



Alternatives to Guardianship for Adults with Mental Illness

For family members or friends of adults with mental illness, it can be a frustrating and challenging experience if their loved ones refuse mental health treatment that they feel might help them. This Fact Sheet will address why guardianship is neither a legal nor a practical solution to compel people with mental health disabilities to receive treatment. It also will explore some other options that might be more productive.

Does Pennsylvania’s guardianship law allow the guardian to compel the person to get mental health treatment?

No. Pennsylvania’s guardianship law explicitly prohibits guardians from admitting individuals over whom they have guardianship to psychiatric hospitals. No guardianship order can lawfully authorize a guardian to admit the person to a psychiatric hospital.

The Pennsylvania guardianship law also provides that guardians cannot consent to electroconvulsive therapy (“ECT”), psychosurgery, or experimental procedures absent a specific court order, following a hearing, that allows the guardian to authorize such treatment.

Short of inpatient treatment, ECT, and experimental procedures, can a guardian or health care representative make other mental health treatment decisions for an individual with mental illness?

Courts may grant guardians authority to make health care decisions, which theoretically could include mental health decisions. In addition, Pennsylvania law also allows “health care representatives” – often family members – to make health care, including mental health care, decisions for persons who are determined by their doctors not to be competent to make those decisions. These authorities, however, run into legal and practical obstacles.

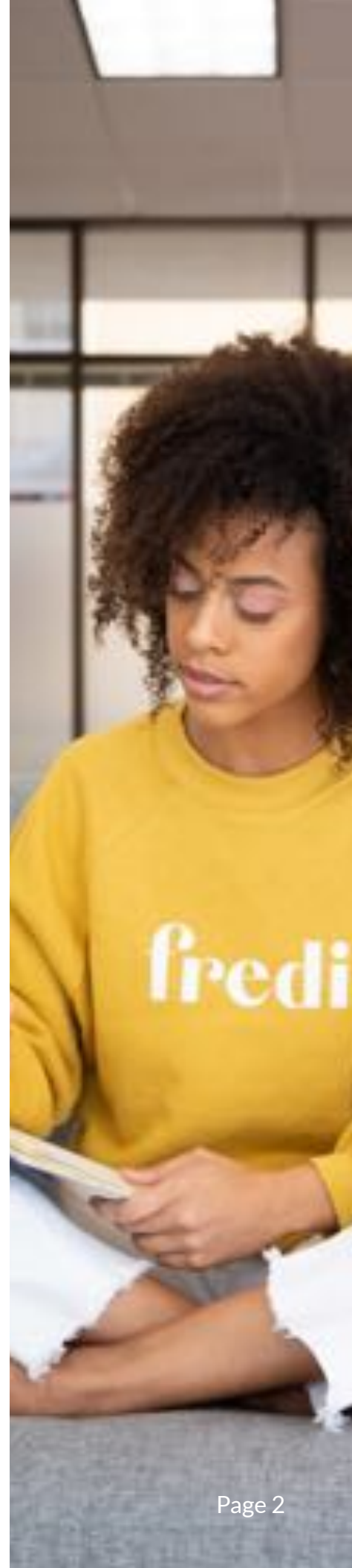
Legally, it appears that neither guardians nor health care representatives of adults would have the authority to compel mental health treatment of an individual against her will. The Pennsylvania Mental Health Procedures Act (“MHPA”) governs “involuntary” outpatient and inpatient treatment. For adults, the MHPA does not allow anyone other than the individual with mental illness to “voluntarily” consent to mental health treatment. Accordingly, the parent, guardian, or healthcare representative of an adult cannot, consistent with the MHPA, give consent to mental health treatment on behalf of a person who opposes it. Treatment in such circumstances would, in effect, be involuntary and all involuntary treatment must accord with strict procedures set out in the MHPA.

As a practical matter, moreover, neither guardians nor health care representatives will be able to compel a person with mental illness to cooperate with treatment if she is opposed to treatment. While guardians and health care representatives can certainly suggest and encourage therapy and medication – or even services like case management or peer support – a person who does not want to receive those services will not participate in or benefit from them.

Can guardianship undermine efforts to help a person with mental illness?

Yes. When a family member or friend seeks guardianship over a loved one with mental illness it could drive a wedge between them. Some people with mental illness struggle to trust others, so guardianship – where family or friends are depriving their loved ones of autonomy – may reinforce those issues. Some people with mental illness may also have misbeliefs that others are trying to harm or control them, which could also be bolstered by guardianship. Guardianship in these circumstances would be contentious and make those with mental illness even less likely to allow their family and friends to help them.

While it can be hard to see people we love make what we consider to be “bad” decisions, it is important to remember that that they – like all of us – have the right to make choices and stripping them of that right should not be taken lightly. All of us can and do make bad choices, but no one would consider subjecting us to guardianship unless we had a disability. Yet, having a disability should not be sufficient to take away a person’s right to make choices. The “dignity of risk” – the recognition that the right to take reasonable risks is an essential part of human dignity and self-esteem – should be respected.





How can I encourage a loved one with mental illness to participate in treatment?

Having people with mental illness create Mental Health Advance Directives (“MHADs”) when they have capacity to do so can encourage them to seek and participate in treatment. MHADs, which include declarations, powers of attorney, or combinations of those documents, allow individuals with mental illness to make choices about their preferred treatment locations, medications, limitations on or releases of records, and other instructions both for treatment and for other things that might need to be taken care of in the event of a crisis (such as pets). They also enable a person with mental illness to identify someone to make decisions for him within the guidelines chosen by him. MHADs go into effect when a person has a mental health crisis that prevents him from making his own decisions. MHADs generally can last no more than two years.

MHADs are beneficial because it gives people with mental illness reassurance that their choices will be respected and makes them a key participant in their services. If they feel that they will not be subject to unwanted treatment, people with mental illness may be more willing to seek treatment. By giving them power over their mental health treatment, MHADs encourage people with mental illness to take ownership of and be engaged in their own recovery.

To find out more about MHADs, see DRP’s publications at <https://www.disabilityrightspa.org/wp-content/uploads/2018/03/CCSDM-7E.pdf> and <https://www.disabilityrightspa.org/resources/#mental-health>.

What can I do if I believe that a loved one with mental illness is unable to handle his finances?

While a guardian of the estate can be appointed to handle the finances of a person who, due to mental illness, lacks the necessary capacity to do so, the Court will not appoint a guardian if there are less restrictive alternatives.

Perhaps the most common guardianship alternative for financial issues is becoming a “representative payee.” A representative payee will be appointed by the Social Security Administration for beneficiaries of Social Security benefits, including Social Security Disability Insurance (“SSDI”) or Supplemental Security Income (“SSI”), who are unable to manage their own benefits. It is not necessary for a guardian to be appointed or for an individual to be adjudicated incapacitated by a court to have a representative payee appointed. Often SSDI or SSI may be the sole source of income for people with mental illness, so this is a good option instead of guardianship.

Another option for people with mental illness who may have assets beyond Social Security benefits is a financial power of attorney. If the person with mental illness has the capacity to do so, he can execute a financial power of attorney to grant another person legal authority to manage his finances, investments, and property. In the event of a crisis situation that renders the person unable to manage his own financial affairs, the financial power of attorney would help ensure that his financial well-being is not at risk.


An emergency guardian of the estate can also be used to ensure that, in a crisis, the person's financial affairs are protected. An emergency guardian of the estate can be appointed for 30 days when there is a showing that there is imminent risk of irreparable harm. For instance, if a person is experiencing a mental health crisis and not paying rent or other bills, the emergency guardianship can give the guardian limited access to the individual's money to ensure those bills are paid and his housing is not lost while either longer-term changes (e.g., appointment of a representative payee) are put in place or the person is given an opportunity to recover and handle his own finances.



What can I do if I believe that a loved one with mental illness is at risk of harm?

You may make a protective services complaint if you believe that a person with mental illness is being abused, neglected, or exploited. This includes self-neglect to the point where it is a threat to her physical or mental health. In Pennsylvania, the Adult Protective Services system serves individuals age 18 to 59, inclusive, who have disabilities while the Older Adult Protective Services system services individuals age 60 and older. The hotline for both systems can be reached 24 hours/seven days a week at 1-800-490-8505. Once you make a protective services report, there may be an investigation and, if substantiated, the protective services staff may offer the person services to help her. Protective services, under some limited circumstances, can compel the person to accept assistance.

Another option to address specific and concrete risks that may arise due to a person's mental illness is emergency guardianship of the person. An emergency guardian of the person can be appointed for 72 hours (and extended for 20 days) when there is imminent risk of irreparable harm. The emergency guardianship may be useful when, for instance, a person with mental illness is living in a dangerous situation. It gives you the opportunity to try to remove him and offer him help, recognizing that if he does not want help it probably will not be effective.



Crisis services are another option to consider. All Pennsylvania counties have mobile or telephone mental health crisis services. If someone you know is in crisis, you should contact the crisis line for advice and assistance. A list of the counties' general mental health and crisis telephone numbers can be found at <https://www.dhs.pa.gov/Services/Mental-Health-In-PA/Documents/Pennsylvania%20Crisis%20Intervention%20Phone%20Numbers.pdf>.

If someone presents a danger to themselves or others, you can try to initiate the involuntarily commitment process under the MHPA. The MHPA outlines the procedures that must be used to involuntarily commit a person to mental health treatment. The process begins with an “emergency” involuntary commitment (sometimes called a “302”). In the 302 process, the person must be taken to an authorized facility to be evaluated by a doctor to determine if she is a clear and present danger to herself or others. If the person is unwilling to go voluntarily, you should contact crisis services in your county first (see the prior paragraph). If the person is determined to meet the standard for a 302 commitment, she can be held for up to five days. The MHPA sets out increasingly longer time periods for commitments after the initial five-day period, but the person must be given hearings and an attorney to represent her in those proceedings.

Where can I turn for support?

When you have a loved one with mental illness, you may feel alone and isolated. But there are other families and friends experiencing the same issues. Finding a support system can be important to help you. For more information about support groups, contact the Mental Health Association in Pennsylvania at 866-578-3659 or <https://www.mhapa.org/about/contact-us/> or NAMI Keystone Pennsylvania at 412-366-3788 or <https://www.nami.org/Find-Your-Local-NAMI/Affiliate?state=PA>.



Contact Information

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