

Nebraska Q and A

Ten commonly asked questions about PAD's for Nebraska

Please note: the following 10 FAQs are designed to provide a quick and accessible guide to what your state's Statutes say – or do not say – about PADs. The FAQs do not attempt to provide a complete picture of the law in your state, nor can they take the place of legal advice. The answers were accurate when written in November 2006.

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

Yes, by appointing an agent. Nebraska's Health Care and Treatment Decisions statute allows you to appoint an agent (called an "Attorney in fact") to make healthcare decisions for you if you become incompetent to make those decisions yourself. "Health care" may include mental health care. A recommended form for this purpose, called a Power of Attorney, is available [here](#). The form is not mandatory but is helpful because you must in any event follow the formalities listed in the statute (see question 3 below). Nebraska Advocacy Services has published some helpful further information, available [here](#).

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

The Nebraska statute does not allow you to write advance instructions for your psychiatric care in a freestanding document. However, if you fill out a Power of Attorney, you may wish to specify how you would like your Attorney in fact to make decisions for you. If there are particular matters that you wish your Attorney in fact to make clear to your treating physicians, it is advisable to discuss them with him/her and document them in section 2 of the suggested form, attaching further pages if necessary.

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

No. However, you must comply with the following formalities for your Power of Attorney to be valid. (1) It must be in writing; (2) it must say who your Attorney in Fact is; (3) it must make clear that your Attorney in fact is authorized to make decisions on your behalf if you become incapable; (4) it must be dated; (5) it must be witnessed and signed by two adults or a notary, who must attest that you were of sound mind and not under duress when you created the document. The simplest way to comply with these requirements is to use the suggested form.

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

Yes, as outlined above. Your Attorney in fact must be someone other than your attending physician, an employee of your health care provider, or someone who already acts as an agent for ten or more people.

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

Yes. The general rule is that your agent can make any health care decision that you could have made if you were able to. However, you should be aware that there are exceptions to this general rule: see question 9 below.

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 dictate how your agent must act. However, the more you discuss and document your wishes in conjunction with your agent, the more likely it is that those wishes will be followed.

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

Yes. As explained above, it is not possible to write advance instructions only. If you wish to create a PAD, you must use a Power of Attorney, but the extent to which you also document your decisions is up to you.

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. All that is required is that your attending physician and one other physician believe you are incompetent to make the decision. The physicians must document that decision in your medical records. If you are deemed incompetent and a question arises about a decision at a later stage, your physician must evaluate your competence again at that point.

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

Yes. The statute states that your provider is not required to treat you according to your Attorney in fact's instructions if they are contrary to the facility's formal policies of care. The statute also states that your Attorney in fact's instructions must be followed subject to "independent medical judgment": it is therefore likely that the instructions would not be followed if deemed to be medically inappropriate. Finally, your provider could decline to follow the Attorney in fact's instructions if you were considered a danger to yourself or others, or otherwise in an emergency.

10. How long does my PAD remain valid?

Your Power of Attorney remains valid until revoked. You may revoke it at any time you remain competent. If you name your spouse as your Attorney in fact and subsequently undergo a divorce or legal separation, you must amend your Power of Attorney to make it clear who should act as your Attorney in fact