

Tennessee Q and A

Ten commonly asked questions about PAD's for Tennessee

Note: the following 10 FAQs are designed to provide a quick and accessible guide to what your state Statutes say – or do not say – about PADs. The FAQs do not attempt to provide a complete overview of the law in your state, nor can they take the place of legal advice.

1. Can I write a legally-binding psychiatric advance directive (PAD)?

Yes, under the part of the Tennessee Statute entitled “Declarations for Mental Health Treatment”. The PAD form is available at www.state.tn.us/mental/t33/DHMT_FORM.pdf and the Tennessee Department of Mental Health and Developmental Disabilities has published its own guide to the form at www.state.tn.us/mental/t33/DMHT_bro.pdf.

2. Can I write advance instructions regarding medications and/or hospitalization?

Yes. You can specify choices about both medications and hospitalization, including your refusal of consent to either. You may also give further background information about how you have reacted to past treatment.

3. Does anyone have to approve my advance instructions at the time I make them?

No. However, your PAD requires the signatures of two competent adults who know you personally, one of whom must not be a family member or recipient of your estate. They must attest that they have spoken to you about the contents of your PAD and your reasons for preparing one, and that you are competent to create one at that time.

4. Can I appoint an agent to make mental health decisions for me if I become legally incompetent?

Yes, using the part of the Tennessee Statute entitled “Durable Power of Attorney for Health Care”. This is separate from the PAD and allows you to appoint a person to make decisions if you become incompetent, whether those decisions relate to psychiatric or other medical treatment.

5. If I become legally incompetent, can my agent make decisions for me about medications and/or hospitalization?

Yes. If you become legally incompetent to make a particular decision about medication or hospitalization, your agent can make that decisions for you, which might include a decision not to accept the treatment being offered.

6. Does my agent have to make decisions as he/she thinks I would make them (known as “substituted judgment”), or does he/she have to make them in my “best interests”?

The statute does not specify how the agent should act in the event of a situation where you have not informed him or her of your exact wishes.

7. Is there any rule that says that I can only make advanced instructions, only appoint an agent, or that I must do both?

No. You may have one or the other, or both.

8. Before following my PAD, would my mental health care providers need a court to determine I am not competent to make a certain decision?

No. If two physicians, or one physician and one psychologist, decide that you cannot make your own decision, your PAD and/or agent’s instructions will be followed.

9. Does the statute say anything about when my mental health providers may decline to follow my PAD?

Your mental health providers could lawfully decline to follow your PAD if you were involuntarily committed to hospital under State law and a treatment review committee authorized such a course, or if there was an emergency endangering your life or health: Chapter 33-6-1006. Additionally, an individual provider may withdraw care if he or she cannot comply with your PAD as “a matter of conscience”. In that situation, he or she must arrange for your prompt transfer to the care of others.

10. How long does my PAD remain valid?

Your PAD remains valid for two years or until revoked, whichever is sooner. You may also specify a shorter period of validity if you wish. You may revoke your PAD at any time, orally or in writing. If your PAD is due to expire at a time when you lack competence, it remains valid until you regain competence, or for thirty days, whichever is the shorter. For more on the legal issues surrounding revocation see [legal FAQs].