



A GUIDE TO ADVANCE DIRECTIVES: DECIDING YOUR FUTURE MENTAL HEALTH TREATMENT



Prepared by the
Illinois Guardianship and Advocacy Commission

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ABOUT THE ILLINOIS GUARDIANSHIP AND ADVOCACY COMMISSION

The **Illinois Guardianship and Advocacy Commission** was created by the Illinois General Assembly in 1979 and is governed by eleven volunteer citizens who are appointed by the Governor and confirmed by the Senate. Its mission, simply stated, is to safeguard the legal rights of persons with disabilities. Located in nine offices throughout the state, the Commission strives to fulfill its mission through the work of three divisions:

The Human Rights Authority, which, through nine regional panels of volunteers, investigates allegations that the legal rights of persons with disabilities have been violated and recommends remedial action;

The Legal Advocacy Service, which, through its staff attorneys, provides legal advice and representation to individuals with disabilities, both adults and minors, in hearings arising out of mental health laws; and

The Office of State Guardian, which serves as court-appointed guardian of last resort for adults with disabilities and is the largest provider of adult guardianship services in the United States.

INTRODUCTION TO ADVANCE DIRECTIVES FOR MENTAL HEALTH TREATMENT

Like most adults, you are probably used to making your own decisions, but what would happen if you became ill and were unable to make reasonable decisions about the medical treatment you should, or should not, receive? If you were diagnosed as having a mental illness, chances are that a judge would be asked to make treatment decisions for you. If so, after a court hearing, a judge could order that you be admitted to an in-patient mental health facility and be given treatment.

There are, however, disadvantages to asking judges to make mental health treatment decisions. Going to court can be stressful, and it can take several days, or several weeks, before the judge makes a decision. Even if you are later pleased with the judge's decision, you might have liked it better had it been made more quickly. On the other hand, you might not be pleased with the judge's decision; the judge may have ordered treatment that you never would have consented to yourself, or the judge may have refused to order treatment that you would have consented to had you been thinking clearly.

This brochure describes two types of legal documents which you can complete to control your future mental health treatment and to lessen the chances that a judge will be asked to make treatment decisions for you. These documents are called advance directives. In an advance directive, you can express your wishes regarding various types of mental health treatment. If, in the future, you become ill and unable to make competent treatment decisions, your doctor would be required, in most cases, to follow the wishes expressed in your advance directive.

Additionally, you can use an advance directive to designate a friend or family member to make treatment decisions for you. This person, who is called an agent or an attorney-in-fact, would make decisions based on your wishes as expressed in the advance directive.

There are two types of advance directives: (1) a declaration for mental health treatment and (2) a power of attorney for health care. These two types of advance directives are described and compared in the remainder of this brochure.

At the end of the brochure, you will find the addresses and telephone numbers of the Illinois Guardianship and Advocacy Commission's nine offices. Attorneys from the Commission are available to provide you with more information about advance directives for mental health treatment and to help you complete an advance directive if you want one.

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](#).

POWER OF ATTORNEY FOR HEALTH CARE

Key features at a glance

A power of attorney for health care:

- Can cover a wide range of health care decisions or be limited to cover only certain health care decisions, such as those involving mental health treatment.
- Must include a designation of a person as an agent who would have authority to look at your medical records, to make health care decisions for you, and to use your funds to pay for your treatment.
- Need not be witnessed because you are presumed to be competent.
- Becomes effective when you want it to: when signed, on a particular date, or after a particular event.
- Unless you specify otherwise, can be canceled at any time by destroying it, writing your decision to cancel it, or telling another adult of your decision to cancel it.
- Must be followed or your agent must be allowed to find another doctor for you. However, despite your power of attorney, you can be involuntarily hospitalized if you are believed to be dangerous or unable to meet your basic physical needs.
- Unless you specify otherwise, remains effective until you cancel it.

Choosing someone to make decisions for you

Generally speaking, compared to a declaration for mental health treatment, a power of attorney gives you more choices when you want to direct your future health care. First of all, in a power of attorney, you can direct how decisions will be made regarding any type of health care. Unless you limit it, a power of attorney will be interpreted as broadly as possible and will cover all types of health care decisions, not just mental health care decisions. There are other ways in which a power of attorney gives you more choices than a declaration for mental health treatment, and they will be explained in the following sections.

There is at least one important way, however, in which a power of attorney is less flexible than a declaration for mental health treatment. If you complete a power of attorney, you must designate a person who has the authority to make health care decisions for you. In a power of attorney, this person is called an agent. Although you must designate a person to be your agent, that person does not have to serve as your agent and may choose not to make health care decisions for you. If the agent does make decisions for you, he or she must do so in accordance with the terms of the power of attorney.

There are restrictions on who can be your agent. Neither your doctor nor any other

person from whom you are receiving health care can act as your agent.

In addition to making decisions about your treatment, unless you state otherwise, your agent will be able to look at your medical records, including records that describe your mental health treatment, and will be able to use your funds to pay for your treatment.

Expressing your treatment wishes

Besides choosing an agent in your power of attorney, you may express your wishes about your future health care. You do not, however, have to express your wishes; if you do not, your agent must do his or her best to make decisions that would be for your benefit. And, unless you limit the authority of your agent, your agent can make any and all health care decisions that need to be made for you.

If you choose, there are many ways in which you can limit the authority of your agent. For example, as already mentioned, you may decide to limit the power of attorney to cover only mental health treatment or to cover only some types of mental health treatment. Additionally, you can write down the circumstances under which you would want your agent to consent to, or refuse, certain types of treatment.

When the power of attorney becomes effective

In general, a power of attorney becomes effective as soon as you sign it. Thus, as soon as you sign your power of attorney, your agent will have authority to make decisions for you.

You can, however, choose to have your power of attorney become effective at some other time. If you choose, your power of attorney could become effective on a specific date or after a specific event. Thus, for example, you could decide that your power of attorney becomes effective only if you are admitted to a mental health facility.

When your doctor need not follow your power of attorney

Either you or your agent must give your power of attorney to your doctor. Afterwards, as long as your agent is complying with your power of attorney, your doctor must follow the decisions made by your agent. If for some reason your doctor is unwilling to follow your agent's decisions, your doctor must inform your agent and allow him or her to find another doctor for you. Additionally, regardless of your wishes, your agent cannot prevent you from being 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.

Changing or canceling your power of attorney

To change parts of your power of attorney, you must describe the changes you want to make in writing.

On the other hand, unless you specify otherwise, there are many ways you could cancel your entire power of attorney. In addition to putting your decision to cancel the power of

attorney in writing, you can tear or destroy the power of attorney, or you can tell another adult about your decision to cancel the power of attorney and ask that person to put your decision in writing for you.

When the power of attorney expires

Unless you specify otherwise, your power of attorney will not expire and will be valid for the rest of your life.

The Illinois Power of Attorney Act

You can learn more about powers of attorney, and find the [standard power of attorney form](#), in the [Illinois Power of Attorney Act, 755 Illinois Compiled Statutes 45](#).

DECIDING WHETHER TO COMPLETE AN ADVANCE DIRECTIVE

Deciding whether or not to complete an advance directive is an important decision which only you can make for yourself. Some people like the control an advance directive can give them over their future treatment. They know that, if they become mentally ill, they may not be allowed to make their own treatment decisions, and judges may be asked to make decisions for them. Even if they are allowed to make their own treatment decisions, they may make unwise decisions which they might regret later. For these reasons, they want to make decisions about their future treatment, for themselves, before they become ill and while they are thinking clearly.

If you decide that you want an advance directive, you must then decide which advance directive is best for you. Some people do not want to designate an agent or an attorney-in-fact to make decisions for them, so they prefer a declaration. Others may want to create an advance directive for all types of health care, so they prefer a power of attorney.

For help in making these decisions, talk to people you know and trust. You may want to talk to your doctor. You should certainly talk with the person you are considering asking to be your agent or your attorney-in-fact. You should also talk with an attorney. Although this brochure describes some of the important features of advance directives, it is not meant to tell you everything you should know about them. Additionally, if you decide to complete an advance directive, you will probably want to use one of the standard forms created by the Illinois legislature.

CONTACTING THE ILLINOIS GUARDIANSHIP AND ADVOCACY COMMISSION

If you would like more information about advance directives, or if you would like help in completing an advance directive form, you may contact the closest regional office of the Illinois Guardianship and Advocacy Commission. Ask to speak to the intake worker who will take your name and telephone number. An attorney will call you back and, based on your level of income, will determine whether you are eligible to receive legal services from the Commission free of charge. If you are eligible for free services, the attorney will schedule an appointment with you. On the other hand, if you are not eligible for free services, you will be referred to the bar association in your area so that you can contact a member of the private bar.

The addresses and telephone numbers of the Commission's nine offices are listed below.

Office of the Director 421 East Capitol Avenue Suite 205 Springfield, Illinois 62701-1711	217/785-1540
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Office of the Director 160 North LaSalle Street Suite S-500 Chicago, Illinois 60601-3103	312/793-5900
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East Central Regional Office 423 South Murray Road Rantoul, Illinois 61866-2125	217/892-4611
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Egyptian Regional Office #7 Cottage Drive Anna, Illinois 62906-1669	618/833-4897
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Metro East Regional Office 4500 College Avenue Suite 100 Alton, Illinois 62002-5099	618/462-4561
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North Suburban Regional Office 9511 Harrison Avenue, FA 101 Des Plaines, Illinois 60016-1565	847/294-4264
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Peoria Regional Office 309/693-5001
5407 North University
Suite 7
Peoria, Illinois 61614-4785

Rockford Regional Office 815/987-7657
4302 North Main Street
Rockford, Illinois 61103-5202

West Suburban Regional Office 708/338-7500
Madden Mental Health Center
Pavilion 9
P.O. Box 7009
Hines, Illinois 60141-7009

Statewide TTY 312/793-5937

To find out more about the Commission and to learn about other laws which protect the rights of persons with disabilities, please visit the Commission's web site which is www.state.il.us/igac/.