

## **Arizona Law on Mental Health Powers of Attorney and Mental Health Guardianship**

You may believe after you've read the title to this article that the topic is not one of concern to you because your loved one suffers from Alzheimer's disease or another related dementia. However, sometimes mental health services are required for someone with dementia who is exhibiting difficult behaviors. In extreme cases, psychiatric hospitalization may be required to find appropriate medications and behavioral techniques to stabilize the behaviors. Under current Arizona law, though, it can be very difficult for family members to legally admit their loved ones into a psychiatric hospital.

A law passed in 1999 makes it clear that, except in limited circumstances, a family member could not authorize inpatient psychiatric hospitalization for an incapacitated individual who cannot give informed consent to treatment. The family member must be either appointed by the court as a mental health guardian or appointed as an agent to make mental health treatment decisions under a mental health power of attorney signed by the patient at a time when he/she had the capacity to sign the document.

Some family members and health care providers felt that this law made it too difficult for family members to get their loved ones into a hospital. After one family member had to go through an expensive guardianship proceeding to admit her husband into a psychiatric hospital, she complained to the legislature. Through her advocacy effort, the law was changed to make it somewhat easier for a psychiatric hospital admission of an incapacitated person. This change in the law was supported by the Alzheimer's Association.

Under law that became effective on July 18th, 2000, a person can include in his or her regular health care power of attorney a provision that authorizes the appointed agent to admit the person into a psychiatric hospital. Doing a separate mental health care power of attorney is no longer required, although this document still continues to be available as an alternative under the new law.

For those persons who do not plan ahead, the legislators has made it easier for family members to admit their loved ones to a psychiatric hospital when there is no power of attorney authorizing inpatient psychiatric hospitalization in an emergency. A patient may be admitted in such an emergency for inpatient psychiatric treatment by the informed consent of an agent appointed under a regular health care power of attorney even if there is no authority for inpatient admission, or by a "surrogate" designated by statute. The order of surrogate priority by statute is the patient's spouse, an adult child of the patient, a parent of the patient, the patient's domestic partner, a brother or sister of the patient, a close friend of the patient, or the patient's attending physician.

However, a petition for guardianship with mental health powers or a petition for court ordered evaluation at the Maricopa County Psychiatric Annex must be filed within 48 hours of the emergency admission, excluding weekends and holidays. If this is not done

and the patient is not able to give informed consent to treatment, then the patient must be released unless the facility is otherwise prohibited from discharging the patient under federal law. Under federal law, the patient must be stabilized before he can be discharged.

It is important that if your loved one is suffering from Alzheimer's disease or some other dementia, that you plan in advance to ensure that an expensive and stressful guardianship proceeding does not become necessary in the future. A simple, inexpensive mental health care power of attorney or health care power of attorney authorizing the agent to consent to inpatient psychiatric treatment can be prepared and signed in advance, assuming that the individual with the dementia diagnosis is competent to understand the document. If your loved one has a diagnosis of dementia, do not assume that psychiatric hospitalization will never be required; you will be very glad you have the appropriate power of attorney if the need for such hospitalization ever arises.

Downloadable Forms and additional information on advance directives, living wills, and health care power of attorney can also be found through the [dgcenter.org](http://dgcenter.org).