

Conclusion

A person never knows when they may have a medical emergency, be diagnosed with a terminal disease, or suffer a mental health crisis. Making your wishes known beforehand in a mandate, living will and/or advance directive for mental health treatment is always a good plan.

For more information

- ▶ **Louisiana State Bar Association**
www.lsba.org/goto/consumerbrochures
- ▶ **Mental Health Advocacy Services**
<https://mhas.louisiana.gov/documents/>
1-800-428-5432
- ▶ **Office of Behavioral Health - Louisiana**
<https://ldh.la.gov/page/100>
1-800-424-4399

This brochure, prepared by the Public Information Committee of the Louisiana State Bar Association, is issued to inform and provide general information, not to advise. If you have a specific legal problem, you should not try to apply or interpret the law without the aid of an attorney who knows the facts because the facts may change the application of the law.

Courtesy LSBA

IS THERE A POWER OF ATTORNEY FOR MENTAL HEALTH TREATMENT?

*A Guide to
Advance Directives
for Mental Health
Treatment*



For further information, call or write to:
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New Orleans, LA 70130-3404
(504)566-1600

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Mentally Ill Persons and Mental Health Law

Of Louisiana's 4.6 million residents, close to 39.1% (715,000) of adults reported symptoms of anxiety or depression. Over 200,000 live with a serious mental illness on a daily basis.

Behavioral Health Law is a specialized set of laws that can be found in the Louisiana Revised Statutes (La. R.S. 28:1-28:213 and in Children's Code Arts. 1401-1471).

While these laws do not specifically define mental illness, they do define a "Person who has a mental illness" as any person with a psychiatric disorder which has substantial adverse effects on his/her ability to function and who requires care and treatment.

The Mental Health Advocacy Service (1-800-428-5432 and the Office of Behavioral Health can explain advance directives, provide forms, and answer other mental health-related questions.

Advanced Directives

An Advanced Directive for Mental Health Treatment is a document that allows YOU to make decisions in advance about your mental health treatment.

The advanced directive can be in the form of a Declaration (which sets forth preferences or instructions and which can include consent or refusal of mental health treatment), an Appointment of a Representative (to make mental health decisions), or both (in which the representative will act for the principal).

Regardless of the form of the advanced directive, Your instructions cannot limit the state's authority to take you into protective custody, or to involuntarily admit or commit you to a treatment facility. Your instructions can be disregarded in an emergency if your instructions have not reduced the behavior that has caused the emergency. If a representative is appointed, the representative must be a competent adult who must accept the appointment in writing and may withdraw by giving notice to the principal.

The person you appoint must act consistently with your wishes as expressed in the advanced directive. If your wishes are not known, the representative must make decisions in your best interest.

The advance directive will not be valid unless it is signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature. Also, the advanced directive must be accompanied by a written mental status examination performed by a physician or psychologist attesting to your ability to make reasoned decisions about your mental health treatment. The advance directive will continue in effect for 5 years unless you become incapable. If you become incapable, the directive will continue in effect until you are no longer incapable.

You have the right to revoke the document in whole or in part at any time you have not been determined incapable by two physicians. However, the revocation is not effective until it is communicated to your treating physician or other provider.

Mandate (Power of Attorney) v. Advanced Directive

While the Louisiana Medical Consent Law (La. R.S. 40:1159.1 et seq.) governs consent for surgical and medical treatment and who can give such consent, the care and treatment of a person with a mental illness is specifically excluded from this law. Therefore, a health care mandate or power of attorney is not valid for mental health treatment decisions made in those circumstances covered by La. R.S. 28:1-28:213.

The instructions that YOU include in the directive will be followed only if two physicians, who have personally examined you, believe you are "incapable" and have signed a written certificate, which is then made a part of the medical record.

Behavioral Health Law presumes that patients are competent or capable of making decisions. Being determined "incapable" means that, due to any infirmity, you are currently unable to make or communicate reasoned decisions regarding your mental health treatment.

Some examples of mental health treatment are psychoactive medication, short-term (not to exceed 15 days) admission to a treatment facility, electroshock therapy, and outpatient services.