304-293-0695
https://wvendoflife.org

Frequently Asked Questions about the Mental Health Advance Directive

This booklet is based on the revised West Virginia Health Care Decisions Act passed by the West Virginia Legislature in March 2022 and effective June 2022. The Center hopes that this booklet will help West Virginians with advance care planning. The Center's website at https://wvendoflife.org contains a copy of the West Virginia Health Care Decisions Act and additional downloadable forms. The information provided on this website does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available on this site are for general informational purposes only. For legal advice, please consult your attorney.

Revised June 2022

Mental Health Advance Directive Fact Sheet

A mental health advance directive (MHAD), also known as a psychiatric advance directive, is a legal tool that allows persons with mental illness to state their preferences for treatment in advance of a crisis. MHAD provides a way to protect a person's autonomy and ability to self-direct care for treatment of mental health disorders similar to medical powers of attorneys, living wills and other medical advance care planning documents used to direct care for medical disorders in palliative care and end-of-life care.

Benefits of a MHAD

- Persons with mental health disorders who have lost decision-making capacity can receive preferred treatment even though they do not meet involuntary commitment criteria.
- Persons in the middle of an acute mental illness episode who have lost decision-making capacity and have a Ulysses agreement in their MHAD can receive treatment even if they are conscious, unruly, and refusing treatment.
- MHADs can guide treatment for patients whose acute episodes of mental illness otherwise might land them in an emergency department or in jail.
- MHADs can improve patient-provider communication and create cost savings by…
    - Decreasing emergency transports
    - Decreasing need for police involvement
    - Reducing number of mental health hygiene hearings
    - Reducing number of emergency department visits
    - Reducing number of long stays in emergency departments which tie up emergency department resources

Legal Status of MHAD

- MHADs are legal in West Virginia because they fall within the "substantially in compliance" provision of the West Virginia Health Care Decisions Act, §16-30-1 *et seq:* "An expressed directive contained in a living will or medical power of attorney or by any other means the health care provider determines to be reliable shall be followed."
- MHADs are also to be followed according to the West Virginia Code of State Regulations 64CSR74 which states in '64-74-5.5 "An advance psychiatric directive shall be honored…"
- MHADs can be submitted to the West Virginia e-Directive Registry as well as given to treating health care providers and the patient's mental health care representative.

- **What is a mental health advance directive?**
  A mental health advance directive (MHAD, pronounced like "mad") is a legal document, a type of psychiatric advance directive, that allows persons with mental illness to state their preferences for treatment in advance of a crisis. MHAD provides a way to protect a person's autonomy and ability to self-direct care for treatment of mental health disorders similar to medical powers of attorneys, living wills and other medical advance care planning documents used to direct care for medical disorders in palliative care and end-of-life care

- **Can I still make my own health care decisions once I have completed a mental health advance directive form?**
  Yes. Your mental health advance directive form does not become effective until you are unable to make decisions for yourself. As long as you can speak for yourself, you have the right to make your own decisions.

- **Can any person complete a mental health advance directive form?**
  Yes. While the mental health advance directive is intended for persons with mental health disorders or illnesses, any adult (including mature or emancipated minors) who has the ability to make decisions for themselves can complete a mental health advance directive form.

- **Do I need a lawyer to create a medical power of attorney?**
  No. Anyone can complete a WV advance directive without the assistance of a lawyer. Visit the Center's website, https://wvendoflife.org, or call the Center at 304-293-0695 to obtain free WV advance directive forms.

- **Will another state honor my mental health advance directive?**
  Laws differ somewhat from state to state, but in general, a patient's expressed wishes will be honored state-to-state. It is highly recommended that you contact your non-WV health care providers to ask if they will honor your WV advance directive.

  In WV, it is legally required for health care providers to honor non-WV advance directives and medical orders as of June 7, 2022 as long as the forms were completed correctly per that state's laws.

- **What should I do with my mental health advance directive after I sign it?**
  After your advance directive is signed, witnessed, and notarized, keep the original document in a safe location where it can be easily found. A photo copy of your advance directive is legally valid. You are encouraged to submit your form to the WV e-Directive Registry by faxing it to 844-616-1415 or mailing a copy to the WV e-Directive Registry, 64 Medical Center Drive, PO Box 9022 Health Sciences North, Morgantown, WV 26506-9022

Full Name (Last, First, Middle): _____

Address: _____

City/State/Zip: _____

Date of Birth (mm/dd/yyyy): _____/_____/_____

WV e-Directive Registry Opt In HTTPS://WVENDOFLIFE.ORG/REGISTRY

The WV e-Directive Registry makes your forms immediately available to your health care providers in emergencies. If you agree to have this form and any other submitted forms included in the WV e-Directive registry and released to treating health care providers, please mark below.

_____ YES, I OPT IN

_____ NO, I DON'T OPT IN

Registry phone number: 304-293-0695 Registry FAX: 844-616-1415

STATE OF WEST VIRGINIA
MENTAL HEALTH ADVANCE DIRECTIVE

The Types of Treatment I Do and Do Not Want and The Person I want to Make Mental Health Treatment Decisions for Me When I Can't Make Them for Myself

Dated: _____, 20_____

I am giving the following DIRECTIVES (instructions) about treatment that I do and do not want (NOTE: the below are suggestions of things about which you might want to give directives; you may give directives about other types of treatment in addition to or instead of those below):

- the medications I consent to (types and dosage),
- the medications to which I do not give consent (allergies or side effects),
- instructions about short-term inpatient treatment,
- a physician or mental health therapist whom I would like to treat me,
- a facility where I would like to receive treatment,
- instructions about transport to a provider or facility,
- instructions about electroconvulsive treatment (ECT) shock therapy,
- persons to be notified of my mental health treatment,
- persons to be allowed to visit me, and
- instructions about alternative outpatient treatments I would like.

My failure to provide directives does not mean that I want or refuse certain treatments.

_____

_____

Directive with Regard to Revocation – changing my mind
(initial only one of the boxes below)

☐ My wish is that, in accordance with state law, this mental health advance directive may be revoked by me at any time.

☐ My wish is that I may revoke (change my mind about) this mental health advance directive only at times that I have the capacity to make my own mental health care decisions. I understand that I am choosing to give up the right to revoke my mental health advance directive whenever I do not have decision-making capacity and that I will regain that right whenever I recover decision-making capacity.

Crisis Response (completion optional)

The following signs and symptoms may indicate that I am in a mental health crisis:

_____

_____

_____

_____

_____

I request the following interventions/activities in a mental health crisis regardless of setting (community, outpatient or inpatient) which may reduce my symptoms, make me more comfortable, and keep me safe:

_____

_____

_____

_____

_____

In a psychiatric emergency, PLEASE AVOID the following interventions that make me feel worse:

_____

_____

_____

_____

_____

Are you in recovery for, or do you have a substance use disorder (addiction)?_____

If yes, which substances are you most likely to use when your substance disorder is active?

_____

_____

_____

_____

_____

Temporary Custody of Dependents (only applies when I lack the capacity to make my own mental health care decisions and choose to say whom I would want to watch my dependents)

I have the following dependent(s), which may include children, support service animal, pets, etc.:

_____

_____

_____

_____

_____

In the event that I am unable to care for my dependent(s), I direct that the following person have temporary custody of my dependent(s) (only applies when I lack capacity):

Name: _____

Address: _____

_____

Phone Numbers: _____

Dependent(s): _____

For the following reason(s): _____

_____

_____

_____

_____

_____

Name: _____

Address: _____

_____

Phone Numbers: _____

Dependent(s): _____

For the following reason(s): _____
_____

_____

_____

_____

_____

Person(s) to be notified at the time of discharge from a mental health care facility (completion optional)

Name(s): _____

Address(es):_____

_____

Phone Number(s):_____

The Person I Want to Make Health Care Decisions For Me When I Can't Make Them for Myself

I, _____,
(Insert your name and address)

hereby appoint as my representative to act on my behalf to give, withhold, or withdraw informed consent to mental health care decisions in the event that I am not able to do so myself.

The person I choose as my mental health care representative is (One person):

_____

_____

(Insert the name, address, area code, and telephone number of the person you wish to designate as your representative. **Please insert only one name.**)

The person I choose as my successor mental health representative is (One person):

If my representative is unable, unwilling, or disqualified to serve, then I appoint

_____

_____

(Insert the name, address, area code, and telephone number of the person you wish to designate as your successor representative. **Please insert only one name.**)

☐ I do not wish to appoint a mental health care representative. *(Mark this box to select this choice)*

This appointment shall be for the purpose of mental health care decisions. Mental health care means treatment of "mental illness" as defined at West Virginia Code §27-1-2 with psychoactive medication, admission to and retention in a mental health care facility, electroconvulsive treatment and outpatient services. The representative appointed by this document is specifically authorized to be granted access to my medical records and other health information and to act on my behalf to consent to, refuse or withdraw any and all mental health care if my representative determines that I, if able to do so, would consent to, refuse or withdraw such treatment. The authority of the mental health care representative ceases when I have regained capacity to make mental health care decisions.

I appoint this representative because I believe this person understands my wishes and values and will make the mental health care decisions that I would make if I were able to do so, and because I also believe that this person will act in my best interest when my wishes are unknown. It is my intent that my family, my physician and all legal authorities be bound by the decisions that are made by the representative appointed by this document, and it is my intent that these decisions should not be the subject of review by any health care provider or administrative or judicial agency.

It is my intent that this document be legally binding and effective and that this document be taken as a formal statement of my desire concerning the method by which any mental health care decision should be made on my behalf during any period when I am unable to make such decisions.

In exercising the authority under this mental health advance directive, my representative shall act consistently with my special directives as stated in this advance directive.

THIS MENTAL HEALTH ADVANCE DIRECTIVE SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN MENTAL HEALTH CARE. INCAPACITY IS TO BE DETERMINED BY A QUALIFIED PHYSICIAN AND A SECOND QUALIFIED PHYSICIAN OR QUALIFIED PSYCHOLOGIST.

_____ DATE _____

Signature of the Principal *(Sign your name)*

_____

Address of the Principal *(Write your full address)*

I did not sign the principal's signature above. I am at least 18 years of age and am not related to the principal by blood or marriage. I am not entitled to any portion of the estate of the principal or to the best of my knowledge under any will of the principal or codicil thereto, nor legally responsible for the costs of the principal's medical or other care. I am not the principal's attending physician, nor am I the representative or successor representative of the principal.

Witness _____ DATE _____

Witness _____ DATE _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of said County, do certify that_____, as principal, and _____ and _____, as witnesses, whose names are signed to the writing above bearing date on the _____ day of _____, 20_____, have this day acknowledged the same before me.

Given under my hand this ____ day of _____, 20___.

My commission expires:_____

_____

Signature of Notary Public

Insert Notary Stamp Above