



HEALTH, EDUCATION, AND LAW PROJECT

MENTAL HEALTH HANDBOOK



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Important Disclaimer

Use of this informational handbook is not intended to and does not create an attorney-client relationship between you and Legal Aid of Nebraska’s attorneys. The information provided to you through this handbook is intended for educational purposes only. Nothing in this handbook should be considered legal advice or as a substitute for legal advice.



Please understand that the information contained in this handbook is based upon generally applicable Nebraska law. Some laws and procedures may vary depending on which county in Nebraska you live and the specifics of your case. If you want legal advice about your specific issue, talk to an attorney in your area.

Introduction

In mental health crises, legal barriers can prevent people from accessing care. The goal of this handbook is to help people navigate those barriers for themselves or their loved ones. Whether you are addressing an immediate crisis or preparing for long-term care, this handbook aims to empower readers to make informed legal decisions regarding mental illness.

This handbook often uses the term “mental illness” even though not all people with mental illnesses need legal interventions, and even though non-mental-illness conditions like intellectual disabilities or dementia may also be addressed. The spectrum of legal interventions needed to navigate accessing care for people incapable of making their own healthcare decisions primarily depends on if something is more episodic or permanent, the history of past legal interventions, and the severity of the mental illness. With that in mind, this handbook offers guidance on Financial Power of Attorney (POA) documents, Health Care POA documents, and Mental Healthcare Advance Directives, as well as on guardianships, and civil commitments.

Families of individuals with complex medical conditions may also need to explore financial support options, including Social Security benefits, Representative Payees, and VA Fiduciaries. This handbook outlines how to apply for these programs in Nebraska and what legal responsibilities family members have when managing their loved one’s benefits. These programs provide crucial financial assistance to ensure basic needs are met when individuals are unable to manage their own finances due to mental illness.

This handbook also offers practical information for working with healthcare professionals, understanding HIPAA and accessing social resources available throughout Nebraska. Whether you're navigating a mental health crisis for the first time or managing ongoing care, this guide is tailored to help Nebraska families find the legal solutions and community support they need. Links to additional information and forms at the end.

Power of Attorney Documents and Advance Mental Health Directives

Power of Attorney Documents (POAs) are documents that give someone (called the Agent) the legal power to make decisions on behalf of someone else (called the Principal).

Advance Directives allow people to write legal binding documents that state what their wishes are in case they are no longer able to communicate them, generally in reference to medical interventions.

Often these documents are thought of in the context of end-of-life care, for example: “If I am unlikely to recover while in a coma, I do not want machine assistance with breathing—if the circumstances are unclear, my sister should make the choice” but they are also critical to understand when you are caring for a loved one with severe mental illness.

POAs and advance directives are complementary instruments and should be drafted to work together. For example, in the sentence above, “If I am unlikely to recover while in a coma, I do not want machine assistance with breathing” would come from an advance directive, while “if the circumstances are unclear, my sister should make the choice” would be similar to the speaker giving their sister a healthcare POA. Advance directives give instructions. POA’s give someone else the power to make those decisions when unforeseeable circumstances arise.

Mental health advance directives became a legal tool in Nebraska in 2020 and empower individuals living with severe mental illness to consent to inpatient treatment (up to 21 days), medication, and other interventions specifically related to mental illness.

A key about Advance Directives and POAs is that they are often the most practically helpful tools when striving to ensure care for a loved one with mental illness, but that they can only be helpful if they are drafted before a crisis. Once someone is in a mental illness crisis medical state, guardianships or civil commitments may be the only options. Advance directives and POAs are often drafted after an initial mental health crisis when the person has regained capacity, but has a cyclical or episodic mental illness such as Bipolar I Disorder.

It is important to note that every state has different laws around POAs and advance directives, so if you search for something on the internet, unless it is a Nebraska trusted resource, it likely will not help you in Nebraska. This is why there is an extensive list of resources at the end of this book.

POAs and advance directives also are frequently represented inaccurately in media. Just because an advance directive or POA allowed for something in a movie, does not mean that is possible in Nebraska.

Furthermore, your Nebraska POAs and Advance Directives may not be followed in other states. If you live in Nebraska, but you are likely to get treatment at a hospital in a different state (for example because the closest hospital to your house is in Wyoming, or because you work in Iowa) you should likely draft documents for each state.

In understanding how to navigate legal issues when you are caring for someone with mental illness in Nebraska, it is important to understand Nebraska's laws regarding Financial POAs, Healthcare POAs, and Mental Health Advance Directives.

Financial POAs

In Nebraska, a Financial Power of Attorney (POA) is a legal document that allows a “principal” to choose an “agent” to make decisions regarding their money and property. It is important to note that Financial POA Agents may make decisions regarding the principal's funds whether or not the principal is able to do so unless the Financial POA document has special instructions that say the document should only be activated when the principal is incapacitated. The Financial POA gives the agent the power to handle things like withdrawing money from the bank, paying bills, managing property, handling taxes, and making investment choices. Practically, a Financial POA is often needed when people have a healthcare POA because almost all healthcare decisions have financial implications, and medical providers will need consent for both 1) treatment and 2) payment for services.

To be legally binding, the Financial POA document must be signed and notarized. Without a Financial POA, people cannot make most financial decisions on behalf of other adults (unless they have some other legal claim such as being a co-owner) without more formal legal processes that involve court hearings.

It is generally a good idea for every adult to have a Financial POA that is activated when they are unable to make their own financial decisions in case of emergencies. Financial POAs should generally name an agent and someone who could act as an agent if that primary agent was unavailable.

To avoid confusion, it can be helpful to know that Financial POAs can sometimes be referred to by different names such as “Durable” POA.

Health Care POAs

A Health Care POA in Nebraska lets a “principal” appoint an “agent” to make healthcare decisions for them if they become mentally or physically unable to make these choices on their own. This includes decisions about hospital care, surgeries, mental health treatments, and long-term care.

Health Care POA’s are “activated” when a physician determines the principal is incapable of making a health care decision. This can be because someone is conscious but delirious, because someone is unconscious, or because they are otherwise unable to make health care decisions for themselves. Nebraska’s Health Care POA law is part of the Health Care Surrogacy Act, which makes sure the trusted person (the agent) follows the wishes of the person who appointed them (the principal), especially during medical crises.

A “principal’s” Health Care POA agent can be different than their Financial POA “agent,” but it is often simpler for them to be the same person. This, again, is because healthcare decisions have financial consequences.

It is advisable for every adult to have a health care POA in case of emergencies. Good health care POAs should name an agent and someone who could act as an agent if that primary agent was unavailable. It also makes sense most of the time for the backup health care POA agent to be the same as the backup Financial POA agent.

To be legally binding, the Health Care POA document must be signed and notarized. Without a Healthcare POA, people can only make some emergency medical decisions on behalf of other adults. If someone has an ongoing illness that requires nuanced decisions that are not emergent, but the person is incapable of making medical decisions and didn’t have a POA document, they may need a guardianship- this is especially true in cases where the principal expresses disagreement with the choices made for them and there is not a POA. For example, if a person living with advanced stage Alzheimer’s does not want to be in a residential treatment center, and they can communicate that even though that is clearly an irrational medical choice, the person would likely need a guardianship.

A health care POA can be helpful in situations where people have severe mental illness, but they are better with a Mental Health Advance Directive.

Mental Health Advance Directives

If a person is unconscious, a healthcare POA document is very helpful. Healthcare POA documents can also be very helpful when someone has a terminal condition such as dementia. However, there is tension between POAs and civil rights for individuals with severe mental illnesses. In 1975, the US Supreme Court set a national standard that people could only be held and treated against their will for severe mental illnesses if the mental illness made them “immediately dangerous to themselves or others.” Every state interpreted what “immediately dangerous to themselves or others” slightly differently but this resulted in civil commitment laws, which you can read about later in this handbook. A problem this created was that sometimes people with severe mental illness needed treatment but were not immediately dangerous to themselves or others and would not consent to it due to the fact they were so ill. In these cases, even if the individual had a health care POA, it was not always enough to help the principal access the care they needed.

A Mental Health Advance Directive is a legal document that empowers people living with mental illness to make treatment decisions about their own mental healthcare when they are well to be followed if they have a mental health crisis that renders them incapable of making sound mental healthcare decisions.

These documents are often necessary in addition to standard health care POA documents because they allow individuals living with severe mental illness to specifically consent to psychiatric treatments, including psychotropic medication, short-term stays (up to 21 days) in a treatment facility, and electroconvulsive therapy.

There are two types of Mental Health Advance Directives in Nebraska, a self-binding irrevocable Mental Health Advance Directive and a revocable Mental Health Advance Directive. If someone has a self-binding irrevocable Mental Health Advance Directive, they can only revoke it if they are healthy and can provide informed consent.

With this document, a person can give instructions for their preferences for and pre-emptively consent to psychiatric treatments, including psychotropic medication, short-term stays (up to 21 days) in a treatment facility, and electroconvulsive therapy.

If a person who has a mental health advance directive has chosen an agent through a healthcare POA, the agent is also the agent for the Mental Health Advance Directive, like with the Healthcare POA, in mental health decisions, the agent must follow the principal’s directions in the mental health directive or, if there are no specific instructions, act in what they believe is the person’s best interest.

By preparing a Mental health advance directive, people in Nebraska can Access mental health services they might otherwise not be able to receive due to an inability to consent while in crisis. Mental health advance directives are also called Psychiatric Advance Directives (PADs), mental healthcare advance directives, Ulysses Agreements and various other names.

Mental health advance directives are different than “WRAP” Plans, etc. because they have greater legal power. Many mental health service providers encourage people living with severe mental illness to write plans for their care if they have a crisis- while writing these plans is wonderful, a mental health advance directive is different because it allows individuals to consent to treatment while they are well even if they would not or could not when they are in a crisis. Mental health advance directives can be activated when a medical professional determines that the principal lacks capacity. In writing mental health advance directives, principals can also state when they should be activated. For example, if someone knows they struggle with mania, they can say their advance directive should be activated if they haven’t slept for 72 hours (proof could be the health care POA agent’s assessment, an apple watch, etc.).

Everyone with a mental health advance directive should also have a healthcare POA so that someone can make decisions if situations arise that are not covered by the advance directive.

Document	What does it do?	When is it activated?	Who needs it?	Why is it needed?
Financial POA (Durable POA)	Financial decisions Agent can make decisions for a principal	When drafted OR When medical provider determines individual lacks capacity to make own decisions	Generally, everyone should have a financial POA that is activated in case of an emergency.	So that an agent can make financial decisions and commitments for a principal.
Health Care POA (Medical POA)	Medical decisions Agent can make decisions for a principal	When medical provider determines individual lacks capacity to make own decisions	Generally, everyone should have a medical POA in case of emergencies.	So that an agent can make healthcare decisions for a principal when the principal is not able to make decisions for themselves.
Mental Health Advance Directive (Psychiatric Advance Directive)	Provides written instructions Incorporates healthcare POA	It is activated when a physician determines a person is having a mental episode that renders them incapable of making their own healthcare decisions OR When something happens that the principal said should activate it.	People who have severe episodic mental illnesses, and who are at times competent to make their own mental healthcare decisions.	Consent to not having car keys, inpatient treatment, medication, and other interventions beyond the reach of a medical POA.

Guardianships

In Nebraska, the process of appointing a guardian requires a court case to be filed. Filing for a guardianship can be a complicated process and it is recommended to consult an attorney before doing so. A guardianship only becomes necessary when someone is unable to make decisions for themselves or they are a minor child without a parent to provide for them. An example would be a parent(s) getting a guardianship over their severely intellectually disabled child that has turned 19 years old so the parent(s) can continue to make medical and financial decisions on their behalf.

A “Ward” is the legal term used to describe a minor child or incapacitated adult who cannot make decisions for themselves (incapacitated) and needs someone responsible to help. If there is no one already chosen to be the guardian, the court first considers the ward’s spouse, then adult children, parents, and other family members who have lived with the ward for at least six months before filing for guardianship. If no family member is available or suitable, the court can appoint a professional guardian or, as a last resort, the Office of the Public Guardian.

The Office of Public Guardian is an appropriate party to be guardian when no other qualified individual is available, but it has a limited number of cases they can handle. The court can also skip over higher-priority people if it decides that someone else would be better for the ward. For example, if a person’s sister and spouse both want to be guardian, the spouse would have higher priority than the sister.

For adult children, parents are usually the first choice to be guardians unless they have passed away or cannot care for the child. Parents can also name a guardian in case they pass away. If the child is 14 or older, the child can suggest a guardian, but the court will decide based on what is best for the child.

The court also decides what type of guardianship fits the ward’s needs. For emergencies, **temporary guardianship** can be set up, usually lasting up to 90 days. This lets the guardian handle urgent needs, like medical care, but only in specific areas where there is an immediate threat. For instance, if the ward is have a mental health episode that requires hospitalization and immediate treatment, then after receiving treatment the ward is now stable and has regained their ability to make their own decisions.

If long-term care is needed, the court may create a **permanent guardianship**. Permanent guardians have more authority to make decisions about the ward’s personal and medical care,

similar to how a parent cares for a child. To set up a permanent guardianship, there is a court hearing where evidence is shown that no less restrictive options are available.

The court can also set up either a **full or limited guardianship**. In a **full guardianship**, the guardian has broad authority over the ward's personal, medical, and financial matters. In a **limited guardianship**, the guardian only helps in certain areas where the ward cannot manage alone. For example, a ward might be able to make personal choices but need help managing money. In such cases, the guardian is given power only over financial matters.

If the ward has significant assets, the court may appoint a **conservator** to manage the ward's financial estate. The conservator works alongside the guardian to make sure both personal and financial needs are met. This role is especially important in Nebraska, where the Public Guardianship Act requires careful management of an incapacitated person's finances, especially if large estates are involved.

Understanding the legal framework's role in mental health decisions

Adult civil commitment is when it is legally necessary to intervene on behalf of someone who is unable to make sound decisions due to severe mental health impairments such as mental illness, cognitive deficiencies, or substance dependency. This is typically triggered by behaviors that pose a threat to the individual's safety or the safety of others or when they are no longer capable of meeting basic personal needs.

Involuntary¹ commitment requires court intervention, where a mental health board or judge must determine that the individual meets the legal criteria for commitment, ensuring both the necessity and protection of their rights.

For minor children, civil commitment is considered when parents are unable to provide adequate care and thus, require legal intervention to protect the child's well-being.

The legal framework ensures that both voluntary and involuntary commitments involve ethical oversight, ongoing reviews, and judicial involvement to balance the rights and safety of the individual with the public interest, with family members often playing a key role in initiating these proceedings.

Board of Mental Health in Nebraska

The Board of Mental Health in Nebraska, established under the Nebraska Mental Health Commitment Act (NMHCA), plays a vital role in ensuring that individuals who suffer from severe mental health issues receive necessary treatment while maintaining their legal rights. This section will explore the purpose, functions, timeline, and the rights of individuals (referred to as "subjects") under the board's authority. It is designed to give family members a clearer understanding of what to expect during the civil commitment process.

1. Purpose of the Board of Mental Health

The Board of Mental Health was created to intervene when individuals are unable to seek treatment voluntarily and their mental health condition makes them a danger to themselves or others. The purpose of the NMHCA, is to provide a structured legal process to determine whether someone requires court intervention and what type of treatment is most appropriate for that person. The goal is to balance public safety with the rights and needs of individuals suffering

¹ If and when people seek inpatient treatment, that may be referred to as voluntary commitment.

from mental illness, promoting voluntary treatment when possible. However, when a person is incapable of making rational decisions regarding their care and poses a threat, the Board of Mental Health steps in to authorize involuntary treatment.

In Nebraska, the board not only evaluates whether an individual is a potential danger to themselves or others, but it also ensures that the process of commitment is handled ethically and fairly. The board's role is not just to protect public safety but also to uphold the individual's legal rights. By providing clear definitions of mental illness and dangerousness, the board ensures that civil commitment is reserved for cases where there is a risk to the individual or the public. This process emphasizes the importance of restoring individuals to independent living whenever possible.

2. Function of the Board of Mental Health

The Board of Mental Health is tasked with a number of responsibilities related to the civil commitment of individuals who are mentally ill and dangerous. The board consists of people in the legal and medical community to conduct hearings, examine evidence, and determine whether the individual poses a danger to themselves or others.

Anyone can file a petition for civil commitment through the Board of Mental Health. When a petition for civil commitment is filed the board reviews evidence that comes from family members, healthcare professionals, and law enforcement officials. The board assesses whether the individual is capable of making rational decisions about their health or if their mental illness impairs their judgment to the extent that they cannot meet their basic needs, such as securing food, shelter, and medical care.

The board has the ability to force treatment if found necessary by the evidence presented. These orders can include either inpatient or outpatient treatment, depending on the severity of the individual's condition. The board follows the individual to ensure compliance with the treatment orders and can modify or terminate the orders based on the individual's progress. In cases of outpatient treatment, the medical team working with the individual is required to report to the board if the individual fails to follow the treatment order. This ensures that individuals receive appropriate care while protecting the public from any potential danger.

3. Timeline of the Commitment Process

The timeline for the civil commitment process in Nebraska is designed to be quick and fair while balancing the rights of the individual. Once a petition is filed, the process follows a structured timeline, beginning with emergency protective custody and a formal hearing.

1. **Petition Filed:** The process begins when a petition is filed with the county attorney's office, usually by a family member, healthcare professional, or law enforcement official. The petition must provide evidence that the individual is mentally ill and dangerous. To find out where to file a petition, you should contact your local county court clerk.
2. **Emergency Custody:** If the court finds that the individual is mentally ill and dangerous, the individual may be placed into emergency protective custody for evaluation. Emergency custody can last up to seven days while waiting for the hearing.
3. **Hearing:** A hearing must take place within seven days of the individual being taken into custody. During the hearing, the board evaluates the evidence to determine whether the individual is a danger to themselves or others due to their medical conditions. This hearing is crucial for ensuring that the individual's rights are protected. The individual is entitled to an attorney and can request the appointment of a public defender.
4. **Issuance of Treatment Order:** If the board finds the individual is mentally ill and dangerous, it issues a treatment order. This order will direct the individual to undergo either inpatient or outpatient treatment, depending on the severity of the condition. The order is based only on the treatment necessary to ensure the individual's safety and that of the public.
5. **Ongoing Monitoring:** Following a treatment order, the board continues to monitor the individual's progress. The medical team for the individual is required to report any changes to the individual's condition and compliance with the treatment plan. The board can modify or terminate the treatment order as needed.

4. Rights of the Individual

Throughout the civil commitment process, the individual has a number of important rights. These rights are designed to protect the individual from unjust or unnecessary commitment, while also ensuring that they receive appropriate treatment.

1. **Right to Legal Representation:** The individual has the right to be represented by an attorney throughout the entire process. If they cannot afford an attorney, the court will appoint a public defender to represent them. This makes sure the individual has access to legal representation and helps to protect their interests throughout the process.
2. **Right to be Informed:** Before the hearing, the individual must receive a copy of the petition that was originally filed and a list of what their rights are. They must be informed of the specific reasons why this petition was filed, as well as their rights to challenge the petition, present evidence, and appeal the board's decision.
3. **Present Evidence:** During the hearing, the individual has the right to present their own evidence, call witnesses, and ask questions of those who testify against them. This

includes the right to present medical records, testimony of family or friends, and other evidence that they believe to be important to their case.

4. **Right to Appeal:** If the board issues a treatment order, the individual has the right to appeal the decision. A higher court will review the appeal to see if the board made a proper decision based upon the evidence that was provided.

Representative Payees for Social Security

Each year, more than eight million people receiving Social Security benefits or Supplemental Security Income (SSI) need assistance in managing their money. A representative payee is to provide assistance to minors, elderly people, or adults with disabilities who cannot handle their own finances due to their circumstances. The Social Security Administration (SSA) appoints representative payees—typically a family member, friend, or another trusted individual—to manage the social security funds on behalf of the individual in need. Representative payees are responsible for ensuring that the Social Security funds are used solely for the individual's daily needs, including food, housing, medical care, and other essentials.

Representative payees have a significant responsibility to use these funds only in the individual's best interest. The representative payee is also required to keep records of how the funds are spent and provide that to the SSA. Being a representative payee only provides the authority to handle funds from the SSA. In general, representative payees are not allowed to charge fees for this unless they are provided specific approval from the SSA.

Key Responsibilities of a Representative Payee

The core responsibilities of a representative payee include:

1. **Managing Day-to-Day Needs:** Payees must use the individual's funds to cover daily needs such as food, shelter, utilities, clothing, and medical expenses. If any funds remain after meeting these needs, they should be saved in an interest-bearing account or U.S. Savings Bonds.
2. **Record Keeping and Reporting:** Payees are required to maintain detailed records of how the individual's funds are used. Every year, the represented payee must submit an Accounting Report to the SSA, detailing how they used the funds and if there are any savings for the previous year. Failure to manage funds appropriately can result in penalties, including repayment of misused funds and possible imprisonment.
3. **Handling Lump-Sum or Past-Due Payments:** If the SSA issues a lump-sum payment or past-due benefits, the representative payee must prioritize covering the individual's immediate needs, such as improving living conditions and addressing their medical needs.

The “Representative Payee Accounting Report” can be completed online or by paper, which is mailed to them by the SSA. To access the online report, the representative payee will need the physical report mailed to them to get certain information to access the report online. Completing the online report takes approximately 15 minutes and completed in one session. There is no option to save progress and return later. After submitting the report, the SSA provides a confirmation the report is received.

If a child or adult with a disability receives a large back payment covering more than six months of benefits, these funds may be deposited into a dedicated account. These dedicated accounts are strictly regulated by the SSA and can only be used for specific expenses related to the individual’s needs, such as medical treatment, education, or therapy. The representative payee is responsible for keeping detailed records of how these funds are used and may be required to repay any funds misused from the dedicated account. Any misuse of these funds for purposes not related to the child or individual with disabilities may result in the represented payee having to repay the funds and could lead to further legal action.

While representative payees manage Social Security funds, they have no legal authority over the individual’s other income, assets, or medical treatment. It is vital that a representative payee keeps the individual’s funds separate from their own. The bank account must be titled as a payee account or only in the individual’s name. Joint accounts are not permitted. The accounts should be titled similarly to:

- "(Individual’s name) by (your name), representative payee."
- "(Your name), representative payee for (Individual’s name)."

If the funds are comingled, the SSA may take action to ensure the individual’s funds are used appropriately. Organizations that serve as representative payees must follow additional guidelines for managing accounts for multiple individuals, ensuring that each individual's funds are accounted for. Representative payees are responsible for informing the SSA of any changes that might affect individual’s eligibility or payment amount. Some examples include:

- The individual moving or changing their living situation.
- Starting or stopping work.
- Receiving additional government benefits.
- Traveling outside the U.S. for more than 30 days.
- Being convicted of a crime or institutionalized for a mental health condition.

Payees must also report if they are no longer willing or able to serve in their role, to allow the SSA to appoint a new payee.

VA Fiduciary Program

The Veterans Affairs (“VA”) fiduciary program ensures that veterans, who are unable to manage their VA benefits due to injury, disease, age, or incapacity, receive financial assistance through a “fiduciary.” This would only apply to individuals who receive VA benefits. A fiduciary, is someone who is appointed by the VA, who manages the VA benefits on behalf of the veteran, ensuring that the funds are used solely for their well-being. The goal of the program is to protect the veteran’s interests. The fiduciary is responsible for ensuring that the veteran’s funds are managed properly and that the veteran’s financial needs, such as food, housing, and medical care, are met.

Key Responsibilities of a VA Fiduciary:

1. **Managing the Veteran's Funds:** The fiduciary must ensure that all necessary bills, including rent, utilities, medical care, and any other expenses, are paid on time. They are also responsible for keeping the Veteran’s funds safe by placing them in a separate bank account. Fiduciaries must also collect any debts owed to the veteran and pay any required taxes on their behalf.
2. **Reporting and Accountability:** Fiduciaries must maintain detailed records of all financial transactions made on behalf of the veteran. The VA requires periodic reports, detailing how funds have been managed, including how much has been spent and saved. Failure to submit these reports or manage the funds properly can result in penalties.
3. **Protecting Veteran’s Information:** Fiduciaries must take appropriate steps to protect the veteran’s private information. Paper and electronic records must be kept secure, and fiduciaries are required to have safety measures in place to ensure that the veteran’s personal information remains confidential.
4. **Communication with the VA and Veteran:** Fiduciaries must keep the VA informed of any significant changes in the veteran’s circumstances, such as changes in their living situation, income, or health. Fiduciaries should also maintain open communication with the veteran, regularly updating them about the status of their benefits and financial situation.

Before appointing a fiduciary, the VA conducts an investigation to gather information about the veteran’s financial situation and determine the appropriate fiduciary. During this investigation, the VA will ask for:

- Photo identification.
- Information on monthly bills and income.
- A list of assets (bank accounts, property, etc.).
- A list of medications and the veteran's medical provider information.

- The name and contact information of the veteran's next of kin.

The VA prefers to appoint a fiduciary that the veteran chooses, such as a spouse or family member. A guardian/conservator, another interested party, or a professional fiduciary may also be selected. The VA will assess the fiduciary's qualifications through:

- An interview with a VA representative.
- A credit report review.
- A criminal background check.
- Interviews with character witnesses.

Veteran Rights: Veterans in the VA fiduciary program have specific rights, including:

- The right to appeal the VA's decision to appoint a fiduciary.
- The right to request a different fiduciary.
- The right to manage their own non-VA finances, vote, or enter into contracts.
- Veterans may also request that the VA re-evaluate their ability to manage their benefits at any time.

Both the fiduciary and the veteran must notify the VA of any important changes in address, income, or medical conditions. The fiduciary must also inform the VA of any personal changes that may affect their ability to perform their duties, such as illness or legal issues.

Veterans have the right to appeal the VA's decision regarding their inability to manage benefits or the selection of a fiduciary. The appeal process begins by filing a Notice of Disagreement with the VA, and veterans have one year from the date of the notification to file the appeal. If the appeal is not filed in time, the VA's decision becomes final. Veterans may also request a hearing with the Board of Veterans' Appeals during the appeal process.

HIPAA and Mental Health Care

The Health Insurance Portability and Accountability Act (HIPAA) plays an essential role in protecting the privacy of individuals' medical information, especially in the areas of mental and behavioral health. While HIPAA provides strong privacy protections, it also allows for necessary communication between healthcare professionals, patients, and caregivers to ensure patient safety, coordination of care, and effective treatment.

1. HIPAA Privacy Rule and Sharing Mental Health Information

The HIPAA Privacy Rule provides safeguards to ensure that patients' medical information, including mental health data, is kept confidential. The Privacy Rule ensures that while mental health and medical information is protected, however, there are situations where sharing is necessary for effective care or safety concerns of the patient.

Under HIPAA, healthcare professionals are permitted to share mental health and medical information in several contexts:

- For treatment purposes: Healthcare professionals can share a patient's mental health and medical information with other healthcare professionals as necessary to coordinate and facilitate treatment. For example, a psychiatrist may need to share treatment details with a primary care physician.
- To protect public safety: Healthcare professionals are allowed to share information if the patient presents a serious and imminent threat to themselves or others. For instance, if a therapist is informed that a patient plans to harm someone, they can notify the individual at risk or involve law enforcement.
- With patient consent: When a patient consents, their mental health information can be shared with family members, friends, or others involved in their care. This consent can be general or specific to certain types of information or circumstances.

2. HIPAA Helps Caregiving Connections

HIPAA allows healthcare professionals to share mental health and medical information with family members, caregivers, or friends when the health care professional believes that such communication is in the patient's best interest. This is particularly important when the patient is unable to make decisions due to their mental health and/or medical conditions. In such cases, the healthcare professional may share relevant information with those involved in the patient's care. This allows for family and caregivers to remain involved in supporting the patient's treatment and recovery process. Examples include:

- **When the patient is incapacitated:** If a patient is unconscious, disoriented, or otherwise unable to make decisions (e.g., due to severe intoxication or a psychiatric crisis), the

healthcare professional may share information with a family member or caregiver about the patient's condition, treatment plan, or medications.

- **When it is deemed necessary:** Healthcare professionals can use their professional judgment to share necessary information when doing so is essential for the patient's well-being, such as contacting family about a treatment plan or notifying them about side effects of medication.

3. Preventing Harm and Disclosing Information

HIPAA enables health care professionals to disclose information to prevent harm, even if the patient has not explicitly agreed to share that information. In circumstances where the healthcare professional believes that the patient poses a significant threat to themselves or others, HIPAA allows the healthcare professional to disclose mental health and/or medical information to individuals who can help. The information shared must be limited to what is necessary to address the risk. This can include:

- **Contacting family members:** If a patient has stopped taking prescribed medication and the health care professional believes the patient may become a danger to themselves (e.g., at risk of suicide), the healthcare professional may contact family members or caregivers without the patient's consent to ensure safety.
- **Involving law enforcement:** When there is an immediate and serious threat, such as when a patient expresses intent to harm someone, a healthcare professional can notify law enforcement or emergency services to prevent harm.

4. Family Concerns and Refusal to Share Information

There are situations where a patient may refuse to allow the healthcare professional to share information with their family or caregivers. In these cases, the healthcare professional must respect the patient's wishes unless:

- **There is a serious threat to health or safety:** If the health care professional believes that the patient poses an imminent threat to their own health or the safety of others, they may still share information with family members or others who can help.
- **Listening to family concerns:** Healthcare professionals can receive information about the patient from family members or loved ones.

If you have legal authority, like a guardianship, you can have the same access to information as the patient and can make decisions about the patient's care.

5. HIPAA and Mental Health Care in Nebraska

In Nebraska, additional state laws supplement HIPAA to provide protection for healthcare professionals who act in good faith. This offers healthcare professionals legal protection when they share information under HIPAA's provisions for preventing harm or coordinating care for a patient. HIPAA plays a critical role in balancing privacy with the need for effective mental health care and safety. While HIPAA protects the patient's mental health and medical information, it also allows health care professionals the ability to share information to ensure the patient's safety or to involve family members in treatment. This will allow the families, caregivers, and health care professionals to work together to support patients struggling with mental health conditions while respecting their privacy.

Community Mental Health Resources

Below are community resources for mental health support.

- **Suicide & Crisis Hotline- Dial 988**
 - Call or text anytime if facing any kind of mental health crisis.
- **Behavioral Health Connection:** www.nebraskamed.com/behavioral-health/connection
 - Free help accessing behavioral health resources. Available to anyone.
 - Contact: 402-836-9292
- **Heartland Family Service:** www.heartlandFamilyService.org
 - Provides counseling services based on clients' ability to pay.
 - Contact: 402-553-3000
- **Community Alliance:** www.community-alliance.org
 - Provides counseling and psychiatric services, including telehealth. They accept Medicaid, Medicare and most private insurance. For those without insurance, they offer a sliding fee scale.
 - Contact: 402-341-5218
- **Child Saving Institute:** www.childsaving.org
 - Provides adolescent and youth counseling.
 - Contact: 402-553-6000
- **Region 6 Behavioral Healthcare:** www.regionsix.com
 - Provides youth and family care coordination to individuals with a Severe Emotional Disturbance or Serious Mental Illness.
 - Contact: 402-444-7722
- **Great Plains Mental Health Associates:** www.greatplainsmentalhealth.org
 - Provides mental health services focusing on “spirit, mind, and body.” Offers counseling, psychiatry, meditation classes, spirituality groups, and yoga.
 - Contact: 402-614-0010
- **Jewish Family Services:** www.jfsomaha.com
 - Provides counseling by developing an individualized treatment plan in partnership with the client. They work with most insurance companies including Medicaid and Medicare. For those without insurance, they offer a sliding fee scale.
 - Contact: 402-330-2024
- **Catholic Charities:** www.ccomaha.org
 - Provides mental health therapy for individuals and families.
 - Contact: 402-554-0520
- **Lutheran Family Services:** www.lfsneb.org
 - Provides children and adult behavioral health services.



- Contact: 402-342-7007

Below are links to more comprehensive mental health resource lists.

- **NAMI:** <https://naminebraska.org/resources/resources-by-region/>
- **PsychologyToday:** www.PsychologyToday.com/us
- **Region 6:** www.regionsix.com/services/service-directory/#mental_health_adult

Appendix A: Sample Forms

Below are samples of some the forms that need to be filed following an order of guardianship. All of the forms can be found on the Nebraska Supreme Court's website.

- supremecourt.nebraska.gov/programs-services/guardianship
- Guardianship Flow Chart: <https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-85.pdf>
 - Interested Party Forms: supremecourt.nebraska.gov/forms/interested_party
 - Orders of Appointment: supremecourt.nebraska.gov/forms/order_appointment
 - Acceptance of Appointment: supremecourt.nebraska.gov/forms/acceptance_appointment
 - Discharge of Guardian: supremecourt.nebraska.gov/forms/discharge_guardian
 - All other Guardian Forms: supremecourt.nebraska.gov/forms/other_guardianship_forms
 - Annual reporting packets:
 - For adult wards: supremecourt.nebraska.gov/adult_packet
 - For minor wards: https://supremecourt.nebraska.gov/minor_packet

For people in Lancaster County, the Lancaster County Probate website is a great resource for updated forms as well as questions that might arise while serving as a guardian in that specific county.

- [Lancaster county probate](https://www.lancastercountyprobate.com/)

Conservatorship Information

- Conservatorship Flow Chart: <https://dhhs.ne.gov/Pages/Mental-Health-Commitment.aspx>
- Annual reporting For Packet C : <https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-35.pdf>
- Instructions for Packet C: <https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-35-instructions.pdf>
- Quick Reference Form: <https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-7-1.pdf>

Nebraska Supreme Court Power of Attorney Forms & Instructions

- Financial Power of Attorney: <https://supremecourt.nebraska.gov/sites/default/files/DC-6-12-fillin.pdf>
- Instructions for Financial POA: <https://supremecourt.nebraska.gov/sites/default/files/DC-6-12a.pdf>

- Health Care Power of Attorney: <https://supremecourt.nebraska.gov/sites/default/files/DC-6-13-fillin16.pdf>
- Instructions for Health Care POA:
- <https://supremecourt.nebraska.gov/sites/default/files/DC-6-13a.pdf>

VA Fiduciary Forms

- VA fiduciary Guide: https://www.benefits.va.gov/FIDUCIARY/docs/VA_Fiduciary_Guide_Oct_2021.pdf
- VA Form 10-0137 (Let Health Care Provider Know Your Wishes for Medical, Mental Health, Long-term, and other types of care.): <https://www.va.gov/find-forms/about-form-10-0137/>
- Spanish-English Version: <https://www.va.gov/find-forms/about-form-10-0137/>
- VA Form 10-0137A (Form to learn about your rights to accept or refuse medical treatment, and to complete a power of attorney for health care or a living will.): <https://www.va.gov/find-forms/about-form-10-0137/>
- General Website Information: <https://www.benefits.va.gov/fiduciary/>

Nebraska Mental Health Care Advance Directives

- Find a lawyer at an affordable rate or for free at nevlp.org/shcsignup.org under legal problem just put: Requesting MHAD Consult
- Information for FAQ: <https://dhhs.ne.gov/Behavioral%20Health%20Documents/Advanced%20Mental%20Health%20Directive%20FAQ.pdf>
- Example Form/Template: <https://nebraskalegislature.gov/laws/statutes.php?statute=30-4415>
- Legal Resources & Information: <https://supremecourt.nebraska.gov/self-help/legal-resources-information>
- Definitions for Advance Mental Health care Directives Act: <https://nebraskalegislature.gov/laws/statutes.php?statute=30-4404>
- DHHS General Information of Mental Health Commitment Act & Forms: <https://dhhs.ne.gov/Pages/Mental-Health-Commitment.aspx>

Resource for SSA Representative Payee

- Start Here: <https://www.ssa.gov/payee/form/>
- Create Account Here: <https://www.ssa.gov/myaccount/>
- Omaha Office Number: 1+(866)716-8299



- Lincoln Office Number: 1+(866) 593-2880
- Grand Island Office Number: 1+(877) 407-3441
- Norfolk Office Number: 1+(855) 207-7082
- North Platte Office Number: 1+(833) 329-5527