

Mental Health

Advance Directives

2003



What is an Advance Directive?

- Mental Health Advance Directive is a legal document that allows a you to state your preferences regarding mental health care before a mental health crisis occurs when you may be unable to understand treatment choices and make decisions.
- Family, friends, and mental health personnel may provide input or information to help your make decisions, but you have the final say so as to what goes into the advance directive form. The influences of others, as beneficial as they may seem, may not be necessarily what you truly want for your treatment options.



What is an Advance Directive?

(continued)

- An Advance Directive should name a Health Care Surrogate to make mental health care decisions for you at some future time if you are not able to make your own decisions.
- You may also name an Alternate Surrogate to assume these duties if the original surrogate is unwilling or unable to perform his or her duties.
- If neither the Surrogate or the Alternate is able or willing to serve, the health care facility can appoint a proxy to carry out your preferences. A proxy is limited to a guardian, spouse, adult child, parent, adult relative or close personal friend and must be designated in this order of listing.



What is an Advance Directive?

(continued)

A competent person can change or revoke an Advance Directive at any time:

- ⑩ By a signed & dated written statement
- ⑩ By destroying the Advance Directive
- ⑩ By telling others you want to change or revoke
- ⑩ By doing a new Advance Directive

You may also state a time of termination on the Advance Directive.

An Advance Directive does not:

- ⑩ Require a specific form.
- ⑩ Need to be prepared by an attorney
- ⑩ Require a notary for signature of the person, witnesses, or health care surrogate.



Why Have an Advance Directive?

A Mental Health Advance Directive:

- ⑩ Is a great way for you to manage your care and advocate for yourself.
- ⑩ Allows you to plan now for a future time when your ability to make decisions may be temporarily lost. Treatment choices are made now but acted on in the future.
- ⑩ Allows you to choose a trusted individual to speak on your behalf



Why Have an Advance Directive? (continued)

- ⑩ The Health Care Surrogate you choose will most likely be appointed by the court as your guardian advocate under the Baker Act, if you need one.
- ⑩ If you ever have a guardian appointed by the court, the Health Care Surrogate you named will continue to make all health care decisions for you, unless the court changes the Surrogate's authority.



Capacity

You must be stable and have the capacity to prepare an advance directive

Loss of capacity triggers use of the Advance Directive. As long as you remain capable of making health care decisions, you must be the one to give or refuse consent to treatment.

A provider who ignores your objections to certain treatment is inviting legal charges of battery.

A provider who administers treatment to a person who is incapacitated, short of imminent danger, without the consent of a legally authorized decision-maker is also inviting legal charges of battery.



Incapacity

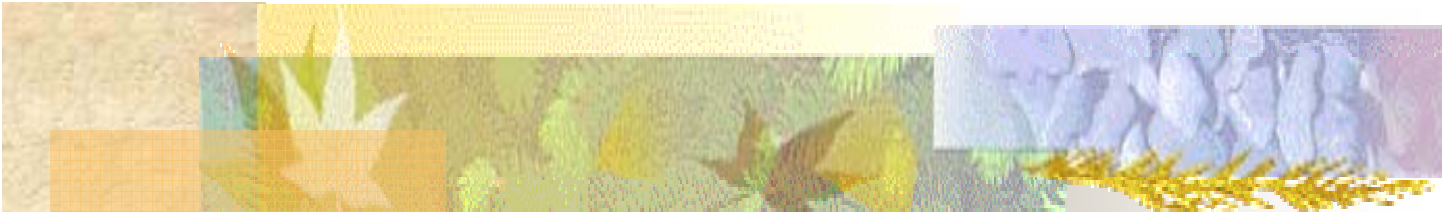
- You are presumed to be capable of making your own mental health care decisions unless determined to be incapacitated.
- Incapacity or Incompetence means that a person has been found by a doctor to be physically or mentally unable to give a well-reasoned, willful and knowing health care decision.
- If you are found to lack capacity, it must be written in your medical record.
- The Health Care Surrogate is then notified by the facility in writing that his or her authority under the Advance Directive is in effect.



Incapacity

(continued)

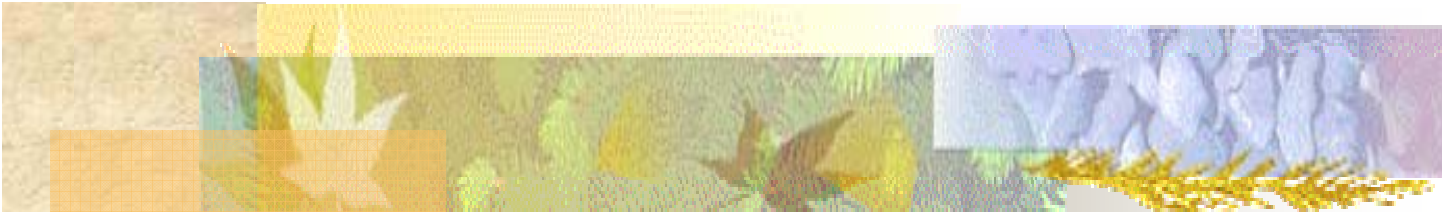
- Authority of the Health Care Surrogate begins with the doctor's determination that you lack capacity and stays in effect until a doctor determines you have regained your capacity to make decisions.
- Lack of capacity to make health care decisions is not an indication that you lack capacity for any other purpose.



Advance Directives and the Baker Act

Voluntary or Involuntary?

- A person on voluntary status is able to make his or her own treatment decisions – including the right to refuse treatment.
- If lacking capacity to consent or refuse consent to treatment, the person must be placed on involuntary status so his due process rights can be protected and the Health Care Surrogate will be notified to make the decisions indicated by the person in the Advance Directive.
- The facility must petition the court to appoint the Health Care Surrogate as the person's Guardian Advocate.



What is a Health Care Surrogate?

- A Health Care Surrogate is the person you choose to consent to treatment included in your Advance Directive or the decisions which he or she believes you would have made under the circumstances if you were capable of doing so.
- The Health Care Surrogate can also access your clinical records and consent to the release of information and medical records to appropriate persons, and apply for public benefits for you.



What is a Health Care Surrogate? ?(continued)

Unless you give the Surrogate permission in writing or the Surrogate gets the court's permission, the Surrogate can't consent to:

- Electro-convulsive therapy (ECT)
- ⑩ Experimental treatments
- ⑩ Abortion
- ⑩ Sterilization, or
- ⑩ Psychosurgery.

The Surrogate also cannot have you admitted to a facility on a voluntary basis. However, if the you are admitted on an involuntary basis, the Surrogate may make treatment decisions for you, if you are determined to be incapacitated.



Choosing a Good Health Care Surrogate

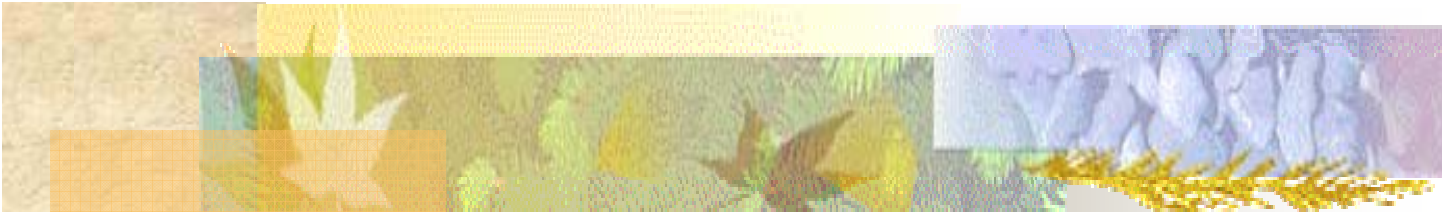
- If you don't name your own Health Care Surrogate, the person who may ultimately decide what treatment you receive may not be a person you trust to carry out your wishes.
- The Health Care Surrogate and Alternate you choose for carrying out your wishes should be people you know well and trust with this responsibility.
- The person chosen should be someone who will only consent to treatment you desire when competent and have included in your Advance Directive.



Choosing a Good Health Care Surrogate (continued)

You should not be pressured in any way to name a specific person as your Health Care Surrogate or Alternate. The decision is yours alone. The person should be:

- ⑩ A competent adult, able to understand and willing to accept the responsibility
- ⑩ Easy to contact and reasonably available to be involved in your treatment
- ⑩ Capable of advocating for you,
- ⑩ Able & willing to speak with health care providers, and
- ⑩ Able to understand the health care information provided in order to make decisions.



Choosing a Good Health Care Surrogate (continued)

The person chosen to be the Health Care Surrogate or Alternate should not be:

- ⑩ An employee of DCF,
- ⑩ A facility administrator,
- ⑩ A member of the Florida Local Advocacy Council, or
- ⑩ A mental health professional

because these persons are not authorized to be later appointed by the court as Guardian Advocates.



How to be an Good Health Care Surrogate

Be knowledgeable

- ⑩ Know your role
- ⑩ Represent the wishes of the person on whose behalf you are acting
- ⑩ Consent to or refuse treatment based on those wishes, not your own
- ⑩ You are not a “figurehead”, signing off on the provider’s decisions!

Understand your authority and responsibility

- ⑩ Read the Advance Directive of the person you are representing
- ⑩ Discuss treatment options with that person to familiarize yourself with the person’s general and specific wishes



How to be an Good Health Care Surrogate (continued)

Don't be afraid to ask questions

- ⑩ You have the right to get information from the provider about the person you are representing.
- ⑩ Get as much information as needed to make fully informed decisions

Ask for full explanations

- ⑩ If there is anything that you don't understand, ask staff to explain them.
- If you feel uncomfortable – like you don't have “the whole picture”, say so! Don't be pushed into a decision before you feel you have the whole picture... just as you wouldn't make a decision for yourself before you felt you had all the information you needed



How to be an Good Health Care Surrogate (continued)

Be Firm and Persistent

- ⑩ Don't be bullied
- ⑩ Don't trust phrases like, "Trust me..."
- ⑩ Don't hesitate to insist that you be fully heard
- ⑩ Don't be afraid to argue for what the person is entitled to!

Keep Your Cool

- ⑩ Getting upset and/or yelling only alienates providers, undermines your authority and credibility, and decreases your effectiveness as an advocate



The Provider's Role

A health care facility must provide to you:

- ⑩ Written information concerning your rights about advance directives
- ⑩ Facility policies respecting these rights,

The facility must document in the your medical records whether or not you have executed an Advance Directive.



The Provider's Role

(continued)

- A health care provider that refuses to comply with your Advance Directive, or the treatment decision of your Surrogate has to make reasonable efforts to transfer you to another facility that will comply with your directive or treatment decisions.

- If a facility is unwilling to carry out your wishes or the treatment decisions of your Surrogate because of moral or ethical beliefs, within 7 days, it must either:
 1. Transfer you to another provider & pay for the cost of the transport, or
 2. Carry out your wishes or those of your Surrogate.



Review of a Health Care Surrogate's Decisions

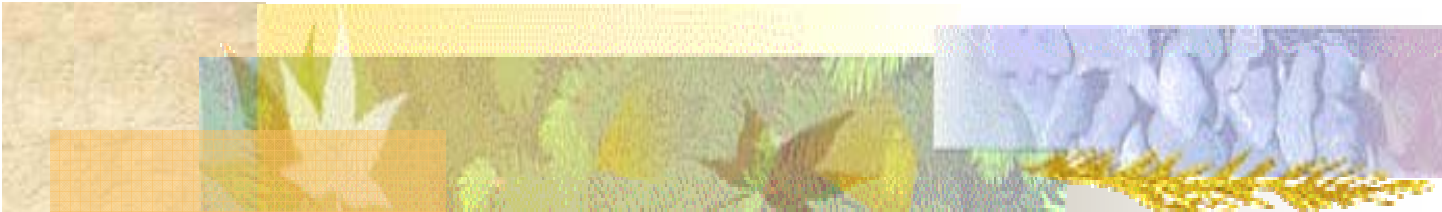
Your family, the health care facility, the physician, or any other interested person affected by the Surrogate's decisions can ask the court to intervene if:

- Decisions are not in accord with your known desires;
- ⑩ The Advance Directive is vague
- ⑩ The Surrogate was not properly named or the designation of the Surrogate has been revoked;
- ⑩ The Surrogate has failed to perform his or her duties or the Surrogate has become incapable of serving due to illness or incapacity;
- ⑩ Surrogate has abused powers
- ⑩ You have sufficient capacity to make your own health care decisions



Mental Health Advance Directive

- Advance planning does not always anticipate everything you will want or need at a future point in time or it may change after you sign an Advance Directive.
- Advance Directives are not the solution to all problems with treatment planning but it will guide your Health Care Surrogate to only consent to treatment you wish and to refuse interventions you object to.
- Except under the most extreme circumstances, providers must honor these choices unless they seek court action to overturn these decisions.



Mental Health Advance Directive (continued)

Make sure the Advance Directive can be located in case of an emergency.

Consider putting it on file with:

- ⑩ Health Care Surrogate/Alternate
- ⑩ Family
- ⑩ Case manager
- ⑩ Mental health facility
- ⑩ Others?

You can change the form we will be using today to better reflect your choices. A section can be crossed out (with your initials) and pages can be added to include choices not included in the printed form.



Mental Health Advance Directive (continued)

If your choices in an advance directive are not honored by a provider, you should contact the Advocacy Center for Person's with Disabilities whose toll-free telephone number will be on the back of your ID card.