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|  HAWAII HEALTH SYSTEMS CORPORATION <i>Quality Healthcare for All</i> PROCEDURE | Department: LEGAL | Policy No. PAT 1007B1 |
| | Supersedes Procedure No. N/A | Subject: ADVANCE HEALTH CARE DIRECTIVE |
| Subject: ADVANCE HEALTH CARE DIRECTIVE | Approved By:  By: Linda Rosen, M.D., M.P.H. Its: HHSC CEO | Approved Date: February 18, 2021 Last Reviewed: February 4, 2021 |

I. **PURPOSE:** To establish guidelines to ensure individuals obtaining services at HHSC ("Individual") are informed of their rights to make decisions concerning their care, including the right to: (1) accept or refuse medical, surgical, or mental health treatment and (2) at the Individual's option, formulate an Advance Health Care Directive.

II. DEFINITIONS:

All capitalized terms used herein are defined in this Section II. Any other capitalized term used in this procedure and not defined herein shall have the meaning set forth in Chapters 327E and 577, Hawaii Revised Statutes ("HRS"), as each may be amended.

"Advance Health Care Directive" means an individual instruction or a Power of Attorney for Health Care.

"Capacity" means an Individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a Health Care Decision.

"Designated Surrogate" means a person, designated by an Individual, other than an Individual's Agent or Guardian, who is authorized to make health care decisions for an Individual that the Individual could make on his or her own behalf, during the Individual's incapacity, in accordance with Chapter 327E, HRS.

"Health Care Decisions" means a decision made by an Individual, or the Individual's Legal Representative, regarding the Individual's health care.

"Health Care Provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

"Individual" includes a person 18 years old or older or an emancipated minor, as defined under Section 577-25, HRS, as may be amended, who is obtaining services at an HHSC Facility.

"Interested Persons" means the patient's spouse, unless legally separated or estranged, a reciprocal beneficiary, any adult child, either parent of the patient, an adult sibling or adult grandchild of the patient, or any adult who has exhibited special care and concern for the patient and who is familiar with the patient's personal values.

"Legal Representative" includes an Agent designated in a Power of Attorney for Health Care, judicially appointed Guardian having the authority to make Health Care Decisions for an Individual or Minor child, as defined by Chapter 577, HRS, or a parent or other person with legal authority to make Health Care Decisions on behalf of a Minor child.

"Non-Designated Surrogate" means a person selected by consensus amongst Interested Persons to make limited Health Care Decisions on behalf of an Individual, during the Individual's incapacity, in accordance with Chapter 327E, HRS.

"Power of Attorney for Health Care" means the designation of an Agent to make Health Care Decisions for the Individual granting the power.

"Supervising Health Care Provider" means the Primary Physician or the physician's designee, or the Health Care Provider or the provider's designee who has undertaken primary responsibility for an Individual's health care.

III. PROCEDURES:

A. Providing Information to the Individual.

At the time of admission as an inpatient or a resident, a staff member or department designated by the HHSC Facility ("Facility staff member") shall provide each Individual, or the Individual's Legal Representative, a written description of the Individual's rights regarding Advance Health Care Directives, and information about the HHSC Facility's policy regarding Advance Health Care Directives. If an Individual or the Individual's Legal Representative has: (1) questions regarding Advance Health Care Directives or Advance Mental Health Care Directives, or (2) requests further information or assistance, or both, Facility shall make a referral to the designated Facility staff member or department, and such referral shall be documented in the Individual's current medical record.

If at the time of admission the information cannot be provided due to the clinical presentation of the Individual, or the unavailability of the Legal Representative, the information shall be provided when possible during the admission.

B. Obtaining Information Regarding Individual's Advance Health Care Directive.

At the time of admission as an inpatient or a resident, the Facility shall determine whether an Individual has executed an Advance Health Care Directive or otherwise prepared any other instruction for health care, and document in a prominent part of the Individual's current medical record whether or not the Individual has executed an Advance Health Care Directive.

If at the time of admission the information cannot be obtained due to the clinical presentation of the Individual, or the unavailability of the Legal Representative, the information shall be obtained when possible during the admission.

A Supervising Health Care Provider who has been notified of the existence of an Advance Health Care Directive must record its existence in a designated and prominent part of the Individual's current medical record. If the Individual's Advance Health Care Directive is in writing, a Supervising Healthcare Provider shall ask the Individual, Individual's family member, or Individual's Legal Representative to bring a copy of such document to the Facility, or otherwise make all reasonable efforts to obtain a copy of it. If a copy is furnished, the Supervising Healthcare Provider shall follow the Facility process for its placement in the designated area of the Individual's current medical record.

If an Individual at any time indicates that the Individual wishes to establish an Advance Health Care Directive, the Facility shall make a referral for assistance, and document the referral in the Individual's current medical record.

C. Complying With Health Care Decisions.

1. Advance Health Care Directive.

Advance Health Care Directive, previously referred to as a living will, is a written document expressing an Individual's Health Care Decisions and preferences concerning medical, surgical, or mental health treatment, or any of the foregoing, during the Individual's incapacity or end of life. Such written document shall be in accordance with the Uniform Health Care Decisions Act, Chapter 327E, HRS, as may be amended. An Advance Health Care Directive may include a power of attorney for health care and an Advance Mental Health Care Directive.

Health Care Decisions and preferences may include, but are not limited to, the selection and discharge of Health Care Providers and facilities; approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and direction to provide, withhold, or withdraw artificial nutrition and hydration, provided that withholding or withdrawing artificial nutrition or hydration is in accord with accepted and applicable health care standards. A written Advance Health Care Directive may also include the Individual's nomination of a Guardian of the person.

Each Facility shall designate a person to whom, or a department to which, referrals shall be made in the event an Individual, or the Individual's Legal Representative, has questions regarding Advance Health Care Directives. If an Individual, or the Individual's Legal Representative, has questions regarding Advance Health Care Directives, the Facility shall, as appropriate, make a referral to the designated person or department at the Facility, notify the Supervising Healthcare Provider of the referral, and document the referral in the Individual's current medical record.

Validity. An Advance Health Care Directive shall be valid if it complies with Chapter 327E, HRS, or if it was executed in compliance with the laws of the state where it was executed. If an Advance Health Care Directive appears to be invalid, the Supervising Healthcare Provider shall notify the Facility's Administrator or his or her designee for the determination of the legal validity of the Advance Health Care Directive. Otherwise, the Supervising Healthcare Provider, or other provider, may consider an Advance Health Care Directive valid and rely upon it in the absence of actual knowledge or notice of its revocation or invalidity.

Revocation. An Individual may revoke the designation of an Agent only by a signed writing or by personally informing the Supervising Healthcare Provider. Any other part of an Advance Health Care Directive may be revoked by the Individual at any time and in any manner that communicates the Individual's intent to revoke. A Health Care Provider who is informed of a revocation shall promptly communicate the revocation to the Supervising Health Care Provider and to any health care institution at which the Individual is a patient or resident. The Supervising Health Care Provider so informed shall then have the fact of the revocation documented promptly in a prominent part of the Individual's current medical record. If the revocation is in writing, the Supervising Health Care Provider shall request a copy of it and follow the Facility's process for its placement in the Individual's current medical record.

2. Health Care Decision by a Designated Agent for Health Care.

An Agent designated in the Power of Attorney may make Health Care Decisions on behalf of the Individual. Unless otherwise specifically stated in the Power of Attorney for Health Care, the authority of an Agent designated in the Power of Attorney for Health Care becomes effective only if the Supervising Healthcare Provider certifies in writing that the Individual lacks Capacity. Certification shall be documented in the Individual's current medical record. Unless otherwise specifically stated in the Power of Attorney for Health Care, the authority of an Agent ceases to be effective upon a determination that the Individual has recovered Capacity.

3. Health Care Decision by a Surrogate.

A Surrogate may make a Health Care Decision for the Individual if the Supervising Health Care Provider of the Individual determines that the Individual lacks Capacity, and no Agent or Guardian has been designated or appointed, respectively, or is reasonably available. Upon a determination that an Individual lacks Capacity to provide consent to or refusal of medical treatment, the Supervising Healthcare Provider or his or her designee shall make reasonable efforts to inform the Individual of his or her lack of Capacity.

A Surrogate may either be designated by the Individual, or be appointed by Interested Persons. A Supervising Health Care Provider shall require a Surrogate to provide a written declaration under the penalty of false swearing, stating facts and circumstances reasonably sufficient to establish his or her claimed authority to act as a Surrogate. The Patient/Resident Declaration of Authority to Act as Surrogate form or the Appointed ("Non-Designated") Surrogate form attached to this procedure, or similar form(s) or processes in use at the Facility, shall be used to document authority in the Individual's current medical record.

An Individual may designate a Surrogate to make a Health Care Decision for the Individual by personally informing the Supervising Health Care Provider. A Designated Surrogate may make Health Care Decisions for the Individual that the Individual could make on the Individual's own behalf. An Individual may disqualify a Designated Surrogate by personally informing the Supervising Health Care Provider of such disqualification. A Supervising Health Care Provider who is informed of such designation or disqualification of a Surrogate shall promptly record such designation or disqualification in the Individual's current medical record. If the designation or disqualification is in writing, a Supervising Healthcare Provider shall request a copy of it, and if one is furnished, shall follow the Facility process for its placement in the Individual's current medical record.

If an Individual has not designated a Surrogate, or the Designated Surrogate is not readily available, Interested Persons may appoint a Surrogate from among themselves. The Supervising Health Care Provider or his or her designee shall make reasonable efforts to locate as many Interested Persons as practicable. The Supervising Health Care Provider may rely on Interested Persons to notify other Interested Persons. The Supervising Health Care Provider or his or her designee shall then inform such located Interested Persons of the Individual's lack of Capacity and that a Non-Designated Surrogate should be selected for the Individual.

A Non-Designated Surrogate may make Health Care Decisions for the Individual that the Individual could make on his or her own behalf, except for decisions on withholding or withdrawing artificial nutrition and hydration. Artificial nutrition and hydration may be withheld or withdrawn for an Individual upon a decision of a Non-Designated Surrogate only when the Supervising Health Care Provider and a second independent physician certify in the

Individual's current medical record that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the Individual is highly unlikely to have any neurological response in the future.

If Interested Persons cannot reach a consensus as to who should act as the Non-Designated Surrogate, or if any of the Interested Persons disagrees with the selection or the decision of the Non-Designated Surrogate, then any of the Interested Persons involved in the discussions to choose a Surrogate may seek guardianship of the Individual by initiating guardianship proceedings pursuant to Chapter 551, HRS, as may be amended.

4. Health Care Decision by Guardian.

A Guardian shall comply with the Individual's direction concerning Health Care Decisions for the Individual. A Guardian shall not revoke the Individual's Advance Health Care Directive unless expressly authorized by a court of competent jurisdiction. Unless there is a court order to the contrary, the Health Care Decision of Agent takes precedence over that of a Guardian.

D. When the Facility or Health Care Provider May Decline Compliance.

Individual instructions, and decisions made by anyone with authority to make a Health Care Decision on behalf of an Individual, must be honored by the Health Care Provider and Facility within the limits of the applicable laws and the mission, philosophy, and capabilities of the Facility. A Health Care Provider may decline to comply with an individual instruction or Health Care Decision for reasons of conscience if the instruction or decision is contrary to a policy of the Facility which is expressly based on reasons of conscience and if the policy was timely communicated to the Individual or to a person then authorized to make Health Care Decisions for the Individual.

A Health Care Provider may decline to comply with an individual instruction or Health Care Decision if the individual instruction or Health Care Decision requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the Health Care Provider or Facility.

If a Health Care Provider or the Facility declines to comply with such individual instructions or Health Care Decisions, the Facility shall promptly inform the Individual or Individual's Legal Representative, if possible, and any person then authorized to make Health Care Decisions for the Individual. The Facility shall immediately make all reasonable efforts to assist in the transfer of the Individual and his/her current medical record to another Health Care Provider who is, or another facility or institution that is, willing to comply with the Individual's instruction or Health Care Decision. The Facility shall provide continuing care to the Individual until a transfer can be effected.

E. Other Things to Consider in the Implementation of this Policy and Procedure.

1. When a Conflict or a Question Arises.

If any Health Care Provider identifies, recognizes, or learns of a conflict, or has a question, as to the validity of an Advance Health Care Directive, its terms, or the procedures involved, he or she shall promptly notify the individual or department designated by the Facility to oversee compliance with this policy and procedure, who may obtain legal counsel if necessary.

2. When a Condition Affecting an Advance Directive is Identified.

If a Supervising Healthcare Provider makes or is informed of a determination that a condition exists which affects an Individual's Advance Health Care Directive or the authority of an Agent, Guardian, or Designated Surrogate, he or she shall promptly record the determination in the Individual's current medical record. The Supervising Health Care Provider shall then communicate the determination to the Individual, if possible, and to any person then authorized to make Health Care Decisions for the Individual.

3. Re-determination of Capacity.

If any Interested Person, Guardian, or Supervising Healthcare Provider believes the Individual has regained Capacity, and so informs the Supervising Healthcare Provider, the Supervising Healthcare Provider shall re-examine the Individual and determine whether the Individual has regained Capacity. The Supervising Healthcare Provider shall then enter his or her decision and the basis for it in the Individual's current medical record. The Supervising Healthcare Provider shall also communicate the decision to the Individual and any person then authorized to make Health Care Decisions for the Individual, and the person who initiated the re-determination of Capacity.

F. Educating Staff and the Community.

Each Facility shall designate a person who, or a department which, shall arrange for the education of its staff concerning its policies and procedures, and the current federal and state laws regarding Advance Health Care Directives and rights of Individuals thereunder. The Facility shall also arrange for and document education of the community at large regarding federal and state laws regarding Advance Health Care Directives and rights of Individuals under the same. Each Facility shall determine the type of education activities appropriate to the community served by the Facility.

G. Compliance.

Each Facility shall designate a person who, or a department which, shall be responsible to oversee the Facility's compliance with this procedure, and the federal and state laws concerning Advance Health Care Directives. Any complaints or grievances shall be addressed through the Facility's grievance process.

IV. ATTACHMENTS (Optional Forms):

1. Declaration of Authority to Act as Surrogate.
2. Declaration of Appointed (Non-Designated) Surrogate.

DECLARATION OF AUTHORITY TO ACT AS SURROGATE

I, _____,
(Print or Type Name of Surrogate)

under penalty of false swearing, provide the following statement of facts and circumstances establishing my claimed authority to act as a surrogate for

(Print or Type Name of Patient/Resident)

To the best of my knowledge and belief, the patient/resident named above has been determined by the primary physician to lack capacity to make healthcare decisions, and no agent or guardian has been appointed or the agent or guardian is not reasonably available.

THIS SECTION TO BE COMPLETED AND SIGNED ONLY BY PATIENT/RESIDENT DESIGNATED SURROGATE:

I have been provided information that the above named patient/resident personally informed the Supervising Health Care Provider that I have been designated by the patient to make Health Care Decisions for the patient as his or her surrogate. This information was provided to me by the following means:

(e.g., orally by [name of Supervising Health Care Provider]; or in writing by [document and date])

I accept the appointment as a "patient designated surrogate" for the patient/resident.

(Signature of Patient/Resident Designated Surrogate)

(Date)

(Printed Name)

(Address)

(City)

(State)

(Zip code)

DECLARATION OF APPOINTED (NON-DESIGNATED) SURROGATE

- ☐ I have been selected by consensus of Interested Persons of the above named patient/resident to act as the patient's/resident's surrogate to make Health Care Decisions for the patient/resident. I accept the appointment as a "non-designated surrogate" or an "appointed surrogate".

1. I am an Interested Person based on my relationship to the patient as: *(select one)*

- ☐ Spouse (not legally separated or estranged)
- ☐ Reciprocal Beneficiary
- ☐ Adult Child
- ☐ Parent
- ☐ Adult Sibling
- ☐ Adult Grandchild
- ☐ Adult who has exhibited special care and concern for the patient/resident and who is familiar with the patient's/resident's personal values.

2. The following other Interested Persons took part in my selection: (names and relationship to patient)

3. Additional facts and circumstances to established claimed authority (if any)

(Use additional sheets of paper if necessary; attach copies of any relevant documents.)

(Signature of Appointed Surrogate)

(Date)

(Printed Name)

(Address)

(City)

(State)

(Zip code)