** on the
24 guardian's behalf. The court shall not require an inventory and
25 appraisal to be filed until **【3】** three months have elapsed after the
26 grant of letters.

27 (cf: P.L.1981, c.405, s.3B:16-8)

28
29 50. N.J.S.3B:17-1 is amended to read as follows:

30 3B:17-1. A fiduciary need not render or settle **【his】** an account
31 if **【he】** the fiduciary files with the court a release or discharge from
32 the beneficiary, ward, or cestui que trust who **【is of full age】** has
33 reached majority and is not **【mentally competent】** incapacitated.

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

36 (cf: P.L.1981, c.405, s.3B:17-1)

37
38 51. N.J.S.3B:23-21 is amended to read as follows:

39 3B:23-21. Unclaimed estate assets. When a fiduciary states
40 **【his】** a final account and there remains in **【his hands】** the
41 fiduciary's control a balance, devise, distributive share, dividend, or
42 sum of money to be paid to a person and the person, or **【his】** that
43 person's guardian, if **【he be an infant】** a minor or **【mental**
44 **incompetent】** a person who is incapacitated, fails to claim the
45 balance, devise, distributive share, dividend, or sum of money
46 within the period of time set forth in R.S.46:30B-37.1, then the
47 property shall be disposed of as provided in N.J.S.3B:23-19 if it is

1 part of an intestate estate or otherwise presumed abandoned and
2 handled in accordance with the "Uniform Unclaimed Property Act
3 (1981)," R.S.46:30B-1 et seq.
4 (cf: P.L.2001, c.109, s.3)

5

6 52. N.J.S.3B:23-34 is amended to read as follows:

7 3B:23-34. An action to recover a devise may not be maintained
8 until:

- 9 a. The devise becomes due and payable;
- 10 b. Reasonable demand for payment is made upon the personal
11 representative; and
- 12 c. A refunding bond in substantially the form prescribed in
13 N.J.S.3B:23-26 is tendered to the personal representative by the
14 devisee, or, if the devisee is a minor or a person who is
15 incapacitated, by the guardian of **his** the devisee's estate **if the**
16 devisee is an infant or a mental incompetent, and, if **he** refuses to
17 accept not accepted by the personal representative, the refunding
18 bond**,** is filed with the clerk of the court, prior to the
19 commencement of the action.

20 (cf: P.L.1981, c.405, s.3B:23-34)

21

22 53. N.J.S.3B:23-39 is amended to read as follows:

23 3B:23-39. When a devise charged by will upon real estate is
24 wholly or in part limited over:

25 a. To **infants, mental incompetents** minors, persons who are
26 incapacitated, or persons not in esse; or

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

29 c. In a manner that the vesting of the devise may be contingent-
30 The Superior Court may, in a summary or other action by the
31 executor, or a person interested in the real estate, direct the devise
32 paid into court together with any additional sums as the court may
33 deem reasonable to cover the expense of investing and taking
34 charge of the devise. Upon payment into court, the real estate shall
35 be wholly clear and discharged from the lien created by the will.

36 (cf: P.L.1981, c.405, s.3B:23-39)

37

38 54. Section 1 of P.L.1955, c.232 (C.9:2-13) is amended to read
39 as follows:

40 1. For the purposes of **this act** P.L.1955, c.232 (C.9:2-13 et
41 seq.), the following words and phrases, unless otherwise indicated,
42 shall be deemed to have the following meanings:

43 (a) The phrase "approved agency" means a legally constituted
44 agency having its principal office within or without this State,
45 which has been approved, pursuant to law, to place children in New
46 Jersey for purposes of adoption.

47 (b) The word "child" means any person under 18 years of age.

1 (c) The word "custody" means continuing control and authority
2 over the person of a child, established by natural parenthood, by
3 order or judgment of a court of competent jurisdiction, or by written
4 surrender to and approved agency pursuant to law.

5 (d) The phrase "forsaken parental obligations" means willful
6 and continuous neglect or failure to perform the natural and regular
7 obligations of care and support of a child.

8 (e) The phrase "mentally **incompetent**" incapacitated" means
9 inability to understand and discharge the natural and regular
10 obligations of care and support of a child by reason of mental
11 disease, **feebleness of mind, or habitual intemperance** intellectual
12 disability, or the effects of drug, alcohol, or substance abuse.

13 (f) The word "parent," when not otherwise described by the
14 context, means a natural parent or parent by previous adoption.

15 (g) The word "may" shall be construed to be permissive and the
16 word "shall" shall be construed to be mandatory.

17 (cf: P.L.1990, c.26, s.3)

18

19 55. Section 7 of P.L.1955, c.232 (C.9:2-19) is amended to read
20 as follows:

21 7. If the court shall determine that custody of the child has
22 been surrendered as provided in Article II of **this act** P.L.1955,
23 c.232 (C.9:2-13 et seq.), the court may declare that the person
24 making such surrender shall have no further right to custody of the
25 child. If the court shall determine that a parent of the child is dead,
26 or mentally **incompetent** incapacitated as defined in section 1 of
27 P.L.1955, c.232 C.9:2-13), or has forsaken parental obligation, the
28 court may declare that such parent shall have no further right to
29 custody of the child. If the court shall determine that a custodian or
30 guardian has been appointed for the child, but that such custodian or
31 guardian has willfully and continuously neglected or failed to
32 discharge the responsibilities of such appointment, the court may
33 declare that such custodian or guardian shall have no further control
34 and authority over the person of the child.

35 (cf: P.L.1990, c.26, s.4)

36

37 56. Section 3 of P.L.1972, c.81 (C.9:17B-3) is amended to read
38 as follows:

39 3. Except **with respect to the provisions of N.J.S. 2A:14-21,**
40 with respect to the provision of services pursuant to the laws
41 relating to dependent and neglected children, allocated to chapter
42 4C of Title 30 of the Revised Statutes (C.30:4C-1 to 30:4C-44), to
43 persons between 18 and 21 years of age who seek to avail
44 themselves of such services and who are enrolled in a school or
45 training program below college level or who require a course of
46 treatment for emotionally, cognitively, or physically disabled
47 persons, with respect to the right of a court to take any action it
48 deems appropriate and in the interest of a person under 21 years of

1 age, or to require a change in action heretofore taken by a court
2 with respect to a person under 21 years of age, or with respect to the
3 provisions of the "New Jersey Uniform Gifts to Minors Act"
4 (P.L.1963, c.177, C.46:38-13 et seq.), or the "New Jersey Uniform
5 Transfers to Minors Act," R.S. 46:38A-1 et seq., every person 18 or
6 more years of age shall in all other matters and for all other
7 purposes be deemed to be an adult and, notwithstanding any other
8 provision of law to the contrary, shall have the same legal capacity
9 to act and the same powers and obligations as a person 21 or more
10 years of age. Except as herein otherwise provided, every act or
11 action of any such person shall be as valid, binding, and enforceable
12 by or against such person as if, at the time such act or action was
13 performed or undertaken, such person was 21 or more years of age
14 and no act or action by any such person performed or undertaken on
15 or after the effective date of this act shall be subject to
16 disaffirmance because of minority.

17 (cf: P.L.1987, c.18, s.3)

18

19 57. Section 7 of P.L.1975, c.231 (C.10:4-12) is amended to read
20 as follows:

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

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

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

38 (2) **【Any】** matter in which the release of information would
39 impair a right to receive funds from the Government of the United
40 States**【.】**;

41 (3) **【Any】** material the disclosure of which constitutes an
42 unwarranted invasion of individual privacy such as any records,
43 data, reports, recommendations, or other personal material of any
44 educational, training, social service, medical, health, custodial,
45 child protection, rehabilitation, legal defense, welfare, housing,
46 relocation, insurance, and similar program or institution operated by
47 a public body pertaining to any specific individual admitted to or
48 served by **【such】** an institution or program, including but not

1 limited to₂ information relative to the individual's personal and
2 family circumstances, and any material pertaining to admission,
3 discharge, treatment, progress₂ or condition of any individual,
4 unless the individual concerned (or, in the case of a minor or
5 **【incompetent】** an incapacitated individual, **【his】** the individual's
6 guardian) shall request in writing that the **【same】** material be
7 disclosed publicly**【.】** ;

8 (4) **【Any】** collective bargaining agreement, or the terms and
9 conditions which are proposed for inclusion in any collective
10 bargaining agreement, including the negotiation of the terms and
11 conditions thereof with employees or representatives of employees
12 of the public body**【.】** ;

13 (5) **【Any】** matter involving the purchase, lease₂ or acquisition of
14 real property with public funds, the setting of banking rates₂ or
15 investment of public funds, **【where】** if it could adversely affect the
16 public interest if discussion of **【such】** the matters were disclosed**【.】**
17 ;

18 (6) **【Any】** tactics and techniques utilized in protecting the safety
19 and property of the public, provided that their disclosure could
20 impair **【such】** that protection **【. Any】** , or investigations of
21 violations or possible violations of the law**【.】** ;

22 (7) **【Any】** pending or anticipated litigation or contract
23 negotiation other than in subsection b. (4) herein in which the
24 public body is, or may become₂ a party**【.**

25 **Any】** , or matters falling within the attorney-client privilege, to
26 the extent that confidentiality is required in order for the attorney to
27 exercise his ethical duties as a lawyer**【.】** ;

28 (8) **【Any】** matter involving the employment, appointment,
29 termination of employment, terms and conditions of employment,
30 evaluation of the performance of, promotion₂ or disciplining of any
31 specific prospective public officer or employee or current public
32 officer or employee employed or appointed by the public body,
33 unless all the individual employees or appointees whose rights
34 could be adversely affected request in writing that **【such】** the
35 matter or matters be discussed at a public meeting**【.】** ; or

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

41 (cf: P.L.2008, c.14, s.1)

42

43 58. N.J.S.12A:3-308 is amended to read as follows:

44 12A:3-308. a. In an action with respect to an instrument, the
45 authenticity of, and authority to make, each signature on the
46 instrument is admitted unless specifically denied in the pleadings.
47 If the validity of a signature is denied in the pleadings, the burden

1 of establishing validity is on the person claiming validity, but the
 2 signature is presumed to be authentic and authorized unless the
 3 action is to enforce the liability of the purported signer and the
 4 signer is **[dead]** deceased or **[incompetent]** incapacitated at the
 5 time of trial of the issue of validity of the signature. If an action to
 6 enforce the instrument is brought against a person as the
 7 undisclosed principal of a person who signed the instrument as a
 8 party to the instrument, the plaintiff has the burden of establishing
 9 that the defendant is liable on the instrument as a represented
 10 person under subsection a. of **[12A:3-402]** N.J.S.12A:3-402.

11 b. If the validity of signatures is admitted or proved and there
 12 is compliance with subsection a. of this section, a plaintiff
 13 producing the instrument is entitled to payment if the plaintiff
 14 proves entitlement to enforce the instrument under **[12A:3-301]**
 15 N.J.S.12A:3-301, unless the defendant proves a defense or claim in
 16 recoupment. If a defense or claim in recoupment is proved, the
 17 right to payment of the plaintiff is subject to the defense or claim,
 18 except to the extent the plaintiff proves that the plaintiff has rights
 19 of a holder in due course which are not subject to the defense or
 20 claim.

21 (cf: N.J.S.12A:3-308)

22

23 59. Section 16 of P.L.1966, c.291 (C.13:1C-16) is amended to
 24 read as follows:

25 16. The board may refuse the application of any applicant for an
 26 examination or, after due notice and public hearing, refuse to issue
 27 a certificate, or revoke any certificate issued by it, if the applicant
 28 for, or holder of, such a certificate~~---~~ :

29 (a) has been convicted of an offense involving moral turpitude,
 30 is a drug addict or alcoholic, or is **[mentally incompetent,]**
 31 incapacitated; or

32 (b) advocates the overthrow of the Government of the United
 33 States by force and violence or other unlawful means~~.,]~~ ; or

34 (c) has made any willful statement or impersonated any other
 35 person or permitted or aided any other person to impersonate **[him]**
 36 the applicant or certificate holder in connection with any
 37 application or examination for certification and registration~~.,]~~ ; or

38 (d) has been found to be inefficient in performing the duties of
 39 any position held by **[him]** the person, on the basis of the holding
 40 of which experience qualifications are offered on **[his]** that
 41 person's behalf.

42 (cf: P.L.1966, c.291, s.16)

43

44 60. Section 1 of P.L.1942, c.230 (C.17:4-9.1) is amended to read
 45 as follows:

46 1. **[Whenever a "successor company" has been or may**
 47 **hereafter be]** For purposes of this section, the term "successor
 48 company" includes "successor bank" or "successor savings bank";

1 and the term "predecessor company" includes "liquidating
2 company" or "predecessor savings bank."

3 A successor company formed under **and by virtue of the**
4 **provisions of section 17:4-9** R.S.17:4-9, repealed and replaced by
5 section 16 of P.L.1948, c.67 (C.17:9A-16), and **has** qualified to
6 act as a fiduciary as provided for **in section 17:4-41** by R.S.17:4-
7 41, repealed and replaced by section 30 of P.L.1948, c.67 (C.17:9A-
8 30), **subject to the exception hereinafter made,** in order to
9 facilitate **and hasten** the orderly liquidation **and the winding up**
10 **of the affairs** of the **"liquidating company"** predecessor
11 company, **it shall and may be lawful for such** the **"successor**
12 **company"** successor company shall be permitted **from time to**
13 **time,** to **take over and become** be substituted as fiduciary in
14 **any or all** those matters in which **said "liquidating company"**
15 the predecessor company has qualified**;** in any and all matters
16 where**.**

17 If in the sound judgment of the **"liquidating company"**
18 predecessor company and the **"successor company"** successor
19 company such a substitution of fiduciary is deemed **advisable,** in
20 the best interests of the trust or relation **,** and in aid of the
21 **winding up of the affairs of the "liquidating company,"**
22 **"liquidating company"** liquidation, the predecessor company may
23 file its account to date with the court having **the** jurisdiction
24 **thereof,** and upon approval **of such account** thereof and **upon**
25 **the** discharge **of the "liquidating company"** from **such** the
26 trust or relation the **said " successor company"** successor
27 company shall succeed to **all such** the rights, relations, and trusts
28 and **the** associated duties **connected therewith,** and shall
29 execute and perform **each and every such** the trust or relation **in**
30 **the same manner** as if **such "successor company"** the successor
31 company had **itself** originally assumed the trust or relation;
32 provided, however, that the **"successor company"** successor
33 company shall not assume **no** the liabilities **which may have**
34 **been** incurred by the **"liquidating company"** predecessor
35 company incident to its administration of **such** the trust or
36 relation.

37 **The "successor company"** Subject to this section, the successor
38 company shall **as to such matters** succeed to **all** the rights and
39 duties of the **"liquidating company"** predecessor company and to
40 all fiduciary capacities**,** whether as administrator, coadministrator,
41 executor, coexecutor, trustee or cotrustee, guardian, coguardian,
42 assignee, coassignee, receiver, coreceiver, committee or
43 committeeman of estates of lunatics, or in any other fiduciary
44 capacity of or **in respect to any estate or trust or other matter being**
45 administered under the laws of New Jersey, or as transfer agent or

1 registrar of stocks and bonds[, such relations as well as any other or
2 similar fiduciary relations and all rights, privileges and duties
3 connected therewith shall remain unimpaired, subject as
4 aforesaid,].

5 Subject to this section, all fiduciary rights, privileges, and duties
6 shall remain unimpaired and shall continue [into and] in the [said]
7 ["successor company"] successor company from [and as of] the
8 date of discharge by the court of the ["liquidating company"]
9 predecessor company from [such] the trust or relation, [by the
10 court, irrespective] regardless of : (i) the date [when such] the
11 relationship [may have been created or] was established [, and
12 irrespective of the date of said] ; (ii) the trust agreement [relating
13 thereto or the date of death of any] was created; or (iii) the trustor
14 [or] , the decedent [or lunatic] , the person who is mentally
15 incapacitated, or the minor [whose estate is being so administered
16 or managed, and it shall not be necessary for said "successor
17 company"] died, without the need for the successor company to
18 seek appointment in [said] the person's estates [by any court of
19 this State]; provided [, further,] that [in all cases] where the
20 instrument under which the ["liquidating company"] predecessor
21 company qualified to act did not require the ["liquidating company"
22 to furnish] furnishing of a bond, no [such] bond shall be required
23 [of the "successor company" as provided for in section 17:4-41, or
24 otherwise. The terms "successor company" and "liquidating
25 company" as used herein shall apply to and be construed to have
26 the same meaning as is placed on said terms by section 17:4-9].

27 (cf: P.L.1942, c.230, s.1)

28

29 61. Section 18 of P.L.1969, c.242 (C.18A:66-184) is amended to
30 read as follows:

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

43 The participant will be considered totally disabled if [he is]
44 unable to perform each duty of [his] the participant's occupation
45 and is under the regular care of a physician. After the 12 months
46 following the commencement of [such] the disability benefit

1 payments, **[he]** the participant must be unable to engage in any
2 gainful occupation for which **[he]** the participant is reasonably
3 fitted by education, training, or experience. Total disability is not
4 considered to exist if **[he]** the participant is gainfully employed.
5 However, following an agreement with the insurance company and
6 the policyholder, the participant can continue to receive disability
7 benefits for a limited time while performing some type of work.
8 During the period of rehabilitation the monthly benefit will be the
9 regular payment less 80% of the participant's earnings from **[such]**
10 the rehabilitative position.

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

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

27 If the participant has recovered from the disability for which
28 **[he]** the participant had received benefits and again becomes totally
29 disabled while insured, the later disability will be regarded as a
30 continuation of the prior one unless the participant has returned to
31 full-time covered employment for at least **[6]** six months.
32 However, if the later absence is due to an unrelated cause and the
33 participant had returned to full-time work, it will be considered a
34 new disability. The disability benefit insurance cannot be converted
35 to an individual policy.

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

40 (cf: P.L.1969, c.242, s.18)

41

42 62. N.J.S.22A:2-10 is amended to read as follows:

43 22A:2-10. Chancery Division of Superior Court; costs awarded.

44 Upon the completion and determination of the following actions
45 and proceedings in the Chancery Division of the Superior Court, the
46 costs awarded to a party therein for the drawing of papers, including
47 orders, writs and judgments, shall be as stated below:

1	Plaintiff's costs, foreclosure	\$ 50.00
2	Plaintiff's costs, partition	70.00
3	Plaintiff's and receiver's costs, receivership	125.00
4	Plaintiff's costs, receivership	62.50
5	Receiver's costs, receivership	62.50
6	Plaintiff's costs, divorce, dissolution of civil	
7	union, nullity, custody	30.00
8	Plaintiff's costs, causes of action for other relief	65.00
9	Plaintiff's costs, [incompetency] <u>incapacity</u> action	47.50
10	Plaintiff's costs, sale of lands of [infant] <u>minor</u>	
11	or [incompetent] <u>incapacitated individual</u>	50.00
12	Plaintiff's costs, release of dower or curtesy	50.00
13	Plaintiff's costs, mortgage lands of [an infant] <u>a minor</u>	
14	or [incompetent] <u>incapacitated individual</u>	50.00
15	Plaintiff's costs, interpleader	35.00
16	Plaintiff's costs, appointment of tax receiver	27.50
17	Plaintiff's costs, actions for payment of money	
18	into court; to hold real estate; to limit creditors	22.50
19	Plaintiff's costs, action for appointment of	
20	trustee or substituted trustee	33.50
21	Costs on contempt proceedings	25.00
22	Costs on application to fix dower or curtesy	22.50
23	Costs on application to pay moneys out of court	23.50
24	Costs on application for instructions, or to	
25	approve account	30.00
26	Costs on application for writ of execution	10.00
27	Costs on application for relief from final judgment	
28	or, in a matrimonial cause from judgment	
29	nisi or order	20.00
30	Costs on application for writ of possession	30.00
31	Costs on application for alimony pendente lite,	
32	attorney fee, suit money	20.00
33	Defendant's costs where final judgment	
34	is taken by [him] <u>defendant</u>	30.00
35	Defendant's costs where final judgment is	
36	not taken by [him] <u>defendant</u>	20.00
37	Costs upon any other litigated or special motion,	
38	subsidiary or interlocutory, not heretofore	
39	provided for	50.00
40	(cf: P.L.2006, c.103, s.84)	

41

42 63. Section 2 of P.L.1991, c.201 (C.26:2H-54) is amended to
43 read as follows:

44 2. The Legislature finds and declares that:

45 a. **[Competent adults]** Adults have the fundamental right, in
46 collaboration with their health care providers, to control decisions
47 about their own health care unless they lack the mental capacity to
48 do so. This State recognizes, in its law and public policy, the

1 personal right of the individual patient to make voluntary, informed
2 choices to accept, to reject, or to choose among alternative courses
3 of medical and surgical treatment.

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

16 c. In order that the right to control decisions about one's own
17 health care should not be lost in the event a patient loses decision
18 making capacity and is no longer able to participate actively in
19 making **【his own】** such health care decisions, this State recognizes
20 the right of **【competent】** adults, who have the mental capacity, to
21 plan ahead for health care decisions through the execution of
22 advance directives, such as living wills and durable powers of
23 attorney, and to have the wishes expressed therein respected,
24 subject to certain limitations.

25 d. The right of individuals to forego life-sustaining measures is
26 not absolute and is subject to certain interests of society. The most
27 significant of these societal interests is the preservation of life,
28 understood to embrace both an interest in preserving the life of the
29 particular patient and a related but distinct interest in preserving the
30 sanctity of all human life as an enduring social value. A second,
31 closely related societal interest is the protection of individuals from
32 direct and purposeful self-destruction, motivated by a specific intent
33 to die. A third interest is the protection of innocent third parties
34 who may be harmed by the patient's decision to forego therapy; this
35 interest may be asserted to prevent the emotional and financial
36 abandonment of the patient's minor children or to protect the
37 paramount concerns of public health or safety. A fourth interest
38 encompasses safeguarding the ethical integrity of the health care
39 professions, individual professionals, and health care institutions,
40 and maintaining public confidence and trust in the integrity and
41 caring role of health care professionals and institutions. Finally,
42 society has an interest in ensuring the soundness of health care
43 decision making, including both protecting vulnerable patients from
44 potential abuse or neglect and facilitating the exercise of informed
45 and voluntary patient choice.

46 e. In accordance with these State interests, this State expressly
47 rejects on both legal and moral grounds the practice of active
48 euthanasia. No individual shall have the right to, nor shall any

1 physician or other health care professional be authorized to engage
2 in, the practice of active euthanasia.

3 f. In order to assure respect for patients' previously expressed
4 wishes when the capacity to participate actively in decision making
5 has been lost or impaired; to facilitate and encourage a sound
6 decision making process in which patients, health care
7 representatives, families, physicians, and other health care
8 professionals are active participants; to properly consider patients'
9 interests both in self-determination and in well-being; and to
10 provide necessary and appropriate safeguards concerning the
11 termination of life-sustaining treatment for **【incompetent】** patients
12 who lack mental capacity as the law and public policy of this State,
13 the Legislature hereby enacts the New Jersey Advance Directives
14 for Health Care Act.
15 (cf: P.L.1991, c.201, s.2)

16
17 64. Section 3 of P.L.1991, c.201 (C.26:2H-55) is amended to
18 read as follows:

19 3. As used in **【this act】** P.L.1991, c.201 (C.26:2H-53 et seq.):

20 "Adult" means an individual **【18 years of age or older】** who has
21 reached majority pursuant to section 3 of P.L.1972, c.81 (C.9:17B-
22 3).

23 "Advance directive for health care" or "advance directive" means
24 a writing executed in accordance with the requirements of **【this act】**
25 P.L.1991, c.201. An "advance directive" may include a proxy
26 directive or an instruction directive, or both.

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

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

36 "Declarant" means **【a competent】** an adult who 【executes】 has
37 the mental capacity to execute an advance directive and does so.

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

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

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

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

3 "Health care institution" means all institutions, facilities, and
4 agencies licensed, certified, or otherwise authorized by State law to
5 administer health care in the ordinary course of business, including
6 hospitals, nursing homes, residential health care facilities, home
7 health care agencies, hospice programs operating in this State,
8 mental health institutions, facilities or agencies, or institutions,
9 facilities, and agencies for the developmentally disabled. The term
10 "health care institution" shall not be construed to include "health
11 care professionals" as defined in **[this act]** P.L.1991, c.201.

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

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

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

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

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

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

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

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

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

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

1 "Terminal condition" means the terminal stage of an irreversibly
2 fatal illness, disease, or condition. A determination of a specific
3 life expectancy is not required as a precondition for a diagnosis of a
4 "terminal condition," but a prognosis of a life expectancy of six
5 months or less, with or without the provision of life-sustaining
6 treatment, based upon reasonable medical certainty, shall be
7 deemed to constitute a terminal condition.

8 (cf: P.L.1991, c.201, s.3)

9

10 65. Section 5 of P.L.1991, c.201 (C.26:2H-57) is amended to
11 read as follows:

12 5. a. A declarant may reaffirm or modify either a proxy
13 directive, or an instruction directive, or both. The reaffirmation or
14 modification shall be made in accordance with the requirements for
15 execution of an advance directive pursuant to section 4 of **[this act]**
16 P.L.1991, c.201 (C.26:2H-56).

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

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

24 (2) Execution of a subsequent proxy directive or instruction
25 directive, or both, in accordance with section 4 of **[this act]**
26 P.L.1991, c.201 (C.26:2H-56).

27 c. Designation of the declarant's spouse as health care
28 representative shall be revoked upon divorce or legal separation,
29 and designation of the declarant's domestic partner as defined in
30 section 3 of P.L.2003, c.246 (C.26:8A-3) as health care
31 representative shall be revoked upon termination of the declarant's
32 domestic partnership or designation of the declarant's partner in a
33 civil union as defined in section 2 of P.L.2006, c.103 (C.37:1-29)
34 shall be revoked upon termination of the declarant's civil union,
35 unless otherwise specified in the advance directive.

36 d. **[An incompetent]** A patient who lacks mental capacity may
37 suspend an advance directive, including a proxy directive, an
38 instruction directive, or both, by any of the means stated in
39 paragraph (1) of subsection b. of this section. **[An incompetent]** A
40 patient who lacks mental capacity and has suspended an advance
41 directive may reinstate that advance directive by oral or written
42 notification to the health care representative, physician, nurse, or
43 other health care professional of an intent to reinstate the advance
44 directive.

45 e. Reaffirmation, modification, revocation, or suspension of an
46 advance directive is effective upon communication to any person
47 capable of transmitting the information including the health care

1 representative, the attending physician, nurse, or other health care
2 professional responsible for the patient's care.
3 (cf: P.L.2003, c.246, s.28)

4

5 66. Section 6 of P.L.1991, c.201 (C.26:2H-58) is amended to
6 read as follows:

7 6. a. A declarant may execute a proxy directive, pursuant to
8 the requirements of section 4 of **[this act]** P.L.1991, c.201
9 (C.26:2H-56), designating **[a competent]** an adult with mental
10 capacity to act as **[his]** the declarant's health care representative.

11 (1) **[A competent]** An adult who has mental capacity, including,
12 but not limited to, a declarant's spouse, partner in a civil union as
13 defined in section 2 of P.L.2006, c.103 (C.37:1-29), domestic
14 partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3),
15 adult child, parent, or other family member, friend, religious or
16 spiritual advisor, or other person of the declarant's choosing, may
17 be designated as a health care representative.

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

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

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

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

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

43 b. A declarant may execute an instruction directive, pursuant to
44 the requirements of section 4 of **[this act]** P.L.1991, c.201
45 (C.26:2H-56), stating the declarant's general treatment philosophy
46 and objectives; or the declarant's specific wishes regarding the
47 provision, withholding, or withdrawal of any form of health care,
48 including life-sustaining treatment; or both. An instruction

1 directive may, but need not, be executed contemporaneously with,
2 or be attached to, a proxy directive.
3 (cf: P.L.2003, c.246, s.29)

4

5 67. Section 8 of P.L.1991, c.201 (C.26:2H-60) is amended to
6 read as follows:

7 8. a. The attending physician shall determine whether the
8 patient lacks capacity to make a particular health care decision. The
9 determination shall be stated in writing, shall include the attending
10 physician's opinion concerning the nature, cause, extent, and
11 probable duration of the patient's incapacity, and shall be made a
12 part of the patient's medical records.

13 b. The attending physician's determination of a lack of decision
14 making capacity shall be confirmed by one or more physicians. The
15 opinion of the confirming physician shall be stated in writing and
16 made a part of the patient's medical records in the same manner as
17 that of the attending physician. Confirmation of a lack of decision
18 making capacity is not required when the patient's lack of decision
19 making capacity is clearly apparent, and the attending physician and
20 the health care representative agree that confirmation is
21 unnecessary.

22 c. If the attending physician or the confirming physician
23 determines that a patient lacks decision making capacity because of
24 a mental or psychological impairment or a developmental disability,
25 and neither the attending physician or the confirming physician has
26 specialized training or experience in diagnosing mental or
27 psychological conditions or developmental disabilities of the same
28 or similar nature, a determination of a lack of decision making
29 capacity shall be confirmed by one or more physicians with
30 appropriate specialized training or experience. The opinion of the
31 confirming physician shall be stated in writing and made a part of
32 the patient's medical records in the same manner as that of the
33 attending physician.

34 d. A physician designated by the patient's advance directive as
35 a health care representative shall not make or confirm the
36 determination of a lack of decision making capacity.

37 e. The attending physician shall inform the patient, if the
38 patient has any ability to comprehend that he has been determined
39 to lack decision making capacity, and the health care representative
40 that: (1) the patient has been determined to lack decision making
41 capacity to make a particular health care decision; (2) each has the
42 right to contest this determination; and (3) each may have recourse
43 to the dispute resolution process established by the health care
44 institution pursuant to section 14 of **【this act】** P.L.1991, c.201
45 (C.26:2H-66).

46 Notice to the patient and the health care representative shall be
47 documented in the patient's medical records.

48 f. A determination of lack of decision making capacity under
49 this act is solely for the purpose of implementing an advance

1 directive in accordance with the provisions of this act, and shall not
2 be construed as a determination of a patient's incapacity [or
3 incompetence] for any other purpose.

4 g. For purposes of this section, a determination that a patient
5 lacks decision making capacity shall be based upon, but need not be
6 limited to, evaluation of the patient's ability to understand and
7 appreciate the nature and consequences of a particular health care
8 decision, including the benefits and risks of, and alternatives to, the
9 proposed health care, and to reach an informed decision.
10 (cf: P.L.1991, c.201, s.8)

11
12 68. Section 2 of P.L.2005, c.233 (C.26:2H-103) is amended to
13 read as follows:

14 2. The Legislature finds and declares that:

15 a. This State recognizes, in its law and public policy, a patient's
16 right to make voluntary, informed choices to accept, reject, or
17 choose among alternative courses of medical and surgical treatment,
18 and specifically for [a competent] an adult who has mental capacity
19 to plan ahead for health care decisions through the execution of an
20 advance directive for health care, otherwise known as a living will
21 or durable power of attorney for health care, and to have the wishes
22 expressed therein respected, subject to certain limitations;

23 b. Advance directives for health care provide a vehicle for
24 [competent] adults who have mental capacity to operationalize
25 their fundamental legal right to accept or refuse medical treatment
26 in the event that they are rendered unable to make decisions and
27 communicate with a health care provider about their treatment
28 options because of serious illness, injury, or permanent loss of
29 mental capacity;

30 c. The issues affecting persons with mental illness and their
31 psychiatric needs warrant enactment of a separate statute governing
32 advance directives for these individuals, who: find their civil rights
33 and due process protections frequently compromised; often lack the
34 resources, societal supports, and self-esteem needed to make
35 advance directives for health care work for them; and are
36 disadvantaged by the fact that many physicians and attorneys are
37 unaware of the specific issues that typically enter into the decisions
38 that a person with mental illness may make for himself when in
39 crisis;

40 d. The provision by statute of advanced directives for mental
41 health care will assure respect for the rights of patients with mental
42 illness with respect to the provision of mental health services and
43 their decision-making in regard thereto; and

44 e. In order to permit a person with mental illness to execute an
45 advance directive that specifies preferences for mental health
46 services in the event that the declarant is subsequently determined
47 to lack decision-making capacity, the Legislature hereby enacts the

1 "New Jersey Advance Directives for Mental Health Care Act."
2 (cf: P.L.2005, c.233, s.2)

3
4 69. Section 3 of P.L.2005, c.233 (C.26:2H-104) is amended to
5 read as follows:

6 3. As used in this act:

7 "Adult" means an individual **【18 years of age or older】** who has
8 reached majority pursuant to section 3 of P.L.1972, c.81 (C.9:17B-
9 3).

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

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

21 "Declarant" means **【a competent】** an adult who 【executes】 has
22 the mental capacity to execute an advance directive for mental
23 health care and does so.

24 "Domestic partner" means a domestic partner as defined in
25 section 3 of P.L.2003, c.246 (C.26:8A-3).

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

30 "Mental health care decision" means a decision to accept or
31 refuse any treatment, service, or procedure used to diagnose, treat,
32 or care for a patient's mental condition. "Mental health care
33 decision" also means a decision to accept or refuse the services of a
34 particular mental health care professional or psychiatric facility,
35 including a decision to accept or to refuse a transfer of care.

36 "Mental health care professional" means an individual licensed
37 or certified by this State to provide or administer mental health care
38 in the ordinary course of business or practice of a profession.

39 "Mental health care representative" means the individual
40 designated by a declarant pursuant to the proxy directive part of an
41 advance directive for mental health care for the purpose of making
42 mental health care decisions on the declarant's behalf, and includes
43 an individual designated as an alternate mental health care
44 representative who is acting as the declarant's mental health care
45 representative in accordance with the terms and order of priority
46 stated in an advance directive for mental health care.

47 "Patient" means an individual who is under the care of a mental
48 health care professional.

1 "Proxy directive" means a writing which designates a mental
2 health care representative in the event that the declarant
3 subsequently lacks decision-making capacity.

4 "Psychiatric facility" means a State psychiatric facility listed in
5 R.S.30:1-7, a county psychiatric hospital or the psychiatric unit of a
6 county hospital, a short-term care facility, special psychiatric
7 hospital or psychiatric unit of a general hospital or other health care
8 facility licensed by the Department of Health pursuant to P.L.1971,
9 c.136 (C.26:2H-1 et seq.), or a hospital or community-based mental
10 health center or other entity licensed or funded by the Department
11 of Human Services to provide community-based mental health
12 services.

13 "Responsible mental health care professional" means a person
14 licensed or certified by the State to provide or administer mental
15 health care who is selected by, or assigned to, the patient and has
16 primary responsibility for the care and treatment of the patient.

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

20 (cf: P.L.2012. c.17, s.248)

21

22 70. Section 5 of P.L.2005, c.233 (C.26:2H-106) is amended to
23 read as follows:

24 5. a. (1) An advance directive for mental health care shall be
25 deemed to be valid for an indefinite period of time if it does not
26 include an expiration date, subject to a declarant's right to modify,
27 revoke, or suspend the advance directive in accordance with the
28 provisions of this section.

29 (2) If an advance directive includes an expiration date that
30 occurs during a period of time in which the declarant has been
31 determined by the responsible mental health care professional to
32 lack the capacity to make a particular mental health care decision,
33 the advance directive shall remain in effect until the declarant is
34 determined by the responsible mental health care professional to
35 have regained the capacity to make a particular mental health care
36 decision.

37 b. A declarant may state in an advance directive for mental
38 health care, including a proxy directive or an instruction directive,
39 or both, whether the declarant wishes to be able to modify, revoke
40 or suspend the advance directive after it has become operative
41 pursuant to section 7 of **[this act]** P.L.2005, c.233 (C.26:2H-108);
42 however, the failure to include such a statement in the advance
43 directive shall not be construed to prevent the declarant from
44 modifying, revoking or suspending the advance directive under the
45 circumstances described in this subsection.

46 c. A declarant may reaffirm or modify an advance directive for
47 mental health care, including a proxy directive or an instruction
48 directive, or both, subject to the provisions of subsection b. of this
49 section. The reaffirmation or modification shall be made in

1 accordance with the requirements for execution of an advance
2 directive for mental health care pursuant to section 4 of **【this act】**
3 P.L.2005, c.233 (C.26:2H-105).

4 d. A declarant may revoke an advance directive for mental
5 health care, including a proxy directive or an instruction directive,
6 or both, subject to the provisions of subsection b. of this section, by
7 the following means:

8 (1) notification, orally or in writing, to the mental health care
9 representative or mental health care professional, or other reliable
10 witness, or by any other act evidencing an intent to revoke the
11 document; or

12 (2) execution of a subsequent proxy directive or instruction
13 directive, or both, in accordance with section 4 of **【this act】**
14 P.L.2005, c.233 (C.26:2H-105).

15 e. Designation of the declarant's spouse as mental health care
16 representative shall be revoked upon divorce or legal separation,
17 and designation of the declarant's domestic partner as mental health
18 care representative shall be revoked upon termination of the
19 declarant's domestic partnership or designation of the declarant's
20 civil union partner as mental health care representative shall be
21 revoked upon termination of the declarant's civil union, unless
22 otherwise specified in the advance directive.

23 f. An inpatient in a psychiatric facility may modify, revoke, or
24 suspend an advance directive for mental health care, including a
25 proxy directive or an instruction directive, or both, by any of the
26 means stated in paragraph (1) of subsection d. of this section, unless
27 a responsible mental health professional determines, in accordance
28 with the provisions of section 8 of **【this act】** P.L.2005, c.233
29 (C.26:2H-109), that the patient lacks decision-making capacity to
30 make the decision to modify, revoke, or suspend the advance
31 directive. A patient who has modified, revoked, or suspended an
32 advance directive may reinstate that advance directive by oral or
33 written notification to the mental health care representative or
34 mental health care professional of an intent to reinstate the advance
35 directive.

36 g. Reaffirmation, modification, or revocation of an advance
37 directive for mental health care is effective upon communication to
38 any person capable of transmitting the information, including the
39 mental health care representative or mental health care professional
40 responsible for the patient's care.

41 (cf: P.L.2005, c.233, s.5)

42

43 71. Section 6 of P.L.2005, c.233 (C.26:2H-107) is amended to
44 read as follows:

45 6. a. A declarant may execute a proxy directive, pursuant to
46 the requirements of section 4 of **【this act】** P.L.2005, c.233
47 (C.26:2H-105), designating **【a competent】** an adult who has mental
48 capacity to act as the declarant's mental health care representative.

1 (1) **【A competent】** An adult who has mental capacity, including,
2 but not limited to, a declarant's spouse, domestic partner, civil union
3 partner, adult child, parent, or other family member, friend,
4 religious or spiritual advisor, or other person of the declarant's
5 choosing, may be designated as a mental health care representative.

6 (2) An operator, administrator, or employee of a psychiatric
7 facility in which the declarant is a patient or resident shall not serve
8 as the declarant's mental health care representative unless the
9 operator, administrator, or employee is related to the declarant by
10 blood, marriage, domestic partnership, civil union, or adoption.

11 This restriction shall not apply to a mental health care
12 professional if that individual does not serve as the patient's
13 responsible mental health care professional or other provider of
14 mental health care services to the patient and the patient's mental
15 health care representative at the same time.

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

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

30 (5) A declarant shall state the limitations, if any, to be placed
31 upon the authority of the mental health care representative.

32 (6) If a declarant explicitly authorizes the mental health care
33 representative to consent to the declarant's admission to a
34 psychiatric facility, the declarant shall separately initial each
35 paragraph in which that authorization is granted at the time that the
36 proxy directive is signed and witnessed.

37 b. A declarant may execute an instruction directive, pursuant to
38 the requirements of section 4 of **【this act】** P.L.2005, c.233
39 (C.26:2H-105), which specifies preferences for mental health
40 services in the event that the declarant is subsequently determined
41 to lack decision-making capacity.

42 (1) The instruction directive may include: a statement of the
43 declarant's general mental health care philosophy and objectives;
44 the declarant's specific wishes regarding the provision, withholding,
45 or withdrawal of any form of mental health care; or both.

46 (2) The declarant's specific wishes regarding the provision,
47 withholding, or withdrawal of any form of mental health care may
48 include:

- 1 (a) the identification of mental health care professionals and
 - 2 programs and psychiatric facilities that the declarant would prefer
 - 3 to provide mental health services;
 - 4 (b) consent to admission to a psychiatric facility for up to a
 - 5 specified number of days;
 - 6 (c) a refusal to accept specific types of mental health treatment,
 - 7 including medications;
 - 8 (d) a statement of medications preferred by the declarant for
 - 9 mental health treatment;
 - 10 (e) a statement of the preferred means of crisis intervention or
 - 11 other preferences for mental health treatment; and
 - 12 (f) additional instructions or information concerning mental
 - 13 health care.
- 14 (3) An instruction directive may, but need not, be executed
- 15 contemporaneously with, or be attached to, a proxy directive.
- 16 (cf: P.L.2005, c.233, s.6)

17

18 72. Section 8 of P.L.2005, c.233 (C.26:2H-109) is amended to

19 read as follows:

20 8. a. The responsible mental health care professional shall

21 determine whether the patient lacks the capacity to make a

22 particular mental health care decision. The determination shall: be

23 stated in writing; include the responsible mental health care

24 professional's opinion concerning the nature, cause, extent, and

25 probable duration of the patient's incapacity; and be made a part of

26 the patient's medical records.

27 b. The responsible mental health care professional's

28 determination of a lack of decision-making capacity shall be

29 confirmed by one or more mental health care professionals. The

30 opinion of the confirming mental health care professional shall be

31 stated in writing and made a part of the patient's medical records in

32 the same manner as that of the responsible mental health care

33 professional.

34 c. A mental health care professional designated by the patient's

35 advance directive as a mental health care representative shall not

36 make the determination of a lack of decision-making capacity.

37 d. The responsible mental health care professional shall inform

38 the patient, if the patient has any ability to comprehend that he has

39 been determined to lack decision-making capacity, and the mental

40 health care representative that:

41 (1) the patient has been determined to lack decision-making

42 capacity to make a particular mental health care decision;

43 (2) each has the right to contest this determination; and

44 (3) each may have recourse to the dispute resolution process

45 established by the psychiatric facility pursuant to section 14 of **[this**

46 **act]** P.L.2005, c.223 (C.26:2H-115). Notice to the patient and the

47 mental health care representative shall be documented in the

48 patient's medical records.

1 e. A determination of lack of decision-making capacity under
2 this act shall be solely for the purpose of implementing an advance
3 directive for mental health care in accordance with the provisions of
4 this act, and shall not be construed as a determination of a patient's
5 incapacity **【or incompetence】** for any other purpose.

6 f. For the purposes of this section, a determination that a
7 patient lacks decision-making capacity shall be based upon, but
8 need not be limited to, an evaluation of the patient's ability to
9 understand and appreciate the nature and consequences of a
10 particular mental health care decision, including the benefits and
11 risks of, and alternatives to, the proposed mental health care, and to
12 reach an informed decision.

13 g. For the purposes of this section, "mental health care
14 decision" includes a decision to modify, revoke, or suspend an
15 advance directive for mental health care as provided in subsection f.
16 of section 5 of **【this act】** P.L.2005, c.233 (C.26:2H-106).

17 (cf: P.L.2005, c.233, s.8)

18
19 73. Section 4 of P.L.1989, c.303 (C.26:5C-8) is amended to read
20 as follows:

21 4. a. The content of a record referred to in section 3 of **【this**
22 **act】** P.L.1989, c.303 (C.26:5C-7) may be disclosed in accordance
23 with the prior written informed consent of the person who is the
24 subject of the record or if the person is **【legally incompetent】**
25 adjudicated incapacitated or deceased, in accordance with section 8
26 of **【this act】** P.L.1989, c.303 (C.26:5C-12).

27 b. If the prior written consent of the person who is the subject
28 of the record is not obtained, the person's records shall be disclosed
29 only under the following conditions:

30 (1) To qualified personnel for the purpose of conducting
31 scientific research, but a record shall be released for research only
32 following review of the research protocol by an Institutional
33 Review Board constituted pursuant to federal regulation 45 C.F.R.
34 s. 46.101 et seq. The person who is the subject of the record shall
35 not be identified, directly or indirectly, in any report of the research
36 and research personnel shall not disclose the person's identity in any
37 manner.

38 (2) To qualified personnel for the purpose of conducting
39 management audits, financial audits, or program evaluation, but the
40 personnel shall not identify, directly or indirectly, the person who is
41 the subject of the record in a report of an audit or evaluation, or
42 otherwise disclose the person's identity in any manner. Identifying
43 information shall not be released to the personnel unless it is vital to
44 the audit or evaluation.

45 (3) To qualified personnel involved in medical education or in
46 the diagnosis and treatment of the person who is the subject of the
47 record. Disclosure is limited to only personnel directly involved in
48 medical education or in the diagnosis and treatment of the person.

1 (4) To the department as required by State or federal law.

2 (5) As permitted by rules and regulations adopted by the
3 commissioner for the purposes of disease prevention and control.

4 (6) In all other instances authorized by State or federal law.

5 (cf: P.L.1989, c.303, s.4)

6

7 74. Section 8 of P.L.1989, c.303 (C.26:5C-12) is amended to
8 read as follows:

9 8. When consent is required for disclosure of the record of a
10 deceased or legally **【incompetent】** incapacitated person who has or
11 is suspected of having AIDS or HIV infection, consent may be
12 obtained:

13 a. From an executor, administrator of the estate, or authorized
14 representative of the legally **【incompetent】** incapacitated or
15 deceased person;

16 b. From the person's spouse, domestic partner as defined in
17 section 3 of P.L.2003, c.246 (C.26:8A-3), primary caretaking
18 partner or, if none, by another member of the person's family; and

19 c. From the commissioner in the event that a deceased person
20 has neither an authorized representative or next-of-kin.

21 (cf: P.L.2003, c.246, s.30)

22

23 75. R.S.30:1-18 is amended to read as follows:

24 R.S.30:1-18. No provision of this Title shall restrain or abridge
25 the power and authority of the Superior Court over the persons and
26 property of **【the incompetent or】** persons who are mentally ill or
27 incapacitated.

28 (cf: P.L.1965, c.59, s.5)

29

30 76. R.S.30:4-1 is amended to read as follows:

31 R.S.30:4-1. The State board, with the approval of the Governor,
32 shall appoint a board of trustees for each State institution or agency
33 **【within the department】** or for each group or class thereof as it may
34 determine, from residents of the State without respect to political
35 affiliation or belief.

36 **【Whenever】** The State board, with the approval of the Governor,
37 may appoint a board of trustees or authorize or designate an
38 existing board of trustees whenever the establishment or assumption
39 of jurisdiction over an additional institution, or the acquisition of
40 **【a】** an institutional site **【therefor】**, is authorized by the Legislature
41 **【the State board, with the approval of the Governor, may appoint a**
42 **board of trustees therefor or may authorize or designate any existing**
43 **board of trustees to assume jurisdiction thereof】**.

44 Each board of trustees of an institution shall be known as "the
45 board of trustees" naming the institution or group or class for which
46 the board is appointed. The State board, with the approval of the
47 Governor, shall **【determine the names of】** name the boards of
48 noninstitutional agencies.

1 Except as otherwise specifically provided by statute, the boards
2 of trustees shall consist of not less than five nor more than seven
3 members **[**appointed with the approval of the Governor from
4 residents of the State at large without respect to political affiliation
5 or belief**]**. At least two women shall be members of each board in
6 charge of **[**the Training School for Boys, Jamesburg, the Home for
7 Disabled Soldiers, Sailors, Marines and their Wives and Widows,
8 and**]** the institutions or agencies for **[**the**]** persons who are blind,
9 **[**feeble-minded, the epileptic and the insane**]** or who have a mental
10 illness or developmental disability, and at least two members of the
11 Commission for the Blind and Visually Impaired shall themselves
12 be legally blind but **[**they shall**]** not **[**be**]** employees, or related to
13 an employee by blood, marriage, or adoption **[**to any employee, or
14 **related to an employee of said commission.** At least a majority of
15 the members of each board in charge of the Training School for
16 Girls, Trenton, and the women's reformatory shall be women**]**.

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

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

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

36 **[On]** Annually, on or before July 1 **[of each year]** each **[such]**
37 board of trustees shall **[reorganize by the election]** elect from
38 **[among]** its members **[of]** a **[chairman and vice chairman]** chair
39 and vice chair and shall appoint a secretary, with the approval of the
40 chief executive officer of the institution, who shall be an employee
41 of the **[department]** institution or agency and **[shall]** serve at the
42 pleasure of the board without additional compensation. The term of
43 office of the **[chairman and vice chairman]** chair and vice chair
44 shall be until June 30 of the following year or until their successors
45 are elected and qualified.

46 (cf: P.L.1977, c.63, s.12)

1 77. Section 1 of 1969, c.181 (C.30:4-7.1) is amended to read as
2 follows:

3 1. It is hereby declared to be the public policy of this State to
4 make maximum provision for the health, safety, and welfare of
5 **【incompetent】** patients who are incapacitated and residents in State
6 and county institutions for **【the mentally ill and developmentally**
7 **disabled】** persons with mental illness and persons with
8 developmental disabilities, for **【developmentally disabled】** persons
9 with developmental disabilities who are residents in community-
10 based alternate living arrangements in the State or in private
11 facilities both in and outside the State, and for inmates under age 18
12 in State and county penal and correctional institutions, by
13 permitting the chief executive officer of **【such】** the institution or
14 the regional administrator of a Division of Developmental
15 Disabilities community services region to consent to the utilization
16 of appropriate medical, psychiatric, surgical, and dental treatment
17 for **【such】** the patients, inmates, and residents where prescribed by
18 a licensed physician or dentist as provided for herein.
19 (cf: P.L.1997, c.208, s.1)

20
21 78. Section 2 of P.L.1969, c.181 (C.30:4-7.2) is amended to read
22 as follows:

23 2. The chief executive officer of a State or county **【institution**
24 **for the mentally ill or developmentally disabled, of】** psychiatric
25 hospital or developmental center, a State or county penal or
26 correctional institution, **【of】** or a juvenile facility or detention
27 center, or the regional administrator of a Division of Developmental
28 Disabilities community services region is hereby authorized to give
29 consent for medical, psychiatric, surgical, or dental treatment to
30 **【incompetent】** patients who lack mental capacity, inmates, or
31 juveniles under age 18, or residents, hospitalized, confined, or
32 placed by the Division of Developmental Disabilities in
33 community-based alternate living arrangements in the State or in
34 private facilities both in and outside the State, under circumstances
35 where it appears that:

36 **【(a)】** a. **【Such】** The patients, inmates, juveniles, or residents,
37 because of **【incompetency】** mental incapacity or nonage, are legally
38 prevented from giving consent to **【such】** the treatment**【,】**; and

39 **【(b)】** b. Either:

40 **【(i)】** (1) there is no parent or guardian known to **【such】** the
41 officer or administrator, after reasonable inquiry, who **【is**
42 **competent】** has the mental capacity to give consent for the
43 treatment of patients, inmates under the age of 18, or residents**【,】** ;
44 or

45 **【(ii)】** (2) where a parent or guardian, after reasonable notice of
46 the proposed treatment and a request for consent, and prior to the
47 date fixed in **【such】** the notice for the rendering of **【said】** the

1 treatment, refuses or neglects to execute and submit to **【such】** the
2 officer or administrator a writing expressing either the grant or
3 denial of **【such】** the consent**【,】**; and

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

9 (cf: P.L.1997, c.208, s.2)

10

11 79. Section 10 of P.L.1965, c.59 (C.30:4-24.2) is amended to
12 read as follows:

13 10. a. Subject to any other provisions of law and the
14 **【Constitution】** Constitutions of New Jersey and the United States,
15 no patient shall be deprived of any civil right solely **【by reason of**
16 **his receiving】** because of receipt of treatment under the provisions
17 of this Title nor shall **【such】** the treatment modify or vary any legal
18 or civil right of any **【such】** patient, including, but not limited to, the
19 right to register for and to vote at elections, or rights relating to the
20 granting, forfeiture, or denial of a license, permit, privilege, or
21 benefit pursuant to any law.

22 b. Every patient in treatment shall be entitled to all rights set
23 forth in **【this act】** P.L.1965, c.59 and shall retain all rights not
24 specifically denied him under this Title. A notice of the rights set
25 forth in **【this act】** P.L.1965, c.59 shall be given to every patient
26 within **【5】** five days of **【his】** admission to treatment. **【Such】** The
27 notice shall be **【in writing and】** written in simple understandable
28 language. It shall be in a language the patient understands and if the
29 patient cannot read the notice, it shall be read to **【him】** the patient.
30 **【In the case of an】** If a patient is adjudicated **【incompetent patient】**
31 incapacitated, **【such procedure shall be followed for the patient's**
32 **guardian】** the notice shall be given to the patient's guardian.
33 Receipt of this notice shall be acknowledged in writing, with a copy
34 placed in the patient's file. If the patient or guardian refuses to
35 acknowledge receipt of the notice, the person delivering the notice
36 shall state this in writing, with a copy placed in the patient's file.

37 c. No patient may be presumed to be **【incompetent】**
38 incapacitated because **【he has been examined or treated】** of an
39 examination or treatment for mental illness, regardless of whether
40 **【such】** the evaluation or treatment was voluntarily or involuntarily
41 received. **【Any】** A patient who leaves a mental health program
42 following evaluation or treatment for mental illness, regardless of
43 whether that evaluation or treatment was voluntarily or
44 involuntarily received, shall be given a written statement of the
45 substance of **【this act】** P.L.1965, c.59.

46 d. Each patient in treatment shall have the following rights, a
47 list of which shall be prominently posted in all facilities providing

1 **【such】** these services and otherwise brought to **【his】** the patient's
2 attention by **【such】** additional means as the department may
3 designate:

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

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

36 (3) To be free from physical restraint and isolation. Except for
37 emergency situations, in which a patient has caused substantial
38 property damage or **【has】** attempted to harm himself or others and
39 in which less restrictive means of restraint are not feasible, a patient
40 may be physically restrained or placed in isolation, only on a
41 medical director's written order or that of **【his】** the director's
42 physician designee which explains the rationale for **【such】** the
43 action. The written order may be entered only after the medical
44 director or **【his】** physician designee has personally seen the patient
45 **【concerned】**, and evaluated **【whatever】** the episode or situation **【is**
46 **said to require】** causing the need for restraint or isolation.
47 Emergency use of restraints or isolation shall be for no more than

1 **[1]**one hour, by which time the medical director or **[his]** physician
2 designee shall have been consulted and shall have entered an
3 appropriate written order **[in writing]**. **[Such]** The written order
4 shall be effective for no more than 24 hours and shall be renewed if
5 restraint and isolation are continued. While in restraint or isolation,
6 the patient must be bathed every 12 hours and checked by an
7 attendant every **[2]** two hours **[with a notation in writing of such**
8 **checks placed]** , which actions shall be noted in the patient's
9 treatment record along with the order for restraint or isolation.

10 (4) To be free from corporal punishment.

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

16 (1) To privacy and dignity.

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

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

23 (4) To have access to individual storage space for **[his]** private
24 use.

25 (5) To see visitors each day.

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

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

30 (8) To regular physical exercise several times a week. It shall
31 be the duty of the hospital to provide facilities and equipment for
32 **[such]** the exercise.

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

35 (10) To suitable opportunities for interaction with members of
36 the opposite sex, with adequate supervision.

37 (11) To practice the patient's religion of **[his]** choice or abstain
38 from religious practices. Provisions for **[such]** worship shall be
39 made available to each person on a nondiscriminatory basis.

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

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

44 g. (1) A patient's rights designated under subsection e. of this
45 section may be denied for good cause **[in any instance in which]**
46 when the director of the patient's treatment program **[in which the**
47 **patient is receiving treatment]** feels it is imperative to **[deny any of**

1 these rights] do so; provided, however, under no circumstances
2 shall a patient's right to communicate with [his] the patient's
3 attorney, physician, or the courts be restricted. Any [such] denial
4 of a patient's rights shall take effect only after a written notice of
5 the denial has been filed in the patient's treatment record [and shall
6 include] , including an explanation of the reason for the denial.

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

12 (3) In each instance of a denial or a renewal, the patient, [his]
13 the patient's attorney, [and his] the patient's guardian, if the patient
14 has been adjudicated [incompetent] incapacitated, and the
15 department shall be given written notice of the denial or renewal
16 and the reason [therefor].

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

24 (cf: P.L.1975, c.85, s.2)

25

26 80. Section 14 of P.L.1965, c.59 (C.30:4-25.2) is amended to
27 read as follows:

28 14. Application for determination of eligibility for functional
29 services for a person under the age of 21 years who is believed to
30 have a developmental disability may be made to the commissioner
31 by:

32 1. [his] the person's parent or guardian;

33 2. a child-caring agency, hospital, clinic, or other appropriate
34 agency, public or private, or by a physician having care of the
35 minor, provided the written consent of the parent or guardian or the
36 Division of Youth and Family Services, under its care and custody
37 program, has been obtained; or

38 3. a Superior Court, Chancery Division, Family Part having
39 jurisdiction over the minor.

40 Application for determination of eligibility for any person over
41 18 years of age for functional services may be made by:

42 a. a person with a developmental disability over 18 years of
43 age on [his] the person's own behalf;

44 b. the guardian of the person of an adjudicated [mentally
45 incompetent] incapacitated adult; or

46 c. any court of competent jurisdiction in which the issue of
47 mental deficiency may have arisen and which finds that it is in the

1 interest of the person with an alleged mental deficiency to
2 determine such eligibility.
3 (cf: P.L.2010, c.50, s.33)

4

5 81. Section 1 of 1991, c.233 (C.30:4-27.11a.) is amended to read
6 as follows:

7 1. The Legislature finds and declares that:

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

13 b. The rights set forth in section 10 of P.L.1965, c.59 (C.30:4-
14 24.2) apply to any person who has been involuntarily committed to
15 a State or county psychiatric hospital, a psychiatric unit of a county
16 hospital, or a special psychiatric hospital in accordance with the
17 laws of this State;

18 c. Because involuntary assessment and treatment in a screening
19 service and involuntary commitment to a short-term care facility
20 involve the deprivation of a patient's liberty, it is necessary to
21 specify and guarantee by statute the rights to which that patient is
22 entitled, in a manner similar to that provided for a patient who is
23 involuntarily committed to a State or county psychiatric hospital, a
24 psychiatric unit of a county hospital, or a special psychiatric
25 hospital, while recognizing the administrative, structural, and
26 staffing features of screening services and short-term care facilities
27 which are different from State or county psychiatric hospitals,
28 psychiatric units of county hospitals, or special psychiatric
29 hospitals, as well as recognizing differences between the
30 administrative, structural, and staffing features of screening services
31 and short-term care facilities by providing a separate guarantee of
32 rights for patients in each of these settings; and

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

40 (cf: P.L.1991, c.233, s.1)

41

42 82. Section 3 of P.L.1991, c.233 (C.30:4-27.11c) is amended to
43 read as follows:

44 3. a. Subject to any other provisions of law and the
45 **【Constitution】** Constitutions of New Jersey and the **【Constitution**
46 **of the】** United States, a patient shall not be deprived of a civil right
47 solely by reason of **【his】** receiving assessment or treatment under
48 the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.), nor shall the

1 assessment or treatment modify or vary a legal or civil right of that
2 patient, including, but not limited to, the right to register for and to
3 vote at elections, or rights relating to the granting, forfeiture, or
4 denial of a license, permit, privilege, or benefit pursuant to any law.

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

9 c. A patient shall not be presumed to be **【incompetent】**
10 mentally incapacitated solely because **【he has been examined】** of
11 an examination or **【treated】** treatment for mental illness.

12 d. A patient shall be entitled to a writ of habeas corpus upon
13 proper petition by **【himself】** the patient, a relative, or a friend to a
14 court of competent jurisdiction in the county in which **【he】** the
15 patient is detained and shall further be entitled to enforce, by civil
16 action or other remedies otherwise available by common law or
17 statute, any of the rights provided in **【this act】** P.L.1991, c.233
18 (C.30:4-27.11a et seq.).

19 (cf: P.L.1991, c.233, s.3)

20

21 83. Section 4 of P.L.1991, c.233 (C.30:4-27.11d) is amended to
22 read as follows:

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

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

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

46 A patient's right to refuse medication when imminent danger to
47 the patient or others is not present may be overridden by a written
48 policy which has been adopted by the short-term care facility to

1 protect the patient's right to exercise informed consent to the
2 administration of medication. The written policy shall, at a
3 minimum, provide for appropriate procedures that ensure notice to
4 the patient of the decision by the attending physician or other
5 designated physician to administer medication, and the right to
6 question the physician about **【his】** the physician's decision to
7 administer medication and to provide information to the physician
8 regarding that decision. The written policy shall also provide for
9 review of the patient's decision to object to the administration of
10 medication by a psychiatrist who is not directly involved in the
11 patient's treatment. The psychiatrist shall not override the patient's
12 decision to object to the administration of medication unless the
13 psychiatrist determines that: the patient is incapable, without
14 medication, of participating in a treatment plan that will provide a
15 realistic opportunity of improving **【his】** the patient's condition; or,
16 although it is possible to devise a treatment plan that will provide a
17 realistic opportunity of improving the patient's condition without
18 medication, a treatment plan which includes medication would
19 probably improve the patient's condition within a significantly
20 shorter time period, or there is a significant possibility that, without
21 medication, the patient will harm himself or others before
22 improvement of **【his】** the patient's condition is realized.

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

25 (2) Not to be subjected to psychosurgery or sterilization,
26 without the express and informed, written consent of the patient
27 after consultation with counsel or interested party of the patient's
28 choice. A copy of the patient's consent shall be placed in the
29 patient's treatment record. If the patient has been adjudicated
30 **【incompetent】** incapacitated, a court of competent jurisdiction shall
31 hold a hearing to determine the necessity of the procedure. The
32 patient shall be physically present at the hearing, represented by
33 counsel, and provided the right and opportunity to be confronted
34 with and to cross-examine all witnesses alleging the necessity of the
35 procedure. In these proceedings, the burden of proof shall be on the
36 party alleging the necessity of the procedure. In the event that a
37 patient cannot afford counsel, the court shall appoint an attorney not
38 less than 10 days before the hearing. An attorney so appointed shall
39 be entitled to a reasonable fee to be determined by the court and
40 paid by the State.

41 (3) To be free from unnecessary physical restraint and seclusion.
42 Except for an emergency in which a patient has caused substantial
43 property damage or has attempted to harm himself or others, or in
44 which **【his】** the patient's behavior threatens to harm himself or
45 others, and in which less restrictive means of restraint are not
46 feasible, a patient may be physically restrained or placed in
47 seclusion only on an attending physician's written order or that of
48 another designated physician which explains the rationale for that

1 action. The written order may be given only after the attending
2 physician or other designated physician has personally seen the
3 patient, and evaluated the episode or situation that is said to require
4 restraint or seclusion.

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

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

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

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

36 (5) Not to receive electroconvulsive treatment or participate in
37 experimental research without the express and informed, written
38 consent of the patient. The patient shall have the right to consult
39 with counsel or interested party of the patient's choice. A copy of
40 the patient's consent shall be placed in the patient's treatment
41 record. If the patient has been adjudicated **【incompetent】**
42 incapacitated, a court of competent jurisdiction shall hold a hearing
43 to determine the necessity of the procedure. The patient shall be
44 physically present at the hearing, represented by counsel, and
45 provided the right and opportunity to be confronted with and to
46 cross-examine all witnesses alleging the necessity of the procedure.
47 In these proceedings, the burden of proof shall be on the party
48 alleging the necessity of the procedure. In the event that a patient
49 cannot afford counsel, the court shall appoint an attorney not less

- 1 than 10 days before the hearing. An attorney so appointed shall be
2 entitled to a reasonable fee to be determined by the court and paid
3 by the State.
- 4 b. A patient receiving treatment in a short-term care facility
5 shall have the following rights, which may only be denied pursuant
6 to subsection c. of this section. A list of these rights shall be posted
7 in a conspicuous place in each room designated for use by a patient
8 and otherwise brought to the patient's attention pursuant to
9 subsection d. of this section:
- 10 (1) To privacy and dignity.
- 11 (2) To the least restrictive conditions necessary to achieve the
12 purposes of treatment.
- 13 (3) To wear **【his】** the patient's own clothes; to have access to
14 and use **【his】** nondangerous personal possessions including **【his】**
15 toilet articles; and to have access to and be allowed to spend a
16 reasonable sum of **【his own】** money for expenses and small
17 purchases.
- 18 (4) To have access to individual storage space for **【his】** private
19 use.
- 20 (5) To see visitors each day.
- 21 (6) To have reasonable access to and use of telephones, both to
22 make and receive confidential calls.
- 23 (7) To have ready access to letter writing materials, including
24 stamps, and to mail and receive unopened correspondence.
- 25 (8) To regular physical exercise or organized physical activities
26 several times a week.
- 27 (9) To be outdoors at regular and frequent intervals, in the
28 absence of medical considerations, commencing two weeks after
29 admission, except where the physical location of the short-term care
30 facility precludes outdoor exercise or would render the supervision
31 of outdoor exercise too onerous for the facility.
- 32 (10) To suitable opportunities for interaction with members of
33 the opposite sex, with adequate supervision.
- 34 (11) To practice the patient's religion of **【his】** choice or abstain
35 from religious practices. Provisions for worship shall be made
36 available to each patient on a nondiscriminatory basis.
- 37 (12) To receive prompt and adequate medical treatment for any
38 physical ailment.
- 39 (13) To be provided with a reasonable explanation, in terms and
40 language appropriate to the patient's condition and ability to
41 understand, of:
- 42 (a) the patient's general mental and physical condition;
- 43 (b) the objectives of the patient's treatment;
- 44 (c) the nature and significant possible adverse effects of
45 recommended treatments;
- 46 (d) the reasons why a particular treatment is considered
47 appropriate; and

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

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

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

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

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

34 (cf: P.L.1991, c.233, s.4)

35

36 84. Section 5 of P.L.1991, c.233 (30:4-27.11e) is amended to
37 read as follows:

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

45 (1) To be free from unnecessary or excessive medication.
46 Medication shall not be administered unless at the order of a
47 physician. Medication shall be administered in accordance with
48 generally accepted medical standards as part of a treatment

1 program. Medication shall not be used as punishment, for the
2 convenience of staff, as a substitute for a treatment program, or in
3 quantities that interfere with the patient's treatment program.

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

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

15 (3) To be free from unnecessary physical restraint and seclusion.
16 Except for an emergency, in which a patient has caused substantial
17 property damage or has attempted to harm himself or others, or in
18 which **[his]** the patient's behavior threatens to harm himself or
19 others, and in which less restrictive means of restraint are not
20 feasible, a patient may be physically restrained or placed in
21 seclusion only on an attending physician's written order or that of
22 another designated physician which explains the rationale for that
23 action. The written order may be given only after the attending
24 physician or other designated physician has personally seen the
25 patient, and evaluated the episode or situation that is said to require
26 restraint or seclusion.

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

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

47 While a patient is in restraints or seclusion, nursing personnel
48 shall check the patient's hygienic, toileting, food-related, and other
49 needs every 15 minutes. A notation of these checks shall be placed

1 in the patient's medical record along with the order for restraints or
2 seclusion. A patient in restraints shall be permitted to ambulate
3 every four hours, except when the patient's psychiatric condition
4 would make a release from restraints dangerous to **【himself】** the
5 patient or others, and shall be permitted to ambulate at least once
6 every 12 hours regardless of the patient's psychiatric condition.

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

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

13 (1) To privacy and dignity.

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

16 (3) To wear **【his】** the patient's own clothes, except as necessary
17 for medical examination.

18 (4) To see visitors.

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

21 (6) To practice the patient's religion of **【his】** choice or abstain
22 from religious practices.

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

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

28 (a) the patient's general mental condition, and **【his】** physical
29 condition if the screening service has conducted a physical
30 examination of the patient;

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

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

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

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

38 (9) To have a discharge plan prepared **【for him】** and to
39 participate in the preparation of that plan.

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

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

3 d. A notice of the rights set forth in this section shall be given
4 to a patient as soon as possible upon admission to the screening
5 service. The notice shall be **[in writing and]** written in simple
6 understandable language. It shall be in a language the patient
7 understands and if the patient cannot read the notice, it shall be read
8 to **[him]** the patient. **[In the case of an]** If the patient is
9 adjudicated **[incompetent patient, this procedure shall be followed**
10 **for]** incapacitated, the notice shall be given to the patient's
11 guardian. Receipt of this notice shall be acknowledged in writing
12 with a copy placed in the patient's file. If the patient or guardian
13 refuses to acknowledge receipt of the notice, the person delivering
14 the notice shall state this in writing with a copy placed in the
15 patient's file.

16 (cf: P.L.1991, c.233, s.5)

17
18 85. R.S.30:4-101 is amended to read as follows:

19 30:4-101. **[In]** Married, domestic partnership, or civil union
20 couples who are residents of a public institution maintained in
21 whole or in part by the State, or a county, municipality, or
22 subdivision thereof, **[married couples, inmates of the same**
23 **institution,]** shall not be **[separated or]** maintained in separate
24 quarters. This provision shall not apply to institutions for persons
25 with mental illness or developmental disabilities, or to correctional
26 institutions or **[to cases]** where the health or mental condition of
27 the persons concerned warrants separation.

28 (cf: P.L.2010, c.50, s.42)

29
30 86. Section 10 of P.L.1985, c.133 (C.30:4-165.15) is amended to
31 read as follows:

32 10. a. Whenever the commissioner believes that guardianship is
33 no longer required or that another person should be appointed to
34 serve as guardian, **[he]** the commissioner shall apply to the
35 Superior Court for an order modifying or terminating the letters of
36 guardianship. Where someone other than the commissioner is
37 serving as guardian, notice shall be provided to that person.

38 b. At least once every three years, the commissioner shall
39 review the case of each person who receives functional or other
40 services and who has a guardian.

41 c. The Public Defender, the **[incompetent]** incapacitated
42 person, or someone acting [in his] on behalf of the incapacitated
43 person may institute a similar action for judicial review at any time.

44 d. In cases where the commissioner serves as guardian, the
45 Public Defender shall be given notice of any actions taken pursuant
46 to subsection a. or b. of this section. The Public Defender shall be
47 given an opportunity to meet the person subject to review and
48 inspect the commissioner's records.

1 (cf: P.L.1994, c.58, s.49)

2

3 87. Section 7 of P.L.1946, c.118 (C.30:4A-7) is amended to read
4 as follows:

5 7. If the person for whom the diagnosis is sought by any court
6 or agency of the State, **[or of a]** county, or municipal government,
7 desiring to utilize the services of the diagnostic center, is not under
8 confinement or process **[of any nature whatsoever]**, then admission
9 to the diagnostic center shall be secured upon application to the
10 Superior Court upon forms to be provided by the Department of
11 Human Services. The county adjuster shall be the official **[in the**
12 **county]** charged with the responsibility of assisting with processing
13 of **[such]** the applications and shall perform functions similar to
14 those set forth in Title 30**[,]** of the Revised Statutes. In connection
15 with each **[such]** application, the court shall order a hearing to be
16 held, which may be in camera at the discretion of the court. At least
17 **[ten]** 10 days' notice of the time, date, and place of **[such]** the
18 hearing shall be served upon the person, and if **[he be]** a minor or
19 **[incompetent]** a person who is incapacitated, upon the parent,
20 guardian, person standing in loco parentis, or person having custody
21 and control of **[such]** the minor or **[incompetent]** person who is
22 incapacitated. At **[such]** the hearing, the court shall determine
23 whether the services of the diagnostic center shall be made
24 available to the **[said]** person and may order the person's
25 confinement **[of such person]** in the center for a period not to
26 exceed **[ninety]** 90 days **[and shall cause a copy of said order of**
27 **confinement to accompany the said person]** , which order shall be
28 provided to the center.

29 (cf: P.1991, c.91, s.324)

30

31 88. Section 17 of P.L.1968, c.413 (C.30:4D-17) is amended to
32 read as follows:

33 17. (a) Any person who willfully obtains benefits under **[this**
34 **act]** P.L.1968, c.413 (C.30:4D-1 et seq.) to which **[he]** a person is
35 not entitled or in a greater amount than that to which **[he]** a person
36 is entitled and any provider who willfully receives medical
37 assistance payments to which **[he]** a provider is not entitled or in a
38 greater amount than that to which **[he]** a provider is entitled is
39 guilty of a crime of the third degree, provided, however, that the
40 presumption of nonimprisonment set forth in subsection e. of
41 N.J.S.2C:44-1 for persons who have not previously been convicted
42 of an offense shall not apply to a person who is convicted under the
43 provisions of this subsection.

44 (b) Any provider, or any person, firm, partnership, corporation,
45 or entity, who:

46 (1) Knowingly and willfully makes or causes to be made any
47 false statement or representation of a material fact in any cost study,

1 claim form, or any document necessary to apply for or receive any
2 benefit or payment under **[this act]** P.L.1968, c.413; or

3 (2) At any time knowingly and willfully makes or causes to be
4 made any false statement, written or oral, of a material fact for use
5 in determining rights to such benefit or payment under **[this act]**
6 P.L.1968, c.413; or

7 (3) Conceals or fails to disclose the occurrence of an event
8 which

9 (i) affects **[his]** a person's initial or continued right to any such
10 benefit or payment, or

11 (ii) affects the initial or continued right to any such benefit or
12 payment of any provider or any person, firm, partnership,
13 corporation, or other entity in whose behalf **[he]** a person has
14 applied for or is receiving such benefit or payment with an intent to
15 fraudulently secure benefits or payments not authorized under **[this**
16 **act]** P.L.1968, c.413 or in a greater amount than that which is
17 authorized under **[this act]** P.L.1968, c.413; or

18 (4) Knowingly and willfully converts benefits or payments or
19 any part thereof received for the use and benefit of any provider or
20 any person, firm, partnership, corporation, or other entity to a use
21 other than the use and benefit of such provider or such person, firm,
22 partnership, corporation, or entity; is guilty of a crime of the third
23 degree, provided, however, that the presumption of
24 nonimprisonment set forth in subsection e. of N.J.S.2C:44-1 for
25 persons who have not previously been convicted of an offense shall
26 not apply to a person who is convicted under the provisions of this
27 subsection.

28 (c) Any provider, or any person, firm, partnership, corporation,
29 or entity who solicits, offers, or receives any kickback, rebate, or
30 bribe in connection with:

31 (1) The furnishing of items or services for which payment is or
32 may be made in whole or in part under **[this act]** P.L.1968, c.413;
33 or

34 (2) The furnishing of items or services whose cost is or may be
35 reported in whole or in part in order to obtain benefits or payments
36 under **[this act]** P.L.1968, c.413; or

37 (3) The receipt of any benefit or payment under this act, is
38 guilty of a crime of the third degree, provided, however, that the
39 presumption of nonimprisonment set forth in subsection e. of
40 N.J.S.2C:44-1 for persons who have not previously been convicted
41 of an offense shall not apply to a person who is convicted under the
42 provisions of this subsection.

43 This subsection shall not apply to (A) a discount or other
44 reduction in price under **[this act]** P.L.1968, c.413 if the reduction
45 in price is properly disclosed and appropriately reflected in the
46 costs claimed or charges made under **[this act]** P.L.1968, c.413;
47 and (B) any amount paid by an employer to an employee who has a

1 bona fide employment relationship with such employer for
2 employment in the provision of covered items or services.

3 (d) Whoever knowingly and willfully makes or causes to be
4 made or induces or seeks to induce the making of any false
5 statement or representation of a material fact with respect to the
6 conditions or operations of any institution or facility in order that
7 such institution or facility may qualify either upon initial
8 certification or recertification as a hospital, skilled nursing facility,
9 intermediate care facility, or health agency, thereby entitling them
10 to receive payments under **[this act]** P.L.1968, c.413, shall be
11 guilty of a crime of the fourth degree.

12 (e) Any person, firm, corporation, partnership, or other legal
13 entity who violates the provisions of any of the foregoing
14 subsections of this section or any provisions of section 3 of
15 P.L.2007, c.265 (C.2A:32C-3), shall, in addition to any other
16 penalties provided by law, be liable to civil penalties of: (1)
17 payment of interest on the amount of the excess benefits or
18 payments at the maximum legal rate in effect on the date the
19 payment was made to said person, firm, corporation, partnership or
20 other legal entity for the period from the date upon which payment
21 was made to the date upon which repayment is made to the
22 State**[,]**; (2) payment of an amount not to exceed three-fold the
23 amount of such excess benefits or payments**[,]**; and (3) payment in
24 the sum of not less than and not more than the civil penalty allowed
25 under the federal False Claims Act (31 U.S.C. s.3729 et seq.), as it
26 may be adjusted for inflation pursuant to the Federal Civil Penalties
27 Inflation Adjustment Act of 1990, Pub.L.101-410 for each
28 excessive claim for assistance, benefits or payments.

29 (f) Any person, firm, corporation, partnership, or other legal
30 entity, other than an individual recipient of medical services
31 reimbursable by the Division of Medical Assistance and Health
32 Services, who, without intent to violate **[this act]** P.L.1968, c.413,
33 obtains medical assistance or other benefits or payments under **[this**
34 **act]** P.L.1968, c.413 in excess of the amount to which he is entitled,
35 shall be liable to a civil penalty of payment of interest on the
36 amount of the excess benefits or payments at the maximum legal
37 rate in effect on the date the benefit or payment was made to said
38 person, firm, corporation, partnership, or other legal entity for the
39 period from September 15, 1976 or the date upon which payment
40 was made, whichever is later, to the date upon which repayment is
41 made to the State, provided, however, that no such person, firm,
42 corporation, partnership, or other legal entity shall be liable to such
43 civil penalty when excess medical assistance or other benefits or
44 payments under this act are obtained by such person, firm,
45 corporation, partnership, or other legal entity as a result of error
46 made by the Division of Medical Assistance and Health Services, as
47 determined by said division; provided, further, that if preliminary
48 notification of an overpayment is not given to a provider by the

1 division within 180 days after completion of the field audit as
2 defined by regulation, no interest shall accrue during the period
3 beginning 180 days after completion of the field audit and ending
4 on the date preliminary notification is given to the provider.

5 (g) All interest and civil penalties provided for in **[this act]**
6 P.L.1968, c.413 and all medical assistance and other benefits to
7 which a person, firm, corporation, partnership, or other legal entity
8 was not entitled shall be recovered in an administrative proceeding
9 held pursuant to the "Administrative Procedure Act," P.L.1968,
10 c.410 (C.52:14B-1 et seq.), except that recovery actions against
11 minors or **[incompetents]** incapacitated persons shall be initiated in
12 a court of competent jurisdiction.

13 (h) Upon the failure of any person, firm, corporation,
14 partnership, or other legal entity to comply within 10 days after
15 service of any order of the director or **[his]** the director's designee
16 directing payment of any amount found to be due pursuant to
17 subsection (g) of this section, or at any time prior to any final
18 agency adjudication not involving a recipient or former recipient of
19 benefits under **[this act]** P.L.1968, c.413, the director may issue a
20 certificate to the clerk of the Superior Court that such person, firm,
21 corporation, partnership, or other legal entity is indebted to the
22 State for the payment of **[such]** the amount. A copy of such
23 certificate shall be served upon the person, firm, corporation,
24 partnership, or other legal entity against whom the order was
25 entered. Thereupon the clerk shall immediately enter upon **[his]**
26 the record of docketed judgments the name of the person, firm,
27 corporation, partnership, or other legal entity so indebted, and of the
28 State, a designation of the statute under which such amount is found
29 to be due, the amount due, and the date of the certification. Such
30 entry shall have the same force and effect as the entry of a docketed
31 judgment in the Superior Court. Such entry, however, shall be
32 without prejudice to the right of appeal to the Appellate Division of
33 the Superior Court from the final order of the director or **[his]** the
34 director's designee.

35 (i) In order to satisfy any recovery claim asserted against a
36 provider under this section, whether or not that claim has been the
37 subject of final agency adjudication, the division or its fiscal agents
38 is authorized to withhold funds otherwise payable under **[this act]**
39 P.L.1968, c.413 to the provider.

40 (j) The Attorney General may, when requested by the
41 commissioner or **[his]** the commissioner's agent, apply ex parte to
42 the Superior Court to compel any party to comply forthwith with a
43 **[subpena]** subpoena issued under **[this act]** P.L.1968, c.413. Any
44 party who, having been served with a **[subpena]** subpoena issued
45 pursuant to the provisions of **[this act]** P.L.1968, c.413, fails either
46 to attend any hearing, or to appear or be examined, to answer any
47 question or to produce any books, records, accounts, papers or
48 documents, shall be liable to a penalty of **[\$500.00]** \$500 for each

1 such failure, to be recovered in the name of the State in a summary
2 civil proceeding to be initiated in the Superior Court. The Attorney
3 General shall prosecute the actions for the recovery of the penalty
4 prescribed in this section when requested to do so by the
5 commissioner or **his** the commissioner's agent and when, in the
6 judgment of the Attorney General, the facts and law warrant such
7 prosecution. Such failure on the part of the party shall be
8 punishable as contempt of court by the court in the same manner as
9 like failure is punishable in an action pending in the court when the
10 matter is brought before the court by motion filed by the Attorney
11 General and supported by affidavit stating the circumstances.

12 (k) Notwithstanding the provisions of N.J.S.2C:43-3 to the
13 contrary, but in addition to any other penalty or disposition that may
14 be imposed by law:

15 (1) a person who violates the provisions of subsection (a), (b),
16 or (c) of this section shall be liable to a penalty of not less than
17 \$15,000 and not more than \$25,000 for each violation; and

18 (2) a person who violates the provisions of subsection (d) of this
19 section shall be liable to a penalty of not less than \$10,000 and not
20 more than \$25,000 for each violation.

21 (l) A person who violates the provisions of subsection (a), (b),
22 or (c) of this section under circumstances in which the aggregate
23 amount obtained or sought to be obtained is \$1,000 or more, who
24 has previously been convicted of a violation of the provisions of
25 subsection (a), (b), or (c) of this section within 10 years of the
26 current violation, under circumstances where the aggregate amount
27 obtained or sought to be obtained was \$1,000 or more, is guilty of a
28 crime of the second degree and, in addition to any other penalty or
29 disposition authorized by law and notwithstanding the provisions of
30 N.J.S.2C:43-3 to the contrary, shall be liable to a penalty of not less
31 than \$25,000 and not more than \$150,000 for each such repeat
32 violation.

33 (cf: P.L.2010, c.30, s.2)

34

35 89. Section 1 of P.L.1952, c.76 (C.30:6B-1) is amended to read
36 as follows:

37 1. **Whenever,** If it is determined in **any** a proceeding in
38 **any** a court of competent jurisdiction **or before a judicial officer,**
39 **having jurisdiction thereof, under the laws of this State** for the
40 commitment of a person alleged to be **of unsound mind** mentally
41 incapacitated or otherwise in need of confinement in a psychiatric
42 hospital or other institution for **his** the person's proper care, **it is**
43 determined after such adjudication of the status of such person as
44 may be required by law that commitment to a hospital for mental
45 disease or other institution treatment, or safekeeping, that
46 commitment is necessary **for safekeeping or treatment and it**
47 **appears that such** and that the person is eligible for care or
48 treatment by the Department of Veterans Administration Affairs

1 or other agency of the United States **Government, the said court or**
2 **judicial officer**], the court may commit the person to the
3 Department of Veterans Affairs or other agency instead of to a State
4 institution, upon receipt of a certificate from the Department of
5 Veterans Administration Affairs or **such** other agency showing
6 that facilities are available and that **such** the person is eligible for
7 care or treatment therein, **may,** subject to the provisions of this
8 act **,** commit such person to said Veterans Administration or other
9 agency instead of to an institution of this State**].**

10 Upon **any such** commitment, **such person,** **and** when
11 admitted to **any** a facility operated by any such agency **within or**
12 **without this State**], the person shall be subject to the rules and
13 regulations of the Department of Veterans Administration Affairs
14 or other agency. The chief officer of **any** a facility of the
15 Department of Veterans Administration Affairs or institution
16 operated by **any** the other agency **of the United States** to which
17 the person is **so** committed shall, with respect to **such person**
18 the retention of the person's custody, transfer, parole, or discharge,
19 be vested with the same powers as that of the chief officer of a State
20 institution **would have** if **such** the person had been committed
21 to a State institution**,** with respect to the retention of custody,
22 transfer, parole or discharge of such person**].**

23 (cf: P.L.1952, c.76, s.1)

24

25 90. Section 4 of P.L.1952, c.76 (C.30:6B-4) is amended to read
26 as follows:

27 4. Upon receipt of a certificate of the Department of Veterans
28 **Administration Affairs** or **such** other agency of the United
29 States that facilities are available for the care or treatment of **any**
30 a person **heretofore** committed to **any hospital** an institution for
31 the **insane or other institution for the care or treatment of persons**
32 **similarly afflicted** care and treatment of persons who are mentally
33 incapacitated and that **such** the person is eligible for care or
34 treatment, the chief officer of the institution may, subject to the
35 approval of the Commissioner of **Institutions and Agencies**
36 Human Services or of the court **or judicial officer** having
37 jurisdiction **of such** over the person, **cause the** transfer **of**
38 **such** the person to the Department of Veterans Administration
39 Affairs or other agency **of the United States** for care or treatment.

40 **Any** A person transferred as provided in this section shall be
41 deemed **to be** committed to the Department of Veterans
42 **Administration Affairs** or other agency **of the United States**,
43 pursuant to the original commitment.

44 (cf: P.L.1957, c.138, s.1)

45

1 91. Section 4 of P.L.1977, c.82 (C.30:6D-4) is amended to read
2 as follows:

3 4. No **【developmentally disabled】** person with a developmental
4 disability shall be presumed to be **【incompetent】** incapacitated or
5 shall be discriminated against or shall be deprived of any
6 constitutional, civil, or legal right solely by reason of admission to
7 or residence at a facility or solely by reason of receipt of any
8 service for **【developmentally disabled】** persons with developmental
9 disabilities. No such admission, residence, or receipt of services
10 shall modify or vary any constitutional, civil, or legal right of
11 **【such】** the person, including, but not necessarily limited to**【;】** , the
12 right to:

- 13 a. Register and vote at elections;
14 b. Free exercise of religion;
15 c. Receive and send unopened correspondence and, upon
16 request, to obtain assistance in the writing and reading of **【such】**
17 that correspondence;
18 d. Private visitations and private telephone conversations
19 without prior notice to the facility during **【such】** reasonable hours
20 as may be established by the facility with parents, guardians,
21 representatives of guardian services, relatives, friends, physicians,
22 attorneys, government officials, and any other persons;
23 e. Reasonable opportunities for interaction with members of
24 the opposite sex;
25 f. Confidential handling of personal and medical records.

26 (cf: P.L.1977, c.82, s 4)

27

28 92. Section 5 of P.L.1977, c.82 (C.30:6D-5) is amended to read
29 as follows:

30 5. a. No person receiving services for **【the developmentally**
31 **disabled】** persons with developmental disabilities at any facility
32 shall:

- 33 (1) be subjected to any corporal punishment;
34 (2) be administered any medication or chemical restraint, except
35 upon the written authorization of a physician when necessary and
36 appropriate as an element of the service being received or as a
37 treatment of any medical or physical condition in conformity with
38 accepted standards for **【such】** that treatment. The nature, amount
39 of, and reasons for the administration of any medication or chemical
40 restraint shall be promptly recorded in **【such】** the person's medical
41 record; or
42 (3) be physically or chemically restrained or isolated in any
43 manner, except in emergency situations for the control of violent,
44 disturbed, or depressed behavior which may immediately result in
45 or has resulted in harm to **【such】** the person or other person or in
46 substantial property damage.

47 The chief administrator of the facility, or **【his】** the chief
48 administrator's designee, shall be notified immediately upon the

1 application of any **【such】** restraint or isolation, and thereafter
2 **【such】** the restraint or isolation shall be continued only upon the
3 written order of the administrator or designee. **【Such】** The order
4 shall be effective for not more than 24 hours, and may be renewed
5 for additional periods of not more than 24 hours each if the
6 administrator or designee shall determine that **【such】** continued
7 restraint or isolation is necessary. While in restraint or isolation,
8 **【such】** the person shall be checked by an attendant every 15
9 minutes, and bathed every 24 hours. **【Such】** The restraint or
10 isolation shall be terminated at any time if an attending physician
11 shall find **【such】** the restraint or isolation to be medically
12 contraindicated. The nature, duration of, reasons for, and notation
13 of attendant checks shall be promptly recorded in **【such】** the
14 person's medical record;

15 (4) be subjected to shock treatment, psychosurgery, sterilization,
16 or medical behavioral or pharmacological research without the
17 express and informed consent of **【such】** the person, if **【a**
18 **competent】** an adult who has mental capacity, or of **【such】** the
19 person's guardian ad litem specifically appointed by a court for the
20 matter of consent to these proceedings, if a minor or an
21 **【incompetent】** adult who lacks mental capacity or a person
22 administratively determined to **【be mentally deficient】** have a
23 mental deficiency. **【Such】** The consent shall be made in writing
24 and shall be placed in **【such】** the person's record.

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

41 (5) Notwithstanding the provisions of paragraph (4) of this
42 subsection to the contrary, nothing in this section shall prohibit
43 consent obtained or research conducted pursuant to the provisions
44 of P.L.2007, c.316 (C.26:14-1 et seq.) as provided
45 in this paragraph (5).

46 (a) In addition to meeting the requirements of sections 4 and 5
47 of P.L.2007, c.316 (C.26:14-4 and C.26:14-5), medical research

1 involving persons who are protected by the provisions of this
2 subsection shall also meet the approval of the Interdisciplinary
3 Research Committee established herein.

4 (b) The members of the Interdisciplinary Research Committee
5 shall be appointed by the Assistant Commissioner of the Division of
6 Developmental Disabilities in the Department of Human Services,
7 and shall serve at the pleasure of the Assistant Commissioner. The
8 members shall have diverse backgrounds, represent a variety of
9 professions, and include at least one self-advocate and one family
10 member, neither of whom shall be an employee of the department.

11 (c) The committee shall independently determine whether the
12 criteria set forth in section 3 of P.L.2007, c.316 (C.26:14-3), and
13 where required, the informed consent provisions of section 4 of
14 P.L.2007, c.316 (C.26:14-4), have been met. In addition, the
15 committee may impose such other conditions on approval as it
16 determines are necessary to protect the health, safety, and autonomy
17 of the individuals participating in the medical research.

18 (d) Notices of proposals for medical research received by the
19 committee, and the committee's action on the proposals, shall be
20 posted on the department's website and forwarded to the New Jersey
21 Council on Developmental Disabilities, The Elizabeth M. Boggs
22 Center on Developmental Disabilities, and Disability Rights of New
23 Jersey.

24 (e) Two years after enactment of P.L.2011, c.182 and every two
25 years thereafter, the division shall provide to the Legislature,
26 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and post on
27 the division's Internet website, a summary of the research proposals
28 reviewed by the committee and the actions taken.

29 b. Every **【developmentally disabled】** person with a
30 developmental disability in residence at any facility shall be
31 provided with a nutritionally adequate and sufficient diet and shall
32 receive appropriate and sufficient medical and dental care on a
33 regular basis and whenever otherwise necessary.

34 c. Every **【developmentally disabled】** person with a
35 developmental disability between the ages of **【5】** five and 21,
36 inclusive, in residence or full-time attendance at any facility shall
37 be provided a thorough and efficient education suited to **【such】** the
38 person's age and abilities.

39 (cf: P.L.2011, c.182, s.1)

40

41 93. R.S.30:9-1 is amended to read as follows:

42 30:9-1. The **【boards of chosen freeholders in】** counties of the
43 first class shall appoint a superintendent for each county hospital
44 and the physicians for the several county hospitals. The **【terms】**
45 term of office of **【such appointees, except that of the**
46 **superintendents of the county hospitals for the insane, whose terms**
47 **of office shall be】** the physicians shall be two years. The term of
48 office of the superintendents of the county hospitals shall be as

1 provided by **[section]** R.S.30:9-12 **[of this title, shall be two**
2 **years]**.

3 (cf: R.S.30:9-1)

4

5 94. Section 1 of P.L.1941, c.37 (C.30:9-3.1) is amended to read
6 as follows:

7 1. **[Boards of chosen freeholders]** Counties are empowered to
8 maintain a commissary or store for the sale of commodities to
9 patients, patients' visitors, and employees of any county psychiatric
10 hospital **[for the insane]** under rules to be adopted by the **[board]**
11 county. The cost of establishing the commissary or store may be
12 defrayed out of **[any]** funds appropriated for current maintenance.
13 Any profit **[accruing]** may be used **[by the board]** for recreational
14 entertainment of the patients or **[any other]** another like purpose.

15 (cf: P.L.1941, c.37, s.1)

16

17 95. R.S.30:9-4 is amended to read as follows:

18 30:9-4. **[Wherever in any county in this State a lunatic asylum]**
19 If a psychiatric hospital is owned and maintained by the county, and
20 it becomes necessary **[from time to time]** either to enlarge **[such**
21 **asylum]** the hospital by the building of additions or extensions
22 **[thereto]**, or to erect additional buildings **[or pavilions]** for the
23 accommodation of the **[insane]** patients, the board of chosen
24 freeholders or governing body of **[any such]** the county may **[,**
25 **from time to time]**, upon a resolution or ordinance, as appropriate,
26 to be adopted by the affirmative votes of two-thirds of the
27 **[members of such board]** full authorized membership of the board,
28 build **[such]** additions, extensions, additional building or buildings,
29 **[pavilion or pavilions]**, and properly fit, furnish, and equip **[the**
30 **same]** them.

31 (cf: P.L.1940, c.7, s.1)

32

33 96. R.S.30:9-5 is amended to read as follows:

34 30:9-5. **[To]** The county may issue bonds in the corporate name
35 of the county to meet the expense of erecting new buildings,
36 additions, or accommodations at a county **[lunatic asylum]**
37 psychiatric hospital, and making repairs to [such] or otherwise
38 properly fitting, furnishing, and equipping the buildings [,
39 providing proper furniture or apparatus for lighting, heating or
40 otherwise fitting up the same, the board of chosen freeholders may
41 issue bonds in the corporate name of the county**]**.

42 (cf: P.L.1940, c.7, s.2)

43

44 97. R.S.30:9-6 is amended to read as follows:

45 30:9-6. The board of chosen freeholders or governing body of a
46 county, by a resolution or ordinance, as appropriate, adopted by the
47 affirmative vote of two-thirds of **[its members]** the full authorized
membership of the board may consolidate its county psychiatric

1 hospitals **【for the insane】** in one place on suitable lands owned by
2 the county and erect, furnish, and maintain suitable hospital
3 buildings thereon. County bonds for **【such】** this purpose may be
4 issued to an amount not exceeding six-tenths of one per cent of the
5 ratables of the county.

6 (cf: R.S.30:9-6)

7

8 98. R.S.30:9-7 is amended to read as follows:

9 30:9-7. **【Whenever】** If county psychiatric hospitals **【for the**
10 **insane shall be】** are consolidated as **【authorized】** provided by
11 **【section】** R.S.30:9-6 **【of this title】**, the **【board of chosen**
12 **freeholders of such】** county may sell **【any】** its lands and buildings
13 **【owned by such county and used for the purposes of】** used for a
14 psychiatric hospital **【for the insane which are located in a part of**
15 **the county remote from the site of the hospital buildings so**
16 **consolidated, and which】** that are **【rendered】** unnecessary **【to be**
17 **used】** for **【such】** hospital purposes, and the sale and conveyance of
18 **【such】** the lands **【by such board】** shall vest in the purchaser title in
19 fee to the premises so sold. The proceeds of **【such】** the sale shall
20 be applied **【by such board】** to the sinking funds of **【such】** the
21 county or to the redemption of county bonds, and not otherwise.

22 (cf: R.S.30:9-7)

23

24 99. R.S.30:9-8 is amended to read as follows:

25 30:9-8. **【Whenever in any county of this state】** If the board of
26 chosen freeholders or the governing body of the county **【thereof**
27 **shall determine】** determines, by a resolution **【which shall receive】**
28 or ordinance, as appropriate, adopted by the affirmative votes of at
29 least two-thirds of **【all its members】** the full authorized
30 membership of the board, that **【any】** a county psychiatric hospital
31 **【for the insane】** under its management and control is unsuitably
32 located, and that it is expedient and desirable that the location
33 thereof should be changed to some other place in its county, **【such**
34 **board】** the county may make **【such】** the change.

35 (cf: R.S.30:9-8)

36

37 100. R.S.30:9-9 is amended to read as follows:

38 30:9-9. If **【, in the judgment of a board of chosen freeholders】**
39 the county desiring to change the location of a county psychiatric
40 hospital **【for the insane】** under authority of **【section】** R.S.30:9-8
41 **【of this title,】** determines there is no suitable location **【within its**
42 **county】** at which **【such】** the hospital might be relocated, and **【such**
43 **board】** desires to locate the hospital in **【some other】** another county
44 of this **【state】** State, it may do so by entering into an agreement
45 with the **【board of chosen freeholders of such】** other county, either
46 to **【jointly】** build and maintain **【such】** the hospital jointly, or **【that**

1 the board of one county may] to build and maintain the [same]
2 hospital by one county with the right in the other [board] county to
3 commit its patients therein, at a sum per week per patient to be
4 agreed upon.

5 If both [of such boards] counties agree to [jointly] build and
6 maintain [such] the hospital jointly, they shall [jointly agree]
7 concur upon the site [thereof], appoint an architect, and approve
8 [of] plans and specifications, and do and perform [every other
9 necessary act and thing] everything necessary for [the] completion
10 of the work [herein] authorized and the maintenance [of the same
11 after completion] thereafter, including [the] employment of
12 physicians and other necessary employees [in and about the
13 institution].

14 If by [the] their agreement [between such boards one board is to
15 build and maintain such] one county builds and maintains the
16 hospital, that [board] county shall select the site [therefor],
17 appoint the architect, and approve [of] the plans and specifications,
18 and do and perform [every other necessary act and thing]
19 everything necessary for [the] completion of the work [herein]
20 authorized, and the maintenance [of the same after completion]
21 thereafter, including [the] employment of physicians and other
22 necessary employees [in and about the institution].

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

36 The [moneys wherewith] funds to acquire [such] the lands,
37 erect [such] the buildings, and [to do and] perform [all] the work
38 [and things], including the purchase of materials and fittings,
39 furnishings, and equipment [herein] authorized, except [that which
40 might consist in] for maintenance only, shall be raised [and
41 obtained by the board of chosen freeholders of the county if one
42 only undertakes the doing of the work, or the boards of chosen
43 freeholders of the two counties undertaking the doing of the work]
44 by one or more counties doing the work, each to the extent of its
45 share, by the issue and sale of bonds [therefor and in the manner

1 and by the methods prescribed by chapter 1 of the title
2 Municipalities and Counties (s. 40:1-1 et seq.), and shall be] paid
3 [out] by the county treasurer or treasurers, [as the case may be on
4 the order of the board of chosen freeholders, as the case may be] in
5 accordance with the counties' agreement.

6 (cf: R.S.30:9-9)

7

8 101. R.S.30:9-11 is amended to read as follows:

9 30:9-11. [Where any work is to be done] If the cost of work
10 performed and materials [to be] furnished in the [erection and]
11 construction, fitting, furnishing, and equipping of [such buildings
12 or in the fitting, furnishing and equipping of the same,] county
13 psychiatric hospitals, or [in and about] laying out the grounds, as
14 provided by [section] R.S.30:9-9 [of this title, where the cost
15 thereof shall exceed the sum of one thousand dollars] , exceeds
16 \$1,000, the [same] work shall be [done] performed and materials
17 furnished on a contract [to be] awarded to the lowest responsible
18 bidder who shall furnish satisfactory security to the [board or
19 boards] county or counties undertaking [such] the work, on bids
20 duly advertised [for] in the county or counties [engaged in the
21 work, and also where the]. If buildings are to be [erected]
22 constructed, the advertisement shall be published for at least two
23 weeks, once in each week; and if joint counties undertake the work
24 [be undertaken by joint boards], they shall appoint a committee to
25 advertise [for] and receive [such] the bids[, which committee
26 shall] and to report the bids to [such boards] their governing
27 bodies at their next meetings.

28 (cf: R.S.30:9-11)

29

30 102. R.S.30:9-12 is amended to read as follows:

31 30:9-12. [The board of chosen freeholders in counties] Counties
32 of the first class, in appointing superintendents for the county
33 psychiatric hospitals [for the insane], may designate and prescribe
34 the terms of office of [such] the superintendents, which shall not
35 [be for a longer time than] exceed five years.

36 (cf: R.S.30:9-12)

37

38 103. Section 6 of P.L.1976, c.120 (C.30:13-6) is amended to
39 read as follows:

40 6. [Any] A nursing home resident may arrange for the
41 resident's own discharge [himself] from a nursing home upon
42 presentation of a written release and, if the resident is [an]
43 adjudicated [mental incompetent] incapacitated, upon the written
44 consent of [his] the resident's guardian. In [such] this case, the
45 nursing home is free from any responsibility for the resident upon
46 [his] the resident's release. When a nursing home wishes to

1 transfer or discharge on a nonemergency basis a **[competent or an**
2 **adjudicated mental incompetent]** resident **[on a nonemergency**
3 **basis]** who has mental capacity or a resident who is adjudicated
4 incapacitated, [it] the nursing home may do so for medical reasons
5 or for **[his]** the person's welfare or for that of other residents upon
6 receiving a written order from the attending physician, or for
7 nonpayment **[of his stay]**, except as prohibited by Title XVIII or
8 Title XIX of the Social Security Act, as amended, and **[such]** the
9 action shall be recorded in the resident's medical record. When a
10 transfer or discharge on a nonemergency basis of a resident is
11 requested by a nursing home, the resident or, in the case of **[an]** a
12 resident who is adjudicated **[mental incompetent resident]**
13 incapacitated, the guardian, shall be given at least 30 days advance
14 notice of **[such]** the transfer or discharge.

15 (cf: P.L.1976, c.120, s. 6)

16

17 104. R.S.34:15-27 is amended to read as follows:

18 34:15-27. An agreement for compensation may be modified at
19 any time by a subsequent agreement. **[A]** Upon the application of
20 any party, a formal award, determination **[and rule for]**, judgment,
21 or order approving settlement may be reviewed within **[2]** two
22 years from the date when the injured person last received a payment
23 **[upon the application of either party]** on the ground that the
24 incapacity of the injured employee has subsequently increased. If
25 **[any]** a party entitled to a review under this section shall become
26 **[insane]** mentally incapacitated within the **[aforesaid 2-year]** two-
27 year period, **[his insanity]** the mental incapacity shall constitute
28 grounds for tolling the unexpired balance of the **[2-year]** two-year
29 period, which shall only begin to run again after **[his coming to or**
30 **being of same mind]** the party returns to mental capacity. An
31 award, determination **[and rule for]**, judgment, or order approving
32 settlement may be reviewed at any time on the ground that the
33 disability has diminished. In such case, the provisions of **[section]**
34 R.S.34:15-19 [of this Title] with reference to medical examination
35 shall apply.

36 (cf: P.L.1975, c. 319, s.1)

37

38 105. R.S.37:1-6 is amended to read as follows:

39 37:1-6. A marriage or civil union license shall not be issued to a
40 minor under the age of 18 years, unless the parents or guardian of
41 the minor, if **[there be]** any, first certify **[under their hands and**
42 **seals]**, in the presence of two reputable witnesses, **[their]** consent
43 thereto, which **[consent]** shall be delivered to the licensing officer
44 issuing the license. **[If the parents, or either of them, or guardian of**
45 **any such minor shall be of unsound mind, the consent of such**
46 **parent or guardian to the proposed marriage or civil union]** Consent

1 to the proposed marriage or civil union by a parent or guardian who
2 is mentally incapacitated shall not be required.

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

7 The licensing officer shall transmit to the State registrar all
8 **such** consents, orders, and approvals **so received by him in the**
9 **same manner and** subject to the same penalty as in the case of
10 marriage or civil union certificates **of marriage or civil union and**
11 **marriage or civil union** or licenses.

12 (cf: P.L.2006, c.103, s.10)

13

14 106. R.S.37:1-9 is amended to read as follows:

15 37:1-9. No marriage license shall be issued when, at the time of
16 making an application therefor, either applicant is **infected with a**
17 **venereal disease in a communicable stage, or is** a person currently
18 adjudicated **mentally incompetent** incapacitated.

19 (cf: P.L.1981, c. 254, s. 1)

20

21 107. Section 3 of P.L.1987, c.291 (C.40:11A-22.2) is amended
22 to read as follows:

23 3. No person may be appointed as a parking enforcement
24 officer unless the person:

25 a. is a resident of this State during the term of appointment;

26 b. is able to read, write, and speak the English language **well**
27 **and intelligently** proficiently;

28 c. **is of sound mind** has the mental capacity and **in good**
29 **health** physical ability to perform the tasks of parking enforcement
30 officer;

31 d. is of good moral character;

32 e. has not been convicted of any offense involving dishonesty
33 or which would make **him** the person unfit to perform the duties
34 of **his** the office.

35 (cf: P.L.1987, c.291, s.3)

36

37 108. R.S.40:65-3 is amended to read as follows:

38 40:65-3. The notice may be served upon all owners residing in
39 the municipality, personally, or by leaving the same at their usual
40 place of residence with a member of the family above the age of
41 fourteen years. In the case of **infants** minors and **incompetents**
42 incapacitated persons, **such** the notice shall be served upon their
43 guardians; when any real estate is held in trust, upon the trustee;
44 when held by joint tenants, tenants in common or by the entirety,
45 upon any one such tenant. If the owner of any **such** the real
46 estate is a nonresident of the municipality, the notice may be served
47 upon **him** the owner personally, or upon **his** the owner's agent

1 in charge of the property, or upon the occupant thereof, or mailed to
2 the nonresident owner at **[his]** the nonresident owner's last known
3 post-office address.

4 (cf: R.S.40:65-3)

5

6 109. Section 3 of P.L.1987, c.260 (C.40A:9-154.9) is amended
7 to read as follows:

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

10 a. Is a resident of this State during the term of appointment;

11 b. Is able to read, write, and speak the English language **[well**
12 **and intelligently]** proficiently;

13 c. **[Is of sound mind]** Has the mental capacity and **[in good**
14 **health]** physical ability to perform the tasks of parking enforcement
15 officer;

16 d. Is of good moral character; and

17 e. Has not been convicted of any offense involving dishonesty
18 or which would make the person unfit to perform the duties of **[his]**
19 the office.

20 (cf: P.L.1987, c.260, s.3)

21

22 110. Section ¹[4] 41¹ of P.L.1988, c.130 (C.42:2A-8.2) is
23 amended to read as follows:

24 42:2A-8.2. Resignation of registered agent. a. The registered
25 agent of a domestic limited partnership or a foreign limited
26 partnership authorized to transact business in this State may resign
27 by complying with the provisions of this section.

28 b. The registered agent, or, in the case of a registered agent who
29 is deceased or has been **[declared incompetent]** adjudicated
30 incapacitated by a court of competent jurisdiction, **[his]** the agent's
31 legal representative, shall serve a notice of resignation by certified
32 mail, return receipt requested, upon a general partner or general
33 partners of the limited partnership at the address last known to the
34 agent, and shall make an affidavit of **[such]** service. If service
35 cannot be made, the affidavit shall so state, and shall state briefly
36 why service cannot be made. The affidavit, together with a copy of
37 notice of resignation, shall be filed in the Office of the Secretary of
38 State.

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

1 d. If any certificate of change replacing a resigned agent is not
2 filed, the limited partnership shall, after written demand therefor by
3 the Secretary of State, forfeit to the State a penalty of [\\$200.00]
4 \\$200 for each year or part thereof until an agent is appointed. The
5 Secretary of State may issue a certificate to the Clerk of the
6 Superior Court that the limited partnership is indebted for the
7 payment of this penalty. This certificate shall be entered by the
8 Clerk as a judgment docketed in the Superior Court, and shall have
9 the same form as a docketed judgment.

10 (cf: P.L.1988, c.130, s.41)

11
12 111. Section 30 of P.L.1983, c. 489 (C.42:2A-31) is amended to
13 read as follow:

14 30. Events of withdrawal of a general partner. Except as
15 approved by the specific written consent of all partners at the time,
16 a person ceases to be a general partner of a limited partnership upon
17 the happening of any of the following events:

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

20 b. The general partner ceases to be a member of the limited
21 partnership as provided in section 46 of P.L.1983, c.489 (C.42:2A-
22 47);

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

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

37 e. Unless otherwise provided in the certificate of limited
38 partnership, 120 days after the commencement of any proceeding
39 against the general partner seeking reorganization, arrangement,
40 composition, readjustment, liquidation, dissolution, or similar relief
41 under any statute, law, or regulation, the proceeding has not been
42 dismissed, or if within 90 days after the appointment without his
43 consent or acquiescence of a trustee, receiver, or liquidator of the
44 general partner or of all or any substantial part of his properties, the
45 appointment is not vacated or stayed, or within 90 days after the
46 expiration of any **such** stay, the appointment is not vacated;

47 f. In the case of a general partner who is a natural person
48 **his**, the partner's death, or the entry by a court of competent

1 jurisdiction of a judgment adjudicating **【him incompetent】** the
2 partner incapacitated to manage **【his】** the partner's person or estate;

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

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

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

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

14 (cf: P.L.1988, c.130, s.18)

15

16 112. Section 49 of P.L.1983, c.489 (C.42:2A-50) is amended to
17 read as follows:

18 42:2A-50. Power of personal representative of deceased or
19 **【incompetent】** incapacitated person; representative or successor of
20 corporation, trust, or other entity. If a partner who is an individual
21 dies or a court of competent jurisdiction adjudges **【him】** the partner
22 to **【be incompetent】** lack the mental capacity to manage **【his】** the
23 partner's person or **【his】** property, the partner's executor,
24 administrator, guardian, conservator, or other legal representative
25 may exercise all the partner's rights for the purpose of settling **【his】**
26 the partner's estate or administering **【his】** the partner's property,
27 including any power the partner had to give an assignee the right to
28 become a limited partner. If a partner is a corporation, trust, or
29 other entity and is dissolved or terminated, the powers of that
30 partner may be exercised by its legal representative or successor.

31 (cf: P.L.1983, c.489, s.49)

32

33 ¹**【**113. Section 7 of P.L.1993, c.210 (C.42:2B-7) is amended to
34 read as follows:

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

39 b. The registered agent of a foreign or domestic limited
40 liability company may resign and appoint a successor registered
41 agent by filing a certificate in the office of the Secretary of State,
42 stating that it resigns and the name and address of the successor
43 registered agent. There shall be attached to **【such】** the certificate a
44 statement executed by the affected limited liability company
45 ratifying and approving **【such】** the change of registered agent.
46 Upon **【such】** filing, the successor registered agent shall become the
47 registered agent of each limited liability company which has ratified
48 and approved the substitution and the successor registered agent's

1 address, as stated in **【such】** the certificate, shall become the address
2 of each limited liability company's registered office in this State.
3 The Secretary of State shall furnish to the successor registered agent
4 upon request a certified copy of the certificate of resignation. Filing
5 of the certificate of resignation shall be deemed to be an amendment
6 of the certificate of formation of the limited liability company
7 affected thereby and the limited liability company shall not be
8 required to take any further action with respect thereto, to amend its
9 certificate of formation under **【this act】** P.L.1993, c.210 (C.42:2B-1
10 et seq.).

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

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

24 (2) The resignation shall become effective 30 days after filing
25 the affidavit of service in the office of the Secretary of State or
26 upon the designation by the limited liability company of a new
27 registered agent pursuant to **【this act】** P.L.1993, c.210, whichever
28 is earlier. If the limited liability company fails to designate a new
29 registered agent within the 30-day period, the limited liability
30 company shall thereafter be deemed to have no registered agent or
31 registered office in this State, until the limited liability company
32 files a certificate of change of address of registered office and
33 registered agent indicating the new registered office and registered
34 agent.

35 (cf: P.L.1997, c.139, s.8.)¹

36

37 ¹**【114.** Section 47 of P.L.1993, c.210 (C.42:2B-47) is amended
38 to read as follows:

39 47. If a member who is an individual dies or a court of
40 competent jurisdiction adjudges **【him】** the member to **【be**
41 **incompetent】** lack the mental capacity to manage **【his】** the
42 member's person or **【his】** property, the member's executor,
43 administrator, guardian, conservator, or other legal representative
44 may exercise all of the member's rights for the purpose of settling
45 **【his】** the member's estate or administering **【his】** the member's
46 property, including any power under an operating agreement of an
47 assignee to become a member and the power given to an assignee
48 under subsection d. of section 46 of P.L.1993, c.210 (C.42:2B-46).

1 If a member is a corporation, trust, or other entity and is dissolved
2 or terminated, the powers of that member may, in addition to the
3 powers given to an assignee under subsection d. of section 46 of
4 P.L.1993, c.210 (C.42:2B-46), be exercised by its legal
5 representative or successor.
6 (cf: P.L.1998, c.79, s.11)]¹

7
8 ¹[115.] 113.¹ R.S.42:4-13 is amended to read as follows:
9 42:4-13. **When** **If** a member of a partnership **has been or shall**
10 **be adjudged a lunatic** is adjudicated incapacitated, the court may
11 **in an action and** on application of **any of the other partners**
12 another partner or **such** other person as the court shall determine
13 to be entitled to make the application, dissolve the partnership. The
14 court may proceed in the action in a summary manner or otherwise.
15 (cf: P.L.1953, c.40, s.32)

16
17 ¹[116.] 114.¹ R.S.42:4-14 is amended to read as follows:
18 42:4-14. When a partnership is dissolved as provided by
19 **section** R.S.42:4-13 **of this Title**, or is otherwise lawfully
20 dissolved **by due course of law**, and a **member thereof** partner
21 has been **or shall be adjudged a lunatic** adjudicated incapacitated,
22 the guardian of **such lunatic** the partner who is incapacitated, in
23 the name and on behalf of **his ward** that partner, may **join and**
24 concur with the other **members of the partnership** partners or
25 other persons interested in disposing of **all** the partnership
26 property, **in such manner and upon such terms as the court may**
27 **direct** as directed by the court.
28 (cf: P.L.1953, c.40, s.33)

29
30 ¹[117.]¹ 115.¹ R.S.42:4-15 is amended to read as follows:
31 42:4-15. The guardian mentioned in **section** R.S.42:4-14 **of**
32 **this Title** may make and execute all **such** conveyances and do all
33 things necessary to effectuate the provisions of this article **as the**
34 **court may direct**. **He** and shall also dispose of all money or
35 property **by him** received for, from, or on account of the
36 **lunatic's** share or interest in the partnership of the partner who is
37 mentally incapacitated, as the court may direct.
38 (cf: P.L.1953, c.40, s.34)

39
40 ¹[118.] 116.¹ Section 13 of P.L.2007, c.92 (C.43:15C-13) is
41 amended to read as follows:
42 13. The disability benefit coverage provided under a group
43 policy or policies shall provide a monthly income if the participant
44 becomes totally disabled from occupational or nonoccupational
45 causes for a period of at least six consecutive months following the
46 effective date of the coverage. The monthly disability benefit may
47 be paid by the insurance company so long as the participant remains

1 disabled up to the **【seventieth】** 70th birthday, provided the
2 disability commenced prior to the **【sixtieth】** 60th birthday. The
3 benefit shall terminate when the participant is no longer considered
4 totally disabled or begins to receive retirement benefits.

5 The participant shall be considered totally disabled if the
6 participant is unable to perform each duty of the participant's
7 occupation and is under the regular care of a physician. After the 24
8 months following the commencement of **【such】** the disability
9 benefit payments, the participant shall be unable to engage in any
10 gainful occupation for which the participant is reasonably fitted by
11 education, training, or experience. Total disability shall not be
12 considered to exist if the participant is gainfully employed.
13 Following an agreement with the insurance company and the
14 policyholder, the participant may continue to receive disability
15 benefits for a limited time while performing some type of work.
16 During the period of rehabilitation, the monthly benefit shall be the
17 regular payment less 80% of the participant's earnings from **【such】**
18 the rehabilitative position.

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

27 Disability benefit insurance provisions of the group policy or
28 policies shall not cover disability resulting from or contributed to
29 by pregnancy, act of war, intentionally self-inflicted injury, or
30 attempted suicide **【whether or not sane】** regardless of the person's
31 mental capacity. For purposes of **【such】** the disability benefit
32 coverage, the participant shall not be considered to be disabled
33 while the participant is imprisoned or while outside the United
34 States, its territories or possessions, or Canada.

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

43 No participant shall be covered by the disability benefit
44 provision of the group policy or policies except upon the
45 completion of one year of full-time continuous employment in a
46 position eligible for participation in the Defined Contribution
47 Retirement Program. For a member who is a participant pursuant to
48 paragraph (5) of subsection a. of section 2 of P.L.2007, c.92

1 (C.43:15C-2) as amended by section 12 of P.L.2007, c.103 and
2 section 7 of P.L.2010, c.1, completion of one year of full-time
3 continuous employment in a position eligible for membership in the
4 Teachers' Pension and Annuity Fund, Police and Firemen's
5 Retirement System, State Police Retirement System, or the Public
6 Employees' Retirement System shall also be considered in
7 determining if the participant met the requirements of this
8 paragraph.
9 (cf: P.L.2010, c.1, s.16)

10

11 ¹~~119.~~ 117.¹ R.S.44:1-1 is amended to read as follows:

12 44:1-1. As used in this chapter:

13 "Almshouse" means a place where the poor are maintained at the
14 public expense of a municipality or county, which has not
15 established and does not maintain a welfare-house~~;~~ .

16 "Commissioner" means the ~~commissioner of institutions and~~
17 ~~agencies;~~ Commissioner of Human Services.

18 "County adjuster" means the official of that designation
19 authorized to act in the cases of commitment or admission of
20 ~~insane~~ persons who have a mental illness to state or county
21 psychiatric hospitals ~~for the insane;~~ .

22 "May" shall be construed to be permissive~~;~~ .

23 "Municipality" shall not include, in meaning, a county, unless
24 otherwise indicated by the context, but shall include a city,
25 borough, township, town, village, or municipality governed by an
26 improvement commission~~;~~ .

27 "Overseer" means a person who is charged with the
28 superintendence and relief or removal of the poor within ~~his~~ the
29 overseer's jurisdiction or found in ~~his~~ the overseer's
30 municipality, and means superintendent in all cases where a
31 superintendent as defined in this section is authorized to act when
32 there is no overseer~~;~~ .

33 "Permanent or indoor poor" means poor persons who may be
34 better relieved or maintained and supported under the provisions of
35 this chapter by commitment to a welfare-house, almshouse, or, with
36 limitations, in the home~~;~~ .

37 "Poor person" means one who is unable to maintain himself or
38 those dependent upon him ~~;~~ .

39 "Public charge" means a person to whom it is necessary to
40 furnish proper relief as provided in this chapter~~;~~ .

41 "Settlement of a person" means ~~his~~ a person's right under the
42 provisions of this chapter to relief or maintenance and support in a
43 municipality, county, or counties~~;~~ .

44 "State board" means the ~~state board of control of institutions~~
45 ~~and agencies;~~ State Board of Human Services.

1 "Superintendent" means the employee of a welfare board of a
2 county or district authorized to act for it and under its direction and
3 to act for overseers where there are none[;] .

4 "Temporary or outdoor poor" means poor persons who can be
5 relieved temporarily at their domicile or without being maintained
6 in an almshouse or welfare-house[;] .

7 "Voluntary wards of the county welfare board" means persons
8 admitted to a county welfare-house on application to the county
9 welfare board and not supported entirely at public expense[;] .

10 "Welfare board" means the board of one or more counties
11 authorized to have charge, supervision, and control of a welfare-
12 house and to supervise through a superintendent such work for or in
13 relation to the poor as directed or authorized[;] .

14 "Welfare-house" means a place where persons unable to care for
15 and maintain themselves in whole or in part by reason of age,
16 infirmity or poverty may be cared for and maintained in whole or in
17 part at the expense of a county or municipality under the
18 superintendent of a county welfare board in a county or portion
19 thereof or districts composed of more than one county or portions
20 thereof.

21 "District welfare-house" where so mentioned, means one
22 established and maintained by more than one county or portions
23 thereof.

24 (cf: R.S.44:1-1)

25

26 ¹[120.] 118.¹ R.S.44:4-1 is amended to read as follows
27 44:4-1. As used in this chapter:

28 "Almshouse" means a place for the maintenance of the poor at
29 the public expense of a county or municipality, prior to the
30 establishment of a welfare-house[;] .

31 "Commissioner" means the [commissioner of institutions and
32 agencies;] Commissioner of Human Services.

33 "County adjuster" means the official of that designation
34 authorized to act in the cases of commitment or admission of
35 [insane] persons who have a mental illness to State or county
36 hospitals for the insane[;] .

37 "County welfare board" means the board of a single county
38 authorized to have charge, supervision and control of a county
39 welfare-house and the administration of the settlement and relief of
40 the poor for such county and to supervise through a director of
41 welfare such work for or in relation to the poor as directed or
42 authorized[;] .

43 "Director of welfare" means an employee of a county welfare
44 board with authority to act for it and under its direction, and to act
45 for and in lieu of overseers where there are none, and perform the
46 functions of and replace the office of overseer[;] .

47 "May" shall be construed to be permissive[;] .

1 "Municipality" shall not include, in meaning, a county, unless
2 otherwise indicated by the context, but shall include any city,
3 borough, township, town, village or municipality governed by an
4 improvement commission.

5 "Permanent or indoor poor," as found in this chapter, shall mean
6 a disabled person who has been diagnosed by a regular practicing
7 physician as being unemployable due to a mental or physical
8 condition, providing such condition is in the physician's opinion of
9 permanent nature, and further providing that the disabled person is
10 not eligible for any other type of categorical aid.

11 "Poor person" means a permanently disabled person who is
12 without means of support as defined above.

13 "Public charge" means a person to whom it is necessary to
14 furnish proper relief as provided in this chapter[;] .

15 "Settlement of a person" means his right under the provisions of
16 this chapter to relief or maintenance and support in any county or
17 counties[;] .

18 "State board" means the State Board of [Control of Institutions
19 and Agencies;] Human Services.

20 "Temporary or outdoor poor" means poor persons who can be
21 relieved temporarily at their domicile or without being maintained
22 in an almshouse or welfare-house[;] .

23 "Welfare-house" means a place where the poor are maintained at
24 the public expense under the superintendence of a county welfare
25 board in any county.

26 "Disabled person" means any person entitled to relief under this
27 chapter.

28 (cf: P.L.1947, c.373, s.1)

29

30 ¹[121.] 119.¹ R.S.44:7-1 is amended to read as follows:

31 44:7-1. As used in this chapter:

32 "Commissioner" means the Commissioner of [the Department of
33 Institutions and Agencies] Human Services.

34 "State board" means the State Board of [Control of the
35 Department of Institutions and Agencies] Human Services.

36 "State division" means the bureau of assistance as set up within
37 the Department of [Institutions and Agencies] Human Services.

38 "Director of old age assistance" means the chief of the State
39 bureau of assistance.

40 "Director of welfare" means the director of the county welfare
41 board.

42 "County welfare board" means the boards established within the
43 several counties for the purposes of administering welfare to the
44 needy, whether set up under the authority of this chapter or
45 pursuant to any other laws of this State.

46 "Assistance" means money payments to or on behalf of eligible
47 persons.

1 "Old age assistance" means assistance to aged needy persons as
2 provided by this chapter, and, unless otherwise indicated, includes
3 all programs of assistance for other specified classes of persons
4 authorized to be administered by or through the county welfare
5 boards.

6 "County adjuster" means the official of that designation
7 authorized to act in cases of commitment or admission of **【insane】**
8 persons who have a mental illness to State or county hospitals for
9 the insane.

10 "Federal aid" means grants-in-aid to the State as provided for in
11 the Federal Social Security Act, approved August 14, 1935, as
12 amended.

13 "Institution" means any establishment, whether in single or
14 multiple dwellings, whether public or private, whether incorporated
15 or unincorporated, whether for profit or nonprofit, operated at the
16 direction of or under the management of an individual or
17 individuals, corporation, partnership, society, or association, which
18 furnishes food and shelter for 4 or more persons unrelated to the
19 proprietor and which provides medical or nursing service or any
20 other personal care or service beyond food, shelter, and laundry, to
21 any 1 or more of such persons.

22 (cf: P.L.1962, c.222, s.9)

23

24 ¹**【122.】** 120.¹ Section 1 of P.L.1964, c.155 (C.44:11-1) is
25 amended to read as follows:

26 1. As used in **【this act】** P.L.1964, c.155 (C.44:11-1 et seq.):

27 "Court" means the Superior Court in the county whose welfare
28 board is responsible for making payments of public assistance to or
29 for the benefit of the recipient or, in cases where a representative
30 payee has been appointed pursuant to **【this act】** P.L.1964, c.155,
31 the Superior Court having made such appointment.

32 "Functionally **【incompetent】** incapacitated" means subject to a
33 mental, physical, or emotional condition which renders the
34 individual incapable of receiving and utilizing payments of public
35 assistance in a manner conducive to the health and well-being of
36 **【himself】** the individual and **【his】** the individual's dependents.

37 "Representative payee" means a person appointed by a court to
38 act for a recipient to the extent of receiving and administering
39 payments of public assistance.

40 "Public assistance" means "old age assistance" and "disability
41 assistance" as authorized by Revised Statutes, Title 44, chapter 7;
42 "blind assistance" as authorized by Revised Statutes, Title 30,
43 chapter 6; "assistance for dependent children" as authorized by
44 chapter 86, laws of 1959; together with amendments and
45 supplements to any of the foregoing; and any other program
46 administered through the county welfare boards, by whatever name
47 now or hereafter known, which is authorized to provide financial
48 assistance to needy persons in the form of money payments.

1 "Recipient" means a person who has been found eligible to
2 receive payments of public assistance.

3 "Welfare board" means the county welfare board or board of
4 social services responsible for making payments of public
5 assistance to or for the benefit of the recipient.

6 (cf: P.L.1991, c.91, s.446)

7

8 ¹**[123.] 121.**¹ Section 2 of P.L.1964, c.155 (C.44:11-2) is
9 amended to read as follows:

10 2. Whenever it appears necessary to appoint a representative
11 payee for a recipient who is functionally **[incompetent]**
12 incapacitated, a complaint seeking such appointment may be filed
13 with the court by the welfare board. The complaint shall set forth
14 the name, age, and place of residence of the recipient; the name and
15 place of residence of the nearest relative of the recipient, if known;
16 and that the recipient has been found otherwise eligible to receive a
17 grant of public assistance.

18 (cf: P.L.1964, c.155, s.2)

19

20 ¹**[124.] 122.**¹ Section 3 of P.L.1964, c.155 (C.44:11-3) is
21 amended to read as follows:

22 3. A verified statement by the director of the welfare board, or
23 **[his]** the director's authorized representative, annexed to the
24 complaint and setting forth that a review by the **[State Bureau of**
25 **Assistance]** Division of Family Services in the Department of
26 Human Services indicates that the recipient is functionally
27 **[incompetent]** incapacitated, shall be prima facie evidence of the
28 necessity for the appointment.

29 (cf: P.L.1964, c.155, s.3)

30

31 ¹**[125.] 123.**¹ Section 4 of P.L.1964, c.155 (C.44:11-4) is
32 amended to read as follows:

33 4. Upon the filing of a complaint and verified statement as
34 provided by **[this act]** P.L.1964, c.155 (C.44:11-1 et seq.), the court
35 shall proceed in a summary manner to hear testimony for the
36 purpose of determining whether the recipient is functionally
37 **[incompetent]** incapacitated. The written certification of **[2]** two
38 physicians who have been in the actual practice of medicine and
39 surgery in this State for at least **[5]** five years shall be sufficient,
40 but not required, evidence to establish **[such]** the condition of the
41 recipient. If the court is satisfied that the recipient is functionally
42 **[incompetent]** incapacitated, **[such]** the court shall appoint a fit

1 and proper person as representative payee for **【such】** the recipient.
2 (cf: P.L.1964, c.155, s.4)

3

4 ¹**【126.】** 124.¹ Section 7 of P.L.1964, c.155 (C.44:11-7) is
5 amended to read as follows:

6 7. (a) When at a hearing held upon application of the recipient
7 the court determines from the certification of **【2】** two physicians, or
8 other acceptable evidence, that the recipient is no longer
9 functionally **【incompetent】** incapacitated, the court may discharge
10 the representative payee.

11 (b) Whenever it appears upon application and good cause shown
12 by the representative payee or the welfare board that **【such】** the
13 representative payee should be relieved of **【his】** the representative
14 payee's duties, the court may discharge **【such】** the representative
15 payee and, if the circumstances still require, appoint **【in his stead**
16 **some other fit and proper person】** a replacement for the
17 representative payee.

18 (cf: P.L.1964, c.155, s.7)

19

20 ¹**【127.】** 125.¹ Section 6 of P.L.1985, c.256 (C.45:14B-36) is
21 amended to read as follows:

22 6. A valid authorization for the purpose of **【this act】** P.L.1985,
23 c.256 (C.45:14B-30 et seq.) shall:

24 a. Be in writing;

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

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

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

35 e. Be signed by the patient or the person authorizing the
36 disclosure. If the patient is adjudicated **【incompetent】**
37 incapacitated or is deceased, the authorization shall be signed by the
38 patient's legally authorized representative. When the patient is
39 more than 14 years of age but has not yet reached **【the age of】**
40 majority, the authorization shall be signed by the patient and by the
41 patient's parent or legal guardian. When the patient is less than 14
42 years of age, the authorization shall be signed only by the patient's
43 parent or legal guardian; and

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

45 (cf: P.L.1985, c.256, s.6)

1 ¹~~128.~~ 126.¹ Section 1 of P.L.1953, c.269 (C.47:3-9) is
2 amended to read as follows:

3 1. Whenever papers ~~of the character hereinafter~~ as described
4 herein have been on file in the office of ~~any~~ the county clerk or
5 register of deeds and mortgages for more than the number of years
6 specified, the county clerk or register of deeds and mortgages, ~~as~~
7 ~~the case may be~~, having charge thereof, may direct ~~such~~ the
8 papers ~~to~~ be removed and destroyed ~~or the records therein~~
9 ~~otherwise effectively obliterated~~, subject, however, to the
10 limitations imposed herein ~~in respect to said papers~~.

11 The following ~~are the papers which~~ may be removed and
12 destroyed ~~or the records therein effectively obliterated~~ pursuant
13 to the provisions of this act:

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

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

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

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

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

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

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

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

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

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

- 1 (k) Depositions, which are not within the scope of any
2 applicable court rule and which do not pertain to any pending court
3 action or proceeding, after ten years;
- 4 (l) Delinquent municipal tax returns for real and personal
5 property and discharges therefor, after twenty years;
- 6 (m) Elections returns, certificates of, and all other papers relating
7 to elections, including primary petitions, returns for primary and
8 general elections, and statements of candidates' campaign managers
9 and treasurers, after five years;
- 10 (n) Executions returned by the sheriff, both satisfied and
11 unsatisfied, after twenty years; provided notations thereof have
12 been entered on the dockets;
- 13 (o) Extradition papers including applications for writs of habeas
14 corpus, except judgments thereon, after five years;
- 15 (p) Indictments, accusations, informations, and complaints in
16 the nature thereof, if nolle prossed, or if the defendant charged
17 thereby has been convicted or acquitted, or if the court has
18 otherwise disposed of the same, after five years;
- 19 (q) Inquests conducted by the coroners, and their reports, and
20 other papers relating to sudden deaths, after ten years;
- 21 (r) Insolvency proceedings, assignments for the benefit of
22 creditors, inventories in **[such]** the proceedings, discharges of
23 insolvents, and other papers relating or incidental to insolvency
24 proceedings, after twenty years;
- 25 (s) Institutions and agencies, commitments other than in
26 criminal or **[lunacy]** mental incapacity cases, reports, and other
27 papers relating to institutions and agencies, after thirty years;
- 28 (t) Judgment transcripts for docketing, after twenty years;
29 provided notations thereof have been entered on the dockets;
- 30 (u) Judgments, satisfactions and discharges, and releases of
31 judgments, after twenty years; provided notations thereof have been
32 entered on the dockets;
- 33 (v) Juries, lists of Grand and petit juries, and other papers
34 relating to summoning, impaneling, and the charging of **[such]** the
35 juries, after five years;
- 36 (w) Justices of the peace bonds, dockets, files, and papers, after
37 twenty years;
- 38 (x) Licenses for hunting, including applications, after two years;
- 39 (y) Lien notices and claims other than mechanics' lien claims,
40 and other than lien notices or notices in the nature of lien notices
41 filed by any State, county, or municipal agency, after six years;
- 42 (z) Lists of causes for trial calendars, including notices of trial,
43 after one year;
- 44 (aa) **[Lunacy proceedings]** Proceedings for commitments to
45 psychiatric institutions, including medical and other reports relating
46 thereto, after thirty years;
- 47 (bb) Mechanics' lien and construction lien claims, notices of
48 intention, notices of unpaid balance and right to file lien, stop

1 notices, and all papers relating to mechanics' lien and construction
2 lien claims, other than proceedings and actions in the courts brought
3 to enforce **【such】** the lien claims, after six years;

4 (cc) Notary public certificates and qualifying papers, after five
5 years;

6 (dd) Notices and other papers, authorized or required by law to
7 be filed but not recorded and not involving title to real or personal
8 property or to proceedings or actions in any court, after ten years;

9 (ee) Oaths of office of persons whose incumbency in office has
10 ceased, after five years; provided the term of office of **【such】** the
11 person expired prior to **【said】** the five years;

12 (ff) Permits to carry firearms which have expired, including the
13 applications therefor, after two years;

14 (gg) Prison records and reports and papers relating thereto, after
15 five years;

16 (hh) Probation reports and papers relating thereto, after five
17 years;

18 (ii) Referees' reports, not forming a part of the record of a
19 proceeding or action in court, after six years;

20 The **【said】** several periods of time shall be computed from the
21 date of the filing of **【said】** the papers.

22 The county clerk and the register of deeds and mortgages **【,**
23 respectively, in his discretion,**】** may retain on file **【in his office】**
24 any of the **【said】** papers as a part of the permanent records of
25 **【such】** the office.

26 (cf: P.L.1953, c.269, s.1)

27

28 ¹**【129】** 127.¹ R.S.48:12-151 is amended to read as follows:

29 48:12-151. All actions accruing from injuries to persons caused
30 by the wrongful act, neglect, or default of any railroad company
31 owning or operating any railroad within this State, shall be
32 commenced and sued within **【2】** two years next after the cause of
33 action accrued, and not after, except for injuries to **【infants】** minors
34 and **【incompetents】** incapacitated persons occurring subsequent to
35 the effective date of **【this act】** R.S.48:12-151. Actions by an
36 executor or administrator for injuries causing the death of the
37 testator or intestate shall be commenced and sued within **【2】** two
38 years next after the death, and not after. All actions for injury done
39 to any property by fire communicated by an engine of any railroad
40 company of any railroad within this State shall be commenced and
41 sued within **【2】** two years after the cause of action accrued, and not
42 after, except that action for injury occurring after the effective date
43 of this act shall be commenced within **【6】** six years after the cause
44 of action accrued, and not thereafter.

45 (cf: P.L.1962, c.198, s.157)

1 ¹**[130.] 128.**¹ Section 7 of P.L.1971, c.317 (C.52:4B-7) is
2 amended to read as follows:

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

7 a. Upon an application made to the board under the provisions
8 of the "Criminal Injuries Compensation Act of 1971," P.L.1971,
9 c.317, the board shall fix a time and place for a hearing on **[such]**
10 the application and shall cause notice thereof to be given to the
11 applicant.

12 b. For the purpose of carrying out the provisions of the
13 "Criminal Injuries Compensation Act of 1971," P.L.1971, c.317, the
14 board, or any member thereof, may hold **[such]** hearings, sit, and
15 act at **[such]** times and places, and take **[such]** testimony as the
16 board or **[such]** any member may deem advisable. Any member of
17 the board may administer oaths or affirmations to witnesses. The
18 board shall have full powers of subpoena and compulsion of
19 attendance of witnesses and production of documents, except that
20 no subpoena shall be issued except under the signature of a
21 member of the board, and application to any court for aid in
22 enforcing **[such]** the subpoena may be made in the name of the
23 board by any member thereof. Subpoenas shall be served by any
24 person designated by the board.

25 c. In any case in which the person entitled to make an
26 application is a child, the application may be made on **[his]** the
27 person's behalf by **[his]** the person's parent, guardian, or advocate.
28 In any case in which the person entitled to make an application is
29 **[mentally incompetent]** incapacitated, the application may be made
30 on **[his]** the person's behalf by **[his]** the guardian, advocate, or
31 **[such]** other individual authorized to administer **[his]** the person's
32 estate.

33 d. Any person having a substantial interest in a proceeding may
34 appear, produce evidence, and cross-examine witnesses in person or
35 by **[his]** attorney.

36 e. The board may receive in evidence any statement, document,
37 information, or matter that may in the opinion of the board
38 contribute to its functions under the "Criminal Injuries
39 Compensation Act of 1971," P.L.1971, c.317, but the board shall
40 not be bound by the rules of evidence.

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

47 (cf: P.L.2007, c.95, s.8.)

1 ¹**[131.] 129.**¹ R.S.52:14-13 is amended to read as follows:

2 52:14-13. **[Whenever]** When an officer of this **[state]** State or a
3 member of a **[state]** State board or commission **[appears to be**
4 insane and is committed to an institution for the insane pursuant to
5 law] is unable to perform the duties of the commission or
6 appointment because of mental incapacity, the commission or
7 appointment of **[such]** the officer or member shall become vacated
8 and void, and a vacancy shall thereupon exist in **[such]** the office,
9 the same as though the officer or member had resigned or died.
10 (cf: R.S.52:14-13)

11

12 ¹**[132.] 130.**¹ Section 1 of P.L.2002, c.118 (C.52:17B-139.7) is
13 amended to read as follows:

14 1. A licensed pharmacist or other provider of oxygen or an
15 oxygen delivery system who has supplied oxygen or an oxygen
16 delivery system to a patient on an order from a licensed health care
17 provider shall notify the appropriate fire department or company
18 serving the municipality in which the patient resides of the name
19 and address of the patient and the existence of the oxygen or
20 oxygen delivery system at the patient's residence, in accordance
21 with the provisions of **[this act]** P.L.2002, c.118 (C.52:17B-139.7
22 et seq.).

23 a. Prior to notification, a pharmacist or other provider of
24 oxygen or an oxygen delivery system shall inform the patient of the
25 notification requirements of this act and obtain written informed
26 consent from the patient for the notification.

27 If the patient is legally **[incompetent]** incapacitated, the
28 pharmacist or other provider of oxygen or an oxygen delivery
29 system shall inform an authorized representative of the patient of
30 the notification requirements of **[this act]** P.L.2002, c.118 and
31 obtain the written informed consent from the authorized
32 representative.

33 b. Written informed consent shall consist of a statement, on a
34 form or in a manner to be determined by the Director of the
35 Division of Consumer Affairs in the Department of Law and Public
36 Safety, signed by the patient or by an authorized representative of
37 the patient, which acknowledges that the pharmacist or other
38 provider of oxygen or an oxygen delivery system has provided the
39 patient with information regarding the notification requirements of
40 **[this act]** P.L.2002, c.118, and that the patient or authorized
41 representative of the patient consents to the notification.

42 c. If the patient or **[his]** the patient's authorized representative
43 declines to give **[his]** informed consent for the notification, the
44 pharmacist or other provider of oxygen or an oxygen delivery
45 system is required to inform the patient or **[his]** the patient's
46 authorized representative that the patient is obligated to notify the
47 appropriate fire department or company of the patient's name and

1 address and of the existence of oxygen or an oxygen delivery
2 system at **his** the patient's residence.

3 d. If the patient or **his** the patient's authorized representative
4 declines to give **his** informed consent, the pharmacist or other
5 provider of oxygen or an oxygen delivery system is exempt from
6 the requirement to make the notification and is permitted to supply
7 the oxygen or oxygen delivery system as directed by the licensed
8 health care provider's order.

9 e. A copy of the written informed consent shall be attached to
10 the order for the oxygen or oxygen delivery system or otherwise
11 included in the patient's record or, if written consent is not given,
12 the pharmacist or other provider of oxygen or an oxygen delivery
13 system shall note on the order or in the patient's record that
14 informed consent was not given.

15 f. A pharmacist or other provider of oxygen or an oxygen
16 delivery system who complies with the provisions of this act shall
17 be immune from civil liability if the patient fails to notify the
18 appropriate fire department or company of the patient's name and
19 address and the existence of oxygen or an oxygen delivery system
20 at the patient's residence.

21 (cf: P.L.2002, c.118, s.1)

22

23 ¹**133.** 131.¹ Section 2 of P.L.1985, c.298 (C.52:27G-21) is
24 amended to read as follows:

25 2. The Legislature finds and declares that private guardianship
26 for an **incompetent** elderly adult who is incapacitated may not be
27 feasible where there are no willing and responsible family members
28 or friends to serve as guardian, that **this act** P.L.1985, c.298
29 (C.52:27G-20 et seq.) establishes a public guardianship program for
30 elderly adults for the purpose of furnishing guardianship services to
31 elderly persons at reduced or no cost when appropriate, and that
32 **this act** P.L.1985, c.298 intends to promote the general welfare
33 by establishing a public guardianship system that permits elderly
34 persons to determinatively participate as fully as possible in all
35 decisions that affect them.

36 (cf: P.L.1989, c.248, s.1)

37

38 ¹**134.** 132.¹ R.S.54:5-84 is amended to read as follows:

39 R.S.54:5-84. If a delinquent owner or lienor **shall be, at the**
40 **time of the** is under the age of 18, a person with an intellectual
41 disability, or a person who has been adjudicated incapacitated and
42 in need of a guardianship available under Title 3B of the New
43 Jersey Statutes, upon expiration of the time **limited** limit for the
44 redemption of the real estate in which **he is interested, an infant**
45 **under the age of twenty-one years, or a person with an intellectual**
46 **disability, or who has been judicially adjudged a person in need of a**
47 **guardian** that person has an interest, the right to redeem shall not
48 be barred by service of notice as provided in this article so long as

1 **【such impediment shall continue】** the minority, disability, or
2 incapacity continues, but shall be barred only by an action to
3 foreclose brought in the Superior Court.

4 (cf: P.L.2010, c.50, s.82)

5

6 ¹**【135.】 133.**¹ N.J.S.59:8-8 is amended to read as follows:

7 59:8-8. Time for presentation of claims. A claim relating to a
8 cause of action for death or for injury or damage to person or to
9 property shall be presented as provided in this chapter not later than
10 the **【ninetieth】** 90th day after accrual of the cause of action. After
11 the expiration of six months from the date notice of claim is
12 received, the claimant may file suit in an appropriate court of law.
13 The claimant shall be forever barred from recovering against a
14 public entity or public employee if:

15 a. **【He】** The claimant failed to file **【his】** the claim with the
16 public entity within 90 days of accrual of **【his】** the claim except as
17 otherwise provided in **【section】** N.J.S.59:8-9; or

18 b. Two years have elapsed since the accrual of the claim; or

19 c. The claimant or **【his】** the claimant's authorized
20 representative entered into a settlement agreement with respect to
21 the claim.

22 Nothing in this section shall prohibit **【an infant or incompetent】**
23 a minor or a person who is mentally incapacitated from
24 commencing an action under this act within the time limitations
25 contained herein, after **【his coming to or being of full age】**
26 reaching majority or **【sane mind】** returning to mental capacity.

27 (cf: P.L.1994, c.49, s.4)

28

29 ¹**【136.】 134.**¹ The following are repealed:

30 R.S.30:9-1.1;

31 R.S.30:9-2;

32 R.S.30:9-29;

33 R.S.44:5-11; and

34 R.S.44:5-19.

35

36 ¹**【137.】 135.**¹ This act shall take effect immediately.