



ADMINISTRATIVE/FISCAL/CLINICAL/PHF POLICY AND PROCEDURES

COUNTY OF SANTA BARBARA
ALCOHOL, DRUG AND MENTAL HEALTH SERVICES

Section - CLINICAL

Effective: 5/31/2004

**Policy - #13 ADVANCE DIRECTIVES: PSYCHIATRIC
HEALTH FACILITY**

Revised:

Director's Approval See signature page

Date _____

Assistant Director's Approval _____

Date _____

Form Ref. -

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POLICY:

It is the policy of Santa Barbara County ADMHS to provide information about, and assistance in completing Advanced Directives. This information will be available in English and Spanish. Laws and regulations governing Advanced Directives appear in the Federal Patient Self-Determination Act of 1990, the Code of Federal Regulations, and the California Probate Code. Advanced Directives take effect when an individual is confined in a hospital (or other 24-hour care facility that provides medical treatment as a part of its normal routine), and has been found by a physician to lack capacity as defined in the California Probate Code.

Advance Healthcare Directives is a document that provides a mechanism for patients to direct their own health care decisions such as agreeing to or refusing certain treatment when they are unable to provide informed consent (e.g., comatose state, impaired mental status, inability to communicate). Patients may use Advance Healthcare Directives to: (1) Appoint a Health Care Agent to make health care decisions on their behalf and / or (2) To establish Individual Healthcare instructions. Patients may choose to complete either one or both of these options. Each part alone is legally binding.

A. Background

The Psychiatric Health Facility informs patients of their right to formulate an Advance Directive and honors established directives or decisions specified by an authorized Agent within the limits of the law. "Capacity" means that the patient understands the nature and consequences of the proposed health care, including the risks and benefits, and is able to make or communicate his / her health care decisions.

California Probate Code allows for the provisions of Mental Health Instructions, sometimes referred to as Psychiatric Advance Directives. Instructions now may include decisions regarding cannot provide consent for placement into an acute psychiatric facility, convulsive treatment, psychosurgery, elective sterilization, or abortion.

Legal Citations:

Federal Patient Self-Determination Act of 1990
CFR, Title 42, Section 422.128 & 438.6(i)(3) & (4)
CPC, Sections 4600-4724
CPC, Section 4600

PROCEDURE:

1. During the admission process the admitting nurse (TEAM LNS) will supply the patient (over the age of 18 years) with an Advance Directive Brochure title Your Right to Make Healthcare Decisions. These brochures are available in English and Spanish. A translator will be used for persons who speak other than English or Spanish. **NOTE** In many instances the patients will be unable to receive the brochure (e.g., acute altered mental status or combative). In these cases the information will be given to the family members, if available, or at a later point when the patient is ready, Documentation will be made on the Advanced Directives Inquiry Form ADIF).
2. The LNS will provide the patient with information regarding Advance Directives and document accordingly on the ADIF. Patients who request more information will be referred to the Team Social Worker. The Team Social Worker will provide additional information as requested or contact the ADMHS Patients' Rights Advocate to assist the patient. This shall be documented accordingly on the ADIF. **NOTE** Social Services staff will maintain competency on the provision of information and the assistance in development of Advance Directives and established Advanced Directives for filing in the medical record.
3. If the patient indicates that she / he has an Advanced Directive that is filed in the medical record (soft chart) LNS should access the chart through Medical Records, communicate the content to the Treatment Team, and document accordingly on the ADIF.
4. The Advance Directive must contain all of the following elements to be considered legally valid:
 - ◆ Statement of the patient's intent to create an Advanced Directive
 - ◆ Signature of the patient and date of signature
 - ◆ Signatures of two (2) witnesses or a Notary Public and official stamp
5. Patients who wish to formulate an Advance Directive need to have approval by the Attending Physician to insure that they have present "capacity". If the Team Physician has determined that the patient has the requisite capacity, she / he should document this fact in the Physician's progress Notes. Patients approved for this process will be referred to the Team Social Worker who will assist the patient if formulating an Advance Directive.
6. For patients who have an established Advance Directive not in the medical record, Social Services will attempt to locate a copy of the Advance Directive and place in patient's medical record. **NOTE** Advanced Directives filed in the patient's old record (soft chart) are still valid unless they have passed their expiration date.
7. An Advanced Directive is activated if a patient lacks "capacity" to give informed consent. The Attending Physician will make the determination if the patient lacks "capacity". **NOTE** The fact that a patient has been admitted to a mental health facility, does not, in itself, mean that the patient lacks capacity. An Advance Directive is no longer in effect as soon as the person regains the capacity to make health care decisions. The patient's primary physician will make the determination when the patient's capacity is restored and document accordingly.
8. If a patient has an Advanced Directive specifying mental health instructions every effort will be made to comply with the instructions within the scope of the law, department policy and procedures, and the patient's treatment plan.
 - a. A healthcare agent cannot authorize any treatment that the patient objects to, even though the patient is deemed to lack capacity by the primary physician.
 - b. A healthcare provider may decline to comply with a healthcare instruction that requires medically ineffective health care or health care that is contrary to generally accepted health care standards.
 - c. LPS law supersedes Advance Directives. 5150's, Certifications, and Riese proceedings shall continue as needed.
 - d. Administration of emergency medications and other emergency procedures such as use of Seclusion or Restraint may be utilized even though they may not be authorized by the Advance Directive.

9. Patients having capacity may revoke the designation of an agent, and may revoke or modify any and all part of an Advanced Directive, in writing or by personally informing a healthcare provider. Advance Directives do not expire unless a specific expiration date is stated in the document.
10. Clients with questions or concerns regarding Advance Directives can be referred to the Department of Health Services, Licensing and Certification Division at 1 800 236-9747. This information also appears in the ADMHS Advanced Directives brochure, *Your Right to Make Healthcare Decisions*. Clients can also be referred to the ADMHS Patients' Rights Advocate.
11. Any question regarding the compliance of a Mental Health Advance Directive will be routed to the Administrator-on-duty.
12. Training: Staff training will be provided by the ADMHS Patients' Rights Advocate and the Quality Assurance Department. The Patients' Rights Advocate will also provide notifications of any changes in laws and regulations within 90 days of the effective date of those changes.
13. The MHP will ensure that beneficiaries are not discriminated against based on whether or not they execute an Advanced Directive. The Patients' Rights Advocate and the Quality Assurance Department offer trainings to staff and related community agencies regarding Advance Directives that includes information on the legal right of clients to decide if they will or will not create an Advance Directive and that such a decision cannot result in adversely affecting the treatment or care being provided to a client. The trainings will also inform participants regarding the Compliance Hotline, which they will be encouraged to utilize if they have concerns about the discrimination of clients based on their Advance Directive status. In addition, the Quality Assurance Department will review grievances that pertain to Advance Directive issues and will respond accordingly.
14. At this time, the Santa Barbara County MHP has not identified any "conscientious objections" permitted by the state legal authorities that would support limitations on advance directives. Any changes to this issue will be immediately communicated to staff and clients/beneficiaries, and changes will promptly be made to informing materials.

B. Healthcare provider's responsibilities include:

1. The hospital determines whether a patient has or wishes to make an Advance Directive and honors Directives within the limits of the law and the hospital's mission and capabilities.
2. Comply with the individual healthcare instructions or decisions made by the healthcare agent. Failure to follow an Advance Directive may result in liability for damages (Cal. Probate Code 4742).
3. Maintaining Advance Directives in the patient medical record (Cal. Probate Code 4731 (a)).
4. Notifying the designated healthcare agent that the patient lacks capacity (Cal. Probate Code 4732).
5. Providing the designated agent access to the patient's medical record (Cal. Probate Code 4678).

Assistance: Patients' Rights Advocate

Reference: Quality Assurance Manager

Replaces: New Policy