

DECLARATION FOR MENTAL HEALTH TREATMENT

A GUIDE FOR PROVIDERS



**Tennessee Department of Mental Health
and Substance Abuse Services**

developed this form based on
Tennessee Code Annotated, Title 33, Chapter 6, Part 10.

What is a Declaration for Mental Health Treatment?

A Declaration for Mental Health Treatment (DMHT) is a legal document that allows people to plan ahead for mental health services they might receive and to say how they want to be treated or not be treated when they lack capacity to make informed decisions about their mental health treatment. A DMHT may also assist service providers in giving appropriate treatment. Any competent individual may make a DMHT, if he or she is at least sixteen (16) years old or an emancipated minor and has the capacity to make informed mental health treatment decisions.

The DMHT may 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 DMHT may also provide other instructions and information for mental health providers.

A mental health service provider may not require the DMHT as a condition for admission to a mental health facility, provision of mental or physical health treatment, or insurance.

As a mental health service provider, what are my responsibilities?

Physicians and other mental health service providers (referred to below as mental health service provider) have a number of responsibilities under the law:

1. A mental health service provider must determine a service participant's capacity to make informed treatment decisions:
 - a. Two examiners (two physicians, or a physician with an expertise in psychiatry by training, education, or experience and a doctoral level psychologist with health service provider designation) determine that the person is currently unable to make an informed decision about mental health treatment because the person is not able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.

OR

- b. A court may determine that a person is unable to make an informed decision and have appointed a conservator in a prior proceeding. The court determines that the person is currently unable to make an informed decision about mental health treatment because 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.

If either of the above occurs, then the person is said to be incapable of making mental health treatment decisions and, if available, a Declaration for Mental Health Treatment is invoked.

2. Generally, for matters addressed in the DMHT, a mental health service provider must provide services consistent with the DMHT when the service participant lacks capacity to make informed mental health treatment decisions. A DMHT is effective and overrides the decisions of a conservator for any mental health treatment covered in the DMHT. A conservator with authority to make mental health treatment decisions may make decisions regarding mental health services not covered in the DMHT.

3. A mental health service provider must have written policies and procedures, applicable to all competent individuals sixteen (16) years of age or older, who receive mental health treatment from the service provider. The mental health service provider must provide service participants with the following information and material, in written form, without recommendation:

- a. Materials provided by the State on the right to make informed mental health treatment decisions, including the right to accept or refuse mental health treatment, and the right to execute a Declaration for Mental Health Treatment;
- b. Information on the provider's policies about the right to make informed 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 Declaration for Mental Health Treatment.

4. A mental health service provider must:

- a. Document an existing Declaration for Mental Health Treatment in a prominent place in the service participant's record;
- b. Comply with the law relating to Declarations for Mental Health Treatment;
- c. Educate the staff and the community on issues relating to Declarations for Mental Health Treatment;
- d. Provide the service participant with a copy of a Declaration for Mental Health Treatment form unless the mental health service provider believes the service participant has received a copy of a DMHT form within the last twelve (12) months or has a validly executed Declaration; and
- d. Honor a Declaration for Mental Health Treatment executed in another state if it complies with the provisions of Title 33, Part 6, Chapter 10.

Are there mental health service provider penalties associated with a Declaration for Mental Health Treatment?

A mental health service provider, who in good faith provides or does not provide mental health treatment based on a Declaration for Mental Health Treatment, is not subject to criminal prosecution, civil liability, or professional disciplinary action if the DMHT is later found to be invalid.

It is an offense (Class A misdemeanor) for a person, without authorization of the service participant, to intentionally 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 participant's desires and interests, with the intent or effect of affecting the service participant's mental health treatment.

Are there additional laws governing a Declaration for Mental Health Treatment?

The requirements listed previously are in addition to any requirements that may be imposed under federal law and should be interpreted in a manner consistent with federal law. A mental health service provider or any employee or agent of a mental health service provider is not required to act in a manner inconsistent with federal law or contrary to the mental health service provider's religious or philosophical beliefs. No mental health service provider is subject to criminal prosecution or civil liability for failure to comply with this section.

Are there circumstances when the mental health service provider does not have to honor a Declaration for Mental Health Treatment?

- If there is an emergency endangering the person's health or life, the mental health service provider can choose not to follow the preference described in the service participant's DMHT.
- If a mental health service provider is unwilling to comply with the DMHT, then the mental health service provider may choose not to treat the person and withdraw from services. The mental health service provider must promptly notify the service participant and document his or her actions in the service participant's record. When as a matter of conscience, the healthcare provider cannot implement the decisions as provided in the Declaration, he or she shall arrange for the prompt transfer of the care of the service participant to another mental health provider.
- If the service participant has been involuntarily committed to an inpatient treatment facility under Title 33, Chapter 6 and a Treatment Review Committee authorizes the treatment, the mental health service provider may choose not to follow the preferences described in the service participant's Declaration.

How is a Declaration for Mental Health Treatment completed?

Any competent individual who is sixteen (16) years of age or older, or an emancipated minor with capacity to make informed mental health treatment decisions, can put into effect a Declaration for Mental Health Treatment by completing a form indicating the service participant's preferences for mental health treatment. The service participant and two witnesses must sign the form at which time the Declaration is effective. The witnesses must be adults and must know the service participant.

Witnesses cannot be:

- The service participant's mental health service provider;
- An employee of the service participant's mental health service provider; or
- An employee or operator of a mental health facility.

At least one (1) of the witnesses must be neither a relative by blood, marriage or adoption, nor a person entitled to any portion of the estate upon the service participant's death under any will or codicil of the service participant in existence at the time the DMHT is signed.

The form does not need to be notarized and cannot be signed on the premises of a mental health service provider.

Does the Declaration for Mental Health Treatment expire?

A DMHT is effective for two (2) years from the date it is signed. The service participant may choose to have an expiration date shorter than two years. After a DMHT expires, the service participant must complete a new form for the expression of his or her treatment preferences.

If a DMHT is in effect at the time of the expiration, it will remain in effect until the service participant is capable of making informed mental health decisions but for no more than thirty (30) days after the expiration date.

Can a Declaration for Mental Health Treatment be revoked?

If a service participant has the capacity to make informed decisions about his or her treatment, the service participant may revoke the Declaration in whole or in part, at any time orally or in writing. Making a new Declaration revokes an earlier declaration. A revocation is effective when the service participant communicates the revocation to the attending physician or other provider. The provider must note the revocation in the service participant's record.

Where can I find a Declaration for Mental Health Treatment form?

The Tennessee Department of Mental Health and Substance Abuse Services has developed a form for a Declaration for Mental Health Treatment; other forms may be used, but they must be consistent with Tennessee Code Annotated Title 33, Chapter 6, Part 10. In addition, a DMHT may be expressed in or incorporated into a durable power of attorney for healthcare that is executed under Title 34, Chapter 6, Part 2 on or after March 1, 2001. Such a declaration can be revoked for mental health services under the conditions in Title 33, Chapter 6, Part 10.

The DMHT form is available on the Tennessee Department of Mental Health and Substance Abuse Services' website: http://tn.gov/mental/t33/DHMT_FORM.pdf. The form is also available from the Tennessee Department of Mental Health and Substance Abuse Services' Office of Consumer Affairs and Peer Support Services by calling toll-free 1-800-560-5767. If you have any questions or comments on this document, you may contact the TDMHSAS Office of Consumer Affairs and Peer Support Services by email OCA.TDMHSAS@tn.gov.



Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS), Authorization No. 339479, 5,000 copies, online and print publication, May 2013, at a cost of \$1.16 per copy.

The Tennessee Department of Mental Health and Substance Abuse Services is committed to the principles of equal opportunity, equal access and affirmative action. Contact the TDMHSAS EEO/AA Coordinator at (615) 532-6580, Office of Human Resources; the Title VI Coordinator at (615) 532-6510; or the ADA Coordinator at (615) 532-6700 for further information. Persons with hearing impairments should contact the department by email at OC.Tdmhsas@tn.gov.