

MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES BULLETIN

Commonwealth OF PENNSYLVANIA
OFFICE OF MENTAL HEALTH AND SUBSTANCE ABUSE
SERVICES

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SUBJECT: Guidelines for Following Mental Health Advance Directives in State Mental Hospitals

BY:
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Deputy Secretary for Mental Health
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SCOPE: State Mental Health Hospitals

PURPOSE:

1. If a person admitted to the state hospital for service has a mental health advance directive (MHAD), the directions in the MHAD will be followed. The mental health advance directive could include both the mental health declaration and power of attorney. Mental health declarations and mental health power of attorney are legal for up to two years at which point they expire unless they have been updated, signed and dated.
2. If the state hospital is unable to honor the person's MHAD because the choices expressed will expose the individual to the risk of irreparable harm or death, a petition will be filed with the Court seeking termination only of the choice(s) likely to put the person at such risk. The remaining provisions of the MHAD will continue to be honored unless otherwise terminated by court order.
3. All individuals will be informed about MHAD during discharge planning. People who receive services will be supported in their wishes to prepare a MHAD or update a MHAD, which will be signed and witnessed upon their

discharge from the state hospital. Copies of the MHAD will be forwarded to providers to insure continuity of care at the direction of the individual.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Director, Bureau of Hospital Operations, DPW-OMHSAS, P.O. Box 2675, Harrisburg, PA 17105 or phone 717-705-8152.

BACKGROUND:

Act 194 of 2004 was signed into law on November 30, 2004, permitting Pennsylvanians who have capacity to make mental health treatment decisions and who are age 18 or older or an emancipated minor to draft Mental Health Care Advance Directives (MHAD). These directives provide the opportunity to give or withhold consent to mental health treatment in advance of when the treatment may be needed. The law became effective on January 28, 2005.

People who have a mental illness are able to recover from their illnesses and live productive lives. It is the position of the Department that MHADs promote individual autonomy and have a key role in the recovery process by allowing an individual to take responsibility for and control of his or her mental health treatment.

POLICY:

The following procedures are to be followed whenever a person is voluntarily admitted under Section 201, or is committed for involuntary treatment under Sections 302, 303, 304 or 305 of the Mental Health Procedures Act:

A. Whenever a person is committed voluntarily or involuntarily to a state hospital, an inquiry shall be made as to the existence of a MHAD. Upon learning that such a document exists, all reasonable efforts will be made to obtain the document and to contact any designated agent(s).

B. All reasonable efforts will be made to facilitate honoring non-treatment-related preferences stated in the MHAD, including contacting designated caregivers for children or pets to inform the caregivers of the needed services.

C. People Who Receive Services through a Voluntary Commitment

1. The refusal of any psychotropic medication by a person who receives services on a voluntary commitment and who is 14 years of age and above, including by instruction in an MHAD, is to be honored unless the person poses an imminent threat of danger to himself or herself or others. In such an emergency situation, however, the person's protest may be overridden only when staff also initiate the involuntary emergency commitment process under Section 302 of the Act and the below procedures are followed.

When the person protests the administration of medication, and the lack of medication does not precipitate an emergency but does pose a serious danger to himself or herself or others, or the person demonstrates an inability to care for himself or herself, a court-ordered involuntary commitment should be initiated under Section 304(c) of the Act.

If the person has a guardian-of-the-person, or an agent designated through an MHAD, the commitment may be converted to involuntary status if the person, agent, or guardian protests necessary medication and the person meets the involuntary commitment standards. If involuntary commitment standards are not met, the person, agent, or guardian protests, and effective treatment without medication is not possible, the person may be transferred or discharged and referred to an alternative program that is clinically suitable.

2. The treating physician must decide whether other medication or treatment without medication can be effective. If the person does not meet involuntary commitment standards and protests any psychotropic

medication, or has an MHAD related to the use of certain psychotropic medication, if the protested medication is determined to be an essential treatment, it should be explained to the individual. Those who have the person's trust should discuss the benefits and risks of the medication with him or her.

The person's concerns should be explored and discussed by the treatment team. If the person continues to refuse and the physician takes the position that effective treatment cannot be provided without medication, the person may be transferred to another physician's care or to another facility or may be discharged and referred to an appropriate mental health service. People may not be denied appropriate referral on the basis of refusal to take psychotropic medication or because of the existence or lack of an MHAD.

D. People Who Receive Services through an Involuntary Commitment

1. During an emergency in which a person poses an imminent threat to himself or herself or others and is receiving services through an involuntary commitment (under Sections 302, 303, 304 and 305 of the Act), those in charge of treatment are authorized to provide the necessary treatment to protect the health and safety of the individual and others. The key issues to document are that the medication is for the purpose of protecting the health and safety of the individual or others, and that it is used to relieve the mental illness that creates the emergency condition. The individual is entitled to follow up education, training and support to help prevent the emergency from occurring again in the future.

2. Whenever the person with a MHAD in involuntary treatment pursuant to Sections 302, 303, 304 or 305 of the Act protests treatment with any psychotropic medication in a non-emergency, the following procedures are to be followed by the treatment team director or his/her designee:

If an individual has a valid, effective MHAD that indicates an objection to the use of a medication that is prescribed by the provider, the MHAD is to be treated as a contemporaneous objection (protest) to the medication as specified in the MHAD. The objection indicated by the MHAD is to be honored, and it must be complied with as long as the MHAD remains valid.

3. An interested party may file a petition seeking a determination that following the directions in the declaration or the mental health power of attorney may cause potential irreparable harm or death. In that event, the Court may invalidate some or all of the provisions and issue orders appropriate to the circumstances authorizing treatment. The Court shall issue an order within 72 hours of the filing of the petition.