

PA Behavioral Health and Aging Coalition

Mental Health Advance Directive March 13, 2014 Webinar

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Where We are Going

- What is a Mental Health Advance Directive?
- Why Make one?
- How to Make One in Pennsylvania

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Basic Premise

- *People With Mental Illness Have the Same Rights That People Without Mental Illness Have.*

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What Are A Person's Rights?

- Examples are:
 - ⇒ To Be Treated With Compassion, Dignity And Respect.
 - ⇒ Practice Your Own Values and Spiritual Beliefs.
 - ⇒ Express Your Feelings.
 - ⇒ Choose Your Own Friends.
 - ⇒ **Right to Refuse or Consent to Treatment.**
 - ⇒ Right To Choose Your Provider.

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Choosing Treatment

- Individuals Have the Right to Determine the Nature and Extent of Their Medical Care.
- Personal Autonomy is a Fundamental Right Guaranteed by the Constitution.
 - ⇒ Right To Informed Consent.
 - ⇒ Right To Treatment.
 - ⇒ Right To **REFUSE** Treatment.

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Informed Consent

- Three Requirements:
 - ⇒ Doc's duty to disclose all significant medical info.
 - ⇒ Capacity.
 - ⇒ **VOLUNTARY** consent.

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Capacity in this Context

- What is capacity for MH Advance Directives?
 - ⇒ Capacity is the basic ability to understand:
 - Your Diagnosis
 - Risks and Benefits of Treatment
 - Alternative Treatments
 - The Consequences of Not Having Any Treatment
 - ⇒ ***It is only related to Mental Health Treatment.***

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Capacity

- Who determines capacity?
 - ⇒ The Presumption is That You Have Capacity.
- Who determines incapacity?
 - ⇒ Two Evaluations
 - One by a Psychiatrist,
 - One by Another Mental Health Professional.
 - Whenever Possible One of the Evaluators Will Be Your Treating Professional.

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Mental Health Care Advance Directives

- Document That Allows You To Make Choices About MH Treatment In Advance Of Incapacitation.
- Addresses both:
 - Informed Consent and
 - Right To Refuse Treatment

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Why Is It Important?

- Taking Responsibility for Yourself
- Feel More Comfortable Seeking Treatment
- Autonomy – It's All About You!
- Helps Ensure Better Treatment, Faster
- Encourages Discussion of Preferences
- A Natural Part Of A Wellness Plan

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Mental Health Advance Directives

- Two Types:
 1. Declaration
More Defined, Less Flexible.
 2. Power of Attorney
More Flexible, Requires an Agent.
- In Pennsylvania you can have a combination of the two.

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What Does Pennsylvania's Law Look Like?

- Requirements for Completing Forms.
- Consumer, Agent, and Provider Responsibilities.
- Detailed Forms.
- Due Process for Termination by Court if it becomes necessary.

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Mental Health Advance Directive Requirements

- You Must be at Least 18 yrs Old or an Emancipated Minor.
- You Must Not Currently be Incapacitated
- **You Must Sign, Date, and Have Two Witnesses.**
- You Must Include Your Mental Health Treatment Instructions.
- A Power of Attorney Must Appoint an Agent.

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MH Advance Directive Instructions - Examples

- ⇒ Medications
- ⇒ ECT, Drug Trials, Research Studies
- ⇒ Crisis Management
- ⇒ Who Should Be Called
- ⇒ Who You Want to Care for Your Children or Pets
- ⇒ Dietary choices
- ⇒ Religious choices
- ⇒ Treatment History

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MH Advance Directive Instructions - Examples

Treatment

- Medications
- ECT, Drug Trials, Research Studies
- Treatment History
- Crisis Management

Preferences

- Who Should Be Called
- Care for Your Children or Pets
- Dietary and religious choices
- Hospital

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What Requires Written Consent?

- ECT
- Research of Any Kind
- Experimental Studies
- Drug trials

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How to Make One

- Step 1. Decide what type.
- Step 2. Write your treatment decisions down.
Discussion with support Folks.
- Step 3. Sign, Date Document –Two Witnesses.
- Step 4. Copies to Agents/ Family/ Providers/
- Step 5. Keep a Card on Your Person Noting the Existence and Who to Contact.
- Step 6. Review and Update at Least Every Two Years.

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How to Decide What Type

- Do you want to make all of your own decisions without having anyone else involved? OR
If you do not have anyone you trust to make the same decisions for you that you would make

⇒ Then you should make a Declaration.

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How to Decide What Type

- If you want someone else to make decisions on your behalf AND
You have someone that you trust to make the same decisions for you that you would make for yourself AND
That person is willing to serve as your agent
⇒ Then you should make a Power of Attorney

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How to Decide What Type

- If you want to make some decisions AND
You want someone else to make other decisions about new things that may come up AND
You have someone you trust to make the same decisions for you that you would make AND
You have someone willing to serve as your agent
⇒ Then you should make a Combination Declaration and Power of Attorney.

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Most Important:

- **DISCUSS YOUR CHOICES**
- **SIGN, DATE, HAVE TWO WITNESSES**

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Who Should Get Copies?

- Your Mental Health Provider.
- Physical Doctor.
- The Agent Named in Document.
- Anyone Listed as a Possible Guardian.
- Family or Friends That You Trust.
- Carry a Card with a Contact.
- ***Remember to Give Everyone Updates.***

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All About Agents

WHO?

1. **Someone you really, really, really TRUST!**
2. Can't be your provider or an employee of your provider unless they are related to you.
3. Can't be an owner, operator or employee of a residential facility in which you receive care (unless related).
4. It can't be someone who witnesses your Directive, or signs your Directive because you are unable to.

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Agents Continued

- Substitute Judgment Standard for Decisions.
 - ⇒ The Agent Must "Stand in Your Shoes."
- You Decide Which Powers to Give.
 - ⇒ You must **Expressly** (write down) give the power to decide participation in any experimental research, drug trials or ECT.
 - ⇒ An Agent Cannot Agree to Psychosurgery or Terminating Parental Rights, **No Matter What.**

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Agent Responsibilities

- Being available to make treatment decisions.
- Trying to make decisions for you that you would make for yourself.
- Getting all the info needed to make decisions.
- Advocating for what you need.
- Letting the Court know there is a MH advance directive if there is a guardianship proceeding.
- **NOT RESPONSIBLE FOR COSTS OF TREATMENT BECAUSE THEY ARE AN AGENT.**

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Agents - removal

- An Agent may be removed by the Court for:
 - ⇒ Death (naturally!) or incapacity
 - ⇒ Non-compliance with the advance directive
 - ⇒ Physical assault or threats of harm
 - ⇒ Coercion
 - ⇒ Voluntarily withdrawing
 - ⇒ Divorce (unless you state otherwise in your directive)

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Provider Responsibilities

- Ask if you have one.
- Inform People Being Discharged.
- Place A Copy in the Mental Health Record for at least two years.
- Make any Revocation or Amendment Part of the Mental Health Record.

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Provider Responsibilities Continued

- Document any Determination of Capacity
 - ⇒ Ability to make mental health care decisions *only*.
- Comply with the Directive
 - ⇒ But can't violate clinical practice or medical standards.
- Inform if he/she Cannot Comply.
 - ⇒ Consumer AND legal representatives.
 - ⇒ Document the reasons for non-compliance.
- Transfer if he/she Cannot Comply.
 - ⇒ Reasonable efforts.

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Provider Responsibilities What A Provider May Not Do

- A Provider May Not Provide Any Treatment Without Consent.
 - ⇒ Unless there's an emergency.
- A Provider May Not Treat or Refuse to Accept a Person as a Patient Solely on the Basis of Whether or Not They Have an Advance Directive.

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Court Ordered Revocation

- Irreparable Harm or Death
 - ⇒ Any Interested Party May File a Petition With the Court.
- A Judge May Revoke Some or All of the Instructions.
 - ⇒ Remaining Provisions Will Continue to be in Effect.
 - ⇒ Decision within 72 Hours.

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Guardians and Agents

- You Can Name the Person You Would Want as Guardian in Your Advance Directive
- If You Are Adjudicated Incapacitated, the Power of Attorney remains in Effect.
- The Court Will Give Preference to the Agent to Continue.
- If the Court Grants the Power to the Guardian Instead, the Guardian is Still Bound by the Advance Directive.

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• FREQUENTLY ASKED QUESTIONS and SPECIAL POINTS

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What Form?

- You Do Not Have to Use a Special Form.
- Can I Use a Form that I Took from Somewhere Else?
 - ⇒ Sure, just keep in mind that forms from other states might have requirements that Pennsylvania doesn't have – for example notarizing the signature. Or another states' form may not meet Pennsylvania requirements – for example we require a signature, date, and two witnesses.

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Changes

- How do I make changes to my Directive?
 - ⇒ You may change your Directive at any time ***as long as you have capacity***. Any changes must be signed, dated and witnessed.
 - ⇒ If you make significant changes you may wish to avoid confusion by making a new Directive. Make sure you destroy any old copies if you do this.

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Changes

- What if I want to change my Advance Directive while I am in the hospital?
 - ⇒ You should request an evaluation for capacity. You should then be evaluated by a psychiatrist and another MH professional. If you have capacity, you should be able to make whatever changes you like.

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Canceling

- How Do I Cancel My Directive?
 - ⇒ You may cancel (revoke) some or all of your Directive at any time ***as long as you have capacity.***
 - ⇒ You may revoke orally or in writing. In writing is definitely better. The revocation is effective as soon as you tell your provider. You will have to make a new one if you decide to reinstate your advance directive after your revoke it.

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Involuntary Commitment

- How does having a MH Advance Directive affect involuntary commitment?
 - ⇒ You may still be committed.
 - ⇒ Treating professionals may do whatever is necessary to prevent harm to you or others in an emergency.
 - ⇒ Your Advance Directive will govern your treatment while you are in the hospital.

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Voluntary Commitment

- Can my Agent sign me in under voluntary commitment to a hospital?
 - ⇒ No. If your agent could sign you in voluntarily, even if you didn't want to go, you would not have the due process that you are entitled to under the law.

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Confidentiality

- Should a Provider protect my confidentiality by not making my advance directive available to a hospital?

⇒ No!

Presumably you want the people who are treating you to have access to your MH Advance Directive. Anyone who knows that you have one should come forward with it in a crisis.

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Special Points

- VALID when signed, dated, witnessed.
- IN EFFECT when person has been evaluated and found to lack capacity to make MH treatment decisions.
- NO LONGER IN EFFECT when person is found to have capacity to make MH trmt decisions again or is discharged.

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Special Points

- NO SPECIAL FORM IS REQUIRED
- NO NOTARY IS REQUIRED
 - ⇒ SIGNED, DATED, WITNESSED (ONLY!)
- MH TREATMENT
 - ⇒ NOT POA FOR OTHER HEALTH CARE, FINANCES, TERMINAL ILLNESS, SOCIAL SECURITY, ETC.

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Special Points

- WRAP can include the information to be considered a legal MHAD.
- For clarity, label that portion as MHAD.
- Provide copies and identify as MHAD.
- NO NOTARY IS REQUIRED
 - ⇒ But **MUST SIGN, DATE, 2 WITNESSES**

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It's a great Idea

- **A Mental Health Care Advance Directive Is An Important Tool For Crisis Management.**
- **A Mental Health Care Advance Directive Is A Natural Part Of A Wellness Plan.**
- **A Mental Health Care Advance Directive Supports Recovery.**

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Resources

- MHAD Guide
http://www.mhapa.org/downloads/Adv_Directives_2008_02.pdf
- MHAD Agent Guide
<http://www.mhapa.org/downloads/MentalHealthAgents.pdf>

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Mental Health Advance Directive

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