

Confidentiality and Legal Considerations for Parents, Friends and Employers



Navigating the legal and confidentiality considerations in eating disorders treatment can be a confusing experience. Learning the terminology and general principles of confidentiality can simplify the process, improving communication and streamlining care.

Terminology:

The **Health Insurance Portability and Accountability Act of 1996, or HIPAA**, protects individuals' medical records from becoming public knowledge. HIPAA states that under normal circumstances, medical records are private and that anyone with access to them, like healthcare professionals, healthcare facilities or insurers, cannot share that medical information with anyone but the patient.

A **power of attorney (POA)** document can allow a patient to grant a friend or family member access to medical records. Anyone with a POA can sign legal documents for the patient and read or transport medical records in the patient's absence. If the patient loses mental capacity, the power of attorney ends. This document varies by state and should be created by a lawyer.

A **durable power of attorney** document is similar to a regular (non-durable) POA, but it remains in place even when the patient becomes incapacitated.

A **medical power of attorney** (also called a **durable power of attorney for health care**) document allows a patient to choose a friend or family member to make medical decisions about the patient's healthcare if the patient is incapable of making those decisions. Medical POA rules vary by state and it's best to consult a lawyer to write one.

Advance directives are completed by the patient to specify their health wishes in particular circumstances, when they are unable to make decisions for themselves due to incapacitation. Most hospitals have forms for patients to fill out to specify instructions.

Guardianship gives someone the legal authority to make decisions about another person's physical and psychological care. It does not allow them to sign the person into a treatment program, but it does allow them to be closely involved in the decision-making process. To grant guardianship, a judge must decide that a person is not capable of making these decisions on his or her own. Those seeking guardianship will need to obtain a court order. Regulations vary by state; consult with a lawyer for guidance on your situation. Guardianship is only effective in the state in which it is granted.

Conservatorship grants authority to manage another person's finances. It can be useful in eating disorders to reduce access to funds that are fueling the disorder and allowing a seriously ill individual to go untreated. To be granted, a judge must decide that a person isn't capable of making these decisions on his or her own. Those seeking conservatorship will need to obtain a court order. Regulations vary by state; consult with a lawyer for guidance on your situation. Conservatorship is only effective in the state in which it is granted.

Information for Specific Groups and People:

Workplace/employers:

HIPAA protection extends to human resources (HR) departments at employers. If a person discloses his/her medical condition to HR personnel when talking about health insurance benefits, HR is required to maintain confidentiality. If HR divulges information without permission, the harmed party can file a civil rights complaint. HIPAA requires companies to have policies that provide for sanctions against any HR person who releases confidential medical information. The Americans with Disabilities Act may provide recourse for anyone fired from a job because of a medical condition.

Parents of a child under 18:

In most states parents have medical power of attorney over children under the age of 18, although the exact regulations depend on the state.

Non-relative friends and parents of a child of legal age (18+):

Parents of children of legal age or friends of a person with an eating disorder may want to help navigate insurance issues or participate in treatment, but, because of certain regulations protecting medical privacy, they cannot speak with health professionals or facilities on a patient's behalf without the patient's permission.

If a friend or family member is helping a patient through the treatment process, the patient can give oral permission for that person to see the patient's records and participate when talking with healthcare providers or insurers. That person may also make doctors' appointments for the patient. A friend or family member cannot see a patient's medical files or transport the files or lab samples if the patient is absent, even if permission has been given orally.

Parents do not have medical or durable power of attorney over children who are older than age 18, even if the children are covered under the parents' health insurance policy. Parents have no legal authority to force a legally adult child into treatment; the parents and child must go through the usual legal process to set up power of attorney. This can be a problem if the child does not want treatment or is at odds with the parents. Parents whose adult children are refusing treatment may consider discussing guardianship and/or conservatorship options with a lawyer.

This information is educational, and should not be construed as legal advice. For guidance particular to your situation, please consult a lawyer.