



FREQUENTLY ASKED QUESTIONS ABOUT MENTAL HEALTH ADVANCE DIRECTIVES – GUIDE FOR CONSUMERS

What is a Mental Health Advance Directive?

A Mental Health Advance Directive is a document that allows you to make your choices known regarding mental health treatment in the event that your mental illness makes you unable to make decisions. In effect, you are making decisions about treatment before the time that you will need it. This allows you to make more informed decisions and to make your wishes clearly known. A new law was passed in Pennsylvania, effective January 28, 2005, that makes it possible for you to use a Mental Health Advance Directive.

Many decisions may need to be made for you if you have a mental health crisis or are involuntarily committed and become unable to make treatment decisions. For example, the choice of hospital, types of treatment, and who should be notified are decisions that may be made for you. Unfortunately, at the time of crisis, you may not be able to make your wishes known, and therefore you may end up with others making decisions that you would not make. One way to be sure that your doctor, relatives, and friends understand your feelings is to prepare a Mental Health Advance Directive before you become unable to make decisions. Pennsylvania law allows you

to make a Mental Health Advance Directive that is a declaration, a power of attorney, or a combination of both.

What is a Declaration?

A declaration contains instructions to doctors, hospitals, and other mental health care providers about your treatment in the event that you become unable to make decisions or unable to communicate your wishes. A declaration usually deals with specific situations and does not allow much flexibility for changes that come up after the document is written, such as a new type of medical crisis, new kinds of medication, or different treatment choices.

What is a Mental Health Power of Attorney?

A mental health power of attorney allows you to designate someone else, called an agent, to make treatment decisions for you in the event of a mental health crisis. A mental health power of attorney provides flexibility to deal with a situation as it occurs rather than attempting to anticipate every possible situation in advance. When using a mental health power of attorney it is very important to choose someone you trust as your agent and to spend time with that person explaining your feelings about treatment choices. Your doctor or his/her employee, or an owner, operator, or employee of a residential facility where you are living cannot serve as an agent.

What is a Combined Mental Health Declaration and Power of Attorney?

Pennsylvania's law also allows you to make a combined mental health declaration and power of attorney. This lets you make decisions about

some things, but also lets you give an agent power to make other decisions for you. You choose the decisions that you want your agent to make for you, as many or as few as you like. This makes your Mental Health Advance Directive more flexible in dealing with future situations, such as new treatment options, that you would have no way of knowing about now.

Your agent should be someone you trust, and you should be sure to discuss with your agent your feelings about different treatment choices so that your agent can make decisions that will be most like the ones you would have made for yourself.

What makes a Mental Health Advance Directive Valid?

There is no specific form that must be used but your Mental Health Advance Directive must meet the following requirements:

1. You must be at least 18 years of age;
2. You must not have been declared incapacitated by a court and had a guardian appointed or currently be under an involuntary commitment.
3. The Mental Health Advance Directive must be signed, witnessed and dated. Witnesses must be at least 18 years old. If you cannot physically sign the document, another person may sign for you, but the person signing may not also be a witness. Your doctor or his/her employee, or an owner, operator, or employee of a residential facility where you are living cannot serve as an agent.
4. The Mental Health Advance Directive must contain your choices about beginning, continuing, or refusing mental health treatment.

The Mental Health Advance Directive also can include choices about other things, such as who you want to be your agent or guardian, who you want to care for your children or pets, who you want notified about your condition, and/or your dietary or religious choices.

5. If your Mental Health Advance Directive is a Power of Attorney, then you must name the person you want to be your agent and say that you are authorizing them to make whatever decisions you want them to make.

The Mental Health Advance Directive is valid for two years from the date you sign it unless one of the following happens first:

1. You revoke the entire Mental Health Advance Directive, or
2. You make a new Mental Health Advance Directive. If you do not have capacity to make treatment decisions at the time the Mental Health Advance Directive will end, the advance directive will stay in place until you are able to make treatment decisions.

What is Capacity?

Capacity is the basic ability to understand your diagnosis and to understand the risks, benefits, and alternative treatments of your mental health care. It also includes the ability to understand what may happen if you do not receive treatment.

Do I need to include proof of my capacity with the document?

Unless you have a guardian or are currently under an involuntary commitment, you are presumed to have capacity when you make a Mental Health Advance Directive. However, at a later time, it is possible for someone to challenge whether you had capacity. If you want to be very sure that no one can challenge your Mental Health Advance Directive later, you can include a letter from your treating doctor from the same time-period that you made your directive stating that you had capacity at that time.

When would my Mental Health Advance Directive take effect?

You can write in your Mental Health Advance Directive when you want the directive to take effect, for example, when involuntary commitment occurs, or when a psychiatrist and another mental health treatment professional say that you no longer have capacity to make mental health treatment decisions.

Who will determine that I don't have capacity to make mental health decisions?

For the purpose of your Mental Health Advance Directive, incapacity will be determined after you are examined by a psychiatrist and one of the following: another psychiatrist, psychologist, family physician, attending physician, or mental health treatment professional. Whenever possible, one of the decision makers will be one of your current treating professionals.

What if a court appoints a guardian after I have appointed an agent to make my mental health care decisions?

In your advance directive you can name someone you want the court to choose as your guardian. The court will appoint the person you choose,

unless there is a good reason not to. In many cases your agent and the person you would want to be your guardian would be the same person. However, you may want one person to make your mental health care decisions, and someone else to make other decisions for you. If the court-appointed guardian and your agent are different people, the court will allow your agent to make mental health care decisions, unless you say otherwise in your Mental Health Advance Directive. If the court decides to grant the powers that you gave to an agent to the guardian, the guardian would still have to make decisions as written in your advance directive.

May I make changes to my Mental Health Advance Directive?

You may change your Mental Health Advance Directive in writing at any time, as long as you have capacity. If you make significant changes, you should make a new document so that there are no conflicts or misunderstandings. Remember that your changes or a new directive must be witnessed by two individuals, at least 18 years of age, and you should give new copies to your provider, agent, and other support people.

May I revoke my Mental Health Advance Directive?

You may revoke, or in other words, cancel, a part or the whole Mental Health Advance Directive at any time, as long as you have capacity. This may be done either orally or in writing. It is effective as soon as you tell your provider. Your advance directive will automatically end after two years from the date you signed it unless you do not have capacity to make mental health care decisions at that time. If you do not have capacity at the time it would end, the Mental Health Advance Directive will stay in force until you regain capacity.

What types of instructions should I include?

A Mental Health Advance Directive is a way to communicate lots of information to your provider. You may wish to include your choices about different treatment options, such as medications, electro-shock therapy, and crisis management. In addition, you may say who you want to be told in the event of a crisis, or write down your dietary choices, past treatment history, who you want to take care of your children or pets, and other information that you want to be taken care of while you seek treatment.

Who should I give my Mental Health Advance Directive to?

The only way that your providers will know what your choices are is if you give them your Mental Health Advance Directive. You should also give copies to your treating physician, agent, and family members or other people that would be notified in the event of a crisis. Keep the original in a safe place, and be sure that someone who would be told of any crisis can get the original so it can be given to the attending physician. You may wish to carry a card in your wallet that states that you have a Mental Health Advance Directive, and who should be called in the event that you lack capacity to make mental health care decisions. Include that person's phone numbers, and also name another person in case the first person is not available. Remember that if you make changes or a new Mental Health Advance Directive that you must be sure that everyone has copies of the most recent version.

Do health care providers have to follow my instructions?

Yes, unless a provider cannot in good conscience comply with your instructions because they are against accepted clinical or medical practice,

or because the policies of the provider, such as what is covered by insurance, do not allow compliance, or because the treatment is physically unavailable. If the provider cannot comply for any of these reasons, the provider must tell you or your agent as soon as possible. It is very helpful to discuss your decisions with your provider when you make your Mental Health Advance Directive, so that you know whether they will be able to follow your instructions.

Remember that even if you consent in advance to a particular medication or treatment, your doctor will not prescribe that treatment or drug unless it is appropriate at the time you are ill. Your consent is only good if your choices are okay at that time within the standards of medical care. Your doctor will also have to consider if a particular treatment option is covered by your insurance. If, for example, the HMO that you have does not cover a certain drug on its formulary, your doctor may prescribe a drug that is similar, but is on the HMO formulary, as long as you have not withheld consent to that particular drug.

How does a Mental Health Advance Directive affect involuntary commitment?

The voluntary and involuntary commitment provisions of the Mental Health Procedures Act are not affected by having a mental health care advance directive. What may be affected is how you can be treated after you are committed.

Contact Information

If you need more information or need help, please contact Disability Rights Pennsylvania (DRP) at 800-692-7443 (voice) or 877-375-7139 (TDD). The email address is: intake@disabilityrightspa.org.

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