

A publication of the Illinois Guardianship and Advocacy Commission

An Advance Directive for Mental Health Care allows an individual to state in advance his or her wishes regarding treatment and who can make decisions on his/her behalf if he/she is not competent to make choices. It can be invaluable in aiding an ill family member, while respecting his or her choices about treatment.

DECLARATION FOR MENTAL HEALTH TREATMENT

Key features at a glance:

A declaration for mental health treatment:

- Is limited to decisions regarding three types of mental health treatment: psychotropic medications, electroconvulsive therapy, and in-patient hospitalization.
- Can include a designation of a person as an attorney-in-fact who would have authority to look at your mental health records and to make treatment decisions for you if you are unable to do so.
- Must be signed by two competent adults who attest that you appear to be of sound mind.
- Becomes effective only after two physicians or a judge determines that you are unable to make or communicate reasonable decisions regarding your mental health treatment.
- Must be followed by your doctor except when a court order contradicts your wishes or when there is an emergency. Moreover, despite your declaration, you can be hospitalized if you are believed to be dangerous or unable to meet your basic needs.
- Can be canceled only in writing and only if a physician determines, in writing, that you are able to make treatment decisions and able to cancel the declaration.
- Expires after three years unless, at that time, you are unable to make treatment decisions. Expressing your treatment wishes in a declaration Like any advance directive, a declaration for mental health treatment allows you to put into writing your wishes regarding decisions that may have to be made in the future if you become ill and not able to make them or express them for yourself. As its name indicates, however, a declaration for mental health treatment allows you to put into writing your wishes regarding only three types of mental health treatment: psychotropic medication, electroconvulsive therapy, and in-patient hospitalization. Although limited to only three types of treatment, a declaration allows you to express your wishes regarding that treatment in a variety of ways. You can choose to list the medications you would want to receive, or you can choose to list the medications that you would not want to receive. You can also write down the circumstances under which you would or would not want to receive medications. For example, you could agree to take a certain medication but only after your doctor first attempts to treat you with another, preferred medication for a specified period of time.

Similarly, you can express your wishes regarding electroconvulsive therapy and in-patient hospitalization. If you agree to be hospitalized, you can state the particular hospital where you would like to be admitted. You can also put conditions on your agreement to be hospitalized. For example, you could agree to be hospitalized but only after you have had a chance to talk to a familiar doctor or a trusted relative. If you agree to be hospitalized, you can be hospitalized under the declaration for no more than 17 days. At the end of those 17 days, you would have to be discharged, be taken to court to be involuntarily admitted, or consent to remain hospitalized.

Choosing someone to make decisions for you

Besides expressing your treatment wishes in a declaration for your doctor to follow, you could choose to designate a person to talk to your doctor and to make and express treatment decisions for you if you become unable to do so. This person is called an attorney-in-fact, but he or she does not have to be an attorney. You can designate any trusted friend or family member to be your attorney-in-fact. You do not have to designate anyone as an attorney-in-fact if you do not want to, but, if you choose to do so, that person must agree to the designation in writing.

An attorney-in-fact would make decisions about your treatment consistent with the wishes expressed in your declaration. For example, if your doctor suggests electroconvulsive therapy for you and your declaration states that you do not want to receive electroconvulsive therapy, your attorney-in-fact must refuse that treatment on your behalf.

If you have an attorney-in-fact, decisions may be made about treatments which you did not mention in the declaration. In these cases, your attorney-in-fact would decide whether or not you would receive these treatments based on what he or she believed you would want. If, however, your attorney-in-fact does not know what you would want, he or she would make the decision based on what he or she believed would be best for you.

In addition to making decisions about your treatment, unless you state otherwise in your declaration, your attorney-in-fact will be able to look at your mental health records.

There are restrictions on who can be your attorney-in-fact. Your doctor, your doctor's employees, and other individuals involved in your treatment cannot be your attorney-in-fact unless they are related to you.

Obtaining witnesses to the declaration

To be valid, the declaration must be witnessed by two competent adults. Those witnesses must be able to say that they know you, that you appear to be of sound mind, and that you are not completing the declaration due to duress, fraud, or undue influence.

Certain persons cannot be witnesses to your declaration. Thus, your relatives, your doctor or his or her relatives, other persons involved in your treatment, and the person designated as your attorney-in-fact cannot witness your declaration.

When the declaration becomes effective

The declaration will not be used to direct your mental health treatment as soon as you sign it. Instead, it will be used only when, and if, you become unable to make or express treatment decisions for yourself. This determination must be made by either two physicians or a judge. Thus, before your declaration will become effective, two physicians, or a judge, must determine that your ability to receive and evaluate information effectively, or your ability to communicate decisions, is so impaired that you are unable to make decisions about your mental health treatment. Until you are determined to be unable to make decisions, the declaration will not be used, and you can continue to make decisions about your treatment as you always have.

When your doctor need not follow your declaration

As a general rule, after you have been determined to be unable to make treatment decisions, and after your doctor is given your declaration, he or she must follow the wishes expressed there. There are three exceptions to the general rule, however. First, you can be given treatment, contrary to the wishes expressed in your declaration, in an emergency. Second, regardless of your wishes regarding in-patient hospitalization, you can still be involuntarily admitted to a mental health facility if you are alleged to be unable to provide for your basic physical needs or reasonably expected to inflict serious physical harm on yourself or someone else in the near future. Third, you can be given treatment, contrary to the wishes expressed in your declaration, if your wishes are contradicted by a court order.

Changing or canceling your declaration

If your treatment wishes change, you can change or cancel the declaration, but only under certain conditions. First, you can cancel the declaration only in writing; merely telling someone that you have changed your mind will not change the declaration. Second, a doctor must evaluate you and document that you are able to make your own treatment decisions and able to cancel your declaration. Thus, you can change or cancel your declaration only if a doctor states in writing that you are capable of doing so.

When the declaration expires

A declaration for mental health treatment generally will remain valid for three years after it is completed; after three years, the declaration expires, and you will have to complete a new one. However, if, at the end of three years, you are unable to make decisions, and the declaration is being used to direct your treatment, it will remain in effect until you are able to make your own decisions again.

The Mental Health Treatment Preference Declaration Act

You can learn more about declarations, and find the [standard form](#) for declarations, in the [Mental Health Treatment Preference Declaration Act, 755 Illinois Compiled Statutes 43](#).