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## **North Sound Behavioral Health Organization**

### **Section 1500 – Clinical: Mental Health Advance Directives**

Authorizing Source: 42 CFR 417.436, 422.128, 438.6, 438.10, 438.100, 489.100, 489.102, 489.104; RCW 71.32, 11.94.010, 11.125, and 71.05, WAC 388-877-0600

Cancels:

See Also:

Providers must comply with this policy and may develop individualized implementation guidelines as needed

Responsible Staff: Deputy Director

Approved by: Executive Director

Signature:

Date: 7/20/2017

## **POLICY #1518.00**

### **SUBJECT: MENTAL HEALTH ADVANCE DIRECTIVES**

#### **PURPOSE**

To ensure North Sound Behavioral Health Organization (North Sound BHO) enrolled adult individuals and their families receive information about mental health advance directives and support from providers in developing advance directives. Providers will follow applicable Washington State Law (Revised Code of Washington [RCW] 71.32) in order to support the individual in making treatment decisions, facilitating communication between the individual and clinician and improving clinical outcomes for the individual.

#### **DEFINITIONS (Per RCW 71.32.020)**

##### **Adult**

Any individual who has attained the age of majority (18 years or older) or is an emancipated minor.

##### **Agent**

A person with authority to make mental health treatment decisions on the principal's behalf consistent with instructions in the mental health advance directive.

##### **Capacity**

An adult has not been found to be incapacitated pursuant to this chapter (RCW 71.32.020 – see definition for incapacitated below) or RCW 11.88.010(1)(e).

##### **Court**

A superior court as defined in RCW 2.08.

##### **Health care facility**

A hospital, as defined in RCW 70.41.020; an institution, as defined in RCW 71.12.455; a state hospital, as defined in RCW 72.23.010; a nursing home, as defined in RCW 18.51.010; or a clinic that is part of a community mental health service delivery system, as defined in RCW 71.24.025.

##### **Health care provider**

An osteopathic physician or osteopathic physician's assistant licensed under RCW 18.57 or 18.57A, a physician or physician's assistant licensed under RCW 18.71 or 18.71A or an advanced registered nurse practitioner licensed under RCW 18.79.050.

**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 non-treatment; or communicate his or her understanding or treatment decisions; or (b) has been found to be incompetent pursuant to RCW 11.88.010(1)(e).

**Informed consent**

Consent that is given after the person: (a) is provided with a description of the nature, character and anticipated results of proposed treatments and alternatives and the recognized serious possible risks, complications, and anticipated benefits in the treatments and alternatives, including non-treatment, in language the person can reasonably be expected to understand; or (b) elects not to be given the information included in (a) of this subsection.

**Long-term care facility**

Has the same meaning as defined in RCW 43.190.020.

**Mental disorder**

Any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

**Mental Health Advance Directive**

A written document in which a principal makes a declaration of instructions or preferences or appoints an agent to make decisions on behalf of the principal regarding the principal's mental health treatment, or both, and is consistent with the provisions of RCW 71.32.

**Mental Health Professional**

A psychiatrist, psychologist, psychiatric nurse, or social worker and such other mental health professionals as may be defined by rules adopted by the secretary (of the Department of Behavioral and Health Recovery [DBHR]) pursuant to the provisions of chapter RCW 71.05.

**Principal**

An adult who has executed a mental health advance directive.

**Professional person**

A mental health professional, physician, registered nurse and others as defined by rules adopted by the secretary pursuant to the provisions of RCW 71.05.

**Social Worker**

A person with a master's or further advanced degrees from a social work educational program accredited and approved as provided in RCW 18.225.010.

## **POLICY**

Competent, adult individuals may anticipate the possibility of later incapacity and may prepare mental health advance directives stating their desires regarding the provision or withholding of mental health care in such an event including identification of a person the individual would want to act on his or her behalf.

A mental health advance directive can be an essential tool for an individual to plan for a mental health crisis by expressing, in advance his or her instructions or preferences.

It is North Sound BHO's practice to encourage the use of mental health advance directives and to honor mental health advance directives. However, neither North Sound BHO nor its providers shall place conditions on the provision of mental health care or otherwise discriminate against an individual based on whether or not the individual has executed a mental health advance directive.

## **MENTAL HEALTH ADVANCE DIRECTIVE**

1. An adult with capacity may execute a mental health advance directive.
2. A directive executed in accordance with Washington's Mental Health Advance Directive statute (RCW 71.32) is presumed to be valid. The inability to honor one or more provisions of a directive does not affect the validity of the remaining provisions.
3. A directive executed in accordance with Washington's Mental Health Advance Directive statute may include any provision relating to mental health treatment or the care of the principal or principal's personal affairs.

Without limitation, a directive may include:

- a. The principal's preferences and instructions for mental health treatment;
- b. Consent to specific types of mental health treatment;
- c. Refusal to consent to specific types of mental health treatment;
- d. Consent to admission to and retention in a facility for mental health treatment for up to 14 days;
- e. Descriptions of situations that may cause the principal to experience a mental health crisis;
- f. Suggested alternative responses that may supplement or be in lieu of direct mental health treatment, such as treatment approaches from other providers;
- g. Appointment of an agent pursuant to RCW 11.125 to make mental health treatment decisions on the principal's behalf, including authorizing the agent to provide consent on the principal's behalf to voluntary admission to inpatient mental health treatment; and
- h. The principal's nomination of a guardian or limited guardian (as defined by law) as provided in RCW 11.94.010 for consideration by the court if guardianship proceedings are commenced.

4. A directive may be combined with or be independent of a nomination of a guardian or other durable power of attorney under RCW 11.125, so long as the processes for each are executed in accordance with its own statutes.

## PROCEDURES

1. Providing Information

Each North Sound BHO provider will:

- a. Ensure a written statement of the agency's policy regarding the implementation of mental health advance directives and a written description of the State law in Washington concerning mental health advance directives is given to individuals (or family or surrogate if the individual is incapacitated) at the intake assessment. The individual's clinical record shall contain documentation to reflect that the required information was provided.
- b. Include information and instruction concerning mental health advance directives in any ongoing consumer education programs.

2. Requesting/Utilizing Information

- a. Provider policies will ensure during the intake evaluation of adult individual, staff will inquire into the existence of medical and/or mental health advance directives previously executed by the individual. The individual's clinical record will include documentation that reflects the response to the inquiry. If the individual is incapacitated (see definition) at the time of the intake and is unable to receive information or articulate whether or not he or she has executed an advance directive, providers may give advance directive information to the enrollee's family, or surrogate, or other concerned persons in accordance with state law. A provider is not relieved of the obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow up procedures to ensure the information is given to the individual directly at the appropriate time must be in place.
- b. If the individual indicates she/he has a medical and/or mental health advance directive, staff will request a copy and maintain it in the individual's current clinical record (i.e., this document should not be archived to a historical file). If the clinician has received an individual's advance directive, it will become part of the individual's medical record and the clinician will be considered to have actual knowledge of its contents. The clinician must act in accordance with the directive to the fullest extent possible, unless compliance would violate the accepted standard of care established in RCW 7.70.040, the requested treatment is not available, compliance would violate applicable law, or it is an emergency situation and compliance would endanger any person's life or health. More information regarding compliance and conditions for non-compliance can be found in RCW 71.32.150.

- c. In the event the North Sound BHO provider staff becomes aware of the individual's subsequent admission to a hospital, nursing home, or other residential facility, staff will contact the facility to make them aware of and supply a copy of, the individual's medical and/or mental health advance directive in a timely manner.
3. Providing Assistance
  - a. North Sound BHO providers will assist adult individuals who appear competent and desire to prepare a mental health advance directive. \*Assistance shall include the following:
    - i. Information: The mental health professionals and other trained staff will endeavor to answer questions about mental health advance directives and the effect of a particular mental health advance directive in the individual's circumstance.
    - ii. Provision of approved forms: The mental health professionals and other trained staff will make available to those interested individual's copies of the approved Washington State forms for mental health advance directives, as well as, the addendum of the Durable Power of Attorney (these forms can be found on the DBHR website).
    - iii. Assistance in locating eligible witnesses: In Washington, mental health advance directives require a minimum of two witnesses to the principal's signature. However, state law prohibits certain individuals (i.e. family members, prospective beneficiaries and attending mental health care personnel) from serving as witnesses. If needed, staff shall assist in locating eligible individuals to witness the individual's execution of the form(s) who meet the requirements indicated on the form(s). A sample form is available at RCW 71.32.260 or by following this link: <http://apps.leg.wa.gov/RCW/default.aspx?cite=71.32.260>.
    - iv. Staff shall not serve as a witness to the principal's signature if they are or have been directly involved in the individual's care. Staff shall not accept appointment as a guardian or other agent in a Durable Power of Attorney or Declaration of a Desire for a Natural Death.
  - b. \*Staff need not provide assistance to an individual in circumstances in which staff believes the individual is unable to make an informed decision regarding the execution of a mental health advance directive.
4. If the individual transfers to any other North Sound BHO provider, the mental health advance directive(s) shall be sent to the receiving agency for inclusion in the individual's clinical record at such agency once appropriate authorization to release information is obtained.
5. North Sound BHO or North Sound BHO providers must inform individuals, families, or surrogates that complaints concerning non-compliance with advanced directives may be filed with DBHR (see North Sound BHO brochure for current phone number).

6. North Sound BHO or North Sound BHO providers may refer individuals, families, or surrogates that complaints concerning non-compliance with advanced directives to Ombuds for assistance in filing the complaint.
7. Staff Training/Community Education
  - a. Each provider will conduct staff training in accordance with North Sound BHO Regional Training Plan on mental health advance directives. Providers will provide clinical staff with information concerning mental health advance directives and the provisions of this directive and relevant statutes. North Sound BHO and its providers will participate in training provided by DBHR.
  - b. North Sound BHO and its providers shall seek appropriate opportunities to provide community education and disseminate information concerning mental health advance directives.
8. North Sound BHO and its providers will ensure all subsequent changes in the Washington Mental Health Advance Directive statute will be provided to adult individual as soon as possible, but no later than 90 days after the effective date of the change.
9. North Sound BHO will monitor for compliance with this policy and relevant statutes through the administrative audit process.

#### **ATTACHMENTS**

None