

Position Statement 23: Psychiatric Advance Directives

Policy Position

Psychiatric advance directives permit people to determine what treatment they will receive if and when they lose the capacity to make treatment decisions. Mental Health America supports and promotes the use of psychiatric advance directives as a tool for the expression of an individual's free will and self-determination in coping with mental health and substance use conditions. State laws regulate advance directives, and compliance is strongly advised. Resources include:

- My Plan My Life, MHA's website on Psychiatric Advance Directives, <http://www.myplanmylife.com>
- National Resource Center on Psychiatric Advance Directives, <http://www.nrc-pad.org>
- The Bazelon Center for Mental Health Law provides a template for decision making in constructing a psychiatric advance directive at <http://www.bazelon.org/LinkClick.aspx?fileticket=Jnjz10IQFPw%3d&tabid=226>.

Background

A psychiatric advance directive is a written statement of a person's treatment preferences and other wishes and instructions. A psychiatric advance directive or a power of attorney (sometimes called a durable power of attorney or a power of attorney for health care) can also be used to assign decision-making authority to another person who can act on that person's behalf during times of incapacitation.

Psychiatric advance directives offer several key benefits. Correctly implemented and executed, they can:

- Promote individual autonomy, empowerment and recovery from mental illness;
- Enhance communication between individuals and their families, friends, healthcare providers, and other professionals;
- Protect people from being subjected to ineffective, unwanted, and possibly harmful treatments or actions; and
- Help in preventing crises and the resulting use of involuntary treatment or dangerous interventions such as restraint or seclusion.

People considering the creation of a psychiatric advance directive need to be fully informed about the benefits and limitations of these legal instruments. Anyone creating an advance directive should be able to do so without coercion, with choices regarding implementation and revocability, and with full knowledge and understanding of the implications of his or her decisions. It is particularly important that no treatment, service or government benefit be

conditioned on the willingness of an individual to create an advance directive or on the content of an advance directive.

The primary goal and focus of mental health services should be recovery.⁽¹⁾ The recovery model recognizes that persons with mental health conditions should be able to live a meaningful, self-directed life in the community. It also recognizes that persons with mental health conditions are able to set their own goals and define what recovery means to them. Psychiatric advance directives can be an important tool in enabling persons with mental health conditions to achieve their recovery goals.

Psychiatric advance directives are an underutilized tool for empowering individuals and offer significant potential for preventing or mitigating crisis situations. While every state has enacted legislation authorizing some form of advance directive for health care, many of these general advance directive laws do not provide adequately for the unique problems relating to the treatment of mental illnesses. Barriers to the implementation of psychiatric advance directives, such as state laws that add unnecessary procedural or legal burdens, should be eliminated. Thus, it is a priority for Mental Health America to reform state laws that impede ready access to psychiatric advance directives or reliable compliance with them.

Call to Action

- States should enact legislation creating specialized psychiatric advance directives. Such legislation should be designed to enable people to choose the most important elements of the directive for them, including: what types of treatment will be covered, what events or determinations will trigger implementation, and whether or not and under what circumstances the directive will be revocable.
- Such legislation should also be based upon the recognition that, while the treatments authorized can be highly beneficial, even life-saving, for the individual, many treatments have serious side effects. Therefore, the decision to agree or not to agree in advance to such treatments or to authorize someone else to do so on one's behalf is a serious one which should be accompanied by appropriate safeguards to insure that the decision is fully informed and free from coercion.
- Such safeguards should include the requirement that any advance directive be witnessed by at least one person who is independent of any entity providing treatment to the person.
- It is particularly important that a person who is considering designating someone to act on her/his behalf choose someone who understands that individual's values and preferences and can be relied upon to faithfully carry out her/his wishes.
- Individuals, family members, friends, advocates, healthcare providers and other professionals should meet in community dialogues and work together to promote education, training and research towards the successful creation and implementation of psychiatric advance directive programs
- State laws should require that mental health providers comply with valid psychiatric advance directives unless to do so would result in serious and imminent physical harm to the individual or others.⁽²⁾

- Provider agencies and inpatient and outpatient facilities should be educated about and should be encouraged to ask people coming in for services/treatment if they have an advance directive.

Effective Period

The Mental Health America Board of Directors approved this policy on September 17, 2011. It is reviewed as required by the Mental Health America Public Policy Committee.

Expiration: December 31, 2016

1. [See MHA Position Statement 11: In Support of Recovery-Based Systems Transformation](#)
2. Mental Health America strongly agrees with the decision in *Hargrave v. Vermont*, 340 F.3d 27 (2nd Cir. 2003), that even a person who is involuntarily committed to a psychiatric hospital has the right to have the hospital comply with her/his advance directive. State laws should expressly recognize this right.