

Title: **Mental Health Advance Directives**

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POLICY

Persons with mental illness may fluctuate between periods of capacity and incapacity. Mental health advance directives provide a method of expressing instructions and preferences for treatment in advance of a period of incapacity and providing advance consent to or refusal of treatment.

It is the policy of EvergreenHealth Monroe to honor mental health advance directives that meet state law requirements, medical and ethical practice standards, and the policies and procedures of this hospital. The hospital and medical staff shall presume a properly executed mental health advance directive is valid and will honor it, even if one or more provisions of the directive are deemed to be invalid. However, in those circumstances where it is not appropriate or permissible to honor mental health advance directives, the patient and/or their designated agent will be advised and appropriate documentation made in the patient’s medical record.

PURPOSE

The purpose of this policy is to describe how the hospital, hospital staff, and medical staff will comply with their legal, ethical, and other obligations concerning mental health advance directives. The policy does not address all aspects of the law governing mental health advance directives, but attempts to focus on those most relevant to this organization.

DEFINITIONS

The following are key terms referred to in the law governing mental health advance directives, and are used in the procedures discussed below:

Agent: an agent has legal authority to make decisions for a patient within the limits the patient has set on the agent’s decision-making power

Capacity : an adult that has not been found to be incapacitated under the mental health

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Title: **Mental Health Advance Directives**

advance directives procedures set out in this policy, or under the Washington state guardianship statute RCW 11.88.010(1)(e) has capacity

Health care provider : osteopathic physician or osteopathic physician’s assistant, a physician or physician’s assistant, or an advanced registered nurse practitioner

Incapacitated : an adult who (a) is unable to understand the nature, character, and anticipated results of proposed treatment or alternatives; understand the recognized serious possible risks, complications, and anticipated benefits in treatments and alternatives, including nontreatment; or communicate his or her understanding or treatment decisions; or (b) that has been found to be incompetent under the Washington state guardianship statute RCW 11.88.010(1)(e)

Professional person : a mental health professional or a physician, or registered nurse

Principal : an adult who has made a mental health advance directive

Mental health advance directive : a written document in which a patient makes a declaration of instructions or preferences or appoints an agent to make decisions on behalf of the patient regarding the patient’s mental health treatment, or both, and that is consistent with the provisions of Washington’s mental health advance directive statute

Mental health professional : a psychiatrist, psychologist, psychiatric nurse, or social worker

PROCEDURE

1. Each patient shall be asked whether he or she has made a mental health advance directive and provided with a copy of the brochure, *“What Patients Need to Know About Mental Health Advance Directives.”*
2. On receipt of a mental health advance directive, a copy of the directive shall be placed in the patient’s chart.
3. On receipt of a directive a medical staff member shall determine the validity of the directive. It must:
 - a. Be in writing;
 - b. Include language that shows an intent to create a mental health advance directive;

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Title: **Mental Health Advance Directives**

- c. Be dated and signed by the patient or be dated and signed in the patient's presence at his or her direction;
 - d. State whether the directive may or may not be revoked during a period of incapacity; and,
 - e. Contain the signatures of two witnesses following a declaration that the witnesses personally know the patient, were present when the patient dated and signed the directive, and that the patient did not appear to be incapacitated or acting under fraud, undue influence, or duress.
4. The following areas of the directive shall also be reviewed for validity:
 - a. Appointment of agent: If the directive includes appointment of an agent it must contain the words "This power of attorney shall not be affected by the incapacity of the principal," or "This power of attorney shall become effective upon the incapacity of the principal, or similar words.
 - b. Effective date: A directive may be effective immediately after it is executed or it may become effective at a later time. Mental health advance directives validly executed before the effective date of ESSB 5223, the law relating to mental health advance directives, are effective until they are revoked, superseded, or expire.
 - c. Directives created outside Washington state: A directive validly executed in another political jurisdiction is valid to the extent it is permitted under Washington state law.
 - d. Witnesses: Hospital staff and employees, medical staff members or any other person involved in the patient's care *are not permitted* to witness a mental health advance directive.
5. The patient shall be asked whether he or she is subject to any court orders that would affect the implementation of his or her directive. If so, a copy of the court order must be obtained and placed in the patient's chart.
6. On admission the admitting medical staff member shall, in accordance with the requirements of section VI of this policy, ascertain whether compliance with the directive or portions of it is possible.

Title: **Mental Health Advance Directives**

7. During treatment, in accordance with the requirements of section VI of this policy, the attending medical staff member shall ascertain on an ongoing basis whether compliance with the directive or portions of it is possible.
8. On receipt of an agent's notice of withdrawal, the notice and the effective date shall be noted in the patient's chart. If there is no effective date, the notice is effective immediately.
9. A revocation of a mental health advance directive is effective upon receipt and shall be made part of the medical record immediately.

NON-COMPLIANCE WITH DIRECTIVE INSTRUCTIONS

1. Ability to object on ***initial*** receipt of directive:
 - a. If unable or unwilling to comply with any part or parts of the directive ***for any reason***, an objection can be made to that part or those parts of the directive.
 - b. Notify the patient of the objection, and, if applicable his or her agent and document the part or parts of the directive that are objectionable and the reason in the patient's medical chart.
2. Ability to object ***once acting under authority of a directive***:
 - a. Unless an objection to treatment in accordance with the advance directive has been noted on receiving the directive, treatment shall follow the directive.
 - b. When acting under the authority of a directive, the provisions of the directive shall be followed to the fullest extent possible, ***except for the following reasons***:
 - Compliance with the provision of the mental health advance directive would violate the accepted standard of care;
 - The requested treatment is not available;
 - Compliance would violate the law; or,
 - The situation constitutes an emergency and compliance would endanger any person's life or health
 - c. If unable to comply with any part or parts of the directive for the reasons cited above, the patient, and if applicable, his or her agent shall be notified and the

Title: **Mental Health Advance Directives**

reason documented in the medical record. All other parts of the directive shall be followed.

3. If a patient is involuntarily committed or detained for involuntary treatment and provisions of the mental health advance directive are inconsistent with either the purpose of the commitment or any court order relating to the commitment, those provisions may be treated as invalid during the commitment. However, the remaining provisions of the directive are advisory while the patient is committed or detained.

DECLARING A PATIENT INCAPACITATED

1. When a patient with a mental health advance directive, or an agent for such a patient if applicable, seeks either inpatient or outpatient mental health treatment for the patient under the terms of the directive a capacity determination shall be made. Once a patient with a mental health advance directive has been determined to be incapacitated in accordance with the procedures below, his or her mental health advance directive will go into effect.
2. Capacity determinations:
 - a. At least one mental health professional or health care provider must personally examine the patient prior to making a capacity determination.
 - b. Prior to a capacity determination, a health care provider shall advise the patient that a capacity determination is being sought and that the patient may request the determination be made by a court.
 - c. If the patient chooses a court hearing:
 - The patient shall be given the opportunity to appear in court; and,
 - A mental health provider shall testify.
 - d. A capacity determination, for purposes of mental health advance directives, may only be made by:
 - A court, if the request is made by the patient or the patient's agent;
 - One mental health professional and one health care provider; or
 - Two health care providers.

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Title: **Mental Health Advance Directives**

(Note: For purposes of 2 and 3 above, one of the persons making the determination must be a psychiatrist, psychologist or psychiatric advance registered nurse practitioner.)

- e. ***An initial determination of capacity must be completed within 48 hours of a request.*** During the period between the request for an initial determination of the patient's capacity and its completion, the patient may not be treated unless consent is given, or treatment is otherwise authorized by state or federal law. If the patient qualifies for involuntary treatment under the state involuntary treatment laws, he or she may be treated.
 - f. If an incapacitated person is already being treated according to his or her directive, a request for redetermination of capacity does not prevent treatment.
3. Capacity determination time frames and obligations:
- a. Inpatient treatment:
 - Reevaluate capacity within 72 hours of admission or when there has been a change in the patient's condition that indicates he or she appears to have regained capacity, whichever occurs first.
 - After 72 hours of inpatient treatment, reevaluate capacity when there has been a change in patient's condition that indicates he or she appears to have regained capacity.
 - At the request of the patient and/or his or her agent, a redetermination of the patient's capacity must be made within 72 hours.
 - If a patient does not have an agent for mental health treatment decisions and asks for a determination or redetermination of capacity, complete the determination, or if the patient is seeking a determination from a court, make reasonable efforts to notify the person legally authorized to make decisions for the patient.
 - b. Outpatient treatment:
 - When a patient requests a redetermination of his or her capacity, the redetermination must be made within 5 days of the first request following a determination.

Title: **Mental Health Advance Directives**

- If a patient being treated does not have an agent for mental health treatment decisions, the person requesting a capacity determination shall arrange for the determination.

(Note: If a capacity determination is not made within the time frames set out under “inpatient treatment” and “outpatient treatment” above, the patient shall be considered to have capacity. The patient shall be treated accordingly.)

INPATIENT TREATMENT

1. Consent to inpatient admission in a directive is effective only if there is substantial compliance with the material provisions of the directive related to inpatient treatment.
2. If the admitting physician is not a psychiatrist, the patient must receive a complete psychological assessment by a mental health professional within 24 hours of admission to determine the continued need for inpatient evaluation or treatment.
3. If the patient is found to have capacity, he or she may only be admitted to or remain in inpatient treatment if he or she consents or is detained under the state involuntary treatment law.
4. If an incapacitated patient continues to refuse inpatient treatment, he or she may seek injunctive relief from a court.
5. ***Discharge after 14 days of treatment:*** At the end of the period of time that the patient or his or her agent consented to voluntary inpatient treatment, but not longer than 14 days after admission, if the patient has not regained capacity or has regained capacity but refuses to consent to remain for additional treatment, release the patient during reasonable daylight hours unless detained under the state involuntary treatment law.
6. Discharge for patients with mental health advance directives voluntarily admitted to inpatient treatment: If a patient takes action demonstrating a desire to be discharged, and makes statements requesting to be discharged, the patient shall be allowed to be discharged and may not be restrained in any way in order to prevent his or her discharge. (Note, however, that if a patient presents a likelihood of serious harm or is gravely disabled, the patient may be held for sufficient time to notify a Designated Mental Health Professional (DMHP) in order to allow for evaluation and possible detention under state involuntary treatment laws.)

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Title: **Mental Health Advance Directives**

7. Inpatient treatment for patients with a ***directive consenting to admission*** but ***currently refusing admission***:
 - a. The following admission procedure shall be followed for a patient who:
 - Chose not to be able to revoke his or her directive during any period of incapacity;
 - In his or her mental health advance directive consented to voluntary admission to inpatient mental health treatment or authorized an agent to consent on the patient's behalf; and,
 - At the time of admission to inpatient treatment, refuses to be admitted.
 - b. In such cases, in order for the hospital to admit the patient pursuant to the mental health advance directive, a physician member of the hospital medical staff shall:
 - Evaluate the patient's mental condition and determine in conjunction with another health care provider or mental health professional, that the patient is incapacitated;
 - Obtain the informed consent of the agent, if any, designated in the directive;
 - Document that the patient needs an inpatient evaluation or is in need of inpatient treatment and that the evaluation or treatment cannot be accomplished in a less restrictive setting; and,
 - Document in the medical record a summary of findings and recommendations for treatment or evaluation.
 - c. The hospital may not use or threaten unreasonable confinement if the patient refuses to stay in the hospital.

AGENT AUTHORITY

1. Unless the directive has been revoked, the decisions of an appointed agent must be consistent with the instructions and preferences expressed in the directive or if not expressed, otherwise known to the agent. If the patient's instructions or preferences are not known, the agent must make a decision he or she determines is in the best interests of the patient.
2. Except as may be limited by state or federal law, the agent has the same right as the patient to receive, review, and authorize the use and disclosure of the patient's health care

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Title: **Mental Health Advance Directives**

information when the agent is acting on behalf of the patient and to the extent required for the agent to carry out his or her duties.

3. A directive may give the agent authority to act while the patient has capacity. Even if the directive gives such authority to the agent, the decisions of the patient supersede those of the agent at any time the patient has capacity.
4. On receipt of an agent's notice of withdrawal, the notice, and effective date if one is provided, shall be noted in the patient's chart. If no effective date is specified, the notice is effective immediately.

REVOCATION/EXPIRATION OF A DIRECTIVE

1. A patient with capacity may revoke a directive in whole or in part by a written statement. An incapacitated patient may revoke his or her directive only if he or she elected at the time of executing the directive to be able to revoke when incapacitated.
2. The revocation is effective immediately upon receipt and shall be made part of the medical record.
3. If a patient makes a subsequent directive, it revokes in whole or in part (either by its language or to the extent of any inconsistency) the previous directive.
4. A directive remains effective to the extent it does not conflict with a court order and no other proper basis for refusing to honor the directive or portions of it exists.
5. If a mental health advance directive is scheduled to expire, but the patient is incapacitated, the directive remains in effect unless the directive specifies that the patient is able to evoke while incapacitated and has revoked the directive.

CONFLICTING DIRECTIVES OR AGENCY APPOINTMENTS

1. Discrepancies in directives or in agent appointments shall be reported to the supervisor or nurse manager.
2. If an incapacitated patient has more than one valid directive and has not revoked any of his or her directives then the most recently created directive controls any inconsistent provisions unless one of the directives states otherwise.

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Title: **Mental Health Advance Directives**

3. If an incapacitated patient has appointed more than one agent via a durable power of attorney with the authority to make mental health treatment decisions, the most recently appointed agent shall be treated as the patient's agent for mental health treatment decisions unless otherwise provided in the appointment.
4. Any time a patient with capacity consents to or refuses treatment that differs from the provisions of his or her directive, the consent or refusal constitutes a waiver of any provision of the directive that conflicts with the consent or refusal. However, it does not constitute a revocation of that provision unless the patient also revokes that provision or the directive in its entirety.

RESPONSIBILITIES

1. Admitting staff: question patients about the existence of a mental health advance directive, obtain copy and place in patient record. Distribute patient brochure to all patients.
2. Admitting physician or clinician: determine validity of mental health advance directive and provide care in accordance with directive as possible; be familiar with mental health advance directive legislation-competency determinations, patient responsibilities under the law and necessary record keeping.
3. Nursing staff: be familiar with mental health advance directive legislation-competency determinations, patient responsibilities under the law and necessary record keeping.