

**NORTHERN MICHIGAN REGIONAL ENTITY
ADMINISTRATIVE MANUAL**

POLICY NAME: ADVANCE DIRECTIVES PROCEDURE
CHAPTER: SEVEN – MEMBER SERVICES
POLICY #: 07-02-003
EFFECTIVE DATE: March 23, 2016

PURPOSE

To provide guidance to meet the requirement of Michigan Law as applied to advance directives. Staff are not qualified, or authorized to author or advise on advance directives. Their role is to educate individuals served about their rights, discuss the issues they may wish to address, if the individual wishes, and assist him or her with accessing appropriate guidance.

APPLICATION

This procedure applies to the five Member Community Mental Health Services Programs (CMHSPs), the NMRE Substance Use Disorder services provider panel, and all in-network and out-of-network providers.

DEFINITIONS

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

Crisis Plan is 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 individuals experience increased difficulty managing their life or exhibits increased symptoms requiring emergent care.

Do-Not-Resuscitate Order directs that, in the event an individual suffers cessation of both spontaneous respiration and circulation, resuscitation will not be initiated.

Durable Power of Attorney for Health Care, is the written designation of a patient advocate as established in 1998 Act 386, Part 5 MCL 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.

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

PROCEDURES

- I. The member handbook (which includes information on advance directives) is provided to ALL consumers when they are assessed for services. This booklet is also offered to consumers yearly at their annual treatment plan meeting.
- II. An Advance Directive Information tri-fold will be available in all CMH locations.
- III. An Advance Directive may also be referred to as a Durable Power of Attorney for Health Care.
- IV. An individual 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 could also choose to develop a crisis plan.
- V. The decision to have any type of Advance Directive is completely voluntary. No family member, hospital, insurance company, mental health center etc. can force an individual to have one, or dictate what the advance directive should say.
- VI. Treatment cannot be given or denied based on whether an individual has an advance directive.
- VII. Documentation in the beneficiary's Record:
 - A. There shall be documentation in a prominent part of the beneficiary's current medical record as to whether or not the beneficiary has executed an advance directive.
 - B. If a consumer has an Advance Directive, the Advance Directive becomes part of the consumer's medical record.
- VIII. Advance Directive for Medical Care
 - A. Each CMHSP is responsible for assisting and referring adult consumers and guardians in obtaining Advance Directives for Medical Care or Do Not Resuscitate (DNR) orders if requested.
 - B. CMHSP staff will not draw up or witness an Advance Directive for Medical Health Care.
 - C. Local Probate Courts have jurisdiction in these matters.
 - D. The CMHSP clinician is responsible for documenting the education and assistance given. The documentation should include the education of the consumer and the specific steps taken if there is a desire to develop an Advance Directive for Medical Care or a Do Not Resuscitate Order
 - E. In an Advance Directive, the individual 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 he or she wishes if he or she becomes terminally ill.
 - F. A Medical Advance Directive may also include wishes concerning mental health treatment.
- IX. Advance Directive for Mental Health Care
 - A. Each CMHSP will develop procedures for the education of staff and consumers about the rights of the individual to develop an Advance Directive for Mental Health Care.
 - B. An Advance Directive for Mental Health Care, also known as a Durable Power of Attorney for Mental Health Care, is a document in which a consumer appoints another individual to make

- mental health decisions for them in the future should they lose the ability to make decisions for themselves.
- C. The Advance Directive for Mental Health Care document can be applicable to treatment in a hospital and in the community.
 - D. A specific form is not required for the Advance Directive. However, there is a sample form available at www.michigan.gov/mdhhs, under Mental Health and Substance Abuse.
 - E. Any individual, 18 years or older being of sound mind may complete an advance directive.
 - F. If an individual has a guardian appointed under the Estates and Protected Individuals Code, they cannot then sign an Advance Directive.
 - G. The person given decision making power is called a Patient Advocate.
 - H. A Patient Advocate can only make decisions for the consumer when he or she cannot give informed consent to mental health treatment.
 - I. Informed Consent is when the individual can:
 - 1. Understand that they have a condition that needs treatment and
 - 2. Understand the treatment options (including no treatment for the condition and
 - 3. Consider the possible benefits and drawbacks (such as side effects from medication) from each treatment and
 - 4. Make a reasonable choice among the treatment(s) available.
 - J. A physician and a mental health professional (who can be a physician, psychologist, registered nurse or master's level social worker) must each make the determination that the individual is or is not able to give informed consent prior to implementing the advance directive.
 - K. In the Advance Directive for Mental Health Care, the individual appoints another individual 18 years or older (patient advocate) to make mental health decisions that one would normally make for himself/herself. 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.
 - L. A mental health professional can refuse to honor the wishes of the person through the advance directive concerning a specific mental health treatment, location or professional, if there is a psychiatric emergency endangering the life of the consumer or the life of another person or the treatment sought is unavailable, or if there is a conflict with court ordered treatment.
 - M. To be legally binding the advance directive must be in writing, signed by the consumer and witnessed by two adults.
 - N. Witnesses may not be immediate family members, the person's doctor or the requested patient advocate. Employees of a hospital or community mental health program where the person receives mental health services may not witness an advance directive.
 - O. Before a patient advocate can act, he or she must sign an acceptance.
 - P. An advance directive can be cancelled by telling someone, or showing them in any way, that the document does not reflect the consumer's current wishes. However, in the advance directive a consumer 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 consumer tells/shows someone they want the advance directive cancelled.
 - Q. If an interested person, disputes whether the patient advocate is acting in the best interests of the recipient, he or she may petition the local probate court in writing to resolve the dispute.
 - R. The powers of a patient advocate stop when the consumer is able to give informed consent.

- X. The CMHSP's shall be responsible for the following:
 - A. At the time of the initial face to face professional evaluation,
 - 1. All individuals will receive written information concerning advance directives.
 - 2. Staff will inquire if a consumer has an advance directive.
 - 3. If a consumer has an advance directive it will become part of the consumer's medical record. Notation of said advance directive will be prominently displayed on or in the consumer's medical record.
 - B. At the treatment planning session (typically the 2nd appointment) and at least annually thereafter, consumers will be offered the opportunity to complete a crisis plan.
 - C. A crisis plan is a written document, attached to the plan a service, intended to direct care when individuals experience increased difficulty managing their lives.

- XI. All Northern Michigan Regional Entity providers that provide 24 hour care shall be responsible for:
 - A. Furnishing the individual, family members, guardians and legal representatives with educational materials delineating an individual's legal right, under Michigan Law, to make decisions related to medical treatment.
 - B. Knowing an individual may make decisions about medical care or mental health treatment or both including the right to refuse treatment.
 - C. Knowing that the individual may designate a patient advocate, by executing an advance directive.
 - D. Documentation of the education provided will be contained in the consumer's medical record.
 - E. Any referral(s) made to community resources to assist individuals in initiating and or executing an advance directive or designating a patient advocate will be documented in the medical record.

- XII. All providers shall be responsible for:
 - A. Understanding that these rights extend to all adults (or their legal representative) and shall not be limited to those diagnosed with a terminal illness.
 - B. Not conditioning the provision of care or otherwise discriminating against an individual based on whether or not the individual has executed a crisis plan, advance directive or patient advocate designation.
 - C. Ensuring that all staff are informed of, and act in accordance with, the individual's right to participate in his/her own health care and advance directives. This includes informing case managers and other team members if the guardian or individual institutes any advance directive with the provider.
 - D. Ensuring that individuals are informed that complaints concerning the advance directive process may be filed with the CMHSP's or the Northern Michigan Regional Entity's Customer Services Office.
 - E. Ensuring that mental health professionals practicing within the organization understand their obligation to comply with patient desires as expressed by the individual in the advance directive/patient advocate designation or by the individual's patient advocate with authority to act.
 - F. Knowing that mental health professionals are NOT bound to follow an expressed desire if any of the following apply:
 - 1. In the opinion of the mental health professional, compliance is not consistent with applicable standards of care.

2. The treatment requested is not reasonably available.
 3. Compliance is not consistent with applicable law.
 4. Compliance is not consistent with court ordered treatment.
 5. In the mental health professional's opinion, there is a psychiatric emergency endangering the life of the individual, and compliance is not appropriate under the circumstances.
- G. Complying with Michigan law when addressing situations in which an individual consumer 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 or not he/she has executed an advance directive/patient advocate designation.
 - H. Complying with federal and Michigan law regarding giving advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual, or to a surrogate or other concerned person. The provider also shall abide by follow up procedures to ensure that the information is given to the individual directly at the appropriate time (i.e. once he/she is no longer incapacitated and able to receive such information).
 - I. The information provided to adult beneficiaries must reflect changes in State law as soon as possible, but no later than 90 days after the effective date of the change.

XIII. Monitoring process

The Provider Network Manager will review the CMHSP's advance directive policy and procedures annually.

REFERENCES

- Code of Federal Regulations, 42 CFR Part 438, Subpart A 438.6(i)
- Michigan Dignified Death Act, 1978 PA 368, MCL333.5651, *et seq*, as amended by 204 PA 551
- Michigan Do-Not Resuscitate Procedure Act (MDNRPA), 1996PA 193, MCL 333.1051 *et seq*, as amended by 2004 PA 552.
- Patient Advocate Act, 1998 PA 386, Part 5 of the Estates and Protected Individuals Code (EPIC) MCL.700.5501 *et seq*, as amended by 2004 PA 554.
- Michigan's Mental Health Code Act 258 f the Public Acts of 1974 as amended by 2001, as amended by 2004 PA 2004 PA 554,555,556,557,553 *lmd. Eff. AND* 2004 PA 496, 497, 498, 499 Effective March 30, 2005

REVISED:

REVIEWED: March 23, 2016

APPROVED: January 1, 2014

Signed copy is on file with NMRE

 Dave Schneider
 Northern Michigan Regional Entity Chief Executive Officer

 Date