

As a caregiver for a person living with depression, you may find yourself involved in legal issues affecting your loved one's well-being. This fact sheet provides information for caregivers so they can be alert to potential legal issues, engage in advance planning, and access additional information and resources. **Please note: This information is general and should not be construed as legal advice.** For help with your particular situation, consult with a qualified attorney.



People living with depression have the right to make decisions for themselves, access services, and keep health data private. They have rights regarding employment and education. Depending on the severity of their depression and the circumstances of their housing, employment, and income, they may have rights to receive accommodations, government subsidies, and professional care for a depression-related disability.

As a caregiver, you may need to support your loved one by advocating on their behalf when they are being mistreated or their wishes are not being respected. In some instances, you will almost certainly need legal advice and representation. In addition to lawyers in private practice, you can seek support from advocacy organizations, legal services offices for people with low income, and government agencies responsible for protecting people with a mental health-related disability.

Communicating about preferences and priorities, then formalizing them in appropriate documents, will help you and your loved one be on the same page while addressing their depression. Your loved one's providers may be able to help with some of the documents identified below, such as the HIPAA authorization and advance directive. For others, you can find examples online or by asking your local librarian for resources on writing a healthcare proxy or power of attorney. Once you have a template as a starting point, work with your loved one to tailor the document to their preferences. If you are using a standard form, read it and make sure it says what you want it to say. It is often worth consulting an attorney because there may be particular legal requirements in the state(s) where you and your loved one reside.

ACCESS TO HEALTH INFORMATION

Access to Personal Health Information: The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires that providers maintain confidentiality about a patient's diagnosis and treatment, and even their relationship as a patient. There is an exception to this wall of privacy: when the provider has a good faith belief that there is a serious and imminent threat to the health or safety of the individual or another person AND the person to whom the provider would disclose is in a position to prevent the harm or lessen the threat.



Patients may waive this right to privacy and allow a provider to disclose their personal health information to specific people, such as a caregiver. This permission can be explicit, as with a signed waiver, or implicit, as when your loved one invites you into their appointment when discussing their health situation. The best approach is for your loved one to indicate explicitly that the provider may talk with you.

Even when there is no explicit or implicit permission, HIPAA in no way prevents health care providers from listening to caregivers or family members who are concerned about the person's safety, health, or well-being. You can report your concerns to your loved one's provider, such as behaviors you have observed, things you have heard your loved one say (such as an intention to harm themselves or others), or relevant

personal or family history. Do not expect them to engage in a conversation. It is up to their discretion what they will do with the information you have shared. Visit <https://familyaware.org/patient-privacy>.

Access to Educational Records: Colleges and universities that receive federal funding are subject to the Family Educational Rights and Privacy Act (FERPA), which controls access to information kept in a student's educational record, including some records from health services. When students reach age 18, their parents can no longer access their educational records without advance written permission.



However, educational institutions may disclose a student's personally identifiable information from their educational records to others without prior written consent if there is an emergency AND the people to whom the information will be disclosed need that information to protect the health or safety of the student or other people. FERPA does not prevent school officials from listening to caregivers' concerns.

Your loved one can sign a waiver to allow you access to their records, particularly those at the school's health and mental health services. Also, if the student lives on campus, residence staff may be willing to keep instructions from your student about who to contact under what circumstances. In general, however, residence staff seeks to further students' independence and may be reluctant to take on that responsibility unless it is deemed a reasonable accommodation with regard to a disability.

PLANNING AHEAD

Psychiatric Advance Directive: Having a Psychiatric Advance Directive (PAD) is a great way of minimizing family conflict around care. Prepared when a person is legally competent (and preferable not during a depressive episode), a PAD documents a person's instructions and preferences about their treatment and care, that is, what they want to happen in particular situations. For example, a person may write as part of their PAD that, if they need to go to the hospital, they would prefer to go to a particular hospital and that a particular person take them if available. Visit <https://www.nrc-pad.org/> for state-specific information.



Even if your loved one does not have a legal PAD, it would help both of you to have clarity about your loved one's preferences and priorities in what is known as a "care plan." Understanding what they would like to happen and the role you can play if they are unable to make decisions for themselves allows you to make decisions more confidently and without the stress of uncertainty. It also gives you a document to point to, reminding them that they already made these decisions and your role is to help make them happen.

Health Care Proxy: This is another form of advance directive, used for health care generally. Through a health care proxy, the individual appoints a person (and one or more alternates) to be their health care agent and make decisions on their behalf when they are unable to make decisions or communicate for themselves (e.g., unconscious). This document is sometimes called a durable power of attorney, though that term can also apply to appointment of a person to manage financial affairs.

Additional reading:

- <http://careforyourmind.org/helping-my-son-to-plan-ahead/>
- <http://careforyourmind.org/psychiatric-advance-directives-a-must-have-for-us/>

OTHER ISSUES

Your loved one may require legal help to ensure that their **health insurance** coverage meets the terms of their insurance contract and the requirements of the law. For example, there might not be an appropriate mental health provider in your loved one's insurance network. The insurance company might not be giving equal benefits for mental health as physical health. Your loved one might not have access to a medication or treatment that their healthcare provider believes is best for them. Your loved one (or you, if they are on your health insurance) might get a bill for services that they thought insurance would cover.



For information about health insurance issues, check out these resources:

- <http://familyaware.org/healthinsurance>
- <http://familyaware.org/insfactsheet/>
- <http://careforyourmind.org/are-you-getting-all-the-mental-health-coverage-you-deserve/>
- <http://careforyourmind.org/what-can-you-do-if-your-mental-health-benefits-are-denied/>

Sadly, **employment discrimination** still happens against people living with depression. This might include termination or demotion for mental health reasons or the employer's refusal to provide reasonable accommodations for depression that qualifies as a disability.



Here are some resources about workplace protections and working when you have depression:

- <http://careforyourmind.org/how-to-get-what-you-need-for-workplace-success/>
- <http://careforyourmind.org/a-patients-guide-to-taking-medical-time-off-work-2/>
- <https://www.eoc.gov/laws/guidance/depression-ptsd-other-mental-health-conditions-workplace-your-legal-rights>



Families sometimes need to deal with issues around **legal capacity** and **consent to treatment**. This can happen when a person's thinking is so affected by depression that they cannot make decisions for themselves in a way that they would if they were not in a depressive episode, or when a person is actively considering or has attempted suicide.

Read these articles for information about legal capacity and consent to treatment:

- <http://careforyourmind.org/the-right-to-treatment-and-the-right-to-refuse-treatment/>
- <http://careforyourmind.org/keeping-our-loved-ones-safe/>
- <http://careforyourmind.org/planning-to-protect-our-rights/>

Your loved one may be entitled to **government benefits**, such as subsidized health insurance, supplementary income for disability, and publicly-funded mental health care.

- Social Security: <https://www.ssa.gov/benefits/disability/>
- Health care: <https://www.healthcare.gov/people-with-disabilities/coverage-options/>
- Find your state's mental health agency: <https://findtreatment.samhsa.gov/locator/stateagencies.html#.X7VWANT7nGI>



As a caregiver, you may deal with higher levels of stress and burnout related to supporting your loved one—especially when legal issues are involved. We suggest you read these:

- <http://familyaware.org/help-someone/stress-test/>
- <http://familyaware.org/education/role-of-a-family-caregiver/>