

Advance Directives Education

Each CMH Board must be in compliance with recent law changes regarding Advance Directives. The purpose of this communication is to provide an overview of Northern Affiliation's Administrative Policy on "Advance Directives" and a summary of key factors within multiple regulations. It is also offered as a means to provide guidance for the development of policies and procedures regarding Advance Directives at the CMH/Network Provider level and a training tool for respective staff members and contractors.

What is an Advance Directive?

An Advance Directive is a written legal document about health care instructions that will be implemented sometime in the future, if the consumer is unable to make treatment decisions on his/her own.

Reasons that Advance Directives are being promoted in recent laws:

- Empowers consumers – helps them control treatment decisions if they become incapacitated.
- Helps families assist their loved ones in a crisis by knowing the consumer's wishes.
- Enhances communications about treatment preferences to family, health care providers, and others.
- May facilitate timely treatment intervention before the consumer's condition deteriorates.
- May reduce adversarial court proceedings for involuntary admissions.

There are different forms of Advance Directives:

Durable Power of Attorney for Health Care and/or Mental Health Care (DPA)

- The DPA is a legally recognized form of advance directive that creates the role of "patient advocate".
- The DPA can be for medical care or psychiatric care or both.
- A Patient Advocate is appointed to make health care choices when the consumer is no longer competent or able to communicate his/her health care choices.

Living Will

- A Living Will expresses specific health care choices generally related to end of life decisions.
- While health care providers and courts may consider the contents, these documents are not fully recognized as legally binding in Michigan.

Do Not Resuscitate Order (DNR)

- A DNR is a legally recognized advance directive in Michigan.
- A DNR allows the consumer to explain what his/her end of life health care treatment decisions are and for those choices to be honored outside of a hospital setting.

In Michigan, Psychiatric Advance Directives are in the form of Durable Power of Attorney for Health Care.

This is a legal document voluntarily prepared by the adult consumer and witnessed.

- The consumer must be 18 or older. Persons with appointed guardians cannot sign an advance directive.
- The witnesses must be 18 or older and cannot be family members, current health care providers, current residential care providers, or the patient advocate.

The Advance Directive provides advance instructions for health care, mental health care, or both.

It contains information regarding choices and preferences for treatment, should the consumer lose the ability to make those decisions in the future. Examples are:

- What hospital(s) to use
- What medications are desired or not desired
- Gives authorization (or not) for ECT treatments
- Preferred medical or psychiatric treatment providers

It is completely voluntary.

- No one can force a consumer to write one.

- Treatment can not be withheld if the consumer does not have one.

A specific form is not required. (See resources below for samples)

The document is valid until it is revoked orally or in writing.

There are certain situations that may prevent the consumer's preferences from being followed.

- If the preference is inconsistent with generally accepted practice standards.
- If the requested treatment is not available.
- If the preference is inconsistent with laws.
- If there is a life threatening situation.

The Advance Directive designates a patient advocate to make treatment decisions when the consumer is incapacitated.

The Patient Advocate acts as a health care agent in following written preferences and instructions included within the document. The Patient Advocate only acts when the consumer had been deemed unable to give informed consent for treatment, as determined:

- By a physician AND a qualified mental health professional (another physician, registered professional nurse, or mental health professional possessing at least a master's degree);
- Upon examination (face-to-face); and
- Each of the two professionals making the determination that the consumer is in need of mental health treatment.

Informed consent is when the consumer can:

- ✓ Understand they have a condition that needs treatment and
- ✓ Understand the treatment options (including no treatment) and
- ✓ Consider the possible benefits & drawbacks from each treatment and
- ✓ Make a reasonable choice among the treatment(s) available.

Consumers should inform health care providers when an Advance Directive has been initiated, revoked, or changed.

Consumers served by the Northern Affiliation will be notified of their rights under Michigan Law to formulate any type of Advance Directive.

- The CMH Handbook will be provided to consumers at the time of initial assessment, will be offered annually at the treatment plan meeting, and will be available at all times in all locations.
- The Advance Directives in Michigan tri-fold pamphlet will be available at all times in all locations.

The role of staff is to educate consumers on their rights and assist them in accessing resources.

As an agent of a health care provider, staff or care providers:

- Are encouraged to discuss advance directives with an adult consumer.
- Can answer general questions regarding advance directives, e.g., where to obtain forms and information, how to complete the forms, and assist in identifying preferences. However, **use caution and avoid undue influence**. Ensure that the consumer makes the decisions regarding advance directive issues and choices.
- Cannot be designated as a patient advocate for consumers.
- Cannot witness an advance directive for consumers.

What can be done if a Consumer requests assistance or guidance beyond the resources given above?

Refer the consumer to the CMH Customer Service Representative at 1-800-834-3393.

Required documentation in the medical record:

- During the initial assessment, staff will ask the consumer if they have an Advance Directive. The response must be noted in a prominent part of the medical record as to whether or not the consumer has executed an advance directive.

- If one exists and the consumer wishes, the document itself should be filed appropriately within the record.
- A record must be made of any education or assistance provided to consumer, family members, guardian, or legal representative regarding the individual's right to make medical treatment decisions.
- Any instance where the consumer's advance directive was not followed.

Other resources:

- Sample forms and background information at www.michigan.gov/mdch under Mental Health/Substance Abuse. Click side bar Mental Health and Developmental Disability, then Psychiatric Advance Directive.
- Educational web casts and other information at www.nrc-pad.org.
- NCCMH – Northern Affiliation Administrative Manual, Advance Directive Policy, Policy #3006.