

OREGON STATE HOSPITAL

POLICIES AND PROCEDURES

SECTION 6: Patient Care

POLICY: 6.025

SUBJECT: Advance Directives

**POINT
PERSON:** CHIEF OF MEDICINE

APPROVED: DOLORES MATTEUCCI
SUPERINTENDENT

DATE: DECEMBER 27, 2018

I. POLICY

- 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, OSH must provide every adult patient with an opportunity to complete advance directive, including a declaration for mental health treatment. 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. Health care personnel (HCP) may not provide their personal opinion or recommend a course of action to a patient.
- E. HCP 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 HCP 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 HCP 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, 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. A HCP who fails to comply with this policy or related procedures may be subject to disciplinary action, up to and including dismissal.

II. 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).

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.

III. PROCEDURES

- A. Upon admission, nursing staff must ask the patient, family member, HCR, or guardian if the patient has executed an advance directive, living will, a mental health advance directive, or has a HCR.
 - 1. At admission, nursing staff must complete the Self-Determination Act form (OSH MR-75040) and file it in the medical record.
 - 2. If the patient has executed an advance directive, a copy of the form must be placed in the “Legal” section of the chart.
- B. If the patient has not completed an advance directive and does not have a HCR, the attending physician/PMHNP must assess if the patient has or lacks capacity at admission and before significant treatment decisions.
- C. If the attending physician/PMHNP assesses the patient to have capacity, the patient must promptly be offered an opportunity to complete advance directives.
 - 1. The patient should be promptly offered the current advance directives and declaration for mental health treatment forms issued by OHA, information on the patient’s right to make health and mental health care decisions, and information on the provisions of this policy.
 - 2. If the patient wishes to complete advance directives, the advanced directives should be executed in compliance with applicable provisions in ORS chapter 127 and other relevant regulations.
 - 3. HCP must file the original or a copy of the advance directives in the patient’s medical record and give a copy to the patient or HCR.
 - 4. The interdisciplinary treatment team (IDT) should review advance directives with the patient.
- D. A patient who has capacity may revoke all or part of an advance directive at any time in accordance with provisions of ORS 127.545. The revocation is immediately effective upon being communicated by the patient or guardian to the patient’s physician/PMHNP or HCR.
 - 1. In the latter case, the HCR must immediately notify the patient’s attending physician/PMHNP of the revocation.

2. Upon learning of the revocation, the physician/PMHNP must immediately review the patient's medical record for documentation affected by the revocation (e.g., a Physician's Orders for Life-Sustaining Treatment [POLST]), and document the change in the medical record.
- E. The patient's IDT must review the patient's advance directive upon admission or when an advance directive is completed, updated, or revoked and adjust care decisions as appropriate.
1. The IDT must review the advance directive annually or more frequently as necessary.
 2. The IDT must review the advance directive whenever the patient requests.
 3. If a patient lacks capacity, the IDT may refuse to review the advance directive when the patient requests. The patient's HCR may review the advance directive instead for the patient.
- F. Whenever a patient has implemented, updated, or revoked an advance directive, the unit Office Specialist must update the "Advance Directive" field on the medical record facesheet to reflect the advance directives.

IV. 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.

Oregon State Hospital Policy and Procedure Manual. *Organ donation*, 6.014. Author.

Oregon State Hospital Policy and Procedure Manual. *Patient rights*, 7.005. Author.

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