

Mental Health and Substance Use Disorders Psychiatric Advance Directives (PAD)

Colorado HB19-1044

Orders for Scope of Treatment

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**MENTAL HEALTH
COLORADO**

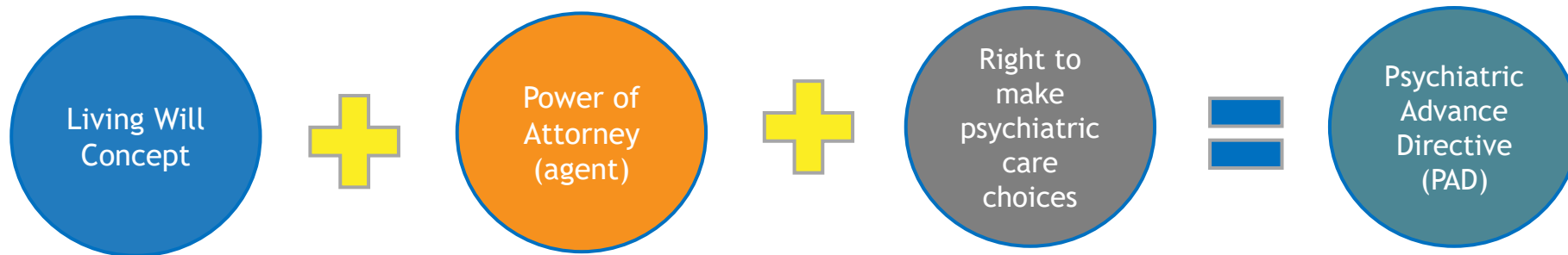
Psychiatric Advance Directives are about the right to Personal Autonomy

“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

Psychiatric Advance Directives are Anchored in this Constitutional Right



Right to privacy/autonomy, while a fundamental right, is not absolute so in some matters may be balanced against legitimate government interests; for example, emergency medication.

1990 Patient Self-Determination Act added weight to the authority of PADs

- ▶ Medicaid/Medicare providers ***must ask*** if a person has a directive and note this in the medical record (including a copy of the directive if it is provided).
- ▶ Providers must summarize health care decision-making rights and facility's policies about health care directives; ***cannot require or prohibit*** PAD.
- ▶ Must also ***educate staff*** and community about patient rights.

Benefits of a Psychiatric Advance Directive (PAD)

- ▶ People who exercise greater self determination have a **better quality of life**:
 - ▶ Better employment situations, less physical and sexual abuse, more successful community integration.
- ▶ Advance directives support principles of recovery: person-driven; based on respect; and involving individual, family and community strengths and responsibilities.

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¹ Powers et al., 2012; Shogren, Wehmeyer, Palmer, Rifkenbark, & Little, 2014; Wehmeyer and Schwartz, 1997; Wehmeyer & Palmer, 2003

² SAMHSA "10 Guiding Principles of Recovery"

Why a PAD?

- ▶ Colorado law has traditionally recognized the right of a person to write a medical advance directive for care should the person become incapacitated.
- ▶ However, medical advance directives do not adequately address the complexities associated with behavioral health treatment.
- ▶ Many emergency procedures and interventions can be more appropriate and more effectively delivered when the provider has information of what works best and is preferred by the person.

What is a PAD?

- ▶ A PAD is a legal instrument that documents a person's preferences for future behavioral health treatment. PADs are for persons 18 years of age or older.
- ▶ Allows the appointment of a behavioral health agent, to make decisions on behalf of a person in a behavioral health crisis.
- ▶ A PAD is drafted when a person is well enough to consider preferences for future mental health treatment.

Colorado PAD legislation

- ▶ Passed unanimously by the Colorado Legislature in 2019
- ▶ HB19-1044
 - ▶ https://leg.colorado.gov/sites/default/files/2019a_1044_signed.pdf
- ▶ While most states have their own version of a psychiatric advance directive, Colorado's law has certain unique features. (next slide)

Colorado PAD Unique Features

- ▶ The Psychiatric Advance Directive becomes effective upon signature.
- ▶ Intended to be honored in all situations, not just crisis.
- ▶ No medical professional declaration of competence needed for PAD to be in effect.
- ▶ Person cannot orally revoke the PAD; must be in writing with signatures of two disinterested witnesses.

Disinterested Witnesses

- ▶ Means an adult, other than a spouse, partner in a civil union, domestic partner, romantic partner, child, parent, sibling, grandchild, grandparent, health care provider, person who at the time of the adult's signature has a claim against any portion of the adult's estate at the time of the adult's death either as a beneficiary of a will that exists at the time of the adult's signature or as an heir at law.
- ▶ Disinterested witnesses attest that the adult executing the psychiatric advance directive was of sound mind and free of coercion when he or she signed the psychiatric advance directive form.

PAD Contents

► In Colorado, A PAD must include:

1. Personal identifying and demographic information
2. Instructions concerning behavioral health treatment
3. Instructions concerning medications (primary and alternative)
4. Instructions concerning alternative treatments (eg. ECT)
5. Instructions for the person's appointed agent (if the person chooses to have one)
6. PADs are in effect for two years following the date signed, unless the person executes a new form, amends or revokes the original signed form.

Agent

- ▶ A person 18 years or older who is authorized by an adult to make decisions concerning mental health and substance use disorder treatment, medication and alternative treatment for the adult to the extent authorized by that adult.
- ▶ Appointing an agent is not required for a PAD to be in force.
- ▶ An agent may be authorized to have total authority to act on the person's behalf or only those parts of the PAD as outlined in the PAD.
- ▶ The agent's signature must be on the PAD to act as an agent.

Why Should Providers Be Interested in a PAD?

- ▶ PAD gives providers important information about which medications the person is currently using, if any.
- ▶ PAD informs the provider about medications that are potentially harmful to the person, or allergic or other negative reactions that person has experienced in the past and could specify alternatives.
- ▶ PAD gives the provider contact information for the person's agent to make decisions with the provider on behalf of the person.
- ▶ PAD provides the provider with important information on alternative treatments that should be used that have been beneficial to the person in the past.

Why Should a Provider Be Interested?

- ▶ The PAD provides the contact information of a treating physician or behavioral health professional that is currently serving the person.
- ▶ With a PAD in effect, commitment procedures may not be necessary, as the PAD can serve as a crisis intervention plan, which may enable treatment to begin earlier and more effectively in a crisis.
- ▶ **If the person is deemed a danger to self or others or gravely disabled, the emergency hold authority takes precedence over a PAD. (State statute 27-65-105)**

Emergency Holds

- ▶ Nothing in a PAD precludes an emergency hold as cited in 27-65.
- ▶ However, all other preferences specified in a PAD are still to be followed during an involuntary hold or crisis (such as medications, alternative interventions, etc.)

What is My Role as a Provider?

- ▶ The provider should make a good faith effort to locate a PAD:
 - ▶ is there a wallet card? On the person? In the person's health record? On the person's refrigerator: EMS
- ▶ ASK the person if he/she has a PAD.
- ▶ If in the case of a conflict between a PAD and a person's medical advance directive, the document most recently executed takes precedence.

What is My Role as a Provider?

Emergency medical service personnel, health care providers, or health care facilities shall comply with a person's PAD that:

- ▶ has been executed in Colorado or another state
- ▶ Is apparent and immediately available
- ▶ Reasonably satisfies the requirements specified in the enabling statute unless the instruction on the PAD will cause substantial harm to the adult.

Substantial Harm Concerns

- ▶ If the person's instructions on the PAD will cause substantial harm to the person, emergency medical service personnel, health care providers, or health care facilities shall make a good faith effort to consult with the person's agent, if applicable, and offer an alternative course of treatment.

Role as a Provider

- ▶ In the case of a conflict between the person's PAD and the person's oral request for behavioral health treatment, the PAD takes precedence for the treatment decision or preference at issue.
- ▶ Nothing in the enabling PAD statute modifies or alters any generally accepted ethics, standards, protocols or laws for emergency medical personnel, health care providers or health care facilities.
- ▶ A PAD cannot compel or authorize emergency medical personnel, health care providers or health care facilities to administer behavioral health treatment that is prohibited by state or federal law.

Role as a Provider

- ▶ If the person who is known to have a properly executed and signed PAD is transferred from one health care facility or health care provider to another, the transferring health care facility or provider shall communicate the existence of a PAD to the receiving facility or provider before transfer. The transferring facility shall ensure that a copy of the PAD accompanies the adult upon admission to or discharge from a health care facility.

Role of Provider

- ▶ The person may NOT include in their PAD an instruction that exempts them from an involuntary emergency procedure or commitment authorized by state law. Any such instruction is void.
- ▶ However, all other provisions of a PAD are still to be followed.
- ▶ Any person authorized to perform an involuntary emergency procedure or commitment according to state law and who complies with the legal requirements of such procedure or commitment is not subject to civil or criminal liability or regulatory sanction.

Role of a Provider

- ▶ Health care facilities, or health care providers, may not require a person to have executed a PAD as a condition of being admitted to or receiving behavioral health treatment from the facility or provider.
- ▶ Emergency medical service personnel, health care providers, health care facilities or any other person who complies with a legally executed PAD that he or she believes to be the most current version is not subject to civil or criminal liability or regulatory sanction.

PAD Form

Psychiatric Advance Directives Form:

- ▶ <https://www.mentalhealthcolorado.org/wp-content/uploads/2020/01/PADv.14.pdf>
- ▶ **Note: this form is preferred but not required for a PAD to be legal.**

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