

Address Mental Health Care in Your Estate Plan with a Psychiatric Advance Directive

One aspect of estate planning that may not always get the attention it should is addressing physical incapacity. Your estate plan should include detailed instructions in the event that you become unable to make critical decisions for yourself. You can do this by including health care powers of attorney or advance directives in your estate plan.

But what if your family has a history of mental illness? Is there a way to memorialize your wishes in the event of a psychiatric episode rendering you unable to make decisions about your treatment? A psychiatric advance directive (PAD) may be the answer.

Two documents to address physical incapacity

There are two documents available to address physical incapacity: an advance health care directive (sometimes referred to as a “living will”) and a health care power of attorney (HCPA). Some states allow you to combine the two in a single document.

An advance directive expresses your preferences for the use of life-sustaining medical procedures — such as artificial feeding and breathing, surgery, invasive diagnostic tests, and pain medication — specifying the situations in which these procedures should be used or withheld. For example, you might instruct health care providers to withhold treatment in the event of a coma or permanent brain damage with little or no chance of recovery or include a “do not resuscitate” order.

A document prepared in advance can’t account for every scenario or contingency, however, so it’s wise to pair an advance directive with an HCPA. This allows you to authorize your spouse or other trusted representative to make medical decisions or consent to medical treatment on your behalf when you’re unable to do so. An HCPA can include specific instructions to your representative, as well as general guidelines or principles to follow in dealing with complex medical decisions or unanticipated circumstances.

Consider a PAD

Many states allow generic HCPAs and advance directives to address mental as well as physical health issues. But some states limit or prohibit mental health treatment decisions by general health care representatives. Around half of the states have PAD statutes, which authorize special advance directives to outline one’s wishes with respect to mental health care and appoint a representative to make decisions regarding that care.

PADs may address a variety of mental health care issues, including:

- Preferred hospitals or other providers,
- Treatment therapies and medications that may be administered,
- Treatment therapies and medications that *may not* be administered, such as electroconvulsive therapy or experimental drugs,
- A statement of general values, principles or preferences to follow in making mental health care decisions, and

- Appointment of a representative authorized to make decisions and carry out your wishes with respect to mental health care in the event you're incapacitated.

Although requirements vary from state to state, to be effective, a PAD must be signed by you and your chosen representative, and in some states by two witnesses. Be sure to discuss the terms of the PAD with your family, close friends, physician and any mental health care providers. To ensure the PAD is available when needed, provide copies to all the above persons, keep the original in a safe place and inform your family of its location.

Gather the facts

As mentioned, PADs are available in around half of the states. If you're concerned about mental health, for example, if it runs in your family, check with your state to see if it's an option. If not, consider using generic advance directives and HCPAs to address mental health care.