

OREGON STATE HOSPITAL

POLICY

SECTION 6: Patient Care **POLICY: 6.025**

SUBJECT: Advance Directives

POINT PERSON: Chief of Medicine

APPROVED: Sara Walker, MD  **DATE: JULY 25, 2024**
Interim Superintendent

SELECT ONE: New policy Minor/technical revision of existing policy
 Reaffirmation of existing policy Major revision of existing policy

I. PURPOSE AND APPLICABILITY

- A. Every patient at Oregon State Hospital (OSH) has the right to make health care decisions, including end of life medical care and mental health care decisions, in accordance with the Federal Patient Self-Determination Act and the Uniform Health Care Decisions Act. In accordance with regulation and this policy, OSH must provide every adult patient with an opportunity to complete or revise an advance directive, including a declaration for mental health treatment.
- B. This policy applies to all staff and patients.

II. POLICY

- A. OSH will honor the patient's right to complete advance directives or review and revise their advance directives. OSH may not limit the right for a patient who has capacity to complete advance directives.
- B. Advance directives must be executed in accordance with provisions of Oregon Revised Statute (ORS) Chapter 127 and other applicable regulations.
- C. In accordance with ORS 127.649 and 127.703, OSH does not need to provide advance directives materials described in this policy to a patient if there is reason to believe that the patient has received such documents within the preceding 12-month period, or has previously executed a valid advance directive, or a form appointing a health care representative.
- D. If a patient requests assistance in completing or updating advance directives, OSH will arrange for assistance as necessary. Staff may not provide their personal opinion or recommend a course of action to a patient.

- E. Staff may not condition providing care or otherwise discriminate against a patient based on whether or not the patient has executed an advance directive.
- F. OSH will make every effort to respect patient wishes concerning advance directives. In the event of a conflict between patient wishes and individual staff beliefs, OSH will respect and support the patient's wishes and expeditiously provide alternative care.
 - 1. If a clinician is unable or unwilling to provide care directed by a patient's advance directive or as decided by a patient's health care representative (HCR), the Chief Medical Officer (CMO) or designee is responsible to assign another clinician to the patient's care in accordance with provisions of ORS 127.625.
 - 2. OSH will not provide care requested in a patient's advance directive or by a HCR which is contrary to requirements of ORS 127 or other regulations.
 - 3. Conflicts regarding advance directives may be referred to the CMO and the Ethics Committee.
- G. Complaints regarding advance directives may be filed with the State of Oregon survey or certification agency as described in OSH Policy and Procedure 7.006, "Patient Grievances".
- H. Upon request, Consumer and Family Services will provide written information about advance directives to a patient's family, friends, or significant others.
- I. OSH will educate staff regarding advance directives and provisions of this policy upon hire and whenever this policy or related procedures are updated.
- J. OSH follows all applicable regulations, including federal and state statutes and rules; Oregon Department of Administrative Services (DAS), Shared Services, and Oregon Health Authority (OHA) policies; and relevant accreditation standards. Such regulations supersede the provisions of this policy unless this policy is more restrictive.
- K. Staff who fail to comply with this policy or related policy attachments or protocols may be subject to disciplinary action, up to and including dismissal.

III. DEFINITIONS

- A. "Advance directive" is a written instruction, such as a living will, recognized under State law relating to the individual's wishes in provision of health care when the individual is incapacitated (42 CFR § 489.100).
 - 1. NOTE: In this policy, the term "advance directive" refers to both an advance directive for medical care and a declaration for mental health treatment.

- B. “Capacity” in this policy has the same meaning as “capable”, which means that the patient, in the opinion of the court or the patient’s attending physician/psychiatric mental health nurse practitioner (PMHNP), possesses the ability to make and communicate health care decisions to health care practitioners.
- C. “Clinician” in this policy means a person who provides direct patient care or services.
- D. “Declaration for mental health treatment” in this policy and in accordance with ORS 127.700 means a document making a declaration of preferences or instructions regarding mental health treatment. In this policy, a declaration for mental health treatment is also referred to as a “mental health advance directive”.
- E. “Health care representative” in this policy has the same meaning as the definition in ORS 127.505.
- F. “Staff” includes employees, volunteers, trainees, interns, contractors, vendors, and other state employees assigned to work at Oregon State Hospital (OSH).

IV. PROCEDURES

Procedures A Procedures for Completing or Revising Advance Directives

V. RELATED OSH POLICIES AND PROTOCOLS

6.005 Deceased Patient

7.005 Patient Rights

Self-Determination Act (OSH MR-75040) [medical form]

Declaration for Mental Health Treatment (OSH MR-76053) [medical form]

VI. REFERENCES

42 CFR § 482.13(b)(3).

42 CFR §§ 489.100 – 489.102.

Cruzan v Director, Missouri Department of Health (1990 MO 760 SW 2d/110 S., Ct. US Supreme Court)

Joint Commission Resources, Inc. (2018). *The joint commission comprehensive accreditation manual for hospitals*, RI.01.05.01. Oakbrook Terrace, IL: Author.

Oregon Administrative Rule § 309-033-0220.

Oregon Revised Statute §§ 127.505 – 127.660.

Oregon Revised Statute §§ 127.663 – 127.684.

Oregon Revised Statute §§ 127.700 – 127.737.

Oregon Revised Statute § 127.995.

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Patient Self-Determination Act (Section 4206 and 4761 of the Omnibus Budget Reconciliation Act of 1990).