

HEALTHWEST

Policy and Procedure

No. 04-025

Prepared By:

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Subject: Advance Directives

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I. POLICY

HealthWest (“HW”) will ensure individuals we serve in need of medical and/or resuscitative services shall be immediately referred to an appropriate medical-surgical facility. HW shall recognize a properly executed durable power of attorney or patient advocate designation pursuant to MCL 700.5501-20 (Part 5 of the Michigan Estates and Protected Individuals Code). HW shall honor decisions regarding terminal care by a patient or patient surrogate if a patient is terminally ill, including requests for hospice care. HW shall honor a valid do-not-resuscitate order when required to do so by Michigan law. HW will not provide legal or medical advice or service if the individual we serve expresses a desire to execute an advance directive, but will assist the individual or legal representative with an appropriate referral when requested. Because there are areas of Michigan law regarding advance directives that are currently unsettled, it shall be the policy of HW to continuously update the policy to reflect any changes in state law as soon as possible but no later than ninety (90) days after it becomes effective. HW will not discriminate against any individual based on whether or not the individual has executed an advance directive.

II. PURPOSE

To provide guidelines for staff to meet the requirements of Michigan law and a basis for provision of information by HealthWest regarding Michigan law regarding advance directives to individuals we serve pursuant to 42 USCA 1396a(w).

III. APPLICATION

HealthWest and, as applicable, contracted or direct providers.

IV. DEFINITIONS

- A. **Advance Directive** - A written instruction, such as a living will or durable power of attorney for health care, recognized under state law (whether statutory or recognized by the courts of the state, and relating to the provision of such care when the individual is incapacitated. See 42 USCA 1396a(w)(4)). Under Michigan law this includes, but is not limited to, rights asserted by designation of a patient advocate (MCL 700.5501 *et. seq.*), durable power of attorney for health care (MCL 700.5501 *et. seq.*), or a do-not-resuscitate order or assertion of rights (MCL 333.5651 *et. seq.*, Michigan Dignified Death Act).
- B. **Patient Advocate** - A person who is named in a designation to exercise power concerning care, custody and medical or mental health treatment decisions for the designating person, under the provisions of the Michigan Estates and Protected Individuals Code ("EPIC"), MCL 700.5506(1).
- C. **Patient Surrogate** – Means the parent or legal guardian of a patient who is a minor or a member of the immediate family, the next of kin, or legal guardian of a patient who has a condition other than minority that prevents the patient from giving consent to medical treatment. MCL 333.5653(1)(g).
- D. **Do-Not-Resuscitate Order** - Means a document executed pursuant to Section 3 or 5 of the Do-Not-Resuscitate Procedures Act directing that in the event that a patient suffers cessation of both spontaneous respiration and circulation in a setting outside of a hospital, nursing home, or a mental health facility owned or operated by the Department of Community Health, no resuscitation will be initiated. MCL 333.1052(f).
- E. **Hospice** - Means a health care program that provides a coordinated set of services rendered at home or in outpatient or institutional settings for individuals suffering from a disease or condition with a terminal prognosis. MCL 333.20106(4).
- F. **Terminally Ill** - Terminal illness means a disease or condition due to which, in the opinion of a physician, a patient's death is anticipated within six (6) months after the date of the physician's opinion. MCL 333.5653(1)(a).
- G. **CPR** – Resuscitation utilizing chest compression and artificial respiration according to guidelines of the American Heart Association/American Red Cross.
- H. **Of Sound Mind** – There is a presumption under law that any person is of sound mind, and therefore competent to make decisions. See *Taff v. Hosmer*, 14. Mich. 309 (1866). If this presumption appears to be unreasonable as applied to a person, then HealthWest may request judicial determination of soundness of mind pursuant to the Michigan Mental Health Code (MCL 330.1001 *et. seq.*) and the Michigan Estates and Protected Individuals Code (MCL 700.5501 *et. seq.*).

- I. **Health Care Professional** – For the purposes of the Michigan Do-Not-Resuscitate Procedures Act, the following are included as designated health care professionals, subject to the requirement that the health care professional not institute resuscitation when the health care professional is aware of the existence of a do-not-resuscitate order:
 - 1. A paramedic.
 - 2. An emergency medical technician.
 - 3. An emergency medical technician specialist.
 - 4. A physician.
 - 5. A nurse.
 - 6. A medical first responder.
 - 7. A respiratory therapist.
 - 8. A physician assistant.

- J. **Medical First Responder** – Means an individual who has met the educational requirements of a department approved medical first responder course and who is licensed to provide medical first response life support as part of a medical first response service or as a driver of an ambulance that provides basic life support services only. MCL 333.20906(8).

- K. **Guardian** – Means a person who has qualified as a guardian of a minor or a legally incapacitated individual under a parental or spousal nomination or a Court appointment, and includes a limited guardian as described in MCL §§ 700.5205-6; 770.5306. Guardian does not include a guardian ad litem.

- L. **Guardian Ad Litem** – Means a person appointed by Probate Court before or during a proceeding. Responsibilities may include prosecuting an action on behalf of an individual, providing information to a respondent, conducting an investigation, and making a report and recommendation to the Court. MCL 330.1616.

V. PROCEDURES

HW will develop and adopt procedures that are consistent with the Policy. HW may choose to adopt the following procedures in whole. If HW does not adopt the procedures in whole, then it must demonstrate to the Lakeshore Regional Entity (the PIHP) that its procedures are consistent with the Policy and address all required Federal and State statutes and regulations.

A. Advance Directives

- 1. At the time of the initial face to face professional evaluation, the HW staff person shall make a determination of the legal status of the individual we serve and any person representing the individual. The individual we serve will be provided with information about advance directives in the Member Handbook during their orientation to services. The Member Handbook shall also include a clear and precise statement of HealthWest policy regarding conscientious objections by physicians and staff. The staff will ensure that crisis planning and advance directives are discussed with the individual at the time of the Orientation to Services or Person Centered Planning process. The staff will then document on the Individual Plan of Service (IPOS) form

or the Orientation form that crisis planning and advance directives were discussed with the individual.

- a. If the individual we serve is a legally competent adult over the age of 18, the individual will be asked whether he/she has designated a Patient Advocate under the EPIC for purposes of making medical decisions in the event of future incapacity. Additionally, the individual will be asked whether he/she has a do-not-resuscitate order or other written advance directive regarding medical care. Copies of such documents will be requested and placed in the individual's record. If there is a do-not-resuscitate order, it will be placed in the Alerts/Crisis Plan section of the chart. The individual's chart will be identified with a "DNR" sticker.
- b. If the individual we serve is a legally incapacitated adult, HW shall determine if the individual has a Patient Advocate designated pursuant to the EPIC or a do-not-resuscitate order made while the individual was of sound mind. A do-not-resuscitate order or other advance directive that was executed while the individual was of sound mind shall be honored. A Patient Advocate may make decisions regarding an advance directive only when there is clear and convincing evidence that the decisions made by the Patient Advocate reflect the intent of the individual we serve, as expressed while competent.
- c. If the individual we serve is a legally incapacitated adult without a Patient Advocate or do-not-resuscitate order, HW shall determine whether the individual has a guardian appointed under the EPIC. A guardian appointed under the EPIC has the power to provide approval for necessary medical or other professional care. MCL 700.5314. A guardian may make decisions regarding an advance directive only with clear and convincing evidence of the individual's intent, as expressed while the individual was of sound mind.
- d. If the individual we serve is an adult who has previously been competent and is now not of sound mind, no advance directive or patient advocate designation can be created by interested parties in the absence of clear and convincing evidence of the individual's intent. *In re: Martin*, 450 Mich. 204 (1995).
- e. If the individual we serve is a minor, HW shall determine whether all interested parties, including parents, physicians, spiritual advisors and other family members, agree on an advance directive for the minor. If agreement is present, then HW may accept such an advance directive. If HW disagrees with an advance directive, the determination should be made by the Probate Court. *In re: Rosebush*, 195 Mich. App. 675 (1992); *In re: Martin*, 450 Mich. 204 (1995).
- f. If the individual we serve has a developmental disability and has a guardian appointed under the Michigan Mental Health Code, no advance directive, do-not-resuscitate order or other direction for extraordinary medical procedures may be accepted by HW. If it appears that an advance directive, a do-not-resuscitate order or other extraordinary medical procedure would be in the best interest of

the individual, then the determination shall be made by the Probate Court. See Michigan Attorney General Opinion No. 7056 (2000).

- g. If the individual we serve has a terminal illness, the provisions of the Michigan Dignified Death Act apply. In this case, the individual, or the individual's patient advocate or the individual's surrogate may request palliative treatment only, including, but not limited to, hospice care or pain management, MCL 333.5655(c). This would include the power of an individual's patient advocate or patient surrogate to create a valid do-not-resuscitate order on behalf of the individual we serve.
2. In the event that the individual we serve or legal representative has questions regarding an advance directive, such as a Durable Power of Attorney for Health Care, a do-not-resuscitate order or other rights and limitation of rights, as interpreted by the courts, the individual or legal representative shall be referred to the HealthWest Office of Recipient Rights for consultation/referral. No legal or medical advice will be given by HW staff.
3. At the time of enrollment in services provided through HW, the individual we serve shall be given a written description of their rights regarding advance directives under Michigan law.
4. In the event that the individual we serve/or legal representative executes an advance directive, this shall be documented in the medical record and a copy of the advance directive shall be retained in the medical record filed in the Alert/Crisis Plan section and shall not be purged from the record, unless the advance directive is revoked.
5. If an advance directive exists, HW will confirm with the individual we serve/or legal representative that a copy of the order has been sent to local hospitals and ambulance services.

B. Emergency Situations

In an emergency situation such as an injury or sudden illness:

1. Staff shall provide immediate first aid, including resuscitation if certified and, if necessary, arrange for transportation to an emergency medical facility.
2. Staff shall check the individual's record for documentation of an advance directive. If one exists, staff will copy and deliver it to the paramedics or other emergency personnel, or to the emergency medical facility as soon as possible.
3. Staff shall not interpret advance directive documents or act on any belief about the contents of such documents, except where the Michigan Do-Not-Resuscitate Procedures Act directs that designated health care professionals honor a do-not-resuscitate order. Specifically, if a health care professional arrives at the location

of an individual who has a do-not-resuscitate order outside of a hospital, a nursing home or a mental health facility owned or operated by the Department of Community Mental Health and is aware of the existence of the do-not-resuscitate order, then the health care professional shall not institute resuscitation.

C. Non-Emergency Situations

Staff will honor advance directives contained in an individual's chart.

1. In a residential setting, the assigned nurse shall review the advance directive with the individual, his/her legal representative, family, and the individual's physician, and provide written instruction to residential staff assigned as to how to provide care.
2. In other settings, the HW primary worker shall request instructions from a family physician concerning implementation and shall record such instructions with the advance directive in the chart.

D. Terminal Illness/Hospice Involvement

1. When requested by the individual we serve or a patient advocate or patient surrogate of an individual, hospice services will be accommodated by HW and contract staff.
2. Staff shall defer all medical care and treatment decisions to the individual's private physician, hospice staff, and hospice volunteers when they are present in the home. These decisions include determining when to resuscitate and when to call for emergency medical services.
3. If the private physician, hospice staff, or hospice volunteers are not present, HW and contract staff shall provide comfort and care consistent with the directions supplied by the individual we serve or a legal representative of the individual.

E. Mental Health Advance Directive

1. At the time of the initial face to face professional evaluation, the HW staff person shall make a determination of the legal status of the individual and any person representing the individual. The individual we serve will be provided with information about advance directives in the Member Handbook during the orientation to services. The Member Handbook shall also include a clear and precise statement of HealthWest policy regarding conscientious objections by physicians and staff. The staff will ensure that crisis planning and advance directives are discussed with the individual at the time Orientation of Services or at the Person Centered Planning process. The staff will then document on the Individual Plan of Service (IPOS) or Orientation of Services form that the crisis planning and advance directives were discussed with the individual.

- a. If the individual is a legally competent adult over the age of 18, the individual will be asked whether he/she has designated a Patient Advocate under the EPIC for purposes of making mental health decisions in the event of future incapacity. Copies of such documents will be requested and placed in the individual's record.
 - b. If the individual we serve is a legally incapacitated adult, HW shall determine if the individual has a Patient Advocate designated pursuant to the EPIC made while the individual was of sound mind. A Patient Advocate may make decisions regarding mental health services only when there is clear and convincing evidence that the decisions made by the Patient Advocate reflect the intent of the individual, as expressed while competent.
- F. HW staff will inform individuals that complaints regarding noncompliance with this Policy may be filed with the HW Office of Recipient Rights.
- G. HW will ensure that information provided to the individuals is changed when State law changes as soon as possible, but no later than ninety (90) days after the effective date of the change.
- H. HW will not discriminate against any individual based on whether or not the individual has executed an advance directive.

VI. REFERENCES

42 USCA 1396a(w)
42 USCA 1396a(w)(4)

Michigan Estates and Protected Individuals Code (Act 386 of 1998)
Michigan Dignified Death Act (Act 368 of 1978, Part 56A)
Michigan Do-Not-Resuscitate Procedure Act (Act 193 of 1996)
Michigan Mental Health Code (Act 258 of 1974)
Michigan Public Health Code (Act 368 of 1978, Part 209)

In re: Martin, 450 Mich. 204 (1995)
In re: Rosebush, 195 Mich. App. 675 (1992)
Taff v. Hosmer, 14. Mich. 309 (1866)

Michigan Attorney General Opinion No. 7056 (2000)