

Section 9 Clinical Policies Subject 9.15 End of Life Issues Policy 9.15.5 Patients Initiating Advance Directives	12/01/91 - Originated 04/08/13 - Reviewed w/ changes - Reviewed w/o changes 05/13/13 - Effective Ethics Committee - Author
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Patients Initiating Advance Directives

Definitions

The following definitions apply to IHOP Policies 9.15.5, 9.15.6, and 9.15.8.

- **Adult:** A person 18 years of age or older, or a person under 18 years of age who has had the disabilities of minority removed.
- **Advance Directive:** A directive, medical power of attorney (MPOA), or Out-of-Hospital Do-Not-Resuscitate (OOHDNR) Order.
- **Agent:** An adult to whom authority to make health care decisions has been delegated under a medical power of attorney. An agent may exercise authority only if the patient’s attending physician certifies in writing in the patient’s medical records that the patient is incompetent. A person may not act as an agent while the person serves as: (1) the patient’s health or residential care provider; or (2) an employee of the patient’s health or residential care provider unless the person is a relative of the patient.
- **Artificial Nutrition and Hydration:** The provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).
- **Attending Physician:** A physician selected by or assigned to a patient who has primary responsibility for a patient’s treatment and care. For purposes of this policy, the designations *faculty* and *house officer* will have the same meaning as attending physician. House officers are expected to be involved in discussions, certification, documentation and orders concerning treatment decisions and advance directives. House officers must also ensure that faculty are made aware of all of these actions. If a faculty physician is unavailable for co-signature, house officer progress notes must document faculty notification and agreement.
- **Competent:** Possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and

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**Definitions,
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consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

- ***DNR Identification Device:*** An identification device worn for the purpose of identifying a person who has executed or issued an OOH DNR order or on whose behalf an OOH DNR order has been executed or issued. The Texas Board of Health has specified a distinctive standard design for necklace and bracelet DNR identification devices.
- ***Declarant:*** A person who has executed or issued an advance directive.
- ***Directive:*** An instruction to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition. The term includes a written directive executed by a competent adult, a non-written directive issued by a competent adult qualified patient, and a directive executed on behalf of a patient younger than 18 years of age.
- ***Health care or treatment decision:*** Consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or a procedure to maintain, diagnose, or treat an individual's physical or mental condition, including decisions made on behalf of a minor.
- ***Incompetent:*** Lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.
- ***Irreversible Condition:*** A condition, injury, or illness that (a) may be treated but is never cured or eliminated; (b) leaves a person unable to care for or make decisions for the person's own self; and (c) is fatal without life-sustaining treatment provided in accordance with the prevailing standard of medical care.
- ***Life-sustaining Treatment:*** Treatment that, based on reasonable medical judgment, sustains the life of a patient and

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without which the patient will die. The term includes life-sustaining medications, CPR and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

- **Medical Power of Attorney (MPOA):** A document delegating authority to an agent to make health care decisions on the principal's behalf if the principal's attending physician certifies that the principal is incompetent (i.e., lacks decisional capacity).
- **Out-of-Hospital Do-Not-Resuscitate (OOHDNR) Order:** An order, prepared and signed by the attending physician of a person, that documents the instructions of a person or the person's legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatments: cardiopulmonary resuscitation (CPR); endotracheal intubation or other advanced airway management; artificial ventilation; defibrillation; transcutaneous cardiac pacing; and other life-sustaining treatments as specified by the Texas Board of Health. The term does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care or to alleviate pain or to provide water or nutrition.
- **Out-of-hospital Setting:** A location in which health care professionals are called for assistance, including long-term care facilities, in-patient hospice facilities, private homes, hospital outpatient or emergency departments, physician's offices, and vehicles during transport.
- **Principal:** An adult who has executed a medical power of attorney (usually, the patient).
- **Proxy:** A person designated and authorized by a directive to make a treatment decision for another person in the event the other person becomes incompetent or otherwise mentally or physically incapable of communication.

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- **Qualified Patient:** A patient with a terminal or irreversible condition that has been diagnosed and certified in writing by the attending physician.

 - **Qualified Relatives:** Those persons from the following list, in descending order of priority, who are authorized along with the attending physician to execute or issue an OOHDNR order on behalf of a person who (i) has not executed or issued an OOHDNR order, (ii) is incompetent or otherwise mentally or physically incapable of communication, and (iii) does not have a legal guardian, proxy, or agent under a medical power of attorney:
 - 1) the patient's spouse;
 - 2) the patient's reasonably available adult children;
 - 3) the patient's parents; or
 - 4) the patient's nearest living relative

 - **Terminal Condition:** An incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

 - **Witnesses:** In any circumstance in which the Texas Advance Directives Act requires the execution of an advance directive to be witnessed:
 - (a) each witness must be a competent adult; and
 - (b) at least one of the witnesses must be a person who is **not:**
 1. a person designated by the declarant to make a treatment decision;
 2. a person related to the declarant by blood or marriage;
 3. a person entitled to any part of the declarant's estate after the declarant's death under a will or codicil (i.e., a supplement or appendix to a will) executed by the declarant or by operation of law;
 4. the attending physician;
 5. an employee of the attending physician;
 an employee of UTMB if the employee is providing direct patient care to the declarant or is an officer, director, partner,
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6. or business office employee of UTMB or any parent organization of UTMB; or
 7. a person who, at the time the written advance directive is executed or, if the directive is a non-written directive issued under the Advance Directives Act, at the time the non-written directive is issued, has a claim against any part of the declarant’s estate after the declarant’s death.

Policy

UTMB encourages its patients and their loved ones to discuss their medical options in advance.

IHOP Policies 9.15.5, 9.15.6, and 9.15.8 together describe UTMB’s policies and guidelines for honoring patients’ advance directives under the federal Patient Self-Determination Act of 1990 (PSDA), the [Texas Advance Directives Act](#), and other applicable law.

Advance directives validly executed in another state or jurisdiction shall be given the same effect as advance directives validly executed in Texas, and shall be honored in accordance Texas law.

UTMB does not require the execution or issuance of an advance directive as a condition for receiving health care services.

Outpatients who are having a procedure requiring moderate or deep sedation in any ambulatory setting:

At the time a procedure is scheduled, patients will be asked about the existence of any advance directive. If the patient has an existing Out of Hospital Do Not Resuscitate Order document or an existing medical condition (terminal or irreversible condition) in which an advance directive refusing life-sustaining treatment (LST) would apply, the physician must discuss with the patient the risks and benefits of accepting LST during the planned procedure. If patients at the Victory Lakes Ambulatory Surgery Center wish to refuse LST during their procedure, the procedure will be scheduled in the UTMB Galveston hospital where such requests can be better accommodated in collaboration between patient and provider. Patients agreeing to rescind their advance directive for their procedure at the Ambulatory Surgery Center at Victory Lakes will sign a consent form indicating their understanding and acceptance of this policy. In all other ambulatory settings where moderate or deep sedation is performed, the physician and patient must agree to any proposed changes to the

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Policy, continued patient’s existing advance directive and the procedure physician must document the discussion in the medical record.

General Outpatient encounters in any ambulatory setting:

When the existence of an advance directive is unknown, emergency treatment should always be provided to patients without delay. When a patient known to provider or staff has an existing advance directive, it should be honored. By providing a mechanism to implement the patient’s desires under these statutes, UTMB wants to provide information that meets the federal requirement and encourages patients and their loved ones to discuss medical options in advance.

Exception UTMB will not withdraw or withhold life-sustaining treatment from a pregnant patient.

Required Notice to Patients UTMB shall provide written notice of its policies regarding advance directives, along with an explanatory brochure that includes general information about patients’ rights under the PSDA and the Texas Advance Directives Act and resources to contact for assistance, to all individuals upon their admission to the hospital or at the time the individual begins receiving services, whichever is earlier.

If an individual is incompetent or otherwise incapacitated and unable to receive this information, it shall be provided in the following order of preference to:

1. the individual’s legal guardian;
2. a person responsible for the healthcare decision of the individual
3. the individual’s spouse;
4. the individual’s adult child;
5. the individual’s parent; or
6. the person admitting the individual.

Evidence of Advance Directive Upon admission to the hospital, or at the time a patient begins receiving services, whichever is sooner, the patient (or their representative, if the patient is incompetent or otherwise mentally or physically incapable of communication) will be asked if the patient has issued or executed an advance directive.

If a competent adult patient states that he or she has an advance directive but is unable to produce it, the substance of the advance

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Evidence of Advance Directive, continued

directive should be documented in the patient’s chart.

If after a reasonable time (e.g., 36 hours) the patient is still unable to locate their advance directive, he or she should be given the option of executing a new advance directive.

Advance directives should be copied and scanned into the patient’s medical record, and any original documents returned to the patient (or their representative).

Written Advance Directives

Directive: A competent adult qualified patient may execute a written directive at any time in the presence of two witnesses. Both witnesses must be competent adults, and at least one witness must qualify under the additional restrictions listed in the definition of witnesses above. Both witnesses must also sign the directive.

Alternatively, in lieu of signing in the presence of two witnesses, the patient may sign the directive and have their signature acknowledged before a notary public.

The following persons may execute a directive on behalf of a qualified patient who is younger than 18 years of age: (1) the patient’s spouse, if the spouse is an adult; (2) the patient’s parents; or (3) the patient’s legal guardian.

UTMB does not require that patients use a form provided by UTMB.

OOHDNR Order:

Please see [IHOP Policy 9.15.8 Out-of-Hospital Do-Not-Resuscitate \(OOHDNR\) Orders](#).

Medical Power of Attorney:

A competent adult may execute a written MPOA in the presence of two witnesses. Both witnesses must be competent adults, and at least one witness must qualify under the additional restrictions listed in the definition of witnesses above. Both witnesses must also sign the MPOA.

If the patient is physically unable to sign, another person may sign the MPOA with the patient’s name at the patient’s direction in the presence of the patient and two witnesses.

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Written Advance Directives, continued

Note: In lieu of signing in the presence of two witnesses, the patient may sign the MPOA and have their signature acknowledged before a notary public of their choosing.

Preparation of Non-written Advance Directive

Directive:

A competent adult qualified patient may issue a directive by non-written communication in the presence of the attending physician and two witnesses. Both witnesses must be competent adults, and at least one witness must qualify under the additional restrictions listed in the definition of witnesses above. The attending physician shall note the existence of the directive in the patient's medical record, along with the names of the witnesses.

OOHDNR Order:

Please see

[IHOP Policy 9.15.8 Out-of-Hospital Do-Not-Resuscitate \(OOHDNR\) Orders.](#)

Medical Power of Attorney:

1. A competent person who is an adult but is unable to sign can direct a Medical Power of Attorney (MPOA) document to be completed and expressly direct another person to sign their name for them. This should be done in the presence of two qualified witnesses.
2. A copy of the MPOA document must be presented to the person appointed as agent.

Community Education

The Institutional Ethics Committee (IEC) will provide community education programs on preparing and implementing advance directives. The IEC will also provide staff education and maintain documentation of its education efforts.

Patient Complaints

Patients wishing to file a complaint concerning non-compliance with advance directives may write the Texas Department of State Health Services, Health Facility Compliance Group (MC 1979), PO Box 149347, Austin, TX 78714-9347.

Additional information regarding the complaint procedure is available at <http://www.dshs.state.tx.us/hfp/complain.shtm>.

UTMB HANDBOOK OF OPERATING PROCEDURES

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**Request for
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Information**

If the patient requests additional information, this may be provided by staff members such as a nurse, resident, faculty physician, personal medical doctor, social worker or chaplain.

A corps of professionals will be available to assist staff in addressing issues related to advance directives. This corps will include selected physicians, nurses, care managers, chaplains, and representatives from the Ethics Consultation Service, Legal Affairs Department, and Risk Management Department.

References

[Texas Health and Safety Code Chapter 166](#) (Texas Advance Directives Act)

[IHOP Policy 9.15.6 Making and Documenting Treatment Decisions including Withholding or Withdrawing Life-Sustaining Treatment](#)

[IHOP Policy 9.15.8 Out-of-Hospital Do-Not-Resuscitate \(OOHDNR\) Orders](#)