

Understanding a Declaration for Mental Health Treatment

What College and University Students Should Know



College is a time for young adults to continue their education and experience personal growth and independence. College can also be a challenging and complicated time. According to the American Psychiatric Association, up to 60% of college students will experience a mental health crisis during their academic career. The stress and pressure of being a student can exacerbate depression, anxiety, and other mental health conditions. Also, during the college years, many severe mental illnesses can begin to manifest.

If you were to experience a mental health crisis, do you know who could advocate on your behalf about your wishes? Did you know that if you are 18 or older, you can identify who you want that person to be and what you want that plan to look like? Now is the time to put a plan in place before you need it so that you will be prepared if this occurs.

What is a Declaration for Mental Health Treatment?

A declaration for mental health treatment is a legal document available in Ohio that:

- Allows you to make decisions in a time of wellness about your wishes for mental health treatment should you experience a mental health crisis, including stating preferences regarding medication, therapies, admission to a hospital, and physicians and mental health therapists you would or would not want to see.
- Allows you to specify an adult you trust (a “proxy”) to make mental health treatment decisions for you if you lose the capacity to make those decisions yourself.
- Specifies the duties and rights of proxies.
- Specifies when and how the declaration is used.

You may already have a general health care power of attorney which addresses both physical and mental health issues. Mental health issues, however, can be more complex than other health care issues and their specific treatments generally are not addressed in a general health care power of attorney. A declaration for mental health treatment is dedicated solely to mental health treatment choices, providing a more detailed plan for managing a mental health crisis.

Who Should Have a Declaration for Mental Health Treatment?

It is entirely your choice as to whether or not you want a declaration for mental health treatment. Anyone may create a declaration if they are at least 18 years old and have the capacity to consent to mental health treatment decisions. Those who would particularly benefit from having a declaration include individuals who have a mental illness or have been diagnosed with a mental illness in the past and those who have developed an illness that likely will include a mental component as it progresses.

How Do I Create a Declaration for Mental Health Treatment?

As a public service, the Ohio State Bar Association and partner organizations have created a declaration for mental health treatment form that complies with Ohio law and may be used by anyone. This form is available on the Ohio Department of Higher Education’s website. (<https://highered.ohio.gov/initiatives/campus-initiatives/mental-health/mental-health>)

If you decide to create a declaration, it is recommended you discuss your treatment preferences with mental health professionals providing services to you. You should also consult with an attorney if you have any questions of a legal nature regarding the declaration or do not understand anything in the form. Many colleges and universities have a student legal services office or can refer you to appropriate legal assistance. To ensure your declaration for mental health treatment is valid, you must sign the declaration in the presence of two qualified witnesses or a notary public. A qualified witness may not be your mental health treatment provider or their relative or employee; the owner, operator, or relative or employee of an owner or operator of a health care facility in which you are a patient or resident; a person related to you by blood, marriage, or adoption; or a person named as a proxy in your declaration.

If You Select a Proxy to Make Decisions for You

As mentioned above, a declaration for mental health treatment allows you to select an adult to make decisions for you (a “proxy”) if you are unable to make such decisions due to mental incapacity. If you select a proxy, it should be someone you know and trust. Your proxy makes decisions by following what you write in your declaration or by following what you have asked the proxy to do. An adult can only be your proxy if they agree to being the proxy and then sign your declaration in front of two witnesses or a notary public saying that they agree. The adult can decide to stop being your proxy at any time – it is up to them. You may also designate an alternate proxy to act in the role if the original proxy is unable or unwilling to act at any time. If you designate an alternate proxy, the alternate proxy must also sign your declaration.

Ensuring Your Declaration for Mental Health Treatment is Honored

After your declaration for mental health treatment is signed, you will need to give copies of it to your physician, any mental health therapists you see, your proxy if you have designated one, and loved ones so that they know about it. You are responsible for informing others about its existence.

A treatment preference stated in your declaration will be honored unless:

- The treatment preference conflicts with reasonable medical practices;
- The treatment preference conflicts with available resources;
- An emergency situation endangers the life or health of you or another person; or
- The treatment preference conflicts with a court order.

What Else Should I Know about a Declaration for Mental Health Treatment?

- Your declaration for mental health treatment is operative only when two things occur: (1) the declaration is shared with your mental health treatment provider and (2) a physician or psychiatrist and one other mental health treatment provider agree that you do not have the capacity to make your own mental health treatment decisions. Your treating physician or psychiatrist can be one of these two people, but the other person cannot be someone who is treating you.
- Your declaration remains valid for three years unless it is properly revoked. However, it may be renewed one time for another three years if no changes are made. Regardless of when the declaration is set to expire, once the declaration is operative, it continues in effect until you regain the capacity to consent to mental health treatment decisions.
- You have the right to revoke your declaration at any time as long as you have the capacity to consent to mental health treatment decisions. Any revocation must be in writing, signed by you, and dated. The revocation is effective upon its communication to your mental health treatment provider.
- You are not obligated to complete all sections of the form. You should complete only those sections that apply to your situation. If you decide to leave any section blank, it is recommended that you include the mark, “N/A,” to indicate that it does not apply to your situation.

Additional Information

Additional information about declarations for mental health treatment is available from the cover page to the declaration for mental health treatment form referenced above. An attorney can also provide more information.

988 Suicide & Crisis Lifeline

Crisis looks very different from one person to the next. We encourage any Ohioan who is experiencing a mental health or addiction crisis — or their family members — to call, text, or chat the 988 Suicide & Crisis Lifeline to reach a trained specialist who can offer help and support. The Lifeline is free and confidential and available 24/7.

Sources:

R.C. Chapter 2135

Ohio Legal Rights Service, *The What-if Workbook: How to Make Decisions About Your Mental Health Treatment Ahead of Time* (rev. 2010).

Ohio State Bar Association and partner organizations, *State of Ohio Declaration for Mental Health Treatment Cover Page and Notice to Person Making a Declaration for Mental Health Treatment*, available at <https://probate.franklincountyohio.gov/PBCT-website/media/Documents/Forms/Advance%20Directives/State-of-Ohio-Declaration-for-Mental-Health-Treatment.pdf?ext=.pdf>

Mental Health America, *Psychiatric Advance Directive*, available at <https://mhanational.org/psychiatric-advance-directive>