

CHAPTER 32

ADVANCE DIRECTIVES FOR MENTAL HEALTH CARE

Authority

N.J.S.A. 30:4-177.59 and 30:9A-10.

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Chapter Expiration Date

Chapter 32, Advance Directives for Mental Health Care, expires on June 18, 2012.

Chapter Historical Note

Chapter 32, Advance Directives for Mental Health Care, was adopted as R.2007 d.187, effective June 18, 2007. See: Source and Effective Date.

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SUBCHAPTER 1. SCOPE AND PURPOSE

10:32-1.1 Scope

This chapter shall apply to psychiatric hospitals listed in N.J.S.A. 30:1-7 and to the Division of Mental Health Services in the Department of Human Services.

10:32-1.2 Purpose

The purpose of these rules is to standardize the use of advance directives for mental health care and to foster the self-directed recovery of persons who have mental illnesses.

10:32-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Adult” means an individual 18 years of age or older.

“Advance directive for mental health care” or “advance directive” means a writing executed in accordance with the requirements of N.J.S.A. 26:2H-107. An “advance directive” may include a proxy directive, an instruction directive, or both.

“Decision-making capacity” means a patient’s ability to understand and appreciate the nature and consequences of mental health care decisions, including the benefits and risks of each, and alternatives to any proposed mental health care, and to reach an informed decision. A patient’s decision-making capacity is evaluated relative to the demands of a particular mental health care decision.

“Declarant” means a competent adult who executes an advance directive for mental health care.

“Department” means the Department of Human Services.

“Division” or “DMHS” means the Division of Mental Health Services in the Department of Human Services.

“DMHS registry” means the registry for advance directives established by the Division of Mental Health Services pursuant to section 17 of P.L. 2005, c. 233 (N.J.S.A. 30:4-177.59).

“Domestic partner” means a domestic partner as defined in section 3 of P.L. 2003, c. 246 (N.J.S.A. 26:8A-3).

“Inpatient” means a person who has been admitted for treatment to a State psychiatric facility listed in N.J.S.A. 30:1-7.

“Instruction directive” means a writing which provides instructions and direction regarding the declarant’s wishes for mental health care in the event that the declarant subsequently lacks decision-making capacity.

“Licensed independent practitioner” means an individual permitted by law to provide mental health care services without direct supervision, within the scope of the individual’s license to practice in the State of New Jersey pursuant to N.J.S.A. 45:1-1 et seq., and may include physicians, advanced practice nurses, licensed clinical social workers, and psychologists.

“Mental health care decision” means a decision to accept or refuse any treatment, service or procedure used to diagnose, treat or care for a patient’s mental condition. Mental health care decision also means a decision to accept or refuse the services of a particular mental health care professional or

psychiatric facility, including a decision to accept or to refuse a transfer of care.

“Mental health care professional” means an individual licensed or certified by this State to provide or administer mental health care in the ordinary course of business or practice of a profession.

“Mental health care representative” means the individual designated by a declarant pursuant to the proxy directive part of an advance directive for mental health care for the purpose of making mental health care decisions on the declarant’s behalf, and includes an individual designated as an alternate mental health care representative who is acting as the declarant’s mental health care representative in accordance with the terms and order of priority stated in an advance directive for mental health care.

“Patient” means an individual who is under the care of a mental health care professional.

“Proxy directive” means a writing which designates a mental health care representative in the event that the declarant subsequently lacks decision-making capacity.

“Responsible mental health care professional” means a licensed independent practitioner who is selected by, or assigned to, the patient and has primary responsibility for the care and treatment of the patient. For purposes of determining whether a patient, who has executed an advance directive for mental health care, has or does not have the capacity to make a particular mental health treatment decision, a physician, advanced practice nurse, or psychologist on the declarant’s treatment team may function as a responsible mental health care professional, but for all other purposes, each member of the State hospital treatment team assigned to the declarant may be considered a “responsible mental health care professional.”

10:32-1.4 Annual reporting

(a) The chief executive officer of each psychiatric facility listed in N.J.S.A. 30:7-1 shall submit a report to the Commissioner of Human Services, through the Division of Mental Health Services on September 1, 2007, and on September 1 in every year thereafter, about that facility’s implementation of the New Jersey Mental Health Advance Directives Act. The report shall not include patient identifiers, but shall include:

1. The percentage of patients admitted during the preceding year who had executed an advance directive before admission;
2. The number of patients who executed or modified an advance directive for mental health care while a patient at the facility;
3. The number of advance directives that were challenged by the treating professionals at the facility, and in each case why the advance directive was challenged,

whether and by whom the overriding of the advance directive was approved, and whether the patient appealed the override;

4. The number of staff trained to assist patients with advance directives (initial and follow-up training);
5. The number of sessions held by the administration for professional staff to explain their legal obligations under the Act and these rules;
6. The number of persons who are discharged with an advance directive; and
7. A narrative that describes any systemic problems encountered during the year in the implementation of the act, problems in accessing the registry, complaints from patients or families, or other issues.

10:32-1.5 Policies at psychiatric facilities

(a) Every psychiatric facility listed at N.J.S.A. 30:1-7 shall develop policies and procedures that require appropriate clinical staff to:

1. Inform current patients of:
 - i. The availability of advance directives for mental health; and
 - ii. The availability of the State’s voluntary registry;
2. Assist patients in executing advance directives for mental health;
3. Make a routine inquiry of each patient admitted and the referring or committing physician or screening service, at the time of admission, or at such other times as are appropriate under the circumstances, concerning the existence and location of an advance directive for mental health care;
4. Provide appropriate informational materials concerning advance directives for mental health care, including standard forms approved by the Division of Mental Health Services, located at Chapter Appendix A, incorporated herein by reference, and information about the DMHS Registry, established pursuant to N.J.A.C. 10:32-2.1, to all interested patients and their families and mental health care representatives;
5. Assist patients who express an interest in discussing and executing an advance directive for mental health care in doing so, as well as to encourage and enable patients to periodically review their advance directives for mental health care as needed and to consult with an advocate if they wish to do so;
6. Inform mental health care professionals of their rights and responsibilities under P.L. 2005, c. 233 (N.J.S.A. 26:2H-102 et seq.) and these rules, including the responsibility to defer to a patient’s mental health care representative or advance directive unless doing so would: