



BACKGROUND:

Persons with mental illness may fluctuate between periods of capacity and incapacity. Mental health advance directives (MHAD) provide a method of expressing instructions and preferences for treatment in advance of a period of incapacity and providing advance consent to or refusal of treatment.

POLICY:

Mental health advanced directives that meet state law requirements, medical and ethical practice standards, and the policies of procedures of this hospital will be honored for any patient receiving psychiatric services, including psychiatric consultation services provide by the hospital. These patients will be questioned about the existence of a mental health advance directive that will be presumed to be a properly executed and valid even if one or more provisions of the directive are deemed to be invalid. However, in those circumstances where it is not appropriate or permissible to honor mental health advanced directives, the patient and/or their designated agent will be advised and appropriate documentation made in the patient's medical record.

PURPOSE:

The purpose of this policy is to describe how the hospital, hospital staff, and medical staff will comply with their legal, ethical, and other obligations concerning mental health advance directives. This policy does not address all aspects of the law governing mental health advance directives, but attempts to focus on ensuring relevant patients are questioned about the existence of a mental health advance directive. Additionally, the purpose of this policy is to identify clinical, administrative, and legal resources to assist hospital and medical staff to comply with chapter 11.94 RCW, chapter 7.70 RCW, 42 CFR Part 417 et. seq.

DEFINITIONS:

Mental health advance directive: a written document in which a patient makes a declaration of instructions or preferences or appoints an agent to make decisions on behalf of the patient regarding the patient's mental health treatment, or both, and that is consistent with the provisions of Washington's mental health advance directive statute.

PROCEDURE:

1. Patients receiving behavioral health services, including psychiatric consultation provided by the hospital shall be asked whether he or she has made a mental health advance directive. This process will be achieved through the completion of the "mental health advance directive" questionnaire **prior to** the initiation of treatment. The signed, dated, and witness MHAD questionnaire will be placed in the patient medical record.
 - a. **Emergency Department:** the emergency department social worker will complete the MHAD questionnaire on all patient receiving a psychiatric assessment.
 - b. **Inpatient Units:** the unit social worker will complete the MHAD questionnaire on all patients receiving a psychiatric assessment/consultation.
 - c. **Behavioral Health Services:**
 - i. Inpatient & 23-hour bed programs - the admitting RN will complete the MHAD questionnaire on all patients
 - ii. Day Hospital programs - the program specific coordinator will complete the MHAD questionnaire on all patients.
 - iii. Outpatient program - the outpatient coordinator will complete the MHAD questionnaire on all patients.

- d. **Note:** Patient will be directed to their outpatient providers regarding question related to creation of a MHAD.
2. On receipt of a mental health advance directive, a copy of the directive shall be placed in the patient's chart.
3. If the patient does not have a current copy of the MHAD with them but submitted on previous admission, a copy of the MHAD will be retrieved from the old medical record and reviewed with the patient.
4. On receipt of a directive a medical staff member will determine the validity of the directive. For assistance in determining validity contact a hospital designated resource in section 7 of this policy:
 - a. MHAD must include all of the items below:
 - i. Be in writing.
 - ii. Include language that shows an intent to create a mental health advance directive.
 - iii. Be dated and signed by the patient or be dated and signed in the patient's presence at his or her direction.
 - iv. State whether the directive may or may not be revoked during periods a period of incapacity
 - v. Contain the signatures of two witnesses following a declaration that the witnesses personally know that patient, were present when the patient dated and signed the directive, and that the patient did not appear to be incapacitated or acting under fraud, undue influence, or duress.
 - b. The following areas of the directive shall also be reviewed for validity:
 - i. Appointment of an agent: If the directive includes appointment of an agent it must contain the words "This power of attorney shall not be affected by the incapacity of the principal(patient)," or "This power of attorney shall become effective upon the incapacity of the principal(patient)," or similar words.
 - ii. Effective date: A directive may be effective immediately after it is executed or it may become effective at a later time. Mental health advance directives validly executed before the effective date of the law relating to MHAD's (July 27, 2003) are effective until they are revoked, superseded, or expire.
 - iii. Directives created outside Washington State: A directive validly executed in another political jurisdiction is valid to the extent it is permitted under Washington state law.
 - iv. Witnesses: Hospital staff and employees, medical staff members or any other person involved in the patient's care are not permitted to witness a mental health advance directive.
5. On admission the admitting medical staff member shall ascertain whether compliance with the directive or portions of it is possible. For assistance in determining whole or partial compliance contact a hospital designated resource in section 7 of this policy:
 - a. If the unable or unwilling to comply with any part or parts of the directive **for any reason**, an objection can be made to that part or those parts of the directive.
 - b. Notify the patient of the objection, and, if applicable his or her agent and document the parts or parts of the directive that are objectionable and the reason in the patient's medical record.
6. In addressing any of the issue that is not included in this policy (examples below), a hospital designated resource in section 7 of this policy **must be contacted**:
 - a. Interpretation related to the Washington state MHAD law
 - b. Process and determination of incapacity
 - c. Issues related to a MHAD being revoked, superseded, or expiration
 - d. Agent's notice of withdrawal of MHAD
 - e. Objections "once acting under the authority of a directive". i.e. not address in initial objections
 - f. Being detained or committed for involuntary treatment
 - g. Conflicting directives
 - h. Scope of an agent's authority
7. Hospital designated resources:
 - a. Director of Risk Management Services
 - b. Director of Behavioral Health & Social Services