

Nebraska Mental Health Advance Directive FAQ

LB 247, passed in 2020, establishes the Advanced Mental Health Directives Act to address illness-induced treatment reluctance. An Advance Mental Health Care Directive allows an individual to provide preferences and other meaningful instructions for mental health care/treatment. If an individual chooses to have an Advance Mental Health Care Directive, it allows the opportunity to outline instructions for mental health treatment when a person is in crisis or loses capacity to make their own mental health care decisions.

1. Can I write a legally-binding advance mental health care directive?

Yes. Nebraska's Advance Mental Health Care Directives Act allows you to state your wishes regarding your mental health care decisions if you lose capacity to make those decisions yourself. The advance mental health care directive is to be in a form that complies with the Act. An example is included in the statute <https://nebraskalegislature.gov/laws/statutes.php?statute=30-4415> and is available [here](#). The form is not mandatory but is helpful because you must in any event follow the formalities listed in the statute (see question 3 below).

2. Can I write advance instructions regarding psychiatric medications and/or hospitalization?

The Advance Mental Health Care Directives Act does allow you to write advance instructions for your psychiatric care in a freestanding document. If there are particular matters that you wish to make clear to your treating physicians, it is advisable to discuss them with him/her and document them in the directive.

3. Does anyone have to approve my advance instructions at the time I make them?

No. However, you must comply with the following formalities for your directive to be valid. (1) It must be in writing; (2) include whether you wish to revoke the directive at any time or whether it remains irrevocable during periods of incapacity; (3) that you are aware of the nature of the directive and that you signed it freely and voluntarily; (4) it must be dated; (5) you must sign it in the

presence of two disinterested adults or a notary who is not your attorney in fact. The simplest way to comply with these requirements is to use the suggested form.

4. Can I appoint an attorney in fact to make mental health decisions for me if I lose capacity to make these decisions myself?

Yes, you can execute a health care power of attorney. Your attorney in fact must be someone other than your attending physician; a member of your mental health treatment team; a non-relative employee of your attending physician or mental health treatment team; a non-relative who is the owner, operator, or employee of health care provider in or of which you are a patient or resident; and non-relative who already acts as an attorney in fact for ten or more people. The advance mental health care directive is binding upon your attorney in fact. Please see the following link for the Nebraska Supreme court forms site where the Power of Attorney templates are located:

https://supremecourt.nebraska.gov/forms?title=&field_form_number_value=&field_form_type_tid=All&field_form_category_tid%5B%5D=236&field_language_tid=288&=Apply

5. Is there any rule that says that I can only make advanced instructions, only appoint an attorney in fact, or that I must do both?

No. Understand that there will be limits if both a directive and a health care power of attorney are not executed.

6. Before following my Advance Mental Health Care Directive, would my mental health care providers need a court to determine I am not competent to make a certain decision?

No. Your directive becomes active when you lose capacity.

You can also designate a different point at which the directive becomes active by describing the circumstances in the directive. You can also designate a physician to be involved in that determination.

7. How long does my Advance Mental Health Care Directive remain valid?

Your directive remains valid until revoked or it expires according to terms that you include in the directive, whichever is earlier. You may direct that it be irrevocable during periods of incapacity.

8. Who should I give my Advance Mental Health Care Directive to?

The only way that your providers will know what your choices are is if you give them your Advance Mental Health Care Directive. You should also give copies to your treating physician, attorney in fact, family members, or other people that would be notified in the event of a crisis. Keep the original in a safe place, and be sure that someone who would be told of any crisis can get the original. You may wish to carry a card in your wallet that states that you have an Advance Mental Health Care Directive and who should be called in the event that you lack capacity to make mental health care decisions. Include that person's phone numbers, and also the name and phone number of another person in case the first person is not available. Remember that if you create a new Advance Mental Health Care Directive you must be sure that everyone has copies of the most recent version. Wallet card forms can be found at the end of this document.

9. Will health care providers follow my instructions?

There may be times that health care provider does not follow your instructions. Some examples are a provider cannot in good conscience comply with your instructions, the instructions are against accepted clinical or medical practice, the policies of the provider, the services are not covered by insurance, or because the treatment is physically unavailable. It is very helpful to discuss your instructions with your provider when you make your Advance Mental Health Directive, so that you know whether they will be able to follow your instructions.

Your health care provider will follow your instructions given when you have capacity even if they are different than what is in your directive.

10. May I make changes to my Mental Health Advance Directive?

You may change your Mental Health Advance Directive. If you complete a new Mental Health Advance Directive and do not revoke your original directive, the

new provisions will be followed, as will those in the original directive that have not been addressed in the new document.

You may also include provisions regarding your ability to revoke the directive.

11. How does a Mental Health Advance Directive affect involuntary commitment?

The involuntary commitment is not affected by having an Advance Mental Health Care Directive. The preferences expressed in your directive may assist guiding the providers in your treatment.

12. What types of instructions should I include?

A Mental Health Advance Directive is a way to communicate a lot of information to your provider. You may wish to include your choices about different treatment options such as medications; electro-shock therapy; crisis management; preference in treatment facilities and care providers; alternatives to hospitalization if 24-hour care is necessary; emergency interventions; provisions of trauma-informed care and treatment; who treatment information can be disclosed to; individuals who are prohibited from visiting; and any other instructions or preferences for mental health care. In addition, you may say who you want informed in the event of a crisis, write down your dietary choices, past treatment history, and any other information that you want to be considered while you seek treatment.

13. Who can I contact to assist me in completing the MH AD?

If you cannot afford a private attorney, please click on the link below for a list of potential resources:

<https://supremecourt.nebraska.gov/self-help/legal-resources-information>

14. Who should I choose to serve as my attorney in fact?

Choose someone who is an adult, you trust to speak to, can make good decisions for you, can make quick judgments under pressure, who is well informed about their responsibilities, knows what decisions you want made, will make the decisions that you wish even if it isn't what he or she would choose for

themselves, and ask questions if they don't understand a situation or an answer. Be sure to ask the person if he or she wants to serve as your attorney in fact and if he or she fully understands the responsibilities.

15. Do the optional sections on the form need to be completed?

The optional sections do not need to be completed for the directive to be valid.

16. What should I do if I want my providers to share my mental health treatment information during the time my Advance Mental Health Care Directive is activated?

Talk to your providers and/or legal representative about signing an authorization that complies with HIPAA and sets forth what information is to be shared with whom.

17. Where do I find the definition of terms related to the mental health advance directive?

Click on the following link for pertinent definitions:

<https://nebraskalegislature.gov/laws/statutes.php?statute=30-4404>

Healthcare Wallet Cards

Cut out and complete the cards below. Fold the cards in half and put one card in your wallet or purse, along with your driver's license or health insurance card. You may keep the other cards on your refrigerator, in your vehicle glove compartment, take a picture of it with your phone, or put it in another easy-to-find place.

Attn: Healthcare Providers

My name is _____

I have created the following healthcare documents (check one or more, as appropriate)

____ Advance Directives document for my general healthcare and treatment

____ Advance Directives document for my mental healthcare and treatment

____ Healthcare power of attorney

____ Other: _____
_____ (FOLD HERE) _____

My address and phone number are:

Contact: _____

Phone number: _____

Contact: _____

Phone number: _____

Phone number: _____

Attn: Healthcare Providers

My name is _____

I have created the following healthcare documents (check one or more, as appropriate)

____ Advance Directives document for my general healthcare and treatment

____ Advance Directives document for my mental healthcare and treatment

____ Healthcare power of attorney

____ Other: _____
_____ (FOLD HERE) _____

My address and phone number are:

Contact: _____

Phone number: _____

Contact: _____

Phone number: _____

Phone number: _____

Attn: Healthcare Providers

My name is _____

I have created the following healthcare documents (check one or more, as appropriate)

____ Advance Directives document for my general healthcare and treatment

____ Advance Directives document for my mental healthcare and treatment

____ Healthcare power of attorney

____ Other: _____
_____ (FOLD HERE) _____

My address and phone number are:

Contact: _____

Phone number: _____

Contact: _____

Phone number: _____

Phone number: _____

Attn: Healthcare Providers

My name is _____

I have created the following healthcare documents (check one or more, as appropriate)

____ Advance Directives document for my general healthcare and treatment

____ Advance Directives document for my mental healthcare and treatment

____ Healthcare power of attorney

____ Other: _____
_____ (FOLD HERE) _____

My address and phone number are:

Contact: _____

Phone number: _____

Contact: _____

Phone number: _____

Phone number: _____