



## Advance Directives

May 2024

# What is an *Advance Directive*?



\* *Written document* by someone who is:

- 18 years or older and
- competent to make decision (and doesn't have a legal guardian)

\* *Voluntary*

Services and Supports cannot be predicated on an Individual electing or not electing to have Advance Directives in place

\* *Guideline to direct:*

- A. Who will make medical and/or mental health decisions if the individual cannot speak for him/herself
- B. Decisions about future desired – and not desired - medical and/or mental health care

# Why are Advance Directives Important?

- We all have individual values and goals
- Directives can and do make personal medical/mental health care decisions known to family and care providers
- Directives can and do protect the rights of individuals to have their medical/mental health care wishes carried out
- Having a Directive in place may prevent the need for Probate Court appointed legal guardian.

# Legal Basis for Advance Directives

- In 1990 Congress enacted the Patient Self-Determination Act (PSDA) as part of the Omnibus Budget Reconciliation Act of 1990 (PL 101-508). This legislation was intended to "reinforce individuals' constitutional right to determine their final health care."
- In Michigan, Advance Directives are covered in the Estates and Protected Individuals Code, PA 1998 No. 386, as amended by PA 2008 No. 41, effective March 17, 2008. The statutory citation is MCL 700.5506 et seq.

# Types of Advance Directives

- Durable Power of Attorney for Healthcare (DPOA)
  - Can identify medical care and mental health care that is or is not desired.
  - Designates a Patient Advocate
- Living Will
- Do-Not-Resuscitate Declaration (DNR)
- Anatomical Gift (directing donation of body or body parts)

# Durable Power of Attorney (DPOA)

- Appoints another person (**Patient Advocate**) to make medical decisions for when an individual is unable to do so because of incapacity
- Legally binding in Michigan when:
  - Individual creating the Directive is 18 years of age or older
  - Individual is considered competent (and has no legal guardian) when the DPOA is written
  - Patient Advocate is identified
    - **And** Advocate agrees to the arrangement in writing by signing “acceptance” of the Patient Advocate designation
    - **And** 2 witnesses sign the document
      - Witnesses cannot be family, a service provider to the individual making the DPOA, or anyone else who could possibly benefit from the death of the individual.
  - Directive must be filed in the medical/mental health records

# Powers of DPOA/Patient Advocate

- Depending on the medical and/or mental health care and treatments indicated within the documentation, a Patient Advocate can...
  - Makes personal decisions
  - Consent to or refuse medical treatment
  - Consent to or refuse mental health treatment
  - Arrange for home health care, adult day care, or admission to a hospital or nursing home
  - Donate a human body or organs upon the individual's death

# When/How should an Advance Directive be developed?

- The time to develop an Advance Directive Plan and identify a Patient Advocate is when any Individual is well and not struggling with symptoms of their physical and/or mental illnesses. When the Individual is of “sound mind”.
- Topics to be explored include health care procedures and treatments that the Individual has strong feelings about – like certain medications, feeding tubes, ECT...
  - The Directive should include decisions about as many physical and/or mental health services and treatments the individual wants to actively have the opportunity to plan for.
- When being developed, Individuals should discuss their desires with family, friends, spiritual leader(s), physicians and others who offer valued support and input.



# Who should Advance Directives be shared with?

- The Individual who developed the Directive
- The designated Patient Advocate
- Family
- Friends
- Medical Care professionals
- Mental Health Care professionals
- Clergy
- Preferred Hospitals
- Local Emergency Responders – especially if an Individual has significant or terminal health concerns.

# When does a Patient Advocate Act?

- As stated in law, a patient advocate can make decisions when the individual loses the ability to give “informed consent” and is considered incapacitated. This means a loss of:
  - understanding the condition needing treatment
  - understanding treatment option pros and cons
  - ability to make reasonable choice(s)
- Medical Decisions
  - Attending Physician and another physician will determine ability to give informed consent
- Mental Health Decisions
  - Physician and a mental health professional (psychologist, RN, or MSW) must each make the determination
- An individual can specify in their DPOA the physician and mental health professional they want to make the determination.

# When does a Patient Advocate job end?

- Patient Advocate powers end:
  - When the Individual is no longer considered “incompetent” to make decisions and is able to give informed consent for treatment(s)
  - When the Individual dies (aside from any granted powers for making an anatomical gift upon death)
  - Under a Court Order
  - When the Advocate resigns
    - Successor Advocate can be identified by the Individual within the Advance Directive
  - When the Individual revokes the Advocate’s powers (*see next slide for details*)

# Revoking the Advocate

- The Individual can revoke Advocate powers at any time in any way they are able to communicate (verbal or written).
- If verbal, someone who witnesses can write and sign a statement describing the circumstances of the revocation.
  - If possible, the witness of revocation will notify the advocate
- If a physician or mental health professional has notice of the revocation, they will note it in the individual's record and notify the advocate.
- The care decisions within the Advance Directive must be followed until revocation is known to all care providers
- Individuals receiving mental health services can waive the right to immediately revoke Advocate designation and if so, the Advance Directives will remain in place for 30 more days.

# Living Will

- A Living Will is another form of Advance Directive. Living Wills do not require a Patient Advocate be appointed. Living Wills are not legally binding in Michigan, but can be valuable in letting family providers know medical care desires.
- Limited to care during:
  - Terminal illness
  - Permanent unconsciousness
- A living will can state what type of treatment is desired and not desired. For example, transfusions and IV lines can be requested but ventilator care can be refused.
- If a Living Will is desired:
  - Title it as such – so intentions are clear
  - Date and Sign it
  - Have it witnessed by 2 people who are not family
  - IF an Individual also has a DPOA, the health care decisions within both should be consistent.


# Do Not Resuscitate (DNR) Declaration

- A written Advance Directive stating that - if and when heart function and breathing cease, an Individual **does not** want to be resuscitated/saved/or “brought back”.
- Keep DNR Order available. Copies to:
  - Family/friends
  - Patient Advocate if one is appointed
  - Physician(s)
- For Individuals receiving services within the SWMBH network – who live in licensed homes AND have valid DNR – if cardiac or respiratory arrest occur, staff will notify Emergency Responders (EMS) immediately and provide copy of the DNR to EMS upon arrival. Each agency should develop their own process related to when to stop resuscitation and who can make that determination.

# Anatomical gifts

- Any bequest to donate a human body or organs should be recorded in an Advance Directive to provide clear direction about the wishes of the recently deceased.
- The Declaration of an Anatomical Gift can be recorded in any format. Label it clearly.
- Keep Declaration available. Give copies to:
  - Family/friends
  - Patient Advocate if one is appointed

# How does this apply within the SWMBH Network?

- Michigan Law regarding Advance Directives applies to all health care providers who receive federal funds
  - Hospitals
  - Skilled nursing facilities
  - Home health agencies
  - Hospice programs
  - HMOs/CMPs
  - **Other prepaid organizations and comprehensive outpatient rehabilitation facilities.**  Southwest Michigan Behavioral Health and its contracted providers



# How does this apply within the SWMBH Network?

- Educational Requirements of Law:
  - Staff must be educated regarding Advance Directives
- Information Requirements of Law:
  - Customers are to be asked at access and periodically (at time of Person-Centered Planning) if they have executed any Advance Directives
  - Customers are to be given written information and the opportunity to ask questions about Advance Directives at access and upon their request
- Documentation Requirements of Law – to be made part of customer “chart” in a prominent place:
  - Record of date(s) written information was offered
  - Copy of any Advance Directives executed – including dates, powers of and contact information of Patient Advocate
  - Record of coordination of care with other providers regarding the Advance Directive that may be in place.

# How does this apply within the SWMBH Network?

- SWMBH/Participant CMHSP's and Contract Providers shall honor:
  - Valid Durable Powers of Attorney as presented for medical and psychiatric care.
  - Decisions made by identified Patient Advocates – unless unable or otherwise not required by law.
  - Decisions regarding terminal care of a patient, made by a legally designated patient advocate, if a person is terminally ill, including requests for hospice care.
  - A valid Do-Not-Resuscitate Order when required to do so by Michigan law.

# How does this apply within the SWMBH Network?

- Mental Health providers contracted by SWMBH are **not** bound to follow expressed desires of any directive(s) if any of the following apply:
  - In the mental health professional's opinion, 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 mental health professional's opinion, there is psychiatric emergency endangering life and compliance is not appropriate under the circumstances.

# How does this apply within the SWMBH Network?

- SWMBH/Participant CMSHPs and Contract Providers will not:
  - Provide legal or medical advice or service if a customer expresses a desire to execute an Advance Directive.
  - Discriminate or condition the provision of treatment based on whether or not the individual has executed an Advance Directive.
- SWMBH/Participant CMHSPs and Contract Providers:
  - Are not required to provide care that conflicts with an advance directive.

# How does this apply within the SWMBH Network?

## Question:

- What is the difference between a **Crisis Plan** and a Psychiatric **Advance Directive**?
  - A crisis plan is an **informal** plan that can be used by individuals to identify preferences for mental health care when they are not doing well (return of severe symptomology). It is not legally binding.
  - A crisis plan can set up supports during difficult times and serve as a way to identify events and situations that could trigger exercise of patient advocate powers.
  - The Michigan Department of Community Health requires PIHP/CMHSP service providers to offer assistance to individuals with developing a crisis plan as part of Person-Centered Planning.

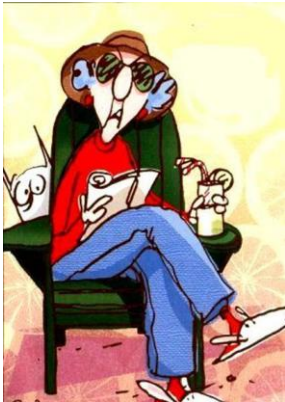
# How does this apply within the SWMBH network?

- SWMBH will update our policies based on any changes in state law no later than 90 days after the effective date of the law change.
- If staff are non-compliant with advance directive requirements or if they give incorrect information:
  - The individual may file grievances with Customer Services

# Simple (fun) example...

**I, MAXINE, being of sound mind and body, do not wish to be kept alive indefinitely by artificial means. Under no circumstances should my fate be put in the hands of pinhead politicians who couldn't pass ninth-grade biology if their lives depended on it, or lawyers and doctors interested in simply running up the bills.**

**If a reasonable amount of time passes and I fail to ask for at least one of the following:**



- \*Glass of wine   \*Chocolate   \*Margarita   \*Sex**
- \*Chocolate   \*Martini   \*Cold Beer**
- \*Chocolate   \*Sex   \*Chicken fried steak**
- \*Chocolate   \*Mexican Food   \*Chocolate**
- \*French Fries   \*Sex   \*Chocolate   \*Pizza**
- \*Chocolate   \*Ice Cream   \*Cup of Tea**
- \*Chocolate   \*Sex   \*Chocolate**

**It should be presumed that I won't ever get better. When such a determination is reached, I hereby instruct my appointed person and attending physicians to pull the plug, reel in the tubes and call it a day.**

**Save the earth. It's the only planet with chocolate**

# For More Information

- Please reference [www.michbar.org](http://www.michbar.org) and search for *Elder Law* for information regarding: Healthcare Powers of Attorney.
- Please also see [www.michigan.gov](http://www.michigan.gov) and search for Advance Directives. This site maintains information regarding Psychiatric Advance Directives.
- This training is to offer you some basic information related to Advance Directive designations. For more specific information please read **Southwest Michigan Behavioral Health Policy on Advance Directives** and/or the applicable laws and regulations cited in that policy.
- *Contact your local Customer Service representative for additional information and resources.*



# Customer Service Contacts

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# Thank-you

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