

TENNESSEE STATUTE  
TITLE 33, CHAPTER 6, PART 10  
DECLARATIONS FOR MENTAL HEALTH TREATMENT

33-6-1001. Declaration for mental health treatment authorized - Contents.

A competent adult may make a declaration for mental health treatment to express the person's preferences and instructions about participation in mental health treatment, including hospitalization for a maximum of fifteen (15) days, psychoactive and other medications, and electroconvulsive and other convulsive therapies. The declaration may include consent to or refusal to permit mental health treatment and other instructions and information for mental health service providers.

[Acts 2000, ch. 947, § 1.]

33-6-1002. "Incapable of making mental health treatment decisions" defined.

IF AND ONLY IF

(1)(A) a court determines in a proceeding to appoint a conservator under title 34, chapters 11 and 13 [transferred to title 34, chapters 1 and 3], that a person is currently unable to make an informed decision about mental health treatment as shown by the fact that the person is not able to understand the proposed procedure, its risks and benefits, and the available alternative procedures due to a diagnosed mental illness, OR

(a) two (2) physicians examine a person, OR

(b) a physician with expertise in psychiatry by training, education, or experience and a psychologist designated as a health service provider examine a person, AND

(ii) the examiners determine that the person is currently unable to make an informed decision about mental health treatment as shown by the fact that the person is not able to understand the proposed procedure, its risks and benefits, and the available alternative procedures due to a diagnosed mental illness,

THEN

(2) the person is "incapable of making mental health treatment decisions" for purposes of this part.

[Acts 2000, ch. 947, § 1; 2002, ch. 730, § 49.]

33-6-1003. Duration of declaration - Expiration - Revocation.

(a) A declaration for mental health treatment continues in effect for two (2) years, for a lesser period if so stated, or until revoked, whichever is sooner. If a declaration for mental health treatment has been invoked and is in effect at expiration under the preceding sentence, the declaration remains effective until the service recipient is capable of making mental health treatment decisions but no more than thirty (30) days after the expiration date. Subsequent declarations shall conform to all requirements of § 33-6-1004.

(b) A service recipient may revoke a declaration in whole or in part at any time orally or in writing if the service recipient is capable of making mental health treatment decisions. Making a new declaration revokes an earlier declaration. It is presumed that a service recipient is capable of making mental health treatment decisions. The presumption is a presumption affecting the burden of proof.

(c) A revocation is effective when a service recipient communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the service recipient's medical record.

[Acts 2000, ch. 947, § 1.]

33-6-1004. Signature required - Witnesses.

(a) A declaration is effective only if it is signed by the service recipient and two (2) competent adult witnesses and is not signed on the premises of a mental health service provider. The witnesses shall attest that the service recipient is personally known to them; signed the declaration in their presence; talked with the witnesses about the document, its contents, and the reasons for preparing and wanting the document to be effective; appears to be capable of making mental health treatment decisions; and is not under duress, fraud, or undue influence.

(b) None of the following may be used as a witness:

(1) The service recipient's mental health service provider;

(2) An employee of the service recipient's mental health service provider;

(3) The operator of a mental health facility; or

(4) An employee of a mental health facility.

(c) At least one (1) of the persons who is a witness shall be a person who is neither:

(1) A relative of the service recipient by blood, marriage or adoption; nor

(2) A person who would be entitled to any portion of the estate of the service recipient upon the service recipient's death under any will or codicil of the service recipient that exists at the time of execution of the declaration for mental health treatment or by operation of law then existing.  
[Acts 2000, ch. 947, § 1.]

33-6-1005. Effective date and applicability of declaration - Compliance.

- (a) A declaration becomes effective when it is signed by the declarant and all witnesses and remains valid until revoked or expired. The physician or provider shall act in accordance with an operative declaration when the service recipient has been found to be incapable of making mental health treatment decisions. The physician or provider shall continue to obtain the service recipient's informed consent to all mental health treatment decisions if the service recipient is capable of providing informed consent or refusal.
- (b) Upon being presented with a declaration, a physician or other provider shall make the declaration a part of the service recipient's medical record. When acting under authority of a declaration, a physician or provider shall comply with it to the fullest extent possible.
- (c) If the physician or other provider is unwilling at any time to comply with the declaration for mental health treatment, the physician or provider may withdraw from providing treatment consistent with the exercise of independent medical judgment and shall promptly notify the service recipient and document the notification in the service recipient's medical record. The physician or other provider shall arrange for the prompt and orderly transfer of the patient to the care of others when as a matter of conscience the health care provider cannot implement the decisions as provided in the declaration for mental health treatment.  
[Acts 2000, ch. 947, § 1.]

33-6-1006. Care contrary to declaration - Authorization by review committee -  
Emergency.

- (a) The physician or other mental health service provider may provide mental health treatment to the service recipient in a manner contrary to the service recipient's wishes as expressed in a declaration for mental health treatment

IF AND ONLY IF:

- (1) The service recipient is involuntarily committed to an inpatient treatment facility under this title and a treatment review committee authorizes it, or
  - (2) There is an emergency endangering the service recipient's life or health.
- (b) A declaration does not limit any authority under this title to take a person into custody or to admit, retain, or treat a person in a mental health facility.  
[Acts 2000, ch. 947, § 1.]

33-6-1007. Declaration superior to powers of conservator.

If a conservator is appointed with powers over the person for mental health treatment, the declaration for mental health treatment shall remain in effect and shall be superior to the powers and duties of the conservator with respect to mental health treatment covered under the declaration.  
[Acts 2000, ch. 947, § 1.]

33-6-1008. New mental health care provider to receive copy of declaration.

If a mental health service provider has a person's declaration for mental health treatment and learns that the person is being provided mental health treatment by another provider, the mental health service provider shall provide the current service provider with a copy of the declaration. If a mental health service provider knows that a person has revoked a declaration for mental health treatment and learns that the person is being provided mental health treatment by another provider, the mental health service provider shall notify the current service provider of the revoked declaration.  
[Acts 2000, ch. 947, § 1.]

33-6-1009. Effect of declarations executed in another state.

A declaration for mental health treatment that is validly executed in another state by a nonresident of this state at the time of execution shall be given effect in this state if the declaration for mental health treatment is in compliance with either the provisions of this part or the laws of the state of the service recipient's residence and the department determines that those laws are essentially as protective of the service recipient as this part.  
[Acts 2000, ch. 947, § 1.]

33-6-1010. Incorporation into durable power of attorney for health care.

A declaration for mental health treatment may be expressed in or incorporated into a durable power of attorney for health care that is executed under title 34, chapter 6, part 2, on or after March 1, 2001. The declaration in that case shall be revocable as to mental health service only under the conditions set in this part.

[Acts 2000, ch. 947, § 1.]

33-6-1011. Immunity for actions taken or not taken in good faith reliance on declaration.

A physician or mental health service provider who administers or does not administer mental health treatment as provided in and in good faith reliance on the validity of a declaration is not subject to criminal prosecution, civil liability or professional disciplinary action based on a subsequent finding of the declaration's invalidity.

[Acts 2000, ch. 947, § 1.]

33-6-1012. Admission to treatment not to be conditioned on execution of declaration for mental health treatment.

No mental health service provider, medical service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare plan, or nonprofit hospital plan, or any similar insurance or medical plan, may condition admission to a mental health facility or providing mental or physical health treatment or insurance on the requirement that a person execute a declaration for mental health treatment.

[Acts 2000, ch. 947, § 1.]

33-6-1013. Destruction or alteration of declaration prohibited - Penalty.

(a) It is an offense for a person, without authorization of the service recipient, intentionally to alter, forge, conceal, or destroy a declaration for mental health treatment, the revocation of a declaration, or any other evidence or document reflecting the service recipient's desires and interests, with the intent or effect of affecting the service recipient's mental health treatment.

(b) An offense under this section is a Class A misdemeanor.

[Acts 2000, ch. 947, § 1.]

33-6-1014. Standard form for declaration for mental health treatment.

(a) The department shall make available a standard form and explanation for declarations for mental health treatment in simple language and easily read type with adequate space to express the preferences and instructions of the service recipient.

(b) The form shall include at least the following information:

- (1) The effect of making the declaration;
- (2) The basic power of a service recipient to control mental health treatment and involuntary treatment authority;
- (3) The general range of mental health treatment processes that the service recipient might consider;
- (4) The conditions under which the declaration may be acted on; and
- (5) How to revoke a declaration.

(c) The form shall include places for at least the following types of preferences and instructions to be written:

- (1) Symptoms that may suggest use of the declaration;
- (2) Psychoactive medication;
- (3) Electroconvulsive or other convulsive treatment;
- (4) Admission to and remaining in mental health facilities;
- (5) Actions that the service recipient refuses to permit;
- (6) Mental health service providers; and
- (7) Other matters on which the service recipient may have preferences or instructions or wish to provide information to mental health service providers.

[Acts 2000, ch. 947, § 1; 2002, ch. 730, § 50.]

33-6-1015. Providers to have written policies and procedures relating to declarations for mental health treatment.

(a) A mental health service provider shall maintain written policies and procedures, applicable to all competent adults who receive mental health treatment from the service provider, that provide for:

(1) Delivering to service recipients the following information and material, in written form, without recommendation:

(A) Information materials provided by the state on the right to make mental health treatment decisions, including the right to accept or refuse mental health treatment and the right to execute declarations for mental health treatment,

(B) Information on the policies of the provider with respect to implementation of the right to make mental health treatment decisions,

(C) A copy of the declaration for mental health treatment form, and

(D) The name of a person who can provide additional information concerning the forms for declarations for mental health treatment;

(2) Documenting in a prominent place in the service recipient's record whether there is an executed declaration for mental health treatment;

(3) Ensuring compliance by the provider with the law relating to declarations for mental health treatment; and

(4) Educating the staff and the community on issues relating to declarations for mental health treatment.

(b) A provider need not furnish a copy of a declaration for mental health treatment to a service recipient if the provider has reason to believe that the service recipient has received a copy of a declaration in the form set forth in this part within the preceding twelve (12) month period or has a validly executed declaration.

(c) The requirements of this section are in addition to any requirements that may be imposed under federal law and shall be interpreted in a manner consistent with federal law. Nothing in this section shall be interpreted to require a mental health service provider or any employee or agent of a mental health service provider to act in a manner inconsistent with federal law or contrary to the provider's religious or philosophical beliefs.

(d) No mental health service provider is subject to criminal prosecution or civil liability for failure to comply with this section.

[Acts 2000, ch. 947, § 1.]