

Advance Health Care Directives

Background

- Advance Health Care Directives is a result of the Patient Self Determination Act of 1992 requiring hospitals participating in Medicare or Medicaid to provide patients with information about their right to state their wishes regarding health care decisions.
- Advance Directives are defined in the Code of Federal Regulations as “a written instruction, such as a living will or durable power of attorney for health care, recognized under State law relating to the provision of health care when the individual is incapacitated.”
- The Advance Directive is so-named, as the documents are typically prepared in “advance” of health care decisions that need to be made; and the “directives” state who will speak on the client’s behalf and what should be done.
- In California, the part of an advance directive used to appoint an agent to make health care decisions is called a Power of Attorney for Health Care and the part indicating in writing what the client wants done with regard to health care is called the Individual Health Care Instructions. The two types may be used together or separately.
- Some states have specific Psychiatric Advance Directives (PADs) where clients can consent to or refuse hospitalizations, medications, ECT, other treatments for mental health, but California is NOT one of those states.

Process

- Applies to all adult and emancipated minor Medicare or Medicaid (Medi-Cal) patients.
- An Advance Directive lasts indefinitely unless revoked. The client may change or cancel their Advance Directive at any time as long as they can communicate their wishes.
- Normally, an Advance Directive does not take effect until a patient loses capacity, but patient can ask that another person make decisions even though patient still has capacity. (A person is presumed to have capacity unless the primary physician decides that is no longer true.)
- An involuntary mental health patient’s capacity to refuse medication must be determined by a court.
- If a client is incapacitated at the time of initial admission to a psychiatric hospital and is unable to receive information or articulate whether or not he/she has executed an Advance Directive, the provider may consult with the closest available relative, friend, or patient-designated surrogate.

NOTE: California’s 5150 laws trump client’s Advance Directives if there is a conflict and the Advance Directive can be revoked instantly when care is refused.

Additional Information

- California Healthcare Association www.calhealth.org
- California Medical Association www.cmanet.org

ADVANCE DIRECTIVE ADVISEMENT

Code of Federal Regulations (CFR) Chapter IV, Part 489.100 defines Advance Directives as: "a written instruction, such as living will or durable power of attorney for health care, recognized under state law (whether statutory or as recognized by the courts of the State), relating to the provision of health care when the individual is incapacitated."

As of June 1, 2004 Federal Regulations requires that all NEW adult clients (18 years and older) and emancipated minors be informed of their right to have an Advance Directive (AD). Therefore all clients who turn 18 or become emancipated after June 1, 2004 shall be informed of their right to have an AD. This physical health AD allows the individual to outline the kind of healthcare treatment they want, and who can speak on their behalf when they are not able to communicate their wishes.

Informed client of right to have an Advance Directive: Yes No

Offered Advance Directive Brochure: Yes No

Client has been informed that complaints concerning noncompliance with AD requirements may be filed with: California Department of Health Services
Licensing and Certification Division Yes No
P.O. Box 997413
Sacramento, CA 95899-1413
1-800-236-9747

Does client have an executed Advance Directive: Client did not disclose Yes No

Informed client of right to have AD placed in medical record: Yes No
Provided AD shall be attached to this form and placed in client's medical record in Medical Section.

Client Signature: _____ Date: _____

Provider Signature: _____ Date: _____