

N.J.A.C. 10:32

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 19, October 1, 2018

New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 32. ADVANCE DIRECTIVES FOR MENTAL HEALTH CARE

Title 10, Chapter 32 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

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

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2015 d.003, effective November 24, 2014.

See: 46 N.J.R. 1524(a), 47 N.J.R. 107(a).

CHAPTER HISTORICAL NOTE:

Chapter 32, Advance Directives for Mental Health Care, was adopted as R.2007 d.187, effective June 18, 2007. See: 38 N.J.R. 3407(a), 39 N.J.R. 2346(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 32, Advance Directives for Mental Health Care, was scheduled to expire on June 18, 2014. See: 43 N.J.R. 1203(a).

Chapter 32, Advance Directives for Mental Health Care, was readopted as R.2015 d.003, effective November 24, 2014. As a part of R.2015 d.003, Appendix A was repealed and adopted as new rules, effective January 5, 2015. See: Source and Effective Date. See, also, section annotations.

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N.J.A.C. 10:32-1.1

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§ 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 and Addiction Services in the Department of Human Services.

History

HISTORY:

Amended by R.2015 d.003, effective January 5, 2015.

See: 46 N.J.R. 1524(a), 47 N.J.R. 107(a).

Inserted "and Addiction".

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N.J.A.C. 10:32-1.2

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§ 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.

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N.J.A.C. 10:32-1.3

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§ 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 "DMHAS" means the Division of Mental Health and Addiction Services in the Department of Human Services.

"DMHAS registry" means the registry for advance directives established by the Division of Mental Health and Addiction 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."

History

HISTORY:

Amended by R.2015 d.003, effective January 5, 2015.

See: 46 N.J.R. 1524(a), 47 N.J.R. 107(a).

Substituted definition " 'Division' or 'DMHAS' " for definition " 'Division' or 'DMHS' ", and definition "DMHAS registry" for definition "DMHS registry"; and in definitions " 'Division' or 'DMHAS' "and "DMHAS registry", inserted "and Addiction".

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§ 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 and Addiction Services on September 1st every year, about the 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.

History

HISTORY:

Amended by R.2015 d.003, effective January 5, 2015.

See: 46 N.J.R. 1524(a), 47 N.J.R. 107(a).

In the introductory paragraph of (a), substituted "and Addiction Services" for "Services on September 1, 2007, and" and "1st" for "1 in", and deleted "thereafter" following "year".

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§ 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 and Addiction Services, located at N.J.S.A. 10:32 Appendix A, incorporated herein by reference, and information about the DMHAS 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:

- i.** Violate an accepted standard of mental health care or treatment under the circumstances of the patient's mental health condition, including past responses to requested or proposed treatments;

- ii. Require the use of a form of care or treatment that is not available to the mental health care professional responsible for the provision of mental health services to the patient;
 - iii. Violate a court order or provision of statutory law; or
 - iv. Endanger the life or health of the patient or another person;
7. Inform staff that a mental health care professional who intentionally fails to act in accordance with the requirements of the Act is subject to discipline for professional misconduct pursuant to section 8 of P.L. 1978, c. 73 (N.J.S.A. 45:1-21);
8. Provide training for staff that includes a forum for discussion and consultation regarding the requirements of P.L. 2005, c. 233 (N.J.S.A. 26:2H-102 et seq.) and these rules for staff and clients, as well as a discussion of the criminal penalties that can be assessed for noncompliance with the Act;
9. Establish procedures that provide for staff consultation with an institutional ethics committee; designate a person to resolve disputes; and provide for referrals to the Attorney General in order to seek resolution by a court of competent jurisdiction in the event of disagreement among the patient, mental health care representative and responsible mental health care professional concerning the patient's decision-making capacity or the appropriate interpretation and application of the provisions of an advance directive for mental health care to the patient's course of treatment;
10. Prohibit any employee from acting as a mental health care representative for a current or former client of the hospital unless that designation is approved by the facility chief executive officer;
11. Establish procedures for gathering data required by N.J.A.C. 10:32-1.4;
12. Document in a patient's chart when the responsible mental health care professional and a corroborating mental health care professional determine that an individual lacks capacity to make a mental health decision and when the patient has been determined to have regained the capacity to make that decision;
13. Document the date, time, and nature of any decision about the patient's care that is made pursuant to an advance directive, whether through a mental health care representative or by operation of an instruction; and
14. Document any override of an advance directive and the reason therefor.

History

HISTORY:

Amended by R.2015 d.003, effective January 5, 2015.

See: 46 N.J.R. 1524(a), 47 N.J.R. 107(a).

In (a)4, inserted "and Addiction", and substituted "N.J.S.A. 10:32" for "Chapter" and "DMHAS" for "DMHS"; in (a)10, deleted "and" from the end; in (a)11, substituted a semicolon for a period at the end; and added (a)12 through (a)14.

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§ 10:32-1.6 Reporting of interference with patient rights to have or invoke an advance directive

(a) A psychiatric facility shall report to the Department, by a written report to the Assistant Commissioner for Mental Health and Addiction Services, every incident in which an employee has materially failed to comply with the policies required by N.J.A.C. 10:32-1.5.

1. Notification of the Assistant Commissioner shall occur no later than five business days after the facility substantiates the event and shall be made in a form and manner prescribed by the Division.

History

HISTORY:

Amended by R.2015 d.003, effective January 5, 2015.

See: 46 N.J.R. 1524(a), 47 N.J.R. 107(a).

In the introductory paragraph of (a), inserted "and Addiction".

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§ 10:32-2.1 Creation and maintenance of a registry of mental health care directives

(a)The Division shall create an internet-based registry that contains information about the advance directives for mental health care of individuals who choose to submit such information.

(b)The information shall be submitted either electronically or on paper on a registry form developed by the Division, Chapter Appendix B, incorporated herein by reference, that shall be available to all licensed mental health programs and to the public through the Department or Division website.

(c)The registry form (N.J.A.C. 10:32 Appendix B) shall be an addendum to the standard advance directives for mental health treatment form (N.J.A.C. 10:32 Appendix A) published by the Division of Mental Health and Addiction Services, but shall clearly be an optional portion of the form, and shall be separately witnessed or executed electronically through a secure website with appropriate safeguards to prevent fraudulent access or registration.

(d)Only DMHAS staff, declarants, licensed independent practitioners, and mental health screeners certified by the Division of Mental Health and Addiction Services pursuant to N.J.A.C. 10:31-3.3, and employed by a designated screening service shall be authorized to access information on the registry. Information on the registry shall only be accessed by persons other than the declarant for purposes of maintenance of the registry or of ascertaining the wishes of a declarant who has registered his or her advance directive, and shall be treated as confidential protected health information.

History

HISTORY:

Amended by R.2015 d.003, effective January 5, 2015.

See: 46 N.J.R. 1524(a), 47 N.J.R. 107(a).

In (c), substituted "N.J.A.C. 10:32" for "Chapter" twice; in (c) and (d), inserted "and Addiction"; and in (d), substituted "DMHAS" for "DHMS".

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§ 10:32-2.2 Access to the registry

(a)An authorized person may access the registry through the Internet, http://www.state.nj.us/humanservices/dmhs/wellness_recovery.htm, 24-hours a day, seven days a week, or on the telephone at 1-800-382-6717 during weekday business hours by providing a password by the Division of Mental Health and Addiction Services pursuant to (b) or (c) below.

(b)The Division of Mental Health and Addiction Services shall provide a user name and password to any licensed independent practitioner or a person who is certified as a mental health screener pursuant to N.J.A.C. 10:31-3.3 upon the request of that person and receipt of proof of the license or certification.

1.A person who obtains a user name and password shall keep that user name and password confidential and shall use it to access information only about a person to whom they are a responsible mental health professional as defined in these rules and who has provided a name, social security number, or other unique identifier to the licensed or certified provider for purposes of accessing the advance directive or for purposes of treatment or payment. The purposeful misuse or disclosure of a password, or failure to report the accidental disclosure of a password, shall be cause to revoke that person's privilege to access the database.

(c)The Division of Mental Health and Addiction Services shall provide each registered declarant with a user name and password that shall limit their access to their own registered directive. The consumer may share that user name and password with a mental health care representative. If the representative does not have the password, the Division of Mental Health and Addiction Services will provide that user name and password to a person who presents either satisfactory proof that they are the person named in an advance directive, or a court order naming the person as the guardian of the person who executed an advance directive.

History

HISTORY:

Amended by R.2015 d.003, effective January 5, 2015.

See: 46 N.J.R. 1524(a), 47 N.J.R. 107(a).

Inserted "and Addiction" throughout; and in (a), substituted "1-800-382-6717" for "(609) 777-0700".

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APPENDIX A

Psychiatric Advance Directive (PAD)/Crisis Plan*
New Jersey Advance Directives for Mental Health Care Act
N.J.S.A. 26:2H-108 et seq.
Name: D.O.B.: Phone:

Address:

I, _____, being a legal adult of sound mind, voluntarily make this declaration for mental health treatment.

Please select and initial one of the following statements:

_____ I want this declaration to be followed if I am incapable of making a decision or decisions about my care, as defined in New Jersey Statutes Annotated 26:2H-109.

_____ In the absence of a declaration of incapacity, I want this declaration to be followed as if I am incapable of making a decision or decisions about my care, as defined in New Jersey Statutes Annotated 26:2H-109, when signs and symptoms listed in PART 2 are evident.

Please select and initial one of the following statements:

_____ I can revoke this plan at any time as permitted by law.

_____ I do not wish to exercise my right to revoke this plan once it has been activated.

If it is determined that I am unable to make informed health care decisions for myself, I want the following person to act as my primary mental health care representative:

Name Relationship to self Phone 1

Phone 2

Address Email

I would like the following person to be my alternate mental health care representative:

Name Relationship to self Phone 1

Phone 2

Address Email

_____ I do not wish to appoint a mental health care representative.

*Adapted from the Wellness and Recovery Action Plan (WRAP(R)) Crisis Plan. Copyright by Mary Ellen Copeland PO Box 301, W. Dummerston, VT 05357 Phone: (802) 254-2092 www.mentalhealthrecovery.com

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If you have designated someone as your mental health care representative, please answer sections A and B by initialing one of the statements. If you do not wish to appoint someone as your representative, do not complete this page.

A) Authority and Limitation of Authority of Mental Health Care Representative

I want my representative to make decisions about my treatment in the following way:

(Please select and initial one of the following statements.)

_____ Make decisions about my care based on what is in this document or, if not specifically expressed, as are otherwise known to my representative. If my wishes are unknown or are not specifically addressed in this document, make decisions based on what he/she believes would be the decision I would make.

_____ Make decisions about my care based on what is in this document or, if not specifically expressed, as are otherwise known to my representative. If my wishes are unknown or are not specifically addressed in this document, make decisions about my care that he/she thinks would be in my best interest, taking into consideration my preferences and consultation with providers and supporters as indicated in this document.

B) Please select and initial one of the following statements:

_____ I consent to giving my representative the authority to admit me to an inpatient or partial psychiatric hospitalization program for up to _____ days.

Initials _____

Optional: Describe the conditions under which you would agree to be hospitalized:

_____ I do not consent to give my representative the authority to admit me to an inpatient or partial psychiatric hospitalization program.

Name (Print):

The following are my wishes regarding my mental health care treatment in the event of a mental health crisis, including hospitalization:

Part 1. The following words describe me when I am feeling well:

Part 2. Symptoms

The following signs and symptoms will indicate that I am in a mental health crisis:

Substance Use (Street Drugs/Alcohol/Prescription Medications)

Without admitting to current use of substances, I offer the following information:

This is the substance(s) that I am or was most likely to use:

I feel and behave this way after taking this drug(s):

Part 3. Supporters

In the event that I am in a mental health crisis please contact the following person(s) in addition to any representatives named:

Name Relationship to self Phone 1

Phone 2

Name Relationship to self Phone 1
Phone 2

Name Relationship to self Phone 1
Phone 2

I do not want the following people notified or involved in my care or treatment in any way:
Name I do not want them involved because: (Optional)

Name I do not want them involved because: (Optional)

If I am admitted to a hospital, I will need assistance with the following tasks:

I need (Name) _____ To (tasks)

I need (Name) _____ To (tasks)

I need (Name) _____ To (tasks)

I need (Name) _____ To (tasks)

I need (Name) _____ To (tasks)

Initials _____

I am a caretaker of the following person(s) at home:

The following person should be contacted to arrange substitute care:

Name Relationship to self Phone 1

Phone 2

Part 4. Medical Information

Primary Care Physician Phone

Psychiatrist Phone

Therapist Phone

Case Manager Phone

Pharmacy Phone

Insurance Carrier ID # Phone

I would like the following health care providers to be notified and consulted about my care:

I have the following medical conditions:

Medications/Supplements/OTC (Over the Counter) preparations I am currently using:

Name Dosage Purpose

Name Dosage Purpose

Medications that have helped me in the past and that I consent to:

Name Dosage Purpose

Name Dosage Purpose

Name Dosage Purpose

Name Dosage Purpose

Medications that I do not consent to or wish to avoid:

Name or type of medication Reason Why

Name or type of medication Reason Why

Name or type of medication Reason Why

Initials _____

Name or type of medication Reason Why

Medications that I am allergic to:

Name Reaction

Name Reaction

Part 5: Help from my supporters and hospital staff

Please do the following things that would help reduce my symptoms, make me more comfortable, and keep me safe:

Please AVOID doing the following things while I am in a crisis, as they may make me feel worse:

Part 6. Home care/Community care/Respite center

If possible, follow this care plan instead of hospitalization:

Part 7. Hospital or other Treatment Facilities

If I am being admitted to a hospital or treatment facility, I prefer the following facilities in order of preference:

1. Name Reason I prefer it

2. Name Reason I prefer it

AVOID using the following hospital or treatment facilities:

1. Name Reason to avoid it

2. Name Reason to avoid it

Part 8: Treatments and Therapies

The following treatments and therapies help me when I am in crisis:

Name When to use this therapy

Name When to use this therapy

Treatments and Interventions that I do not consent to:

Name Reason why

Name Reason why

I would like to be permitted to use the following wellness techniques to help me in my recovery:

Initials _____

Part 9: Inactivating the Plan

The following signs, lack of symptoms or actions indicate that my supporters no longer need to use this plan and I am able to make decisions on my own behalf:

Signature of Declarant:

I, _____, being a legal adult of sound mind, voluntarily make this declaration for mental health treatment.

Signature _____

Date

Print Name _____

Any Mental Health Care Advance Directive plan signed with a more recent date takes precedence over this one.

_____ This plan has been registered with the state of New Jersey.

Witness:

I attest that the declarant signed this document (or asked another to sign this document on his or her behalf) in my presence, and that the declarant appears to be of sound mind and free of duress and undue influence. I am 18 years of age or older. I am not designated by this or any other document as the person's mental health care representative, nor as an alternate mental health care representative. At the time this document is being executed, I am not the responsible mental health care professional responsible, or directly involved with, the declarant's care.

HISTORY:

Repeal and New Rule, R.2015 d.003, effective January 5, 2015.

See: 46 N.J.R. 1524(a), 47 N.J.R. 107(a).

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APPENDIX B

Registration

I hereby submit my mental health advance directive to the Division of Mental Health and Addiction Services in the New Jersey Department of Human Services to be registered. I choose the following password that will permit access for me and anyone with whom I share it.

I further understand that a licensed health care provider who is providing me with mental health care may be able to access my directive if needed. No other person will be permitted to see the directive (except as required for administration of the registry) without my permission.

Signature

Print Name: _____, contact information for confirmation:

Witness:

Dated: _____

Send original NJDMHAS Registry, 222 S. Warren Street, PO Box 700, Trenton, NJ 08625-0700 and attach a copy of your entire mental health care advance directive. You may also submit other documents to be registered that affect your legal ability to consent, such as a health care advance directive, durable power of attorney, temporary or limited guardianship orders, etc., which the registry will accept in its discretion.

History

HISTORY:

Amended by R.2015 d.003, effective January 5, 2015.

See: 46 N.J.R. 1524(a), 47 N.J.R. 107(a).

Inserted "and Addiction", substituted "needed" for "need", and updated the address.

Administrative correction.

See: 47 N.J.R. 2634(b).

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