

ADVANCE DIRECTIVE FOR MENTAL HEALTH CARE

June 2015

What is an advance directive?

- AKA “Durable power of attorney for mental health care”
- A document appointing another person to make mental health decisions for you in the future, if you are unable to make them yourself
- Applies to treatment in hospital and community



Other types of “Durable Powers of Attorney”

- Health care
- Money/finances



Health care – you can choose someone to make a broad range of medical decisions if an accident or sickness makes you unable to make decisions. You can state in your health care advance directives what type of care you wish to receive if you become terminally ill.

-You can include wishes concerning mental health tx in your durable power of attorney for health care

-- You can have different people or the same person for MH and health care

-- Why have both?

-- You may want to choose a different individual to make these different decisions.

-- If you use the fill-in-the-blank forms, an adv. Directive for MH Care will likely have more space to set forth your detailed wishes about MH Care.

Do I have to have an advance directive
for MH care?

**THE ANSWER IS
NO**

- The decision to have any type of advance directive is completely voluntary.
- No one can force you or a consumer to have one.
- If you do have one, no one can dictate what the document says.
- You cannot be denied service b/c you have or do not have an advance directive.

Why have an advance directive?

- Preferences
- Specific to you!
- Avoiding court

Preferences: You make like or dislike certain hospitals, doctors, medications, etc.

Specific: You can express your specific wishes, and increase the chances of your wishes being honored.

Court: You can avoid a commitment hearing in probate court in some circumstances.

Is an Advance Directive for MH Care legally binding?



YES

- Must be in writing, signed by you, and witnessed by 2 adults.

Witnesses:

-Not immediate family

-Not your doctor or patient advocate

-Not an employee of a hospital or CMH program where you are a patient or client

Can have friends, people you know, or neighbors

Do not need it signed by a notary.

There is no REQUIRED form, but the state of MI has one published for use. You can have a lawyer write one for you.

Can you change your mind?

-Yes – you can name a different Patient advocate or change your wishes.

-As long as you are sound of mind, you can sign a new one and destroy the old one.

-Can you decide to give up the right to cancel the document?

-Yes

-You can choose to waive your right to immediately cancel the adv. Directive

-Your decision to cancel is then effective 30 days after you tell someone you wanted it cancelled

-Why do this?

-Your judgment may be altered, and you are not likely to make the best decisions about tx. If you know this in advance you can plan for it by giving your PA 30 days to act on your behalf.

Who is eligible?

- 18+
- Understand the decisions made
- Not guarded



-You must be at least 18 years old

-You must understand you are giving someone power to make certain decisions for you should you become unable to give informed consent.

-You cannot sign an advance directive if you have had a guardian appointed under the Estates and Protected Individuals Code.

Patient Advocate

- The person with decision-making power.
- Can only make decisions if you CANNOT give informed consent to mental health treatment.
 - ▣ How do you know you can give “informed consent?”
 - ▣ Who determines this?
- Duties
- Who can be one?
- Must sign an “acceptance”

-In your advance directive for MH Care, you select a Patient Advocate.

-Informed consent:

-You can give informed consent if you can:

-Understand you have a condition that needs tx, and

-Understand the tx options (including no tx) for the condition you have, and

-Consider the possible benefits and drawbacks (such as side effects from meds) from each tx, and

-Can make reasonable choice among the tx available.

-Who determines if I am able to give informed consent or not?

-Physician & a MH Professional (who can be a physician, psychologist, registered nurse, or masters-level social worker) must EACH make the determination with respect to mental health tx after examining you.

-You can choose the physician and MH professional you wish to make this determination in your MH advance directive.

-Duties:

-Take reasonable steps to follow your desires & instructions, oral or written, decided upon while you were able to give informed consent.

-Who can be one?

-18+

-Spouse, adult child, friend or another individual

-Someone you trust

-Someone who can handle the responsibility

-Talk with this person BEFORE you complete and sign the document.

-You can choose a second person in the case the 1st person is unable to serve. More than one person cannot serve at a time.

-Acceptance:

-Can be done at the time you complete the document or at a later time.

-The can resign at ANY Time. If so, your named successor would become PA

Powers of the Patient Advocate

- Access to Medical and MH Records
- Powers when unable to give informed consent:
 - ▣ Make MH decisions you normally make yourself
- BE VERY CLEAR



-Powers: You can give your patient advocate the right to look at your medical and MH records whenever necessary.

-You can also give them the power to (when unable to give informed consent):

- Make those MH decisions you normally make for yourself
- I.e. Arranging OPT therapy,
- Refuse meds, see that you receive meds you have asked for, choose among recommended meds for your condition, and to force you to take meds if you object at the time.
- sign you in for inpatient tx. Voluntarily
- Refuse or consent to Electro-Convulsive therapy (ECT)

-VERY IMPORTANT TO CLEARLY CHOOSE IN THE DOCUMENT THOSE POWERS YOU ARE GIVING YOUR PATIENT ADVOCATE.

Does an advance directive for MH Care override a commitment order?

- YES...IF



If you give your patient advocate the power to hospitalize you, there may be no need for an application or petition to the probate court and a commitment hearing in the future.

If there is a petition, the patient advocate **MUST** honor the provisions of that order.

What else can I state?

- Informed consent doctor & MH Care provider
- Therapist
- Drugs you do/don't want
- Which hospital is best



Will my wishes always be followed?

- NO
 - ▣ Why not?



- A MH professional can refuse to honor your wishes concerning:
 - If there is a psychiatric emergency endangering your life or the life of another person
 - If the tx you seek is unavailable
 - Conflict with court-ordered tx

What if there is a dispute when my PA is making decisions for me?

- If an interested person disputes whether the patient advocate is acting in your best interests, or has the authority to act on your behalf, they may petition the local probate court in writing to resolve the dispute.



Ionia County Probate Court

Phone: (616) 527-5326

Fax: (616) 527-5321

Email: probate@ioniacounty.org

Website: <http://www.ioniacounty.org/probate-court/>

Preparing to complete the Advance Directive

- Take your time
- Think about the tx you'd like under various circumstances
- Consider whom would be the best Patient Advocate
- Talk to your Mental Health Professional



Once you've signed it:

- Continue to discuss the issue of your care
- Review it
- If you change it

A handwritten signature in black ink, appearing to read 'J. Smith', is centered below the list. The signature is fluid and cursive.

- Continue to help your patient advocate understand your wishes
- Review it at least once a year – change of meds, change in preference, change in PA?
 - Initial it and date the bottom annually if you don't make changes
- Change it: If you do, try to get back old copies and destroy them. Give everyone new copies.

Responsibilities of Health Care Facilities

- Anyone receiving federal funds is obligated to inform incoming patients of their rights to consent to or refuse treatment, including the right to have advance directives.
- Cannot force you to sign an Advance Directive
- Must make it a part of your medical record if you have one.

Offer this information

- You must offer the option of creating an Advance Directive to your consumer.
 - ▣ Assessment prompt
- Where can you find the forms?

Psychiatric **Advance Directive**

Does client have a Advance Directive?

Yes No

Does client desire a Advance Directive plan?

Yes No

Would client like more information about Advance Directive planning?

Yes No

What information was the client given regarding Advance Directive?

Contract with the MDHHS:

CMHSP shall inquire as to the existence of any established medical or psychiatric advance directives relevant to the provision of services⁵.

MHC – Sec. 433, Sec 469a – IF someone is petitioned into hospitalization and they don't have an advance directive, "The CMHSP shall offer to provide assistance in developing an advance directive."

CARF – Section 2.B. Screening and Access to Services – 14.t. The assessment process gathers & records sufficient info to develop a comprehensive pcp for each person serviced, including information about the persons: Advance directives, when applicable

Intranet – linked to MDHHS webpage for the form. Print it out and give it to your consumer.

Printed versions available from clerical staff.

That's what it looks like on streamline.

Where can I get one?



- Intranet
- Clerical
- MDHHS website:
http://www.michigan.gov/mdch/0,4612,7-132-2941_4868_41752---,00.html
- Available in Spanish, English and Arabic

For More Information:

- Michigan Protection and Advocacy Services Inc.
 - 1-800-288-5923
- Colleen A. Jasper, Director, Office of Consumer Relations, Michigan Department of Community Health
 - 1-517-373-1255
- National Resource Center on Psychiatric Advance Directives (NRC-PAD)
 - www.nrc-pad.org

QUESTIONS?



Any burning questions?

Sources

- Geller, Bradley. Advance Directive for Mental Health Care, Planning for Mental Health Care in the Event of Loss of Decision-Making Ability.
- Estates and Protected Individuals Code, PA 1998 No. 386, as amended by PA 2004 No. 532, effective January 3, 2005.
- MCL 700.5506 et seq.
- Michigan Department of Health and Human Services