

Purpose

- I. To ensure that clients and legal guardians are informed of client rights under 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/Directive to Physician", "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 Client Self-Determination Act and the Advance Directives Act.
- III. To provide for education of staff and the community on issues concerning Advance Directives and related advance care documents.

Definition

- I. 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).
- II. Cardiopulmonary Resuscitation (CPR)- any medical intervention used to restore circulatory or respiratory function that has ceased.
- III. Declarant- person who has executed or issued a directive.
- IV. Declaration for Mental Health Treatment- this document allows the client 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 client includes in this declaration will be followed only if a court believes that they are incapacitated to make treatment decisions. Otherwise, the client will be considered able to give or withhold consent for the treatments.
- V. 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.
- VI. 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.
- VII. Life Sustaining Treatment- treatment that, based on reasonable medical judgement, sustains life of a client and without which the client 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.

- VIII. 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.
- IX. Medical Power of Attorney- a document that enables the client 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.
- X. Qualified Clients- client with a terminal or irreversible condition that has been diagnosed and certified in writing by attending physician.
- XI. Terminal Condition- incurable condition that according to reasonable medical judgement will produce death within six months, even with available life-sustaining treatment.
- XII. Witnesses- two competent adult witnesses must sign the form acknowledging the signature of the client or the person acting on the client's behalf except when signed by two physicians in Section C of OOHDR.
- A. Witness One must meet all of the following qualifications and that individual may not be:
1. A person designated to make a treatment decision for the client;
 2. Related to the client by blood or marriage;
 3. Entitled to any part of the estate;
 4. A person who has claim against the estate of the client;
 5. The attending physician or an employee of the physician;
 6. An employee of a health care facility in which that client is being cared for, if involved in providing direct client care to the client; or
 7. An officer, director, partner, or business office employee of a health care facility in which the client is being cared for or any parent organization of the health care facility.

- B. Witness Two may be any competent adult.
1. The declarant, witness, or notary public may sign the directive or a written revocation of the directive using:
 - a. A digital signature that:
 - (1) Uses an algorithm approved by the Department of Health;
 - (2) Is unique to the person using it;
 - (3) Is capable of verification;
 - (4) Is under the sole control of the person using it;
 - (5) Is linked to data in a manner that invalidates the digital signature if the data is changed;
 - (a) Persists with the document and not by association in separate files; and
 - (b) Is bound to a digital certificate; or
 - b. An electronic signature that:
 - (1) Is capable of verification;
 - (2) Is under the sole control of the person using it;
 - (3) Is linked to data in a manner that invalidates the electronic signature if the data is changed; and
 - (4) Persists with the document and not by association in separate files.

Policy

- I. The Agency recognizes a client's and legal guardian's rights 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 client, the client will be notified and if the client or designated representative requests, will be transferred to another appropriate agency/organization. Advance directives will remain in effect unless revoked by the client and/or legal representative.
- 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 client's Advance Directive and/or as discussed with client or designated representative, family, physician, and/or the Agency's governing body are:

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- 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 (Agency will not withdraw follow up support services such as assessments and coordination of care because client is at end of life),
- H. Any other methods recognized as artificial life support,
- I. Surgical Procedures (discussed on an individual basis with client or designated representative, family, physician, and/or Agency's governing body),
- J. CPR (Unless client has a standing DNR or meets other legal criteria for no CPR)

Procedure

- I. The Agency staff will distribute to and review with the client and legal guardian written information relating to the 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 client.
- II. The Agency staff will inquire whether the client has an Advance Directive at the time of the initial assessment. If an Advance Directive is not in place and the client expresses the desire to establish an advanced directive, then a referral may be initiated to their physician to facilitate the proper execution of documents.
 - A. If an Advance Directive is in place, Agency staff will request a copy for the client's medical record and the medical record will be "flagged" appropriately.
 - B. The Agency staff will make every effort to obtain a copy of any client's Advance Directive and file this copy in the medical record. If the client does not provide Agency with a copy, this will be documented in the client's medical record.
- III. If at the time of notice, the client is incompetent or otherwise incapacitated and unable to receive the notice, Agency will provide the required written notice in the following order of preference, to:
 - A. The individual's legal guardian;
 - B. A person responsible for the health care decisions of the client;

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- C. The individual's spouse;
 - D. The individual's adult child;
 - E. The individual's parent; or
 - F. The person admitting the client.
 - G. If the Agency is unable, after a diligent search, to locate an individual listed above, Agency is not required to provide notice. The Agency will provide notice if at any time the client becomes able to receive the notice.
- IV. The client's Advance Directive status will be communicated to all staff involved in the 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. The Agency staff will document in the medical record, on the Consent Form, information about any type of advance care directive the client may have.
- VI. The Agency staff will direct the client and care giver to the client's physician, lawyer, MSW or other community resource if the client requests additional information or wishes to develop an Advance Directive.
- VII. The 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. The Agency staff will not discriminate against clients based on whether or not the client has an Advance Directive.
- IX. The Agency staff will recognize, and honor properly executed advance care documents as evidence of the client's desire to have medical treatment withheld or discontinued as specified by the client.
- X. 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 client and family as needed, and aiding in the development of guidelines on Advance Directives and other bioethical issues.

Reference

<https://www.hhs.texas.gov/regulations/forms/advance-directives>

Texas Administrative Code

Title 26, Part 1, Chapter 558, §558.283

Texas Health and Safety Code, Advance Directives Act

Title 2, Chapter 166, 166.01-166.05

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