

Mental Health Act 2016

Advance health directive for mental health

Guide and form for completing
an advance health directive



Guide for completing an advance health directive

Advance health directive for mental health

Published by the State of Queensland (Queensland Health), January 2021.

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SC1900151

Purpose of the guide

This guide provides information about making an advance health directive for mental health.

At the end of the guide is an advance health directive form and instructions on how to complete it.

For assistance in completing an advance health directive, please speak to an Independent Patient Rights Adviser in a public mental health service or a doctor.

An advance health is made under the *Powers of Attorney Act 1998*.

Benefits of an advance health directive

The benefit of an advance health directive is that it gives you a greater say in your future healthcare, such as healthcare you would like to receive for a mental illness.

An advance health directive applies at a future time if you become unwell and are unable to make decisions about your healthcare. This means you do not have 'capacity' to make decisions.

If you have capacity to make decisions about your healthcare you are capable of:

- understanding the nature and effect of your decisions
- freely and voluntarily making decisions
- communicating your decisions.

If you do not have capacity to make decisions for yourself at a future time, a health practitioner may provide you with healthcare you have agreed to in your advance health directive. The advance health directive acts as a record of your consent to receive particular healthcare.

You may also state any healthcare you do not wish to receive in your advance health directive.

In your advance health directive, you may also express your views, wishes and preferences about your healthcare, and for personal matters, if you do not have capacity to make decisions for yourself at a future time. These preferences will provide guidance to health practitioners and your support persons in the way you are cared for, but is not consent to healthcare.

If you wish, your advance health directive may also consent to healthcare for health conditions other than your mental health, or include your views, wishes and preferences about health conditions other than your mental health.

What you need to understand to make an advance health directive

You can make an advance health directive if you are over 18 years of age and understand the following (this means you have 'capacity' to make an advance health directive)¹:

- the nature and likely effect of each matter in your advance health directive
- your advance health directive only applies when you do not have capacity to make decisions for yourself about the matters in your directive
- you can revoke your directive at any time if you have capacity to make the decision
- you will be unable to oversee the implementation of your advance health directive at a future time, as your directive is only effective when you do not have capacity to make decisions for yourself.

Involvement of a doctor

You should discuss the making of your advance health directive with a doctor who understands your mental health, such as a psychiatrist or a general practitioner. This will increase the likelihood that your directive can be properly used if, at a future time, you do not have capacity to make decisions for yourself.

The doctor will give you advice about the healthcare you may need in the future, and the benefits and risks associated with that healthcare, so you can give informed consent in your advance health directive. Although a doctor will assist you in making decisions, it is essential that you decide the matters you want included in your advance health directive.

The doctor must sign your advance health directive and certify that you appeared to have capacity to make your directive as outlined in the section *What you need to understand to make an advance health directive* (see left).²

The doctor is eligible to sign your advance health directive if he or she is not³:

- the person witnessing your directive (see *Witnessing of your advance health directive*, page 6)
- the person signing your directive for you (see *Another person may sign your advance health directive for you*, page 6)
- your attorney (see *Appointing an attorney*, page 5)
- your relation⁴ or a relation of your attorney
- a beneficiary under your will.

1. See section 42 of the *Powers of Attorney Act 1998*

2. See section 44(6) of the *Powers of Attorney Act 1998*

3. See section 44(7) of the *Powers of Attorney Act 1998*

4. Under the *Powers of Attorney Act 1998*, a 'relation', of a person, is:

- the person's spouse
- another person who is related to the person by blood, marriage or adoption, or because of a de facto relationship, foster relationship or a relationship arising because of a legal arrangement, such as a court order for custody
- another person on whom the person is completely or mainly dependent
- another person who is completely or mainly dependent on the person
- another person who is a member of the same household as the person.

When a treatment authority may be made if you have an advance health directive

A treatment authority made under the *Mental Health Act 2016* authorises a doctor to provide you with treatment and care for your mental illness without your consent.

Strict criteria must be met before an authorised doctor can make a treatment authority, namely:

- you have a mental illness
- you do not have capacity⁵ to make decisions about your treatment and care for the illness
- there is an imminent risk of serious harm to yourself or others, or there is a risk of you suffering serious mental or physical deterioration.

For your advance health directive to act as consent for healthcare, it must authorise the healthcare that is reasonably necessary to make you well again. If your advance health directive does not authorise the type of healthcare your treating doctor believes you need, the doctor may make a treatment authority for you if the criteria apply. The treatment may include you being treated as an inpatient under the treatment authority.

Where your advance health directive is adequate to provide consent for your treatment and care needs, a treatment authority must not be made. The only exception is if you have been treated as an inpatient for 14 days under your advance health directive and a review by a Clinical Director indicates your rights would be better protected if a treatment authority was made for you.

5. See Section 14 of the *Mental Health Act 2016*

Consent to receiving electroconvulsive therapy

You can consent to receiving electroconvulsive therapy under your advance health directive. If you consent to this, you may place limits on the consent, such as the number of treatments to which you consent. It is very important you discuss this type of treatment with a doctor who is likely to be responsible for your treatment and care if you do not have capacity to make decisions for yourself about your healthcare at a future time.

You may also state in your advance health directive that you do not wish to receive electroconvulsive therapy.

Under the *Mental Health Act 2016*, a doctor may perform electroconvulsive therapy on an adult only if the person gives informed consent or, if they are unable to give informed consent, the Mental Health Review Tribunal approves the treatment. In deciding whether or not to approve the treatment, the Tribunal must consider any views, wishes and preferences stated in an advance health directive. A doctor may also perform electroconvulsive therapy for specified involuntary patients under the *Mental Health Act 2016* in emergency circumstances, which is then referred to the Tribunal for consideration.

Appointing an attorney

Under your advance health directive, you may appoint one or more family members, friends or other support persons to make decisions about your healthcare if you do not have capacity to make decisions for yourself at a future time. This person is called an ‘attorney’.

You should appoint a person or persons who know you well and who you believe will respect your views, wishes and preferences. It is important that you explain your views, wishes and preferences to the person or persons you appoint so they can confidently make decisions about your healthcare on your behalf.

A person is eligible to be your attorney if he or she is⁶:

- 18 years of age or over
- not a paid carer or a healthcare provider for you
- not a person who provides services in a residential service where you reside.

You may appoint an attorney instead of, or in addition to, consenting to particular healthcare as part of your advance health directive.

An attorney cannot override any explicit instructions in your advance health directive. For example, if you state in your directive that you do not want to receive a particular type of medication, an attorney cannot consent to this medication being given to you.

An attorney cannot consent to you receiving electroconvulsive therapy.

You may appoint more than one attorney. If you do this, you must decide and document how the attorney(s) should make decisions. For example, you may decide that:

- any one attorney can make decisions
- all attorneys must make decisions together
- a majority of attorneys can make decisions
- a second attorney is to make decisions only if the first attorney is unavailable.

You may also place limits or conditions on the matters about which an attorney can make decisions. For example, you can state an attorney cannot make decisions about particular types of medications you are to receive.

If you are appointing an attorney, you need to understand that⁷:

- you may place limits or conditions on an attorney’s power
- an attorney’s authority is only exercised when you do not have capacity to make decisions for yourself
- if you do not have capacity to make decisions for yourself, the attorney can make decisions for your healthcare in accordance with your advance health directive
- you may revoke the appointment of an attorney at any time you have capacity to make the decision.

The person(s) you nominate must accept being an attorney for you.

An attorney must make decisions honestly and with reasonable diligence to protect your interests.

In making a healthcare decision for you, an attorney must apply the health care principles under Queensland’s guardianship framework (<https://www.publications.qld.gov.au/dataset/power-of-attorney-and-advance-health-directive-forms>).

Your attorney can resign, if they no longer wish to make decisions for your healthcare.

An attorney can resign by notifying you in writing, if you have capacity to make decisions for your healthcare at the time.

If you do not have capacity at the time, they may only resign with the approval of the Queensland Civil and Administrative Tribunal or the Supreme Court.

6. See section 29(2) of the Powers of Attorney Act 1998

7. See section 42 of the Powers of Attorney Act 1998

Witnessing of your advance health directive

Your advance health directive must be signed and dated by an eligible witness⁸.

A person is eligible to be your witness if he or she is⁹:

- a justice of the peace, commissioner for declarations, notary public or lawyer
- not the person signing your advance health directive for you (*see Another person may sign your advance health directive for you, right*)
- not your attorney
- not your relation or a relation of your attorney
- not a paid carer or health provider for you
- not a beneficiary under your will.

The witness must certify that you:

- signed your advance health directive in their presence
- appeared to have capacity to make your advance health directive as outlined in *What you need to understand to make an advance health directive* (page 3).

If there may be doubt that you understood making your advance health directive, the witness may make a written record of why it appeared you understood making your directive.

Another person may sign your advance health directive for you

You may instruct another person to sign your advance health directive for you if you are unable to do so, for example, if you are physically unable to sign your name.

The person signing your advance health directive must certify that you were present at the time the person signs your directive.

A person is eligible to sign your advance health directive for you (an *eligible signer*) if they are¹⁰:

- at least 18 years of age
- not the witness for your advance health directive
- not your attorney.

8. See section 44(4) & (5) of the *Powers of Attorney Act 1998*

9. See section 31 of the *Powers of Attorney Act 1998*

10. See section 30 of the *Powers of Attorney Act 1998*



Regular review of advance health directive

It is a good idea to regularly review your advance health directive to ensure it remains relevant to your healthcare needs. You should talk to your doctor about how often this should happen.

Revoking an advance health directive

If you make an advance health directive, any previous advance health directives you have made may no longer apply if they deal with the same matters. To ensure your wishes are clear, you may revoke any previous advance health directive.

You can revoke an advance health directive at any time, in writing, if you have capacity to make the decision (*see What you need to understand to make an advance health directive, page 3*).

You should talk to the doctor certifying your advance health directive if there are matters in another advance health directive that you want to continue, for example, a directive dealing with end-of-life matters.

You may also revoke the appointment of an attorney at any time, if you have capacity to make the decision (*see What you need to understand to make an advance health directive, page 3*).

It is important that you advise a staff member at a mental health service if you revoke an advance health directive or the appointment of an attorney. Your health records will then be updated to reflect your wishes.

How to complete the advance health directive

You need to complete your advance health directive in consultation with a doctor, such as a psychiatrist at a mental health service or a general practitioner.

If you wish to appoint a person under your advance health directive to make decisions about your healthcare (an attorney), you should discuss the appointment with the person so they can confidently make decisions about your healthcare on your behalf.

Section 1 Personal details

Fill out your personal details in this section.

It is recommended that you use your name as it appears in an official document, such as a birth certificate or driver's licence.

Section 2 Consent to healthcare and my views, wishes and preferences

In this section, you should state the healthcare you consent to receive should you require treatment and care and not have capacity to make healthcare decisions for yourself.

For example, you may wish to identify medications that you have found helpful in the past. You may also describe the circumstances in which you consent to particular healthcare, for example, if you have particular symptoms.

You may also state the types of healthcare you do not want to receive.

In addition, you may state your views, wishes and preferences for your healthcare, and for personal matters, that are important to you. These preferences will provide guidance to health practitioners and your support persons in the way you are cared for, but is not consent to healthcare. The personal matters you identify should be matters that the service can reasonably assist you with, for example, contacting persons who have agreed to look after your home, children or pets.

Example A:

Consent to healthcare

I consent to receiving depot medication for schizophrenia at the dosage and frequency I have agreed to with my treating team and written in my health records.

Views, wishes and preferences

Contact my nominated support person, Harriet Smith, if I am admitted to hospital. I would like Harriet to visit me even if I don't appear to recognise her. I would like Harriet to talk with my treating team as necessary.

Example B:

Consent to healthcare

If I have another occurrence of major depression, I consent to being treated with electroconvulsive therapy as soon as possible after admission to hospital unless it is not appropriate for me due to medicines I am taking, or harmful to my physical health.

Views, wishes and preferences

I have teenage children. If I become unwell, contact my neighbours, Jane and Barry James, who have agreed to look after them while I am in hospital.

Example C:

Consent to healthcare

If I am unable to make decisions or look after myself due to my schizophrenia, I consent to being treated with the medications recommended by my doctor for my schizophrenia. If it is possible, I would like to be treated at home. If the doctor believes I need to go to hospital, I consent to being treated as an inpatient and not being allowed to leave. I consent to remain an inpatient if necessary for up to 14 days.

Views, wishes and preferences

If I need to be treated as an inpatient, contact my sister Allison, who has agreed to take care of my dog and look after my home. I also wish to have access to my mobile phone at all times.

Example D:

Consent to healthcare

I consent to only receiving the following oral medications—Zyprexa or Risperidone. I do not agree to receiving depot injections.

Views, wishes and preferences

I would prefer to sit in a quiet place and be verbally encouraged to take this oral medication as recommended even though I may appear to be reluctant. I also wish to receive visitors from my brother's family, which includes my brother John Smith and his two children Riley and Ryan Smith. I do not want to be served any fish when I am an inpatient, as I have had an allergic reaction to fish in the past.

Example E:

Consent to healthcare

I consent to being treated with electroconvulsive therapy if it is determined by a psychiatrist to be the most clinically appropriate treatment option for me. I consent to be treated with electroconvulsive therapy for not more than _____ treatments over a period of _____ days/weeks. If I still remain unwell, I consent to be further treated with electroconvulsive therapy for not more than _____ treatments if another psychiatrist provides a second opinion supporting that electroconvulsive therapy is the most clinically appropriate treatment.

Section 3

Appointing an attorney

In this section, you can appoint one or more persons to be an attorney for you (see *Appointing an attorney*, page 5). If you wish to appoint more than two attorneys, you may copy the relevant page of the form and attach it to your advance health directive.

You may appoint a person as an attorney in addition to, or instead of, consenting to future healthcare under Section 2 of the form.

The attorney or attorneys must accept the appointment in this section.

Section 4

Conditions of attorney appointment

You may limit or place conditions on the way an attorney can make decisions for you in this section.

Example:

I do not want my attorney, John Smith to agree to me having depot medication on my behalf. John can consent on my behalf to any oral medication that the treating team recommend.

If you appoint more than one attorney, you must decide how they are to make decisions (see *Appointing an attorney*, page 5).

Section 5

Doctor certification

The doctor you have discussed this advance health directive with must certify you have capacity to make this directive.

Section 6

Signature and witness

You must sign your advance health directive

Alternatively, you may ask someone to sign your advance health directive for you. See *Another person may sign your advance health directive for you*, page 6.

A person must witness you signing your directive. See *Witnessing of your advance health directive*, page 6.

Once you have completed your advance health directive

It is important others know you have an advance health directive and where to find it

You should give a copy of your advance health directive to a staff member of a mental health service. Staff from the service will place your advance health directive on the statewide consumer information system, so any doctor can locate your directive if you are admitted to a mental health service at a future time.



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Advance health directive for mental health

You need to complete your advance health directive in consultation with a doctor, such as a psychiatrist at a mental health service or a general practitioner.

Section 1 Personal details

Person making advance health directive

| | | |
|--|----------------------|----------------------|
| Title | Given name | Family name |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Date of birth | Street address | Suburb |
| <input type="text"/> / <input type="text"/> / <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Postcode | Contact number | Email |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |

Section 2 Consent to healthcare and my views, wishes and preferences

*State the healthcare you consent to. You may state the healthcare you do not consent to.
Healthcare may be for mental health or another health condition.*

Consent to healthcare:

State your views, wishes and preferences for your healthcare and personal matters—noting these are not consent to healthcare.

Views, wishes and preferences:

Section 3 Appointing an attorney

Only complete this section if you want to appoint one or more attorneys.

Attorney 1

I appoint the following person as my attorney to make healthcare decisions for me if I do not have capacity at a future time:

| | | |
|--|----------------------|----------------------|
| Title | Given name | Family name |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Date of birth | Street address | Suburb |
| <input type="text"/> / <input type="text"/> / <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Postcode | Contact number | Email |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |

Attorney to complete this section

I have read and understand *Appointing an attorney (page 5)* of the *Advance health directive for mental health (2019)*.

I am eligible to be appointed as an attorney for the person.

I accept my appointment as an attorney.

Attorney signature

Attorney name

Date

 / /

Attorney 2

I appoint the following person as my attorney to make healthcare decisions for me if I do not have capacity at a future time:

| | | |
|--|----------------------|----------------------|
| Title | Given name | Family name |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Date of birth | Street address | Suburb |
| <input type="text"/> / <input type="text"/> / <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Postcode | Contact number | Email |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |

Attorney to complete this section

I have read and understand *Appointing an attorney (page 5)* of the *Advance health directive for mental health (2019)*.
I am eligible to be appointed as an attorney for the person.
I accept my appointment as an attorney.

| | |
|----------------------|--|
| Attorney signature | Attorney name |
| <input type="text"/> | <input type="text"/> |
| | Date |
| | <input type="text"/> / <input type="text"/> / <input type="text"/> |

Section 4

Conditions of attorney appointment

Specify any limitations or conditions on decisions that your attorney(s) can make.

If you have appointed more than one attorney, specify how you would like them to make decisions by marking one of the boxes—see *Appointing an attorney (page 5)* of the *Advance health directive for mental health (2019)*.

| | |
|--------------------------|------------------------------------|
| <input type="checkbox"/> | Any one attorney may decide |
| <input type="checkbox"/> | All attorneys must decide together |
| <input type="checkbox"/> | A majority of attorneys may decide |
| <input type="checkbox"/> | Other |

Section 5 Doctor certification

Doctor to complete this section

I have read and understand *Involvement of a doctor (page 3)* of the *Advance health directive for mental health (2019)*.

The person making this advance health directive appears to have capacity to make the directive.

I am eligible to make this certification.

| | | |
|----------------------|----------------------|--|
| Title | Given name | Family name |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Business address | Suburb | Postcode |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Contact number | Email | |
| <input type="text"/> | <input type="text"/> | |
| Doctor's signature | | Date |
| <input type="text"/> | | <input type="text"/> / <input type="text"/> / <input type="text"/> |

Section 6 Signature and witness

You must sign this form in the presence of an eligible witness.

I make this advance health directive.

I have read and understand *What you need to understand to make an advance health directive (page 3)* of the *Advance health directive for mental health (2019)*.

If you wish to revoke all previous advance health directives you have made, please mark the box below.

☐ **I revoke any previous advance health directives that I have made.**

| |
|--|
| Name |
| <input type="text"/> |
| Signature |
| <input type="text"/> |
| Date |
| <input type="text"/> / <input type="text"/> / <input type="text"/> |

Eligible signer

I am signing this advance health directive for

in the person's presence.

I have read and understand *Another person may sign your advance health directive for you (page 6)* of the *Advance health directive for mental health (2019)*.

I am eligible to sign this advance health directive.

| |
|--|
| Eligible signer name |
| <input type="text"/> |
| Signature |
| <input type="text"/> |
| Date |
| <input type="text"/> / <input type="text"/> / <input type="text"/> |

Witness certification

I am a (mark one box only):

- ☐ **justice of the peace**
- ☐ **commissioner for declarations**
- ☐ **notary public**
- ☐ **lawyer**

I have read and understand *Witnessing of your advance health directive (page 6)* of the *Advance health directive for mental health (2019)*.

The person making this advance health directive appears to have capacity to make the directive.

I am eligible to witness this advance health directive.

Mark the relevant box below:

- ☐ **The person making the advance health directive signed the directive in my presence.**
- ☐ **The person instructed an eligible signer, in my presence, to sign the directive on behalf of the person, and the eligible signer signed the advance health directive in the presence of the person and in my presence.**

Witness name

Address

Suburb

Post code

Witness signature

Date

 / /

