

MENTAL HEALTH ADVANCE DIRECTIVE TOOLKIT

Introduction

Patients with behavioral health conditions are vulnerable during crisis, and Mental Health Advance Directives (MHAD) provide a way for patients to express their needs at a time where they may otherwise be unable to do so. Honoring the treatment preferences outlined in the MHAD can lead to better outcomes for both the patient and provider.

The purpose of the Mental Health Advance Directive Toolkit is to provide general education about the importance of this type of document, highlight strategies for consistent implementation across facilities, and provide a resource for patient education. This document will be updated as additional best practices are added. For the most updated version of this toolkit, please see the [WSHA Behavioral Health website](#).

Mental Health Advance Directive Overview

What is a Mental Health Advance Directive?

Mental Health Advance Directives (MHAD) are an advance care planning tool for people (in Washington, anyone 13 years of age or older) to specify their preferences regarding behavioral health treatment in the event they are incapable of making their own treatment decisions during an acute crisis related to mental health or substance use. MHADs are an important tool for self-determination. It can be an effective means for preventing or responding to a behavioral health crisis and avoiding hospitalization or more restrictive crisis behavioral services, such as involuntary treatment.

MHADs differ from medical advance directives in a key respect – living wills or medical advance directives generally require planning for a medical event a person has never experienced before, while the information in MHADs is often based on past experiences. Additionally, power of attorney appointment for MHADs usually is limited to decisions about behavioral health care.

The Federal Patient Self Determination Act (PSDA) (enacted in 1990) addresses the rights of health (including mental health) care users to stipulate in advance how they would like to be treated by health care providers when they are incapacitated. The CMS Conditions of Participation for Patient rights include the patient has the right to formulate advance directives and to have hospital staff and practitioners who provide care in the hospital comply with these directives.

MHADs may include any of the following:

- A person's preferences and instructions for behavioral health treatment
- Consent and/or refusal to consent to specific types of behavioral health treatment
- Consent to admission to and retention in a facility for behavioral health treatment for up to 14 days
- Suggested alternative responses that may supplement or be in lieu of direct treatment
- Appointment of an agent to make behavioral health treatment decisions on behalf of the person, including empowering the agent to consent to voluntary treatment on behalf of the person

In Washington, MHADs must include:

- A date the directive becomes effective
- The duration of the directive
- When the individual can revoke the directive
- The signature of the individual, witnessed by either a notary public or two witnesses ([RCW 71.32.260](#))

What are Washington Hospitals' responsibilities under the law?

Washington hospitals are required to include the MHAD as part of the patient medical record if one exists, and are required to act in accordance with the directive unless:

- It would violate accepted standard of care
- The requested treatment isn't available
- Compliance would violate the law
- It is an emergency situation and would endanger the person's or someone else's life

Hospitals should also ensure staff are educated about the definition of capacity in relation to use of a MHAD. Capacity can be determined by a court, by two healthcare professionals, or by one mental health professional or substance use disorder professional and one healthcare provider ([RCW 71.32.110](#)).

If a patient has been involuntarily detained, the MHAD may be considered advisory during the detainment, but providers are encouraged to follow the provisions of the directive as much as is appropriate. If any or all of the MHAD is not being used, the patient and/or their agent must be notified, and the rationale documented in the medical record ([RCW 71.32.150](#)).

In addition to these responsibilities, hospitals that have Evaluation and Treatment (E&T) facilities must maintain procedures for assuring the rights of individuals to complete a MHAD ([WAC 246-341-1118](#)).

Comparison of Advance Directive Documents

	Durable Power of Attorney for Healthcare (DPOA-HC)	Health Care Directive (e.g., Living Will)	Mental Health Advance Directive
Document Type	Legal Document	Legal Document	Legal Document
What is it?	At a minimum, it names a health care agent who can make decisions on behalf of the patient. The Honoring Choices PNW DPOA-HC includes additional information about the individual's goals, values, and preferences.	It guides decisions on whether to withhold or withdraw life-sustaining treatment at the end of life.	Outlines preferences regarding behavioral health treatment in the event a patient experiences a behavioral health crisis.
Why is it beneficial?	It allows for an individual to identify an agent who can consent to treatment on their behalf when they are unable to do so.	It preserves the wishes of an individual when faced with decisions regarding end of life care.	It allows for an individual to identify an agent who can consent to treatment on their behalf when they are unable to do so, as well as preserves the wishes of a patient when they are unable to consent to behavioral health treatment.
Who can have one?	Any adult with capacity; only the individual can complete.	Any adult with capacity; only the individual can complete.	Anyone 13 years of age and older with capacity; only the individual can complete.
Where is it utilized?	Used primarily in a hospital setting when an individual does not have capacity.	Used primarily in a hospital setting when an individual does not have capacity.	Used primarily in emergency department and inpatient settings when an individual is experiencing a behavioral health crisis, but due to outlining de-escalation strategies to prevent hospitalization, it may be utilized in outpatient settings.
Where is it stored?	Can be stored in the EHR, and should also be shared with families, legal teams, healthcare agent, and outpatient providers.	Can be stored in the EHR, and should also be shared with families, legal teams, healthcare agent, and outpatient providers.	Can be stored in the EHR, and should also be shared with families, legal teams, healthcare agent, and outpatient providers.

Implementation Strategies

Patients entering different care settings will have varying needs regarding the implementation of the MHAD. The recommendations below are general to all hospital types, with exceptions noted for certain settings. Acute care settings and emergency departments will likely be focused primarily on honoring MHADs, while hospitals with an E&T designation will also need to have policies in place to meet requirements regarding patient rights to create a MHAD.

Policy Recommendations

- Develop a clear hospital policy on MHADs separate from other advance directive policies. The clinical application is different enough that many hospitals find it is clearer to have separate policies in place. Additionally, this can help eliminate staff confusion about the documents.
 - The hospital policy should include an expectation that all patients are screened for a MHAD.
 - Establish standardized labeling procedures for scanning the document into the electronic medical record (EMR). Without a specific designation as a MHAD, labeling it simply as an advance directive risks overwriting other patient documents.
 - There may be times where the MHAD cannot be implemented due to legal or safety concerns. Policies should include clear expectations about how this is communicated to the patient and/or their agent, as well as standardization for how this is documented.
- If a patient is on an ITA hold, the MHAD is considered advisory, but hospitals should still attempt to integrate information from the MHAD where possible.
- Ensure all patient-facing staff (clinical and non-clinical) are trained on MHADs. It is important that all staff understand the legality of the MHAD, the benefits of a MHAD, and the importance of implementing the directives included.

Documentation recommendations

- If a patient has a MHAD, include contents of the directive in treatment planning. This provides an opportunity for all treatment staff to more easily be aware of the contents of the MHAD.
- When unable to honor a specific request in the MHAD, hospitals should have standard language to indicate what was not implemented and why.
- In inpatient settings, development of a MHAD can be integrated into discharge planning if no MHAD already exists.

MHAD Form Information

The MHAD form language can be found [here](#) and then copied into a printable document for completion. The form itself can be witnessed by either a notary public, or by two witnesses. Hospital staff can become a notary public to authorize the directive, but cannot serve as witnesses ([RCW 71.32.090](#)). For settings where patients may complete a MHAD as part of discharge planning, hospitals may consider having a staff member become a notary public to support completion. The MHAD form also includes guidelines for when and how the directive can be revoked.

[Patient Education](#)

Although MHADs have been available to patients for many years, they are often unaware of this option. Facilities with Evaluation and Treatment designations are required to have information in place so a patient can complete one while inpatient. For other facilities, it is best practice to at least provide information about the option to complete a MHAD and encourage the patient to learn more about the option. The flyer linked here can be printed and shared with patients at discharge. Additionally, there are organizations in the community who can support patients in completing a MHAD.

[Patient Flyer](#)

Other Community Resources

[National Alliance on Mental Illness – Washington Chapter](#)

[Washington Behavioral Health Ombuds](#)

[Northwest Justice Project](#)

[Disability Rights Washington](#)

Resources

[WSHA bulletin on 2021 law changes](#)

WSHA November 30, 2021 Webinar – [Slides](#) and [Video Recording](#)

[RCW 71.32 – Mental Health Advance Directives](#)

NAMI and SAMHSA Webinar – [Psychiatric Advance Directives: Supporting Voice and Choice in Mental Health Crisis Settings](#)

[NRC PAD | National Resource Center on Psychiatric Advance Directives \(nrc-pad.org\)](#)

Sample hospital policies *coming soon*