

WHAT KIND OF LIABILITY DO I INCUR FOR CARRYING OUT THE PREFERENCES OF PERSONS WITH PSYCHIATRIC ILLNESSES, AS EXPRESSED THROUGH THEIR ADVANCE DIRECTIVES?

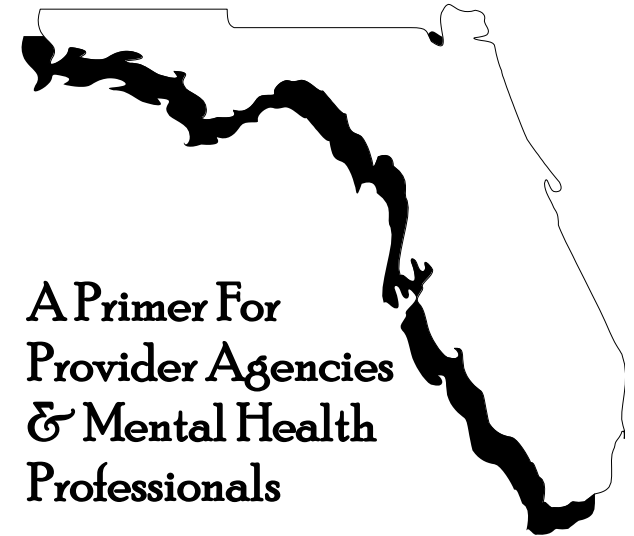
Facilities and professionals have immunity under the law when honoring psychiatric Advance Directives, in good faith and in accordance with Chapter 765, FS.

- A health care facility or provider is not subject to criminal prosecution or civil liability and will not be deemed to have engaged in unprofessional conduct, as a result of carrying out a health care decision made in accordance with the provisions of the law. [765.109(1), FS 2002]
- The Health Care Surrogate who makes a health care decision on a person's behalf, is not subject to criminal prosecution or civil liability for such action. [765.109(1), FS 2002]

HOW CAN I OBTAIN MORE INFORMATION ABOUT MY RESPONSIBILITIES TO HONOR A PERSON'S MENTAL HEALTH ADVANCE DIRECTIVES?

Concordia Behavioral Health – P.O. Box 431403, Miami FL 33243

Mental Health Advance Directives



The Florida Legislature has passed laws regarding the use of Advance Directives, including Mental Health Advance Directives. They are contained in Chapter 765, Florida Statute.

LEGISLATIVE INTENT

In enacting these laws, the Legislature, found the following:

- Every competent adult has the right of self-determination regarding decisions about his or her own health, including the right to choose or refuse medical treatment
- This right is subject to certain interests of society, such as the protection of human life and the preservation of ethical standards in the medical profession
- To be sure that rights are not lost by later mental incapacity, a person can execute a document naming another person to direct his or her treatment upon his or her incapacity
- A person's loss of ability to consent or refuse to consent to treatment doesn't take away any other rights or responsibilities protected by law
- The right to make health care decisions must be returned to a person as soon as the capacity to make such decisions has been regained
- Health care professionals and providers must learn about advance directives and their responsibility to honor person's preferences

WHAT DOES THE CURRENT LITERATURE SAY ABOUT MENTAL HEALTH ADVANCE DIRECTIVES?

The July 2003 issue of Psychiatric Services, published by the American Psychiatric Association, indicates that Psychiatric Advance Directives are an emerging method of treatment planning for adults with serious and persistent mental illnesses. These Directives have the potential to improve treatment involvement and outcomes and to reduce hospitalization and service costs. For the documents to be used and

to be effective, clinicians must recognize and honor the treatment preferences specified by service recipients.

WHO IS ELIGIBLE TO CREATE A MENTAL HEALTH ADVANCE DIRECTIVE?

Any person who is legally competent and has capacity can prepare an Advance Directive. Persons not declared incapacitated through judicial proceedings are presumed to be competent to prepare Advance Directives.

It is not the ultimate quality of decisions that determines competency; it is the ability to understand related facts and make reasoned choices. Similarly, incapacity cannot be inferred from the person's voluntary or involuntary hospitalization for treatment of a mental illness.

WHEN DOES A MENTAL HEALTH ADVANCE DIRECTIVE TAKE EFFECT?

As long as a person remains capable of making health care decisions, he or she must be the one to give consent to treatment. A provider who ignores a competent person's objections, and provides treatment based on the provider's order, is inviting legal charges of battery.

Loss of capacity triggers use of the Advance Directive. Incapacity or Incompetence to consent means that a person has been found by a doctor to be physically or mentally unable to give well-reasoned, willful and knowing medical and mental health treatment decisions.

Authority of the Health Care Surrogate begins with the doctor's determination that the person lacks capacity and stays in effect until a doctor determines the person has regained his or her capacity to make decisions

A provider who administers treatment to a person who is incapacitated, short of imminent danger, and without the consent of a legally authorized

decision-maker is also inviting legal charges of battery.

CAN I STILL ORDER EMERGENCY TREATMENT IN CASE OF IMMINENT DANGER?

Yes. Assuming all federal and state requirements are fully met for initiating, monitoring, and evaluating the use of such emergency measures.

WHAT ARE MY RESPONSIBILITIES AS A MENTAL HEALTH PROFESSIONAL /PROVIDER?

A health care facility must provide to each person written information concerning the person's rights about Advance Directives and the facility's policies respecting these rights. The facility must document in the person's medical records whether or not the person has executed an Advance Directive.

If a physician determines the person lacks capacity, it must be written in the person's medical record. The Health Care Surrogate must be notified by the facility in writing that his or her authority under the Advance Directive is in effect.

A person who lacks capacity to make well-reasoned, knowing and willful decisions about his or her own mental health treatment must be on involuntary admission status to preserve the person's due process rights.

If a facility is unwilling to carry out the patient's wishes or the treatment decisions of the Surrogate because of moral or ethical beliefs, within 7 days, it must either:

1. Transfer the person to another provider & pay for the cost of the transport, or
2. Carry out the person's wishes or those of the Surrogate.

