



## POLICY AND PROCEDURE MANUAL

SUBJECT Advance Directives	ACCOUNTABILITY NMRE and NMRE Network Providers	Effective Date: 2/22/2022	Pages: 2
REQUIRED BY: 42 CFR Part 438, Subpart A 438.6(i)	BBA Section: PIHP Contract Section: 7.10.5 Advance Directives P.6.3.1 Customer Services Standards Other:	Last Review Date: 7/29/2019	Past Review Date: 3/23/2016 1/1/2014
Policy: <input checked="" type="checkbox"/>  Procedure: <input type="checkbox"/>	Review Cycle: Annual  Author: Customer Services Specialist	Responsible Department: Customer Services	Reviewers: Customer Services

### Definitions

**Advance Directive:** A written document recognized under state law (whether statutory or as recognized by the courts) in which a competent individual gives instruction about their health care that will be implemented at some future time if the individual is unable to make their own health care decisions.

**Beneficiary:** A person served by the publicly funded behavioral health and substance use disorder system or his/her representative. For the purposes of this policy, the terms “beneficiary” and “member” are used interchangeably.

**Crisis Plan:** A plan of action established by an individual receiving specialty supports during the person-centered planning process. The crisis plan (which becomes a formal part of the individual’s Plan of Service) is intended to direct care when the individual experiences increased difficulty managing their life of exhibits increased symptoms requiring emergent care.

**Do-Not-Resuscitate Order (DNR):** Directs that, in the even an individual suffers cessation of both spontaneous respiration and circulation, resuscitation will not be initiated.

**Durable Power of Attorney for Health Care:** A written designation of a patient advocate as established in 1998 Act 386, Part 5 CML 700.5506 through 700.5520, as amended. An individual 18 years of age or older who is of sound mind at the time a patient advocate designation is made may designate in writing another individual who is 18 years of age or older to exercise powers concerning care, custody, and medical or mental health treatment decisions for the individual making the patient advocate designation.

**Informed Consent:** The process of informing a client or patient of the risks, benefits, and expected outcome of a medication, medical procedure, or therapeutic approach in which they have agreed to take part.

**Living Will:** A written document that informs doctors, family members, and others about the type of medical care a person wishes to receive should they become terminally ill or permanently unconscious.

**Person-centered Planning:** The process of planning and supporting the individual receiving services. It builds upon the individual's capacity to engage in activities that promote community life and honors the individuals' preferences, choices, and abilities.

#### Purpose

The purpose of this policy is to ensure that adult beneficiaries of services in the Northern Michigan Regional Entity (NMRE) service area receive information on advance directives in accordance with 42 CFR 422.128 and 42 CFR 438.6.

#### Policy

The NMRE and its Network Providers will ensure that beneficiaries are notified of their rights under Michigan law to formulate an Advance Directive. Though staff is not qualified or authorized to author or advise on advance directives, they will educate beneficiaries about their rights, discuss any issues beneficiaries may wish to address, and assist beneficiaries with accessing appropriate guidance if they wish to enact Advance Directives.

#### References

- Michigan Dignified Death Act, 1978 PA 368, MCL 333.5651, as amended
- Michigan Do-Not-Resuscitate Procedure Act, 1996 PA 193, MCL 333.1051, as amended
- Patient Advocate Act, 1998 PA 368, Part 5 of the Estates and Protected Individual Code (EPIC) MCL 700.5501, as amended
- Michigan Mental Health Code Act 258 of the Public Acts of 1974, as amended

#### Approval Signature



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NMRE Chief Executive Officer

2/22/22

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Date

SUBJECT Advance Directives	ACCOUNTABILITY NMRE and NMRE Network Providers	Effective Date: 2/22/2022	Pages: 5
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Policy: <input type="checkbox"/>  Procedure: <input checked="" type="checkbox"/>	Review Cycle: Annual  Author: Customer Services Specialist	Responsible Department: Customer Services	Reviewers: Customer Services

### Procedure

- A. The NMRE “Guide to Services” handbook (which includes information on advance directives) will be provided to ALL beneficiaries when they are assessed for services. This handbook will also be offered to beneficiaries at their annual treatment plan meeting.
- B. An “Advance Directive Information” trifold brochure will be available in all provider locations.
- C. An Advance Directive may also be referred to as a Durable Power of Attorney for Health Care.
- D. A beneficiary may choose to have an Advance Directive for medical care, and/or an Advance Directive for mental health care and/or a Living Will or have no Advance Directive at all. An individual may also choose to develop a Crisis Plan.
- E. The decision to have any type of Advance Directive will be completely voluntary. No family member, hospital, insurance company, mental health center, etc. will force an individual to have an Advance Directive or dictate what it will say.
- F. A provider will not discriminate or condition the provision of care based on whether a beneficiary has an Advance Directive.
- G. Documentation in the beneficiary’s record:
  - 1. There will be documentation in a prominent part of the beneficiary’s current medical record stating whether they have executed an Advance Directive.
  - 2. If a beneficiary has an Advance Directive, the Advance Directive will become part of their medical record.
- H. Advance Directive for Medical Care:

1. Each Network Provider is responsible for assisting and referring adult beneficiaries and guardians with obtaining an Advance Directive for Medical Care or Do-Not-Resuscitate (DNR) order if requested.
2. Network Provider staff will not draft witness an Advance Directive for Medical Health Care.
3. Local Probate Courts will have jurisdiction over Advance Directives.
4. Network Provider staff will be responsible for documenting the education and assistance given. The documentation will include the education of the beneficiary and the specific steps taken if there is a desire to develop an Advance Directive for Medical care or a Do-Not-Resuscitate Order.
5. In an Advance Directive, the beneficiary chooses someone to make a broad range of medical decisions if an accident or sickness makes them unable to make decisions. A person may also say what type of care they wish if they become terminally ill.
6. A Medical Advance Directive may also include concerning mental health treatment.

I. Advance Directive for Mental Health Care:

1. Network Providers will develop procedures for the education of staff and beneficiaries about the rights of beneficiaries to develop Advance Directives for Mental Health Care.
2. An Advance Directive for Mental Health Care, also known as a Psychiatric Advance Directive, is a document in which a beneficiary appoints another individual to make mental health decisions for them in the future should they lose the ability to make decisions for themselves.
3. The Advance Directive for Mental Health Care document will be applicable to treatment in a hospital and/or in the community.
4. A specific form will not be required for the Advance Directive. A sample form is available at [MDHHS - Psychiatric Advance Directive \(michigan.gov\).](https://www.michigan.gov/mdhhs/0,4570,7-253_7-254_7-255_7-256_7-257_7-258_7-259_7-260_7-261_7-262_7-263_7-264_7-265_7-266_7-267_7-268_7-269_7-270_7-271_7-272_7-273_7-274_7-275_7-276_7-277_7-278_7-279_7-280_7-281_7-282_7-283_7-284_7-285_7-286_7-287_7-288_7-289_7-290_7-291_7-292_7-293_7-294_7-295_7-296_7-297_7-298_7-299_7-300_7-301_7-302_7-303_7-304_7-305_7-306_7-307_7-308_7-309_7-310_7-311_7-312_7-313_7-314_7-315_7-316_7-317_7-318_7-319_7-320_7-321_7-322_7-323_7-324_7-325_7-326_7-327_7-328_7-329_7-330_7-331_7-332_7-333_7-334_7-335_7-336_7-337_7-338_7-339_7-340_7-341_7-342_7-343_7-344_7-345_7-346_7-347_7-348_7-349_7-350_7-351_7-352_7-353_7-354_7-355_7-356_7-357_7-358_7-359_7-360_7-361_7-362_7-363_7-364_7-365_7-366_7-367_7-368_7-369_7-370_7-371_7-372_7-373_7-374_7-375_7-376_7-377_7-378_7-379_7-380_7-381_7-382_7-383_7-384_7-385_7-386_7-387_7-388_7-389_7-390_7-391_7-392_7-393_7-394_7-395_7-396_7-397_7-398_7-399_7-400_7-401_7-402_7-403_7-404_7-405_7-406_7-407_7-408_7-409_7-410_7-411_7-412_7-413_7-414_7-415_7-416_7-417_7-418_7-419_7-420_7-421_7-422_7-423_7-424_7-425_7-426_7-427_7-428_7-429_7-430_7-431_7-432_7-433_7-434_7-435_7-436_7-437_7-438_7-439_7-440_7-441_7-442_7-443_7-444_7-445_7-446_7-447_7-448_7-449_7-450_7-451_7-452_7-453_7-454_7-455_7-456_7-457_7-458_7-459_7-460_7-461_7-462_7-463_7-464_7-465_7-466_7-467_7-468_7-469_7-470_7-471_7-472_7-473_7-474_7-475_7-476_7-477_7-478_7-479_7-480_7-481_7-482_7-483_7-484_7-485_7-486_7-487_7-488_7-489_7-490_7-491_7-492_7-493_7-494_7-495_7-496_7-497_7-498_7-499_7-500_7-501_7-502_7-503_7-504_7-505_7-506_7-507_7-508_7-509_7-510_7-511_7-512_7-513_7-514_7-515_7-516_7-517_7-518_7-519_7-520_7-521_7-522_7-523_7-524_7-525_7-526_7-527_7-528_7-529_7-530_7-531_7-532_7-533_7-534_7-535_7-536_7-537_7-538_7-539_7-540_7-541_7-542_7-543_7-544_7-545_7-546_7-547_7-548_7-549_7-550_7-551_7-552_7-553_7-554_7-555_7-556_7-557_7-558_7-559_7-560_7-561_7-562_7-563_7-564_7-565_7-566_7-567_7-568_7-569_7-570_7-571_7-572_7-573_7-574_7-575_7-576_7-577_7-578_7-579_7-580_7-581_7-582_7-583_7-584_7-585_7-586_7-587_7-588_7-589_7-590_7-591_7-592_7-593_7-594_7-595_7-596_7-597_7-598_7-599_7-600_7-601_7-602_7-603_7-604_7-605_7-606_7-607_7-608_7-609_7-610_7-611_7-612_7-613_7-614_7-615_7-616_7-617_7-618_7-619_7-620_7-621_7-622_7-623_7-624_7-625_7-626_7-627_7-628_7-629_7-630_7-631_7-632_7-633_7-634_7-635_7-636_7-637_7-638_7-639_7-640_7-641_7-642_7-643_7-644_7-645_7-646_7-647_7-648_7-649_7-650_7-651_7-652_7-653_7-654_7-655_7-656_7-657_7-658_7-659_7-660_7-661_7-662_7-663_7-664_7-665_7-666_7-667_7-668_7-669_7-670_7-671_7-672_7-673_7-674_7-675_7-676_7-677_7-678_7-679_7-680_7-681_7-682_7-683_7-684_7-685_7-686_7-687_7-688_7-689_7-690_7-691_7-692_7-693_7-694_7-695_7-696_7-697_7-698_7-699_7-700_7-701_7-702_7-703_7-704_7-705_7-706_7-707_7-708_7-709_7-710_7-711_7-712_7-713_7-714_7-715_7-716_7-717_7-718_7-719_7-720_7-721_7-722_7-723_7-724_7-725_7-726_7-727_7-728_7-729_7-730_7-731_7-732_7-733_7-734_7-735_7-736_7-737_7-738_7-739_7-740_7-741_7-742_7-743_7-744_7-745_7-746_7-747_7-748_7-749_7-750_7-751_7-752_7-753_7-754_7-755_7-756_7-757_7-758_7-759_7-760_7-761_7-762_7-763_7-764_7-765_7-766_7-767_7-768_7-769_7-770_7-771_7-772_7-773_7-774_7-775_7-776_7-777_7-778_7-779_7-780_7-781_7-782_7-783_7-784_7-785_7-786_7-787_7-788_7-789_7-790_7-791_7-792_7-793_7-794_7-795_7-796_7-797_7-798_7-799_7-800_7-801_7-802_7-803_7-804_7-805_7-806_7-807_7-808_7-809_7-810_7-811_7-812_7-813_7-814_7-815_7-816_7-817_7-818_7-819_7-820_7-821_7-822_7-823_7-824_7-825_7-826_7-827_7-828_7-829_7-830_7-831_7-832_7-833_7-834_7-835_7-836_7-837_7-838_7-839_7-840_7-841_7-842_7-843_7-844_7-845_7-846_7-847_7-848_7-849_7-850_7-851_7-852_7-853_7-854_7-855_7-856_7-857_7-858_7-859_7-860_7-861_7-862_7-863_7-864_7-865_7-866_7-867_7-868_7-869_7-870_7-871_7-872_7-873_7-874_7-875_7-876_7-877_7-878_7-879_7-880_7-881_7-882_7-883_7-884_7-885_7-886_7-887_7-888_7-889_7-890_7-891_7-892_7-893_7-894_7-895_7-896_7-897_7-898_7-899_7-900_7-901_7-902_7-903_7-904_7-905_7-906_7-907_7-908_7-909_7-910_7-911_7-912_7-913_7-914_7-915_7-916_7-917_7-918_7-919_7-920_7-921_7-922_7-923_7-924_7-925_7-926_7-927_7-928_7-929_7-930_7-931_7-932_7-933_7-934_7-935_7-936_7-937_7-938_7-939_7-940_7-941_7-942_7-943_7-944_7-945_7-946_7-947_7-948_7-949_7-950_7-951_7-952_7-953_7-954_7-955_7-956_7-957_7-958_7-959_7-960_7-961_7-962_7-963_7-964_7-965_7-966_7-967_7-968_7-969_7-970_7-971_7-972_7-973_7-974_7-975_7-976_7-977_7-978_7-979_7-980_7-981_7-982_7-983_7-984_7-985_7-986_7-987_7-988_7-989_7-990_7-991_7-992_7-993_7-994_7-995_7-996_7-997_7-998_7-999_8000)
5. Any beneficiary 18 years of age or older being of sound mind may complete an Advance Directive.
6. If a beneficiary has a guardian appointed under the Estates and Protected Individuals Code, they may not sign an Advance Directive.
7. An individual given decision-making power over a beneficiary will be called a Patient Advocate.
8. A Patient Advocate will only make decisions for the beneficiary when they cannot give informed consent to mental health treatment.

9. Informed consent will be permitted when the beneficiary can:
  - a. Understand that they have a condition that needs treatment; and
  - b. Understand the treatment options (including no treatment for the condition); and
  - c. Consider the possible benefits and drawbacks (such as side effects from medication) from each treatment; and
  - d. Make a reasonable choice among the treatment(s) available.
10. A physician and a mental health professional (who can be a physician, psychologist, registered nurse, or master's level social worker) will each make the determination that the beneficiary is or is not able to give informed consent prior to implementing the Advance Directive.
11. In an Advance Directive for Mental Health Care, the beneficiary will appoint another individual 18 years or older (Patient Advocate) to make mental health decisions that they would normally make for themselves. For example, a Patient Advocate can arrange for outpatient treatment, agree to or refuse medication, and sign a consent for inpatient treatment as a formal voluntary patient.
12. A mental health professional can refuse to honor the wishes of the beneficiary through the Advance Directive concerning a specific mental health treatment, location, or professional, if there is a psychiatric emergency endangering the life of the beneficiary or the life of another person or the treatment sought is unavailable, or if there is a conflict with court ordered treatment.
13. To be legally binding the Advance Directive will be in writing, signed by the beneficiary and witnessed by two adults.
14. Witnesses will not be immediate family members, the beneficiary's doctor or the requested Patient Advocate.
15. Before a Patient Advocate can act, they will sign an acceptance.
16. An Advance Directive will be considered canceled by telling someone, or showing them in any way, that the document does not reflect the beneficiary's current wishes. In the Advance Directive, however, a beneficiary can choose to waive this right to immediately cancel the Advance Directive. In such a case, any decision to cancel the Advance Directive is effective 30 days after the beneficiary tells/shows someone they want the Advance Directive canceled.
17. If an interested person disputes whether the Patient Advocate is acting in the best interest of the beneficiary, they may petition the local probate court in writing to resolve the dispute.

18. The powers of a Patient Advocate stop when the beneficiary can give informed consent.

J. Network Providers will be responsible for:

1. At the time of the initial face-to-face professional evaluation:

- a. All individuals will receive written information concerning Advance Directives.
- b. Staff will inquire about whether a beneficiary has an Advance Directive.
- c. If a beneficiary has an Advance Directive, it will become part of their medical record. Notation of the Advance Directive will be prominently displayed on or in the beneficiary's medical record.

2. At the treatment planning session (typically the second appointment) and at least annually thereafter, beneficiaries will be offered the opportunity to complete a Crisis Plan.

3. A Crisis Plan will be a written document, attached to the IPOS, intended to direct care when beneficiaries experiences difficulty managing their lives.

K. All NMRE Network Providers that provider 24-hour care will be responsible for:

L. All providers will be responsible for:

1. Understanding that these rights extend to all adults (or their legal representatives) and will not be limited to those diagnosed with a terminal illness.
2. Not conditioning the provision of care or otherwise discriminating against a beneficiary based on whether or not they have executed a Crisis Plan, Advance Directive, or Patient Advocate designation.
3. Ensuring that all staff are informed of, and act in accordance with, the beneficiary's right to participate in their own health care and Advance Directives; this includes informing Case Managers and other team members if the guardian or beneficiary institutes any Advance Directive with the provider.
4. Ensuring that individuals are informed that complaints concerning the advance directive process may be filed with the CMHSP's or the NMRE's Customer Services Office.
5. Ensuring that mental health professionals practicing within the organization understand their obligation to comply with a beneficiary's desire as expressed by the beneficiary in the Advance Directive/Patient Advocate designation or by the beneficiary's Patient Advocate with the authority to act.
6. Knowing that mental health professionals will NOT be bound to follow an expressed desire if any of the following apply:

- a. In the opinion of the mental health professional, compliance is not consistent with applicable standards of care.
  - b. The treatment requested is not reasonably available.
  - c. Compliance is not consistent with applicable law.
  - d. Compliance is not consistent with court ordered treatment.
  - e. In the mental health professional's opinion, there is a psychiatric emergency endangering the life of the beneficiary, and compliance is not appropriate under the circumstances.
7. Complying with Michigan law when addressing situations in which a beneficiary is incapacitated at the time of admission and is unable to receive information (due to the incapacitating condition or mental disorder) or to articulate whether they have executed Advance Directive/Patient Advocate designation.
8. Complying with federal and Michigan law regarding giving advance directive information to the beneficiary's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated beneficiary, or to a surrogate or other concerned person. The provider will also abide by follow-up procedures to ensure that the information is given to the beneficiary directly at the appropriate time (i.e., once they are no longer incapacitated and able to receive such information).
9. The information provided to adult beneficiaries will reflect changes in state law as soon as possible, but no later than 90 days after the effective date of the change.

M. Monitoring Process:

The NMRE Provider Network Manager will review Network Providers' advance directive policies and procedures annually.

Approval Signature



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NMRE Chief Executive Officer

2/22/22

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Date