

## **PURPOSE**

- I. To ensure that patients/clients and their legal representatives are informed of patient/client rights under federal and state law to make and direct decisions concerning medical care; including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives such as a "Living Will", "Medical Power of Attorney", "Out-Of-Hospital DNR", or "Declaration of Mental Health Statement".
- II. To guide Agency staff in implementing the provisions of the Patient Self-Determination Act and Texas' Advance Directives Act.
- III. To provide for education of staff and the community on issues concerning advance directives and related advance care documents.

## **Definitions**

### **Artificial Nutrition and Hydration**

The provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

### **Cardiopulmonary Resuscitation (CPR)**

Any medical intervention used to restore circulatory or respiratory function that has ceased.

### **Declarant**

Person who has executed or issued a directive.

### **Declaration for Mental Health Treatment**

This document allows the patient to make decisions in advance about mental health treatment and specifically three types of mental health treatment: psychoactive medication, convulsive therapy and emergency mental health treatment. The instructions that the patient includes in this declaration will be followed only if a court believes that they are incapacitated to make treatment decisions. Otherwise, the patient will be considered able to give or withhold consent for the treatments.

**Health Care or Treatment Decision**

Consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or a procedure to maintain, diagnose, or treat an individual's physical or mental condition, including such a decision on behalf of a minor.

**Irreversible Condition**

Condition, injury or illness that may be treated but is never cured or eliminated; that leaves the person unable to care for or make decisions for person's own self; and that without life sustaining treatment, is fatal.

**Life Sustaining Treatment**

Treatment that, based on reasonable medical judgement, sustains life of a patient and without which the patient will die. The term includes life sustaining medications and artificial life support; it does not include pain management medication or a medical procedure that provides comfort care, or palliative care.

**Living Will/Directive to Physician**

Type of advance directive in which an individual puts in writing their wishes about medical treatment should they be unable to communicate at the end of life. The Texas Directive permits the withholding or withdrawing of life-sustaining medical treatment in the event of a terminal or an irreversible condition that would result in death without life-support.

**Medical Power of Attorney**

A document that enables the patient to appoint someone they trust to make decisions about their medical care if they cannot make those decisions themselves. This type of advance directive may also be called a "health care proxy" or "appointment of a health care agent." The person appointed may be called the health care agent, surrogate, attorney-in-fact, or proxy.

**Qualified Patients**

Patient with a terminal or irreversible condition that has been diagnosed and certified in writing by attending physician.

**Terminal Condition**

Incurable condition that according to reasonable medical judgement will produce death within six (6) months, even with available life-sustaining treatment.

Witnesses

Two competent adult witnesses must sign the form acknowledging the signature of the patient or the person acting on the patient's behalf except when signed by two (2) physicians in Section C of OOHDR.

Witness 1 must meet all of the following qualifications and that individual may not be:

A person designated to make a treatment decision for the patient;

Related to the patient by blood or marriage;

Entitled to any part of the estate;

Be a person who has claim against the estate of the patient;

The attending physician or the attending physician's employee;

An employee of a health care facility in which that patient is being cared for, if involved in providing direct patient care to the patient; or

An officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or any parent organization of the health care facility.

Witness 2 may be any competent adult.

The declarant, in lieu of signing in the presence of witnesses, may sign the directive and have the signature acknowledged before a notary public.

The declarant, witness, or notary public may sign the directive or a written revocation of the directive using:

A digital signature that:

Uses an algorithm approved by the Department of Health;

Is unique to the person using it;

Is capable of verification;

Is under the sole control of the person using it;

Is linked to data in a manner that invalidates the digital signature if the data is changed;

Persists with the document and not by association in separate files; and

Is bound to a digital certificate; or

An electronic signature that:

Is capable of verification;

Is under the sole control of the person using it;

Is linked to data in a manner that invalidates the electronic signature if the data is changed; and

Persists with the document and not by association in separate files.

## **POLICY**

- I. The Agency recognizes the right of a patient/client and their legal representative under federal and state law to make decisions regarding medical care, including the right to formulate advance directives. The Agency will not withhold care based on whether or not the individual has an advance directive. However, if at any time Agency staff is unable to honor an advance directive elected by the patient/client, the patient/client will be notified and, if the patient/client or designated representative requests, will be transferred to another appropriate agency or organization.
- II. The Agency does not participate in the withdrawal of life sustaining care.
- III. Life sustaining procedures the Agency is unable and/or unwilling to withhold in accordance with a patient's/client's advance directive and/or as discussed with the patient/client or their designated representative, family, physician, and/or the

Agency's Governing Body are :

- A. Artificially Administered Nutrition,
- B. Artificially Administered Hydration,
- C. Mechanical Breathing Machines - (Oxygen, Ventilator, etc,)
- D. Total Parenteral Nutrition,
- E. Blood Transfusions,
- F. Life Sustaining Medications - (All routes),
- G. Dialysis, (the Agency will not withdraw followup support services such as assessments and coordination of care because the patient/client is at the end of life),
- H. Any other methods recognized as artificial life support,
- I. Surgical Procedures (discussed on an individual basis with the patient/client or designated representative, family, physician, and/or the Agency's Governing Body),
- J. CPR (Unless the patient/client has a standing DNR or meets other legal criteria for no CPR)

**PROCEDURE**

- I. Agency staff will distribute to and review with the patient/client or their legal representative written information relating to the patient's/client's right to refuse medical or surgical treatment and the right to formulate advance directives, as well as Agency policies relating to advance directives at the time of the initial assessment, prior to the provision of care to the patient/client.
- II. Agency staff will inquire whether the patient/client has an advance directive at the time of the initial assessment. If an advance directive is not in place and the patient/client expresses the desire to establish an advanced directive, then a

medical social services referral may be initiated to facilitate the proper execution of documents.

- A. If an advance directive is in place, Agency staff will request a copy for the patient's/client's medical record and the medical record will be "flagged" appropriately.
  - B. Agency staff will make every effort to obtain a copy of any patient's/client's advance directive and file this copy in the medical record. If the patient/client does not provide the Agency with a copy, this will be documented in the patient's/client's medical record.
- III. If at the time of notice, the patient/client is incompetent or otherwise incapacitated and unable to receive the notice, the Agency will provide the required written notice in the following order of preference, to:
- A. The individual's legal representative;
  - B. A person responsible for the health care decisions of the patient/client;
  - C. The individual's spouse;
  - D. The individual's adult child;
  - E. The individual's parent; or
  - F. The person admitting the patient/client.
  - G. If the Agency is unable, after a diligent search, to locate an individual listed above, the Agency is not required to provide notice. The Agency will provide notice if at any time the patient/client becomes able to receive the notice.
- IV. The patient's/client's advance directive status will be communicated to all staff involved in the patient's/client's care in one of the following ways:
- A. Identifying the chart(s).
  - B. List in the on call book.

- C. Verbal and written communication.
- V. Agency staff will document in the medical record (i.e. the Consent Form, Plan of Care form), information about any type of advance care directive the patient/client may have. Agency staff will encourage the patient/client to forward a copy to his or her physician if the physician does not have a copy.
- VI. Agency staff will direct the patient/client and their caregiver or representative to the patient's/client's physician, lawyer, MSW or other community resource if the patient/client requests additional information or wishes to develop an advance directive.
- VII. Agency staff may complete or witness an advance care document or participate in the decision-making process relating to whether to have an advance care document.
- VIII. If, at any time, a patient/client refuses medical treatment, Agency staff will discuss the refusal with the physician and document both the refusal and the physician notification in the patient's/client's medical record and complete a Physician Verbal Order form if appropriate.
- IX. Agency staff will not provide any medical treatment that the patient/client has not consented to receive.
- X. Agency staff will not withhold treatment or otherwise discriminate against patients/clients based on whether or not the patient/client has an advance directive.
- XI. Agency staff will recognize and honor properly executed advance directives as evidence of the patient's/client's desire to have medical treatment withheld or discontinued as specified.
- XII. The Agency will provide functions relating to advance directives such as, but not limited to, educating Agency personnel and the community served on advance directives and other bioethical issues, assisting the patient/client and family as needed, and aiding in the development of guidelines on advance directives and other bioethical issues.