

**Purpose**

To ensure the Agency's implementation of the provisions of the Advance Directives Act, Health and Safety Code, Chapter 166.

**Policy**

- A. The Agency will honor the client's wishes related to his/her advance directive, if made known to the Agency, unless the Agency is incapable of providing the requested procedures at the level of intensity required by the client's condition.
- B. If at any time the Agency is unable to honor an advance directive elected by the client, s/he will be notified and if the client's representative requests, s/he will be transferred to another appropriate agency/organization s/he chooses. The advance directive will remain in effect unless revoked by the client or his/her representative.
- C. The Agency will not discriminate against the client or withhold care based on whether or not s/he has an advance directive.
- D. The Agency complies with applicable Federal conscience and anti-discrimination laws prohibiting exclusion, adverse treatment, coercion, or other discrimination against individuals or entities on the basis of their religious beliefs or moral convictions as found in the Department of Health and Human Services, Office for Civil Rights, Rule 45 CFR, Part 88, Protecting Statutory Conscience Rights in Health Care, effective May 2019.
- E. 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 the client or his/her representative, family, physician, and/or the Agency's governing body are:
  - 1. Artificial nutrition;
  - 2. Artificial hydration;
  - 3. Mechanical breathing machines such as for oxygen, a ventilator, etc.;
  - 4. Total parenteral nutrition;
  - 5. Blood transfusions;
  - 6. Life sustaining medications regardless of the route(s);
  - 7. Dialysis;
    - a. The Agency will not withdraw follow-up support services such as assessments and coordination of care because the client is at the end of his/her life.
  - 8. Any other methods recognized as artificial life support; and
  - 9. Surgical procedures as discussed on an individual basis with the client or his/her representative, family, physician, and/or the Agency's governing body.
- F. The Agency provides personal assistance services; accordingly, its employees do not administer cardiopulmonary resuscitation (CPR).
- G. The Agency does not participate in the withdrawal of life sustaining care.

**Definitions per the Health and Safety Code Chapter 166**

- A. Advance directive: an instruction made to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition, an out-of-hospital do not resuscitate (OOHDNR) order, or a medical power of attorney.
- B. Artificially administered nutrition and hydration: provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the gastrointestinal tract.
- C. Attending physician: a physician selected by, or assigned to, a client who has the primary responsibility for his/her treatment and care.
- D. Cardiopulmonary resuscitation (CPR): any medical intervention used to restore circulatory or respiratory function that has ceased.
- E. Competent: possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of, and reasonable alternatives to, a proposed treatment decision.
- F. Declarant: a person who has executed or issued a directive.
- G. Digital signature: an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature. For an advance directive in which a signature by a declarant, witness, or notary public is required or used, the declarant, witness, or notary public may sign the directive or a written revocation of the directive using a digital signature that:
  - 1. Uses an algorithm approved by the department;
  - 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;
  - 6. Persists with the document and not by association in separate files; and
  - 7. Is bound to a digital certificate.
- H. Electronic signature: a facsimile, scan, uploaded image, computer-generated image, or other electronic representation of a manual signature that is intended by the person using it to have the same force and effect of law as a manual signature. For an advance directive in which a signature by a declarant, witness, or notary public is required or used, the declarant, witness, or notary public may sign the directive or a written revocation of the directive using 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.

- I. Ethics committee: a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.
- J. 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.
- K. Incompetent: lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of, and reasonable alternatives to, a proposed treatment decision.
- L. Irreversible condition: condition, injury or illness that may be treated but is never cured or eliminated that leaves a person unable to care for or make decisions for his/her own self and that, without life sustaining treatment, is fatal.
- M. Life sustaining treatment: treatment that, based on reasonable medical judgment, sustains life of a client and without which the client will die. The term includes both life-sustaining medication and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. It does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.
- N. Medical Power of Attorney: a document delegating to an agent the authority to make health care decisions executed by the client.
- O. Physician: a physician licensed by the Texas Medical Board or a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.
- P. Terminal Condition: an incurable condition caused by injury, disease, or illness that, according to reasonable medical judgment, will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.
- Q. Witness: a person who may serve as a witness to the execution of an advance directive or the issuance of a non-written advance directive as follows per Section 166.003:
  - 1. Each witness must be a competent adult.
    - a. The Agency's staff may be a witness to the client's execution of an advance directive.
  - 2. At least one of the witnesses must be a person who is not:
    - a. A person designated by the declarant to make a health care or treatment decision;
    - b. A person related to the declarant by blood or marriage;
    - c. A person entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;
    - d. The attending physician;
    - e. An employee of the attending physician;

- f. An employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- g. A person who, at the time the written advance directive is executed or, if the directive is a nonwritten directive issued under this chapter, at the time the non-written directive is issued, has a claim against any part of the declarant's estate after the declarant's death.

**Procedure**

- A. As part of an employee's and volunteer's orientation, a copy of the Agency's policy on a client's advance directive will be provided to him/her.
  - 1. Employees and volunteers will be responsible for knowing, observing, and implementing this information in all contacts with the clients.
  - 2. Documentation of the orientation and training will be kept in the individual's personnel file.
- B. The Agency will give the client a copy of its complete Policy on Advance Directives at the earlier of:
  - 1. The time the client is admitted to receive services from the Agency; or
  - 2. The time the Agency begins providing services to the client.
- C. If the client is incompetent or otherwise incapacitated and unable to receive the Policy, the Agency will provide the Policy, in the following order of preference, to:
  - 1. The client's legal guardian;
  - 2. A person responsible for the health care decisions of the client;
  - 3. The client's spouse;
  - 4. The client's adult child;
  - 5. The client's parent; or
  - 6. The person admitting the client.
  - 7. The client or the client's representative will sign and date on the Consent form acknowledging receipt of a copy of the Agency's Policy on Advance Directives.
    - a. The Agency's representative will sign and date the Consent form, also.
    - b. If the client is unable to sign/date the Consent form, the reason why will be provided on the form.
    - c. The original signed/dated Consent form will be kept in the client's record at the Agency and a copy will be given to the client or the client's representative.
- D. If the Agency is unable, after a diligent search, to locate an individual listed above, the Agency is not required to provide a copy of the Policy.
- E. If the client has executed an advance directive, the Agency representative will request a copy for the client's record.

## Administrative Policy Manual

### RI.2 Advance Directives

1. The client may decline to provide a copy of his/her advance directive.
    - a. If the client declines to provide a copy of his/her advance directive, it will be documented in the client's record.
  2. If the client does provide a copy of his/her advance directive:
    - a. It will be placed in his/her record at the Agency.
    - b. The paper and/or the electronic record will be flagged so staff can recognize readily that an advance directive is in place.
    - c. The fact that the client has an advance directive will be relayed verbally or in writing to all staff involved in the client's care.
    - d. This information will be listed in the on-call log book, the Calling Tree, the Emergency Preparedness Manual, and related sources.
- F. If the client has not executed an advance directive and wishes to do so, s/he or his/her representative will be encouraged to contact the client's physician, lawyer, or another applicable community resource.