

A G U I D E T O

Mental Health Advance Directives

In 2004, Pennsylvania Governor Edward G. Rendell signed into law Act 194, Mental Health Declarations and Powers of Attorney. The purpose of the law is to allow adults to consent to, or refuse, various treatments for mental health care in advance of their need for that treatment, in case their mental illness makes them incapable of making mental health decisions at a later date. They also may appoint another person to make treatment decisions for them.

This brochure tells you about your rights under this law and gives you facts about what a mental health advance directive and mental health power of attorney are, how to make one, and what you need to consider in making one.

Any questions you have about mental health advance directives that are not answered here should be discussed with your psychiatrist or other mental health professional, lawyer, or family member.

This brochure was developed and distributed by The Hospital & Healthsystem Association of Pennsylvania and the Pennsylvania Psychiatric Society.

There are several terms that you should understand as you prepare a mental health advance directive and mental health power of attorney.

AGENT — An individual named in the mental health power of attorney to act on your behalf.

INCAPACITATED — The lack of sufficient capacity for a person to: (1) understand the need for treatment, the treatment itself, alternatives, benefits, and risks; or (2) communicate mental health care decisions, as determined by a psychiatrist and second mental health professional after an examination.

MENTAL HEALTH ADVANCE DIRECTIVE — Also called a “declaration.” A document in which you list the mental health care you wish to receive—or not receive—should you ever become incapacitated and lose your ability to make or effectively communicate mental health decisions.

MENTAL HEALTH CARE — Any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for mental health, including medication and therapy.

MENTAL HEALTH POWER OF ATTORNEY — A document that lists the name of a person (called an “agent”) that you wish to make mental health care decisions for you should you ever become incapacitated. The document may also list the mental health care you wish to receive—or not receive—should you ever become incapacitated and lose your ability to make or effectively communicate mental health decisions.

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HOW DO MENTAL HEALTH ADVANCE DIRECTIVES AND MENTAL HEALTH POWERS OF ATTORNEY WORK?

They would only be used when you are incapacitated and unable to make decisions for yourself. This would be determined by a psychiatrist and a second mental health professional who have examined you. It also could be triggered by some other circumstances that you put in your advance directive or power of attorney (such as when you exhibit certain symptoms).

I ALREADY HAVE AN ADVANCE DIRECTIVE AND POWER OF ATTORNEY FOR MY PHYSICAL HEALTH CARE. DO I NEED TO DEVELOP SEPARATE DOCUMENTS FOR MY MENTAL HEALTH CARE?

Even though you may include mental health information in your physical health advance directive, it is advisable to develop a separate mental health advance directive and mental health power of attorney.

AM I REQUIRED TO HAVE A MENTAL HEALTH ADVANCE DIRECTIVE OR MENTAL HEALTH POWER OF ATTORNEY?

No. You are not required to have either of these documents to receive treatment.

WHO MAY CREATE AND SIGN A MENTAL HEALTH ADVANCE DIRECTIVE AND MENTAL HEALTH POWER OF ATTORNEY?

Anyone who is at least 18 years of age, or is an emancipated minor, as long as they have not been determined by a court to be incompetent under the guardianship laws, or are not currently under an involuntary mental health commitment.

WHAT SHOULD I CONSIDER WHEN MAKING DECISIONS ABOUT A MENTAL HEALTH ADVANCE DIRECTIVE AND MENTAL HEALTH POWER OF ATTORNEY?

It is important to consider your own personal situation and treatment history when writing these documents, including the conditions under which you would want the advance directive or power of attorney to be used. Examples of things you may want to include are preferences for treatment (such as a preferred facility, medication choices, and consent for electroconvulsive therapy), as well as information about family notification, child custody arrangements while you are ill, what seems to help you recover, or anything else of importance to you.

You should keep in mind that your psychiatric and other health conditions may change from the time you signed the

documents to the time they are used, so that the medications or treatments you allow in the advance directive are no longer appropriate. To help avoid this, consider specifying your preferences without being overly restrictive, giving your treatment providers choices. It will also help to prepare your advance directive in consultation with your psychiatrist or attending physician so that you are fully informed when you make your choices.

Many people will find it especially useful to have an agent to make decisions for them until they are no longer incapacitated. Through a power of attorney, you can give someone you know and trust the right to make decisions for you, according to your need at the time and the preferences you included in your documents.

DOES A MENTAL HEALTH POWER OF ATTORNEY MEAN I HAVE TO APPOINT A LAWYER TO MAKE HEALTH CARE DECISIONS FOR ME?

No. You are allowed to appoint anyone you wish as your agent. You should appoint someone you know, trust, and with whom you can talk over your wishes. Your agent will have the rights and responsibilities that you have unless you state otherwise, including access to your medical records, the ability to make decisions regarding voluntary commitment for inpatient treatment, consent to medications and electroconvulsive therapy, and participation in therapeutic drug trials. Note: Your own psychiatrist or other mental health provider may not act as your agent.

WHERE SHOULD I KEEP MY MENTAL HEALTH ADVANCE DIRECTIVE AND MENTAL HEALTH POWER OF ATTORNEY AND WHO SHOULD KNOW ABOUT IT?

Give a copy of your advance directive and power of attorney to your psychiatrist and other mental health providers, family doctor, other people involved in your care such as family members and case workers, and to the person you named as your agent. You also should bring a copy with you when you are being admitted to a hospital or other health care facility, or carry a note or card in your wallet with the name and phone number of your agent, or any person who has a copy of your advance directive and power of attorney.

HOW LONG ARE MENTAL HEALTH ADVANCE DIRECTIVES AND MENTAL HEALTH POWERS OF ATTORNEY EFFECTIVE?

Both documents automatically terminate two years after being signed, unless they are in operation at the time, so you will need to review and update them periodically. If in operation at the end of the two-year period, the documents terminate once you recover your capacity to make mental health decisions. Your attending physician determines when you regain capacity.

WHAT IF I CHANGE MY MIND?

You may revoke or change your mental health advance directive and mental health power of attorney at any time, unless it is in operation. Collect and destroy the old documents and distribute any revised documents that you may have created.

ARE THERE TIMES WHEN MY MENTAL HEALTH ADVANCE DIRECTIVE WILL NOT BE FOLLOWED?

Although it will usually be followed, there are times when it will not be. Your psychiatrist or other mental health professional will follow your advance directive unless he or she believes that the treatment you requested is medically inappropriate. In such cases, he or she will transfer your care to another provider who is willing to comply with the directive. If that is not possible, you may be discharged if it is safe to do so. There may be situations when your health insurance company will not authorize payment for the treatment that you requested, which may impact your ability to get that treatment. If your condition is very serious but your advance directive prevents treatment that would keep you from harm, a court may invalidate all or part of the advance directive and allow treatment that will help you. The effect of an involuntary commitment on a mental health advance directive is unclear. To avoid problems, it is important for you to talk with your psychiatrist or attending physician about your advance directive and power of attorney before you need to use them.

WHERE CAN I GET THE FORMS I NEED?

To be valid, a mental health advance directive and mental health power of attorney must be a signed, written document and must be witnessed by two other people. You may write it in any format you wish. However, to make the process easier, the law provided a suggested format you may follow.

This form is available on the Internet at the Pennsylvania Psychiatric Society website (<http://www.papsych.org>) and The Hospital & Healthsystem Association of Pennsylvania website (<http://www.haponline.org>, under "for consumers"). Information may also be available from your treating physician, hospital, or other mental health providers or support groups.