



Mental Health America of Franklin County

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Mental Health and the Law

The following is a brief description of laws that protect the rights of persons with psychiatric disabilities. It is not legal advice. In addition to the following laws, the Substance Abuse and Mental Health Services Administration (SAMHSA) provides funds to states and territories for agencies to provide legal assistance to people with mental illness.

The State of Ohio has set up the Ohio Legal Rights Service (OLRS). Their mission is to protect and advocate the human, civil, and legal rights of people with disabilities, including mental illnesses. OLRS provides information and referral, counsel and professional advice and representation on the broad spectrum of cases involving discrimination, abuse, neglect or rights violations. Contact the OLRS at www.state.oh.us/olrs/ or 800-282-9181.

The Americans With Disabilities Act (ADA)

The Americans With Disabilities Act (ADA) protects not only the rights of persons with physical disabilities but also persons with psychiatric disabilities. It is a federal law that prohibits discrimination in the following areas:

Employment: Includes hiring, termination, benefits, working conditions, etc.

Public Accommodations: Includes hotels, offices, shopping malls, restaurants, sports arenas, schools, zoos, hospitals, theaters, grocery stores, homeless shelters, libraries, etc.

Public Entities: Includes all local and state governmental services and programs.

Transportation: Includes buses and trains that must be accessible or alternatives must be offered.

Telecommunications: Telecommunication services must be made accessible for speech and/or hearing impaired persons.

The ADA defines disability as a physical or mental impairment that substantially limits one or more of the major life activities of the person, such as working, learning, sleeping, thinking, and walking. According to the Center for Mental Health Services, "Psychiatric disabilities are the second most frequently cited disability in administrative charges filed under the employment provisions of the ADA." Under the ADA, private employers with 15 or more employees, state and local governments, employment agencies, labor organizations and management committees are all subject to the ADA.

The Fair Housing Amendments Act (FHAA)

Under the FHAA, landlords and sellers cannot discriminate against a person because the person has a mental illness, and the landlord must make reasonable accommodations for a person's disability. The law does not apply in some cases where it is a private house or small apartment building. The law also allows the rejection of any tenant or buyer who would directly threaten the health or safety of others, or who would cause substantial physical damage to the property of others.

Individuals with Disabilities Education Act

The Disabilities Education Act (IDEA) is a federal law mandating that all children receive free, appropriate public education—regardless of the level of severity of their disability. 1997 amendments were aimed at making education meaningful and for improving results for all children in the educational system. Each

child that qualifies must have an individualized education plan (IEP). Other issues addressed include parental involvement, assessment and discipline.

Parity: The Law to End Insurance Discrimination

Parity means equality. The concept of parity is important in the mental health context because many health plans offered by employers provide less coverage for mental health and substance abuse treatment than for general medical and surgical services. In 1996, The Mental Health Parity Act (MHPA) was passed. This federal law requires that health plans provide the same annual and lifetime spending limits for mental health benefits as they do for other healthcare benefits. However, the MHPA does not affect visit limits, or cost sharing, such as co-payments and deductibles. It also does not include substance abuse within its scope, and has a one-percent premium cost cap and a 50-employee exemption. A new mental health parity law has been introduced, but has not become law.

Psychiatric Advance Directives

Advance directives are legal documents that tell others what your treatment preferences are and/or who you would want to make decisions for you when you are incapable of making decisions for yourself. They are directions for others to follow, made in advance of an illness or injury, and state law governs their use. They exist in both the physical health and mental health contexts with the majority of state statutes expressly or by implication applying to mental health. However, some states have passed specific psychiatric advance directive laws due to the unique considerations that persons with mental disabilities may have. Reasons for having a psychiatric advance directive include (1) to promote recovery for people diagnosed with mental illnesses; (2) to prevent unwanted treatment; (3) to improve communication between the consumer and physician; and (4) to potentially shorten a consumer's stay in the hospital.

As of 2002, in Ohio people with a mental illness can create a durable power of attorney (POA) for healthcare to allow them more control over their care during a crisis. A POA allows the person with a mental illness to name another individual, called an "agent," who will make health care decisions for them during a crisis. For more information on advance directives in Ohio, contact the Ohio Legal Rights Service at (800-282-9181). To learn more about advance directives, contact Mental Health America at 800-969-NMHA.

Guardianship

If a person is unable to manage their own affairs because of a mental illness, a probate court, following a hearing, can appoint a guardian to make decisions for them. A guardian, who can be a family member, an attorney, or other responsible person, is legally responsible to direct the legal, financial, and personal affairs of the ward, or the person who needs the guardian. The guardian is accountable to the Probate Court, which acts as the guardian's supervisor.

Mental Health America of Franklin County is a private, not-for-profit organization, established in 1956. We help people navigate the mental health system. We are dedicated to promoting mental health in Franklin County through advocacy, education, and support services. Our programs include: information and referral to community mental health and alcohol/drug services; free support groups for people with mental illness and their families; an Ombudsman program that assists clients in navigating the mental health and alcohol/drug system; mental health screenings in English and Spanish; Pro Bono Counseling Program where underinsured and uninsured individuals can receive free counseling; community and professional mental health education including Get Connected; maternal mental health support and advocacy (POEM); and a quarterly newsletter featuring legislative updates and new happenings at MHAFC. We receive funding from the Franklin County ADAMH Board, United Way of Central Ohio, individuals, foundations, and corporations. To become a member or find out more information, please visit us online at www.mhafc.org.