

MENTAL HEALTH ADVANCE DIRECTIVES

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What Patients Need to Know About Mental Health Advance Directives

If you take the opportunity in advance, you have the right to direct the type of mental health treatment you want, even in the event you cannot make sound decisions due to an occurrence of mental illness. A mental health advance directive is a document that allows you to decide and write down how you would like your mental health treatment handled in the future. This brochure answers some commonly asked questions about these directives in Washington State.

What does a mental health advance directive do?

A mental health advance directive is much like a living will for health care. A person with or without a mental illness can specify how treatment decisions should be made if the person becomes unable to make sound choices due to the mental illness. Under Washington law, you may create a directive that gives someone else the legal authority to make mental health decisions for you if you are unable to make sound decisions. You can say what types of decisions you want made for you and even what those decisions should be. The person you choose to make the decision is called an agent. You can also write down instructions about the treatment you wish to receive. For instance, the directive can say what medication you do or do not want and why, or describe ways to calm you when you are upset. You can have a directive that only appoints an agent or one that only provides instructions about treatment, or a directive that does both.

When does a mental health advance directive apply?

A mental health advance directive goes into effect only if a person becomes “incapacitated” according to Washington State law. When a person is not incapacitated, that person can make decisions about mental health treatment at that time without the help of an agent or prior instructions. A person with a directive can choose in advance whether or not he or she can change or cancel the instructions in the directive if he or she becomes incapacitated. If a person with a directive chooses to not be able to change or cancel the directive on becoming incapacitated, that person may receive treatment based on the directive even if the person says he or she does not want to be treated at the time.

What does incapacitated mean?

“Incapacitated” is a legal term, which generally means that a person cannot make sound decisions about his or her care or treatment. Before a person can be declared incapacitated, certain health-care providers or a court must examine the person and decide whether he or she understands information that is needed to make decisions regarding his or her health care. If the person is found to be incapacitated, then the mental health advance directive will apply.

Who can I appoint to make mental health decisions for me?

The person you choose to make mental health decisions for you should be someone you trust. Unless the person is also your spouse, adult child, brother, or sister, you cannot pick the following people as your “agent”: your doctor, an employee of your doctor or an administrator, owner, or employee of the health-care facility in which you live or are a patient.

Do hospitals require that I have a mental health advance directive?

Hospitals do not require that you have a mental health advance directive, but hospital staff must ask if you have one. If you do have one, the hospital must write this information in your chart. A hospital cannot discriminate against a patient based on whether or not the patient has a directive.

Can I change my mental health advance directive?

The best way to change your mental health advance directive is to cancel or revoke it. To cancel or revoke your directive, you must make a statement in writing stating that you want to cancel or revoke the directive and sign it. You or your agent must give copies of the statement canceling or revoking your directive to everyone who got copies of your directive. You may be able to cancel or revoke your directive only when you have capacity, unless you chose in the directive to be able to cancel or revoke the directive when you do not have capacity. If you change your directive and make a new directive, you should give new copies to your family, doctor, attorney, agent and others that might need a copy. Your health-care provider must know about the change or it will not be effective.

Where should I keep my mental health advance directive?

You and your family should agree on a place to keep your original mental health advance directive. Copies should be given to your family members, doctor, attorney, and anyone you have appointed as an agent to make decisions for you if you become incapacitated. If you are being admitted to the hospital, you should take a copy with you.

Will hospitals and my doctor honor my mental health advance directive?

Hospitals and doctors support patients' rights to make decisions about their mental health care. They will honor mental health advance directives that meet state law requirements, medical and ethical practice standards, and policies and procedures of the hospital. Hospitals and doctors must tell you their policies on directives and whether they know of any conflict between your directive and their policies. If the policies conflict, you or your agent will have to decide whether to continue treatment even though it may not follow your directive's instructions. If the hospital or doctor cannot follow part of the directive, the rest of the directive is still valid.

What if I have a complaint concerning non-compliance with my mental health advanced directive?

If you believe your mental health advanced directive has not been honored by the hospital or your doctors, you may make a complaint concerning non-compliance with the Washington State Mental Health Division by contacting the Quality Improvement and Assurance section at 1-888-713-6010.

What if I have a living will or durable power of attorney for health care?

If you already have a living will and/or durable power of attorney for health care that applies to medical decisions, you should review what it says. The living will and durable power of attorney for medical decisions will be in effect except where they conflict with what your mental health advance directive says. To avoid confusion, you may want to consider having only one person be your agent to make health-care decisions for both mental health and medical decisions. You may also want an attorney to review how the documents fit together.

How do I prepare a mental health advance directive?

A standard form for a mental health advance directive is provided in state law under Title 71, Revised Code of Washington. You may want to involve your health-care provider and/or attorney in making a directive. If you think a directive would be a useful planning tool, contact one of the following agencies. They can assist you in finding a lawyer who will help you write a directive, in some cases for little or no fee.