



Section: Customer Services	Policy Name: Advance Directives	Policy Number: 06.02
Owner: Customer Services Manager	Reviewed By: Sarah Ameter	Total Pages: 5
Required By: <input checked="" type="checkbox"/> BBA <input checked="" type="checkbox"/> MDHHS <input type="checkbox"/> NCQA <input type="checkbox"/> Other (please specify): _____	Final Approval By: <i>Sarah Ameter</i>	Date Approved: Nov 12, 2024
Application: <input checked="" type="checkbox"/> SWMBH Staff/Ops <input checked="" type="checkbox"/> Participant CMHSPs <input checked="" type="checkbox"/> SUD Providers <input checked="" type="checkbox"/> MH/IDD Providers <input type="checkbox"/> Other (please specify): _____	Line of Business: <input checked="" type="checkbox"/> Medicaid <input type="checkbox"/> Other (please specify): <input checked="" type="checkbox"/> Healthy Michigan _____ <input checked="" type="checkbox"/> SUD Block Grant <input checked="" type="checkbox"/> SUD Medicaid	Effective Date: 10/1/24

Policy: Southwest Michigan Behavioral Health (SWMBH)/Participant Community Mental Health Service Providers (CMHSP) and Contract Providers shall honor valid Durable Powers of Attorney as presented for medical and psychiatric care. SWMBH shall honor decisions made by identified Patient Advocates unless unable or otherwise not required by law. SWMBH shall honor decisions regarding the terminal care of a patient, made by a legally designated patient surrogate, if a person is terminally ill, including requests for hospice care. SWMBH shall honor valid Do-Not-Resuscitate Orders when required to do so by Michigan law.

Purpose: To provide guidelines regarding application of Michigan Law for SWMBH service recipients to make decisions concerning their medical care – including the right to accept or refuse medical treatment and to formulate “Advance Directives.”

Scope: Customer Services

Responsibilities: SWMBH Customer Service Department and delegated entities, as applicable, shall ensure compliance with the standards and guidelines outlined in this policy and guiding documents.

Definitions:

- A. Advance Directive: Written instruction such as a living will or durable power of attorney for health care, recognized under State law (whether by statute or by the courts of the state) relating to the provision of health care when the individual is incapacitated.



- B. Medical Advance Directive: Written instructions regarding physical/medical health care. Examples of decisions made include hospital care, medication regimes, Do Not Resuscitate Orders, or organ/tissue donation.
- C. Psychiatric Advance Directive: Written instructions regarding care for psychiatric/mental health care decisions. Examples may include psychiatric hospitalization, MH treatment participation, medication regimes, or any specific psychiatric treatments such as ECT.
- D. Do Not Resuscitate Order: In the State of Michigan, established through MCLA 333.1051 et seq, individuals are able to execute a document directing that in the event that the individual's heart and breathing should stop, no person shall attempt to resuscitate the individual.
- E. Durable Power of Attorney: In regards to Healthcare Decisions, (DPOA) In the State of Michigan, established through MCLA 700.5506 et seq. the state of Michigan allows an adult 18 years of age or older of sound mind to designate a Patient Advocate who is able to make decisions concerning the care, custody and medical treatment if that individual is unable to participate in his/her medical and/or mental health treatment decisions.
- F. Plan for Difficult Times (Crisis Plan): A plan established by a customer of Specialty Mental Health Services within the context of their Person-Centered Plan (PCP). Education about this option is required by the Michigan Department of Health and Human Services (MDHHS). The plan is intended to direct care when a customer begins to experience increased difficulty in managing his/her life or becomes unable to make decisions and care for himself/herself.

Standards and Guidelines:

- A. SWMBH will maintain written policies and procedures for advance directives (42 CFR 422.128 and 42 CFR 438.3(j)).
 - 1. SWMBH shall provide adult beneficiaries with written information on advance directive policies and a description of applicable state law and their rights under applicable laws. This includes:
 - a. The right to accept or refuse medical or surgical treatment.
 - b. The right to formulate advance directives.
 - 2. Written policies respecting the implementation of those rights, will include a clear and precise statement of limitation if the organization cannot implement an advance directive as a matter of conscience. At a minimum, this statement must do the following:
 - a. Clarify any differences between institution-wide conscientious objections and those that may be raised by individual physicians.
 - b. Identify the state legal authority permitting such objection.
 - c. Describe the range of medical conditions or procedures affected by the conscience objection.
 - 3. The information must be continuously updated to reflect any changes in state law as soon as possible but no later than 90 days after it becomes effective.
 - 4. If a beneficiary is incapacitated at the time of initial enrollment and is unable to receive information (due to the incapacitating condition or a mental disorder) or articulate whether or not he or she has executed an advance directive, SWMBH/Participant CMHSPs and Contract Providers may give advance directive information to the beneficiary's family or



- surrogate in the same manner that it issues other materials about policies and procedures in accordance with State law. The agency is not relieved of its obligation to provide this information to the enrollee once he or she is no longer incapacitated or becomes able to receive such information. Follow-up procedures must be in place to ensure that the information is given to the individual directly at the appropriate time.
5. SWMBH/Participant CMHSPs and Contract Providers will not:
 - a. Condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive.
 - b. Provide legal or medical advice or service if a customer expresses a desire to execute an Advance Directive.
 6. SWMBH shall inform individuals that grievances concerning noncompliance with the advance directive requirements may be filed with Customer Services.
 7. SWMBH will educate staff concerning policies and procedures on advance directives.
 8. SWMBH will provide for community education regarding advance directives.
- B. SWMBH will perform the following for the entire network of services provided:
1. Evaluation of Michigan laws to develop SWMBH policies.
 2. Development of educational materials to customers.
 3. Develop and distribute training and educational materials to staff of the network.
 4. Monitor CMHSP's for local implementation of procedures.
 5. Ensure compliance with requirements of State and federal law regarding advance directives.
- C. Specific Procedures utilized throughout SWMBH region will be developed by the CMHSP's for local implementation and will identify tasks/steps such as:
1. Providing training to Network provider staff about advance directives.
 2. Asking customers and potential customers about their Advance Directive status at the time of enrollment in services and annually thereafter.
 3. Providing Advance Directive information and forms to complete.
 4. Offering assistance to complete Advance Directive documents.
 5. Documenting Advance Directive designations in customer record.
 - a. Document in a prominent part of the customer's record if they have executed an advance directive
 6. Informing providers of Advance Directive designations.
 7. Honoring Advance Directive decisions as required.
- D. SWBMBH/CMHSPs and Contract Providers are not required to:
1. Provide care that conflicts with an advance directive.
 2. Implement an advance directive if, as a matter of conscience, the organization cannot implement an advance directive and State law allows any health care provider or any agent of the provider to conscientiously object.
- E. SWMBH/CMHSPs and Contract Providers are not bound to follow expressed desires of any directive(s) if any of the following apply:
1. In the mental health professional's opinion, compliance is not consistent with generally accepted community practice standards of treatment.
 2. The treatment requested is not reasonably available.
 3. Compliance is not consistent with applicable law.



4. Compliance is not consistent with court ordered treatment.
5. In the mental health professional's opinion, there is psychiatric emergency endangering the life of the patient or another individual and compliance is not appropriate under the circumstances.

References:

- A. Medicaid Managed Care Regulations: 42 CFR 422.128, 42 CFR 438.3(j), 42 CFR 438.10 (g), 42 CFR 489.100
- B. MDHHS/PIHP Contract: General Requirements (R5) Advance Directives Compliance
- C. The Michigan Do-Not Resuscitate Procedure Act: Michigan Compiled Laws (MCL) 333.1051-1067 et seq.
- D. The Patient Advocate Act, Part 5 of the Estates and Protected Individuals Code (EPIC): Michigan Compiled Laws (MCL) 700.5506 et seq.

Attachments: None



Revision History

Revision #	Revision Date	Revision Location	Revision Summary	Revisor
1	2/20/15	SWMBH		
2	4/24/15	SWMBH		
3	1/10/17	SWMBH		
4	4/28/17	SWMBH		
5	4/1/19	Policy, Definitions, Standards and Guidelines: A, C1, C5, D, E, References	Update per Managed Care Regulations and MDHHS Contract FY 19	H. Woods
6	4/1/20	Standards and Guidelines: D	Adding information based on 42 CFR 422.128 language	H. Woods
7	6/25/21	References; Standards and Guidelines: C2	Update contract reference. Add clarifying language about timing for checking Advance Directives.	H. Woods
8	5/17/22	Standards and Guidelines: A2 and E6	Added clarifying language based on 42CFR 422.128 language. Renumbered.	H. Woods
9	11/1/22	Renumbering Policy	Renumbering Entire Policy to <u>06.02</u> Advance Directives	H. Woods
10	10/1/24	Throughout	Annual Review	H. Woods






06.02 Advance Directives

Final Audit Report

2024-11-12

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