REVIEW/REVISION HISTORY:

Effective: 1/7/10
Revised: 11/7/11
Revised: 6/21/12
Revised: 5/26/14
Revised: 11/9/15

SUMMARY OF REVISION/REVIEW:

Section IV. - Adjusted throughout to reflect new notification process for ORCS participants, including form usage change

APPROVED:

Signature on file 9/29/15
G. STEVEN HAMMOND, PhD, MD, MHA
Chief Medical Officer

Signature on file 9/30/15
KEVIN BOVENKAMP
Assistant Secretary for Health Services

Signature on file 10/2/15
BERNARD WARNER, Secretary
Department of Corrections
REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 71.32; RCW 72.09.370; DOC 630.590 Offender Re-entry Community Safety (ORCS) Program Review

POLICY:

I. An offender may give instructions regarding his/her mental health treatment in the event that s/he becomes incapacitated to make treatment decisions by completing a Mental Health Advance Directive. A Mental Health Advance Directive can improve functioning and communication between offenders, 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 offender's role and responsibility in his/her treatment options.

II. Nothing in this policy or in a Mental Health Advance Directive shall 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 offender 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 a Prison offender 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 offender health record.

B. A pre-existing Mental Health Advance Directive may be invoked when an offender is declared incapacitated.

1. An offender may only be declared incapacitated by:
a. A court, if the request is made by the offender or his/her 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 offender when a capacity determination is being requested.

   1. The offender 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 offender 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 offender.

      b. During this time, the offender may only be treated:

         1) In an emergency,
         2) In accordance with other statutes and/or policies, or
         3) If the offender gives informed consent, even for treatment to which s/he previously consented, as long as s/he continues to accept the treatment voluntarily.

D. When the offender 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 offender or his/her agent, or

   2. Any substantial improvement in condition that suggests the offender may have regained capacity.
POLICY

MENTAL HEALTH ADVANCE DIRECTIVES

F. Treatment may continue according to the Mental Health Advance Directive until the offender 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 offender and his/her agent, if applicable, will be promptly notified and the reason documented in the offender health record.

B. The fact of having executed a Mental Health Advance Directive is not evidence of incapacitation or the presence of mental illness.

C. The fact of being found incapacitated for the purposes of mental health treatment does not establish incapacitation in other areas of decision making.

D. Offenders 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 offender.
   a. An offender who has capacity may revoke a directive in writing or by stating his/her intent to revoke in the presence of a licensed mental health provider involved in the offender’s care.
   b. An incapacitated offender 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 offender’s care. Any other Department employee/contract staff who receives a revocation will alert the licensed mental health provider involved in the offender’s care.
C. Upon receiving the revocation, the licensed mental health provider will record the time and date in the offender health record. Any written revocation will be placed in the offender health record, and the Mental Health Advance Directive being revoked will be removed for return to the offender or his/her agent.

D. An offender’s consent to treatment which conflicts with his/her Mental Health Advance Directive will not constitute revocation of the directive.

E. There shall 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 s/he has actual or constructive knowledge of the revocation.

IV. Mental Health Advance Directives for Offender Reentry Community Safety (ORCS) Program Participants

A. Offenders participating in the ORCS Program per RCW 72.09.370 will be informed of the benefits, scope, and purposes of a Mental Health Advance Directive and offered assistance in executing one.

1. Offenders 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 ORCS program employee will:
   a. Discuss the benefits, scope, and purposes of a Mental Health Advance Directive, and
   b. Provide the offender with the following documents:
      1) DSHS 22-641 Mental Health Advance Directives: Information for Consumers, and
      2) Mental Health Advance Directive Notice to Persons.

3. After the meeting:
   a. The assigned mental health provider will:
      1) Document on DOC 21-964 Offender Reentry Community Safety Transition Plan that the Mental Health Advance Directive was discussed with the offender and the above information was offered.
b. The assigned ORCS program employee will inform the ORCS contracted community mental health provider of the offender’s desire to execute a Mental Health Advance Directive if the provider was not present at the meeting.

B. For offenders releasing to an area with no ORCS service contract, the assigned ORCS program employee will inform the appropriate community mental health provider when the offender 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 offender regarding specific desires or plans related to the Mental Health Advance Directive that the offender is considering.

2. Participate in determining an offender’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 Offender Reentry Community Safety Transition Plan