

Mental Health Advance Directives (MHAD)

Participation
Planning
Peace of Mind

Call the MHAD Hotline at:
1-877-868-2159

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Thank you

Mental Health America Allegheny County (MHAAC) would like to acknowledge the Disability Rights Network of Pennsylvania (DRNPA). This presentation was originally developed by DRNPA and later adapted by MHAAC. We appreciate the support and guidance we have received from DRNPA in our efforts to educate the community about MHADs.

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Have You Ever:

- Been forced to take a medication you didn't want to take?
- Not been prescribed medication you feels works best for you?
- Worried about who would care for your children, pets, or home if you were in the hospital?
- Had a support person you wanted to be involved in your care who wasn't permitted to be?

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If you answered yes to any of these questions, or if you have similar concerns, an MHAD may give you **peace of mind** to know that your treatment preferences will be known by your support folks and treatment team.

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What We Will Learn Today

- What is a Mental Health Advance Directive?
- Why Make one?
- How to Make One in Pennsylvania

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- ***People With Mental Illness Have the Same Rights That People Without Mental Illness Have, including the right to refuse or consent to treatment.***

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Choosing Treatment

- Individuals Have the Right to Determine the Nature and Extent of Their Medical Care.
- Personal Autonomy is a Fundamental Right Guaranteed by the Constitution.
 - ⇒ Right To Informed Consent.
 - ⇒ Right To Treatment.
 - ⇒ Right To **REFUSE** Treatment (except during an emergency).

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Informed Consent

- Informed consent is when a person knows all the significant information about their options, including the possible consequences of each choice.
- Three Requirements to informed consent:
 - ⇒ Doctor must tell you all significant medical information, such as medication side effects, etc.
 - ⇒ You must have the capacity to make mental health care decisions.
 - ⇒ Your consent must be voluntary.

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What is Capacity for MHADs?

- Capacity is the basic ability to understand:
 - ⇒ Your diagnosis
 - ⇒ Risks and benefits of treatment
 - ⇒ Alternative treatments
 - ⇒ The consequences of not having any treatment
- **Capacity for an MHAD is only related to Mental Health Treatment**

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Who Determines Your Capacity?

- It is assumed that you have capacity.
- Who determines that you don't have capacity?
 - ⇒ There must be two evaluations for capacity:
 - One by a psychiatrist and one by another mental health professional.
 - Whenever possible one of the evaluators will be your treating professional.

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What is a Mental Health Advance Directive?

- An MHAD allows you to write down your mental health treatment preferences while you are well in case there is a time when you are not well.
- An MHAD includes both:
 - ✓ Informed Consent to Mental Health Treatment
 - ✓ Right to Refuse Mental Health Treatment

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Why is an MHAD Important?

- Allows you to take responsibility for your treatment.
- May help you feel more comfortable seeking treatment when you feel you need it.
- Helps ensure better treatment, faster – because your MHAD includes what treatments work for you and don't work for you.
- Encourages discussion of your preferences with your support folks.
- Is a natural part of a wellness plan.

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Mental Health Advance Directive Requirements

- You must be at least 18 years old or an Emancipated Minor.
- You must currently have capacity.
- **You Must Sign, Date, and Have Two Witnesses.**
- You must include your mental health treatment instructions for providers to follow.

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Treatment Decisions

- There are two kinds of choices going into your document:
 1. Consent or refusal for mental health treatment – Provider must comply if they can.
 2. Preferences related to choice of hospital, who should take care of your pets and kids, etc. Your providers should try to respect your wishes if they can, but they are not legally bound to follow them.

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Topics you may include in your MHAD:

Treatment- Legally Binding

- Medications
- Electroconvulsive therapy (ECT), drug trials, research studies
- Treatment history
- Crisis management
- Dietary needs that are medically necessary

Preferences- Not Legally Binding

- Who should be called
- Who will care for your children or pets
- Dietary and religious choices
- Which hospital you go to
- Other important issues

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What Requires Written Consent?

- ECT
 - Experimental Studies
 - Drug trials
- * If you have not specifically written your consent to these three types of treatment, that is considered a refusal of the treatment. However, if you do not want these treatments, it is recommended that you initial the box stating that you do not consent to them.

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Types of Mental Health Advance Directives

- Two Types:
 1. Declaration form
More Defined, Less Flexible.
 2. Power of Attorney (POA) form
More Flexible, Requires an Agent.
- In Pennsylvania you can have a Combination Declaration and POA form.

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How to Decide What Type

If you want to make all of your own mental health decisions without having anyone else involved

OR

If you do not have anyone you trust to make the same decisions for you that you would make

- ⇒ Then you should make a **Declaration MHAD.**

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How to Decide What Type

If you want someone else to make mental health decisions on your behalf

AND

You have someone that you trust to make the same decisions for you that you would make for yourself

AND

That person is willing to serve as your agent

⇒ Then you should make a **Power of Attorney MHAD.**

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How to Decide What Type

If you want to make some decisions

AND

You want someone else to make other decisions about new things that may come up

AND

You have someone you trust to make the same decisions for you that you would make who is willing to serve as your agent

⇒ Then you should make a **Combination Declaration and Power of Attorney MHAD.**

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Filling Out The Forms

- Fill in your choices by putting your initials in the box next to your choice.
- Only fill in the things you want to make a choice about; Leave the others blank.
- Give the reasons for your choices and include important details.

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Include Your Concerns

- Side Effects such as:
 - Nausea
 - Restlessness
 - Tremors
 - Tardive Dyskinesia*
- Treatments that didn't work in the past.

Seizures

Weight Gain

Muscle Rigidity

Other

* Involuntary movements

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Make Sure You Include What Treatments Do Work For You!

- This helps your provider and your agent make sure that you get the appropriate treatment, faster.

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What is an Agent?

- Your agent is the person you've chosen in your MHAD to make mental health care decisions for you when you do not have capacity.
- Your agent should make the same decisions that you would make for yourself if you were able to do so.
- Your agent should make decisions based on discussions with you, and based on the information in your MHAD.

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What does an agent have the power to do?

- You Decide Which Powers to Give.
 - ⇒ In order for your agent to consent to experimental studies, drug trials or ECT, you must write down that you give your agent the power to consent.
 - ⇒ Your agent cannot agree to surgical procedures or terminating your parental rights, **No Matter What**.

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Who to choose as an agent?

1. **Someone you really, really TRUST!**
2. Your agent can't be your provider or an employee of your provider unless they are related to you.
3. Your agent can't be an owner, operator or employee of a residential facility in which you receive care unless they are related to you.
4. Your agent can't be someone who witnesses your MHAD, or signs your MHAD if you are unable to.

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Agent Responsibilities Your Agent Should:

- Be available to make treatment decisions.
- Try to make decisions for you that you would make for yourself.
- Get all the info needed to make decisions.
- Advocate for what you need.
- Let the Court know there is an MHAD if there is a guardianship proceeding.
- Your agent is not responsible for the costs of treatment just because they are your agent.

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An Agent may be Removed by the Court if:

- They are no longer living, or they don't have capacity.
- They don't follow the instructions in your MHAD.
- The agent physically harms you or threatens to harm you.
- The agent tries to force you to do something you don't want to do.
- They voluntarily withdraw from being the agent.
- Your agent is your spouse and you get divorced (unless you state otherwise in your MHAD)

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Provider Responsibilities Your Provider Must:

- Ask if you have an MHAD.
- Inform people being discharged that they can make an MHAD.
- Place a copy of your MHAD in the Mental Health Record for at least two years.
- Make any Revocation (cancellation) or Amendment (change) of your MHAD part of the Mental Health Record.
- Document any determination of capacity to make mental health care decisions.

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Provider Responsibilities Your Provider Must (continued):

- Comply with your MHAD.
 - ⇒ But can't violate clinical practice or medical standards.
- Inform you and your legal representatives if the provider cannot comply with something in your MHAD.
 - ⇒ Your provider must document the reasons why they are unable to comply with your MHAD.
- Make reasonable efforts to transfer if the provider cannot comply with your MHAD.

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What A Provider May Not Do:

- A provider may not provide any treatment without consent, unless there is an emergency.
- A provider may not accept or refuse to accept a person as a patient solely on the basis of whether or not they have an MHAD.

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Making Your MHAD Valid

- If you have an Agent, have the Agent sign to show that they are willing to serve as your agent.
 - ⇒ This is not a legal requirement, but it's important to discuss your treatment decisions with your agent.
- **Sign the MHAD in front of two witnesses.**
- **Date the MHAD.**
- **Have two witnesses sign and date your MHAD.**

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Witnesses

- Witnesses may be anyone over 18, even a provider, **except** for:
 - ⇒ The Agent appointed in your Power of Attorney MHAD, or
 - ⇒ Someone who signs the MHAD on your behalf.
- Witnesses are **ONLY** witnessing your signature, not your capacity.

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Who Should Get a Copy?

- Make **copies** and give to:
 - 1. Your Emergency Contact.**
 - 2. Your Agent, if you have one.**
 - 3. Your Providers.**
 - 4. Friends and Family that you trust.**
- **Be sure to keep a list of who you give it to.**
- **Remember to give out any updates and destroy outdated copies.**

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MHAD Wallet Card

- Fill out a card stating that you have a Mental Health Advance Directive. Add contact information for the person that should be contacted in an emergency.
 - ⇒ Be sure to fill in as much as you know –
 - Cell Phone Number
 - Home Phone Number
 - Email
 - Address
- Keep the card on your person.

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Updating your MHAD

- **You Must Make a New MHAD At Least Every Two Years from the Date on Your Document.**
 - ⇒ If you are in the hospital when the two years comes around, your MHAD will stay in force until you regain capacity, then it expires.

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• FREQUENTLY ASKED QUESTIONS

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Do I Have To Use A Special Form to Make My MHAD?

- You do not have to use a special form.
- Can I use a form that I took from somewhere else?
 - ⇒ Sure, just keep in mind that forms from other states might have requirements that Pennsylvania doesn't have – for example, notarizing the signature. Or another state's form may not meet Pennsylvania requirements – for example, Pennsylvania requires a signature, date, and two witnesses.

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Steps to Completing an MHAD

1. Decide what type of MHAD is right for you.
2. Write your treatment decisions down and discuss them with your support folks.
3. Sign, Date MHAD with Two Witnesses.
4. Give Copies to Agents/Family/Providers.
5. Keep a card on your person stating you have an MHAD and who to contact to get a copy.
6. Review and update at least every two years.

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How do I make changes to my MHAD?

- You may change your MHAD at any time **as long as you have capacity**. Any changes must be signed, dated and witnessed.
- If you make significant changes you may wish to avoid confusion by making a new MHAD. Make sure you destroy any old copies if you do this and sign, date and have two witnesses for the new one.

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What if I want to change my MHAD while I am in the hospital?

- You should request an evaluation for capacity. You will then be evaluated by a psychiatrist and another mental health professional. If you have capacity, you should be able to make whatever changes you like.

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How Do I Cancel My MHAD?

- You may cancel (revoke) some or all of your MHAD at any time **as long as you have capacity**.
- You may revoke your MHAD orally or in writing. In writing is definitely better.
- The revocation is effective as soon as you tell your provider.
- You will have to make a new MHAD if you decide to reinstate your MHAD after you revoke it.

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When Can a Court Revoke Some or All of My MHAD?

- If following your mental health treatment instructions could result in your irreparable (permanent) harm or death.
 - ⇒ Any interested party may file a petition with the Court.
- A Judge may revoke some or all of the instructions.
 - ⇒ Remaining instructions may continue to be in effect.
 - ⇒ The Court will make a decision within 72 Hours.

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How does an MHAD affect Involuntary Commitment?

- Having an MHAD does not affect whether or not you will be involuntarily committed.
- Treating professionals may do whatever is necessary to prevent harm to you or others in an emergency.
- Your MHAD will govern your treatment while you are in the hospital until you regain capacity to make mental health decisions.

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Voluntary Commitment

- Can my Agent sign me in under voluntary commitment to a hospital?
 - ⇒ No. You cannot be signed in voluntarily against your will because you would no longer have your due process protections of having a commitment hearing.

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Confidentiality

- Should a Provider protect my confidentiality by not making my MHAD available to a hospital?

⇒ No!

You want the people who are treating you to have access to your MHAD. Anyone who knows that you have one should give a copy of your MHAD to your provider if there is a crisis.

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After You Leave the Workshop

- Discuss your choices with:
 - ⇒ Your Agent, if you have one, or other trusted support folks.
 - ⇒ Your Provider
 - If your provider cannot comply with your MHAD because of insurance, lack of available treatment options, or because they disagree with your choices, you may decide to change your MHAD or your provider.

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Resources

- MHAD Hotline at Mental Health America Allegheny County.
 - ⇒ Jamie Harris, 1-877-868-2159 Ext. 2017
 - ⇒ jharris@mhaac.net
- NAMI Southwestern PA
 - ⇒ Sharon Miller, 412-366-3788

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