



HURON BEHAVIORAL HEALTH OPERATIONAL POLICY

Policy #: RR.1.12
Issue Date: 01/31/05
Rev. Date: 05/20/23
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Title: Psychiatric Advance Directive Policy
Prepared By: Clinical Director

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Purpose:

To provide guidelines, policy, and philosophy to be used for Psychiatric Advance Directives (PAD) and patient advocate.

Scope:

This policy applies to all employees (including full-time and part-time employees), contract providers, volunteers, students, and/or interns of Huron Behavioral Health (HBH). This policy also applies to all consumers served by Huron Behavioral Health who do not have guardians.

Information:

1. The Michigan Legislature has enacted 42 CFR section 422.128 and also Public Act 386 relating to the administration and distribution of trusts, and legal incapacity related to estates. This bill, which is also referred to as the "Michigan Patient Advocate Act", incorporates mental health treatment decisions into law.
2. In addition to care, custody, and medical treatment, an individual may also designate another individual as their "Patient Advocate" to exercise powers concerning psychiatric/mental health treatment decisions. Under PA 386, a mental health professional that provides mental health treatment to a consumer must comply with the desires of the consumer as stated in their PAD. However, if one or more of the following conditions apply to an expressed desire of the consumer, the mental health professional is NOT bound to follow that desire, but shall instead follow the consumer's other desires as expressed in the designation:
 - In the opinion of the mental health professional, compliance is not consistent with generally accepted community practice standards of treatment
 - The treatment requested is not reasonably available
 - Compliance is not consistent with applicable law
 - Compliance is not consistent with court-ordered treatment
 - In the opinion of the mental health professional, there is a psychiatric emergency endangering the life of the patient or another individual and compliance is not appropriate under the circumstances
3. Additionally, 42 CFR 438.6 requires that HBH provide adult recipients with written information of advance directives including a description of the applicable law.
4. Recipients must also be informed that complaints and grievances regarding non-compliance with advance directive requirements may be filed with the Office of Recipient Rights, HBH's contracted Customer Services provider, or the Michigan Department of Health and Human Services (MDHHS).
5. A Psychiatric Advance Directive is also known as a Durable Power of Attorney (DPOA) for mental health care. In this document, an individual may appoint another person to make mental health decisions for them in the future, should he/she lose the ability to make decisions for himself/herself. Although the term "patient" is used, the document can be applicable to treatment in a hospital and in a community setting.
6. An individual eighteen (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 person who is making the patient advocate designation. Consumers who have a guardian with full guardianship cannot execute a legally binding advance directive. If the consumer's guardian has limited guardianship, and the guardianship does not include the power to make treatment decisions, the individual may still execute an advance directive. Once legally executed, a court cannot give any of the authorities given to a patient advocate in an advance directive, to a guardian. Therefore, consumers should be encouraged to identify a trustworthy patient advocate and execute their psychiatric advance directive while they are of sound mind and prior to having a guardian assigned.

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7. Providers are required to offer a PAD to all Medicaid recipients. It is also to be recommended for General Fund (GF) consumers and all other persons served.
8. The determination of the consumer's ability to make a mental health treatment decision shall be made under PA 386 section 700.5515, as follows:
 - A patient advocate may exercise the power to make mental health treatment decisions only if a physician and a mental health practitioner both certify, in writing and after examination of the consumer, that the consumer is unable to give informed consent to mental health treatment. The consumer may, in the document containing the patient advocate designation, designate a specific physician, a mental health practitioner, or both to make the determination. If the physician or the mental health practitioner designated by the consumer is unable or unwilling to conduct the examination and make the determination within a reasonable time, the examination and determination can be made by another physician or mental health practitioner.
 - With regard to mental health treatment decisions, the Patient Advocate can only consent to the forced administration of medications or to in-patient hospitalization (other than hospitalization as a formal voluntary patient or under court-order), if the patient has expressed in clear and convincing manner that the patient advocate is authorized to consent to that treatment (section 5509 (h)).
8. For purposes of this policy, a patient advocate designation is a legal document that appoints another person to give direction regarding mental health treatment decisions. To be a valid designation, the consumer's mental health record must contain a written certification that is signed by a physician and mental health professional that the patient is unable to give informed consent to mental health treatment. Consumers should be encouraged to use standardized forms available on the MDHHS website or the HBH form "Michigan - Advance Directive for Mental Health" or the Bazelon Center website's Advance Directive Form (see "Forms" section for hyperlinks to website forms).
9. In the event that the consumer is determined to be incompetent or incapable of making their own mental healthcare decisions (by a physician or psychiatrist and a mental health professional), HBH staff will honor the choices defined in the consumer's advance directive to the extent possible (see exceptions in #2 above).
10. Under Michigan law, a consumer with an appointed guardian can NOT sign an advance directive. Additionally, if a consumer has executed an advance directive for medical or mental health care, prior to having a guardian appointed, the guardian may not assume the responsibilities designated to a legal patient advocate in the consumer's advance directive.
11. A signed Psychiatric Advance Directive does NOT replace the need for HBH clinical staff to offer the consumer an opportunity to complete a Crisis Plan (see "[Crisis Plan Policy](#)" QI.1.06). Crisis Plans supplement the consumer's directions and wishes in the event of a psychiatric emergency. (Note: a consumer may have either document or both or none, depending upon the consumer's wishes and needs). When a consumer has a PAD, the worker should reference this in his/her crisis plan.
12. Photocopies of advance directives are valid documents (as long as all parameters have been met, such as signatures, witnesses, etc.).
13. Court orders shall supersede advance directives. If there is a court order or petition to hospitalize a consumer, the consumer's designated patient advocate must honor the provisions of that court order. This includes administration of new drugs which may be released after a psychiatric advance directive is executed.
14. All advance directives (medical and psychiatric) are strictly voluntary on the part of the consumer and HBH staff is never permitted to condition care based on whether or not a consumer implements an advance directive.
15. HBH will make a good faith effort to notify consumers within ninety (90) days whenever new changes in the (Psychiatric Advance Directive) state laws occur by posting notice and providing updated [Advance Directive pamphlet \(90-238\)](#) to all persons served.

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Policy:

A. Guidelines:

1. When an HBH consumer has created a valid advance directive and has executed a valid patient advocate designation, HBH staff providing mental health treatment will comply with the consumers' desires as expressed in their signed advance directive if possible (except in those conditions as denoted in #2 of the "Information" section above).
2. It is also the policy of HBH that mental health providers shall not require the administration of medication or inpatient hospitalization of a consumer unless it is court-ordered or petitioned, or the consumer has expressed in a clear and convincing manner that his/her patient advocate is authorized to consent to such treatment and the patient advocate has given such consent.
3. While there is no prohibition by law, it is HBH's policy in order to avoid any ethical, licensure, or conflict of interest issues, HBH staff is not permitted to become a consumer's patient advocate. HBH employees also cannot serve as a witness to an advance directive.

B. Implementation and On-going Practice:

1. At the start of services all consumers will receive a copy of the pamphlet entitled "[Advance Directive](#)" (90-238). This pamphlet will provide the consumer with general information about:
 - Michigan Patient Advocate Act language
 - Advance directives
 - Patient advocates
 - Durable power of attorney (DPOA)
 - Do-not-resuscitate (DNR) orders
 - Who to make a complaint to regarding their advance directive
2. This information will include, but is not limited to, the beneficiary's rights to make decisions concerning his/her medical and mental health care, the right to accept or refuse treatment and the right to formulate a psychiatric advance directive. (See also "[New Consumers Procedure](#)" ISP.2.05).
3. If a consumer wishes to develop an advance directive for medical health care, they will be directed to see their primary care physician for assistance. Upon completion, a copy should be given to the HBH worker where it will be prominently placed in the consumer's case record (in the administrative/legal section).
4. All consumers entering services and all consumers currently receiving services at HBH will be given information which will enable them to develop a Psychiatric Advance Directive as follows:
 - a. **For NEW consumers entering services:**
 - During the admission process, the consumer is given a copy of the pamphlet "[Advance Directive](#)" (90-238). After providing the pamphlet for advance directives, the Admission/Intake Unit Manager will obtain the consumer's signature on the "[Advance Directive – Consumer Acknowledgement Form](#)" (90-436), and forward to the Unit Manager for scanning into the consumer's case record.
 - Also, during the Intake Assessment process (using the Clinical Assessment Form in EMR), each new consumer will be asked if they have a Medical or Psychiatric Advance Directive completed and if so, the worker will request a copy for the case record. If they do not have an advance directive, the worker will offer them information regarding advance directives.
 - At one of the first appointments after intake, the assigned primary worker will explain advance directives, patient advocates for mental health care, and crisis plans to the consumer.
 - b. **For CURRENT consumers:** at the time of the annual Individual Plan of Service (IPOS) meeting, the primary worker will explain advance directives and patient advocates for mental health care and how they interface and supplement the consumer's existing crisis plan (if the individual has developed one).

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5. The primary worker will offer a copy of the MDHHS Pamphlet entitled "[Advance Directive for Mental Health Care](#)" by Bradley Geller and also a blank copy of the "[Michigan – Advance Directive for Mental Health](#)" form for the consumer to take home and review. This will be documented on the IPOS form.
6. If the consumer expresses an interest in completing an advance directive and requires assistance, the primary worker will provide the consumer with contact information to the Michigan Protection & Advocacy (P&A) Agency:

MICHIGAN PROTECTION AND ADVOCACY AGENCY

Michigan Protection and Advocacy Service - Lansing Office

4095 Legacy Parkway, Suite 500

Lansing, MI 48911- 4264

Phone: (517) 487-1755

TTY: (517) 374 - 4687

Toll Free: (800) 288-5923

FAX: (517) 487-0827

Web Page: <http://mpas.org/>

The Michigan P&A is part of a nation-wide network of federally-mandated disability rights agencies and legal services programs which are mandated by various statutes (federal and state) to provide legal assistance and representation to all persons with disabilities.

7. After a consumer has completed an advance directive form with the appropriate signatures from the patient advocate(s) and witnesses, the worker will request a copy where it will be prominently placed in the correct section of the consumer's case record in the Electronic Medical Record (EMR).
8. Annually, at the time of the IPOS, the worker will verify that HBH has any valid and current advance directives on file.

C. Revocation of an Advance Directive:

1. A consumer may revoke their advance directive at any time unless they have signed the hospitalization waiver and they are attempting to revoke it during a hospital admission. If the consumer waives their right to revoke for thirty (30) days, they may still file an "intent to terminate" hospitalization which requires seventy-two (72) hours, similar to a voluntary hospital admission. If a person revokes their advance directive, they may still be petitioned and admitted to a hospital involuntarily.
2. If a consumer revokes their advance directive and notifies HBH of the revocation, the copy of the advance directive will be marked as "Revoked and Invalid" and date the document and save it in the consumer's case record as evidence of the change. Although revocations do not need to be in writing to be valid, the worker should request that the consumer mark the advance directive "revoked" and date and initial the record, and place it in the consumer's case record.
3. A consumer may waive their power to revoke their right to refuse hospitalization on the advance directive form.

Definitions/Acronyms:

Definitions:

Advance Directive - Document(s) or documentation allowing a person to give directions about future medical care and/or psychiatric care or to designate another person(s) to make medical decisions if the individual loses decision making capacity. Advance directives may include living wills, durable powers of attorney for health care, do-not-resuscitate (DNRs) orders and right to die or similar documents listed in the Patient Self-Determination Act that express the individual's preferences.

Do-Not-Resuscitate (DNR) Order – is a written document prohibiting attempts to restore life (e.g. respiration, circulation, etc.) by artificial means once they have stopped. The DNR may be revoked at any time. To be legal/valid, a DNR must be signed by the declarant (who must be at least 18 years of age and of sound mind), the declarant's attending physician, and two (2) witnesses that are not related to the declarant (guardians of persons

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with intellectual/developmental disabilities do not have the legal authority to sign a DNR). (See also "[Unresponsive Consumer - Suspected Death - Do Not Resuscitate \(DNR\) Procedure RR.2.31](#)").

Durable Power of Attorney for Health Care – under Michigan Law, is an advance directive that designates another person (Patient Advocate) to make health care decisions regarding how aggressive treatment should be if the patient becomes incompetent or unable to make decisions in the future. For example, in the case of a coma or persistent vegetative state. The document also lists medical treatments that the person would not want to have. Durable power of attorney goes into effect when the document is signed and witnessed.

Living Will – although not recognized by Michigan statute, is an advance directive, prepared when an individual is alive, competent and able to make decisions regarding that person's specific instructions about end-of-life care. Living wills allow people to specify whether they want to be intubated, ventilated, treated with medications, shocked with electricity (to stop life-threatening heart rhythms), and fed or hydrated intravenously (if unable to take food or drink). Some people specify the person or persons (patient advocates) who have power of attorney to make health care decisions on the patient's behalf, if the patient is no longer competent to make choices for himself/herself.

Mental Health Professional - means an individual who is trained and experienced in the area of mental illness or intellectual/developmental disabilities and who is one of the following:

- a physician or psychiatrist;
- a psychologist;
- a registered professional nurse;
- a physician's assistant;
- a licensed professional counselor; and
- a licensed master's social worker

Patient Advocate – means an individual designated to exercise powers concerning another individual's care, custody, and medical or mental health treatment or authorized to make an anatomical gift on behalf of another individual.

Acronyms:

CAP – Client Assistance Program
CFR – Code of Federal Regulations
COA – Council on Accreditation
DNR – Do Not Resuscitate
DPOA – Durable Power of Attorney
EMR – Electronic Medical Record
EPIC – Estates and Protected Individuals Code
GF – General Fund
HBH – Huron Behavioral Health
IPOS – Individual Plan of Service
MDHHS – Michigan Department of Health and Human Services
PAD – Psychiatric Advance Directive
P&A – Protection and Advocacy

Forms:

[90-436 Advance Directive – Consumer Acknowledgement Form](#)

Clinical Assessment Form (in EMR)

[90-238 Advance Directive Pamphlet](#)

Crisis Plan Form (in EMR)

Bazon Center Psychiatric Advance Directive Form @ <http://www.bazon.org/issues/advancedirectives/templates.htm>

MDHHS Mental Health Advance Directive Form @ http://www.michigan.gov/documents/Durable_Power_of_Attorney_Form_Doc_157291_7.DOC

[MDHHS Advance Directive for Mental Health Care Pamphlet \(Bradley Geller\)](#) @ http://www.michigan.gov/documents/Durable_Power_of_Attorney_Form_Doc_157289_7.DOC

Records:

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Records of advance directives are retained in the consumer's case record in accordance with the [HBH Record Retention and Storage Policy \(QI.1.23\)](#).

Reference(s) and/or Legal Authority

Medicaid Managed Specialty Supports and Services Concurrent 1915(b)(c) Waiver Program

Balanced Budget Act 438.6(i)

Michigan Mental Health Code 330.1433 & 330.1469a

Federal Patient Self-Determination Act part 489

COA standards

42CFR 438.6 @ <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TILE=42&PART=438&SECTION=6&YEAR=2001&TYPE=TEXT>

42CFR 422.128 @ http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2002/octqtr/pdf/42cfr422.128.pdf

EPIC MCL 700.5506 (et seq Jan 05) @ [http://www.legislature.mi.gov/\(S\(im4kcpbfkeghvx3t0arig0vq\)\)/mileg.aspx?page=getobject&objectname=mcl-700-5506](http://www.legislature.mi.gov/(S(im4kcpbfkeghvx3t0arig0vq))/mileg.aspx?page=getobject&objectname=mcl-700-5506)

Michigan Mental Health Code 330.1433 & 330.1469a @ [http://www.legislature.mi.gov/\(S\(percwe45liieqs45pe0c5g45\)\)/documents/mcl/pdf/mcl-330-1433.pdf](http://www.legislature.mi.gov/(S(percwe45liieqs45pe0c5g45))/documents/mcl/pdf/mcl-330-1433.pdf)

Senate Bill No. 1464, Public Act 386 @ (www.michiganlegislature.org)

MDHHS website for Advance Directive Form @ http://www.michigan.gov/documents/Durable_Power_of_Attorney_Form_Doc_157291_7.DOC

MDHHS website for Advance Directive Pamphlet @ http://www.michigan.gov/documents/Durable_Power_of_Attorney_Doc_157289_7.DOC

Bazelon Center webpage for advance directives @ <http://www.bazelon.org/Where-We-Stand/Self-Determination/Advance-Directives.aspx>

Federal Self-Determination Act (part 489) @ <http://www.denbar.org/docs/psda.pdf?ID=1816>

[ISP.2.05 New Consumers Procedure](#)

[QI.1.06 Crisis Plan Policy](#)

[QI.1.23 Record Retention and Storage Policy](#)

[RR.2.31 Unresponsive Consumer - Suspected Death - Do Not Resuscitate \(DNR\) Procedure](#)

Change History:

Change Letter	Date of Change(s)	Changes
None		New policy to comply with Advance Directives
A	04/03/07	Added #3, 6, & 7 in "Information" section, added section "B." in "Policy" section, added acronyms, added forms, added hyperlinks, and state websites, added "Definitions" section to comply with BABHA procedure 4.9.14, changed title from "Mental Health Treatment Advance Directives" to "Psychiatric Advance Directives", numerous additional changes made – see QI Coordinator for previous version
B	09/12/07	Changed Crisis Plan form number from 90-152 to 90-1006 throughout document to comply with new numbering of regional Crisis form
C	03/02/09	Added last sentence in second bullet in B.4.a,a added form 90-436
D	03/27/13	Reviewed and revised with 8 th edition COA standards – removed COA chapter-specific reference (G1), in B.7 removed "prominently" and "administrative/legal section of", in C.2 changed "removed from the consumer's primary case record" and replaced it with "marked as "Revoked and Invalid....", in C.2 changed "secondary chart" to "case record", corrected minor grammatical items without changing sentence content.
E	07/09/14	Revised to comply with MSHN policy "Customer Services – Advance Directives" – added last (parenthetical) statement in #8 "Information" section, added reference to Michigan Mental Health Code & Federal Self Determination Act, added hyperlinks, , changed "developmental disability" to "intellectual/developmental disability" throughout document (3 places).
F	05/26/15	In B.4.a re-ordered bullets, in 1 st bullet changed "worker" to "Intake/Admissions Unit Manager", in 2 nd bullet removed reference to form # "90-1002" and replaced with "in EMR", no other content changes made.
G	02/16/16	Changed "Michigan Department of Community Health/MDCH" to "Michigan Department of Health and Human Services/MDHHS" throughout document (6 places), in "Definition" section changed "Advance Directive" definition to match MSHN's policy definition, added 1 st four (4) references in "References" section, In "Acronym" section removed "BABH"
H	12/06/17	In "Information" section #4 added "or Michigan Department of Health and Human Services", in #6 added 1 st sentence, in #8 added reference to PA386 section 700.5515 and added last sentence in 1 st bullet, added #9, in "Policy" section B.6 corrected phone numbers, deleted C.3 (replaced this with #9 in Information section, made numerous small wording/grammatical changes/corrections throughout document without impacting sentence content.
I	10/01/19	In "Definitions" section (DNR) removed reference from RR.2.23 to RR.2.31, in "References" section removed RR.2.33 and added RR.2.31, made several minor wording/grammatical changes/corrections throughout document without changing sentence content.
J	06/09/21	In "Acronyms" section added "IPOS", in "Information" section #15 changed "laws occur" to "state laws occur", made several minor wording/grammatical changes/corrections throughout document without changing sentence content.
K	05/20/23	Made several minor wording/grammatical changes/corrections throughout procedure without changing sentence content