

NORTHCARE NETWORK

POLICY TITLE: Advance Directive/Durable Power of Attorney/Plan for Difficult Times
POLICY EFFECTIVE DATE: Aug. 16, 2003
BOARD ADOPTED: Jan. 28, 2004
BOARD ADOPTED REVISIONS: 5/4/05; 11/1/06, 4/19/07

REVIEWED: 8/2/04; 2/15/05; 9/13/06;
7/16/09

TEXT REVISION
3/6/07; 6/16/08

PURPOSE

This policy describes the relationship and responsibilities between NorthCare Network, Community Mental Health Services Programs (CMHSPs), NorthCare Substance Abuse Services, and Medicaid consumers regarding advance directives.

DEFINITIONS

Advance Directive means 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.

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.

Durable Power of Attorney (DPOA) in the State of Michigan states: 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. (As established in Act 386 of 1998, Part 5 Sections 700.5501 through 700.5513 and Section 700.5520, amended by 2004PA 532. Section 5506(1), as amended in 2004.)

Forms for Advance Directives – There is no one form that is mandated by law. The three forms listed meet all the legal requirements and are available at the NorthCare Website www.northcare-up.org

- **Michigan Advance Directive for Mental Health Care** is a form and set of questions and answers developed by Michigan Department of Community Health and consumer 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 MDCH website www.michigan.gov/mdch, under Mental Health and Substance Abuse.

- **Plan for Difficult Times (Crisis Planning)** is a form that may be completed by a consumer within the context of their Individual Plan of Service (IPOS). The plan is intended to direct care when a consumer begins to experience increased difficulty in managing his/her life or becomes genuinely incapacitated and an appointed agent acts on his/her behalf. NorthCare and the 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 consumer may choose to use a different format or the DPOA form endorsed by the State Bar of Michigan. It is available at the NorthCare website www.northcare-up.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 consumers. It is available at the website www.bazelon.org/issues/advancedirectives

POLICY

NorthCare must provide adult consumers 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 a consumer if the consumer decides to develop an Advance Directive for Mental Health Care. The CMHSP Boards will have written materials for staff and adult consumers or their legal representatives to implement an Advance Directive for Mental Health Care. A consumer may decide to use a form of their own choosing. This is a consumer driven effort and may not be mandated by mental health providers. Providers will also be able to direct consumers to the appropriate resources for creating an Advance Directive for Medical Health Care.

The regulatory requirements for providing education to Medicaid consumers 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(l) (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 2004PA 554

The Michigan Mental Health Code (MMHC) has been amended in 2004 to incorporate the language "advance directives". The amendments direct the CMHSPs to assist when a consumer desires to establish an advance directive for their mental health care needs. The amendments are cited in the cross references at the end of this policy.

PROCEDURE

NorthCare responsibilities

- A. The NorthCare Handbook (which includes information on advance directives) is provided to Medicaid consumers of the CMHSPs. Medicaid consumers receiving substance abuse services receive the NorthCare Handbook upon admission to services. Substance Abuse service providers then have no further regulatory responsibility regarding advance directives.
- B. NorthCare 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. Implementation of local guidelines will be reviewed during the NorthCare site review process.
- C. Informational materials in the NorthCare Customer Handbook will be updated within 90 days of the effective date of a change in state law. NorthCare will revise this policy as needed, with a minimum of an annual review.

CMHSP responsibilities

- A. Advance Directive for Medical Health Care—Each CMHSP is responsible for assisting and referring adult consumers and guardians in obtaining Advance Directive for Medical Health Care or DNR orders if requested. Local Probate Courts have jurisdiction in these matters. The CMHSP clinician is responsible for documenting the education and assistance given during the person centered process of developing the individual plan of service. The documentation should include the education of the consumer and the specific steps taken to if there is a desire to develop an Advance Directive for Medical Health Care. The information as to whether or not a consumer has executed an Advance Directive must be documented in a prominent part of the current medical record.
- B. Advance Directive for Mental Health Care--Each CMHSP will develop procedures for educating staff and consumers about the right to an Advance Directive for Mental Health Care and for assisting a consumer in developing the directive if they so choose. This is done in the context of their Individual Plan of Service (IPOS) and requires:
 - 1. Staff training on this policy and its implementation.
 - 2. Guidelines for staff regarding:

- Assisting consumers in developing an Advance Directive for Mental Health Care if requested. This includes offering guidance as to which form the consumer might find the most useful to convey their choices about treatment.
- The opportunity to fully develop the Advance Directive for Mental Health Care and to update as desired by the consumer.
- Documentation of the efforts to create such a plan
- Coordination of Care with hospitals if an emergency admission is necessary.

REFERENCES:

- ✓ Code of Federal Regulations, 42 CFR Parts 438, Subpart A 438.6(i)
- ✓ Michigan Advance Directives for Mental Health Care, www.michigan.gov/mdch
- ✓ 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 33.1051 *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 700.5501 *et seq* , as amended by 2004 PA 554
- ✓ Michigan 's Mental Health Code Act 258 f the Public Acts of 1974 as amended by 2001, as amended by 2004 PA 2004 PA 554,555,556,557,553 Imd. Eff. AND 2004 PA 496,497,498,499 Effective March 30, 2005
- ✓ MDCH Specialty Prepaid Health Plan Application for Participation, 2002
- ✓ NorthCare Network Policy on Inclusion and Prevention of Relapse in Section: Agency Practices
- ✓ Psychiatric Advance Directive, www.bazelon.org/issues/advancedirectives