

ADVANCE DIRECTIVES

VBCMH Training – FY25

Decision Making/Advance Directives

Van Buren CMH respects the rights of our customers to make choices and decisions about their care.

Our customers can make their wishes known by completing an Advance Directive for Health Care, which includes an optional Mental Health page.

This form is contained in the “Peace of Mind” booklet which also provides preplanning guidance.

VBCMH has hard copies of this booklet and it can also be found at:

<https://www.legislature.mi.gov/Publications/PeaceofMind.pdf>

Durable Power of Attorney and Living Will

A Durable Power of Attorney (DPOA) for Health Care is a specific appointment of an individual (the agent) to make decisions regarding the health care of the customer (the principle) in the event of his or her incapacity.

A living will is a written document that is signed and witnessed stating the wishes of an individual concerning medical treatment decisions. Living wills are not recognized by statute in Michigan.

Although a living will and a durable power of attorney are different, they both achieve this result...

“The advance self-determination of medical treatment by a customer in the event he or she becomes incapacitated.”

Provisions of DPOA for Health Care in Michigan

The Act provides that:

- Any person 18 years or older, who is of sound mind at the time of designation, may designate another person who is 18 years or older, to exercise powers concerning care, custody and medical treatment decisions for the customer. That person is to be known as a “Patient Advocate.”

Note: VBCMh employees may NOT act as a Patient Advocate for any VBCMh customer.

Provisions of DPOA for Health Care in Michigan

The designation must be in writing, signed and witnessed by two witnesses.

Witnesses **cannot** be:

- ❖ spouse,
- ❖ parent,
- ❖ child,
- ❖ grandchild,
- ❖ sibling,
- ❖ presumptive heir,
- ❖ known devisee, (one who inherits real estate through a will)
- ❖ physician,
- ❖ patient advocate,
- ❖ employee of a life or health insurance provider for the patient,
- ❖ ***employee of Van Buren Community Mental Health Authority,***
- ❖ employee of a health facility that is treating the patient, or
- ❖ employee of a home for the aged where the patient resides.
(Defined by Michigan law)

Provisions of DPOA for Health Care in Michigan

- ❖ The designation may include a statement of the customer's desires for care, custody and medical treatment and may authorize the "patient advocate" to exercise those powers which the customer could have exercised absent of his or her disability.
- ❖ The "patient advocate" must sign the acceptance of the designation as a patient advocate (and successor advocate, if named) prior to implementation of the DPOA for Health Care.
- ❖ There are specific statements that the acceptance statement must contain.

[MCLA 700.5507(4)]

Who Must Comply With This Law?

The Michigan law applies to all Medicare/Medicaid participating health care entities:

- Hospitals
- Skilled nursing facilities
- Home health agencies
- Hospice programs
- HMOs
- Other prepaid organizations and comprehensive outpatient rehabilitation facilities (**includes VBCMH**).

What Must a Health Care Entity Do?

WRITTEN REQUIREMENTS:

The organization must offer to provide all adult customers with written information, in simple to understand language, regarding the following:

- The individual's rights under the Michigan state law to make health care decisions, which includes the right to accept or reject medical or surgical treatment and the right to execute an Advance Directive.
- The policies of the Health Care entity respecting the implementation of such a right to accept or reject health care treatment.
- The organization's policies and description of applicable state laws.
- Changes in the law, as soon as possible.

What Must a Health Care Entity Do?

ORAL REQUIREMENTS:

- The Health Care entity must ask the individual upon admission to CMH services, during the assessment process, if he or she has executed any form of an Advance Directive and to document in a prominent part of the clinical record the individual's response. This shall be repeated at the annual assessment or as needed/indicated.
- If the individual does have an Advance Directive for Medical Care, the Health Care entity shall request a copy of the Advance Directive and maintain it in the individual clinical record.

Referrals to appropriate sources to assist individuals shall be made when needed.

What Must a Health Care Entity Do?

Compliance with state laws:

- The Health Care entity is required to ensure that the customer has complied with the state legal requirements regarding Advance Directives (i.e. properly executed it utilizing the proper form).

Education:

- The Health Care entity must educate its staff on Advance Directives regulations and issues.

Patient Advocate's Rights, Authority, Responsibilities, and Limitations

Authority under a designation shall not be exercised by the “patient advocate” unless and until the patient is unable to participate in medical treatment decisions.

A “patient advocate” shall:

- Act in accordance with the standards of care applicable to fiduciaries in exercising his or her powers.
- Take reasonable steps to follow the desires, instruction, or guidelines given by the patient while the patient was able to participate in care, custody or medical treatment decisions (either orally or written).
- Not exercise the DPOA powers, concerning the patient's care custody and medical treatment, if the patient is able to participate in the decision of their medical care.

Patient Advocate's Rights, Authority, Responsibilities, and Limitations

- Not make medical decisions to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant person's death.
- Make a decision to withhold or withdraw treatment which would allow a patient to die only if the patient had expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledged that such a decision could or would allow the patient's death.
- Shall not delegate his or her powers to another individual without prior authorization by the patient.

Additional Provisions in Michigan Law

According to MI law the DPOA is:

- Suspended if the patient regains ability to participate in medical treatment.
- Revoked upon the death of the patient.

Additional considerations include:

- Incapacity of Patient
- Binding Effect
- Petition to Probate Court
- Pregnancy
- Limitation on Health Care Provider
- Limitations of Life and Health Insurance Companies
- Not be construed to condone, allow, permit, authorize or approve suicide or homicide.

Is it Required?

- ◆ Does the law **require** that everyone have a DPOA for Health Care?

No, it allows an adult, 18 years of age or older, to create an Advance Directive to give direction for their care and assign a patient advocate.

Need More?

This training is to offer you some *basic* information related to DPOA for Health Care. For more specific information please read the applicable laws and regulations related to this topic.

Remember, “Peace of Mind” booklets are available to staff for personal use as well. It’s a useful tool for everyone.