



# EFE FACT SHEET – Mental Health

## ADVANCE DIRECTIVES IN ILLINOIS

### Statutory References: 755 ILCS 45/4-1; 755 ILCS 43/1-43/75

An Advance Directive is a legal document that gives you the opportunity to choose someone to make decisions about the kind of treatment and services you want to receive if you become unable to make the decisions for yourself.

#### ALERT:

- You should never sign an Advance Directive without fully understanding it.
- No one can force you to sign an Advance Directive. Because Advance Directives are legally binding, you should consider talking with an attorney before making any decisions.

Standard Advance Directive forms are available at Equip for Equality's website, [www.equipforequality.org](http://www.equipforequality.org). These exact forms are not required. Any similar form appropriate for your situation will do.

## TYPES OF ADVANCE DIRECTIVES

In Illinois there are two main types of Advance Directives used for mental healthcare purposes:

1. Power of Attorney for Health Care;
2. Mental Health Treatment Preference Declaration

*(Note: There are also other advance directives used for end-of-life medical decisions and for management of property.)*

## POWER OF ATTORNEY FOR HEALTH CARE

### Statutory Reference: 755 ILCS 45/4-1

The Power of Attorney for Health Care is the broadest of all the Advance Directives. This document gives another person, such as a family member or friend, the power to make decisions about your health care if you become unable to make decisions for yourself.

The person you choose cannot be your doctor or other healthcare worker providing your care.

A Power of Attorney for Health Care allows you to give some or all powers to the person you choose. Those powers relate to decisions about medical or mental health treatment that you would normally have the right to agree to, refuse, or stop.

The Power of Attorney for Health Care **can be changed** or discarded, regardless of your mental or physical condition.

- Amendments (changes) to a Power of Attorney must be in writing.
- A Power of Attorney for Health Care may be canceled in the following ways:
  - in writing;
  - by destroying the document; or
  - verbally, so long as a witness, 18 years of age or older, signs and dates a document confirming your decision to change or cancel the Power of Attorney.

Unless the document states differently, the Power of Attorney for Health Care is effective from the time it is written until your death (or beyond death, if an autopsy, anatomical gift, or disposition of your body is authorized).

## **MENTAL HEALTH TREATMENT PREFERENCE DECLARATION**

**Statutory Reference: 755 ILCS 43/1-43/75**

A Mental Health Treatment Preference Declaration covers three aspects of mental health treatment:

- admission to a mental health facility for up to 17 days;
- psychotropic medication; and
- electro convulsive therapy (ECT).

In the Mental Health Treatment Preference Declaration, you can state specifically what kind of mental health treatment you want, or you may choose someone, called the *attorney-in-fact*, to make these decisions for you.

The *attorney-in-fact* must make decisions based on your wishes. If you have not made clear decisions about the care you wish to receive, the *attorney-in-fact* must choose the treatment he or she, in good faith, believes is in your best interest.

However, your wishes do not have to be followed when they are contrary to a court order or in case of an emergency that endangers your life or health.

The following individuals **cannot** be your *attorney-in-fact*:

- The attending physician or mental health provider or an employee of the physician or provider, unless he or she is related to you by blood, marriage or adoption; or
- An owner, operator or employee of a healthcare facility in which you are a patient or resident, unless he or she is related to you by blood, marriage or adoption.

Two witnesses must sign the Declaration. The following individuals may not be witnesses:

- the attending physician or mental health service provider or a relative of the physician or provider;
- an owner, operator or relative of an owner or operator of a healthcare facility in which you are a patient or resident; or
- a person related to you by blood, marriage or adoption.

The Mental Health Treatment Preference Declaration becomes effective only if two physicians determine that you are no longer mentally capable of making treatment decisions (you have the power to name one of these physicians in the Declaration).

Mental Health Treatment Preference Declarations automatically expire after three years (if not earlier revoked) unless at the end of the three-year period the Declaration is in effect because you are not capable of making treatment decisions. It remains in effect until the time you become capable of making treatment decisions as determined by two physicians.

**IMPORTANT FACT!** Once a Mental Health Treatment Preference Declaration is written, signed and witnessed, **it may be canceled only in writing and only if two physicians determine that you are able to make treatment decisions.** Since a Power of Attorney for Health Care can cover mental health treatment and is more easily canceled, many people prefer it to the Mental Health Treatment Preference Declaration.



### **DO YOU HAVE A QUESTION?**

Contact Equip for Equality (all services are free of charge):  
 800.537.2632 (voice) or 800.610.2779 (TTY)  
[Contactus@equipforequality.org](mailto:Contactus@equipforequality.org)  
[www.equipforequality.org](http://www.equipforequality.org)

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities.

This publication was made possible by a grant from the Center for Mental Health Services. The contents of this publication are the sole responsibility of the authors and do not represent the official views of the Center for Mental Health Services.

©Equip for Equality, 2005 Revised: 09/19/2008