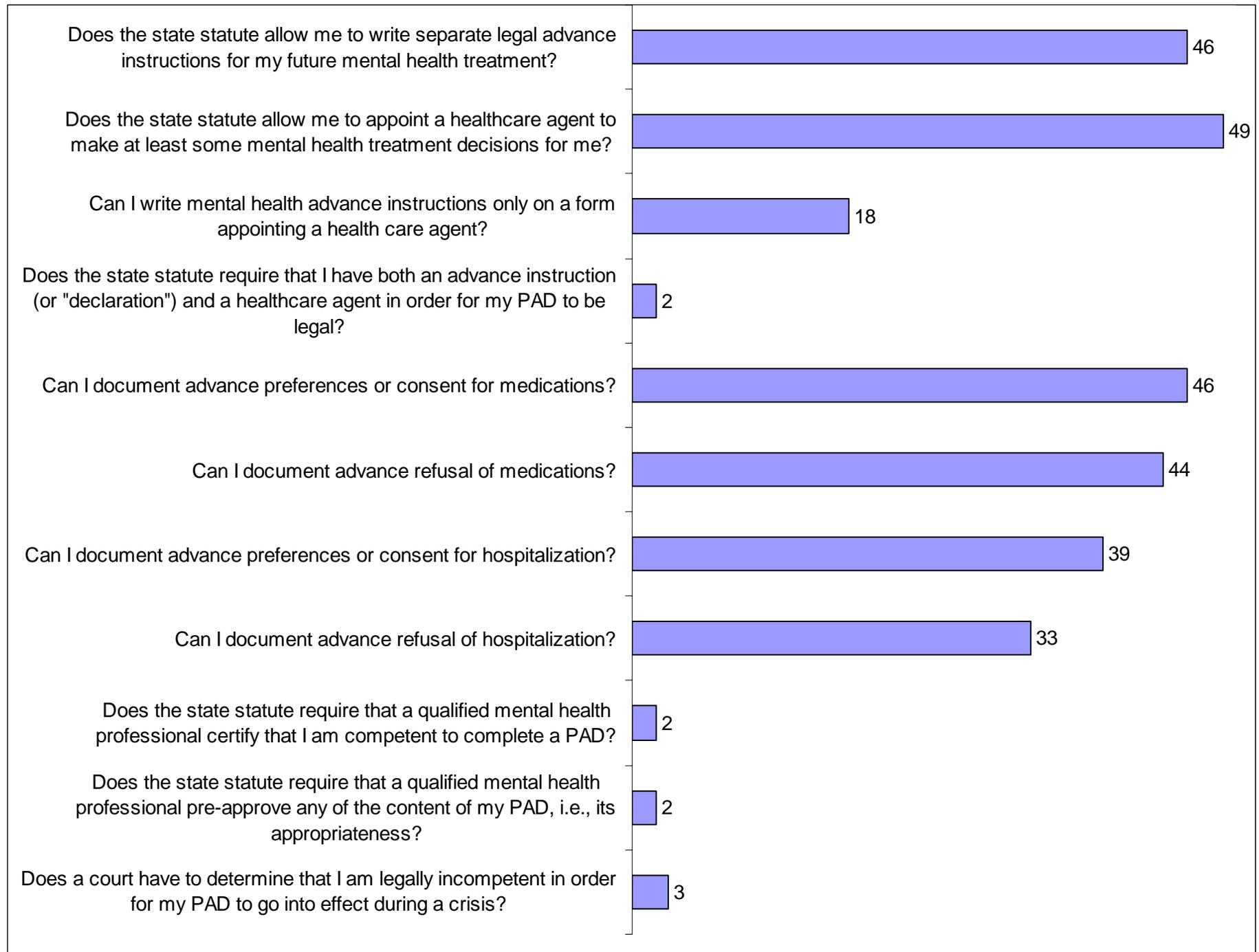


Questions about psychiatric advance directives

Number of states where the answer is "Yes"



Examples of Psychiatric Advance Directive Laws in Five States

[excerpted from Swanson JW, Swartz MS, Ferron J, Elbogen EB, Van Dorn RA (2006). Psychiatric advance directives among public mental health consumers in five U.S. cities: Prevalence, demand, and correlates. *Journal of the American Academy of Psychiatry & Law*, 34: 43-57.]

. . . California, Florida, Illinois, Massachusetts, and North Carolina [represent] a diversity of statutory approaches to authorizing advance mental health care planning.

Illinois and North Carolina both have statutes explicitly authorizing psychiatric advance directives. Illinois in 1996 enacted the Mental Health Treatment Preference Declaration Act,¹⁶ authorizing both an advance instruction for mental health treatment and a proxy decisionmaker for mental health care termed an "attorney-in-fact." The advance declaration goes into effect only "if it is determined by 2 physicians or the court that [the principal's] ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that [the principal] lacks the capacity to refuse or consent to mental health treatment." The Illinois PAD can be used to give advance informed consent to mental health treatment including electroconvulsive therapy, psychotropic medication, and admission to and retention in a health care facility for a period up to 17 days. The PAD may be revoked only when the principal is found competent. It can also be used to designate a particular physician to be consulted for treatment decisions during a crisis and to provide any additional information that the principal wishes to include, such as history of illness and treatment and prodromal symptoms that may indicate an impending exacerbation of psychiatric illness.

The North Carolina Advance Instruction for Mental Health Treatment¹⁷ was passed in 1997 and amended in 1998. This law is similar to the Illinois statute, except that it does not include appointment of a proxy decisionmaker specifically for mental health care decisions. Rather, in North Carolina, a Health Care Power of Attorney (HCPA) may be appointed using the same mechanism that is provided for general health care proxy decisionmaking, (e.g., for end-of-life care). Under this law, a person has the option of completing the Advance Instruction (AI) as a stand-alone document, completing the HCPA without an AI, or completing both documents as mutually reinforcing instruments.

California in 2000 passed the Health Care Decisions Law,¹⁸ revising its power-of-attorney law and updating rules governing health care decisionmaking on behalf of incompetent adults, including persons receiving treatment in mental health care facilities. The new law promulgated a model form entitled "Advance Health Care Directive" (AHCD) that can serve as both an individual health care instruction and a power of attorney. The California AHCD form was further revised in 2003 to include detailed information on

preferences for future mental health treatment in the following areas: who should be notified during a mental health crisis; choice of treatment facility and alternatives to hospitalization; name of primary physician and choice of other physicians to make treatment decisions if the primary physician is unavailable; choices regarding methods for avoiding emergency situations; and choices regarding emergency interventions, routine medications for psychiatric treatment, emergency psychiatric medications, electroconvulsive therapy, persons prohibited from visiting the patient, and “other instructions” about mental health care.

In California, an advance health care directive may be incorporated into a comprehensive aftercare plan that is required for all patients discharged from mental health care facilities. In 1997 the California Health and Safety Code¹⁹ and Welfare and Institutions Code¹⁹ were amended to require all psychiatric facilities to prepare a written aftercare plan and provide copies to the patient, the patient’s legally authorized health care agent (if designated), and any other person or facility requested by the patient. The plan is supposed to include information on medications, dosage and side effects, description of expected course of recovery, ongoing treatment recommendations, and other relevant information to facilitate outpatient follow-up.

The California AHCD form also includes a statement intended for clinicians regarding liability and immunity associated with following these directives. Specifically, failure to follow a patient’s advance directive in California may result in liability for damages, negligence, malpractice, and battery claims.²⁰ However, clinicians cannot be held liable for following an advance directive (i.e., they are immunized from civil and criminal liability or from discipline for compliance with AHCDs²⁰).

In California, persons can revoke their advance directives either in writing or orally, merely by telling their health care provider that they no longer wish to have either the entire document or certain parts of it enforced.

Massachusetts and Florida lack explicit PAD statutes, but allow the use of general health care proxy decisionmakers to direct mental health treatment during periods of incapacity. Massachusetts in 1990 passed the Commonwealth of Massachusetts Act Providing for Health Care Proxies by Individuals,²¹ which implicitly allows the appointed surrogates to make some mental health treatment decisions. A 1999 study in Massachusetts found that 17 percent of VA outpatients had advance directives (durable power of attorney, living will, or both), and about one third of those with advance directives were psychiatric patients; however, it is not known to what extent those patients’ directives included mental health treatment instructions or prohibitions.²²

Florida in 1990 passed the Health Care Advance Directive (HCAD),²³ which was revised in 1996 to include treatment in mental health care facilities governed by the Baker Act²⁴ with special instructions for how the HCDA interacts with involuntary commitment law. The Florida Department of Children and Families has

developed a Mental Health Advance Directive form similar to that used in California, which includes specific information about psychiatric treatment preferences and can be used in conjunction with a legally authorized Mental Health Care Surrogate.²⁵ Florida has also initiated pilot PADs programs in four geographically diverse regions.

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