



Focus on Mental Health Awareness

Did you know that May is “Mental Health Awareness Month? Don’t feel bad if you missed it. Too little thought is given to the profoundly disabling impact of mental illness. Most people have some awareness of the need to plan for health care decision-making by having Advance Directives (Health Care Power of Attorney and Living Will). But most people are not aware that since 2004, Pennsylvania law authorizes the creation of Mental Health Advance Directives (MHADs).

MHADs give individuals with mental illness the ability to plan for the specialized types of supports and services they may need if they should become incapacitated due to mental illness. There are several good reasons to consider including MHADs in your planning:

- Promote your individual autonomy and empowerment.
- Protect you from receiving treatment that you may not want or in a setting you may not want; and
- Improve communication with your mental health providers and family members at a time when you may not be able to express your wishes.

There are two MHADs that are analogous but not identical to Health Care Advance Directives - a Mental Health Care Declaration and a Mental Health Power of Attorney. They can be separate documents or in a combined form. The latter being available in the statute (20 Pa C.S. § 5808). Under Pennsylvania law, individuals who create MHADs have an affirmative duty to let their mental health care providers know and providers must ask their patients if they have them.

A Mental Health Care Declaration (MHCD) is comparable to a Living Will. It allows a competent adult to control his or her mental health care through instructions written in advance regarding the initiation, continuation, or refusal of mental health treatment. The Declarant must be at least eighteen years old (or an emancipated minor) and cannot be incapacitated or severely mentally disabled. The MHCD must be signed by the Declarant (or by mark if they cannot sign) in the presence of two witnesses and dated. Unlike a Living Will, which remains in effect indefinitely, the law requires an individual to execute or amend his or her MHCD at least every two years. However, if the Declarant is incapacitated at the two-year renewal date, the document continues in effect until the Declarant regains capacity.

A Mental Health Power of Attorney (MHPOA) is like a Health Care Power of Attorney and allows a competent adult (the “Principal”) to name an Agent to make mental health care decisions on behalf of the principal, if he or she should become incapacitated. A MHPOA may use the statutory form or any other form so long as it identifies the principal, appoints an Agent, and declares that the principal intends to authorize the Agent to make mental health care decisions on his/her behalf. The requirements for who can create an MHPOA and the execution are the same as for the MHCD. However, there are some limitations on the Agent’s power. An Agent acting under a valid MHPOA cannot consent to electroconvulsive therapy (ECT), experimental procedures or to participation in a research study unless the document expressly authorizes these actions.

A signed MHPOA is only effective once it is given to the patient's mental health care provider and remains effective even if the principal becomes incapacitated. The principal may revoke the MHPOA at any time unless he/she has been involuntarily committed. In the case of involuntary commitment, revocation is only permitted if a psychiatrist or psychologist evaluates the Principal and finds him or her capable of making mental health decisions.

MHADs offer several benefits in that they can allow the Declarant/Principal to:

- 1) Specify treatment preferences, such as a choice of facility or medication(s);
- 2) Indicate personal preferences, i.e., religious, dietary, activities.
- 3) Nominate who should have temporary custody of children.
- 4) List which family members or friends should (or should not) receive information; and
- 5) Provide any other information that may be relevant to his/her mental health treatment.

Considering your options when it comes to your mental and physical health, as well as that of your loved ones, is difficult at any stage. However, it is an extremely important process which can help you to safeguard your physical, mental, and financial future, as well as that of your family. Take the steps now to plan. It will provide peace of mind for tomorrow.

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