

PSYCHIATRIC ADVANCE DIRECTIVES

I. What is a Psychiatric Advance Directive ('PAD')?

A Psychiatric Advance Directive ('PAD') is a document that details instructions on an individual's psychiatric treatment in the event that individual is in crisis and lacks the capacity to make informed decisions about their care. The PAD is drafted when an individual is not in crisis and has the capacity to make decisions about their care. The PAD may also authorize another person to act as a proxy decision maker for the individual in the event that the individual is in crisis and lacks the capacity to make informed decisions about their care.

In 2007, the Legislature passed the New Jersey Advance Directives for Mental Health Care Act, which found that "persons with mental illness and their psychiatric needs warrant enactment of a separate statute governing directives for these individuals." Upon its passage, Disability Rights NJ recognized the similarities between the PAD and the Crisis Plan of the Wellness and Recovery Action Plan ('WRAP'), a popular self-management recovery blueprint for individuals with mental illness that is designed to decrease psychiatric distress and promote individual autonomy. Disability Rights NJ collaborated with the Mental Health Association of New Jersey (MHANJ), an agency that has been promoting WRAPs in their mental health programs throughout New Jersey, to develop a PAD model that combined the familiar language of the WRAP Crisis Plan with the legal requirements of mental health advance directives. The result is a consumer-friendly document that can be easily understood by consumers and can be completed with minimal assistance.

II. What can I include in a PAD?

The PAD template created by Disability Rights NJ and MHANJ allows an individual to holistically detail signs that the individual is in a mental health crisis and to list preferred methods of treatment and support. With a PAD, an individual may:

- Describe signs and symptoms indicating the individual is in a mental health crisis.
- Appoint a mental healthcare representative to make decisions on the individual's behalf.
- List helpful medications, treatment programs, and support methods helpful in past crises, as well as those that the individual does not consent to.
- Instruct treatment providers and their support system on things which reduce symptoms and promote comfort.
- Detail a plan for community-based care instead of hospitalization.

III. When does a PAD take effect?

- A responsible mental healthcare professional treating an individual determines whether the individual lacks capacity to make informed decisions about their treatment.
- The mental healthcare professional must make this determination in writing.
- The written determination must describe the nature, cause, extent, and probable duration of the individual's incapacity.
- This determination only applies for purposes of the PAD taking effect. It does not determine the individual's capacity for any other purpose.
- See also NJSA § 26:2H-107(a)(6).

IV. What is the scope of a mental health care representative?

Individuals may appoint a mental healthcare representative in their PAD, but they are not required to do so. If appointed, a mental healthcare representative has the authority to make mental health decisions on behalf of the individual if they are in crisis and lack capacity to make informed decisions. In this role, a representative may exercise the individual's right to informed consent about their treatment, and they make decisions on the individual's behalf. A representative must act in good faith and within the boundaries of their authority described in the PAD.

A few notes about the authority of mental health care representatives:

- A PAD may expressly authorize, or place restrictions, on the representative's authority. For example: a PAD may permit a representative to consent to the individual's admission to a psychiatric facility (see also NJSA § 26:2h-107 (a)(6)); a PAD may expressly bar a representative from consenting to the individual's admission to a psychiatric facility (see also NJSA § 26:2H-110 (a)(2)); or a PAD may enumerate certain psychiatric facilities where the representative can consent to an individual's commitment (see also NJSA §§ 26:2h-105, 107 (b)(1)).
- An individual may list alternate mental healthcare representatives in the event that their primary mental healthcare representative is unable or unwilling to perform.
- A representative should make decisions that the individual would have made if they had capacity to make informed decisions about their care.
- The responsible mental healthcare professional determining the individual's capacity cannot also be the individual's mental healthcare representative.

V. Filling out a psychiatric advance directive

Disability Rights New Jersey and MHANJ have created instructions for filling out their PAD template. You may access these in English or Spanish below.

VI. If I am in crisis as defined in my PAD while receiving treatment in a hospital or psychiatric facility, how will they know I have a PAD?

New Jersey Department of Human Services, Division of Mental Health and Addiction Services ('DMHAS') contracted with the U.S. Living Will Registry to create a secure, online registry of PADs accessible only to mental healthcare providers. In this way, providers can locate an individual's PAD through a centralized location if the individual is in crisis. You may register your PAD [here](#) at <https://www.state.nj.us/humanservices/dmhas/resources/mental/pad/>. For instructions on registering a PAD with DMHAS, click [here](#) or visit <https://www.state.nj.us/humanservices/dmhas/resources/mental/pad/FAQs%20June%202017.pdf>.