

 <p>THE UNIVERSITY OF NEW MEXICO HEALTH SCIENCES CENTER</p>	Administrative Policies and Procedures
University Hospitals	

ADVANCE DIRECTIVES AND PATIENT SELF-DETERMINATION

Primary Age Group: **Adult**

POLICY:

It is the policy of the University of New Mexico Health Sciences Center (UNMHSC) to advise patients of their rights to self-determination in health care and to formulate advance directives in accordance with the Patient Self-Determination Act, OBRA, 1990, 101 P.L. 508; HCFA Conditions of Participation for Hospitals, 42 CFR 482.13 (1999); the Uniform Health Care Decisions Act, NMSA 1978, Sections 24-7A-1 et seq. (1995, as amended through 2000); the Uniform Anatomical Gift Act, NMSA 1978, Sections 24-6A-1 et seq. (1995, as amended through 2000); and the Uniform Probate Code, NMSA 1978, Sections 45-1-101 (1975, as amended through 1995). This policy applies to all UNMHSC clinical components and medical staff.

POLICY CROSS REFERENCES

- Patient Rights and Responsibilities
- Age of Majority and Emancipation of Minors
- Cardio Pulmonary Resuscitation (CPR) and Documentation
- No Code or DNR, Medical Staff Policy and Procedure
- Do Not Resuscitate in the Operating Room

GENERAL INFORMATION AND DESIRED OUTCOME:

Each adult patient or their legally authorized decision-maker will be informed upon the patient’s admission, or at the earliest possible time, of the patient’s rights to make informed decisions about their medical care, and to formulate advance directives. (*See Patient Rights and Responsibilities Policy.*) Discussions with a patient regarding advance directives will be documented in the medical record. When an advance directive is formulated in the hospital or when it is brought to any UNMHSC site, a copy of the advance directive will be placed in the medical record.

1. **DEFINITIONS**

- 1.1 **Advance Health Care Directives** – An adult or emancipated minor, while having capacity:
- 1.1.1 May give an oral or written individual instruction. If oral, it must be given personally to a health care provider. The instruction may be limited to take effect only if a specified condition arises.

- 1.1.2 May designate any individual to act as surrogate decision maker by personally informing the supervising health care provider.
- 1.1.3 May execute a power of attorney for health care, which may authorize an agent to make any health care decision the patient could have made while having capacity.
 - 1.1.3.1 The authority of the agent becomes effective only upon a determination that the patient lacks capacity and ceases to be effective upon a determination that the patient has regained capacity.
 - 1.1.3.2 An agent shall make health care decisions in accordance with the patient's instructions, if any, and other wishes to the extent known by the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the patient's best interest.
 - 1.1.3.3 An agent may not be an employee of the health care institution unless related by blood, marriage or adoption.
- 1.1.4 **Durable Power of Attorney for Health Care Decisions** – A valid Durable Power of Attorney for health care decisions is one that has been executed in compliance with the applicable state statute. A Durable Power of Attorney executed before July 1, 1997 has a presumption of validity if executed properly. After July 1, 1997, the preferred document, under state law, is the Advance Health Care Directive.
- 1.1.5 **The New Mexico Right to Die Act**, NMSA 1978, Section 24-7-1 et seq. (1977) **was repealed July 1, 1997**, with the enactment of the Uniform Health Care Decisions Act. **Living Wills** previously executed under the Right to Die Act should still be honored if they were in effect prior to July 1, 1995, unless subsequently changed by the individual who made them. **Powers of Attorney** executed under NMSA 1978, Sections 45-5-501 to 45-5-502 (1995) **are still valid** even though the UHCDA allows advance directives to be executed that include similar powers.
- 1.1.6 **EMS – DNR Order** – This is a physician's order honoring the adult patient's advance directive to withhold or terminate resuscitative measures in certain pre-hospital settings. This Order is not binding once the patient is brought to the hospital, but it may inform the hospital physician of the patient's wishes.
- 1.2 **Agent** – an individual designated in a power of attorney for health care to make health care decisions for the individual granting the power.
- 1.3 **Capacity/Competency** – an individual's ability to understand and appreciate the nature and consequences of proposed health care, including its significant benefits, risks and alternatives to proposed health care and to make and communicate an informed health care decision. An individual shall not be deemed to lack capacity solely on the basis that the individual chooses not to accept the treatment recommended by a health care provider.
- 1.4 **Legal Guardian** – a judicially appointed individual having authority to make a health care decision for another individual.
- 1.5 **Renal replacement Therapy** – adjuncts that completely replace or supplement the patient's natural renal function including, but not limited to, hemodialysis and peritoneal dialysis.

- 1.6 **Supervising Health Care Provider** – the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual’s health care. This term does not include medical or surgical residents or medical students.
- 1.7 **“Life Sustaining Treatment”** - is any medical treatment or procedure without which the individual is likely to die within a relatively short time, as determined to a reasonable degree of medical probability by the attending physician.
- 1.8 **Surrogate Decision Maker** – an individual, other than a patient’s agent or legal guardian, authorized under the Uniform Health Care Decisions Act to make a health care decision for the patient.
- 1.9 **General Information:**
- 1.9.1 If given orally, the patient must make the instructions personally to a health care provider who must document the oral instruction in the patient’s medical record.
- 1.9.2 If written, the document must be signed by the patient, and should be dated. Signatures of two witnesses are recommended but not required.
- 1.9.3 In the absence of a documented advance directive, a surrogate decision-maker may make informed decisions on behalf of the patient. In the absence of a designation or if the designee is not reasonably available, any member of the following classes of the patient’s family who is reasonably available may act as surrogate:
- 1.9.3.1 Spouse, unless legally separated or unless there is a pending petition for annulment, divorce, dissolution of marriage or legal separation;
- 1.9.3.2 Domestic partner or significant other who has been in a long-term relationship of indefinite duration with the patient in which the individual has demonstrated an actual commitment to the patient similar to the commitment of a spouse;
- 1.9.3.3 Adult Child;
- 1.9.3.4 Parent;
- 1.9.3.5 Adult Sibling;
- 1.9.3.6 Grandparent;
- 1.9.3.7 Close Friend or Other Concerned Adult who has exhibited special care and concern for the patient and who is familiar with the patient’s personal values.
- 1.9.4 If none of the above individuals are reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient’s personal values and who is reasonably available may act as surrogate.
- 1.9.5 A surrogate decision maker shall communicate the assumption of authority as promptly as possible to the patient, members of the family who can be contacted and the supervising health care provider.
- 1.9.6 If more than one person assumes authority to act as surrogate and they do not agree on a health care decision, the person with the highest priority in the list in section 1.9.3 shall have the authority.

- 1.9.7 If there is more than one person with the same priority and they do not agree on a health care decision, the supervising health care provider will comply with the decision of the majority of the persons with the same priority.
- 1.9.8 A supervising health care provider may require an individual claiming the right to act as surrogate to provide written declaration under penalty of perjury stating the facts and circumstances reasonably sufficient to establish the claimed authority.
- 1.9.9 The patient, at any time while having capacity, may disqualify any person, including a member of their family, from acting as the surrogate in writing or by personally informing a health care provider.
- 1.9.10 A surrogate may not be an employee of the health care institution unless related by blood, marriage or adoption or she/he is a significant other.
- 1.9.11 In case of irreconcilable disagreement, or in the absence of any reasonably available surrogate, the Ethics Committee member on call should be contacted for a patient care conference.
- 1.9.12 A health care decision made by a surrogate for a patient is effective without court approval.
- 1.10 **Decisions by legal guardians**
 - 1.10.1 A legal guardian shall comply with the patient's individual instructions and may not revoke the patient's advance health care directive unless the appointing court expressly so authorizes.
 - 1.10.2 A health care decision of an agent appointed by an individual having capacity takes precedence over that of a legal guardian, unless the appointing court expressly directs otherwise.
 - 1.10.3 A legal guardian may only make health care decisions if the appointing court has expressly authorized them to do so.
- 1.11 **Obligation of the Health Care Provider**
 - 1.11.1 Before implementing any health care decision made for the patient, a supervising health care provider will, if possible, communicate the decision to the patient and identify the person making the decision.
 - 1.11.2 The health care provider will comply with:
 - 1.10.2.1 Any individual instruction(s) the patient made while having capacity.
 - 1.10.2.2 A reasonable interpretation of that instruction made by a person authorized to make health care decisions for the patient.
 - 1.10.2.3 A health care decision for the patient that is not contrary to any individual instructions of the patient and is made by a person authorized to make health care decision for the patient.
 - 1.11.3 A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience by:
 - 1.10.3.1 Promptly informing the patient, if possible, and any person who is authorized to make health care decisions for the patient and
 - 1.10.3.2 Providing continuing care to the patient until a transfer can be affected.
- 2. University Hospitals will not condition the provision of care nor otherwise discriminate against an individual based upon whether or not the individual has executed an Advance Health Care Directive.

PROCEDURE:

1. Every adult or emancipated minor patient admitted to the hospital will be provided with written information concerning the patient's right to make advance directives. Information regarding advance directives will be offered to adults and emancipated minors in the ambulatory areas.

The organization determines if the patient's advance directive includes preferences concerning mental health care. If such information is included, the patient's preferences are communicated to the staff.

The Admitting Patient Representative will provide the patient with the Advance Directives booklet and advise the patient that law requires that the patient be informed of this right. The presence or absence of the Advance Directive is noted in the Medical Record.

A copy of the patient's advance directives will be kept in the medical record.

If the adult or emancipated minor patient requests more information, has difficulty understanding the purpose/concept of Advance Directives, or when there is conflict or uncertainty regarding a patient's advance directive circumstances (e.g. when a decisionally incapacitated patient's advance directive is unknown and the significant family members disagree on what that patient's directive might be), the attending physician shall be notified.

Lifesaving therapeutic interventions may be withheld or withdrawn, including hydration and nutrition, in the routine care of a patient exclusive of an irreversible coma or terminal illness if the patient or their legally authorized decision maker express these wishes or the patient has formulated advance directives regarding these issues.

2. **Obtaining Written Advance Directives** – refer to the attached individual area flow charts for detailed instructions.
3. **Outpatient Process:**
 - 3.1 Advance Directives booklets are available in all clinic areas.
 - 3.2 Providers are available to discuss Advance Directives with a patient.
 - 3.3 Patients are encouraged to complete the forms in the Advance Directives booklet and register their Advance Directives on-line at uslivingwillregistry.com.
 - 3.4 Patients who want to provide a hard copy of their Advance Directives are given the ADVANCE DIRECTIVES booklet that contains the form and address necessary to register their Advance Directives on-line.
4. **Inpatient Process:** As part of the admission process, an attempt will be made to obtain one of the following from all patients 18 years or older:
 - 4.1 A hard copy of the patient's Advance Directives that they have with them.
 - 4.2 Obtain a fax copy of the patient's Advance Directives from uslivingwillregistry.com.
 - 4.3 An ADVANCE DIRECTIVES INFORMATION form completed and signed by the patient.
 - 4.4 The document will be forwarded to the hospital unit that the patient is assigned to. The document will be placed in the patient's chart under the Advance Directives tab.
5. **Provider Responsibilities:**
 - 5.1 Answer any medical questions the patient may have about Advance Directives.

5.2 Comply with any current, un-revoked, verbal or written Advance Directives communicated by the patient.

6. Conflict Resolution:

Ethical dilemmas which concern this policy, such as conflicts or lack of consensus between patient, physician, decision-makers and/or legal representatives are to be addressed by the Medical Ethics Advisory Committee. The actions of the Committee are to be considered advisory in nature and are not intended to interpose a third party between the supervising health care provider and patient. The Committee is to assist in the clarification of issues and the improvement of communication.

In the event of a conflict, a designated sub-committee of the full committee shall be on call 24 hours a day.

If a satisfactory resolution of the conflict cannot be agreed upon after the initial consultation, the matter shall be referred to the full Committee that should be available to meet within ten days.

Legal dilemmas that concern this Policy such as incompetent patients, minors, or the validity of the Living Will/Advance Directives, are to be addressed by the Risk Management Department. The Risk Management Department will take steps to obtain legal advice concerning the situation and will make recommendations to the physician.

7. Documentation – Advance Directives information is to be completed for all patients.

7.1 Advance Directive Documentation Sources :

- 7.1.1 IDX Admitting Screen
- 7.1.2 Power Chart Office
- 7.1.3 Advance Directive Acknowledgement Record
- 7.1.4 Admission Data Base

Attachments:

- Advance Directive Acknowledgement Record
- Emergency Department/Unscheduled admission from clinic Advance Directives process
- Hospice Advance Directives process
- OSIS/SDSU Advance Directives process
- Inpatient Advance Directives process
- Outpatient Advance Directives process
- Advance Directive for Health Care New Mexico

References:

[Indicate if reference is R=Research; NS=National Standard or L=Literature]

- February 2001, JCAHO Comprehensive Accreditation Manual for Hospitals: The Official Handbook, RI.1.2.5, RI-4, RI-12, RI-28, GL-31.
- New Mexico Uniform Health Care Decisions Act
- HCFA 482.22c
- www.uslivingwillregistry.com

**ADVANCE DIRECTIVE
ACKNOWLEDGEMENT RECORD**

Patient directions: please complete the following information for your medical record and let the staff know if you have any questions.

1. Do you have an Advance Directive? Yes No

- A. I have a copy of my Advance Directive with me for my medical record.
- B. I **do not** have a copy of my Advance Directive with me for my medical record.

2. If copies are not readily available please check all that apply:

- A. I will have someone bring a copy of my Directive (s) to the hospital.
- B. The Directive (s) are located at www.uslivingwillregistry.com.
- C. I will mail or bring a copy of my Directive(s) to the hospital/clinic.
- D. I would like to fill out a **new** Directive.

3. I would like to receive more information about Advance Directives. Yes No

Follow up was completed by: Social Worker Other

Patient's signature: _____ Date: _____

Signature of Witness: _____ Date: _____

Staff directions: This information must be placed in the patient's medical record, IDX registration/Power Chart Office.

Medical Record form #

patient sticker