



**MENTAL HEALTH
COLORADO**

Psychiatric Advance Directives

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Presenters

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Learning Objectives

- ▶ Summarize the origins and rationale for Psychiatric Advance Directives.
- ▶ List the potential benefits of Psychiatric Advance Directives
- ▶ Discuss approaches to overcoming barriers to implementation of Psychiatric Advance

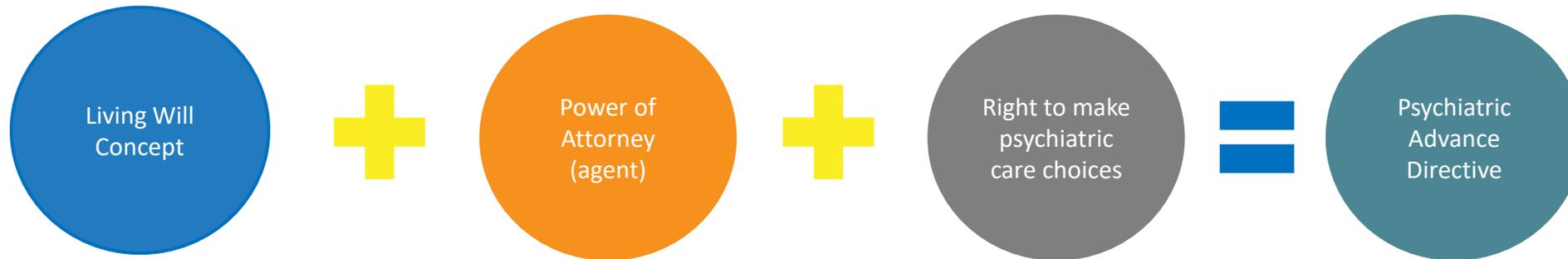
Right to Personal Autonomy

“No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.”

- Minnesota Supreme Court, 1976

- ▶ Right to Privacy
- ▶ Right to Bodily Integrity
- ▶ Right to Self-determination
- ▶ Right to Informed Consent

PAD IS Anchored in this Constitutional Right



PAD SUPPORTS RECOVERY

- ▶ People who exercise greater self determination have a **better quality of life**: Better employment situations, less physical and sexual abuse, more successful community integration. (Powers et al., 2012; Shogren, Wehmeyer, Palmer, Rifenbark, & Little, 2014; Wehmeyer and Schwartz, 1997; Wehmeyer & Palmer, 2003)
- ▶ Advance directives support principles of recovery: person-driven; based on respect; and involving individual, family and community strengths and responsibilities.

(SAMHSA “10 Guiding Principles of Recovery”)

What IS A Psychiatric Advance Directive (PAD)

- ▶ Legal documents that allow persons when of “sound mind” to refuse or give consent to future psychiatric treatment.
- ▶ Provides Written Advance Instructions.
- ▶ Someone can be authorized to make decisions about mental health care for the person if they become incapacitated.

Goals of a PAD

- ▶ To ensure persons are treated according to their wishes, even when they can not speak for themselves.
- ▶ Even when the person is unable to communicate coherently, provides a mechanism for:
 - ▶ exchange of clinical information; and
 - ▶ consent or refusal of treatment.
- ▶ May appoint a proxy decision maker (Health Care Agent) for when a person is incapacitated.

Why have a PAD?

- ▶ Self-determination: PAD operationalizes a person's choices regarding treatment and services—a crisis plan with teeth.
- ▶ Good vehicle to discuss planning and recovery with family, friends and providers.
- ▶ Gives providers, who may not know you, information which will help them provide you with good care.
- ▶ Opportunity to authorize, in advance, who can receive/release medical information.
- ▶ Can incorporate arrangements for care of children, finances (including housing) and pets during a crisis.

Why is a PAD important?

- ▶ Allow family/agents to speak directly with providers during crises.
- ▶ Allow family/agents to help make decisions during crises.
- ▶ Support patient autonomy and empowerment in behavioral health care.
- ▶ May reduce involuntary treatment.
- ▶ May improve continuity of care.
- ▶ Honoring PADs is a Condition of Participation in Medicaid and Medicare for treatment facilities!

If you decide to create your own form, it must contain:

- ▶ The person's
 - ▶ Name, date of birth, and gender
 - ▶ Eye color and hair color
 - ▶ Race or ethnic background
 - ▶ Instructions concerning behavioral health treatment

A PAD must contain

- ▶ Instructions concerning medication
 - ▶ Including primary and alternative instructions
- ▶ Instructions concerning alternative treatment
- ▶ Instructions concerning appointing agent or not appointing an agent
 - ▶ If the person decides to appoint an agent, they must include the information on the next slide:

The bill requires these things *if* an Agent is appointed

- ▶ Agent's:
 - ▶ Name, address, and telephone number
 - ▶ Scope of authority – Must be either:
 - ▶ Agent is limited to executing the person's instructions detailed on the PAD form
 - ▶ Agent has authority to make decisions concerning behavioral health treatment, medication, and alternative treatment on behalf of the Adult

The bill also requires these things

- ▶ Person's signature or mark & date the person signed the PAD form
- ▶ 2 disinterested witnesses' signatures or marks and the date that the disinterested witnesses signed the PAD form
- ▶ Agent's signature or mark and the date the agent signed the PAD form (*if applicable*)
- ▶ Name, Address, and Telephone number of adult's Health Care Provider (*if applicable*)
- ▶ Name of the Health Care Facility in which the adult is enrolled (*if applicable*)

Requirements of Creating a PAD

- ▶ Person must be of “Sound Mind” and free of coercion.
- ▶ Two disinterested witnesses must attest to such “Decision-Making Capacity” and to freedom from coercion
- ▶ Must have two disinterested witness, who can attest to sound mind and free of coercion when signing form.

Definitions in the Legislation

- ▶ Sound Mind - defined in the bill as "the ability to provide consent to or refusal of behavioral health treatment or the ability to make an informed behavioral health care benefit decision.
- ▶ Two Disinterested Witnesses – may not be spouse, partner, family in general, romantic partner, health care facility or provider, or have any interest or expectation in the estate of the person at the time of signing

Basic legal components of a PAD

- ▶ **Instructions:** A legally recognized document with instructions (directives) on psychiatric care, written in advance of the anticipated need: ‘Now, for later’.
- ▶ **Agent:** In Colorado a person *may* name a decision-making agent to carry out instructions.
- ▶ **Executed:** The PAD is executed by a person (age 18 or older) with sound mind to do so in writing, signed and dated, by two witnesses.

Instructions commonly in a PAD

- ▶ **When to treat/hospitalize**

- ▶ *For example: I authorize my agent to get me behavioral health help if I start to... if I start hearing voices telling me to hurt myself...*

- ▶ **Alternatives to hospitals**

- ▶ *For example: I prefer to go to a crisis bed, not a hospital if I am feeling self-destructive.*

- ▶ **Knowledge of medication effects**

- ▶ *For example: I will take this antipsychotic but have learned from past experience not to have a dosage over XYZ*

Continued

▶ Adverse actions

▶ *For example: I do not want injections because I am afraid of shots but I am OK with pills.*

▶ Trauma concerns

▶ *For example: Because of past trauma, I cannot be put into restraints. This would worsen my condition. Please do this instead...*

Continued

- ▶ **Setting treatment parameters for providers and agents**

- ▶ *For example: I authorize my agent/provider to treat with the anti-psychotics they decide on, but if I start exhibiting the following side effects, I want the medication reduced or stopped. Could also list allergies to medication*

CAVEAT: A PAD is not a wish list.

It does not give a person more rights or services than they are reasonably and otherwise entitled to as any other person.

Involuntary Hold

- ▶ If a person is found gravely disabled or danger to self or others, an involuntary hold takes precedence over the PAD.
- ▶ **However, provisions of the PAD are still to be honored during the involuntary hold.**
- ▶ **If a person is subject to an involuntary commitment, the PAD is still to be honored during the commitment.**

Why have an agent?

- ▶ To see that one's instructions are carried out.
- ▶ To work with care providers at a time when it is very hard for the person to do so.
- ▶ An agent means a more flexible directive, able to adjust to unforeseen options or circumstances.
 - ▶ For example, a new medication or a therapy the person did not anticipate in the directive.

What about kids, pets and finances?

▶ Kids

- ▶ Designate who you prefer to take care of your kids
- ▶ must be in accordance with other custody agreements

▶ Finances

- ▶ Agreement with agent/others to help pay bills and manage finances

▶ Pets

- ▶ Make prior arrangements, with instructions, plan, and contacts placed in PAD.

Can a person prepare a directive in the hospital or while under commitment?

- ▶ Generally, a person is assumed competent – even if committed.
- ▶ PAD *should not* be filled out when a person's judgment is impaired.
- ▶ PAD *can* be filled out as part of a discharge plan if a person is doing well; has capacity to make informed decisions.
- ▶ Requires signature of two disinterested witnesses.
- ▶ Agent does not have to be part of the PAD for discharge to move forward.

Where to keep a PAD?

- ▶ If a person has an agent, it is essential that the agent have a copy.
- ▶ Colorado does not yet have a registry for directives, including PADs.
- ▶ Person should give his/her PAD to medical/mental health provider; hospital.
- ▶ Providers must keep a PAD document in the person's medical record.
- ▶ Wallet cards
- ▶ Some keep their PAD on the refrigerator, so it is handy for emergency personnel.
- ▶ Electronically held at attorney's office
- ▶ Cloud storage

Electronic Storage

- ▶ If the person is willing, the PAD can be stored on the Colorado Psychiatric Advanced Directive web site:

ColoradoPAD.org

- ▶ HIPPA

Provider obligations: Implementing a PAD

- ▶ PAD goes into effect upon signatures from all required parties.
- ▶ Provider must **act in good faith per applicable standards of care**; comply with the PAD to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law.

Provider Obligations continued

- ▶ The PAD form shall be complied with unless the adult's instruction on the PAD form will cause substantial harm to the adult.
 - ▶ In that instance, Emergency Medical Service personnel, Health Care Provider, or Health Care Facility shall make a good faith effort to consult with the adult's agent, if applicable, and offer an alternative course of treatment

Unique Colorado Provisions

- ▶ CO Bill is Unique – does not require a MH professional to declare someone of “sound mind”
 - ▶ Does not require a notary
 - ▶ PAD effective upon signature of all parties instead of waiting for a crisis to occur
 - ▶ PAD cannot be revoked orally but can be amended or revoked at any time in writing with two disinterested witnesses.

What if a person refuses to go along with things they consented to in the directive?

- ▶ An agent can be instructed, in the PAD, to work with providers to implement instructions and make other decisions as needed.
- ▶ Providers can file a petition for commitment and/or to administer medications, but a PAD may also have an effect on what the court decides.
- ▶ A person can revoke a PAD in writing at any time.
 - ▶ Need 2 disinterested witnesses

Amending or Revoking a PAD

- ▶ Disinterested Witness:
- ▶ Cannot be Health Care Provider:
- ▶ - Physicians and employees, Any licensed, certified, registered or regulated mental health provider,
- ▶ Cannot be Health Care Facility
- ▶ - Hospital, Hospice, Nursing Facility, Dialysis, HCBS provider, home health care agency, CMHI, other facilities that contracts or provides health care services qualified to provide medical treatment.

Colorado PAD Bill And Form

- ▶ https://leg.colorado.gov/sites/default/files/2019a_1044_signed.pdf
- ▶ <https://www.mentalhealthcolorado.org/wp-content/uploads/2020/01/PADv.14.pdf>

Questions?

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