
 HAWAII HEALTH SYSTEMS CORPORATION <i>Quality Healthcare for All</i> PROCEDURE	Department: Legal	Policy No. PAT 1007B2
		Supersedes Policy No. N/A
Subject: ADVANCE MENTAL HEALTH CARE DIRECTIVES	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 Mental 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 327G 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.

“Advance Mental Health Care Directive” means a written document expressing preferences, instructions, or a Power of Attorney for Mental Health Treatment. An Advance Mental Healthcare Directive may be part of, or combined with, a written Advance Health Care Directive under Chapter 327E.

“Agent” means a competent adult designated in a Power of Attorney contained in an Advance Mental Health Care Directive to make a Mental Health Care Decision for a Principal granting the power and includes all designated alternate Agents.

“Capacity” means a Principal’s ability to understand the significant risks, alternatives to proposed Mental Health Care Treatment and to make and communicate a Mental Health Care Decision.

“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.

“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.

“Guardian” means a judicially appointed guardian or conservator having authority to make a Mental Health Care Decision for a Principal, appointed under part 3, article V of chapter 560.

“Mental Health Care” means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a Principal’s mental condition including, but not limited to, selecting and discharging Health Care Providers and institutions; approval or disapproval of diagnostic tests, surgical procedures, and programs of medications; and approval or disapproval of electroconvulsive treatment.

“Mental Health Care Decision” means a decision made by a Principal, or the Principal’s Agent or Guardian, regarding the Principal’s Mental Health Care or Mental Health Treatment.

“Power of Attorney for Health Care” means the designation of an Agent to make Mental Health Care Decisions for a Principal granting the power.

“Primary Physician” means a physician designated by a Principal or the Principal’s Agent or Guardian to have primary responsibility for the Principal’s health care, including Mental Health Care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

“Principal” means a competent adult or emancipated minor who has executed a written Advance Mental Health Care Directive or Power of Attorney for Mental Health Care.

“Psychologist” means a person authorized to practice psychology under Chapter 465, HRS.

“Supervising Health Care Provider” means the Primary Physician or the physician’s designee, or the health care provider who has undertaken primary responsibility for a Principal’s health care that includes Mental 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 Mental Health Care Directives, or (2) requests further information or assistance, or both, the Facility shall make a referral to the designated Facility Staff Member or Facility 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 Mental Health Care Directive.

At the time of admission as an inpatient or resident, the Facility shall determine whether an Individual has executed an Advance Mental 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 Mental 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.

An Individual who has executed a written Advance Mental Health Care Directive or Power of Attorney for Mental Health Care is defined as the Principal.

A Supervising Healthcare Provider who has been notified of the existence of an Advance Mental Health Care Directive must record its existence in a designated and prominent part of the Principal's current medical record. If the Principal's Advance Mental Health Care Directive is in writing, a Supervising Healthcare Provider shall ask the Principal, Principal's family member, or Principal's Legal Representative to bring a copy to the Facility, or otherwise make 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 Principal's current medical record.

If an Individual at any time indicates that the Individual wishes to establish an Advance Mental 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 Mental Health Care Decisions.

1. Advance Mental Health Care Directive.

An Advance Mental Health Care Directive consists of a Principal's written document expressing the preferences, instructions, or a Power of Attorney for Mental Health Care. Mental Health Care includes any form of treatment used for the treatment of mental illness including, but not limited to, electroconvulsive treatment, the use of psychotropic medication, admission to and retention to a health care facility for the care or treatment of mental illness. An Advance Mental Health Care Directive may be a part of or combined with an Advance Health Care Directive. An Advance Mental Health Directive may also include the Principal'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 Mental Health Care Directives. If an Individual, or the Individual's Legal Representative, has questions regarding Advance Mental 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 Mental Health Care Directive shall be valid if it complies with Hawaii's Advance Mental Health Care Directive statutes under Chapter 327G HRS. If an Advance Mental Health Care Directive appears to be invalid, the Supervising Healthcare Provider, Psychologist or other provider shall notify the Facility's Administrator or his or her designee for the determination of the legal validity of the Advance Mental Health Care Directive and any individual instructions. Otherwise, the Supervising Healthcare Provider, Psychologist, or other provider may consider an Advance Mental Health Care Directive valid and rely upon it in the absence of actual knowledge or notice of its revocation or invalidity.

Revocation. A Principal with Capacity may revoke all or part of an Advance Mental Health Care Directive, including the designation of an Agent or alternative Agents, at any time and in any manner that communicates the Principal's intent to revoke. A Health Care Provider who is informed of a revocation shall promptly communicate the revocation to the Supervising Healthcare Provider and to any health care institution at which the Principal is a patient or resident. The Supervising Healthcare Provider so informed shall then have the fact of the revocation documented promptly in a prominent part of the Principal's current medical record. If the revocation is in writing, the Supervising Healthcare Provider shall request a copy of it and follow the Facility's process for its placement in the Principal's current medical record.

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

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

When a Principal lacks Capacity, if an Agent seeks to withdraw as the Principal's designated Agent ("Withdrawing Agent"), the Withdrawing Agent may withdraw by giving notice to the Principal's Supervising Healthcare Provider. Upon such notice, the Supervising Healthcare Provider shall promptly record the withdrawal, including the date and time of the withdrawal, in the Principal's current medical record. When a Principal lacks Capacity, if the Withdrawing Agent seeks to rescind the withdrawal and act as the Principal's Agent as designated, the Agent shall give notice and provide a written acceptance as the designated Agent to the Principal's Supervising Healthcare Provider. The Supervising Healthcare Provider shall promptly record the rescission, including the date and time of the rescission, in the Principal's current medical record and follow the Facility's process for its placement in the Principal's current medical record.

3. Mental Health Care Decision by Guardian.

A Guardian shall comply with the Principal's direction concerning Mental Health Care Decisions for the Principal. A Guardian shall not revoke the Principal's Advance Mental Health Care Directive, unless expressly authorized by a court of competent jurisdiction. Unless there is a court order to the contrary, the Mental Health Care Decisions of an Agent shall take precedence over that of a Guardian. A Mental Health Care Decision made by a Guardian for the Principal is effective without court order, unless contrary to the Principal's Advance Mental Health Care Directive.

D. Limitations of an Advance Mental Health Care Directive.

A Supervising Healthcare Provider, Psychologist, or other provider may subject a Principal to Mental Health Care in a manner contrary to the Principal's Advance Mental Health Care Directive only:

- When a court order, issued under Part 3 of Article V of Chapter 560 HRS contradicts the Principal's Advance Mental Health Care Directive; or
- In cases of emergency when the Principal poses an imminent threat to the safety of self or others.

Neither an Advance Mental Health Care Directive nor this procedure shall limit any authority either to take an Individual into custody or to admit, retain, or treat an Individual in a health care institution pursuant to Part IV of Chapter 334, HRS.

E. When the Facility, Supervising Healthcare Provider, Psychologist, or other Provider May Decline Compliance.

Mental Health Care Decisions made by the Principal or anyone with authority to make a Mental Health Care Decision on behalf of a Principal, must be honored by the Supervising Healthcare Provider, Psychologist, or other provider and Facility within the limits of the applicable laws and the mission, philosophy, and capabilities of the Facility. If the Supervising Healthcare Provider, Psychologist, other provider, or Facility is unwilling at any time to comply with an Advance Mental Health Care Directive or Mental Health Care Decisions of an Agent, the Supervising Healthcare Provider, Psychologist, other provider, or Facility may withdraw from providing Mental Health Care consistent with the exercise of independent medical judgment. Upon withdrawal, the Supervising Healthcare Provider, Psychologist, other provider, or Facility shall promptly notify the Principal and Agent and shall promptly record the notification in the Principal's current medical record.

In the event that one or more parts of an Advance Mental Health Care Directive cannot be followed, all other parts of the Advance Mental Health Care Directive shall be followed.

A Supervising Healthcare Provider, Psychologist, other provider, and Facility shall not be required to provide Mental Health Care contrary to generally accepted health care standards applicable to the health care provider or Facility.

F. 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 Mental 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 Advance Mental Health Care Directive is Identified.

Unless a Principal is deemed to lack Capacity, the Mental Health Care Decisions at the time of receipt of Mental Health Care shall supersede the Mental Health Care Decisions expressed in the Principal's Advance Mental Health Care Directive. If a Supervising Healthcare Provider makes a determination that a Principal lacks Capacity which affects the Principal's Advance Mental Health Care Directive or the authority of an Agent or Guardian, the Supervising Healthcare Provider shall promptly record the determination in the Principal's current medical record. The Supervising Healthcare Provider shall then communicate the determination to the Principal, if possible, and to any person then authorized to make Mental Health Care Decisions for the Principal.

3. Re-determination of Capacity.

The determination that a Principal has recovered Capacity shall be made by the Supervising Health Care Provider who is a physician. The Supervising Health Care Provider shall promptly document the recovery of Capacity in the Principal's current medical record, and shall promptly notify the Agent that the Principal has recovered Capacity.

G. Compliance.

The 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 Mental Health Care Directives. Any complaints or grievances shall be addressed through the Facility's grievance process.

IV. ATTACHMENTS: None.