



**ADVANCE HEALTH CARE  
DIRECTIVES FOR PLANNING  
MENTAL HEALTH CARE**

**DISABILITY RIGHTS MAINE**


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**WWW.DRME.ORG**

# WHAT IS AN ADVANCE DIRECTIVE FOR MENTAL HEALTH CARE?

- **Instructions you give about mental health care you would like to receive when you are unable to make decisions for yourself;**
  - **The naming of someone else to make health care decisions for you, or**
  - **Both**
- 

# WHY DO I WANT AN ADVANCE DIRECTIVE?


**You can tell mental health providers what treatment you want and don't want in situations when you are unable to speak for yourself.**



# WHEN CAN I MAKE AN ADVANCE DIRECTIVE?

**You can make an advance directive at any time while you have “capacity.”**

**“Capacity” means that an individual:**

- **Understands their diagnosis;**
  - **Understands the risks, benefits and alternative to proposed health care;**
  - **Understands the consequences of not receiving care;**
  - **Can make and communicate health care decisions; and**
  - **Understands the consequences of naming an agent to make health care decisions.**
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# DO I HAVE TO PROVE MY CAPACITY WHEN I WRITE AN ADVANCE DIRECTIVE?

**No. But because your capacity can be questioned later, you *can* attach a statement to your advance directive. It should be from a doctor or psychologist stating you have capacity to write an advance directive.**

**We have provided a form for this.**



# HOW DO I CREATE AN ADVANCE DIRECTIVE?

- **By giving instructions that can be oral or in writing. (We recommend that you put instructions in writing.)**
  - **By naming someone else to make decisions for you. This must be in writing and can be combined with instructions. The person named to make decisions is called an “agent.”**
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# TO WHOM DO I GIVE ORAL INSTRUCTIONS?



**Oral instructions must be given  
either to:**

- **A health care provider; or**
- **A person who would legally  
make decisions for you when  
you are not able to make them.**


# WHY NOT JUST DO ORAL INSTRUCTIONS? ISN'T IT EASIER?

**Although oral instructions are legal, it is best to put them in writing. This will cut down the risk that people misunderstood you or forgot what you said.**





# MUST WRITTEN INSTRUCTIONS BE ON A SPECIAL FORM?

- **No special form is required.**
  - **Written instructions don't have to be signed by witnesses.**
  - **We recommend you have the instructions witnessed. We have also provided a form you may use.**
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# DO I NEED A SPECIAL FORM TO NAME AN AGENT?

- **It must be in writing;**
- **It must be witnessed by two adult competent witnesses; and**
- **Neither of the witnesses may be the person named as the agent in the document.**

**We have provided a sample form.**

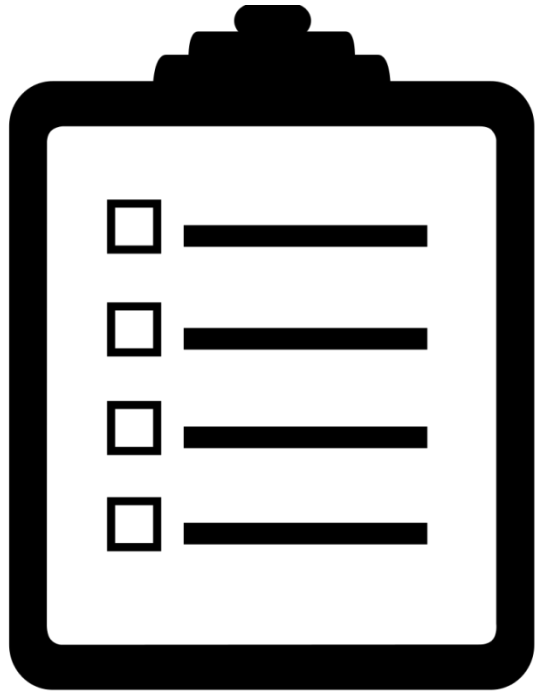


# WHO MAY I NAME AS AN AGENT?

**You may name *any* competent adult as your agent, except:**

- If you live in a nursing home, residential care facility or other assisted living facility, you may not name the owner, operator or employee of that facility unless the person is related to you by blood, marriage or adoption.

# WHO WOULD BE BEST AS AN AGENT?



**The person you choose should be:**

- **someone who knows you well;**
- **someone you trust;**
- **someone who will be reasonably available;**
- **someone who is willing to be your agent.**

# WHAT DECISIONS MAY MY AGENT MAKE?


**Your agent can make all your mental health care decisions or only decisions in the areas you list in your advance directive.**

**How much power your agent has is entirely up to you.**



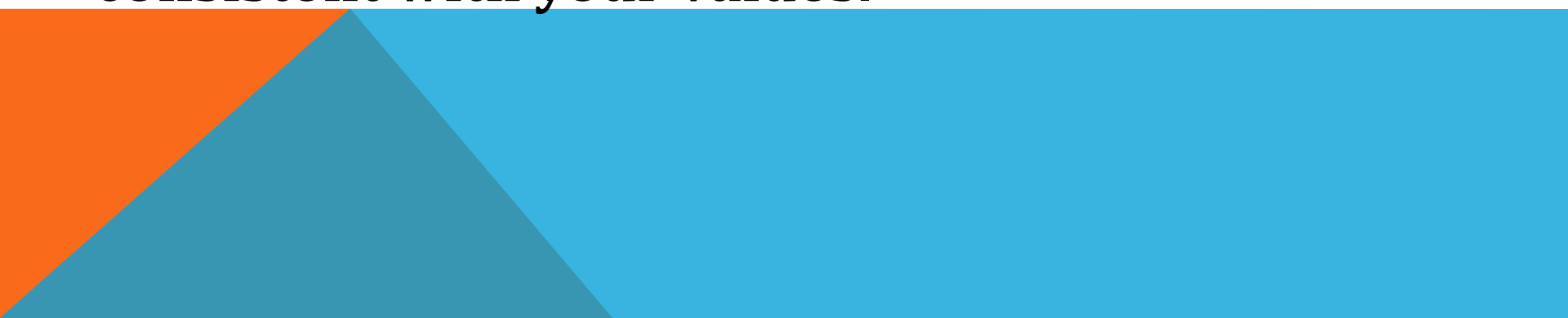
# HOW DOES MY AGENT MAKE DECISIONS?

**Your agent must:**

- **Follow any instructions you have given;**
  - **If there are no instructions on the issue, make decisions the way you would have made them when you had capacity;**
  - **If the agent doesn't know how you would have made the decision, the agent must act in your best interest. The agent has to consider your personal values when deciding what is in your best interest.**
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# ARE THERE ADVANTAGES TO HAVING BOTH INSTRUCTIONS AND AN AGENT?

**YES!**

- **The agent has the right to talk to your health care providers. A conversation can be a lot more helpful to a health care provider in understanding what you want than just words on paper.**
  - **Issues may come up that you didn't give instructions for. The agent can then make decisions consistent with your values.**
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# WHEN CAN MY AGENT MAKE DECISIONS?

**You can choose to have your agent make decisions for you:**

- **right away,**
- **if and when you become incapacitated,**
- **when any other event that you describe occurs.**






# IF I CHOOSE RIGHT AWAY, WHAT HAPPENS TO MY DECISION MAKING?

**As long as you have capacity, you can still make your own decisions. Some people like to have the agent's authority take effect right away so that the agent can talk to the mental health providers, and participate in treatment.**



# WHEN ELSE CAN THE AGENT'S AUTHORITY AND INSTRUCTIONS TAKE EFFECT?


- **You state in your advance directive when you want the agent's authority and the instructions to take effect.**
  - **If you say nothing, it will occur when you become incapable of making decisions for yourself as determined by your primary physician.**
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# HOW WILL I BE DETERMINED INCAPACITATED?



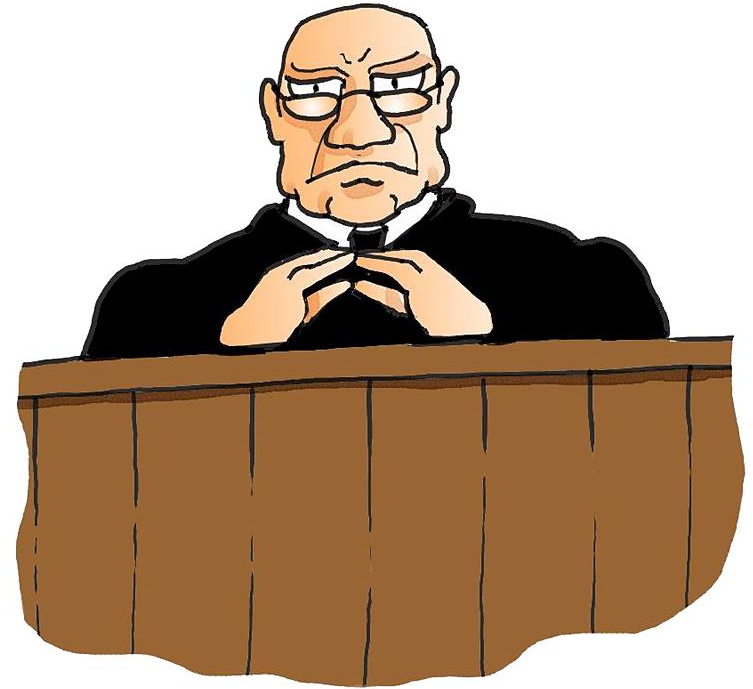
**You can state how you want this to happen. If you say nothing, it will be when your primary physician determines you lack capacity.**

# WHAT OTHER WAYS COULD I LIST FOR DETERMINING INCAPACITY?

- **By the professional evaluating you for emergency hospitalization.**
  - **By a qualified treating professional in a hospital.**
  - **With or without a second opinion.**
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# WHAT IF A COURT FINDS ME INCAPACITATED?

**If a court finds you incapacitated and appoints a guardian, the guardian has to follow the advance directive unless the court specifically decides that they don't have to.**



# CAN I CHANGE MY ADVANCE DIRECTIVE AFTER IT'S WRITTEN?

**YES!**

**Your advance directive may be revoked or rewritten at  
any time while you have capacity.**




# HOW DO I REVOKE INSTRUCTIONS?




- **Instructions can be revoked by any way that makes it clear you have revoked them.**
- **We recommend you do it in writing.**

# HOW DO I REVOKE MY AGENT'S AUTHORITY?

- **The appointment of your agent can only be revoked in writing, or by personally telling the health care provider that you have revoked it.**
  - **A new agent can only be appointed in writing, with two witnesses.**
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# WHAT TYPES OF INSTRUCTIONS CAN I INCLUDE IN MY ADVANCE DIRECTIVE?

- **Medication you want to receive,**
  - **The kind of treatment you want to receive,**
  - **Where you want to receive treatment,**
  - **Who you want to receive treatment from,**
  - **The kinds of interactions that will make you more at ease,**
  - **Who you want notified regarding your treatment and condition.**
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# DO I HAVE TO SAY WHY I AM MAKING MY CHOICES?

**No. But showing you have thought about the choice can help. Well-reasoned choices will have a better chance of being honored.**




CAN I LIST THE THINGS I DON'T WANT?

**Yes.**



# WHAT DO I NEED TO DO TO GET MY ADVANCE DIRECTIVE CARRIED OUT?

**People need to know about it. So you should give copies to:**


- **Your agent**
  - **Your primary physician,**
  - **Your primary psychiatrist,**
  - **Your community mental health providers,**
  - **Your crisis providers,**
  - **Hospitals where you are apt to receive in-patient or emergency care.**
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# DO HEALTH CARE PROVIDERS HAVE TO FOLLOW MY ADVANCE DIRECTIVE?

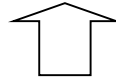


- **An advance directive doesn't require that a provider or hospital admit you or accept you for treatment.**
- **They cannot refuse to accept or admit you because you have an advance directive.**
- **Once they do admit or accept you, they must follow your advance directive, with some exceptions.**

# WHAT ARE THE EXCEPTIONS?

- **An advance directive does not prevent providers from involuntarily hospitalizing someone who meets involuntary commitment standards.**
  - **Nor does it prevent a hospital from treating an individual in an emergency if the person poses imminent threat of harm to self or others.**
  - **An advance directive can be helpful, however, in avoiding these circumstances.**
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**ADVANCE DIRECTIVE  
(Informed consent)**



**Limitations**

**POLICE POWER**

**ADVANCE DIRECTIVES MAY  
PREEMPT NEED FOR**

Examples:

Involuntary Commitment  
Emergency medication  
Seclusion/Restraint

**CAPACITY IRRELEVANT**

**IN LOCO PARENTIS**


**ADVANCE DIRECTIVES DESIGNED TO  
PREEMPT**

Examples:

Guardianship  
Administrative Medication Orders

**INCAPACITY REQUIRED**

# WHAT ARE THE OTHER EXCEPTIONS?

- **Your Advance Directive doesn't meet the requirements of the law.**
  - **The treatment you request is contrary to a policy of the hospital that was communicated to you or to your agent on a timely basis.**
  - **The treatment requested is medically ineffective or contrary to accepted standards of care.**
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# IF THESE OTHER EXCEPTIONS APPLY WHAT CAN THE HEALTH CARE PROVIDER DO?

- **Inform you and your agent,**
- **Provide care until they can transfer you or until a court order can be obtained, and**
- **Assist in the transfer.**



# WHAT CAN I DO IF MY ADVANCE DIRECTIVE ISN'T BEING FOLLOWED?

- **You can ask the Probate Court to order that the Advance Directive be followed.**
  - **Other people who can ask for you are: your agent or a guardian (if you have one); a provider involved with your care; the Department of Human Services or an adult relative or adult friend.**
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**SPECIFIC INSTRUCTIONS**

# MEDICATIONS



- **You may want to address medications in your advance directive.**
- **You can list medications that you give your consent to taking.**
- **You can also include medications you refuse consent for.**

# MEDICATIONS

- **The exclusion of medications, or the improper identification of medications, is what causes advance directives to be challenged.**
- **You should talk to your doctor about medications and “types” of medications before listing them.**

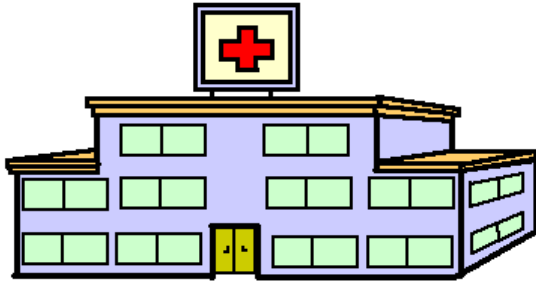


# THE KIND OF TREATMENT

- **You can list treatments that you would like to be offered, for example treatments that have been effective in the past.**
- **Many people list their wishes regarding ECT.**



# HOSPITALIZATION



- **You can name hospitals where you would consent to be admitted. You can then be admitted on the basis of the advance directive on a voluntary basis.**
- **You can choose to be admitted to the hospital even if you pose objections at the time and still be considered voluntary for 5 work days.**

# INTERVENTIONS

- **Although certain hospital interventions can occur involuntarily when an emergency exists you can list interventions you think would help to avoid emergencies.**
- **Some people list being permitted to go to their room; listening to music, for example.**





# INTERVENTIONS



**You can list interventions you agree to should an emergency arise. You could say that if restraint or seclusion were being considered, you would prefer one to the other, or emergency medication.**

# NOTICES

**You can list who you want notified regarding any hospitalizations.**

**Please Notice This**

