



How to Create a Declaration for Mental Health Treatment

Important: This document is meant to serve only as a guide. Disability Rights Texas highly encourages you to consult with an attorney before signing a declaration.

What is a Declaration for Mental Health Treatment?

A Declaration for Mental Health Treatment (“Declaration”) is a legal document that allows you to control the mental health treatment you will receive in the future, if you cannot make treatment decisions yourself because of mental illness. A Declaration will include all of the information that you want doctors to know about you should you have a mental health crisis. Sometimes, the

Declaration is called an Advance Directive. The instructions you put into a Declaration include whether you agree or refuse to take psychoactive medication, electroconvulsive treatment, and options for emergency treatment. Each of these will be described in a later section.

Once you have created a Declaration, it is important to share it with your primary doctor, attorney-in-fact, treatment team, and anyone who you think should be aware of it. This is to ensure that you receive the treatment you request in the Declaration in the event you have a crisis.

A Sample Declaration for Mental Health Treatment can be found at the end of this handout.

Mental Health Treatments Included in your Declaration

One of the main reasons for creating a Declaration is to give you an opportunity to state what types of mental health treatments you consent to in the event you become incapable of making informed medical decisions. The first two sections address this by giving you an opportunity to state which treatments are ok to use and which ones you do not want used. The third section, although similar, is unique because it applies to emergency situations and involves different types of mental health treatment.

1. Psychoactive Medications

Psychoactive medications are drugs that a doctor prescribes to treat mental illnesses. They can also be called psychiatric medications or psychotropic medications. The medications attempt to correct behaviors associated with mental illness. Several classes of drugs fall under this category. Two commonly known ones are sedatives and antidepressants.

On your Declaration, you can say whether or not you want psychoactive medications used in your treatment. You can also state which medications you do and do not consent to. Sometimes new drugs are developed after you have made your declaration. Because of this reality, you can also include whether you consent to potential new drugs that might be developed in the future.

2. Electroconvulsive Treatment (ECT)

In addition to psychoactive medications, you can say whether electroconvulsive treatment (ECT) can or cannot be used in your treatment. When performing ECT, doctors electrically induce seizures in the hope of

“jumpstarting” your brain. Many doctors disagree as to when such a treatment should be used. Some prefer to use it after drugs and therapy, while others may use it sooner. As with psychoactive medications, you should consult a doctor to better understand the nature of such treatments in order to make the most informed decision possible.

3. Emergency Mental Health Treatment

In the event that you require emergency mental health treatment to prevent imminent harm to yourself or others, doctors and health care agencies need to react quickly in order to end the crisis. This section of your Declaration allows you to state preferences for which types of emergency treatment you receive. For purposes of the Declaration, emergency mental health treatment is limited to (1) Restraint, (2) Seclusion, and (3) Medication.

In your Declaration, you should indicate the order in which you would like for them to be used. You can also state whether you have a gender preference for who provides the emergency treatment. You also have the ability to provide other options for emergency situations, such as taking a walk, taking a nap, or going to the relaxation or sensory room

Conditions and Limitations

Under each of the above sections, you have the ability to include conditions and limitations to the treatments. For example, you can request that ECT only be used after psychoactive drugs. You could also request that your healthcare provider only use certain treatments for a set amount of time if they are ineffective. This section is especially important because of the complicated nature and potential outcomes of the treatments.

One thing you cannot change under the conditions and limitations section is the maximum amount of time (3 years) that your declaration is valid before expiration. You can, however, shorten the length of time. .

Making your Declaration Official (“Executed”)

In order for your declaration to become a valid legal document, you and two other people (witnesses) must voluntarily sign it. Once this happens, your declaration is “executed” and may be used as your treatment instructions if you are found incapable of making those decisions yourself.

First, the witnesses must watch you sign and date the document. Then, they must sign it themselves. By signing your Declaration, your two witnesses are saying in a legal way that they know you, that you knew what you were doing when you signed your Declaration, and that you were not forced in any way to sign it.

It is important to note that the law prevents some people from serving as your witnesses. The following people cannot be witnesses:

1. Your relatives by blood, marriage, or adoption;
2. Your health or residential care provider and their employees;
3. The operator of a community health care facility (such as local mental health authority) and their employees providing care to you;
4. A person entitled to a any part of your estate should you die (through a will, trust, operation of the law, etc); and
5. A person who has a claim against your estate.

When your Declaration will be Used

Your Declaration will be used if you are found unable to make your own mental health treatment decisions and, therefore, considered incapacitated. Incapacitated means that, in a guardianship proceeding or at a medication

hearing, a judge has decided that you cannot make mental health treatment decisions for yourself. If you are found incapacitated, and your Declaration becomes effective, two things happen:

1. Doctors, health care providers, and others who treat you must follow the instructions about mental health treatment as stated in your Declaration. *It is important to note that they can go against the instructions you put in your Declaration, but only in an emergency or possibly with a court order at a medication hearing.*
2. Once your Declaration becomes effective, it remains effective until you are found capable of making your own mental health treatment decisions. To be found capable again, a court must declare that you are now competent, you are released from the hospital, or a doctor evaluates you and determines that you are capable of making your own mental health treatment decisions.

Canceling your Declaration

You can cancel or execute a new Declaration if you are capable of making your own decisions about mental health treatment. You can cancel an existing declaration by:

1. Signing a statement that says you are canceling your Declaration;
2. Acting in a manner that demonstrates a specific intent to revoke the Declaration (i.e., tear up the document);
3. Informing your treating doctor that you wish to cancel your Declaration; or
4. Making a new Declaration for Mental Health Treatment

You need to inform your attending physician, the health care facilities and/or providers that you have canceled or made a new Declaration so they will know what your new wishes are. The best way to do this is in writing.

Expiration of your Declaration

Your Declaration automatically expires three years after it has been signed. It is important to note that your Declaration will not expire if, at the end of the three year term, you are incapacitated (incompetent). In a situation like that, the treatment instructions you write in your Declaration could be used for many years and only expire when you regain competence.

Changing your Declaration

If your Declaration has not been signed, you have the ability to change any portion of the document because it has not become legally binding yet. However, if your Declaration has been signed, changing it becomes a very complicated and confusing legal process. For this reason, we suggest that you cancel the Declaration completely and write a new one. Should you attempt to change your Declaration, we highly recommend that you consult with a lawyer.

Overriding your Declaration

Sometimes, physicians and health care providers can subject you to mental health treatments that are different from your Declaration.

There are two cases in which this may happen. The first case occurs when you have been ordered by a judge to receive temporary inpatient treatment because you cannot provide for your basic needs due to mental illness or are likely to cause harm to yourself or others. The second case occurs in emergency situations when the instructions on your Declaration have not been effective in treating the emergency. This power is limited and does not apply to electroconvulsive treatments.

Generally, it is good to give detailed reasons why you do or do not want a particular type of medication. Such reasoning may help to persuade a court to honor your interests.

Disability Rights Texas' goal is to make each handout useful to the general public. If you have suggestions on how this handout can be improved, please contact Disability Rights Texas at the address and telephone number shown on [DRTx's webpage](#) or e-mail DRTx at info@disabilityrightstx.org. Thank you for your assistance. This handout is available in Braille and/or on audio tape upon request. DRTx strives to update its materials on an annual basis and this handout is based upon the law at the time it was written.

Important: *This document is meant to serve only as a guide. The law changes frequently and is subject to various interpretations by different courts. Future changes in the law may make some information in this handout inaccurate. Disability Rights Texas highly encourages you to consult with an attorney about any legal claims you may have and the filing of a tort claims notice. This handout is not intended to and does not replace an attorney's advice or assistance based on your particular situation.*

DECLARATION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, willfully and voluntarily make this declaration for mental health treatment to be followed if it is determined by a court that my ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, is impaired to such an extent that I lack the capacity to make mental health treatment decisions. "Mental health treatment" means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication, and preferences regarding emergency mental health treatment.

This section is usually first in your declaration. Basically, you are saying that everything that follows is what you want done in case you require mental health treatment but are incapable of making an informed decision.

(OPTIONAL PARAGRAPH) I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

This paragraph is optional. It provides doctors and medical employees with a brief background of your mental health history as well as what to expect if you have a mental health crisis.

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:
I consent to the administration of the following medications:

Insert medications desired here.

I do not consent to the administration of the following medications:

*Insert medications **NOT** desired here.*

I consent to the administration of a Federal Food and Drug Administration approved medication that was only approved and in existence after my Declaration and that is considered in the same class of psychoactive medications as stated below:

In this section, you can consent to medications created in the future.

Conditions or limitations:

Here, expressly state any conditions or limitations you wish to place on psychoactive medications.

ELECTROCONVULSIVE TREATMENT (ECT)

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows: *Select one of the following two statements.*

I consent to the administration of convulsive treatment.

I do not consent to the administration of convulsive treatment.

Conditions or limitations:

Here, expressly state any conditions or limitations you wish to place on electroconvulsive treatment, such as when ECT may be used.

PREFERENCES FOR EMERGENCY TREATMENT

In an emergency, I prefer the following treatment FIRST:

Restraint/Seclusion/Medication. *(circle one)*

In an emergency, I prefer the following treatment SECOND:

Restraint/Seclusion/Medication. *(circle one)*

In an emergency, I prefer the following treatment THIRD:

Restraint/Seclusion/Medication. *(circle one)*

I prefer a male/female to administer restraint, seclusion, and/or medications.

Options for treatment prior to use of restraint, seclusion, and/or medications: *This may include taking a walk, taking a nap, etc.*

Conditions or limitations:

Here, expressly state any conditions or limitations you wish to place on ECT.

CONDITIONS AND LIMITATIONS

Include any conditions or limitations not in the individual sections here. This can also include instructions you have for the medical staff.

Signature of Principal (you)/Date:

STATEMENT OF WITNESSES

I declare under penalty of perjury that the principal's name has been represented to me by the principal, that the principal signed or acknowledged this declaration in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, and that I am not a provider of health or residential care to the principal, an employee of a provider of health or residential care to the principal, an operator of a community health care facility providing care to the principal, or an employee of an operator of a community health care facility providing care to the principal.

I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to and do not have a claim against any part of the estate of the principal on the death of the principal under a will or by operation of law.

Witness Signature:

Print Name:

Date:

Address:

Witness Signature:

Print Name:

Date:

Address: