

# *Where We Are Going*



- Describe what a mental health advance directive is.
- Identify the Pennsylvania Requirements.
- Identify areas of confusion and provide explanations.

# *Basic Premise*



- *People With Mental Illness Have the Same Rights That People Without Mental Illness Have.*

# *Choosing Treatment*



- Individuals Have the Right to Determine the Nature and Extent of Their Medical Care.
  - ⇒ Right To Informed Consent.
  - ⇒ Right To Treatment.
  - ⇒ Right To **REFUSE** Treatment.

# *Capacity in this Context*



- **What is capacity for MH Advance Directives?**
  - ⇒ **Capacity is the basic ability to understand:**
    - **Your Diagnosis**
    - **Risks and Benefits of Treatment**
    - **Alternative Treatments**
    - **The Consequences of Not Having Any Treatment**
  - ⇒ **It is only related to Mental Health Treatment.**

# *Determining Capacity*



- Who determines capacity?
  - ⇒ The Presumption is That You Have Capacity.
- Who determines incapacity?
  - ⇒ Two Evaluations
    - One by a Psychiatrist,
    - One by Another Mental Health Professional
    - Whenever Possible One of the Evaluators Will Be The Person's Treating Professional.

# *Mental Health Care Advance Directives*



- **Written Document**
- **Make choices about MH treatment, while you have capacity, in advance of a time you lack capacity**
- **Addresses both:**
  - Informed Consent and**
  - Right To Accept or Refuse Trmt**

# *MH Advance Directives*



- TYPES in Pennsylvania (All Equally Valid):
  - ⇒ Declaration – instructions only
    - More defined, less flexible.
  - ⇒ Power of Attorney- appoints an agent
    - More flexible, requires a relationship
  - ⇒ Combination - Declaration AND Power of Attorney
    - Person reserves some decisions, Agent makes other decisions

# *Pennsylvania MHAD Requirements*



- You Must be at Least 18 yrs Old or an Emancipated Minor.
- You Must Not Currently be Incapacitated
- **You Must Sign, Date, and Have Two Witnesses.**
- You Must Include Your Mental Health Treatment Instructions.
- A Power of Attorney Must Appoint an Agent.

# *MH Advance Directive Instructions - Examples*



- ⇒ Medications
- ⇒ ECT, Drug Trials, Research Studies
- ⇒ Crisis Management
- ⇒ Who Should Be Called
- ⇒ Who You Want to Care for Your Children or Pets
- ⇒ Dietary choices
- ⇒ Religious choices
- ⇒ Treatment History

# *MH Advance Directive Instructions - Examples*



## **Treatment (legally binding)**

- Medications
- ECT, Drug Trials, Research Studies
- Treatment History (may be binding)
- Crisis Management (may be binding)

## **Preferences (NOT legally binding)**

- Who Should Be Called
- Care for Your Children or Pets
- Dietary and religious choices
- Choice of Hospital

# *What Requires Express (written) Consent?*



- ECT
- Research of Any Kind
- Experimental Studies
- Drug trials

If nothing written, it's the same as a refusal.

# *Individual Responsibilities*



- Step 1. Decide what type.
- Step 2. Treatment decisions. Discussion With Support Folks.
- Step 3. Sign, Date Document –Two Witnesses.
- Step 4. Copies to Agents/ Family/ Providers
- Step 5. Keep a Card in Your Wallet Noting the Existence and Who to Contact.
- Step 6. Review and Update at Least Every Two Years.

# Witnesses



- Witnesses:
  - ⇒ Must be at least 18 years old.
  - ⇒ ONLY witnessing signature (not capacity).
  - ⇒ Cannot be the appointed Agent.
  - ⇒ Cannot be a person who signs on behalf of Person.

NOTE: Provider can be a witness.

# *Agents Responsibilities*



- Being available to make treatment decisions.
- Stand in the Person's Shoes!
- Getting all the info needed to make decisions.
- Advocating for what the person needs.
- Come Forward if there is a guardianship proceeding.
- NOT RESPONSIBLE FOR COSTS OF TREATMENT.

# *Who Can't Be An Agent?*



- 1. Person's provider or an employee of the provider (unless related).**
- 2. An owner, operator or employee of a residential facility in which person receives care (unless related).**
- 3. Someone who witnesses the MH Advance Directive, or signs the Directive because person is physically unable to.**

# *Provider Responsibilities*



- Inquire into the existence.
- Inform people being discharged that one can be created.
- Place a copy in the mental health record for at least two years.
- Make any revocation or amendment part of the MH record.

# *Provider Responsibilities*

## *Cont'd*



- Document any determination of capacity.
  - ⇒ Ability to make mental health care decisions *only*.
- Comply with the MHAD.
  - ⇒ But don't violate clinical practice or medical stds.
- Inform if you cannot comply.
  - ⇒ Individual AND legal representatives.
  - ⇒ Document why you cannot comply.
- Transfer if you cannot comply.
  - ⇒ Reasonable efforts.

# *Court Ordered Revocation*



- Irreparable Harm or Death
  - ⇒ Interested party may file a petition with the court.
- A Judge may revoke some or all of the instructions.
  - ⇒ Remaining provisions will continue to be in effect.

# *Special Points*



- VALID when signed, dated, witnessed.
- IN EFFECT when person has been evaluated and found to lack capacity to make MH treatment decisions.
- NO LONGER IN EFFECT when person is found to have capacity to make MH trmt decisions again or is discharged.

# *Special Points*



- NO SPECIAL FORM IS REQUIRED
- NO NOTARY IS REQUIRED
  - ⇒ SIGNED, DATED, WITNESSED (ONLY!)
- MH TREATMENT
  - ⇒ NOT POA FOR OTHER HEALTH CARE, FINANCES, TERMINAL ILLNESS, SOCIAL SECURITY, ETC.

# *Special Points*



- WRAP can include the information to be considered a legal MHAD.
- For clarity, label that portion as MHAD.
- Provide copies and identify as MHAD.
- NO NOTARY IS REQUIRED
  - ⇒ But **MUST SIGN, DATE, 2 WITNESSES**

# *Confidentiality*



- Should a Provider protect confidentiality by not making a MH Advance Directive available to a hospital?

⇒ No!

Presumably the person wants the people treating them to have access to their MH Advance Directive. Anyone who knows that one exists should come forward with that information in a crisis.

# *Involuntary Commitment*



- How does having a MH Advance Directive affect involuntary commitment?

**You may still be committed.**

- If you have an Agent, that person may **NOT** voluntarily commit you.
- Your MHAD will govern your treatment while you are in the hospital.

# *Contact Me With Questions*



- Disability Rights Network of PA  
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