

You have the right to direct your health care, including the right to accept or refuse medical treatment. However, if you become unable to make decisions regarding treatment, the decisions regarding your care become more difficult. Advance directives are legal documents that allow you to make and document decisions and preferences about your health care now, when you are of sound mind and able to communicate, in order to have those decisions or preferences apply in the future should you become unable to make and communicate decisions.

On the last page of this document is a brief glossary of some key terms that may help you when reading through this document and the advance directive forms.

### Different Types of Advance Directives

Texas law provides for various types of directives as briefly explained below.

- **Medical Power of Attorney** (also referred to as a power of attorney for healthcare) – A legal document that allows you to appoint an individual (called an agent) to make health care decisions for you at a time in the future if you become unable to make decisions for yourself and your physician certifies in writing in your medical record that you are not competent at such time. Note that a Medical Power of Attorney is separate and distinct from a general/financial power of attorney under which you appoint an individual to make legal/financial decisions for you and manage your financial affairs.
- **Directive to Physicians and Family or Surrogates** (a.k.a., “Living Will”) – A legal document that allows you to record your personal preferences regarding the administration, withholding, or withdrawing of life-sustaining treatment for a time in the future when you are no longer able to make your wishes known and your physician certifies that you have a terminal or irreversible condition.
- **Out of Hospital Do Not Resuscitate (DNR) Order** – A legal document, issued by the state, that allows you to instruct and direct health care professionals not to initiate or continue the following types of life-sustaining treatment in an out-of-hospital setting (e.g., paramedics, home care, nursing home, physician’s offices, hospital emergency room):
  - Cardiopulmonary resuscitation (CPR),
  - Advanced airway management,
  - Artificial ventilation,
  - Defibrillation, and
  - Transcutaneous cardiac pacing.

To be valid, you must have your attending physician sign the completed Out of Hospital DNR Order form and he/she needs to record the existence of the completed Out of Hospital DNR Order form in your medical record.

*Note: An Out of Hospital DNR Order does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care or alleviate pain, or to provide water or nutrition. In addition, a woman known to be pregnant cannot use an Out of Hospital DNR Order.*

- **Declaration for Mental Health Treatment** – A legal document that allows you to make decisions, in advance, about mental health treatment, including such options as psychoactive medications, convulsive treatment, and preferences for emergency treatment such as restraint, seclusion or medication. This declaration is followed only if a judge determines that you are incapacitated to make treatment decisions. The law defines “incapacitated” and the court determines whether you are incapacitated through either a guardianship proceeding or a hearing to consider the forced administration of psychoactive medication. Otherwise, you are considered to have the ability to give or withhold consent for the treatments. A hospital may not discriminate against you because you have or have not signed a mental health advance directive.

### Completing an Advance Directive

Completing an advance directive is a personal choice. The ideal time to complete an advance directive is when you have time to think about your options and preferences, study the forms, make your decisions, and discuss your wishes and

preferences with your family, desired agent(s), friends, clergy, lawyer, and/or physicians. Also, keep in mind that you can change an advance directive at any time if your preferences change.

### **Patients Under 18 Years Old**

The following persons may execute an advance directive on behalf of a qualified patient younger than 18 years of age:

- (1) Patient's spouse, if the spouse is an adult;
- (2) Patient's parents; or
- (3) Patient's legal guardian.

### **Where to Find Advance Directive Forms**

In this packet, you can find a copy of a:

- Medical Power of Attorney, and
- Directive to Physicians and Family or Surrogates.

The Out of Hospital Do Not Resuscitate Order form and the Declaration for Mental Health Treatment are not provided in this packet. The Out of Hospital Do Not Resuscitate Order form can be found on the Texas Department of State Health Services website at <http://www.dshs.state.tx.us/emstraumasystems/dnr.shtm#forms>; and a copy of the Declaration for Mental Health Treatment can be found on the Texas Department of Aging and Disability website at <http://www.dads.state.tx.us/forms/dadsdmht/DADSDMHT.pdf>.

### **Witnesses/Notary Requirements**

Under Texas law, an advance directive is not valid unless you sign the advance directive in the presence of witnesses or a notary public if applicable.

Each witness must be a competent adult and at least one of the witnesses must be a person who is not:

- The person you have designated to make a treatment decision (i.e., your agent);
- A person related to you by blood or marriage;
- A person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- A person who, at the time the written advance directive is executed, has a claim against any part of your estate after your death;
- The attending physician;
- An employee of the attending physician; or
- An employee of a health care facility in which you are a patient if the employee is providing direct patient care to you 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.

Please follow the directions on each advance directive form for the witness signature requirements (or optional notary requirements, if applicable).

### **Implementation of Advance Directives**

In accordance with the Texas Advance Directives Act and the Federal Patient Self-Determination Act, the facility maintains a written policy regarding the implementation of advance directives. When you provide your physician or the facility a completed advance directive, the existence of the advance directive is documented in your medical record. Note, however, that the desire of a qualified patient, including a qualified patient younger than 18 years of age, supersedes the effect of an advance directive.

Generally, your right to make medical treatment decisions is honored. However, a physician or the facility is not obligated to provide medically inappropriate care or treatment requested by you or on your behalf. The facility has procedures in the event that a physician or facility cannot honor an advance directive or a health care or treatment decision made by you or on your behalf.

## **Changing an Advance Directive**

If you wish to change an advance directive, you need to complete an entirely new document. You may not mark up the existing document with your changes.

## **Canceling an Advance Directive**

You may revoke an advance directive at any time by either:

- Canceling or destroying the advance directive;
- Signing and dating a written statement revoking the advance directive; or
- Orally revoking the advance directive.

## **What Happens if You Have No Advance Directive**

Should you become unable to make your own decisions, your attending physician and your guardian (or certain family members in the absence of a guardian or an agent under a Medical Power of Attorney) can make treatment decisions regarding your health care, which may include a decision to withhold or withdraw life-sustaining treatment if that is believed to be what you would have wanted. A physician, health facility, health care provider, insurer, or health care service plan may not require you to execute or issue an advance directive as a condition for obtaining insurance for health care services or receiving health care services.

## **For More Information**

For more information about advance directives, speak with your care team, or contact Continuum of Care (1-254-724-1187) or Pastoral Services (1-254-724-1181). Also, you may want to consult your attorney and/or your clergy.

## **Complaints Concerning Noncompliance**

Complaints about noncompliance with an advance directive may be filed with the Texas Department of State Health Services by:

- Mailing the complaint to:  
Texas Department of State Health Services  
Health Facility Compliance Group (MC 1979)  
P.O. Box 149347  
Austin, TX 78714-9347;
- Faxing the complaint to 1-512-834-6653;
- E-Mailing the complaint to [hfc.complaints@dshs.state.tx.us](mailto:hfc.complaints@dshs.state.tx.us); or
- Calling 1-888-973-0022 (toll-free)

## **Summary**

It is your responsibility to make your health care decisions known to your health care providers, including completing and providing advance directives to those health care providers.

1. Discuss with your family, desired agent(s), friends, clergy, lawyer and/or physicians your choices regarding advance directives.
2. Complete and sign the advance directive(s) and make sure you carry with you information about your advance directives in the event complete the card(s) on the back cover to carry it in your wallet or purse.
3. Give copies of the advance directives to your family, agent(s), physicians and health care facility(ies).
4. Complete an entirely new advance directive if you wish to make subsequent changes to an advance directive. Be sure to give copies of any new advance directives to those listed under #3 above.

## Glossary

**Adult** – A person at least 18 years old or a person under 18 years old who has had the disabilities of minority removed.

**Agent** – An adult to whom authority to make health care decisions is delegated under a medical power of attorney.

**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).

**Attending physician** – A physician selected by or assigned to a patient who has primary responsibility for the patient's care.

**Competent** – Possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

**Health care or treatment decision** – A decision to consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

**Irreversible Condition** – A condition, injury, or illness that:

- (1) may be treated, but is never cured or eliminated;
- (2) leaves a person unable to care for or make decisions for the person's own self; and
- (3) without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

**Life Sustaining Treatment** – Treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, 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.

**Qualified patient** – A patient with a terminal or irreversible condition that has been diagnosed and certified in writing by the attending physician.

**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.