

NORTHCARE NETWORK

POLICY TITLE: Advanced Directive/Durable Power of Attorney/Plan for Difficult Times	CATEGORY: Clinical Practices	
EFFECTIVE DATE: 8/16/03	BOARD APPROVAL DATE: 4/19/07	
REVIEW DATE: 2/20/23	REVISION(S) TO POLICY STATEMENT: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	OTHER REVISION(S): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
RESPONSIBLE PARTY: Clinical Practices Coordinator	CEO APPROVAL DATE: 3/7/23 Megan Rooney, Interim CEO	

APPLIES TO

NorthCare Network Personnel
Member CMHSPs

POLICY

NorthCare Network must provide adult individuals with written educational information on advance directives policies and include a description of applicable State law. Providers of mental health services are further responsible to assist an individual if the individual decides to develop an Advance Directive for Mental Health Care. Member CMHSPs have written materials for staff and adult individuals or their legal representatives to implement an Advance Directive for Mental Health Care. An individual may decide to use a form of their own choosing. This is an individual driven effort and may not be mandated by mental health providers. Conditioning the provision of care based on whether an individual has executed an advance directive is prohibited. Providers will also be able to direct individuals to the appropriate resources for creating an Advance Directive for Medical Health Care.

PURPOSE

To ensure adult individuals are educated regarding and, if desired, assisted with developing advanced directives for mental health care. The regulatory requirements for providing education to Medicaid individuals about advance directives for both medical and mental health care are stated in the Code of Federal Regulations (CFR) pertaining to the Balanced Budget Act of 1997: 42 CFR Part 438, Subpart A 438.6(I) (3). The Michigan rules for an Advance Directive for Medical Health Care and Advance Directive for Mental Health Care are established in different legal sources. Michigan statutes that establish the authority of a patient advocate acting on behalf of an individual for medical health care are:

- Michigan Dignified Death Act, 1978 PA 368, MCL333.5651 *et seq*, as amended by 2004 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

DEFINITIONS

1. ***Advance Directive*** - is a written instruction such as living will or durable power of attorney for healthcare, recognized under State law (whether statutory or as recognized by the courts of the State), relating to the provision of health care when the individual is incapacitated. There are two types of Advance Directives: one for medical health care and one for mental health care.
2. ***Do Not Resuscitate Order*** - directs that in the event that a declarant's heart and breathing should stop, no person shall attempt to resuscitate the declarant.
3. ***Durable Power of Attorney (DPOA) in the State of Michigan*** –states: A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney in fact in a writing that contains the words "This power of attorney is not affected by the principal's subsequent disability or incapacity, or by the lapse of time", or "This power of attorney is effective upon the disability or incapacity of the principal", or similar words showing the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity and, unless the power states a termination time, notwithstanding the lapse of time since the execution of the instrument.
4. ***Forms for Advance Directives*** - There is no one form that is mandated by law. The three forms listed below meet all the legal requirements and are available at the NorthCare Network Website www.northcarenetwork.org
 - **Michigan Advance Directive for Mental Health Care** is a form and set of questions and answers developed by Michigan Department of Health and Human Services and individual representatives of the statewide Recovery Council. The form is specifically for mental health care and a separate document would be required for medical health care needs. The documents are available at the MDHHS website www.michigan.gov/MDHHS, search advance directives.
 - **Plan for Difficult Times (Crisis Planning)** is a document that may be created in the electronic medical record. It may be completed by an individual within the context of their Individual Plan of Service (IPOS) or at any other time. The plan is intended to direct care when an individual begins to experience increased difficulty in managing his/her life or becomes genuinely incapacitated and an appointed agent acts on his/her behalf. NorthCare Network and the Member CMHSPs have adopted a regional form to utilize if an individual chooses to create a plan for managing their illness during a crisis. By having this form signed by two (2) witnesses and entered into their medical record, this plan would be legally binding as an Advance Directive. The individual may choose to use a different format or the DPOA form endorsed by the State Bar of Michigan. It is available at the NorthCare Network website: www.northcarenetwork.org
 - **Psychiatric Advance Directive** is a form and set of directions prepared by the national Bazelon Center for Mental Health Law. This form is more complex than the two listed above but the directions provide information that may be useful to staff and individuals. It is available at the website www.bazelon.org

5. **Patient Advocate:** 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. An individual making a patient advocate designation under this subsection may include in the patient advocate designation the authority for the designated individual to make an anatomical gift of all or part of the individual's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The authority regarding an anatomical gift under this subsection may include the authority to resolve a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift.

REFERENCES

- Code of Federal Regulations, 42 CFR Parts 438, Subpart A 438.6 and 438.10(g)(2)(xii); Part 422.128
- Michigan Advance Directives for Mental Health Care, www.michigan.gov/MDHHS
- Michigan Dignified Death Act, 1978 PA 368, MCL333.5651, et seq, as amended by 2004 PA 55
- Michigan Do-Not Resuscitate Procedure Act (MDNRPA), 1996PA 193, MCL 333.1051 et seq; MSA 14.15(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 700.5501et seq, as amended by 2004 PA 554
- MDHHS/PIHP Contract
- Psychiatric Advance Directive, www.bazelon.org
- National Resource Center on Psychiatric Advance Directives, www.nrc-pad.org
- Resource, Michigan Long Term Care Ombudsman Program: https://www.michigan.gov/documents/miseniors/Advance_Directives_230752_7.pdf

HISTORY

REVISION DATE: 3/6/07, 6/16/08, 11/27/13, 4/20/17; 2/5/18; 11/27/18, 9/24/19, 5/18/21, 4/19/22

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CEO APPROVAL: 1/30/13, 11/27/13, 10/1/14, 9/1/15, 7/5/16, 5/2/17, 2/12/18, 12/4/18, 10/10/19, 8/4/20, 6/1/21, 5/3/22, 3/7/23

BOARD APPROVAL: 1/28/04, 5/4/05, 11/1/06, 4/19/07

PROCEDURES

A. NorthCare Network Responsibilities

1. The NorthCare Network Handbook (which includes information on advance directives) is provided to individuals with Medicaid coverage by the Member CMSHPs. Medicaid individuals receiving substance abuse services receive the NorthCare Network Handbook upon admission to services. Substance Abuse service providers then have no further regulatory responsibility regarding advance directives.

2. NorthCare Network will provide technical assistance with the training and implementation of this policy as requested by individual providers or as deemed necessary to create regional consistency.
3. Information must be continuously updated to reflect changes in state law as soon as possible but no later than 90 days after it becomes effective.

B. Member CMHSP Responsibilities

1. Each CMHSP will maintain written policies and procedures concerning advance directives with respect to all adult individuals receiving services and their right to formulate an advance directive.
2. Advance Directive for Medical Health Care - Each Member CMHSP is responsible for assisting and referring adult individuals and guardians in obtaining Advance Directive for Medical Health Care or DNR orders if requested. Local Probate Courts have jurisdiction in these matters. The Member CMHSP clinician is responsible for documenting the information provided during the person centered planning process and at any time requested. If an individual has executed an Advance Directive it must be documented in a prominent part of the current medical record.
3. Advance Directive for Mental Health Care - Each Member CMHSP will develop procedures for educating staff and individuals about the right to an Advance Directive for Mental Health Care and for assisting an individual in developing the directive if they so choose. This is done in the context of their Individual Plan of Service (IPOS) and requires:
 - a. Staff training on this policy and its implementation.
 - b. Guidelines for staff regarding:
 - i. Assisting individuals in developing an Advance Directive for Mental Health Care if requested. This includes offering guidance as to which form the individual might find the most useful to convey their choices about treatment.
 - ii. The opportunity to fully develop the Advance Directive for Mental Health Care and to update as desired by the individual.
 - iii. Documentation of the efforts to create such a plan
 - iv. Coordination of Care with hospitals if an emergency admission is necessary.
 - v. Will not condition the provision of care or otherwise discriminate against an individual based on whether they have executed an advance directive.