


COMMUNITY MENTAL HEALTH OF OTTAWA COUNTY
INDIVIDUAL CARE TO CONSUMERS

CHAPTER: 4	SECTION: 36	SUBJECT: INDIVIDUAL CARE TO CONSUMERS
TITLE: ADVANCE DIRECTIVES		
EFFECTIVE DATE: 5/10/02	REVISED/REVIEWED DATE: 4/5/05, 9/18/07, 10/6/12, 12/16/13, 3/1/20, 5/12/2021, 10/31/2022, 11/14/2023	
ISSUED AND APPROVED BY:  EXECUTIVE DIRECTOR		

I. POLICY

It is the policy of Community Mental Health of Ottawa County (CMHOC) to comply with Lakeshore Regional Entity policy 6.7. CMHOC will develop and adopt procedures that are consistent with this policy.

II. PURPOSE

Individuals have the right to determine a course of treatment before receiving services. CMHOC and its contracted providers will respect the role played by the individual, family members, physicians, and spiritual advisors in the making of treatment decisions. Individuals will receive written information about their rights under Michigan law to make decisions about their care, including the right to accept or refuse treatment, and the right to formulate an advance directive. It will be documented in the individual's clinical record if an individual has an executed advance directive. The provision of treatment shall not be conditioned based on whether the individual has, or does not have, an executed advance directive.

Individuals with grievances concerning noncompliance with advance directive requirements may contact the CMHOC Customer Services Department.

It is the purpose of this policy to provide guidelines for CMHOC staff and applicable contracted providers to meet the requirements of Michigan law as applied to advance directives and to provide a basis for provision of information by CMHOC and its affiliates regarding Michigan law regarding advance directives to individuals we serve pursuant to 42 USCA139 a (w).

III. APPLICATION

CMHOC as an affiliate of Lakeshore Regional Entity and, as applicable, contracted or direct providers.

IV. DEFINITIONS

- A. **Advance Directive** - A written instruction, such as a living will or durable power of attorney for health care, recognized under state law (whether statutory or recognized by the courts of the state, and relating to the provision of such care when the individual is incapacitated. (See 42 USCA 1396a (w) (4)). Under Michigan law this includes, but is not limited to, rights asserted by designation of a patient advocate, durable power of attorney for health care, a do-

not-resuscitate order or assertion of rights under the Michigan Dignified Death Act. M.C.L.A. 333.5651, et seq.

- B. **CPR** – Resuscitation utilizing chest compression and artificial respiration according to guidelines of the American Heart Association/American Red Cross.
- C. **Do-Not-Resuscitate Order** - A document executed pursuant to Section 3 or 5 of the Do-Not-Resuscitate Procedures Act directing that in the event that a patient suffers cessation of both spontaneous respiration and circulation in a setting outside of a hospital, nursing home, or a mental health facility owned or operated by the Department of Health and Human Services, no resuscitation will be initiated. M. C.L.A. 333.1052(c).
- D. **Hospice** - A health care program that provides a coordinated set of services rendered at home or in outpatient or institutional settings for individuals suffering from a disease or condition with a terminal prognosis. M. C.L.A. 333.20106(4).
- E. **Terminally III** - Terminal illness means a disease or condition due to which, in the opinion of a physician, a patient's death is anticipated within six (6) months after the date of the physician's opinion. M.C.L.A. 333.5633(1) (h).
- F. **Grievance** – An expression of dissatisfaction about any matter relative to a Medicaid or non-Medicaid covered service.
- G. **Guardian** – A person who has qualified as a guardian of a minor or a legally incapacitated individual under a parental or spousal nomination or a court appointment and includes a limited guardian as described in M.C.L.A. sections 700.5205, 700.5206, and 770.5306. Guardian does not include a guardian ad litem. M.C.L.A. 700.1104.
- H. **Guardianship** - A relationship created by the Court. A guardian can be either a person or an organization. The guardian is given the power to make decisions about the care of another person. The court appoints a guardian when the person is legally unable to make some of their own decisions.
- I. **Guardian Ad Litem** – A person appointed by probate court before or during a proceeding. Responsibilities may include prosecuting an action on behalf of an individual, providing information to a respondent, conducting an investigation, and making a report and recommendation to the court. (Michigan Mental Health Code, Section 330.1616).
- J. **Health Care Professional** – For the purposes of the Michigan Do-Not-Resuscitate Procedures Act, the following are included as designated health care professionals, subject to the requirement that the health care professional not institute resuscitation when the health

care professional is aware of the existence of a do-not-resuscitate order:

1. A paramedic.
2. An emergency medical technician.
3. An emergency medical technician specialist.
4. A physician.
5. A nurse.
6. A medical first responder.
7. A respiratory therapist.
8. A physician assistant.

- K. **Medical First Responder** – An individual who has met the educational requirements of a department approved medical first responder course and who is licensed to provide medical first response life support as part of a medical first response service or as a driver of an ambulance that provides basic life support services only. M.C.L.A. 333.20906(7).
- L. **Of Sound Mind** – There is a presumption under law that any person is of sound mind, and therefore competent to make decisions. If this presumption appears to be unreasonable as applied to a person, then CMHOC may request judicial determination of soundness of mind, pursuant to the Michigan Mental Health Code (MHC) and the Michigan Estate & Protected Individuals Code (EPIC).
- M. **Patient Advocate** - A person 18 years of age or older who is designated in writing to exercise power concerning care, custody and medical or mental health treatment decisions for the designating person, under the provisions of the Estates & Protected Individuals Code, M.C.L.A. 700.5506(1).
- N. **Patient Surrogate** – The parent or legal guardian of a patient who is a minor or a member of the immediate family, the next of kin, or legal guardian of a patient who has a condition other than minority that prevents the patient from giving consent to medical treatment. M.C.L.A. 333.5653(1) (g).

V. **PROCEDURES**

A. **Advance Directives**

1. At the time of the initial face to face professional evaluation, CMHOC staff shall make a determination and document in the clinical record:
 - a. The legal status of the person served
 - b. The legal status of any person representing him/her
 - c. The date of any advance directive/living will be available in CMH file (if such documents are available in CMH file.)

The individual served will be provided with information about advance directives and the Lakeshore Regional Entity Guide to Services containing A Guide to Guardianships and Advanced Directives in Michigan Handbook during the orientation to services.

Persons interested in Advance Directives and/or living wills shall receive information about where, when and how to obtain assistance in developing those by CMHOC staff during their orientation and the Person Centered Planning (PCP) process. CMHOC staff will ensure that advance directives are discussed with the individual during the PCP process. CMHOC staff will then document in the clinical record that advance directives were discussed with the individual.

2. Individuals are informed that grievances concerning non-compliance with Advance Directive requirements may be filed with Customer Services during their orientation and the Person Centered Planning (PCP) process.
3. In the event that the individual served or legal representative have questions regarding an advance directive, such as a Durable Power of Attorney for Health Care, a do-not-resuscitate order or other rights and limitation of rights, as interpreted by the courts, the individual or legal representative shall be referred to appropriate and competent legal expert who is able to:
 - a. Offer legal advice to those served regarding Advance Directives
 - b. Educate advocates regarding Advance Directives
 - c. Assist those served to develop Advance Directives
 - d. Provide advice and direction to the entities or providers who require a copy of the document(s).

No legal or medical advice will be given by unqualified CMHOC staff.

4. At the time of enrollment in services provided through CMHOC, the individual we serve shall be given a written description of the rights regarding advance directives under Michigan law. Community Mental Health of Ottawa County will provide written information on advance directive policies, including a description of applicable State laws to the individual served/or legal representative. This includes information on the beneficiary's right to make decisions concerning his or her medical care, including the right to accept or refuse treatment, and the right to formulate advance directives. This information provided to the adult beneficiaries must reflect changes in State law as soon as possible, but no later than 90 days after the effective date of change.
5. In the event that the individual we serve/or legal representative executes an

advance directive, this shall be documented in a prominent part of the medical record and a copy of the advance directive shall be retained in the medical record. An alert will be set up in the consumer record to alert staff where there is an advance directive on file.

6. CMHOC staff will be trained at the time of employment and annually thereafter regarding the legal concepts of advance directives, living wills, DNR, and how those concepts impact care by a competent legal expert. Similar training will be offered at least annually for those we serve and their advocates in languages understandable to the general public.

B. Emergency Situations

In an emergency situation such as an injury or sudden illness:

1. Staff shall provide immediate first aid, including resuscitation if certified and, if necessary, arrange for transportation to an emergency medical facility.
2. Staff shall check the individual's record for documentation of advance directives. If one exists, staff will copy and deliver it to paramedics or other emergency personnel or to the emergency medical facility as soon as possible.
3. Staff shall not interpret advance directive documents or act on any belief about the contents of such documents.

C. Terminal Illness/Hospice Involvement

1. When requested by the individual we serve or a patient advocate or patient surrogate of an individual, hospice services will be accommodated by CMHOC and contract staff.
2. Staff shall defer all medical care and treatment decisions to the individual's private physician, hospice staff and hospice volunteers when they are present in the home. These decisions include determining when to resuscitate and when to call for emergency medical services.

If the private physician, hospice staff, or hospice volunteers are not present, CMHOC and contract staff shall provide comfort and care consistent with the directions supplied by the individual we serve or a legal representative of the individual.

- A. CMHOC will not discriminate against any individual based on whether or not the individual has executed an advance directive.

VI. REFERENCES

Public Act 312 M.C.L. 700.496
42 USCA 1396a (w)
42 USCA 1369a (w) (4)
M.C.L.A. 333.20106
M.C.L.A. 333.5633(g)
M.C.L.A. 700.455(c)
M.C.L.A. 700.496
M.C.L.A. 700.5501-5512
M.C.L.A. 333.5651
M.C.L.A. 700.5506(1)
M.C.L.A. 333.5653(1) (3)
M.C.L.A. 333.1052(c)
M.C.L.A. 333.20106(4)
M.C.L.A. 333.5653(1) (h)
M.C.L.A. 333.20906(7)
M.C.L.A. 700.5205
M.C.L.A. 700.5206
M.C.L.A. 700.5306
M.C.L.A. 700.1104
M.C.L.A. 700.5314(c)
Section 3-5 Do-Not-Resuscitate Procedures Act
CMH Policy 4-029
42 CFR, Section 128(a-d)
42 CFR, Section 417.436
42 CFR, Section 438.6 (1)
42 CFR, Section 422 (a) (h)
42 CFR, Section 438.6 (i) (3-4)