

Advocating the Legal Rights of Texans with Disabilities  
Implementing the Client Assistance Program for Rehabilitation Clients

DECLARATION FOR MENTAL HEALTH TREATMENT

January, 2000

Summary

The Declaration for Mental Health Treatment [\(1\)](#) (i.e., Advance Directive) is a legal form you create to give instructions about your future mental health treatment, if you are unable to make those future decisions yourself.

The instructions you put into a Declaration include whether you agree to, or refuse to, have *psychotropic medication*, [\(2\)](#) electroconvulsive treatment, and options for emergency treatment. Once it is created and signed, a Declaration is difficult to change or cancel, so think very carefully about whether you want a Declaration.

This handout is only a guide to a complicated legal document. We suggest you discuss creating a Declaration with people you trust completely to help you make good decisions. If you decide you want a Declaration, you should talk about these decisions with a doctor, a lawyer, and family and friends.

A Doctor--who knows you, your illness, and the treatments for your illness--can help you write instructions about the treatments you do or do not want.

A Lawyer can help make sure your Declaration gives exactly the instructions you want--not what you don't want. Talking to a lawyer will also help you find other ways you could give legal instructions about your treatment. We strongly urge you to explore all of these choices before making a decision about how to control your future mental health treatment. For example, a lawyer could help you create a Power of Attorney for Health Care which allows you to appoint someone else to act on your behalf when you can no longer make mental health decisions. You give that person the same instructions about your mental health treatment as you would put in a Declaration.

How it works: If you create a Declaration, once you and two witnesses have signed and dated it, your Declaration has been *executed*. When your Declaration has been *executed*, that means it is legally *possible* for it to be used as your instructions about mental health treatment if you cannot make those decisions later.

An *executed* Declaration becomes *effective* if you are found incapacitated to make your own mental health treatment decisions. *Effective* means your Declaration will be used as your treatment instructions. *Incapacitated* means that, in a guardianship proceeding or at a medication hearing, a judge has decided that you cannot make mental health treatment decisions for yourself.

If you are found *incapacitated*, and your Declaration becomes effective, two things happen.

1. Doctors, health care providers, and others who treat you must follow the instructions about mental health treatment that you wrote in your Declaration. They can go against the instructions you put in your Declaration, but only in an emergency or possibly with a court order at a medication hearing.
2. Your Declaration becomes *effective* and stays *effective* until you are found capable again of making your own mental health treatment decisions. To be found capable again, a court must declare that you are now competent, *or you are released from the hospital, or a doctor evaluates you and determines that you are capable of making your own mental health treatment decisions.*

You cannot be forced to create a Declaration. The Declaration for Mental Health Treatment is supposed to be created and signed voluntarily, of your own free will. The law says that no one can force you to create or sign a Declaration. That means you cannot be forced to sign a Declaration in order to get treatment, to get out of a mental health facility, or for any reason other than you want it to control the mental health treatment you will receive.

## What a Declaration for Mental Health Treatment Is and Things You Should Know about Creating One

### Section 1: What is a Declaration for Mental Health Treatment?

A Declaration for Mental Health Treatment is one way you can control the mental health treatment you will receive in the future, if you cannot make treatment decisions yourself. A Declaration is a legal document. It lets you write down your instructions for doctors and hospitals about three kinds of treatment you may or may not want to use as part of your future treatment, if you cannot make those decisions yourself due to illness or some other reason. The three kinds of treatment you can give instructions about are *psychotropic medication*, *electroconvulsive treatment (ECT)*, and preferences for treatment in an *emergency*.

If you create a Declaration and are found *incapacitated* in regard to making your treatment decisions, the instructions in your Declaration will be followed most of the time, except in cases of special circumstances. However, there are two times when it is possible that the treatment instructions in your Declaration will not be followed:

1. Even if your Declaration states that you do not want psychotropic medication or that you prefer seclusion to restraint, if you are found to be dangerous to yourself or others, the situation may be called an emergency, and you may be given *psychotropic medication* or restrained if --after your Directive has been followed--the situation is still considered an emergency.

2. According to the law, a judge in a medication hearing should follow your instructions regarding psychotropic medications. However, because this is a brand-new law, there is a possibility that--even want a particular type of medication --a court may order that you should be given medications.

However, if you give detailed reasons why you do or do not want a particular type of medication, we believe that the court must follow your Directive. If a judge decides that the changes are not legal, your Declaration may be *void* or canceled. Or the judge might decide that the section on psychotropic medications is not legal, but the other parts of it are legal and should be followed. Until a court rules on this issue, no one can be sure which way a court will interpret this law.

A Declaration cannot be revoked or canceled, once you are determined to be incapacitated. Therefore, we strongly urge you to talk to a lawyer before you create a Declaration.

Lawyers know how to fill in legal forms, and can help make sure your Declaration gives only those instructions you want. A lawyer can also help assure your Declaration does not give instructions you don't want it to contain. Talking to a lawyer will also help you find out about other ways you could give legal instructions about your mental health treatment, and we strongly urge you to explore all of these choices before making a decision about how to control your future mental health treatment. For example, a lawyer could help you create a Power of Attorney for Health Care which would give the same instructions about your mental health treatment as a Declaration, but is immediately canceled when you say it is cancelled.

## How a Declaration for Mental Health Treatment Works

Section 2: Your Declaration must be, *executed* before it is a legal document

If you create a Declaration to be used as your mental health treatment instructions, two other people must sign it before it becomes a legal document. These two people are called witnesses.

Witnesses to your Declaration must watch you sign and date it, then they must sign it themselves. By signing your Declaration, your two witnesses are saying in a legal way that they know you, that you knew what you were doing when you signed your Declaration, and that you were not forced in any way to sign it.

When you and the two witnesses have signed your Declaration, it has been *executed*. When your Declaration has been *executed*, that means it is legally *possible* for it to be used as your treatment instructions if you are found incapable of making those decisions for yourself.

The following people cannot be the two witnesses who sign your Declaration:

- Your relatives;
- Your attending doctor or the doctor's employees;
- A mental health service provider--including a community center--or his or her employees; and
- The owner or operator of a health care facility in which you are a patient or resident, or his or her employees.

### Section 3: Canceling your Declaration

Your Declaration automatically cancels or expires three years after it has been executed, unless you cancel your Declaration or execute a new Declaration before the end of three years.

If you create a Declaration and you and your two witnesses sign it and date it, it has been *executed* and can be legally used as your mental health treatment instructions. It remains in effect for three years after you have executed the Declaration. If you are determined to be incompetent after your Declaration has been *executed*, it cannot be canceled just because you say it is, because you destroy it, or the three years expire.

In order to cancel your Declaration, you must be capable of making your own decisions about mental health treatment. You can cancel your Declaration, when you are competent, by doing any of the following:

1. Write a statement that says you are canceling your Declaration;
2. Tear it up, mark an "X" on the Declaration, or write canceled on the Declaration;
3. Inform your treating doctor that you wish to cancel your Declaration;
4. Make a new Declaration for Mental Health Treatment; or
5. Your Declaration will automatically be canceled three years after it was executed, if you are competent at that time.

You need to inform or mail notification to your *attending physician*, the *health care facilities* and/or *providers* that you have canceled or made a new Declaration so they will know what your new wishes are. (Your *attending physician* is the doctor who is responsible for your treatment. If you have a regular doctor, he or she would probably be your *attending physician*. If you have entered a hospital or another facility, the *attending physician* is the doctor who is assigned to you.)

### Section 4: Changing your Declaration

*Changing your Declaration . . . . . if it has not been executed:*

If you create a Declaration, but do not sign it and do not have two witnesses sign it, it has not been *executed* and can be changed easily by writing in new instructions or taking out old instructions. . .

*if it has been executed:*

If you create a Declaration and you and your two witnesses sign and date it, it has been *executed*. If your *executed* Declaration has been given to a doctor, it is effective and can be used.

Because changing a Declaration that has been *executed* is such a complicated and confusing legal process, it cannot be explained in this booklet. For this reason, we strongly urge you to cancel the Declaration completely and write a new one. If you think you must change your Declaration instead of cancelling it, we strongly urge you to talk to a lawyer to make sure your changes will be legally acceptable.

### Section 5: When an *executed* Declaration can be used

After you *execute* your Declaration, it will be used as your mental health treatment instructions if a judge finds you to be *incapacitated*. *Incapacitated* means that a judge has found that you do not understand the benefits and consequences of treatment and, consequently, you are no longer able to make your own mental health treatment decisions.

You will be found *incapacitated* of making your own mental health treatment decisions if one of these two things happen:

1. A judge, during a *guardianship proceeding*, decides that you cannot understand information well enough to make decisions about your mental health treatment.
2. A judge, in a *medication hearing*, decides that you cannot understand information well enough to make decisions about your mental health treatment.

### Section 6: If *executed*, your Declaration lasts for three years

Once your Declaration has been *executed*, it lasts for three years. If you are competent, three years after it has been executed it will automatically expire. If, after those three years, you want your Declaration to continue, you will have to execute a new Declaration.

However, if you are found *incapable* of making mental health treatment decisions at the end of those three years, it will be used as your treatment instructions for as long as you are found *incapable*.

#### *Examples*

Joe executes a Declaration on December 1, 1997. He is never found *incapacitated* from the time he *executes* his Declaration.

On December 1, 2000, Joe's Declaration will automatically expire. Unless Joe makes a new Declaration at this time, he will no longer have a Declaration.

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Joe executes a Declaration on December 1, 1997. On May 29, 1998, Joe is found incapacitated. On April 6, 1999, Joe is again found to be competent.

Since Joe is competent at the end of three years, December 1, 2000, his Declaration will automatically expire. Unless Joe makes a new Declaration at that time, he will no longer have an effective Declaration.

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Joe executes a Declaration on December 1, 1997. On July 9, 1999, Joe is found incapacitated. Joe is not found competent until November 5, 2002.

Since Joe is incapacitated at the end of three years, December 1, 2000, his Declaration will remain in effect until he becomes competent again, November 5, 2002. Once he becomes competent, his Declaration will expire and he will have to execute a new Declaration.

The reason the law put a time limit on the Declarations is because of the constant changes in mental health treatment. It was thought that this way people would keep up with all the new treatments and change their Declaration with the new information.

Because the legal form you must follow in order to create a Declaration has space to write in **CONDITIONS AND LIMITATIONS** on your treatment instructions, we think you can change almost everything in the form so that your Declaration says exactly what you want it to say.

For example, even though the form says that your Declaration can be used for three years after it is *executed*, we think you can change the form so that your Declaration ends sooner than three years. But, because this is a brand-new law, if someone objects to your change, a judge will have to decide whether or not the change is legal. If a judge decides the change is not legal, your Declaration could last for the entire three-year period, or it could be *void*, meaning it is not legal.

To change the three year time period, you must write in a lesser time period in two places on your Declaration: **ADDITIONAL REFERENCES OR INSTRUCTIONS** and **NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT**. You also have to initial the second change (you should have a lawyer make sure these changes are legally acceptable).

You cannot make the time period longer than three years if you are competent at the end of the three-year period. However, if you are found incompetent at the end of the three-year period, your Declaration will last until you become competent again-- which could be a long time.

We think you can limit the length of time your Declaration would be *effective* if you are found *incapacitated*. Examples of this are next.

*Examples:*

John believes that forever is too long for his Declaration to last if he is found incapable. John wants the Declaration to end at a specific time in the future, even if he is still incapable at that time. John wrote the following limitation:

Limitation: Once I am determined to be incapable of refusing or consenting to mental health treatment and this declaration becomes effective, it may remain effective for only four years. At the end of those four years, this declaration is void even if I am still found incapable.

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Joe has been hospitalized on the psychiatric ward many times and knows that he usually objects to treatment and refuses services when he is admitted. Once when he was hospitalized, he refused treatment for several months, and could not think clearly for a year. Joe believes that when he refuses treatment early in his illness, he seems to stay longer in the hospital so he wants his declaration to be effective for ten (10) years, but not forever.

Condition: If I am found incapable of making mental health treatment decisions and my Declaration becomes effective; it may remain effective for no more than ten years.

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## When Your Declaration Will Be Used as Your Mental Health Treatment Instructions

Section 7: When an *executed* Declaration will become *effective* and will be used

If you are found *incapable* of making mental health treatment decisions during the three years after your Declaration is *executed*, your Declaration becomes *effective*. *Effective* means your Declaration will be used as your treatment instructions.

If your Declaration becomes *effective*, it will stay *effective* until you are found capable of making your own mental health treatment decisions again or you state otherwise. To be found capable again, a judge must agree that you are capable of making your own mental health treatment decisions.

This means that if your Declaration becomes *effective*, it stays *effective* as long as you are found to be incapable of making mental health treatment decisions. If that happens, the treatment *instructions* you write in your Declaration today could be used for many years. That is why you should think very carefully about whether you want to create a

Declaration, and talk about your decision with people you trust to help you make good decisions.

*When an executed Declaration will not become effective ...*

If you have not been found *incapable* of making treatment decisions, you are capable of making decisions and anyone who treats you must inform you of the benefits and risks of treatment and follow your decision on how you want to be treated. This is called giving *informed consent* to treatment.

Giving *informed consent* to mental health treatment means that you have been given enough information about the treatment—its good points and bad points, like side effects—that you can make an educated decision about whether you will allow it, or consent to the treatment being offered or suggested. When you have been given enough information to make a decision, you can give what is legally called *informed consent*.

If you are at a hospital voluntarily, the doctor must get your *informed consent* to treatment. A doctor cannot use your Declaration during the time you are on a voluntary commitment.

Making your Declaration *operational* . . .

If you create a Declaration and it becomes *effective*, the doctors and health care providers who treat you must follow the mental health treatment instructions you wrote in it. So, if you create a Declaration and you enter a hospital or other facility, you will want to have a copy of the Declaration with you. But, if you forget to take your Declaration with you and the doctors don't have a copy of it or don't know it even exists, they will not be able to follow your treatment instructions.

You should carry a copy of it with you at all times, or if there is a doctor you know and trust, you could give a copy of your Declaration to him or her, or to the record's department of the hospital that you usually use. That way, the doctor or the record's department will already have a copy of your Declaration if you enter their hospital or facility. But remember, if you are admitted to a different facility, those doctors won't have your Declaration.

This is also why it is a good idea to give a copy of your Declaration to someone you trust that you can reach when you are in crisis.

Example:

Samantha knows that *psychotropic medication* and *electroconvulsive treatments*(ECT) usually make her feel worse than her illness does. So, she *executed* a Declaration with instructions that she was not to be treated with *psychotropic medications* or *ECT* if she was found incapable of making her own treatment decisions. Samantha then gave her



Declaration to her roommate, Marsha, so that Marsha could give the Declaration to Samantha's doctors if she became ill or was admitted to a mental health facility.

One year later, Samantha was admitted to the hospital and a judge found her incapable of making treatment decisions. At that time, Marsha was supposed to give Samantha's Declaration to the doctors at the hospital so that her instructions about treatment would be followed.

There are three ways this story could end. If you decide to create a Declaration, you should think about each of the ways the story could turn out and take steps to make sure you get the end you want.

Ending 1: Marsha had moved to another city and didn't know that Samantha had been admitted to a hospital, so she could not give Samantha's Declaration to her doctors. Because the doctors did not know that Samantha had created a Declaration, they could not follow her treatment instructions. They thought that Samantha should be treated with psychotropic medication, and asked a judge in a court for permission. The judge gave the doctor permission, and he treated Samantha with psychotropic medication.

Ending 2: Marsha believed that psychotropic medication was the only way Samantha would feel better, so she did not give Samantha's Declaration to the doctor. Because the doctor did not know that Samantha had created a Declaration, they could not follow her treatment instructions. They thought that Samantha should be treated with psychotropic medication, and asked a judge in a court for permission. The judge gave the doctor permission, and he treated Samantha with psychotropic medication.

Ending 3: Marsha gave Samantha's Declaration to the doctor at the hospital just as Samantha had requested. The doctor read the Declaration and did not treat her with psychotropic medication or ECT.

Once a doctor has your Declaration, it can be used, is operational, and the instructions you put in it will be followed--most of the time. However, there is one time when it is possible that the treatment instructions in your Declaration will not be followed:

In an *emergency*, when your behavior shows that you are in imminent danger of causing harm to yourself or others, the doctors must first try to follow your Declaration. However, if following your declaration does not work to stop you from being an immediate danger to yourself or others, the doctor can go against your Declaration.

Example 1:

Tony did not want to receive psychotropic medication if he was admitted to the mental health center, so he created a Declaration saying that and gave it to his doctor. One year later, Tony was admitted to the hospital in crisis.

Even though the doctor had Tony's Declaration, the doctor thought that Tony was going to hurt himself--that made it an emergency situation. The doctor tried to follow the Declaration but Tony remained actively suicidal. To make sure Tony did not hurt himself, the doctor was then allowed to go against the Declaration and give Tony psychotropic medication, even though the Declaration said Tony did not want psychotropic medication to be used in his mental health treatment. However, once the *emergency* is over, the doctor must again follow Tony's Declaration and not give him any more medications.

Example 2:

Tony did not want to receive ECT if he was admitted to the mental health center, so he created a Declaration saying that and gave it to his doctor. One year later, Tony was admitted to the hospital in crisis.

Then, even though the doctor had Tony's Declaration, the doctor thought that Tony was very likely to hurt himself--that made it an emergency situation. The doctor first tried to follow Tony's Declaration, but Tony remained actively suicidal. The doctor cannot give Tony ECT, and must follow Tony's wishes about ECT at all times. There is no exception.

Three Mental Health Treatments You May or May Not Allow

Section 8: Three treatments you can give instructions about in your Declaration

If you create a Declaration, you can give instructions about three kinds of mental health treatment you do or do not want used as part of your mental health treatment if you are incapable of making those decisions in the future. In your Declaration you can give instructions about these three kinds of treatment:

Psychotropic Medications Electroconvulsive Treatment (ECT) Emergency  
Mental Health Treatment

Because the legal form used to create your Declaration has space where you can put **CONDITIONS AND LIMITATIONS** on your treatment instructions, we think you can change almost everything in the form so that your Declaration says exactly what you want about each of these three treatments.

For example, the form has a place to put a checkmark to either consent or refuse ECT, but where it says **CONDITIONS AND LIMITATIONS**, you could write that you consent only to 12 treatments (see the Examples for more changes). Or, you could consent to *psychotropic medication* but only for a certain time period.

Because this is a brand-new law, if someone objects to this, a judge in court will have to decide whether or not these changes are legal. If a judge decides the changes are not legal, your Declaration might be void or cancelled, or the judge might decide that a section of the Declaration is not legal but the other sections are legal and should be

followed. Until a court rules on changes like these, no one can be sure which way a court will interpret this law.

Because there are so many changes you can make about mental health treatment in your Declaration, we strongly urge you to talk to a doctor, a lawyer, and other people you can trust to help you make important decisions.

## Section 9: Psychotropic Medications

If you create a Declaration, you can say whether *psychotropic medications* can or cannot be used in your mental health treatment. If your Declaration becomes *effective*, your instructions will control the treatment you get.

As you will see by the tables below, this is a very complicated part of your Declaration because there are many different instructions you can give about how *psychotropic medications* can be used in your treatment. Because it is so complicated, and because there are so many medications available, you should talk about these decisions with a doctor, a lawyer, friends, and family.

The part of your Declaration where you give instructions about *psychotropic medication* looks like this:

### PSYCHOTROPIC MEDICATIONS

If I become incapable of giving informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

I consent to the administration of the following medications:

I DO NOT consent to the administration of the following medications:

I do consent to the administration of a Federal Drug Administration (FDA) approved medication that was only approved & in existence after my declaration and that is considered in the same class of psychoactive medications as stated below:

Conditions or limitations:

If you will allow psychotropic medication as part of your mental health treatment, you can give instructions about which medications can and cannot be used in your treatment.

Examples of the use of psychotropic medications in your Declaration:

Mary knows that when she becomes very ill, she needs psychotropic medication--specifically lithium--to get better, but sometimes she just stops taking it. When that happens, Mary wants the doctor to give her lithium--and only lithium--even if she objects to it:

Condition: I only consent to the administration of lithium by my psychiatrist. I do not want any anti-psychotic medications because they make me lethargic, and I have uncontrollable trembles.

John has had periods when his thinking was so confused that his doctor has given him medication. While John knows that the medication is necessary, he wants to give his doctor the authority to give him medication only for a while--not forever--so he wrote the following condition:

Condition: I consent to the administration of psychotropic medication by my psychiatrist for up to \_\_\_\_ days. After the \_\_\_\_ days, the medication should be discontinued. I understand that the discontinuation of my medication may cause me to remain at the hospital for a longer period of time.

Harry thinks it is okay for his doctor to give him Haldol when he is incapable and can't give informed consent. He also agrees to take any new medications that may come out after he has executed his declaration that are in the same medication category as Haldol. Harry put a check mark on the line that states that he agrees to new FDA medications and wrote the following condition:

Condition: I consent to the administration of any new medications that are in the same medication category as Haldol that is approved by two doctors.

In the following table, Column 1 shows you the instructions about *psychotropic medications* you could put in your Declaration. If you write the instructions in Column 1 in your Declaration and it becomes *effective*, Column 2 shows what will happen, unless it is an *emergency* (i.e., you are a danger to yourself or to others). Column 3 gives you the legal words you can put into your Declaration to give the instructions.

Psychotropic Medications / Declaration		
Column 1	Column 2	Column 3
If you write these instructions in your Declaration about psychotropic medication,	This is what will happen (unless it is an emergency or there is a court order)	You can write this in your Declaration to give the instructions in Column 1.
You do not want	No psychotropic	. Do not put a

psychotropic medication used in your mental health treatment, and you write these instructions in your Declaration	medication should be used under any circumstances in your mental health treatment.	checkmark on any line. Write this sentence where it says Conditions and Limitations: <i>I do not consent to the use of any psychotropic medications in my mental health treatment.</i>
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If you are using this instruction, you should probably include in the conditions and limitations section that you understand that without medications you may remain in the hospital longer. You may also want to include the reasons that you do not want medications, i.e., side effects, religious beliefs, etc. You should state that this list is not an exhaustive list of reasons that you prefer not to take the medications.

Psychotropic Medications / Declaration		
Column 1	Column 2	Column 3
If you write these instructions in your Declaration about psychotropic medication,	This is what will happen (unless it is an emergency or there is a court order)	You can write this in your Declaration to give the instructions in Column 1.
You will allow psychotropic medication to be used in your mental health treatment, so you write the names of all the medications you will allow to be used in your Declaration.	Only those medications should be used in your mental health treatment.  If a new medication comes out that might help you, your doctors should not give it to you unless you have checked the line that says you approve of new medications (see below) because the new medication is not on the list of medications you put in your Declaration.	Put a checkmark on the line that says: "I consent to the administration of the following medications:" On the next line, write the names of the psychotropic medications you will allow to be used in your treatment.
You consent to the use of psychotropic medication to be used	You should not be given any	Put a checkmark on the line that says: "I do not consent to the administration of the

<p>in your mental health treatment, but you write down the names of medications you do not want to use.</p>	<p>medication that is on your list.  You could be given any medication that is not on your list.</p>	<p>following medications:" and write the names of the psychotropic medications you do not want to use on the line below that statement.  Write this sentence where it says Conditions and Limitations: <i>I consent to the administration of psychotropic medication except those listed above.</i>"</p>
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You should also write the reasons why you do not want certain medications, i.e., side effects, religious beliefs, etc. You may also want to include why you do want the medications that you have written down.

Psychotropic Medications / Declaration		
Column 1	Column 2	Column 3
<p>If you write these instructions in your Declaration about psychotropic medication,</p>	<p>this is what will happen (unless it is an emergency or there is a court order).</p>	<p>You can write this in your Declaration to give the instructions in Column 1.</p>
<p>You consent to the use of any new medications that are FDA approved after you have executed your Declaration.</p>	<p>You will also be given medications that are FDA approved after you have executed your advance directive that are in the same drug class as the medications that you have listed.</p>	<p>Put a checkmark on the line that says: I do consent to the administration of a Federal Drug Administration (FDA) approved medication that was only approved &amp; in existence after my declaration and that is considered in the same class of psychoactive medications as stated below:"  On the next line put the names of the psychotropic medications that you will</p>

		allow to be substituted with new FDA approved medications.
You do not put any instructions in your Declaration about the use of psychotropic medications in your mental health treatment.	No psychotropic medication should be given to you unless someone asks for permission or you are ordered to take medications at a medication hearing.	Leave the psychotropic medication section of your Declaration blank.

If you allow psychotropic medication to be used as part of your mental health treatment, you can write down how many times it can be used, the dosages that you want and give other instructions where the form says **CONDITIONS OR LIMITATIONS**.

#### Section 10: Electroconvulsive Treatments (ECT)

If you create a Declaration, you can say whether ECT can or cannot be used in your mental health treatment. Then, if your Declaration becomes effective, the instructions you put in it will control your treatment. The part of your Declaration you use to give instructions about ECT looks like this:

#### ELECTROCONVULSIVE THERAPY

If I become incapable of giving or I am withholding informed consent for mental health treatment, my wishes regarding electroconvulsive therapy are as follows:

\_\_\_ I consent to the administration of electroconvulsive treatment.

\_\_\_ I do not consent to the administration of electroconvulsive treatment.

Conditions or limitations: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Because this legal form has space where you can put **CONDITIONS AND LIMITATIONS** on your ECT instructions, we think you can write that you consent only to a certain number of ECT treatments.

Examples of the use of ECT in your Declaration:

Maria has had ECT before and knows that it helps her when she is very ill. Maria doesn't have her own doctor, and often has different doctors at the clinic she uses. She wants to make sure that her health is protected if she has ECT treatments again, so Maria states in her declaration that she consents to ECT. Maria added the following condition to her Declaration:

Condition: I consent to the administration of ECT as long as the procedure is explained to me and I understand what health risks are associated with receiving ECT.

Jose had ECT before and knows that after five or six treatments he is much better and is able to think for himself and decide about more treatment. If Jose's doctor wants to give him ECT again, Jose only wants five or six treatments and also wants his brother to watch over his ECT treatment. Jose puts the following condition in his Declaration:

Condition: I consent to the administration of up to six (6) electroconvulsive treatments, provided my brother consents to the treatment.

Lenny's work place got new health insurance, so Lenny has a new doctor. Medication controls his mental illness almost all of the time, but about every five years Lenny may need ECT to feel better. Still, because of the headaches he gets with ECT, Lenny wants to make sure that the doctors always try medications before they give him ECT. Lenny wrote the following condition in his Declaration:

Condition: I consent to the administration of ECT only after my doctor has monitored and adjusted my medication for (period of time) and has exhausted the use of any new and different medications.

Kathryn was given ECT in the past and knows that ECT caused memory loss. She does not want to have ECT again, regardless of the circumstances. Kathryn checked the line in her Declaration that says she does not consent to ECT, and wrote the following condition to her declaration:

Condition: I do not, under any circumstances and regardless of whether I have been determined to be incompetent by a court of law, consent to ECT. I have been given ECT in the past, and it has caused me to have long- term memory loss.

## Preferences for Emergency Treatment

If you create a Declaration, you can state which treatments you prefer to be tried if you require immediate treatment. This section is not meant to cause fear in anyone filling out this form. This section will only be used when it is necessary to treat you in order to prevent probable imminent death or serious bodily injury. Then, if your Declaration becomes effective, your instructions will be attempted first when you are considered in need of emergency treatment.



However, this section only becomes effective when you have been determined incompetent by a court of law. Therefore, a doctor may state that, at the time of the emergency--if you had not been determined incompetent by a court of law-- they did not have to follow your advanced directive. We think that you can ensure that your preferences in this section are used whenever you are in an emergency, regardless of whether you have been determined incompetent, by using the CONDITION AND LIMITATION section.

Example:

Jai states that he prefers to fold clothes when he becomes agitated, then medication, then seclusion, and then restraint if more restrictive means are necessary in an emergency situation. He states this in his Declaration. Jai is hospitalized, but has not been found incompetent by a court of law. During his hospitalization, he starts screaming and threatens to hurt a staff member because they will not allow him to have a smoke break. The doctor does not follow the directive because Jai has not been determined to be incompetent. The doctor then orders mechanical restraints for him.

How to avoid this problem:

Under the CONDITIONS AND LIMITATIONS section, you should write "My preferences under this section should be used whenever an emergency situation arises, regardless of whether I have been determined to be incompetent by a court of law."

The part of your Declaration you use to give instructions about emergency treatment looks like this:

OPTIONAL: In an emergency, I prefer the following treatment FIRST (circle one)  
Restraint / Seclusion / Medication

OPTIONAL: In an emergency, I prefer the following treatment SECOND (circle one)  
Restraint / Seclusion / Medication

OPTIONAL: In an emergency, I prefer the following treatment THIRD (circle one)  
Restraint / Seclusion / Medication

\_\_\_\_ I prefer a male/female to administer restraint, seclusion and/or medications.

Options for treatment prior to use of restraint, seclusion and /or medications:

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Conditions or limitations: \_\_\_\_\_

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Because this legal form has a space where you can put options for treatment prior to use of restraint, seclusion, or medication, we think that you can put other methods you want tried to help you calm down before resorting to restraint, seclusion, or medication.

Examples of the use of Emergency Preferences in your Declaration:

Tyrone knows that he often gets agitated when the unit becomes loud or when he hasn't had enough time to himself. He knows that he is able to calm down if he is allowed to go to a quiet area by himself and listen to music or read a book. He also knows that he prefers seclusion to restraint or medications. In order to ensure that his wishes are followed in an emergency situation, Tyrone first circles seclusion, then restraint, and then medication.

Options for Treatment: Prior to the use of seclusion, restraint, or medications, I would like the option to go to a quiet area by myself and listen to music or read a book because this helps me calm down and often makes seclusion, restraint, or medications unnecessary.

## Section 11: Glossary of Terms

Attending Physician is the doctor who is responsible for your treatment. If you have a regular doctor, he or she would probably be your attending physician. If you have entered a hospital or another facility, the attending physician is the doctor who is assigned to you.

ECT is the acronym for electroconvulsive therapy.

Effective means your Declaration will be used as your treatment instructions when a judge in a medication or a guardianship hearing believes you cannot make those decisions. If your Declaration was executed and you are found incapable of making treatment decisions, your Declaration becomes effective.

Emergency means that it is immediately necessary to treat a person to prevent probable imminent death or serious bodily injury to the person. Even though you create a Declaration, the doctors or others who treat you can go against your Declaration in an emergency situation after they first try the treatments that you have indicated in your declaration.

Executed means that you and two witnesses have signed and dated your Declaration. It will remain in effect for three years unless you cancel it, execute a new declaration, or are found to be incompetent at the time that the three years expire. When your Declaration is executed that means it is legally possible for your Declaration to be used as your instructions for mental health treatments when you can't make those decisions yourself.

Health Care Facility or Provider means an individual or facility licensed, certified, or otherwise authorized to administer health care or treatment, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician or other health care provider, a residential care provider, or an inpatient mental health facility as defined in § 571.008, Tex. Health and Safety Code.

Incapable/ Incompetent/ Incapacitated means that you are not able to make treatment decisions. You will be found incapable if a judge believes that you cannot understand information well enough to make decisions or that you can't tell someone what your decisions about mental health treatment are.

Informed Consent means that unless you have been found incapable, people who treat you must give you enough information about the treatment, its good point and bad points, that you can make an educated decision about whether you will allow the treatment, before you are treated. If you have been given enough information to make a good decision, you can give what is legally called informed consent.

Operational means your Declaration has been executed and was given to a doctor.

Principal is the legal term for the person (principal) who creates the Declaration.

Psychotropic Medication means medication whose use for antipsychotic antidepressant, antimanic, antianxiety, behavioral modification or behavioral management purposes is listed in AMA Drug Evaluations, latest edition, or Physician's Desk Reference, latest edition, or what are administered for any of these purposes. ..." [405 ILCS 5/1-121.1]

Valid means that your Declaration is legal and can be used.

Void means that your Declaration is not legal and cannot be used.

## Appendix Form You Can Use to Create Your Declaration for Mental Health Treatment

A form you can use to create your Declaration:

The Texas law that created the Declaration for Mental Health Treatment included a form you can use to create a Declaration. That form is shown below, and is called "The Statutory Form."

The law says that you can change that form as long as you follow its example. We have included the statutory form. We suggest you use this form.

If you create a Declaration, remember that it is a legal document which can control the mental health treatment you get in the future. Think very carefully about what treatment instructions you want in your Declaration, and discuss those instructions with a doctor

and a lawyer to make sure it gives exactly the instructions you want it to give about your future mental health treatment.

Remember, if you make a mistake about your mental health treatment instructions when you create your Declaration, you might have to live with that mistake for a very long time.

**A Doctor:** You should talk to a doctor you know and trust, and who knows you and your illness, before you fill out the Declaration form. A doctor--who knows you, your illness, and the treatments for your illness--can help you write instructions about the treatments you want and don't want.

**A Lawyer:** You should talk to a lawyer. Lawyers know how to fill out legal forms, and could help you make sure your Declaration does not say things you don't mean. Talking to a lawyer would also help you find out about other legal ways to give instructions about your mental health treatment.

DECLARATION FOR MENTAL HEALTH TREATMENT

I, \_\_\_\_\_, being an adult of sound mind, willfully and voluntarily make this declaration for mental health treatment to be followed if it is determined by a court that my ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment is impaired to such an extent that I lack the capacity to make mental health treatment decisions. "Mental health treatment" means electro convulsive or other convulsive treatment, treatment of mental illness with psychoactive medication, or preferences regarding emergency mental health treatment.

Optional: I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

\_\_\_ I consent to the administration of the following medications:

\_\_\_\_\_

\_\_\_ I do not consent to the administration of the following medications:

\_\_\_\_\_

\_\_\_ I do consent to the administration of a Federal Drug Administration (FDA) approved medication that was only approved and in existence after my declaration and that is considered in the same class of psychoactive medications as stated below:

\_\_\_\_\_  
\_\_\_\_\_

Conditions or limitations:

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CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment,  
my wishes regarding convulsive treatment are as follows:

\_\_\_ I consent to the administration of convulsive treatment.

\_\_\_ I do not consent to the administration of convulsive treatment:

Conditions or limitations:

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PREFERENCES FOR EMERGENCY TREATMENT

Options for treatment prior to use of restraint, seclusion and /or medications.

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Conditions or limitations: \_\_\_\_\_

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OPTIONAL:

In an emergency, I prefer the following treatment FIRST: (circle one)  
Restraint/Seclusion/Medication

OPTIONAL In an emergency, I prefer the following treatment SECOND: (circle one)

Restraint/Seclusion/Medication

OPTIONAL: In an emergency, I prefer the following treatment THIRD: (circle one)

Restraint/Seclusion/Medication

\_\_\_ I prefer a male/female to administer restraint, seclusion and/or medications.

ADDITIONAL REFERENCES OR INSTRUCTIONS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Conditions or limitations:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNATURE OF PRINCIPAL:

\_\_\_\_\_

DATE:

\_\_\_\_\_

STATEMENT OF WITNESSES

I declare under penalty of perjury that the principal's name has been represented to me by the principal, that the principal signed or acknowledged this declaration in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, and that I am not a provider of health or residential care to the principal, an employee of a provider of health or residential care to the principal, an operator of a community health care facility providing care to the principal, or an employee of an operator of a community health care facility providing care to the principal.

I declare that I am not related to the principal by blood, marriage or adoption and that to the best of my knowledge I am not entitled to and do not have a claim against any part of the estate of the principal on the death of the principal under a will or by operation of law.

Witness Signature: \_\_\_\_\_ Print  
Name: \_\_\_\_\_

Date: \_\_\_\_\_  
Address: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Print  
Name: \_\_\_\_\_

Date: \_\_\_\_\_  
Address: \_\_\_\_\_

## NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health treatment and specifically three types of mental health treatment: psychoactive medication, convulsive therapy and emergency mental health treatment. The instructions that you include in this declaration will be followed only if a court believes that you are incapable of making treatment decisions. Otherwise, you will be considered able to give or withhold consent for the treatments.

This document will continue in effect for a period of three years unless you become incapacitated to participate in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapacitated.

You have the right to revoke this document in whole or in part at any time you have not been determined to be incapacitated. **YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED BY A COURT TO BE INCAPACITATED.** A revocation is effective when it is communicated to your attending physician or other health care provider.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration is not 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.

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(1) Referred to as a Declaration throughout this material.

(2) Note: Underlined words are defined in the Glossary in Section 11

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