

36-3201. Definitions

In this chapter, unless the context otherwise requires:

1. "Agent" means an adult who has the authority to make health care treatment decisions for another person, referred to as the principal, pursuant to a health care power of attorney.
2. "Artificially administered" means providing food or fluid through a medically invasive procedure.
3. "Attending physician" means a physician who has the primary responsibility for a principal's health care.
4. "Comfort care" means treatment given in an attempt to protect and enhance the quality of life without artificially prolonging that life.
5. "Health care directive" means a document drafted in substantial compliance with this chapter, including a mental health care power of attorney, to deal with a person's future health care decisions.
6. "Health care power of attorney" means a written designation of an agent to make health care decisions that meets the requirements of section 36-3221 and that comes into effect and is durable as provided in section 36-3223, subsection A.
7. "Health care provider" means a natural person who is licensed under title 32, chapter 13, 15, 17 or 25, a hospice as defined in section 36-401 that is licensed under chapter 4 of this title or an organization that is licensed under this title, that renders health care designed to prevent, diagnose or treat illness or injury and that employs persons licensed under title 32, chapter 13, 15, 17 or 25.
8. "Interested person" means the patient, a person listed under section 36-3231, subsection A, a health care provider directly involved in the patient's medical care or an employee of a health care provider.
9. "Living will" means a statement written either by a person who has not written a health care power of attorney or by the principal as an attachment to a health care power of attorney and intended to guide or control the health care treatment decisions that can be made on that person's behalf.
10. "Mental health care power of attorney" means a written designation of an agency to make mental health care decisions that meets the requirements of section 36-3281.
11. "Physician" means a doctor of medicine licensed pursuant to title 32, chapter 13 or doctor of osteopathy licensed pursuant to title 32, chapter 17.

12. "Principal" means a person who is the subject of a health care power of attorney.

13. "Surrogate" means a person authorized to make health care decisions for a patient by a power of attorney, a court order or the provisions of section 36-3231.

36-3281. Mental health care power of attorney; scope; definition

A. An adult, known as the principal, pursuant to section 36-3282 may designate another adult or adults, known as the agent, to act as an agent and to make mental health care decisions on that person's behalf. The principal may also designate an alternate adult or adults to act as agent if the original designated agent or agents are unwilling or unable to act.

B. An agent under section 36-3283 may make decisions about mental health treatment on behalf of the principal if the principal is found incapable. If an adult does not have a mental health care power of attorney pursuant to this section, an agent with a health care power of attorney under section 36-3221 may make decisions about mental health treatment on behalf of the principal if the principal is found incapable, except as provided in section 36-3283, subsection F. These decisions shall be consistent with any wishes the principal has expressed in the mental health care directive, mental health care power of attorney, health care power of attorney or other advance directive.

C. An agent shall not be a person who is directly involved with the provision of health care to the principal at the time the mental health care power of attorney is executed.

D. For the purposes of this section, "incapable" means that in the opinion of a physician who is licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1, a person's inability to give informed consent as defined in section 36-501.

36-3282. Execution requirements

A. To be valid, a mental health care power of attorney shall:

1. Be executed by a principal who is not incapable, as defined in section 32-3281.

2. Be in writing.

3. Contain language that clearly indicates that the principal intends to create a mental health care power of attorney.

4. Except as provided pursuant to subsection C of this section, be dated and signed or marked by the principal.

5. Be notarized or witnessed in writing by at least one adult who affirms that the notary or witness was present when the principal dated and signed or marked the mental health care power of attorney and that the principal appeared to be of sound mind and free from duress, fraud or undue influence at that time.

B. If a mental health care power of attorney expressly provides that the agent can admit the principal to a level one behavioral health facility licensed by the department of health services, each paragraph that grants this authority must be separately initialed by the principal at the time the mental health care power of attorney is signed and witnessed.

C. If the principal is physically unable to sign or mark a mental health care power of attorney, the notary and each witness shall verify on the document that the principal indicated to the notary or witness that the mental health care power of attorney expressed the principal's wishes and that the principal intended to adopt the mental health care power of attorney at that time.

D. A notary or witness shall not be any of the following:

1. A person designated to make medical decisions on the principal's behalf.

2. A professional care provider directly involved with the provision of care to the principal at the time the mental health care power of attorney is executed.

E. If a mental health care power of attorney is witnessed by only one person, that person shall not be either:

1. Related to the principal by blood, marriage or adoption.

2. Entitled to any part of the principal's estate by will or by operation of law at the time that the power of attorney is executed.

F. A mental health care power of attorney may be used as part of or independent of a health care power of attorney as defined in section 36-3201.

36-3283. Powers and duties of an agent

A. An agent may make mental health care decisions for the principal while the principal is incapable, as defined in section 36-3281.

B. Except as limited by subsection F of this section, an agent's authority to make mental health care decisions is limited only by the express language of the mental health care power of attorney or by a court order pursuant to section 36-3206.

C. The appointment of a person to act as an agent is effective until that authority is revoked by the principal or by a court order.

D. An agent has the same right as the principal to receive information and to review the principal's medical records regarding proposed mental health treatment and to receive, review and consent to the disclosure of medical records relating to that treatment.

E. An agent shall act consistently with the wishes of the principal as expressed in the mental health care power of attorney. Except as limited by subsection F of this section, if the principal's wishes are not expressed in the mental health care power of attorney and are not otherwise known by the agent, the agent shall act in accordance with what the agent in good faith believes to be in the principal's best interests.

F. An agent may consent to admit the principal to a level one behavioral health facility licensed by the department of health services if this authority is expressly stated in the mental health care power of attorney or health care power of attorney under section 36-3221.

G. An agent is not subject to criminal or civil liability for decisions made in good faith and pursuant to a mental health care power of attorney or health care power of attorney.

36-3284. Operation of mental health care power of attorney; duties of physician or mental health care provider

A. A mental health care power of attorney is effective when it is executed and remains in effect until it is revoked by the principal pursuant to section 36-3285 or by court order.

B. If the mental health care power of attorney specifically authorizes the agent to admit the principal to a level one behavioral health facility, a principal shall not be admitted to a level one behavioral health facility licensed by the department of health services unless a physician who is licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1 does all of the following:

1. Conducts an investigation that carefully probes the principal's psychiatric and psychological history, diagnosis and treatment needs.
2. Conducts a thorough interview with the principal and the agent.
3. Obtains the agent's informed consent, as defined in section 36-501.
4. Makes a written determination that the principal needs an inpatient evaluation or will benefit from care and treatment of a mental disorder or other personality disorder or

emotional condition in the program and that the evaluation or treatment cannot be accomplished in a less restrictive setting.

5. Documents in the principal's medical chart a summary of the doctor's findings and recommendations for treatment.

C. The level one behavioral health facility licensed by the department of health services shall conduct a review of the principal's condition and need for admission into the facility and assess the appropriateness of the principal's placement at least once every thirty days. The agent may participate in each review. If possible the agent shall participate in person.

36-3285. Revocation; disqualification of agent

A. Unless limited by the express authority in the document, a principal even if incapable, as defined in section 36-3281, may revoke all or any part of the principal's mental health care power of attorney by doing any of the following:

1. Making a written revocation of the mental health care power of attorney or a written statement to disqualify an agent.
2. Orally notifying the agent or a mental health care provider.
3. Making a new mental health care power of attorney.
4. Any other act that demonstrates a specific intent to revoke a mental health care power of attorney or disqualify an agent.

B. Unless a facility has instituted proceedings pursuant to section 36-533, if a principal who is a patient in a mental health facility revokes a mental health care power of attorney and requests a discharge in writing, the facility shall discharge that person within twenty-four hours after it receives this request, excluding weekends and legal holidays. The discharge requirement prescribed in this section does not apply if a mental health care provider is prohibited from discharging the person under federal law.

36-3286. Sample mental health care power of attorney

A person may use any writing that meets the requirements of sections 36-3281 and 36-3282 to create a mental health care power of attorney. The following form is offered as a sample only and does not prevent a person from using other language or another form.

Mental Health Care Power of Attorney

I, _____, being an adult of sound mind, voluntarily make this declaration for mental treatment. I want this declaration to be followed if I am incapable, as defined in section 36-3281, Arizona Revised Statutes. I designate _____ as my agent for all matters relating to my mental health care including, without limitation, full power to give or refuse consent to all medical care related to my mental health condition. If my agent is unable or unwilling to serve or continue to serve, I appoint _____, as my agent. I want my agent to make decisions for my mental health care treatment that are consistent with my wishes as expressed in this document or, if not specifically expressed, as are otherwise known to my agent.

If my wishes are unknown to my agent, I want my agent to make decisions regarding my mental health care that are consistent with what my agent in good faith believes to be in my best interests. My agent is also authorized to receive information regarding proposed mental health treatment and to receive, review and consent to disclosure of any medical records relating to that treatment.

This declaration allows me to state my wishes regarding mental health care treatment including medications, admission to and retention in a health care facility for mental health treatment and outpatient services.

(initial one of the following)

_____ This mental health care power of attorney is irrevocable if I am unable to give informed consent.

_____ This mental health care power of attorney is revocable at all times.

The following are my wishes regarding my mental health care treatment if I become incapable, as defined in section 36-3281, Arizona Revised Statutes:

I consent to the following mental health treatments:

By initialing here, I consent to giving my agent the power to admit me to an inpatient or partial psychiatric hospitalization program, please initial here: ____ (initial if you consent)

I do not consent to the following mental health treatments:

Additional information about my mental health care treatment needs (consider including mental or physical health history, dietary requirements, religious concerns, people to notify and any other matters that you feel are important):

This mental health care power of attorney is made pursuant to title 36, chapter 32, article 6, Arizona Revised Statutes, and continues in effect for all who may rely on it except to those I have given notice of its revocation pursuant to section 36-3285.

(signature of principal)

Address of agent _____

Telephone number of agent _____

Address of backup agent _____

Telephone number of backup agent _____

Affirmation of witnesses:

I affirm that the person signing this mental health care power of attorney:

1. Is personally known to me.
2. Signed or acknowledged by his or her signature on this declaration in my presence.
3. Appears to be of sound mind and not under duress, fraud or undue influence.
4. Is not related to me by blood, marriage or adoption.
5. Is not a person for whom I directly provide care as a professional.
6. Has not appointed me as an agent to make medical decisions on his or her behalf.

Witnessed by:

_____ (signature and date)

_____ (signature and date)

Acceptance of appointment as agent: (optional)

I accept this appointment and agree to serve as agent to make mental health treatment decisions for the principal. I understand that I must act consistently with the wishes of the person I represent, as expressed in this mental health care power of attorney, or if not expressed, as otherwise known by me. If I do not know the principal's wishes, I have a duty to act in what I in good faith believe to be that person's best interests. I understand that this document gives me the authority to make decisions about mental health treatment only while that person has been determined to be incapable as that term is defined in section 36-3281, Arizona Revised Statutes.

(signature of agent)

(printed name of agent)

36-3287. Surrogate; mental health care power of attorney

The provisions of this chapter that relate to the powers and duties of surrogates apply to a mental health care power of attorney.

36-3292. Filing requirements

A. A person may submit to the secretary of state, in a form prescribed by the secretary of state, the following documents and any revocations of these documents for registration:

1. A health care power of attorney.
2. A living will.
3. A mental health care power of attorney.

B. The person who submits a document for registration pursuant to this section must provide a return address.

C. Documents submitted pursuant to this section must be notarized or witnessed as prescribed by this chapter.