

## The Right Door for Hope, Recovery, and Wellness

Chapter Title <b>Recipient Rights</b>	Chapter # <b>RR</b>		Subject # <b>117.1</b>
Subject Title <b>Advance Directives</b>	Adopted <b>04/23/08</b>	Last Revised <b>7/6/15</b>	Reviewed <b>4/23/08, 3/19/10, 7/6/15; 1/4/17</b>

### PROCEDURE

#### Application

This procedure shall apply to The Right Door for Hope, Recovery, and Wellness and all services operated by or under contract with it. This procedure shall serve as a guide to assure compliance with Board policy regarding Recipient Rights.

#### 1.0 Definitions

1.1 Medical and/or Psychiatric Advance Directive: A written instruction, such as a living will or durable power of attorney for health care, often recognized under State law, relating to the provision of medical and/or psychiatric treatment when the individual is incapacitated. Types of Advance Directives include:

- Do Not Resuscitate Order: Directs that if a patient is to stop both breathing and circulation outside of a hospital, nursing home, or a mental health facility owned or operated by MDHHS, no resuscitation will be initiated. May provide for special instructions for treatment when the consumer's death is imminent, or when the consumer is incurably, terminally ill.
- Durable Power of Attorney for Health Care: Also known as a health care proxy, this is a document in which an individual delegates to another individual, the Patient Advocate, the power to make medical treatment and related personal care and custody decisions for them. Is fully recognized by Michigan courts.
- Living Will: Allows an individual to specify what type of treatment they do or do not want at a future date in the event they are unable to participate in their health care decisions. Does not designate a Patient Advocate. Not legally binding in Michigan.
- Psychiatric Advance Directive: Similar to Living Wills. Allows an individual to specify what type of psychiatric/mental health treatment they do or do not want at a future date in the event they are unable to participate in their mental health care decisions. Not

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legally binding in Michigan unless they also appoint a Patient Advocate.

- 1.2 Mental Health Professional: Licensed physician, licensed psychologist, registered nurse, licensed master's social worker, licensed physician's assistant, licensed professional counselor.
- 1.3 Crisis Plan: A procedure for support people to follow that protects individual choices and promotes recovery. It provides a set of directions and preferences for others to follow during the times that an individual experiences illness or injury. A crisis plan is not enforceable by Michigan law, but the Michigan Department of Health and Human Services, Person Centered Planning Policy, Practice Guidelines states that all individuals served will be provided with an opportunity to develop a crisis plan.
- 1.4 Patient Advocate: A person, 18 years of age or older who is selected to act as a Patient Advocate by another individual 18 years of age or older and of sound mind. The Patient Advocate will act on behalf of the individual in matters regarding care, custody, medical and/or psychiatric treatment decisions when the individual is unable to participate in treatment decisions. The Patient Advocate may also have the authority, which may extend after death, to make an anatomical gift.

### **2.0 Information Dissemination & Documentation**

- 2.1 Written information on the right to develop Advance Directives (AD), including a summary of state law, will be provided to adult consumers at the time of enrollment into services, and upon request. This includes notification that complaints regarding non-compliance with AD rules may be filed with the Michigan Department of Health and Human Services.
- 2.2 If the consumer is incapacitated at the time of enrollment and unable to receive information or indicate if they have developed an advance directive, the written information may be given to the family or surrogate in the same manner in which other information is provided. When the consumer is able to receive the written information, it will be provided directly to the consumer.

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2.3 Documentation in the consumer record will indicate:

2.3.1 The date that the consumer received the information on advance directives, state law.

2.3.2 If the enrollee has executed an advance directive.

2.4 Documentation of an advance directive will be in a prominent part of the individual's current record.

2.5 The executed AD will become part of the mental health record when provided by the consumer.

### **3.0 Completing an Advance Directive**

3.1 Employees of The Right Door for Hope, Recovery, and Wellness or its contractors may not witness a consumer's AD.

3.2 Employees of The Right Door for Hope, Recovery, and Wellness or its contractors shall not agree to be designated as a Patient Advocate for a person who receives services from The Right Door for Hope, Recovery, and Wellness or its contractors.

3.2 Employees of The Right Door for Hope, Recovery, and Wellness and its contractors can assist consumers in developing their advance directive if it is in their scope of practice to do so. If it is not in their scope of practice, the employee or contractor can assist consumers by helping them identify resources available to help in the development of an advance directive.

### **4.0 Patient Advocate Designation & Information**

4.1 A Patient Advocate may exercise the power to make mental health treatment decisions only after two physicians examine the consumer and certify in writing that the person is unable to give informed consent for health care decisions on their own behalf. In the case of ADs for psychiatric care, a physician and a mental health professional must examine the consumer and certify in writing that the consumer is unable to give informed consent for mental health treatment.

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- 4.2 A Patient Advocate shall execute the desires, instructions, or guidelines as written and expressed by the consumer when the AD was developed.
- 4.3 A Patient Advocate shall only make treatment decisions on care that the consumer could have exercised on their own behalf.
- 4.4 A Patient Advocate may not delegate their responsibility to another without prior authorization by the consumer.
- 4.5 A Patient Advocate may withhold or terminate treatment only if the consumer clearly authorized that consent.
- 4.6 The AD is suspended when the consumer regains the ability to participate in decisions regarding their care.

**5.0 Patient Advocate Revocation**

- 5.1 Revocation of a Patient Advocate designation may occur under one or more of the following conditions:
  - 5.1.1 The consumer’s death, except for authorization for the Patient Advocate to make an anatomical gift of all or part of the deceased consumer’s body.
  - 5.1.2 An order by the court.
  - 5.1.3 The Patient Advocate’s resignation or removal by the court unless a successor has been designated.
  - 5.1.4 The consumer’s revocation of the Patient Advocate designation.
- 5.2 The consumer may revoke the Patient Advocate designation at any time and in any manner by which he or she can communicate the intent to revoke.
- 5.3 If there is a dispute about the consumer’s intent, the court may decide on the consumer’s intent.

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- 5.4 If a spouse is named as Patient Advocate and since the time of the designation a divorce, separation or annulment has occurred, the Patient Advocate designation is suspending during the pending divorce/separation/annulment, and finalization of the divorce/separation/annulment, the designation for the spouse is revoked. If a successor was named, then that individual acts as the Patient Advocate.
- 5.5 If the revocation is not in writing, a witness shall record, in writing, the circumstances of the revocation in the clinical record. If the consumer's physician, mental health professional or the health care facility has notice of the revocation, that professional/facility will note the revocation in the consumer's records and notify the Patient Advocate.
- 5.6. A Patient Advocate/mental health facility who acts in good faith under the AD without knowledge of the revocation is still bound by the AD until such notification is received.
- 5.7 The consumer with an AD may waive the right to revoke a Patient Advocate designation.
- 5.8 When the consumer has waived the right to revoke the Patient Advocate designation, the AD will remain in effect for 30 consecutive days after the revocation.

### **6.0 Agency Responsibilities and Advance Directives**

- 6.1 When a legally executed AD has been provided to The Right Door for Hope, Recovery, and Wellness or its contractors, involved mental health professionals shall provide a copy of the AD to other treating mental health professionals when this is consistent with the desires of the consumer or when invoked, the Patient Advocate.
- 6.2 Employees of The Right Door for Hope, Recovery, and Wellness and its contractors will honor the wishes and desires expressed in a legally executed AD except under the following circumstances:
  - 6.2.1 The treatment requested is not reasonably available.

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- 6.2.2 Compliance is not consistent with applicable law.
- 6.2.3 Compliance is not consistent with court ordered treatment.
- 6.2.4 In the opinion of the mental health professional, compliance is not consistent with generally accepted community practice standards of treatment.
- 6.2.5 In the opinion of the mental health professional, there is a psychiatric emergency endangering the life of the consumer or another individual and compliance is not appropriate under the circumstances.
- 6.3 If an AD is in conflict with a crisis plan, the AD shall prevail unless the wishes cannot be honored as specified in section 6.2 of this procedure.
- 6.3 Providers of services will not discriminate against or make completion of an AD as a condition for services.
- 6.4 Providers who cannot implement an AD as a matter of conscience must do all of the following:
  - 6.4.1 Notify in writing the The Right Door for Hope, Recovery, and Wellness Compliance Officer immediately of the objection.
  - 6.4.2 Clarify whether the objection is that of the organization or of the individual provider within the organization.
  - 6.4.3 Identify the State legal authority permitting such objections.
  - 6.4.4 Describe the range of psychiatric and/or medical conditions or procedures affected by the conscientious objection.
  - 6.4.5 The The Right Door for Hope, Recovery, and Wellness Compliance Officer shall notify in writing the PIHP Compliance Officer immediately of the objection.
- 6.5 The Right Door for Hope, Recovery, and Wellness shall provide information and education to its staff, contractors, consumers, and the

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community in general, on information concerning ADs, including the following:

- 6.5.1 Definition of an AD
- 6.5.2 The right to make decisions concerning medical and/or psychiatric care, including the right to accept or refuse medical, surgical, or psychiatric treatment, and the right to develop ADs.
- 6.5.3 An AD enhances an incapacitated individual’s control over medical and/or psychiatric treatment.
- 6.5.4 Relevant state law.
- 6.6 The Right Door for Hope, Recovery, and Wellness shall update its policies and procedures on Advance Directives to reflect changes in State law as soon as possible following those changes, but no later than 90 days after the effective date.

References: Michigan Mental Health Code

Michigan Medicaid Manual

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT) Act 386 of 1998  
PART 5 DURABLE POWER OF ATTORNEY AND DESIGNATION OF PATIENT  
ADVOCATE

Robert S. Lathers, Chief Executive Officer	Date		