



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
PRISON/REENTRY/FIELD
FACILITY/SPANISH MANUALS

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POLICY

TITLE
MENTAL HEALTH ADVANCE DIRECTIVES

REVIEW/REVISION HISTORY:

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SUMMARY OF REVISION/REVIEW:

Updated terminology throughout
Policy Statement II., Directive II.B., III.E., IV.A., an IV.A.3.a. - Adjusted language for
clarification
II.C. - Removed unnecessary language

APPROVED:

Signature on file

SARA KARIKO, MD
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8/17/211

Date Signed

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DAN JOHNSON, MBA
Assistant Secretary for Health Services

8/17/211

Date Signed

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CHERYL STRANGE, Secretary
Department of Corrections

8/17/211

Date Signed

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REFERENCES:

DOC 100.100 is hereby incorporated into this policy; [RCW 71.32](#); [RCW 72.09.370](#); DOC 630.590 Reentry Community Services Program

POLICY:

- I. Individuals may give instructions regarding their mental health treatment in the event that the individual becomes incapacitated to make treatment decisions by completing a Mental Health Advance Directive. A Mental Health Advance Directive can improve functioning and communication between individuals, providers, and family members, which may result in reduced use of hospital services and involvement with the criminal justice system and can enhance the therapeutic relationship and the individual’s role and responsibility in treatment options.
- II. Nothing in this policy or in a Mental Health Advance Directive will be construed to mandate health services employees/contract staff to render treatment that is not indicated, medically necessary, or within practice standards, or that is contrary to law, other policies, or reasonable penological objectives.
- III. This policy does not forbid treatment in emergency situations including, but not limited to, involuntary medication and specific treatment needed to protect an individual or others from imminent danger.

DIRECTIVE:

- I. Mental Health Advance Directives
 - A. The Department will honor any Mental Health Advance Directive that meets the requirements of RCW 71.32.
 1. When an individual in Prison informs an employee/contract staff of having a Mental Health Advance Directive that was executed before incarceration, the employee/contract staff will inform a facility mental health employee/contract staff, who will make reasonable efforts to obtain a copy of the Mental Health Advance Directive. The Mental Health Advance Directive will be placed in the health record.
 - B. A pre-existing Mental Health Advance Directive may be invoked when an individual is declared incapacitated.
 1. An individual may only be declared incapacitated by:

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- a. A court, if the request is made by the individual or the individual's agent (i.e., generally the person assigned Durable Power of Attorney, which grants the authority to make mental health treatment/care decisions), or
 - b. Two Department mental health/health services providers (i.e., Advanced Registered Nurse Practitioner (ARNP), physician, physician's assistant, licensed psychiatrist/psychologist).
 - 1) When declared by health services providers, at least one of the providers must be a psychiatrist, licensed psychologist, or psychiatric ARNP.
- C. A Department health services employee/contract staff will inform the individual when a capacity determination is being requested.
1. The individual may request that the determination be made by a court, at which point the employee/contract staff receiving the request will ensure that the Office of the Attorney General is informed.
 2. If the individual does not request that the determination be made by a court, the Director of Mental Health/designee will assign 2 Department mental health/health services providers as identified above to make the determination within 48 hours of the assignment.
 - a. At least one of the providers will personally examine the individual.
 - b. During this time, the individual may only be treated:
 - 1) In an emergency,
 - 2) In accordance with other statutes and/or policies, or
 - 3) If the individual gives informed consent, even for treatment to which the individual previously consented, as long as the individual continues to accept the treatment voluntarily.
- D. When the individual is declared incapacitated, the Mental Health Advance Directive is invoked.
- E. Capacity will be re-evaluated within 5 days of:
1. A request by the individual or the individual's agent, or
 2. Any substantial improvement in condition that suggests the individual may have regained capacity.



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- F. Treatment may continue according to the Mental Health Advance Directive until the individual is determined to have regained capacity or until the directive is revoked or superseded.
- G. Subsequent determinations of capacity will follow this process.

II. Practice Standards and Limitations

- A. If unable to follow the Mental Health Advance Directive, in whole or part, the individual or the individual’s agent, if applicable, will be promptly notified and the reason documented in the health record.
- B. An executed Mental Health Advance Directive is not evidence of incapacitation or the presence of mental illness.
- C. Being found incapacitated for the purposes of mental health treatment does not establish incapacitation in other areas of decision making.
- D. Individuals with mental health needs who express the desire to execute a Mental Health Advance Directive may seek appropriate outside assistance within relevant legal and policy limitations.

III. Revocation

- A. A Mental Health Advance Directive can be revoked or superseded by:
 - 1. The individual, or
 - a. An individual who has capacity may revoke a directive in writing or by stating intent to revoke in the presence of a licensed mental health provider involved in the individual’s care.
 - b. An incapacitated individual may only revoke a directive when the directive specifically allows revocation while incapacitated.
 - c. Executing a subsequent Mental Health Advance Directive will result in the revocation of the previous directive.
 - 2. Any court order which revokes or conflicts with the directive.
- B. Revocation becomes effective only when it is communicated to a licensed mental health provider involved in the individual’s care. Any other Department employee/contract staff who receives a revocation will alert the licensed mental health provider involved in the individual’s care.

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- C. Upon receiving the revocation, the licensed mental health provider will record the time and date in the health record. Any written revocation will be placed in the health record, and the Mental Health Advance Directive being revoked will be removed for return to the individual or the individual's agent.
- D. An individual's consent to treatment which conflicts with a Mental Health Advance Directive will not constitute revocation of the directive.
- E. There will be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this policy unless the individual has actual or constructive knowledge of the revocation.

IV. Mental Health Advance Directives for Reentry Community Services Program (RCSP) Participants

- A. Individuals participating in the RCSP Program per DOC 630.590 Reentry Community Services Program will be informed of a Mental Health Advance Directive and offered assistance in executing one.
 - 1. Individuals will be provided information on Mental Health Advance Directives as part of the Multi-System Transition Planning Team meetings.
 - 2. At the meeting, the assigned RCSP employee will:
 - a. Discuss the benefits, scope, and purposes of a Mental Health Advance Directive, and
 - b. Provide the individual with the following documents:
 - 1) [Department of Social and Health Services 22-641 Mental Health Advance Directives: Information for Consumers](#), and
 - 2) [RCW 71.32.260 Mental Health Advance Directive Notice to Persons](#).
 - 3. After the meeting:
 - a. The assigned RCSP Transition employee will:
 - 1) Document on DOC 21-964 Reentry Community Services Program Transition Plan that the Mental Health Advance Directive was discussed with the individual and the above information was offered.

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2) Document the encounter in the Health Services section of the individual's file using the RCSP-Advance Directive CPT code.

b. The assigned RCSP employee will inform the RCSP contracted community mental health provider of the individual's desire to execute a Mental Health Advance Directive if the provider was not present at the meeting.

B. For individuals releasing to an area with no RCSP service contract, the assigned RCSP employee will inform the appropriate community mental health provider when the individual has established service in the community.

V. Limitations on Employee/Contract Staff Involvement

A. Department employees/contract staff will not:

1. Attempt to influence an individual regarding specific desires or plans related to the Mental Health Advance Directive that the individual is considering.
2. Participate in determining an individual's capacity as it relates to executing a Mental Health Advance Directive.
3. Serve as a witness for a Mental Health Advance Directive.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

ATTACHMENTS:

None

DOC FORMS:

DOC 21-964 Reentry Community Services Program Transition Plan