Psychiatric Advance Directives

A Toolkit For Providers

Developed for the West Virginia Advocates Protection and Advocacy for Individuals with Mental Illness (PAIMI) Advisory Council

This toolkit was developed to raise awareness of Psychiatric Advance Directives and provide information to individuals interested in developing a Psychiatric Advance Directive. It is not intended to provide legal or medical advice

Table of Contents

Psychiatric Advance Directive Awareness Toolkits

The Psychiatric Advance Directive toolkits were developed for the West Virginia Advocates Protection and Advocacy for Individuals with Mental Illness (PAIMI) Advisory Council and include toolkits for Consumers, Family Members, and Providers. Technical assistance for developing the toolkits and training materials was provided by West Virginia Advocates, the West Virginia Mental Health Consumers' Association and the West Virginia Mental Health Planning Council.

Psychiatric Advance Directives are powerful tools that promote self direction in mental healthcare, and can facilitate mental health recovery. The toolkits and training materials provided are to raise awareness to the benefits of Psychiatric Advance Directives, and to recognize Psychiatric Advance Directives as part of a continuum of care for consumers. To obtain additional copies of the Psychiatric Advance Directive toolkits and inquire regarding training materials please contact West Virginia Advocates at 1-800- 950-5250.

West Virginia Advocates
Phone: 800- 950-5250
Address: 1207 Quarrier St Ste 400 Charleston, WV 25301
Web: **www.wvadvocates.org**

West Virginia Mental Health Consumers Association
Phone: 800-598-8847
Address: 713 Bigley Ave Charleston, WV 25302
Web: **www.wvmhca.org**

West Virginia Mental Health Planning Council
Address: PO Box 1095 Charleston, WV 25324-1095
Phone: 304-552-3819
Web: **www.wvmhpc.org**

This toolkit and supporting materials are available in accessible formats upon request to West Virginia Advocates by calling 1-800- 950-5250

What is an Advance Directive?

An advance directive is a written and signed document which expresses acts or actions consumers want taken in the event they are in crisis and are unable to express their wishes or take action on their own. An advance directive may describe under what conditions someone may assume control over financial affairs--and who should have that power. It may provide information on who may assume control over decisions about life support--or simply describe what to do in the event life supports are believed to be necessary.

A psychiatric advance directive can be written to describe what individuals want done in the event they are in a mental health crisis. This document must be written during a time when the illness is not severe enough to impair the individual's judgment. It may be used as a tool to possibly prevent involuntary treatment or commitment. Even if it is determined that commitment is necessary, an advance directive can be used to identify treatment(s) that reflect the individuals choices.

Someone may write an advance directive to specify their choices for treatment or they may designate a power of attorney for medical decisions. An advance directive may also be written with both provisions: treatment choices and someone to represent medical decisions. Neither the desired treatments nor the medical power of attorney would be used unless the individual is unable to make decisions. An individual would describe the circumstances under which they would want the advance directive to be followed.

In short, a Psychiatric Advance Directive helps individuals maintain choice and control in their mental health treatment. It decreases the possibility of involuntary treatment and all that goes with it: being taken into custody, facing a commitment hearing, and individuals being taken to a hospital against their will. It increases the possibility that treatment will be continuous, providing recognition that the consumer's preferences for treatment may change in a crisis, but recognizing their choices as an important part of the recovery process.

Why Providers Should be Interested in Advance Directives

The commitment process is almost as difficult for providers as it for people with a mental illness or family members of such persons. Difficulties are far less personal for providers. They include the resources needed to initiate and process a commitment and the potential of damaging a therapeutic relationship.

When a consumer of mental health services has an advance directive, commitment procedures may not be necessary. The implementation of an advance directive may make it unnecessary to initiate commitment procedures, since treatment is provided during a crisis. The treatment and interventions are determined and planned by the consumer.

Advance directives are an extension of a consumer's informed choice of treatment. They describe circumstances that the consumer identifies as crisis points. They offer ways in which a

consumer desires crises to be addressed. They suggest treatment(s) which a consumer believes have not been helpful in the past--or which have had adverse affects on the consumer. Consumers have the right to have an advance directive included in their treatment plan. It can serve as a crisis intervention plan. It can enable implementation of crisis intervention early in a crisis rather than when the crisis requires involuntary inpatient hospitalization.

What is my Role as a Provider in Developing an Advance Directive?

Providers must inform consumers of *their right* to develop an advance psychiatric directive. The West Virginia Behavioral Health Consumer Rights rule – 64 CSR 74- requires behavioral health providers to notify consumers of their right to create a Psychiatric Advance Directive. This can be done anytime when the consumer is well, including the intake process. Informing consumers that advance directives can be developed and implemented can also be a part of the treatment planning process.

A Federal law known as the Patient Self Determination Act (1994) requires providers including hospitals, skilled and other nursing homes, home health providers, hospice, and personal care providers who receive Medicare or Medicaid payments to provide community education and also educate staff on advance directives and applicable state laws regarding advance directives. The state agency responsible for approving Medicaid and Medicare providers has a responsibility under this Federal act to develop a description of the state's law for providers use in their education efforts as well as keeping this information current.

Creating a "crisis plan" can be a first step in developing an advance directive. Creating the plan is a part of "best practices" in establishing a process of informed choice. All alternatives should be explored – with a discussion of what services and supports are available and what is not, what has seemed to work for the consumer in the past and what has not, and the consumer's preferences.

A provider cannot be responsible for developing the advance directive. If requested, the provider can offer support for drafting the content of an advance directive. It is important for the provider to empower and encourage the consumer to develop his or her own document. It is likely that an advance directive written by anyone other than the consumer will be rejected at the time of a crisis, and does not facilitate self direction or choice.

What if the Consumer is in Crisis but Rejects the Advance Directive?

Any advance directive can be rejected verbally or in writing by the consumer anytime after it is signed. A consumer in crisis should be reminded of the advance directive and the thinking that went into creating it. If the directives are rejected by the consumer, alternatives to implementing the advance directive should be offered.

If the crisis persists and the consumer is at risk of becoming dangerous to self or others, commitment proceedings may be instituted. The advance directive can be utilized in considering alternatives during the commitment process. That is, even when the advance directive itself is rejected, the selected treatment(s) may be ordered as a part of the involuntary treatment if the person is determined to be likely to do harm to themselves or others.

If a person is hospitalized as a result of a probable cause commitment or a final commitment, the provider should inform the treating physician of the existence of an advance

directive. Often, physicians have a range of treatment choices. The preferences of the consumer may guide the physician in selecting treatment(s) the consumer believes will be most helpful. This will assist the physician and will usually result in improved treatment relationship with the consumer – and more rapid recovery.

What other factors should be considered in providing information regarding an Advance Directive?

The existence and implementation of an advance directive can prevent the need for filing an application for commitment, conducting an evaluation, and providing the testimony at a hearing. There is a cost savings for the provider, law enforcement charged with the responsibility of detaining an individual for an evaluation, and for the Court. Including an advance directive in a treatment plan can enhance self direction in the individual's mental healthcare.

The advance directive also enables treatment at the time of a crisis to begin earlier in the crisis, typically resulting in improving the individual's chances of remaining in the community for treatment as opposed to being involuntarily hospitalized. Other intensive services – sometimes not desired or needed by the consumer or not resulting in crisis resolution – can be replaced by the treatment(s) described in the advance directive. There is a cost savings as well as more involvement and self direction in treatment and treatment planning. Treatments which have a negative effect on the consumer's recovery are not applied, also saving time and costs in crisis resolution.

Self direction in healthcare is highly valued and is an effective way to deliver services. Consideration, writing, and signing an advance psychiatric directive facilitate implementation of that self direction. The consumer becomes a true participant in the treatment; a true director of his or her own treatment.

PROVIDER CONSIDERATIONS

- Advance directives can describe treatment(s) a consumer wants in the event of a crisis
- A consumer has the right to reject their Advance Directive verbally or in writing at any time
- Rejection of the advance directive must be respected and honored
- Involuntary treatment may be requested – or imposed in an emergency – even when there is an advance directive
- Applications for involuntary treatment should be made only when the consumer is deemed to be dangerous to self or others

Resources

ADVANCE SELF-ADVOCACY PLAN (ASAP)
http://www.upennrrtc.org/resources/view.php?tool_id=200

NATIONAL RESOURCE CENTER ON PSYCHIATRIC ADVANCE DIRECTIVES
http://www.nrc-pad.org/component/option,com_frontpage/Itemid,1/

WELLNESS RECOVERY ACTION PLANNING (WRAP)
http://www.mentalhealthrecovery.com/recovery_crisisplanning.php

West Virginia Mental Health Consumers' Association (WVMHCA) Wellness Recovery Action Planning (WRAP) PROJECT
1-800-598-8847

WEST VIRGINIA ADVOCATES
Advance Directive Toolkits for Consumers, Family Members, and Providers
Phone: 800) 950-5250
Address: 1207 Quarrier St Ste 400 Charleston, WV 25301
Web: **www.wvadvocates.org**

Appendices

Appendix A
Patient Self Determination Act

Appendix B
West Virginia Behavioral Health Consumer Rights

Appendix C
West Virginia Healthcare Decisions Act

Appendix D
Psychiatric Advance Directives Information for Family Members PowerPoint Presentation

Appendix E
West Virginia Living Will Form

Appendix F
West Virginia Power of Attorney Form

FEDERAL PATIENT SELF-DETERMINATION ACT
FINAL REGULATIONS

PART 489-PROVIDER AND SUPPLER AGREEMENTS

The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102,1861. 1864. 1866. 1867, and 1871 of the Social Security Act (42 U.S.C. 1302.1395x. 1395aa. 1395cc. 1395dd. and 1395hh) and sec. 602 (k) of Pub. L. 9621 (42 U.S.C 1395ww note).

Subpart 1 Advance Directives

Section 489.100 Definitions

For the purposes of this part "advance directive" means a written instruction, such as a living will or durable power of attorney for health care, recognized under state law (whether statutory or as recognized by the courts of the State), relating to the provision of health care when the individual is incapacitated.

Section 489.102 Requirements for providers

(a) Hospitals, rural primary care hospitals, skilled nursing facilities, nursing facilities, home health agencies, providers of home health-care (and for Medicaid purposes, providers of personal care services), and hospices must maintain written policies and procedures concerning advance directives with respect to all adult individuals receiving medical care by or through the provider and are required to:

(1) Provide written information to such individuals concerning—

(i) An individual's rights under State law (whether statutory or recognized by courts of the State) to make decisions concerning such medical cars, including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual's option, advance directives. Providers are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the requirements of this section are met. Providers are to update and disseminate amended information as soon as possible, but no later than 90 days from the effective date of the changes to State law; and

(ii) The written policies of the provider or organization respecting the implementation of such rights, including a clear and precise statement of limitation if the provider cannot implement an advance directive on the basis of conscience. At a minimum, a provider's statement of limitation should:

(A) Clarify any differences between institution wide conscience objections and those that may be raised by individual physicians:

(B) Identify the state legal authority permitting such objections.

(C) Describe the range of medical conditions or procedures affected by the conscientious objection.

(2) Document in the individual's medical record whether or not-the individual has executed an advance directive.

(3) Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive.

(4) Ensure compliance with requirements of State law (whether statutory- or recognized by the courts of the State) regarding advance directives. The provider must inform individuals that complaints concerning the advance directive requirements may be filed with the State survey and certification agency.

(5) Provide education for staff concerning its policies and procedures on advance directive; and,

(6) Provide for community education regarding issues concerning advance directives that may

include material required in paragraph (a)(1) of this section, either directly or in concert with other providers and organizations. Separate community education materials may be developed and used, at the discretion of providers. The same written materials do not have to be provided in all settings, but the material should define what constitutes an advance directive, emphasizing that an advance directive is designed to enhance an incapacitated individual's control over medical treatment, and describe applicable State law concerning advance directives. A provider must be able to document its community education efforts.

(b) The information specified in paragraph (a) of this section is furnished:

(1) In the case of a hospital, at the time of the individual's admission as an inpatient.

(2) In the case of a skilled nursing facility at the time of the individual's admission as a resident.

(3)(i) In the case of a home health agency, in advance of the individual coming under the care of the agency. HHA may furnish advancer directives information to a patient at the time of the first home visit, as long as the information is furnished before care is provided.

(ii) In the case of personal care services, in advance of the individual coming under the care of the personal care services provider. The personal care provider may furnish advance directives information to a patient at the time of the first home visit, as long as the information is furnished before care is provided.

(4) In the case of a hospice program, at the time of initial receipt of hospice care by the individual in the program.

(c) The providers listed in paragraph (a)of this section—

(1) Are not required to provide care that conflicts with an advance directive.

(2) Are not required to implement an advance directive if, as a matter of conscience, the provider cannot implement an advance directive and State law allows any health care provider or any agent of such provider to conscientiously object.

(d) Prepaid or eligible organizations (as specified in sections 1883 (a)(1)(A) and 1876 (b) of the Act) must meet the requirements specified in ' 417.436 of this chapter. **

(e) If an adult individual is incapacitated- at the time of admission or at the start of care and is unable to receive information-(due to the incapacitating conditions or a mental disorder) or articulate whether or not he or she has executed an advance directive, then the provider may give advance directive information to the individual's family or surrogate in the same manner that it issues other material about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The provider is not relieved of its 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 must be in place to provide the information to the individual directly at the appropriate time.

** The Regulations governing prepaid organizations (HMOs) mirror this part. Information is to be provided to individuals at the time of enrollment.

Federal Register Citations:

Final Revisions: Vol. 60. No. 123, Tuesday. June 27, 1995, page 33294 forward

Interim Final Rule: Vol. 57 No. 45, Friday March 6, 1992, pages 8194-8204

TITLE 64
LEGISLATIVE RULE
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 74
BEHAVIORAL HEALTH CONSUMER RIGHTS

'64-74-1. General.

1.1. Scope. -- This legislative rule establishes personal rights of individuals with behavioral health needs.

1.2. Authority. -- W. Va. Code ' 27-5-9(g).

1.3. Filing Date. -- April 13, 2000.

1.4. Effective Date. -- July 1, 2000.

1.5. Construction. -- This rule shall be liberally construed to effectuate the rehabilitative goals of Chapter 27 of the West Virginia Code, consistent with the protection of consumer rights and dignity.

1.6. Applicability. -- This rule applies to individuals with behavioral health needs.

'64-74-2. Definitions.

2.1. Abuse. B

2.1.a. Physical Abuse. -- Any act or failure to act by an employee of a behavioral health service that was knowingly, recklessly, or intentionally performed, or that was failed to be performed, and that caused, or may have caused, injury or death to an individual, including, but not limited to:

2.1.a.1. The rape or sexual assault of an individual;

2.1.a.2. The striking of an individual;

2.1.a.3. The use of excessive force when placing an individual in bodily restraints; and

2.1.a.4. The use of physical or chemical restraints that is not in compliance with federal or State law.

2.1.b. Verbal Abuse. -- Means any use of oral, written ore gestured language by which abuse occurs. This includes demeaning and derogatory terms to describe persons with disabilities. Verbal abuse includes, but is not limited to:

2.1.b.1. Yelling or using demeaning, derogatory, vulgar, profane or threatening language;

2.1.b.2. Threatening tones in speaking;

2.1.b.3. Teasing, pestering, molesting, deriding, harassing, mimicking or humiliating a consumer

in any way; or

2.1.b.4. Making sexual innuendo.

2.2. Advance Psychiatric Directive. -- Any instruction written and signed by a consumer, describing preferences in health care written when the consumer is competent and psychiatrically stable and implemented when the consumer is not able to make informed decisions in the absence of an advance psychiatric directive.

2.3. Behavioral Health. -- Mental health, developmental disabilities, or substance abuse.

2.4. Behavioral Health Service. -- An inpatient, residential or outpatient service for the care and treatment of individuals with mental illness, developmental disabilities or substance abuse.

2.5. Consumer. B An individual receiving treatment or services in or from a behavioral health service.

2.6. Individualized Program Plan (IPP). -- A master behavioral health treatment plan which is a written, individualized plan specifically tailored to individual needs, including a complete, thorough review of the consumer=s strengths, weaknesses, response to initial interventions and prognosis for resolution of acute symptoms, and other components as indicated in this rule.

2.7. Legal Representative[1]. B A person or agency with legal authority to exercise some degree of control over a consumer=s affairs; namely, one of the following that is the most appropriate to the decision to be made:

2.7.a. A conservator, temporary conservator or limited conservator appointed pursuant to the West Virginia Legal Guardianship and Conservatorship Act, W. Va. Code '44A-1-1 et seq., within the limits set by the order;

2.7.b. A guardian, temporary guardian or limited guardian appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code '44A-1-1 et seq., within the limits set by the order;

2.7.c. An individual appointed as committee or guardian prior to June 9, 1994, within the limits set by the appointing order and W. Va. Code '44A-1-2(d);

2.7.d. A person having a medical power of attorney pursuant to the West Virginia Medical Power of Attorney Act, W. Va. Code '16-30A-1 et seq., within the limits set by the law and the appointment;

2.7.e. A representative payee under the U.S. Social Security Act, Title 42 US Code '301 et seq., within the limits of the payee's legal authority;

2.7.f. A surrogate decision-maker appointed pursuant to the West Virginia Health Care Surrogate Act, W. Va. Code '16-30B-1 et seq., or the West Virginia Do Not Resuscitate Act, '16-30C-1 et seq., within the limits set by the appointment;

[1] Behavioral health services should note that the various types of legal representatives do not necessarily have the lawful authority to act on behalf of the resident in all matters that shall require action by a legal representative. For example, a conservator has responsibility for financial affairs, but not personal affairs, such as medical care.

2.7.g. An individual having a durable power of attorney pursuant to W. Va. Code '39-4-1, or a power of attorney under common law, within the limits of the appointment;

2.7.h. An individual identified pursuant to W. Va. Code '16-3C-4 to grant consent for HIV-related testing and for the authorization of the release of test results;

2.7.i. A parent or guardian of a minor; or

2.7.j. An individual lawfully appointed in a similar or like relationship of responsibility for a consumer under the laws of this State, or another legal jurisdiction, within the limits of the applicable law.

2.8. Mechanical Supports. -- Devices used to support an individual=s proper body position or alignment.

2.9. Neglect. -- A negligent act or a pattern of actions or events that caused or may have caused injury or death to a consumer, or that placed a consumer at risk of injury or death, that was committed by an individual responsible for providing services in a behavioral health service. Neglect includes, but is not limited to:

2.9.a. A pattern of failure to establish or carry out a consumer=s individualized program plan or treatment plan that placed or may have placed a consumer at risk of injury of death;

2.9.b. A pattern of failure to provide adequate nutrition, clothing, or health care;

2.9.c. Failure to provide a safe environment; and

2.9.d. Failure to maintain sufficient, appropriately trained staff.

2.10. Restraint. B A temporary behavior control intervention.

2.10.a. Chemical Restraint. -- The use of medication as a behavior control mechanism to substitute for seclusion or other restraint.

2.10.b. Physical Restraint. -- Any manual method or physical or mechanical device that the individual cannot remove easily, and that restricts the free movement of, normal functioning of, or normal access to a portion or portions of a consumer=s body. Examples of manual methods include therapeutic or basket holds and prone or supine containment. Examples of mechanical devices include arm splints, posey mittens, helmets and straight jackets. Excluded are physical guidance, prompting techniques of brief duration, and mechanical supports.

2.11. Seclusion. -- The placement of a consumer alone in a room or enclosed space with closed doors that a consumer cannot open from inside.

2.12. Secretary. -- The Secretary of the West Virginia Department of Health and Human Resources or his or her designee.

2.13. Treatment Plan. -- Means a written design based on the assessment of a consumer=s needs and strengths that identifies problems, sets client-centered goals and objectives and describes all services, programs and activities currently required to support the achievement of the goals and objectives.

'64-74-3. Applicability to Other Standards.

When an individual receives care or treatment from a behavioral health service, state and federal requirements, accreditation standards applicable to the behavioral health service and the standards set forth in this rule apply. If there is a conflict between those requirements, accreditation standards and the standards specified in this rule, the more stringent standard applies, unless the federal standard must be met for the purposes of Medicare or Medicaid participation, then the federal standard prevails. Behavioral health service providers accredited by a national accreditation agency are deemed to be in compliance with this rule.

'64-74-4. General Rights.

4.1. A consumer with behavioral health needs has the following general rights:

4.1.a. The right not to be discriminated against because of the receipt of behavioral health services.

4.1.b. The right to exercise his or her civil rights, except as abrogated by court order or for the reasons provided in this rule;

4.1.c. The right to be informed of these rules and, if an inpatient in a behavioral health service, the right to be given a copy of them;

4.1.d. The right of a consumer, who resides in congregate living arranged for by a behavioral health service provider, to be housed with other consumers of similar age and need unless otherwise specified in the consumer=s individualized program plan or treatment plan;

4.1.e. The right to privacy and the right to move about freely, unless his or her safety or the safety of others is threatened;

4.1.f. The right not to be deprived of any right as punishment or for clinical reasons, except when an incident occurs related to the exercise of a right, the right may be deprived for clinical reasons, but only for as long as is necessary to permit correction of a situation; and

4.1.g. The right of a consumer receiving care and treatment to receive it in accordance with accepted behavioral health and medical practice standards.

'64-74-5. Advance Psychiatric Directive Right.

5.1. A consumer with psychiatric or mental health needs has a right to an advance psychiatric directive prepared at a time when the individual has not been adjudged to be incompetent. Any advance psychiatric directive written and signed by a consumer may be withdrawn at any time verbally or in writing.

5.2. A consumer has the right to be informed by a behavioral health service of the availability and applicability of an advance psychiatric directive and to receive education and assistance from the behavioral health service in preparing such a document.

5.3. A consumer has the right to refuse to create an advance psychiatric directive.

5.4. A consumer with an advance psychiatric directive has the right to have it entered into his or her clinical record at the behavioral health service at which he or she is receiving or may receive care or treatment;

5.5. An advance psychiatric directive shall be honored unless:

5.5.a. It is withdrawn verbally or in writing by a consumer;

5.5.b. The behavioral health service lacks sufficient resources;

5.5.c. A professional staff member of the behavioral health service believes that the directive would endanger the consumer=s life or be dangerous to others.

5.6. A consumer has the right to be informed of the behavioral health service=s reason for not honoring his or her advance psychiatric directive.

5.7. Nothing in this section should be interpreted to prevent any individual with behavioral health needs from entering into an advance directive related to preferences in health care or conduct of business.

'64-74-6. Informed Consent Right.

6.1. In order for a consumer to give informed consent for care or treatment, a behavioral health service shall inform him or her of the following:

6.1.a. The rights provided under this rule;

6.1.b. The nature of his or her condition and the treatment proposed;

6.1.c. Any reasonable alternative treatments available;

6.1.d. That consent for any part of treatment may be withdrawn at any time in writing or verbally to a member of the treatment staff. Revocation of consent shall be documented on the consent form, and further treatment shall not be provided except as authorized in an emergency;

6.1.e. The reason for taking a proposed medication, including the likelihood of the consumer's condition improving or not improving without the proposed medication;

6.1.f. The type, dosage, including the use of PRN (as needed) orders, the method of administration (oral or injection), and the duration of taking the proposed medication; and

6.1.g. The common side effects, any side effects probable with the particular consumer, and additional side effects that may occur when taking the proposed medication longer than three (3) months.

6.2. In the absence of written consent, if treatment is provided to a consumer, he or she has the right to documentation of the precipitating causes for providing the treatment.

6.3. The procedures outlined in this section shall not apply to those individuals who:

6.3.a. Need life-saving medication for chronic medical conditions, such as diabetes or heart disease; or

6.3.b. Have been taking medications prior to admission and have not refused to continue the medication, even though they may not be able to give informed consent.

'64-74-7. Right to Treatment.

7.1. A consumer has the right to treatment in the least restrictive setting possible.

7.2. A consumer has the right to treatment that is provided humanely in an environment that affords them full protection of their rights.

7.3. A consumer has the right to treatment by trained and competent personnel capable of implementing the consumer=s individualized program plan or treatment plan.

7.4. A consumer has the right to periodic evaluations related to his or her needs no less frequently than every one hundred eighty (180) days while an active consumer of a behavioral health service.

7.5. A consumer has the right to treatment based on diagnosis and assessment of their needs.

7.6. A consumer has the right to treatment based on a treatment plan that identifies immediate needs and interventions and responsibility for implementing the plan.

7.7. A consumer has the right to have treatment plans updated every ninety (90) days or as his or her needs change.

7.8. A consumer has the right to participate in the development of his or her individualized program plan or treatment plan and any revisions.

7.9. A consumer has the right to have a copy of his or her individualized program plan or treatment plan.

7.10. A consumer has the right to have present at any treatment planning or discharge planning meeting representatives of all disciplines providing treatment to the consumer and any other individual, including the consumer=s case manager and family members.

7.11. A consumer has the right to have recorded all treatments administered.

7.12. A consumer who resides in an inpatient behavioral health service for more than fourteen (14) days has the right to outdoor exercise and activity programming conforming with the Division of Health rule, ABehavioral Health Client Rights,@ 64CSR59, ''14.1-14.3.

'64-74-8. Right to Refuse Treatment.

8.1. As a participant in the program planning process, a consumer has the right to object to or refuse any aspect of the individualized program plan or treatment plan.

8.2. If informal discussion and negotiation do not resolve differences, a consumer's right to object to or refuse treatment shall be recognized as legitimate, and shall be responded to in accordance with the provisions of the behavioral health service=s consumer grievance procedure.

8.3. A consumer who has refused psychotropic medications or other recommended therapy has the right to have an agreed-upon effective alternative treatment offered, and it shall be provided if the consumer consents and if within the scope of the behavioral health service=s practice.

8.4. A consumer has the right to orally refuse medication or other treatment that overrides prior written consent, except in emergency situations in which it is documented that the absence of medication or other

treatment would be harmful to the consumer or others.

'64-74-9. Right to Refuse Research and Experimental Treatment.

9.1. A consumer has the right to refuse to participate in or be subjected to research or experimental treatment. Participation by a consumer shall require voluntary, informed and written consent, and an opportunity for consultation with independent specialists and with his or her legal representative.

'64-74-10. Rights Regarding Seclusion and Restraints.

10.1. A consumer has the right to freedom from seclusion and restraints unless the restraints are documented as clinically necessary and all other less restrictive measures have been exhausted.

10.2. A consumer with a single diagnosis of mental retardation or another developmental disability has the right not to be secluded or restrained, but time-out procedures may be used when they have been developed specifically for the consumer and described in the consumer=s treatment plan.

10.3. A consumer has the right to not have seclusion used as punishment. Seclusion may be used only as an emergency measure to control imminent destructive behavior that is a threat to a consumer or to others.

10.4. A consumer has the right to not have physical restraints used as punishment or as a convenience of staff.

10.5. A consumer has the right for drugs or medications to not be used as punishment, as a convenience of staff, as a substitute for adequate staffing, or as a substitute for an individualized program plan or treatment plan.

'64-74-11. Right of Confidentiality.

11.1. A consumer has the right to have all information about his or her diagnosis and treatment kept confidential.

11.1.a. Confidential information includes, but is not limited to:

11.1.a.1. Information obtained during diagnosis or treatment, including the fact that an individual is or has been a consumer;

11.1.a.2. Information provided by a consumer or his or her family for purposes related to diagnosis or treatment;

11.1.a.3. Information provided by the treatment staff;

11.1.a.4. Diagnoses, opinions or remarks made by treatment staff that relate to a consumer=s treatment;

11.1.a.5. Advice, instructions, or prescriptions issued in the course of diagnosis or treatment; and

11.1.a.6. Any record of a consumer=s treatment.

11.1.b. Confidential information does not include: information which does not identify a consumer;

information from which a person acquainted with a consumer would not recognize the consumer; and encoded information from which there is no possible means to identify a consumer.

11.2. A consumer has the right to have information relating to his or her treatment disclosed only:

11.2.a. In a proceeding under W. Va. Code '27-5-4 to disclose the results of an involuntary examination made pursuant to W. Va. Code ''27-5-2 or -3;

11.2.b. In a proceeding under W. Va. Code '27-6A-1 e seq. to disclose the results of an involuntary examination made pursuant to those provisions;

11.2.c. Pursuant to a court order;

11.2.d. To the attorney of the consumer, whether or not in connection with pending judicial proceedings;

11.2.e. To agencies requiring information necessary to make payments to or on behalf of the consumer pursuant to contract or in accordance with law, provided that only such information shall be released to third-party payers as is required to certify that covered services have been provided;

11.2.f. To protect against a clear and substantial danger of imminent injury by a consumer to self or another; and

11.2.g. For internal review purposes of the behavioral health service, to the treatment staff, to other health professionals involved in a consumer=s treatment, on the consumer=s request to anyone designated, or in compliance with applicable federal law, within the meaning of W. Va. Code '27-5-9(e) and/or '27-5-9(3)(i).

11.3. A consumer has the right to be informed about the limits of confidentiality in this rule.

11.4. Consent for Disclosure.

11.4.a. A consent for the disclosure of confidential information shall be in writing and signed by the consumer, or by his or her legal representative. A consumer who signs a consent has the right to a copy of the consent.

11.4.b. A consumer shall not be denied treatment on the basis of refusing to provide consent to disclose confidential information, except when and to the extent disclosure is necessary for treatment, or for the substantiation of a claim for payment for treatment from a source other than the consumer.

'64-74-12. Right to Unrestricted Communication.

12.1. A consumer has the right to unimpeded and private communication by any means with whomever a consumer chooses, except as specified in this rule.

12.2. A consumer=s right to communication, except for that with his or her legal representative, may be restricted or denied if authorized by the treatment staff or the attending physician for a specified time not to exceed thirty (30) days, after which time the restriction may be reviewed and reinstated.

'64-74-13. Rights Regarding Labor, Earnings, and Funds.

13.1. A consumer has the right not to be required to perform uncompensated labor that involves the operation and maintenance of a behavioral health service, but may voluntarily perform it with compensation in accordance with the requirements of relevant State and federal requirements.

13.2. A consumer shall not suffer consequences for refusing to perform uncompensated labor for a behavioral health service.

13.3. A consumer may perform vocational training tasks that do not involve the operation and maintenance of the behavioral health service when the assignment:

13.3.a. Is an integrated part of a consumer=s individualized program plan or treatment plan;

13.3.b. Has been approved as a program activity by the treatment staff; and

13.3.c. Is supervised by a staff member.

13.4. A consumer has unlimited access to his or her funds except as provided by West Virginia law, or by regulations promulgated by the Social Security Administration.

'64-74-14. Juveniles= Additional Rights.

14.1. A consumer under the age of eighteen (18) has the right to be housed separately from emancipated consumers over the age of eighteen (18).

14.2. A consumer under the age of eighteen (18) has the right to an education.

14.3. A consumer under the age of eighteen (18) has the right to appropriate contact and communication with his or her family members and legal representative.

14.4. A consumer under the age of eighteen (18) has the right to be informed about behavior expectations for the protection of others.

14.5. All other rights under this rule apply to consumers under the age of eighteen (18).

'64-74-15. Right of Advocacy and Grievance Procedure.

15.1. A consumer has the right to be informed of and receive a written copy of the behavioral health service grievance procedure.

15.2. A consumer, or another person acting on a consumer=s behalf, has the right to file a grievance with the behavioral health service concerning any alleged violation of the rights afforded by this rule.

15.3. A consumer has the right to discuss a grievance with their professional behavioral health care provider or with an advocate of his or her choosing.

15.4. A consumer has the right to receive a reasonable and timely written decision from the behavioral health service.

15.5. A consumer may, after receipt of the decision or lack of a timely decision on his or her grievance, request a hearing by the Secretary or bring action in circuit court against the behavioral health service.

15.6. A consumer has the right to withdraw his or her grievance at any time.

15.7. The final order by the Secretary after a hearing shall be binding upon the parties, unless appealed in accordance with W. Va. Code ''29A-5 and -6.

15.8. A consumer has the right to pursue other relief even if he or she does not file a grievance.

15.9. A consumer has the right to report any reasonable suspicion of abuse or neglect to civil and criminal authorities in accordance with the applicable adult protective services act (W. Va. Code '9-6-1 et seq.) or child protective services act (W. Va. Code '49-6A-1 et seq.), in addition to usingthe grievance procedure of the behavioral health service.

WEST VIRGINIA STATUTES

§16-30-2. Legislative findings and purpose.

(a) *Purpose*. -- The purpose of this article is to ensure that a patient's right to self-determination in health care decisions be communicated and protected; and to set forth a process for private health care decision making for incapacitated adults, including the use of advance directives, which reduces the need for judicial involvement and defines the circumstances under which immunity shall be available for health care providers and surrogate decision makers who make health care decisions.
The intent of the Legislature is to establish an effective method for private health care decision making for incapacitated adults, and to provide that the courts should not be the usual venue for making decisions. It is not the intent of the Legislature to legalize, condone, authorize or approve mercy killing or assisted suicide.

(b) *Findings*. -- The Legislature hereby finds that:

(1) Common law tradition and the medical profession in general have traditionally recognized the right of a capable adult to accept or reject medical or surgical intervention affecting one's own medical condition;

(2) The application of recent advances in medical science and technology increasingly involves patients who are unconscious or otherwise unable to accept or reject medical or surgical treatment affecting their medical conditions;

(3) Such advances have also made it possible to prolong the dying process artificially through the use of intervening treatments or procedures which, in some cases, offer no hope of medical benefit;

(4) Capable adults should be encouraged to issue advance directives designating their health care representatives so that in the event any such adult becomes unconscious or otherwise incapable of making health care decisions, decisions may be made by others who are aware of such person's own wishes and values; and

(5) The right to make medical treatment decisions extends to a person who is incapacitated at the moment of decision. An incapacitated person who has not made his or her wishes known in advance through an applicable living will, medical power of attorney or through some other means has the right to have health care decisions made on his or her behalf by a person who will act in accordance with the incapacitated person's expressed values and wishes, or, if those values and wishes are unknown, in the incapacitated person's best interests.

§16-30-3. Definitions.

For the purposes of this article:

(a) "Actual knowledge" means the possession of information of the person's wishes communicated to the health care provider orally or in writing by the person, the person's medical power of attorney representative, the person's health care surrogate or other individuals resulting in the health care provider's personal cognizance of these wishes. Constructive notice and other forms of imputed knowledge are not actual knowledge.

(b) "Adult" means a person who is eighteen years of age or older, an emancipated minor who has been established as such pursuant to the provisions of section twenty-seven, article seven, chapter forty-nine of this code or a mature minor.

(c) "Advanced nurse practitioner" means a registered nurse with substantial theoretical knowledge in a specialized area of nursing practice and proficient clinical utilization of the knowledge in implementing the nursing process, and who has met the further requirements of title 19, legislative rules for West Virginia board of examiners for registered professional nurses, series 7 , who has a mutually agreed upon association in writing with a physician and has been selected by or assigned to the person and has primary responsibility for treatment and care of the person.

(d) "Attending physician" means the physician selected by or assigned to the person who has primary responsibility for treatment and care of the person and who is a licensed physician. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under this article.

(e) "Capable adult" means an adult who is physically and mentally capable of making health care decisions and who is not considered a protected person pursuant to the provisions of chapter forty-four-a of this code.

(f) "Close friend" means any adult who has exhibited significant care and concern for an incapacitated person who is willing and able to become involved in the incapacitated person's health care and who has maintained regular contact with the incapacitated person so as to be familiar with his or her activities, health and religious and moral beliefs.

(g) "Death" means a finding made in accordance with accepted medical standards of either: (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible cessation of all functions of the entire brain, including the brain stem.

(h) "Guardian" means a person appointed by a court pursuant to the provisions of chapter forty-four-a of this code who is responsible for the personal affairs of a protected person and includes a limited guardian or a temporary guardian.

(i) "Health care decision" means a decision to give, withhold or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a nursing home or other facility, home health care and organ or tissue donation.

(j) "Health care facility" means a facility commonly known by a wide variety of titles, including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care facility, physicians' office and clinic, extended care facility operated in connection with a hospital, nursing home, a hospital extended care facility operated in connection with a rehabilitation center, hospice, home health care and other facility established to administer health care in its ordinary course of business or practice.

(k) "Health care provider" means any licensed physician, dentist, nurse, physician's assistant, paramedic, psychologist or other person providing medical, dental, nursing, psychological or other health care services of any kind.

(l) "Incapacity" means the inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented and to communicate that choice in an unambiguous manner.

(m) "Life-prolonging intervention" means any medical procedure or intervention that, when applied to a person, would serve to artificially prolong the dying process or to maintain the person in a persistent vegetative state. Life-prolonging intervention includes, among other things, nutrition and hydration administered intravenously or through a feeding tube. The term "life-prolonging intervention" does not include the administration of medication or the performance of any other medical procedure considered necessary to provide comfort or to alleviate pain.

(n) "Living will" means a written, witnessed advance directive governing the withholding or withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with the requirements of section four of this article.

(o) "Mature minor" means a person less than eighteen years of age who has been determined by a qualified physician, a qualified psychologist or an advanced nurse practitioner to have the capacity to make health care decisions.

(p) "Medical information" or "medical records" means and includes without restriction any information recorded in any form of medium that is created or received by a health care provider, health care facility, health plan, public health

authority, employer, life insurer, school or university or health care clearinghouse that relates to the past, present or future physical or mental health of the person, the provision of health care to the person, or the past, present or future payment for the provision of health care to the person.

(q) "Medical power of attorney representative" or "representative" means a person eighteen years of age or older appointed by another person to make health care decisions pursuant to the provisions of section six of this article or similar act of another state and recognized as valid under the laws of this state.

(r) "Parent" means a person who is another person's natural or adoptive mother or father or who has been granted parental rights by valid court order and whose parental rights have not been terminated by a court of law.

(s) "Persistent vegetative state" means an irreversible state as diagnosed by the attending physician or a qualified physician in which the person has intact brain stem function but no higher cortical function and has neither self-awareness or awareness of the surroundings in a learned manner.

(t) "Person" means an individual, a corporation, a business trust, a trust, a partnership, an association, a government, a governmental subdivision or agency or any other legal entity.

(u) "Physician orders for scope of treatment (POST) form" means a standardized form containing orders by a qualified physician that details a person's life-sustaining wishes as provided by section twenty-five of this article.

(v) "Principal" means a person who has executed a living will or medical power of attorney.

(w) "Protected person" means an adult who, pursuant to the provisions of chapter forty-four-a of this code, has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events and environments to an extent that the individual lacks the capacity to: (1) Meet the essential requirements for his or her health, care, safety, habilitation or therapeutic needs without the assistance or protection of a guardian; or (2) manage property or financial affairs to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.

(x) "Qualified physician" means a physician licensed to practice medicine who has personally examined the person.

(y) "Qualified psychologist" means a psychologist licensed to practice psychology who has personally examined the person.

(z) "Surrogate decisionmaker" or "surrogate" means an individual eighteen years of age or older who is reasonably available, is willing to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions and is identified or selected by the attending physician or advanced nurse practitioner in accordance with the provisions of this article as the person who is to make those decisions in accordance with the provisions of this article.

(aa) "Terminal condition" means an incurable or irreversible condition as diagnosed by the attending physician or a qualified physician for which the administration of life-prolonging intervention will serve only to prolong the dying process.

§16-30-4. Executing a living will or medical power of attorney.

(a) Any competent adult may execute at any time a living will or medical power of attorney. A living will or medical power of attorney made pursuant to this article shall be: (1) In writing; (2) executed by the principal or by another person in the principal's presence at the principal's express direction if the principal is physically unable to do so; (3) dated; (4) signed in the presence of two or more witnesses at least eighteen years of age; and (5) signed and attested by such witnesses whose signatures and attestations shall be acknowledged before a notary public as provided in subsection (d) of this section.

(b) In addition, a witness may not be:

(1) The person who signed the living will or medical power of attorney on behalf of and at the direction of the principal;

(2) Related to the principal by blood or marriage;

(3) Entitled to any portion of the estate of the principal under any will of the principal or codicil thereto: *Provided,* That the validity of the living will or medical power of attorney shall not be affected when a witness at the time of witnessing such living will or medical power of attorney was unaware of being a named beneficiary of the principal's will;

(4) Directly financially responsible for principal's medical care;

(5) The attending physician; or

(6) The principal's medical power of attorney representative or successor medical power of attorney representative.

(c) The following persons may not serve as a medical power of attorney representative or successor medical power of attorney representative: (1) A treating health care provider of the principal; (2) an employee of a treating health care provider not related to the principal; (3) an operator of a health care facility serving the principal; or (4) any person who is an employee of an operator of a health care facility serving the principal and who is not related to the principal.

(d) It shall be the responsibility of the principal or his or her representative to provide for notification to his or her attending physician and other health care providers of the existence of the living will or medical power of attorney or a revocation of the living will or medical power of attorney. An attending physician or other health care provider, when presented with the living will or medical power of attorney, or the revocation of a living will or medical power of attorney, shall make the living will, medical power of attorney or a copy of either or a revocation of either a part of the principal's medical records.

(e) At the time of admission to any health care facility, each person shall be advised of the existence and availability of living will and medical power of attorney forms and shall be given assistance in completing such forms if the person desires: *Provided,* That under no circumstances may admission to a health care facility be predicated upon a person having completed either a medical power of attorney or living will.

(f) The provision of living will or medical power of attorney forms substantially in compliance with this article by health care providers, medical practitioners, social workers, social service agencies, senior citizens centers, hospitals, nursing homes, personal care homes, community care facilities or any other similar person or group, without separate compensation, does not constitute the unauthorized practice of law.

(g) The living will may, but need not, be in the following form and may include other specific directions not inconsistent with other provisions of this article. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the living will which can be given effect without the invalid direction and to this end the directions in the living will are severable.

STATE OF WEST VIRGINIA

LIVING WILL

Living will made this _____day of _____(month, year).

I,_____, being of sound mind, willfully and voluntarily declare that I want my wishes to be respected if I am very sick and not able to communicate my wishes for myself. In the absence of my ability to give directions regarding the use of life-prolonging medical intervention, it is my desire that my dying shall not be prolonged under the following circumstances:

If I am very sick and not able to communicate my wishes for myself and I am certified by one physician, who has personally examined me, to have a terminal condition or to be in a persistent vegetative state (I am unconscious and am neither aware of my environment nor able to interact with others), I direct that life-prolonging medical intervention that would serve solely to prolong the dying process or maintain me in a persistent vegetative state be withheld or withdrawn. I want to be allowed to die naturally and only be given medications or other medical procedures necessary to keep me comfortable. I want to receive as much medication as is necessary to alleviate my pain.

I give the following SPECIAL DIRECTIVES OR LIMITATIONS: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis and mental health treatment may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

_____
_____
_____
_

It is my intention that this living will be honored as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences resulting from such refusal.

I understand the full import of this living will.

_____
Signed

_____

_____
Address

I did not sign the principal's signature above for or at the direction of the principal.

I am at least eighteen years of age and am not related to the principal by blood or marriage, entitled to any portion of the estate of the principal to the best of my knowledge under any will of principal or codicil thereto, or directly financially

responsible for principal's medical care. I am not the principal's attending physician or the principal's medical power of attorney representative or successor medical power of attorney representative under a medical power of attorney.

_____ _____
Witness DATE

_____
Witness DATE

_____
STATE OF

_____
COUNTY OF

I, _____, a Notary Public of said County, do certify that _____, as principal,
and_____ and _____, as witnesses, whose names are signed to the writing above bearing date on the _____ day of _____, 20____,have this day acknowledged the same before me.
Given under my hand this _____ day of _____, 20__.
My commission expires:_____
_____
Notary Public
(h) A medical power of attorney may, but need not, be in the following form, and may include other specific directions not inconsistent with other provisions of this article. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the medical power of attorney which can be given effect without invalid direction and to this end the directions in the medical power of attorney are severable.

STATE OF WEST VIRGINIA

MEDICAL POWER OF ATTORNEY

Dated: _____ , 20_____
I,_____, hereby
(Insert your name and address)
appoint my representative to act on my behalf to give, withhold or withdraw informed consent to health care decisions in the event that I am not able to do so myself.
The person I choose as my representative is:
_____

(Insert the name, address, area code and telephone number of the person you wish to designate as your representative)

The person I choose as my successor representative is:

If my representative is unable, unwilling or disqualified to serve, then I appoint:

_____

_

(Insert the name, address, area code and telephone number of the person you wish to designate as your successor representative)

This appointment shall extend to, but not be limited to, health care decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, care and treatment in a nursing home or other facility, and home health care. The representative appointed by this document is specifically authorized to be granted access to my medical records and other health information and to act on my behalf to consent to, refuse or withdraw any and all medical treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to do so, would consent to, refuse or withdraw such treatment or procedures. Such authority shall include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging interventions. I appoint this representative because I believe this person understands my wishes and values and will act to carry into effect the health care decisions that I would make if I were able to do so and because I also believe that this person will act in my best interest when my wishes are unknown. It is my intent that my family, my physician and all legal authorities be bound by the decisions that are made by the representative appointed by this document and it is my intent that these decisions should not be the subject of review by any health care provider or administrative or judicial agency.

It is my intent that this document be legally binding and effective and that this document be taken as a formal statement of my desire concerning the method by which any health care decisions should be made on my behalf during any period when I am unable to make such decisions.

In exercising the authority under this medical power of attorney, my representative shall act consistently with my special directives or limitations as stated below.

I am giving the following SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis, funeral arrangements, autopsy and organ donation may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

_____

_____

THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN MEDICAL CARE.

_____
Signature of the Principal

I did not sign the principal's signature above. I am at least eighteen years of age and am not related to the principal by blood or marriage. I am not entitled to any portion of the estate of the principal or to the best of my knowledge under any will of the principal or codicil thereto, or legally responsible for the costs of the principal's medical or other care. I am not the principal's attending physician, nor am I the representative or successor representative of the principal.

_____
Witness: DATE

_____
Witness: DATE

_____
STATE OF

_____
COUNTY OF

I, _____, a Notary Public of said County, do certify that_____, as principal, and _____ and _____, as witnesses, whose names are signed to the writing above bearing date on the _____ day of _____, 20_____, have this day acknowledged the same before me.
Given under my hand this _____ day of _____, 20____.
My commission expires:_____

_____
Notary Public

§16-30-5. Applicability and resolving actual conflict between advance directives.

(a) The provisions of this article which directly conflict with the written directives contained in a living will or medical power of attorney executed prior to the effective date of this statute shall not apply. An expressed directive contained in a living will or medical power of attorney or by any other means the health care provider determines to be reliable shall be followed.

(b) If there is a conflict between the person's expressed directives, the physician orders for scope of treatment form and the decisions of the medical power of attorney representative or surrogate, the person's expressed directives shall be followed.

(c) In the event there is a conflict between two advance directives executed by the person, the one most recently completed takes precedence only to the extent needed to resolve the inconsistency.

(d) If there is a conflict between the decisions of the medical power of attorney representative or surrogate and the person's best interests as determined by the attending physician when the person's wishes are unknown, the attending physician shall attempt to resolve the conflict by consultation with a qualified physician, an ethics committee or by some other means. If the attending physician cannot resolve the conflict with the medical power of attorney representative, the attending physician may transfer the care of the person pursuant to subsection (b), section twelve of this article.

§16-30-6. Private decision-making process; authority of living will, medical power of attorney representative and surrogate.

(a) Any capable adult may make his or her own health care decisions without regard to guidelines contained in this article.

(b) Health care providers and health care facilities may rely upon health care decisions made on behalf of an incapacitated person without resort to the courts or legal process, if the decisions are made in accordance with the provisions of this article.

(c) The medical power of attorney representative or surrogate shall have the authority to release or authorize the release of an incapacitated person's medical records to third parties and make any and all health care decisions on behalf of an incapacitated person, except to the extent that a medical power of attorney representative's authority is clearly limited in the medical power of attorney.

(d) The medical power of attorney representative or surrogate's authority shall commence upon a determination, made pursuant to section seven of this article, of the incapacity of the adult. In the event the person no longer is incapacitated or the medical power of attorney representative or surrogate is unwilling or unable to serve, the medical power of attorney representative or surrogate's authority shall cease. However, the authority of the medical power of attorney representative or surrogate may recommence if the person subsequently becomes incapacitated as determined pursuant to section seven of this article unless during the intervening period of capacity the person executes an advance directive which makes a surrogate unnecessary or expressly rejects the previously appointed surrogate as his or her surrogate. A medical power of attorney representative or surrogate's authority terminates upon the death of the incapacitated person except with respect to decisions regarding autopsy, funeral arrangements or cremation and organ and tissue donation: *Provided,* That the medical power of attorney representative or surrogate has no authority after the death of the incapacitated person to invalidate or revoke a preneed funeral

contract executed by the incapacitated person in accordance with the provisions of article fourteen, chapter forty-seven of this code prior to the onset of the incapacity and either paid in full before the death of the incapacitated person or collectible from the proceeds of a life insurance policy specifically designated for that purpose.

(e) The medical power of attorney representative or surrogate shall seek medical information necessary to make health care decisions for an incapacitated person. For the sole purpose of making health care decisions for the incapacitated person, the medical power of attorney representative or surrogate shall have the same right of access to the incapacitated person's medical information and the same right to discuss that information with the incapacitated person's health care providers that the incapacitated person would have if he or she was not incapacitated.

(f) If an incapacitated person previously expressed his or her wishes regarding autopsy, funeral arrangements or cremation, organ or tissue donation or the desire to make an anatomical gift by a written directive such as a living will, medical power of attorney, donor card, driver's license or other means, the medical power of attorney representative or surrogate shall follow the person's expressed wishes regarding autopsy, funeral arrangements or cremation, organ and tissue donation or anatomical gift. In the absence of any written directives, any decision regarding anatomical gifts shall be made pursuant to the provisions of article nineteen of this chapter.

(g) If a person is incapacitated at the time of the decision to withhold or withdraw life-prolonging intervention, the person's living will or medical power of attorney executed in accordance with section four of this article is presumed to be valid. For the purposes of this article, a physician or health facility may presume in the absence of actual notice to the contrary that a person who executed a living will or medical power of attorney was a competent adult when it was executed. The fact that a person executed a living will or medical power of attorney is not an indication of the person's mental incapacity

§16-30-7. Determination of incapacity.

(a) For the purposes of this article, a person may not be presumed to be incapacitated merely by reason of advanced age or disability. With respect to a person who has a diagnosis of mental illness or mental retardation, such a diagnosis is not a presumption that the person is incapacitated. A determination that a person is incapacitated shall be made by the attending physician, a qualified physician, a qualified psychologist or an advanced nurse practitioner who has personally examined the person.

(b) The determination of incapacity shall be recorded contemporaneously in the person's medical record by the attending physician, a qualified physician,

advanced nurse practitioner or a qualified psychologist. The recording shall state the basis for the determination of incapacity, including the cause, nature and expected duration of the person's incapacity, if these are known.

(c) If the person is conscious, the attending physician shall inform the person that he or she has been determined to be incapacitated and that a medical power of attorney representative or surrogate decisionmaker may be making decisions regarding life-prolonging intervention or mental health treatment for the person.

§16-30-8. Selection of a surrogate.

(a) When a person is or becomes incapacitated, the attending physician or the advanced nurse practitioner with the assistance of other health care providers as necessary, shall select, in writing, a surrogate. The attending physician or advanced nurse practitioner shall reasonably attempt to determine whether the incapacitated person has appointed a representative under a medical power of attorney, in accordance with the provisions of section four of this article, or if the incapacitated person has a court-appointed guardian in accordance with the provisions of article one, chapter forty-four-a of this code. If no representative or court-appointed guardian is authorized or capable and willing to serve, the attending physician or advanced nurse practitioner is authorized to select a health care surrogate. In selecting a surrogate, the attending physician or advanced nurse practitioner must make a reasonable inquiry as to the existence and availability of a surrogate from the following persons:

(1) The person's spouse;
(2) The person's adult children;
(3) The person's parents;
(4) The person's adult siblings;
(5) The person's adult grandchildren;
(6) The person's close friends;
(7) Any other person or entity, including, but not limited to, public agencies, public guardians, public officials, public and private corporations and other persons or entities which the department of health and human resources may from time to time designate in rules promulgated pursuant to chapter twenty-nine-a of this code.

(b) After inquiring about the existence and availability of a medical power of attorney representative or a guardian as required by subsection (a) of this section and determining that such persons either do not exist or are unavailable, incapable or unwilling to serve as a surrogate, the attending physician or an advanced nurse practitioner shall select and rely upon a surrogate in the order of priority set forth in subsection (a) of this section, subject to the following conditions:

(1) Where there are multiple possible surrogate decisionmakers at the same priority level, the attending physician or the advanced nurse practitioner shall, after reasonable inquiry, select as the surrogate the person who reasonably appears to be best qualified. The following criteria shall be considered in the determination of the person or entity best qualified to serve as the surrogate:

(A) Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the person or in accordance with the person's best interests;
(B) The proposed surrogate's regular contact with the person prior to and during the incapacitating illness;
(C) The proposed surrogate's demonstrated care and concern;
(D) The proposed surrogate's availability to visit the incapacitated person during his or her illness; and
(E) The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process;

(2) The attending physician or the advanced nurse practitioner may select a proposed surrogate who is ranked lower in priority if, in his or her judgment, that individual is best qualified, as described in this section, to serve as the incapacitated person's surrogate. The attending physician or the advanced nurse practitioner shall document in the incapacitated person's medical records his or her reasons for selecting a surrogate in exception to the priority order provided in subsection (a) of this section.

(c) The surrogate is authorized to make health care decisions on behalf of the incapacitated person without a court order or judicial involvement.

(d) A health care provider or health care facility may rely upon the decisions of the selected surrogate if the provider believes, after reasonable inquiry, that:

(1) A guardian or representative under a valid, applicable medical power of attorney is unavailable, incapable or unwilling to serve;
(2) There is no other applicable advance directive;
(3) There is no reason to believe that such health care decisions are contrary to the incapacitated person's religious beliefs; and
(4) The attending physician or advanced nurse practitioner has not received actual notice of opposition to any health care decisions made pursuant to the provisions of this section.

(e) If a person who is ranked as a possible surrogate pursuant to subsection (a) of this section wishes to challenge the selection of a surrogate or the health care decision of the selected surrogate, he or she may seek injunctive relief or may

file a petition for review of the selection of, or decision of, the selected surrogate with the circuit court of the county in which the incapacitated person resides or the supreme court of appeals. There shall be a rebuttable presumption that the selection of the surrogate was valid and the person who is challenging the selection shall have the burden of proving the invalidity of that selection. The challenging party shall be responsible for all court costs and other costs related to the proceeding, except attorneys' fees, unless the court finds that the attending physician or advanced nurse practitioner acted in bad faith, in which case the person so acting shall be responsible for all costs. Each party shall be responsible for his or her own attorneys' fees.

(f) If the attending physician or advanced nurse practitioner is advised that a person who is ranked as a possible surrogate pursuant to the provisions of subsection (a) of this section has an objection to a health care decision to withhold or withdraw a life-prolonging intervention which has been made by the selected surrogate, the attending physician or advanced nurse practitioner shall document the objection in the medical records of the patient. Once notice of an objection or challenge is documented, the attending physician or advanced nurse practitioner shall notify the challenging party that the decision shall be implemented in seventy-two hours unless the attending physician receives a court order prohibiting or enjoining the implementation of the decision as provided in subsection (e) of this section. In the event that the incapacitated person has been determined to have undergone brain death and the selected surrogate has authorized organ or tissue donation, the decision shall be implemented in twenty-four hours unless the attending physician receives a court order prohibiting or enjoining the implementation of the decision as provided in said subsection.

(g) If the surrogate becomes unavailable for any reason, the surrogate may be replaced by applying the provisions of this section.

(h) If a person who ranks higher in priority relative to a selected surrogate becomes available and willing to be the surrogate, the person with higher priority may be substituted for the identified surrogate unless the attending physician determines that the lower-ranked person is best qualified to serve as the surrogate.

(i) The following persons may not serve as a surrogate: (1) A treating health care provider of the person who is incapacitated; (2) an employee of a treating health care provider not related to the person who is incapacitated; (3) an owner, operator or administrator of a health care facility serving the person who is incapacitated; or (4) any person who is an employee of an owner, operator or administrator of a health care facility serving the person who is incapacitated and who is not related to that person.

§16-30-9. Medical power of attorney representative and health care surrogate decision-making standards.

(a) General standards.
The medical power of attorney representative or the health care surrogate shall make health care decisions:

(1) In accordance with the person's wishes, including religious and moral beliefs; or
(2) In accordance with the person's best interests if these wishes are not reasonably known and cannot with reasonable diligence be ascertained; and
(3) Which reflect the values of the person, including the person's religious and moral beliefs, to the extent they are reasonably known or can with reasonable diligence be ascertained.

(b) Assessment of best interests.
An assessment of the person's best interests shall include consideration of the person's medical condition, prognosis, the dignity and uniqueness of every person, the possibility and extent of preserving the person's life, the possibility of preserving, improving or restoring the person's functioning, the possibility of relieving the person's suffering, the balance of the burdens to the benefits of the proposed treatment or intervention and such other concerns and values as a reasonable individual in the person's circumstances would wish to consider.

§16-30-10. Reliance on authority of living will, physician orders for scope of treatment form, medical power of attorney representative or surrogate decisionmaker and protection of health care providers.

(a) A physician, licensed health care professional, health care facility or employee thereof shall not be subject to criminal or civil liability for good-faith compliance with or reliance upon the directions of the medical power of attorney representative in accordance with this article.

(b) A health care provider shall not be subject to civil or criminal liability for surrogate selection or good faith compliance and reliance upon the directions of the surrogate in accordance with the provisions of this article.

(c) A health care provider, health care facility or employee thereof shall not be subject to criminal or civil liability for good-faith compliance with or reliance upon the orders in a physician orders for scope of treatment form.

(d) No health care provider or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of life-prolonging intervention from a person pursuant to a living will made in accordance with this article shall, as a result thereof, be subject to

criminal or civil liability.

(e) An attending physician who cannot comply with the living will or medical power of attorney of a principal pursuant to this article shall, in conjunction with the medical power of attorney representative, health care surrogate or other responsible person, effect the transfer of the principal to another physician who will honor the living will or medical power of attorney of the principal. Transfer under these circumstances does not constitute abandonment.

§16-30-11. Negligence.

Nothing in this article shall be deemed to protect a provider from liability for the provider's own negligence in the performance of the provider's duties or in carrying out any instructions of the medical power of attorney representative or surrogate. Nothing in this article shall be deemed to alter the law of negligence as it applies to the acts of any medical power of attorney representative or surrogate or provider, and nothing herein shall be interpreted as establishing a standard of care for health care providers for purposes of the law of negligence

§16-30-12. Conscience objections.

(a) *Health care facilities.* -- Nothing in this article shall be construed to require a health care facility to change published policy of the health care facility that is expressly based on sincerely held religious beliefs or sincerely held moral convictions central to the facility's operating principles.

(b) *Health care providers.* -- Nothing in this article shall be construed to require an individual health care provider to honor a health care decision made pursuant to this article if:

> (1) The decision is contrary to the individual provider's sincerely held religious beliefs or sincerely held moral convictions; and
> (2) The individual health care provider promptly informs the person who made the decision and the health care facility of his or her refusal to honor the decision. In such event, the medical power of attorney representative or surrogate decision maker shall have responsibility for arranging the transfer of the person to another health care provider. The individual health care provider shall cooperate in facilitating such transfer, and a transfer under these circumstances shall not constitute abandonment.

§16-30-13. Interinstitutional transfers.

(a) In the event that a person admitted to any health care facility in this state has been determined to lack capacity and that person's medical power of attorney has been declared to be in effect or a surrogate decisionmaker has been selected for that person all in accordance with the requirements of this article and that person is subsequently transferred from one health care facility to another,

the receiving health care facility may rely upon the prior determination of incapacity and the activation of the medical power of attorney or selection of a surrogate decisionmaker as valid and continuing until such time as an attending physician, a qualified physician, a qualified psychologist or advanced nurse practitioner in the receiving facility assesses the person's capacity. Should the reassessment by the attending physician, a qualified physician, a qualified psychologist or an advanced nurse practitioner at the receiving facility result in a determination of continued incapacity, the receiving facility may rely upon the medical power of attorney representative or surrogate decisionmaker who provided health care decisions at the transferring facility to continue to make all health care decisions at the receiving facility until such time as the person regains capacity.

(b) If a person admitted to any health care facility in this state has been determined to lack capacity and the person's medical power of attorney has been declared to be in effect or a surrogate decisionmaker has been selected for that person all in accordance with the requirements of this article and that person is subsequently discharged home in the care of a home health care agency or hospice, the home health care agency or hospice may rely upon the prior determination of incapacity. The home health care agency or hospice may rely upon the medical power of attorney representative or health care surrogate who provided health care decisions at the transferring facility to continue to make all health care decisions until such time as the person regains capacity.

(c) If a person with an order to withhold or withdraw life-prolonging intervention is transferred from one health care facility to another, the existence of such order shall be communicated to the receiving facility prior to the transfer and the written order shall accompany the person to the receiving facility and shall remain effective until a physician at the receiving facility issues admission orders.

(d) If a person with a physician orders for scope of treatment form is transferred from one health care facility to another, the health care facility initiating the transfer shall communicate the existence of the physician orders for scope of treatment form to the receiving facility prior to the transfer. The physician orders for scope of treatment form shall accompany the person to the receiving facility and shall remain in effect. The form shall be kept at the beginning of the patient's transfer records unless otherwise specified in the health care facility's policy and procedures. After admission, the physician orders for scope of treatment form shall be reviewed by the attending physician and one of three actions shall be taken:

(1) The physician orders for scope of treatment form shall be continued without change;
(2) The physician orders for scope of treatment form shall be voided and a new form issued; or

(3) The physician orders for scope of treatment form shall be voided without a new form being issued

§16-30-14. Insurance.

(a) No policy of life insurance or annuity or other type of contract that is conditioned on the life or death of the person, shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-prolonging intervention from a person in accordance with the provisions of this article, notwithstanding any terms of the policy to the contrary.

(b) The withholding or withdrawal of life-prolonging intervention from a principal in accordance with the provisions of this article does not, for any purpose, constitute a suicide and does not constitute the crime of assisting suicide.

(c) The making of a living will or medical power of attorney pursuant to this article does not affect in any manner the sale, procurement or issuance of any insurance policy nor does it modify the terms of an existing policy.

(d) No health care provider or health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit medical service corporation or mutual nonprofit hospital service corporation shall require any person to execute a living will or medical power of attorney as a condition for being insured for or receiving health care services.

§16-30-15. Withholding of life support not assisted suicide or murder.
The withholding or withdrawal of life-prolonging intervention from a person in accordance with the decision of a medical power of attorney representative or surrogate decision maker made pursuant to the provisions of this article does not, for any purpose, constitute assisted suicide or murder. The withholding or withdrawal of life-prolonging intervention from a person in accordance with the decisions of a medical power of attorney representative or surrogate decision maker made pursuant to the provisions of this article, however, shall not relieve any individual of responsibility for any criminal acts that may have caused the person's condition. Nothing in this article shall be construed to legalize, condone, authorize or approve mercy killing or assisted suicide.

§16-30-16. Preservation of existing rights and relation to existing law; no presumption.

(a) The provisions of this article are cumulative with existing law regarding an individual's right to consent to or refuse medical treatment. The provisions of this article shall not impair any existing rights or responsibilities that a health care provider, a person, including a minor or an incapacitated person or a person's family may have in regard to the withholding or withdrawal of life-prolonging

intervention, including any rights to seek or forego judicial review of decisions regarding life-prolonging intervention under the common law or statutes of this state.

(b) This article creates no presumption concerning the intention of an individual who has not executed a living will or medical power of attorney to consent to, refuse or withdraw any and all medical treatment or diagnostic procedures, including, but not limited to, life-prolonging intervention.

§16-30-17. No abrogation of common law doctrine of medical necessity.
Nothing in this article shall be construed to abrogate the common law doctrine of medical necessity.

§16-30-18. Revocation.

(a) A living will or medical power of attorney may be revoked at any time only by the principal or at the express direction of the principal by any of the following methods:

(1) By being destroyed by the principal or by some person in the principal's presence and at his or her direction;
(2) By a written revocation of the living will or medical power of attorney signed and dated by the principal or person acting at the direction of the principal. Such revocation shall become effective only upon delivery of the written revocation to the attending physician by the principal or by a person acting on behalf of the principal.
The attending physician shall record in the principal's medical record the time and date when he or she receives notification of the written revocation; or
(3) By a verbal expression of the intent to revoke the living will or medical power of attorney in the presence of a witness eighteen years of age or older who signs and dates a writing confirming that such expression of intent was made. Any verbal revocation shall become effective only upon communication of the revocation to the attending physician by the principal or by a person acting on behalf of the principal. The attending physician shall record, in the principal's medical record, the time, date and place of when he or she receives notification of the revocation.

(b) There is no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual knowledge of the revocation.

(c) The grant of a final divorce decree shall act as an automatic revocation of the designation of the former spouse to act as a medical power of attorney representative or successor representative.

§16-30-19. Physician's duty to confirm, communicate and document terminal condition or persistent vegetative state; medical record identification.

(a) An attending physician who has been notified of the existence of a living will executed under this article, without delay after the diagnosis of a terminal condition or persistent vegetative state of the principal, shall take steps as needed to provide for confirmation, written certification and documentation of the principal's terminal condition or persistent vegetative state in the principal's medical record.

(b) Once confirmation, written certification and documentation of the principal's terminal condition or persistent vegetative state is made, the attending physician shall verbally or in writing inform the principal of his or her condition or the principal's medical power of attorney representative or surrogate, if the principal lacks capacity to comprehend such information and shall document such communication in the principal's medical record.

(c) All inpatient health care facilities shall develop a system to visibly identify a person's chart which contains a living will or medical power of attorney as set forth in this article.

§16-30-20. Living wills previously executed.
A living will executed prior to the effective date of this article and which expressly provides for the withholding or withdrawal of life-prolonging intervention or for the termination of life-sustaining procedures in substantial compliance with the provisions of section four of this article is hereby recognized as a valid living will, as though it were executed in compliance with the provisions of this article.

§16-30-21. Reciprocity.
A living will or medical power of attorney executed in another state is validly executed for the purposes of this article if it is executed in compliance with the laws of this state or with the laws of the state where executed.

§16-30-22. Liability for failure to act in accordance with the directives of a living will or medical power of attorney or the directions of a medical power of attorney representative or health care surrogate.

(a) A health care provider or health care facility without actual knowledge of a living will or medical power of attorney completed by a person is not civilly or criminally liable for failing to act in accordance with the directives of a principal's living will or medical power of attorney.

(b) A health care provider or a health care facility is subject to review and disciplinary action by the appropriate licensing board for failing to act in accordance with a principal's directives in a living will or medical power of

attorney, or the decisions of a medical power of attorney representative or health care surrogate: *Provided,* That the provider or facility had actual knowledge of the directives or decisions.

(c) Once a principal has been determined to be incapacitated in accordance with the provisions of this article and his or her living will or medical power of attorney has become effective, any health care provider or health care facility which refuses to follow the principal's directives in a living will or medical power of attorney or the decisions of a medical power of attorney representative or health care surrogate, because the principal has asked the health care provider or health care facility not to follow such directions or decisions, shall have two physicians, one of whom may be the attending physician, or one physician and a qualified psychologist, or one physician and an advanced nurse practitioner, certify that the principal has regained capacity to make the request. If such certification occurs, the provisions of the applicable living will or medical power of attorney, or the statute creating the authority of the health care surrogate shall not apply because the principal has regained decision-making capacity.

§16-30-23. Prohibition.

Under no circumstances may the presence or absence of a living will or medical power of attorney be used to deny a person admission to a health care facility.

§16-30-24. Need for a second opinion regarding incapacity for persons with psychiatric mental illness, mental retardation or addiction.

For persons with psychiatric mental illness, mental retardation or addiction who have been determined by their attending physician or a qualified physician to be incapacitated, a second opinion by a qualified physician or qualified psychologist that the person is incapacitated is required before the attending physician is authorized to select a surrogate. The requirement for a second opinion shall not apply in those instances in which the medical treatment to be rendered is not for the person's psychiatric mental illness.

§16-30-25. Physician orders for scope of treatment form.

(a) No later than the first day of July, two thousand three, the secretary of the department of health and human resources shall implement the statewide distribution of standardized physician orders for scope of treatment (POST) forms.

(b) Physician orders for scope of treatment forms shall be standardized forms used to reflect orders by a qualified physician for medical treatment of a person in accordance with that person's wishes or, if that person's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with that person's best interest. The form shall be bright pink in color to facilitate recognition by emergency medical services personnel and other health care providers and shall be designed to provide for information regarding

the care of the patient, including, but not limited to, the following:

(1) The orders of a qualified physician regarding cardiopulmonary resuscitation, level of medical intervention in the event of a medical emergency, use of antibiotics and use of medically administered fluids and nutrition and the basis for the orders;
(2) The signature of the qualified physician;
(3) Whether the person has completed an advance directive or had a guardian, medical power of attorney representative or surrogate appointed;
(4) The signature of the person or his or her guardian, medical power of attorney representative, or surrogate acknowledging agreement with the orders of the qualified physician; and
(5) The date, location and outcome of any review of the physician orders for scope of treatment form.

(c) The physician orders for scope of treatment form shall be kept as the first page in a person's medical record in a health care facility unless otherwise specified in the health care facility's policies and procedures and shall be transferred with the person from one health care facility to another.

Information for Providers

Psychiatric Advance Directives

Providers

- Psychiatric Advance Directives:

  Used to document a individuals specific instructions or preferences regarding mental health treatment, in preparation for the possibility that the person may lose capacity to give or withhold informed consent to treatment during a crisis

Options

Three options for developing a Psychiatric Advance Directive

1. Living Will
2. Medical Power of Attorney
3. Combination of Living Will and Medical Power of Attorney

Typically under state laws….

- Accept or refuse treatment
- Have a advance directive and/or healthcare agent
- Most states you can have a single or separate plan for physical and psychiatric care

West Virginia Healthcare Decisions Act

- Addressed End of Life Care
- Includes psychiatric care under the definition for health care decisions under the definition of healthcare facilities

Right to Create a Advance Psychiatric Directive

State Rule 64-74-5
Advance Psychiatric Directive Right

- A consumer has a right to an advance psychiatric directive prepared at a time when the individual has not been adjudged to be incompetent

Consumer Rights

- A consumer has the right to refuse to create an advance psychiatric directive
- A consumer with an advance psychiatric directive has the right to have it entered into his or her clinical record at the behavioral health service at which he or she is receiving or may receive care or treatment

Role as a Provider

- Inform consumers of their right to create a advance directive

State Medicaid Agency Obligations

- Must develop a written description of the states Advance Directive law to be distributed by Medicaid providers and health plans
- Any revisions to state law must be incorporated into information no later than **60** days of effective date of law

State Medicaid Agency Obligations

- When contracting with managed care plans state Medicaid agencies must require the plan to comply with requirements of federal law in regards to written policies and procedures
- Plan must meet the requirements of the Patient Self Determination Act

Federal Role

- Department of Health and Human Services is required to:
  - Conduct public education campaign
  - Conduct Provider technical assistance to states
  - Oversee compliance
  - Mail AD information to Social Security recipients

* In partial fulfillment of these requirements Federal DHHS has developed a brochure describing advance directives

Community Education

Same written materials do not have to be provided in all settings however all must:

- Define a advance directive
- Emphasize that it is designed for consumers to exercise self direction over healthcare
- Describe applicable state law in regards to advance directives

Community Education

- All information distributed must be current
  - Must include state law revisions within 90 days of effective date of the revision
  - Providers may contract with other entities to provide the information, however the provider is legally responsible for ensuring education occurs

When Information on AD Policies Must Be Provided

- At time of admission
- Upon enrollment in a healthcare plan
- Before receiving care
- When initially receiving care

Family receipt of Advance Directive Information

- Providers may give information regarding a advance directive when:
  - The consumer is incapacitated and unable to receive information due to a mental disorder or a incapacitating condition, or if the consumer is unable to articulate whether or not they have a advance directive
  - **The information must be given to the consumer once they are no longer incapacitated**

Providers

- A consumer has the right to be informed by a **behavioral health service** of the availability and applicability of an advance psychiatric directive and to receive education and assistance from the behavioral health service in preparing such a document

Role as a Provider

- Entities must provide education to their staff and their community on advance directives either directly or with other providers
- Education must include education regarding:
  - Rights under state law to participate in decisions regarding their medical care
  - The facilities policies regarding advance directives

Role as a Provider

TIPS

- Don't wait until a crisis to introduce the idea of creating a Advance Directive
- Include in treatment plan
- Collaborate with other providers to do community education
- Distribute information to consumers at intake, and periodically thereafter

Providers should consider…

- Advance directives can describe treatment(s) a consumer wants in the event of a crisis
- An Advance directive can be rejected, even verbally, at any time by the consumer
- Involuntary treatment may be requested -- or imposed (mental hygiene process) in an emergency -- even when there is an advance directive

When providers can refuse to implement a Advance Directive

- The provider does not have the resources to provide the treatment
- A provider believes that the directive would **endanger** the consumers **life** or be dangerous to others

When providers can refuse to implement a Advance Directive

If a provider does not honor a psychiatric advance directive they must:

- Tell the consumer the **reason for not honoring** their advance psychiatric directive

Tips:

- Be specific
- Do it in writing

Complaints

- State Medicaid agencies are responsible for reviewing and responding to complaints regarding advance directives
- Penalties can include fines and removal as Medicaid/Medicare approved provider

What to do if directives are not being followed

- Complaints can be filed with the agency that surveys and certifies Medicare and Medicaid providers
- Providers and healthcare plans must inform consumers they have this right, and how to file a complaint

Benefits

- Promotes self direction of care
- They can enable crisis intervention early
- Enhances communication between healthcare providers and the consumer
- Self direct services received even if involuntarily hospitalized

Benefits

- Can be included in Treatment Plans
- Allows the consumer to describe their own crisis and behaviors to identify behaviors and preferences regarding interventions
- Helps providers engage the consumer in their own treatment
- Could assist in avoiding involuntary treatment

The Role of Education

- Locate or develop and distribute printed materials describing Psychiatric Advance Directives
- Inform your staff of the providers role
- Ask individuals if they want to include Psychiatric Advance Directives in their treatment plan

Resources

ADVANCE SELF-ADVOCACY PLAN (ASAP)
http://www.upennrrtc.org/resources/view.php?tool_id=200

NATIONAL RESOURCE CENTER ON PSYCHIATRIC ADVANCE DIRECTIVES
http://www.nrc-pad.org/component/option,com_frontpage/Itemid,1/

WELLNESS RECOVERY ACTION PLANNING (WRAP)
http://www.mentalhealthrecovery.com/recovery_crisisplanning.php

WEST VIRGINIA ADVOCATES
Advance Directive Toolkits for Consumers, Family Members, and Providers
Phone: 800) 950-5250
Address: 1207 Quarrier St Ste 400 Charleston, WV 25301
Web: **www.wvadvocates.org**

STATE OF WEST VIRGINIA

LIVING WILL

Living will made this ____day of _____(month, year).

I,_____, being of sound mind, willfully and voluntarily declare that I want my wishes to be respected if I am very sick and not able to communicate my wishes for myself. In the absence of my ability to give directions regarding the use of life-prolonging medical intervention, it is my desire that my dying shall not be prolonged under the following circumstances:

If I am very sick and not able to communicate my wishes for myself and I am certified by one physician, who has personally examined me, to have a terminal condition or to be in a persistent vegetative state (I am unconscious and am neither aware of my environment nor able to interact with others), I direct that life-prolonging medical intervention that would serve solely to prolong the dying process or maintain me in a persistent vegetative state be withheld or withdrawn. I want to be allowed to die naturally and only be given medications or other medical procedures necessary to keep me comfortable. I want to receive as much medication as is necessary to alleviate my pain.

I give the following SPECIAL DIRECTIVES OR LIMITATIONS: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis and mental health treatment may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

_____

_____

_____

It is my intention that this living will be honored as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences resulting from such refusal.

I understand the full import of this living will.

_____
Signed

_____

_____
Address

I did not sign the principal's signature above for or at the direction of the principal.

I am at least eighteen years of age and am not related to the principal by blood or marriage, entitled to any portion of the estate of the principal to the best of my knowledge under any will of principal or codicil thereto, or directly financially responsible for principal's medical care. I am not the principal's attending physician or the principal's medical power of attorney representative or successor medical power of attorney representative under a medical power of attorney.

_____ _____
Witness DATE

_____ _____
Witness DATE

_____
STATE OF

_____
COUNTY OF

I, _____, a Notary Public of said County, do certify that

_____, as principal,

and_____ and _____, as witnesses, whose names are signed to the writing above bearing date on the _____ day of _____, 20____,have this day acknowledged the same before me.
Given under my hand this _____ day of _____, 20__.

My commission expires:_____

_____
Notary Public

STATE OF WEST VIRGINIA
MEDICAL POWER OF ATTORNEY

The Person I Want to Make Health Care Decisions
For Me When I Can't Make Them for Myself

Dated:_____ , 20 ____

I, _____ , hereby
(Insert your name and address)

appoint as my representative to act on my behalf to give, withhold or withdraw informed consent to health care decisions in the event that I am not able to do so myself.

The person I choose as my representative is:

_____
(Insert the name, address, area code and telephone number of the person you wish to designate as your representative)

The person I choose as my successor representative is:

If my representative is unable, unwilling or disqualified to serve, then I appoint

_____
(Insert the name, address, area code and telephone number of the person you wish to designate as your successor representative)

This appointment shall extend to, but not be limited to, health care decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, care and treatment in a nursing home or other facility, and home health care. The representative appointed by this document is specifically authorized to be granted access to my medical records and other health information and to act on my behalf to consent to, refuse or withdraw any and all medical treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to do so, would consent to, refuse or withdraw such treatment or procedures. Such authority shall include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging interventions.

I appoint this representative because I believe this person understands my wishes and values and will act to carry into effect the health care decisions that I would make if I were able to do so, and because I also believe that this person will act in my best interest when my wishes are unknown. It is my intent that my family, my physician and all legal authorities be bound by the decisions that are made by the representative appointed by this document, and it is my intent that these decisions should not be the subject of review by any health care provider or administrative or judicial agency.

It is my intent that this document be legally binding and effective and that this document be taken as a formal statement of my desire concerning the method by which any health care decision should be made on my behalf during any period when I am unable to make such decisions.

In exercising the authority under this medical power of attorney, my representative shall act consistently with my special directives or limitations as stated below.

I am giving the following SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis, funeral arrangements, autopsy, and organ donation may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

_____

_____

_____

THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN MEDICAL CARE.

_____
Signature of Principal

I did not sign the principal's signature above. I am at least eighteen years of age and am not related to the principal by blood or marriage. I am not entitled to any portion of the estate of the principal or to the best of my knowledge under any will of the principal or codicil thereto, or legally responsible for the costs of the principal's medical or other care. I am not the principal's attending physician, nor am I the representative or successor representative of the principal.

Witness: _____ DATE: _____

Witness: _____ DATE: _____

STATE OF _____

COUNTY OF _____

I, _____ , a Notary Public of said County, do certify that _____ ,

as principal, and _____ and _____ , as witnesses,

whose names are signed to the writing above bearing date on the _____ day of _____,

20 _____ , have this day acknowledged the same before me.

Given under my hand this _____ day of _____ , 20____.

My commission expires: _____

_____
Notary Public