CITY OF PHILADELPHIA

Department of Behavioral Health and Intellectual disAbility Services
Promoting Recovery, Resilience & Self Determination

Jill Bowen, Ph.D.
Commissioner

Tierra M. Pritchett, Ed.D. CHC
Deputy Commissioner

H. Jean Wright II, Psy.D.
Deputy Commissioner

Sosunmolu Shoyinka, M.D.
Chief Medical Officer

MENTAL HEALTH ADVANCE DIRECTIVES: A PRIMER ON A VALUABLE RECOVERY TOOL[1]

Mental Health Advance Directives (MHADs) are beneficial legal tools that promote autonomy and empowerment for individuals with a mental illness and are consistent with a recovery-oriented system of care. Nevertheless, many individuals may not be familiar with the concept of MHADs. The following document will outline the purpose, benefits, and current status of MHADs in Philadelphia.

What are Mental Health Advance Directives?

Mental Health Advance Directives (MHADs)—also known as Psychiatric Advance Directives—are legal tools that allow for an individual to communicate their treatment preferences *ahead of* a mental health crisis, during which they may be unable to make decisions.[i] They are akin to advance directives for medical care, which address preferences for medical care regarding physical health problems. Any person at least 18 years of age who a court has not declared incapacitated, who does not have a guardian appointed for them, and who is not currently subject to involuntary commitment can create an MHAD.

An MHAD often consists of two documents: (1) a Mental Health Declaration and/or (2) a Mental Health Power of Attorney.

- A Declaration is a direct way for an individual to control their mental health care.[ii] It can contain specific instructions on preferred hospitals, treatment modalities, and medications, give informed consent, and provide information on who to contact for help with regular life activities such as paying bills and taking care of children. A Declaration is usually limited to specific situations and there is limited flexibility for changes that arise after the document is written.
- A Power of Attorney is an indirect way for an individual to control their mental health care. A person appoints a Power of Attorney (i.e., an agent) to advocate

[1] Authored by Kelly Porter, BA, Public Health Intern with the Behavioral Health and Justice Division and the DBHIDS Policy Unit. Supervised by Jaymes Fairfax-Columbo, JD, PhD (BHJD/DBHIDS Policy Unit) and Adam Stout, MPM (Planning & Innovation, DBHIDS Policy Unit).

and make treatment decisions on their behalf if they are physically or mentally unable to do so themselves. An agent is typically a trusted family member or friend. The agent may make decisions for a situation as it occurs, which provides for more flexibility.

Under Pennsylvania law, an individual can utilize both a Declaration and Power of Attorney to maintain control of their mental health care.

An MHAD must be in writing, signed, witnessed, and dated.[iii] Once signed, the MHAD is valid for two years unless the individual revokes the directive or makes a new one.

What are the benefits of a Mental Health Advance Directive?

An MHAD provides notable benefits both to individuals with mental illness and to the behavioral health system. An MHAD promotes self-directed care in psychiatric treatment and protects client autonomy. It also optimizes treatment and care during a mental health crisis as doctors, hospitals, law enforcement, and mental health providers have knowledge of and can align their actions with the wishes outlined in the person's MHAD. In fact, the Substance Abuse and Mental Health Services Administration (SAMHSA) has noted that an MHAD "represents a promising opportunity for public behavioral healthcare systems to implement patient-centered approaches to care and treatment decision-making during mental health crises."[iv]

Research indicates that utilizers of mental health services are supportive of MHADs and see them as integral tools to facilitate client involvement in their own care.[v] Further, research has associated MHADs with several benefits, such as:

- Increased communication and cooperation between individuals receiving services and their treatment team.[vi]
- Reduced use of coercive crisis interventions.[vii]
- Increased compatibility between preferred and prescribed medications.[viii]
- Increased feelings of empowerment among individuals receiving services.[ix]
- Increased perception that one's personal needs are being met.[x]

What are the barriers to effectively using Mental Health Advance Directives?

While there are notable benefits to MHADs, barriers to their completion and implementation continue to exist— although these barriers may be navigable with some additional efforts. One such barrier is that completing complex forms can be particularly challenging. To this end, research suggests that manualized

interventions to help facilitate completion of MHADs is beneficial, as well as the use of computer assistance.[xi] As for implementation, there may be unfamiliarity of MHADs among medical professionals.[xii] Accordingly, providers could "receiv[e] systematic information about the legal and ethical underpinnings of [MHADs], as well as consultation regarding when to invoke the exception to the rule that [MHADs] must be followed."[xiii] Moreover, providers do not have to follow the MHAD if it goes against medical standards, although there must be reasonable efforts made to transfer the individual to another facility or to a provider who will comply with the MHAD.[xiv] Another reported barrier is that there is no centralized repository for MHADs, which may limit access when the information is needed. It is often up to the individual themselves to provide copies to their agent and mental health provider.[xv] A centralized repository system at the state or county level might be created to make MHADs accessible by all.

What is the status of Mental Health Advance Directives in Philadelphia?

In January 2005, Pennsylvania enacted Act 194, "provid[ing] a means for competent adults to control their mental health care either directly through instructions written in advance or indirectly through a mental health care agent" within their qualified rights.[xvi] The legislation followed a national trend to promote MHADs as a useful tool in mental health policy. For more information on Psychiatric Advance Directives in Pennsylvania as well as copies of forms, see resources provided by the Pennsylvania Department of Human Services.

In Philadelphia, the Department of Behavioral Health and Intellectual disAbility Services (DBHIDS) connects Medicaid-eligible individuals to mental health and substance use services through the Community Behavioral Health (CBH) Member Services Department and it connects uninsured/underinsured individuals to services via the Behavioral Health Special Initiative (BHSI). DBHIDS recognizes that MHADs safeguard the right of individuals receiving services to participate in decisions regarding their behavioral health care. For more information on MHADs in Philadelphia, see the "Mental Health Advance Directives" page on the CBH website.

---

[i] Substance Abuse and Mental Health Services Administration (SAMHSA) (2019). *A practical guide to psychiatric advance directives.* Department of Health and Human Services. Available at https://www.samhsa.gov/sites/default/files/a_practical_guide_to_psychiatric_advance_directives.pdf

[ii] *Pennsylvania's Mental Health Advance Directives (Brochure).* The Advocacy Alliance. Retrieved from https://theadvocacyalliance.org/resources/resources-publications_files/Advanced-Directives-Brochure-legal-size.pdf

[iii] Pennsylvania Department of Human Services. *Instructions and forms: Mental health advanced directives for Pennsylvanians.*https://www.dhs.pa.gov/docs/For-Providers/Documents/Behavioral%20Health%20Services/Instructions%20%20Forms%20-%20English.pdf

[iv] *See* Endnote i.

[v] Braun, E., Gaillard, A. S., Vollman, J., Gather, J., & Scholten, M. (2022). Mental health service users' perspectives on psychiatric advance directives: A systematic review. *Psychiatric Services*, *74*(4), 381-392. https://doi.org/10.1176/appi.ps.202200003

[vi] *See, e.g.,* Srebnik, D.S., Rutherford, L.T., Peto, T., Russo, J., Zick, E., Jaffe, C., & Holtzheimer, P. (2005). The content and clinical utility of psychiatric advance directives. *Psychiatric Services, 56*(5), 592-98. https://doi.org/10.1176/appi.ps.56.5.592. *See also*, *e.g.*, Swanson, J.W., Swartz, M.S., Elbogen, E.B., Van Dorn, R.A., Ferron, J., Wagner, H.W., McCauley, B.J., Kim, M. (2006). Facilitated psychiatric directives: A randomized trial of an intervention to foster advance treatment planning among persons with severe mental illness. *The American Journal of Psychiatry 163*(11), 1943-51. https://ajp.psychiatryonline.org/doi/full/10.1176/ajp.2006.163.11.1943

[vii] Swanson, J.W., Swartz, M.S., Elbogen, E.B., Van Dorn, R.A., Wagner, H.R., Moser, L.A., Wilder, C., & Gilbert, A.R. (2008). Psychiatric advance directives and reduction of coercive crisis interventions. *Journal of Mental Health, 17*(3), 255-67. https://doi.org/10.1080%2F09638230802052195

[viii] Wilder, C.M., Elbogen, E.B., Moser, L.L., Swanson, J.W., & Swartz, M.S. (2010). Medication preferences and adherence among individuals with severe mental illness and psychiatric advance directives. *Psychiatric Services, 61*(4), 380-85. https://doi.org/10.1176/ps.2010.61.4.380

[ix] *See, e.g.,* Backlar, P., McFarland, B.H., Swanson, J.W., & Mahler, J. (2001). Consumer, provider, and informal caregiver opinions on psychiatric advance directives. *Administration and Policy in Mental Health and Mental Health Services Research, 28*, 427-441. https://link.springer.com/article/10.1023/A:1012214807933. *See also, e.g.*, Elbogen, E.B., Van Dorn, R., Swanson, J.W., Swartz, M.S., Ferron, J., Wagner, H.R., & Wilder, C. (2007). *Psychological Public Policy Law, 13*(4). https://doi.org/10.1037%2F1076-8971.13.4.273

[x] Wilder, C.M., Swanson, J.W., Bonnie, R.J., Wanchek, T., McLaughlin, L., & Richardson, J. (2012). A survey of stakeholder knowledge, experience, and opinions of advance directives for mental health in Virginia. *Administration and Policy in Mental Health and Mental Health Services Research, 40,* 232-239. https://doi.org/10.1007/s10488-011-0401-9

[xi] *See, e.g.*, Swanson, J.W., Swartz, M.S., Elbogen, E.B., Van Dorn, R.A., Ferron, J., Wagner, H.W., McCauley, B.J., Kim, M. (2006). Facilitated psychiatric directives: A randomized trial of an intervention to foster advance treatment planning among persons with severe mental illness. *The American Journal of Psychiatry 163*(11), 1943-51. https://ajp.psychiatryonline.org/doi/full/10.1176/ajp.2006.163.11.1943. *See also, e.g.*, Elbogen, E.B., Swanson, J.W., Appelbaum, P.S., Swartz, M.S., Ferron, J., Van Dorn, R.A., & Wagner, H.R. (2007). Competence to complete psychiatric advance directives: Effects of facilitated decision making. *Law of Human Behavior, 31*(3), 275-89. https://doi.org/10.1007%2Fs10979-006-9064-6. *Additionally, see* Sherman, P.S. (1998). Computer-assisted creation of psychiatric advance directives. *Community Mental Health Journal*, *34*, 351-62. https://doi.org/10.1023/A:1018731922671

[xii] McDevitt, D. (2020). Psychiatric advance directives: Navigating the regulatory landscape. *The Nurse Practitioner 45*(4): 10-13. DOI: 10.1097/01.NPR.0000657304.67256.e5

[xiii] Swanson, J.W., Van McCrary, S., Swartz, M.S., Van Dorn, R.A., & Elbogen, E.B. (2006). Overriding psychiatric advance directives: Factors associated with psychiatrists' decisions to preempt patients' advance refusal of hospitalization and medication. *Law & Human Behavior 31*(1), 77-90. DOI 10.1007/s10979-006-9032-1

[xiv] *See* Endnote ii.

[xv] *See* Endnote vi.

[xvi] HB 2036, Pennsylvania General Assembly, 2004 Reg. Sess. (Pa. 2004). https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2004&sessInd=0&act=194