

**KENNEDY HEALTH SYSTEM
KENNEDY MEMORIAL HOSPITALS-UNIVERSITY MEDICAL CENTER**

Policy: Advance Directive	Manual: Administrative
Function: Patient Rights	Policy Number: A106
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POLICY

- Kennedy Health System ensures that all adult patients will be provided the opportunity to learn about and/or make a valid advance directive to indicate their decisions about life-prolonging treatment, and/or to appoint a proxy to speak for them, should they lose their decision-making capacity or the ability to communicate choices.
- Advance directives can protect a patient’s rights and wishes in the event the patient becomes physically or mentally unable to make healthcare decisions. Providers honor a patient’s advance directive as long as it does not violate State and Federal laws. The existence or lack of an advance directive does not determine an individual’s access to care, treatment and services.
- A valid advance directive is followed regardless of the patient’s race, religion, national origin, sex, sexual preferences, handicap, diagnosis, ability to pay and source of payment. No patient will be discriminated against with regard to the provision of care or based on whether the patient has executed an advance directive.
- Information for patients, community and associates regarding their rights to make healthcare decisions, options and a summary of the hospital’s advance directive policy shall be provided by Kennedy Health System (Appendix A) in the KHS Patient Guide, and website.
- The provisions of a valid advance directive (See Appendix B) will be followed.
- If a healthcare professional, because of personal conviction, declines to participate in withholding or withdrawing of life sustaining treatments, as outlined in a patient’s advance directive, then Kennedy Health System’s “Exclusion from Patient Care Policy” (see Human Resource Manual) should be followed. If necessary, the provider must cooperate with appropriate and timely reassignment of care to a willing provider.
- When conflicts about compliance with an advance directive arises, associates,

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physicians, and students are strongly encouraged to contact the system's Medical Ethics Advisory Committee (M.E.A.C.) for further guidance.

DEFINITIONS

See **Appendix C**.

PROCEDURE

ADVANCE DIRECTIVE INQUIRY AND DOCUMENTATION:

- Adult patients will be asked if they have an advance directive at their point of entry into Kennedy Health System.
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NURSING'S ROLE (Inpatients):

- Nursing shall assess and document the existence of a patient's advance directive on the initial assessment record for all inpatients.
- Assistance will be provided to the patient if he/she wants to create an advance directive.
- *If an advance directive exists and is available*, the nurse will acknowledge the advance directive and inquire whether the patient wants it as is. The patient has the option to review or revise their advance directive prior to it being placed within the medical record. The nurse will communicate pertinent information to the physician and pertinent caregivers as it relates to the patient's plan of care and known wishes.
- *If a copy of the advance directive is not available for the record*, nursing will attempt to document the substance of the advance directive and/or report the name of proxy in the directive (only if patient can articulate and agrees to provide the information verbally) on the initial assessment section of the advance directive.
Nursing will encourage the patient/family to bring the advance directive as soon as feasible; attempts will also be made to check if the patient has the document in a previous record. The patient may also be offered the ability to create a new advance directive. Sample forms are supplied in the Kennedy Patient Guide. Guest Services may also provide assistance with this process.

PHYSICIAN'S ROLE:

- The attending physician shall review an advance directive contained in the patient's chart and discuss its content with the patient and/or the patient's healthcare representative.
- The physician shall document a summary of all discussions with the patient or significant others concerning the patient's advance directive.
- If an advance directive exists, but a copy is not available for the record, important care decisions shall be made by the attending physician in consultation with the decision maker using substituted judgment or best interest criteria as appropriate. Any information on the substance and/or proxy documented in the chart will assist to guide

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care decisions. When anyone involved desires, a Medical Ethics Advisory Consultation one shall be held.

- The physician will incorporate the executed Advance Directive in the patient's treatment plan.
- The patient has the option to review and revise his/her advance directive at any time.

WHEN ADVANCE DIRECTIVE BECOMES EFFECTIVE:

Two elements must be true:

- The attending physician determines that the patient has lost decision-making capacity and this determination has been validated as outlined in Appendix D.
- A valid, executed advance directive is available in the healthcare setting.

PATIENTS WITHOUT AN ADVANCE DIRECTIVE - REQUESTING FURTHER INFORMATION:

- If a patient does not possess an advance directive, and expresses an interest in executing one, additional advance directive information will be provided at point of entry into the Kennedy system.
- For more information, discussion about writing an advance directive, or choices about care, patients shall be encouraged to talk with their attending physician. The patient shall also be encouraged to discuss their choices with family members or close friends, or any spiritual leader in their life.
- When a patient requests further information or needs help in writing an Advance Directive, the following departments may be contacted for further assistance: Guest Services, Nursing, and/or Case Management/Social Work. Clinicians may also refer the patient to the information about advance directives enclosed in the Kennedy Patient Guide.

When an Advance Directive is Not Valid Due To Lack of Witnessing/Signatures:

- If the advance directive is incomplete due to lack of witnesses, anyone except a proxy can serve as a witness.

MANAGEMENT OF THE ADVANCE DIRECTIVE IN THE CONTINUUM OF CARE/ PRE-HOSPITALIZATION, EMERGENCY SETTING, AND POST-HOSPITALIZATION:

Pre-Hospitalization:

- If the patient or family presents the paramedic with an advance directive it should be brought to hospital for inclusion in the patient record, brought to the attention of the attending physician, and documented on the patient's chart.

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- If the paramedic is caring for a patient who requires full cardiac resuscitation and is presented with an advance directive and a request to discontinue the resuscitative efforts in compliance with the patient's wishes:
 - Resuscitative efforts shall be initiated/continued, unless the patient has an out of hospital DNR order.
 - The base physician shall be notified concerning the document, its substance, and the family request.
 - In good faith and with the concurrence of the base physician the resuscitative effort may be discontinued in compliance with the patient's wishes.

Emergency Department:

- If the patient or family presents the physician with an advance directive, the physician will, when time permits and without endangering the patient's life, make a reasonable review of the advance directive and determine whether the patient lacks decision-making capacity and if it can be honored (See Appendix E).

Outpatient Hospital Settings:

- Outpatient facilities will honor a patient's advance directive when the physician determines that the conditions of the advance directives are met-
- At the patients request, patients will be provided additional information on creating advance directives or be provided assistance with formulating one. The KHS advance directive policy is communicated to the patient/family at their request or as appropriate to the patient's care, treatment, services provided.

RESPONSIBILITY:

All hospital employees and medical staff shall comply with the above policy.

REFERENCES

Sections 4206 and 4751 of the 1990 Omnibus Budget Reconciliation Act (OBRA);
New Jersey Advance Directives for Healthcare Act; and
CAMH, RI JCAHO STANDARD

REVIEWED BY

Medical Ethics Advisory Committee

Advance Directive

APPENDIX A

PROCEDURE

PROVISION OF ADVANCE DIRECTIVE INFORMATION:

- Community and provider education is the responsibility of the Medical Ethics Advisory Committee (M.E.A.C.), as well as the Department of Marketing and Communication by means of speaker panel discussions, case studies, lectures and literature (Ethics Grand Rounds).
- A Patient Guide outlining individuals' rights regarding advance directives are distributed to all inpatients at the time of registration and/or admission. The Patient Guide also provides a sample advance directive for patients wishing to complete one and/or name a proxy. This information is also available to outpatients, visitors and associates and may be obtained in Admissions, Guest Services, and/or patient care units.
- The Advance Directive Policy and Procedure is reviewed with associates at orientation, along with other patient rights policies. All associates receive an annual mandatory review packet that covers the advance directive topic, along with related policies and procedures.
- Upon request, Kennedy's policies and procedures are provided to patients, proxy decision-makers, families, volunteers, and visitors.
- Tailored educational seminars/programs are available to providers through the M.E.A.C. Education function when requested. These programs are designed to assist associates with resolving ethical issues, particularly relating to advance directives.
- Patients may have a consultation regarding advance directives that will be arranged with a member of Guest Services or through a designee (e.g., nursing/social work/MEAC member).
- Counsel for patients, families, associates, physicians, about questions that may arise concerning the development or execution of an advance directive is available.
- Assist the patient in executing an advance directive in accordance with the patient's wishes using a sample form.

APPENDIX B

DETERMINING THE VALIDITY OF AN ADVANCE DIRECTIVE:

To be valid:

- An advance directive must be signed and dated by, or at the direction of the patient (declarant) in the presence of two adult witnesses, who shall attest that the patient is of sound mind and free of duress and undue influence, or it can be signed and dated by the patient (declarant) and acknowledged before a notary public or attorney at law.
- The designated proxy or healthcare representative cannot act as a witness for the patient.
- Out-of-state advance directives are honored. No particular form need be used, photo copies are acceptable.

To be Followed:

AN ADVANCE DIRECTIVE IS FOLLOWED WHEN IT IS CONSISTENT WITH THE EXPLICIT TERMS OF AN ADVANCE DIRECTIVE AND ONE OF THE FOLLOWING CIRCUMSTANCES IS MET:

- When the life sustaining treatment is experimental and not proven therapy, or is likely to be ineffective or futile in prolonging life, or is likely to merely prolong the imminent dying process, or;
- When the patient is permanently unconscious, as determined by the attending physician and confirmed by a second qualified physician; or
- When the patient is in a terminal condition, determined by the attending physician and confirmed by a second qualified physician;
- When the patient has a serious irreversible illness or condition and the likely risks and burdens associated with the medical intervention to be withheld or withdrawn may reasonably be judged to outweigh the likely benefits to the patient from seeking such intervention or the imposition of the medical intervention would be inhumane;
- An advance directive cannot require Kennedy Health System, any physician, nurse or other healthcare provider to begin, continue, withhold, or withdraw medical care in a manner contrary to law or accepted professional standards.

APPENDIX C

DEFINITIONS

Adult - An individual 18 years or older.

Attending Physician- The licensed physician responsible for the overall management of the care and treatment of the patient.

Advance Directive - a document in which a person either expresses a choice for medical treatments and/or names an individual who should make treatment choices if the person becomes unable to make these decisions. The most frequently used type of advance directives are the Living Will (instructive directive) and the Durable Power of Attorney (proxy directive) for Healthcare. A durable power of attorney can be combined with a living will into a single document that describes one's treatment preferences in various situations and names a proxy.

Healthcare Representative (proxy) - the individual designated to make healthcare decisions on the declarant's behalf in accordance with the terms and order of priority stated in a living will and/or with the patient's previously expressed wishes.

An employee of Kennedy Health System may not serve as a healthcare representative for a patient unless the employee is related by blood, marriage or adoption. A physician that is not the attending physician may serve as the healthcare representative.

Living Will - a document specifying an individual's preferences regarding medical decisions to withhold or withdraw life-sustaining treatment if the person is seriously ill and unable to communicate his/her decisions.

Durable Power of Attorney or Proxy Directive - A witnessed legal document in which a patient names another person to make medical decisions if the patient becomes unable to make them. Instructions about treatment preferred or to be provided, such as surgery or artificial nutrition and hydration, can also be included.

Decision-Making Capacity - A patient's ability to understand and appreciate the nature and consequences of healthcare decisions, including the benefits and risks of each, and alternatives to any proposed healthcare, and to reach an informed decision.

Life Sustaining Treatment - The use of any medical device or procedure, artificially provided fluids and nutrition, drugs, surgery, or therapy that uses mechanical or other artificial means to sustain, restore, or supplant a vital bodily function, and thereby increasing the life expectancy of a patient.

APPENDIX C (cont'd.)

Terminal Condition - the stage of an irreversibly fatal illness, disease, or condition. Without requiring a specific determination of life expectancy, this policy recognizes that a prognosis of six months or less, without life sustaining treatment, based upon reasonable medical certainty is a terminal condition.

Declarant - A mentally capable adult who executes an advance directive.

APPENDIX D

DETERMINATION OF LOSS OF DECISION-MAKING CAPACITY

- The attending physician's determination must be confirmed in writing by one or more physicians unless the patient's loss of decision-making capacity is clearly apparent and the healthcare representative concurs.
- When the lack of decision-making capacity is related to a mental or psychological impairment or a developmental disability and the attending physician lacks specialized training or experience, the lack of decision-making capacity shall be confirmed by one or more physicians with appropriate specialized training or experience.
- A physician designated by the patient's Advance Directive as a healthcare representative or proxy shall not make or confirm the determination of a lack of decision-making capacity.
- The attending physician shall inform the patient (if the patient has any ability to comprehend) and the healthcare representative that the determination of loss of decision-making capacity has been made.
- The attending physician will make this determination and document the nature, cause, extent, and probable duration of the patient's incapacity. Also, document notification of patient and/or healthcare representative regarding loss of decision-making capacity.
- The attending physician, the healthcare representative, and when appropriate, any additional physician responsible for the patient's care shall discuss the nature and prognosis of the patient's medical condition, and the risks, benefits and burdens of the proposed treatment options and the alternatives when determining decision making capacity.

APPROVED

Medical Ethics Advisory Committee (M.E.A.C.)