

Title: Advance Directives - Living Will & Durable POA for Healthcare

Document Owner: Robin Stake Department: Utilization	Date Created: 12/01/1991
Approver(s): Megan Wirsching	Date Approved: 01/16/2024
Affected Department(s): Admitting, Care Management	Version: 15

PURPOSE

To delineate how EvergreenHealth Monroe executes and formulates a patient's Advance Directives and to direct the compliance of employees in the procedures for advance directive management. This policy complies with Federal law in the Patient Self-Determination Act (PSDA, 1991), OBRA 1990, and Washington State Law in the Natural Death Act. (RCW 70.122).

All adults receiving health care have certain rights, such as the right to confidentiality of their personal and medical records and to know about and consent to the services and treatments they may receive. "The Patient Self-Determination Act" (PSDA) is a federal law that requires health care providers to give patients written information about their right to make choices about their health care. This information must include a description of the ways in which individuals can make health care decisions in advance.

PHILOSOPHY

- A. Snohomish County Public Hospital District #1 (the "District") is committed to allowing patients to make their own decisions about their healthcare, especially regarding end-of-life decisions. This right is especially significant today because modern medical technology can prolong the lives of people who are terminally ill or permanently unconscious even when there is no hope of recovery. In such circumstances, the District recognizes the right of each patient to decide whether to die without extraordinary treatment or to have life-sustaining treatment instituted to prolong life as long as possible.
- B. This policy is intended to provide procedures to ensure that patients' Advance Directives are honored by District staff to the extent permitted by law. It is specifically intended to comply with federal law, "The Patient Self-Determination Act", sections 4206 and 4761 of the Omnibus Budget Reconciliation Act of 1990(OBRA/90), the Washington Natural Death Act (RCW 70.122), and the Washington Mental Health Advance Directives Act (RCW 71.32).
- C. The District will not discriminate against any individual based on whether or not the individual has executed an Advance Directive or require that a patient has an Advance Directive as a condition of receiving services.

TYPES OF ADVANCE DIRECTIVES

Paper copies of this document may not be current and should not be relied on for accuracy. The current version is located at ehm.policytech.com.

Title: **Advance Directives - Living Will & Durable POA for Healthcare**

“Advance Directives” are written instructions to health care providers that are prepared before medical or mental health treatment is actually needed. An Advance Directive describes the type of care or treatment a patient would want if a medical or mental illness or an accident occurs that makes it impossible for him or her to consent to medical or mental illness treatment at the time it is needed. Some types of Advance Directives are meant to be used only if the patient is terminally ill or in a permanent unconscious state. There are several different types of Advance Directives in Washington State:

- a. **Living Will** (also known as a Health Care Directive) is allowed under a Washington State statute, the "Washington Natural Death Act", RCW 70.122.010. It is a written document that enables a patient to tell his or her doctor what he or she does or does not want if diagnosed with a terminal condition or is permanently unconscious. The patient may choose not to prolong the process of dying from an incurable and irreversible condition. The patient must sign and date the Living Will in the presence of two witnesses, who must also sign. These two witnesses may not be, at the time of signing, any of the following:
 - i. Related to the patient by blood or marriage;
 - ii. Entitled to inherit the patient's money or property;
 - iii. A person to whom the patient owes money;
 - iv. The patient's doctor or the doctor's employees; or an
 - v. Employee of the health care facility where the patient is receiving health care
 1. The patient can change his or her Living Will at any time so long as he or she is mentally capable. If the patient is not mentally capable, he or she can cancel or revoke it, but cannot change it or write a new one. The patient can cancel his or her Living Will by destroying it or having someone else destroy it in their presence; or signing and dating a written statement that he or she is canceling it; or verbally telling his or her doctor, or instructing someone to tell his or her doctor, that he or she is canceling it. The patient, or someone they have instructed, must tell the attending physician before the cancellation is effective.
- b. **Durable Power of Attorney for Healthcare (DPOAHC)** is another type of Advance Directive used in Washington State. It is a written document that allows the patient to designate someone to make "informed consent" health care decisions for the patient if he or she is unable to make them at the time treatment is needed. The patient can also describe what type of health care decisions he or she wants made and under what circumstances the decisions should be made.
 - A DPOAHC becomes effective only by a court order or if a physician determines the patient is unable to make healthcare decisions for him or herself. It does not need a witness or be notarized in Washington State unless it also includes powers for financial matters.
- c. **Physician Orders for Life-Sustaining Treatment (POLST) form** is technically not an Advance Directive and does not take the place of one. It translates an Advance Directive into physician

Title: **Advance Directives - Living Will & Durable POA for Healthcare**

orders. It is a "portable" Physician Order form that describes the patient's code directives. It is intended to go with the patient from one care setting to another.

- d. **Organ or Tissue Donation:** The Washington State Uniform Anatomical Gift Act (RCW 68.50) allows individuals to specify whether they wish to donate specific body parts or their entire body upon their death. This can be done via a written statement witnessed by two people, by checking the back of their driver's license, or in their will. See policy *Organ and Tissue Donation* for more information.
- e. **Mental Health Advance Directive** is the newest type of Advance Directive allowed under Washington State law (RCW 71.32). It is designed to provide an individual with capacity the ability to control decisions relating to his or her own mental health care. It is a written document that describes the patient's directions and preferences for treatment and care during times when he or she is having difficulty communicating and making decisions regarding his or her mental health care. It can inform mental health providers what treatment the patient does or doesn't want and identify an "agent" who can make decisions and act on behalf of the patient.
 - i. It is based on the following concepts:
 - 1. Some mental illnesses cause individuals to fluctuate between capacity and incapacity;
 - 2. During periods when an individual's capacity is unclear, he or she may be unable to access needed treatment due to an inability to give informed consent;
 - 3. Early treatment may prevent him or her from becoming so ill that involuntary treatment is necessary; and
 - 4. Mentally ill individuals need some method of expressing their instructions and preferences for treatment and providing advance consent to or refusal of treatment.
 - ii. A mental health advance directive provides the individual with a full range of choices and allows them to document whether they want to be able to revoke a directive during periods of incapacity. The law requires providers to respect an individual's mental health advance directive to the fullest extent possible. It may include:
 - 1. Consent, or refusal of, particular medications or inpatient admissions;
 - 2. Who can visit the patient in the hospital;
 - 3. Who the patient appoints to make his or her decisions regarding mental health treatment, the "agent";
 - 4. Anything else the patient wants or doesn't want in their future mental health treatment
 - iii. The "agent" names by the patient must be at least 18 years old and cannot be the patient's physician, case manager, or residential provider unless that person is also his or her spouse, adult child, or sibling.
 - iv. A provider may refuse to follow a mental health advance directive under the following instances:

Paper copies of this document may not be current and should not be relied on for accuracy. The current version is located at ehm.policytech.com.

Title: **Advance Directives - Living Will & Durable POA for Healthcare**

1. The patient's instructions are against hospital policy or are unavailable;
2. Following the directive would violate state or federal law;
3. The instructions would endanger the patient or others;
4. The patient is hospitalized under the Involuntary Treatment Act or is in jail.

DEFINITIONS

- a. **"Adult"** means any individual who has attained the age of majority (18 years old) or is an emancipated minor.
- b. **"Attending Physician"** means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient [RCW 70.122.020(2)].
- c. **"Capacity"** means a patient's ability to make healthcare decision and shall be determined in accordance with *Policy Informed Consent on Behalf of Incapacitated Patients*.
- d. **"Life-Sustaining Treatment"** means any medical or surgical intervention that uses mechanical or other artificial means, including artificially provided nutrition and hydration, to sustain, restore, or replace a vital function which when applied to a patient who is in a terminal or permanently unconscious condition would serve only to prolong the process of dying. Life-sustaining treatment shall not include the administration of medication or the performance of any medical or surgical intervention deemed necessary solely to alleviate pain [RCW 70.122.020(5)].
- e. **"Permanently Unconscious Condition"** means an incurable and irreversible condition in which the patient is medically assessed within reasonable medical judgment as having no reasonable probability of recovery from an irreversible coma or persistent vegetative state [RCW 70.122.020(6)].
- f. **"Terminal Condition"** means an incurable and irreversible condition caused by injury, disease, or illness that within reasonable medical judgment will cause death within a reasonable period of time, in accordance with accepted medical standards and where attempts of resuscitation will serve only to prolong the process of dying [RCW 70.122.020(9)].

POLICY

No District employee, hospital District volunteer, attending physician, or employee of the attending physician is permitted to witness any patient's Advance Directive. Employees who have been appointed as a notary public may use their notary seal to notarize signatures (RCW 70.122.030).

No District employee, hospital District volunteer or attending physician shall be required under any circumstances to participate in the withholding or withdrawing of life-sustaining treatment if such person objects to so doing. No such person shall be discriminated against in employment or professional privileges because of the person's participation or refusal to participate in the withholding or withdrawing of life- sustaining treatment [RCW 70.122.060(4)].

Paper copies of this document may not be current and should not be relied on for accuracy. The current version is located at ehm.policytech.com.

Title: Advance Directives - Living Will & Durable POA for Healthcare

Staff and attending physicians may presume that the patient's Advance Directive is legally valid unless the Advance Directive has been revoked. No staff or attending physician will be liable for failing to act upon a revocation unless that person has knowledge of the revocation (RCW 70.122.040).

RESPONSIBILITY

Staff from several departments have important roles in implementing District policy on Advance Directives. Listed below are summaries of departmental responsibilities.

DEPARTMENT RESPONSIBLE	RESPONSIBILITY/ACTION:
Patient Registration	Registration personnel are frequently the patient's first point of contact with an Evergreen facility or service. Generally, registration personnel have the following responsibilities: <ul style="list-style-type: none"> • Determine if the patient has executed an Advance Directive. • Note in the electronic health record whether the patient has an Advance Directive and whether we have a copy. • Offer each patient information regarding rights and how to create an Advance Directive. • Make copies of Advance Directives and route to appropriate staff and facilities. • Refer to Social Services those patients expressing interest in establishing an Advance Directive.
Case Management Social Workers	Care Management Social Workers provide information to those patients expressing interest in establishing Advance Directives, including information as to where copies of Advance Directive forms may be obtained. Social workers may refer interested patients to their attending physician, Pastoral Care, their own legal counsel, or other appropriate physicians or personnel for additional information to reach a decision on this matter.
Nursing Personnel	Nursing personnel and Health Unit Coordinators are responsible for notifying appropriate staff and physicians regarding the patient's Advanced Directive. As caregivers, nursing personnel also have important roles in ensuring that patients' Advance Directives are implemented.
Attending Physician	The attending physician's role is crucial to successful implementation of the district's policy on advance directives: <ul style="list-style-type: none"> • All attending and primary care physicians are encouraged to raise the issue of Advance Directives with each adult patient at any opportunity (including office visits), preferably when the patient is healthy. • Attending and primary care physicians are encouraged to provide information to those patients expressing interest in establishing Advance Directives, including information as to where they may obtain copies of

Paper copies of this document may not be current and should not be relied on for accuracy. The current version is located at ehm.policytech.com.

Title: **Advance Directives - Living Will & Durable POA for Healthcare**

	<p>the brochure "Who will decide if you can't". This brochure includes forms for both a Living Will and a Durable Power of Attorney for Health Care.</p> <ul style="list-style-type: none"> • Each time the physician asks a patient to sign an Informed Consent, the physician is encouraged to ask the patient if he or she has an Advance Directive or would like to discuss establishing an Advance Directive. • Attending physicians will refer interested patients to Social Services, Pastoral Care, their own legal counsel, or other appropriate physicians or personnel. • Attending physicians will honor the patient's revocation of his or her Advance Direct, document the revocation, and notify appropriate District personnel. <p>When the patient's Advance Directive conflicts with the physician or District's policies:</p> <ul style="list-style-type: none"> • The attending physician shall inform a patient or his or her surrogate decision-maker of the existence of any policy or practice of the physician or District (facility or agency) that would preclude the honoring of the patient's Advance Directive at the time the physician becomes aware of the existence of an Advance Directive. If the patient chooses to retain the physician (or facility or agency), the physician shall prepare a written plan to be filed with the patient's Advance Directive that sets forth the physician's (or facility's or agency's) intended actions should the patient's medical status change so that the Advance Directive would become operative. • The physician (and facility or agency) have no obligation to honor the patient's Advance Directive if they have complied with this notification (RCW 70.122.060).
<p>Health Information Management (HIM)</p>	<p>HIM personnel scan the patient's Advance Directive in the Advance Directive portion of the electronic medical record. If the patient has revoked his/her Advance Directive, HIM personnel add the copy of the revocation statement, if signed, to the permanent record.</p>

Other related organizational policies:

- a. Organ and Tissue Donation
- b. Withdrawing or Withholding Life-Sustaining Treatment
- c. Informed Consent on Behalf of Incapacitated Patients
- d. Patient Rights and Responsibilities

REFERENCES

AHRQ (Agency for Healthcare Research and Quality) National Guideline Clearinghouse / Advance Directives www.ahrq.gov (Updated / Verified August 4, 2008).

Paper copies of this document may not be current and should not be relied on for accuracy. The current version is located at ehm.policytech.com.

Title: **Advance Directives - Living Will & Durable POA for Healthcare**

CMS Manual System: Hospital Interpretive Guidelines: Appendix A, Rev. 75, Implementation: 12/02/2011; Interpretive Guidelines: 482.12(a)(7),(b)(2).

NIAHO Accreditation Requirements, Rev. 10, Patient Rights, PR.2.

Mitty EL, Ramsey G. Advance directives. In: Capezuti E, Zwicker, Mezey M, Fulmer T, editor(s). Evidence-based geriatric nursing protocols for best practice. 3rd ed. New York (NY): Springer Publishing Company; 2008. p. 539-63. [62 references].

Washington State Hospital Association. Federal and State Law on Advance Directives.
www.wsha.org/EOL-FedState.cfm.

Washington State Medical Association, 2014, <https://www.wsma.org/advancedirectives>.

Washington State RCW 13.64.060, Power and Capacity of Emancipated Minor.