



# **ADVANCE PSYCHIATRIC DIRECTIVES FOR MENTAL HEALTH CARE**

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# The New Jersey Law

- P.L. 2005, c 233, became effective on March 21, 2006.
- The N.J. legislature recognized that while general advanced directives for healthcare are appropriate and effective where a person is unable to make health care decisions because of serious illness, that “..[i]ssues affecting persons with mental illness and their psychiatric needs warrant enactment of a separate statute governing advance directives for these needs...” N.J.S.A. 26:2H-103 (c)
- For the purpose of this presentation, we will refer to PADs (Psychiatric Advance Directives), although these directives may also be called Mental Health Care Advance Directives (MHCADs).
- Today, at least 26 States have separate and distinct advance psychiatric directive laws. See the National Resource Center on Psychiatric Advance Directives ([www.nrc-pad.org](http://www.nrc-pad.org)) for information about this.



# What are Psychiatric Advance Directives (PADs)?

- PADs are legal documents that allow individuals to express their treatment preferences for future mental health crises, by providing instructions and/or by naming a surrogate decision-maker.
- Any individual with decision-making capacity can develop a PAD; this excludes persons who have been adjudicated incompetent and have a guardian, unless the directive was made prior to the appointment of a guardian when the person was competent.
- Practitioners working in crisis and inpatient psychiatric services must affirmatively determine whether an individual in their care has a PAD.
- When it is determined that a patient receiving crisis and acute care services has a PAD and lacks decisional capacity, the PAD becomes operational.



# Internet Registry

- N.J.A.C. 10:32-2.1 establishes the creation of a voluntary, internet-based registry
- The PAD registry became operational in 2019 and may be accessed through the DMHAS website <https://www.nj.gov/humanservices/dmhas/home/index.html>
- Registry may be accessed by designated Psychiatric Emergency Services (PES) and Affiliated Emergency Services
- Updating of registry will be through <https://USACPR.com>
- DMHAS will work with hospitals and PES and AES to update and upgrade access of the registry

# Decision-Making Capacity



- In order to formulate a PAD, individual must possess decision-making capacity, which the statute defines this as the 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.
- Note that decisional capacity is not competency, as the latter is a legal determination by a court.
- Individuals are presumed competent unless a court has determined them to be incompetent.



# What are the Benefits of PADs?

- Allow individuals to express their desires and to obtain preferred treatment should they need mental health crisis services and lack decisional capacity.
- Enhances communication and shared decision-making between patients and treatment team
- Promotes patient empowerment and potentially minimizes the use of coercion (e.g., provides informed consent, permits administration of medication over competent adult's objection)
- Improves continuity of care and allows for more timely clinical interventions

See American Psychiatric Association website (<https://www.psychiatry.org/>)



# Concerns About Psychiatric Advance Directives

- While service users and professionals endorse their use, implementation has been slow and some barriers exist to their development and use (Swartz et al., Psychiatric Services, 2020).
- Individuals with mental illness may not be aware of PADs; or believe these are too difficult to complete without assistance, which is not readily available to them.
- With assistance, adults with SMI can complete legally valid PADs and that these documents faithfully represent their preferences and help them obtain effective crisis treatment while avoiding coercive interventions.



# What Can mental health providers do?

- According to studies, mental health professionals involvement in helping in the creation of PADs was essential to realize the benefits of PADs and to reduce barriers to their use (Braun et.al., Psychiatric Services, 2023).
- To encourage the development of PAs, agencies should:
  - Adopt policies and practices encouraging routine inquiry about clients' PADs, at the time of admission, and at such other times as are appropriate.
  - Provide informational materials concerning PADs to all interested clients and their families, and offer assistance to patients interested in executing a PAD.
- See SAMHSA toolkit “A Practical Guide to Psychiatric Advance Directives”

[https://psychnews.psychiatryonline.org/doi/10.1176/appi.pn.2020.11b12?utm\\_source=TrendMD&utm\\_medium=cpc&utm\\_campaign=Psychiatric\\_News\\_TrendMD\\_0](https://psychnews.psychiatryonline.org/doi/10.1176/appi.pn.2020.11b12?utm_source=TrendMD&utm_medium=cpc&utm_campaign=Psychiatric_News_TrendMD_0)