

**King County Behavioral Health Administrative Services Organization (KCBHASO)
Mental Health Advance Directives – What Clinicians Need to Know**

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What do clinicians need to know about mental health advance directives?	<p>Clients have the <u>right</u> to have a mental health advance directive (MHAD). Clinicians must:</p> <ul style="list-style-type: none"> • Inform clients of this right when client rights are reviewed. • Ask client if they have an advance directive and document the response. • Provide written information to clients about mental health advance directives – brochure here: https://www.hca.wa.gov/assets/free-or-low-cost/22-641en-mental-health-advance-directives-brochure.pdf. • Keep a copy of the advance directive, including any revocations or changes, in the client’s record and with the crisis plan. • Assist client with completing a directive if client desires. • Integrate MHAD with treatment and crisis plans. • Support the use of the MHAD once it’s completed.
What is a MHAD?	<p>A mental health advance directive is a legal document that:</p> <ul style="list-style-type: none"> • Describes treatment and services a client wants and doesn’t want for use in future circumstances in which a person has compromised capacity for decision-making or communication of preferences. • Identifies a person (“agent”) who has been given authority to make decisions on behalf of client when client is incapacitated. Also sometimes called ‘proxy’, ‘surrogated decision-maker’ or Durable Power of Attorney. • Is created by the client at a time when he or she is capable of making treatment decisions in anticipation of a time when he or she is not able to do so. A person is presumed “capable” to complete an advance directive unless formally determined NOT to be capable.
What are the potential benefits of a MHAD?	<ul style="list-style-type: none"> • Provides information about: <ul style="list-style-type: none"> ○ What has worked for the client during past crises? ○ Early symptoms and care alternatives that may reduce hospitalization. • Allows person to get treatment if incapacitated and unable to provide consent. • Empowers clients regarding treatment decisions. • Can provide for a substitute decision-maker called an “agent”. • Increased willingness of clients to seek voluntary treatment during a crisis because they have more control over the process. • Offers a vehicle to share information that normally would be unavailable to crisis/emergency staff.
MHAD elements and form template	<p>Mental health advance directives may include:</p> <ul style="list-style-type: none"> • Descriptions of situations that may cause the person to experience a mental health crisis;

	<ul style="list-style-type: none"> • Preferences, consents, refusals, and instructions for care when incapacitated including, but not limited to: hospitalization, alternatives to hospitalizations, de-escalation strategies, use of seclusion and restraint, medications, whom to notify, whom to have access to records, contacting previous care providers, and instructions for care of children, pets, finances, and home; • Authorization for a named “agent” who: (a) cannot be paid (b) may resign at any time with written notice (c) may not be the client’s provider and (d) can review medication records and provide consent on the person’s behalf, including for voluntary admission to inpatient mental health treatment. <p>Mental health advance directive form: https://www.hca.wa.gov/health-care-services-supports/behavioral-health-recovery/mental-health-advance-directives</p>
Determination of incapacity	<ul style="list-style-type: none"> • Formal determination of incapacity is NOT needed to follow mental health advance directive instructions. It is only needed if a person is disagreeing with their directive AND they have elected to only be able to ‘revoke’ the directive when they have capacity. • The process for formal determination of incapacity, when needed, is detailed in RWC 71.32 and is conducted by: <ul style="list-style-type: none"> ○ Superior Court (client or agent can request it) OR ○ One mental health professional and one health care provider* OR ○ Two health care providers* (<i>*One must be a psychiatrist, psychologist, or psychiatric ARNP</i>). • Determination of incapacity must occur within 48 hours of request and re-evaluated if: (a) hospitalized under the directive - within 72 hours or upon change in condition, (b) an outpatient within 5 days. Client is considered to have capacity if timeframes not met. • Client must be told that determination is being sought. • Client can challenge a determination of incapacity.
Inpatient admission under a MHAD	<p>For clients with advance directives that specify advance consent to hospitalization:</p> <ul style="list-style-type: none"> • Client can be admitted as a <u>voluntary</u> patient for up to 14 days in any 21-day period <ul style="list-style-type: none"> ○ After 14 days (or less if specified in MHAD) the client must: <ul style="list-style-type: none"> ▪ Be referred to a Designated Crisis Responder (DCR); ▪ Remain as voluntary patient (can be encouraged to stay); or ▪ Be released during daylight hours. • Client cannot be: <ul style="list-style-type: none"> ○ Physically forced or restrained to prevent leaving if voluntary; ○ Retained in a hospital unless MHAD instructions are being substantially followed.
Honoring MHAD	<ul style="list-style-type: none"> • Mental Health advance directives must be honored unless instructions: <ul style="list-style-type: none"> ○ Conflict with involuntary treatment order; ○ Conflict with accepted standards of care; ○ Indicate treatment that is unavailable; ○ In an emergency, would endanger any person’s life or health;

	<ul style="list-style-type: none"> ○ Indicate personal services (care of pets, household, finances) that facility doesn't normally provide; ○ Violate law. ● A directive also may be superseded by a court order, even if the order doesn't explicitly reference the directive. ● If unable or unwilling to comply with any part or parts of the directive: <ul style="list-style-type: none"> ○ Promptly notify the client and agent of the reason. ○ Document the reason in the client's record. ● Clinicians are not subject to civil liability or sanctions for unprofessional conduct: <ul style="list-style-type: none"> ○ If directives are honored in good faith and without negligence. ○ If directives cannot be honored and the client and agent are informed and reasons documented in chart. ● The inability to honor one section does not affect the validity of other sections. ● If there is more than one directive, follow the directive most recently created. <p>Directives validly executed in another jurisdiction are considered valid.</p>
Revocation of a MHAD	<ul style="list-style-type: none"> ● A directive may be revoked (in whole or in part), in writing, by: <ul style="list-style-type: none"> ○ A person with capacity ○ An incapacitated person, but only if he or she elected at the time of executing the directive to be able to revoke when incapacitated ○ The revocation is effective upon receipt by the agent and provider
Complaints about non-compliance with an advance directive	<p>Clients may make a complaint about a provider's non-compliance with an advance directive with:</p> <ul style="list-style-type: none"> ● KCBHASO Client Services: 206-263-8997 ● The Behavioral Health Ombuds: 206-205-5329 ● The Washington State Department of Social and Health Services (DSHS): 1-888-713-6010
Additional resources for clients	<p>Washington State Health Care Authority link to MHAD information and form: https://www.hca.wa.gov/health-care-services-supports/behavioral-health-recovery/mental-health-advance-directives</p>
Washington State Law	<p>RCW 71.32 https://app.leg.wa.gov/RCW/default.aspx?cite=71.32&full=true</p>

Mental Health Advance Directives: Here's How They Work

