**DRAFT ADVANCE DIRECTIVE POLICY[[1]](#footnote-1)**

**POLICY:** In accordance with the [YOUR STATE] General Statutes and other federal legislation[[2]](#footnote-2), it is the policy of the [YOUR DEPARTMENT/PROGRAM] that all [INSERT STATUTES SUPPORTING ADVANCE DIRECTIVES HERE] clients be afforded the same “…personal, property, and civil rights…”[[3]](#footnote-3) as other citizens. These rights include, but are not limited to, the right to informed consent[[4]](#footnote-4) and the right to create Advance Directives. [YOUR INSTITUTION] policy #\_\_\_\_\_ ensures that all clients capable of making health care decisions have an opportunity to do so in a manner that is collaborative, self-determined, and individually-tailored through the creation of Advance Directives for Health Care. All clients (inpatient and outpatient) are presumed to be capable of making their own treatment decisions unless otherwise noted. Advance Directives for Health Care, when prepared during a state of mental capacity, provide a mechanism for clients to convey their preferences for treatment in the event that they should be deemed unable to make such health care decisions at some point in the future.

[YOUR INSTITUTION] policy # \_\_\_ is consistent with the recovery framework endorsed by [YOUR INSTITUTION] in that it affords all clients an opportunity to become active participants in *all* health care decisions, including those that must be made on behalf of clients during times of mental incapacity. Consistent with this approach, Advance Directives can provide numerous benefits to people in recovery, providers, family members, and the system as a whole. For example, Advance Directives can promote individual autonomy and empowerment; improve continuity of care, communication, and collaboration between people in recovery, professionals, and family members; protect individuals against unwanted, ineffective, or harmful interventions or actions; facilitate preventative care and earlier intervention; and help prevent crises resulting in the use of involuntary treatment or safety interventions such as restraint or seclusion.

In accordance with the 1990 Patient Self-Determination Act, [YOUR INSTITUTION] must provide all clients admitted to certain Medicaid-funded facilities[[5]](#footnote-5) with the opportunity to create advance directives. [YOUR INSTITUTION] is further committed to increasing education about advance directives and facilitating the preparation of advance directives for those who wish to do so. The goal of [YOUR INSTITUTION] Policy #\_\_\_\_ is to improve the process of creating, executing, and utilizing an Advance Directive so that it is more collaborative, self-determined, and based on previous experiences of treatment and rehabilitation. [YOUR INSTITUTION] supports the use of advance directives as mechanisms for upholding individual rights and ensuring that treatment and rehabilitation provided is informed by the wishes of the client.

**Definitions:**

Advance Directives. Advance Directives are legal documents that allow a person to plan in advance for treatment in the event that they are deemed unable to make or communicate their preferences at some point in the future. It is prepared before any condition or circumstance occurs that causes the individual to be deemed unable to make or communicate such judgments.

Living Will. A Living Will is a document in which an individual conveys, in writing, their directions as to specific life-sustaining/support systems, procedures or treatment to have administered should they become in a terminal condition or permanently unconscious. The Living Will tells the physician, or other health care providers, whether the individual wishes life support systems to be administered to keep themselves alive in these situations or whether they does not want to receive such treatment, even if it results in their death.

Appointment of Health Care Representative. An Appointment of a Health Care Representative is a written document in which an individual authorizes a person to convey their wishes concerning whether to withhold or withdraw life support systems in the event that they are deemed unable to communicate their preferences.

The Health Care Representative may make health care decisions, other than withdrawal of life support systems, on a person’s behalf should they be deemed unable to make or communicate such decisions themselves. An Advance Directive for Health Care can also include written preferences for medication, hospitals, emergency treatment and procedures, treating physicians, persons to notify in the event of hospitalization, and medical decisions.

Anatomical Gift (Organ/Tissue Donor). An Anatomical Gift is a donation of all or any part of their body to take effect after their death.

**Policy Checklist:**

Does [YOUR INSTITUTION] support the rights of persons in recovery to create and benefit from Advance Directives by endorsing the following policies:

* Will [YOUR INSTITUTION] provide all facilities with Advance Directive Toolkits and Forms in English and Spanish that may be used to facilitate the execution and implementation of Advance Directives?
* Upon entry into any [YOUR INSTITUTION] program, is every individual provided with information and educational materials regarding Advance Directives. If the person is unable to understand this material at the time of admittance, will it be provided at a later time?
* Will all of [YOUR INSTITUTION] clients will be informed of their right to create, revise, or revoke Advance Directives during intake and periodically thereafter. If the client does not have the capacity to make health care decisions at the time of admittance, will these materials be provided to the person at a later date?
* Will clients who wish to create, revise, or revoke Advance Directives be connected with an advocacy organization that can aid in the development, revision, or revocation of Advance Directives, if so desired?
* Will every [YOUR INSTITUTION] program/facility have procedures in place for the clear documentation of the steps taken to inform, create, or implement Advance Directives?
* Will every [YOUR INSTITUTION] program/facility have procedures in place to ensure Advance Directives are kept in the clients’ medical records?
* Will every [YOUR INSTITUTION] program/facility have procedures in place to ensure that Advance Directive files contain up-to-date documentation?
* Will [YOUR INSTITUTION] Division of Education and Training offer training on the development and implementation of Advance Directives?
* Will every [YOUR INSTITUTION] direct care service professional receive specialized training on the development and implementation of Advance Directives as a part of a larger training on recovery-oriented practices and client rights?
* Will [YOUR INSTITUTION] create a system-wide method of tracking and updating and accessing information about Advance Directives that is compliant with HIPAA standards and psychiatric privilege laws?

**SAMPLE PROCEDURES:**

**Admission Procedures:**

Upon entry into the program:

1. Every client is provided with information and educational materials regarding Advance Directives. Every client is asked about the existence of or interest in creating Advance Directives.
2. If a client’s decision-making capacity at the time of admission is in question, a formal evaluation will be conducted by an attending physician prior to the provision of information and education materials regarding Advance Directives. Materials will be offered at a point when the client has regained decision-making capacity.
3. Every client is provided with contact information for advocacy organizations that can assist with the creation of Advance Directives.
4. Every client is provided with assistance in connecting with advocacy organizations, if so desired.
5. Copies of any existing Advance Directives are requested.
6. Copies of any Advance Directives are placed in the client’s chart.
7. The management information system is updated to note the existence of Advance Directives.

**Documentation Procedures:**

Procedures will be in place to ensure that clear documentation is made in the chart about any and all actions taken in regard to Advance Directives including, but not limited to, documentation about:

1. Information provided to clients about Advance Directives.
2. Clients’ decisions about creating, revising, or revoking Advance Directives.
3. Referrals or contact information given to client.
4. Any execution, implementation, revision, or revocation of Advance Directives.
5. Assessments of capacity to make health care decisions.

**Training Procedures:**

Procedures will be in place to ensure that all direct care staff are informed of agency procedures related to the use of Advance Directives.

1. A training on *Integrating Advance Directives into Everyday Practice* will be made available to all direct care staff. This training will focus on ways to educate allclients about Advance Directives, resources and guidelines available to assist with the creation, maintenance, and implementation of Advance Directives.
2. At least one representative from the program will receive training on the relevant laws and practices pertaining to the creation and use of Advance Directives.

**Advance Directive Creation/Modification Procedures:**

Any [YOUR INSTITUTION] client who wishes to create a new Advance Directive may do so in conjunction with their care providers, family members and/or friends, independent advocacy organizations, or on their own. Clients will be encouraged to discuss preferences outlined in Advance Directives with members of the treatment team, family members or significant others, and/or consumer advocates. Special circumstances may apply when a person has a conservator (see Procedures for Creating and Modifying Advance Directives with Clients under Conservatorship below).

All programs will have procedures in place to ensure that:

1. Staff are familiar with the process of creating, revising, or revoking Advance Directives.
2. Clients have access to information regarding Advance Directives and Advance Directive Toolkits.
3. Clients have formal opportunities to create, revise, or revoke Advance Directives upon intake and/or during regular treatment review meetings, given that decision-making capacity is not in question.
4. Clients are afforded regular opportunities to discuss Advance Directives with independent advocates who have been trained in the development and implementation of Advance Directives.
5. Any new Advance Directives or modifications of Advance Directives must be dated, witnessed and notarized. Signatures of two witnesses are required. If the client is in a [YOUR INSTITUTION] facility at the time the Advance Directive is created/modified, one witness must be a person from outside the program and one witness must be a licensed physician or clinical psychologist with specialized training in mental illness (or in accord with individual state requirements).
6. Assistance is provided to the client with obtaining witnesses and notarizing the document (or in accordance with individual state requirements).
7. Staff facilitate a discussion with clients around the distribution of Advance Directives to health care providers and agents.

**Advance Directives with Clients under Conservatorship:**

If a client has a conservator of person and/or estate, the conservator “shall afford the conserved person the opportunity to participate meaningfully in decision-making in accordance with the conserved person’s abilities.”[[6]](#footnote-6) This includes reasonable conformance with expressed health care preferences and health care instructions, if any, that may have been executed prior to the appointment of the conservator.

**Procedures for Maintaining Updated Advance Directives:**

Procedures will be in place for maintaining and documenting information about Advance Directives to ensure that:

1. Advance Directives are stored in a uniform, readily accessible location in client charts, in inverse chronological order.
2. Clients are easily identified as having Advance Directives in charts and/or the EHR system.
3. The [YOUR INSTITUTION] management information system is kept up-to-date with regard to Advance Directives of clients at each particular program, including the date of the most recent version of the document, the location of the most recent version of the document, and the name and telephone number of the health care agent representative and the alternate health care representative.
4. Clients are provided with a means of documenting the location of their Advance Directive and contact information for their health care representative in a format that is compliant with HIPPA and psychiatric privilege laws.

**Procedures for Implementing an Advance Directive:**

All clients (inpatient and outpatient) are presumed to have capacity to make their own treatment decisions, unless otherwise noted. Procedures will be in place to:

1. Refer each client to an attending physician or to a psychiatrist for the determination of mental capacity, if decision-making capacity is in question.
2. Use accepted standards for assessing decision-making capacity and documenting same.
3. Inform clients of their right to request a second opinion.
4. All disputes will be referred to the medical director of the program.

If a client is deemed unable to make their own decisions, procedures must be in place to:

1. Obtain the most recent Advance Directives.
2. Contact the client’s Conservator and/or health care representative upon admission to a hospital and/or when they are deemed unable to make their own health care decisions.
3. Ensure that treatment decisions are made in conjunction with the client’s Advance Directives until they have regained capacity to make their own health care decisions.
4. Arrange for attending physician to review and document the mental status of the client regularly until decision-making capacity is restored.

**Procedures for Revoking an Advance Directive:**

Advance Directives may be revoked at any time, either verbally or in writing. This includes times when an attending physician determines that the client is incapable of making treatment decisions. Attending physicians or other health care professionals are required to document revocation of Advance Directives in the medical record. This varies state by state—check with their state on specific rules/parameters for revocation.

1. To be adapted according to relevant state statutes. [↑](#footnote-ref-1)
2. Patient Self-Determination Act of 1991; American with Disabilities Act; Rehabilitation Act and 1992 Amendments; and Title 42- Public Health, Chapter IV- Health Care financing administration, Department of Health and Human Services, Subchapter G- Standards and certification, subpart b- administration. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. To be adapted according to your state statues [↑](#footnote-ref-6)