Washington State DEPARTMENT OF SOCIAL & HEALTH SERVICES

DIVISION OF DEVELOPMENTAL DISABILITIES
Olympia, Washington

TITLE: MEDICAL TREATMENT BASED ON ADVANCE DIRECTIVES POLICY 9.01

Authority: RCW 7.70.065
RCW 11.92.043(4)
Chapter 70.122 RCW
RCW 71A.20.050
WAC 388-81-017
In re Grant, 109 Wn.2d 545, (1987)
Patient Self-Determination Act (OBRA 1990, P.L. 101-508)

PURPOSE

Persons with developmental disabilities, like all other citizens, have a legal right to make decisions concerning their medical care, to accept or refuse surgical or medical treatment, and to formulate advance directives. This policy establishes procedures for agency staff regarding medical treatment based upon advance directives.

SCOPE

This policy applies to community Intermediate Care Facilities for the Mentally Retarded (ICF/MRs) and Division of Developmental Disabilities (DDD) Residential Habilitation Centers (RHCs).

DEFINITIONS

Advance directives means instructions from an individual capable of making decisions regarding future medical treatment in the event that he or she becomes incapable of making such decisions. An advance directive specifies medical treatment the individual consents to or refuses.

Attending physician means the physician selected by the person who has primary responsibility for the person's medical treatment and care.

Cardiopulmonary resuscitation (CPR) means the process of keeping the heart pumping and the blood oxygenated through external means, including chest compressions, electric shock, injection of drugs into the heart; and artificial breathing.

Code/No Code means an order entered in a person's medical record telling whether or not to initiate CPR in the event the person is found with his/her heart not beating. Unless the person or their legal guardian executes a valid advance directive, health care providers are required to initiate CPR in all cases when a person's heart stops. The physician enters the "No Code"; the guardian executes an advance directive.

DNR means "do not resuscitate." This is the same as a "No Code" order.

Durable power of attorney for health care means a document that appoints another person to make medical decisions for someone else. Most durable powers of attorney for health care only take effect when a person has lost the ability to make his/her own decisions because of illness or injury. The person to whom the power of attorney is given is called the "attorney in fact" or "the agent."

Guardian means someone appointed by a judge in a legal proceeding to make health care decisions for another person who is incapable of making their own decisions or who cannot do so responsibly.

Informed consent means consent given by a person to receive treatment with an understanding of the risks and benefits involved. If a person is not competent to give informed consent for health care, superintendents, and other persons as defined in RCW 7.70.065 may provide informed consent on the person's behalf.

Life support means medical procedures or treatments which are necessary to assist the person to recover from a specific medical event. This may include, but is not limited to, resuscitation, artificial nutrition and hydration, mechanical ventilation, and dialysis.

Life sustaining treatment means any medical or surgical intervention that uses mechanical or other artificial means, including artificially provided nutrition and hydration, to sustain, restore, or replace a vital function, which, when applied to a qualified patient, would serve only to prolong the process of dying. "Life sustaining treatment" does not include the administration of medication or the performance of any medical or surgical intervention deemed necessary solely to alleviate pain.

Living will is a common term for a health care directive. This type of advance directive informs the health care provider that, in the event the individual becomes terminally ill or permanently

unconscious and life-sustaining treatment will only prolong the process of dying, the individual wants artificial life supports removed so they can die naturally.

Permanent unconscious condition means an incurable and irreversible condition in which the patient is medically assessed within reasonable medical judgment as having no reasonable probability of recovery from an irreversible coma or a persistent vegetative state.

Terminal condition means an incurable and irreversible condition caused by injury, disease, or illness, that, within reasonable medical judgment, will cause death within a reasonable period of time in accordance with accepted medical standards, and where the application of life sustaining treatment serves only to prolong the process of dying.

Valid means properly executed according to Washington State law.

POLICY

A. Persons living in community ICF/MRs and RHCs funded and/or operated by DDD shall receive routine and emergency health services and other rehabilitative services appropriate to their needs and consistent with the expressed preferences of each person, or his or her legal guardian if the person has been determined incompetent.

B. As a means of protecting a person's legal rights and ensuring that person's participation in decision making regarding medical care and treatment, community ICF/MRs and RHCs shall:

1. Provide written information to adult clients and guardians at the time of admission concerning a person's legal right (whether statutory or as recognized by courts of the state) to participate in decisions regarding their medical care, including the right to accept or refuse medical or surgical treatment, and the right to formulate advance directives under limited circumstances;

2. Maintain written policies and procedures with respect to advance directives, including living wills and durable powers of attorney for health care, and provide written information to clients and agency staff about such policies;

3. Document in the person's medical record whether or not the person has executed an advance directive; and

4. Not condition the provision of care or otherwise discriminate against a person based on whether the person has executed an advance directive.

C. An advance directive will be honored only for a person who is eighteen (18) years or older and for whom:

1. The attending physician diagnoses a terminal condition and the person is in an advanced phase of that illness; or

2. Two (2) physicians diagnose the person as in a permanent unconscious condition where the application of life support would serve only to prolong the process of dying.

Before executing an advance directive, a guardian must first determine that the person, if competent, would choose to withhold life sustaining treatment or, if this determination cannot be made, that withholding life sustaining treatment is in the person's best interests.

PROCEDURES

I. ADMISSION

A. When an adult is admitted into a community ICF/MR or an RHC, the facility administrator/superintendent must:

1. Provide written information concerning a person's legal rights as specified in Policy Section B above and the facility's policies concerning implementation of these rights to:

a. The person; and/or

b. The person's legal guardian.

Examples of advance directives are provided in Attachment A (*Advance Directive for Health Care*) and Attachment B (*Guardian's Advance Directive for Health Care*) of this policy.

2. Document in the person's medical record whether or not the person has executed an advance directive. Clients are not required to execute advance directives; this is a matter of personal choice.

a. If the person is incapacitated at the time of admission but later becomes capable of making decisions about their medical care and treatment, the person must be informed of their rights at that time. Document in the

person's medical record that they could not receive the information regarding their rights.

b. If the person at the time of admission is unable to state if an advance directive exists, and if no one else can provide a copy of the person's advance directive, document that the person could not communicate whether an advance directive exists.

B. If a person has a valid advance directive, the facility must follow the advance directive to the extent permissible under state law except as provided for in Section H below.

C. The advance directive must be placed in the person's permanent medical record.

D. If the advance directive appears to be defective (e.g., lacks witnesses, signatures, etc.), or contains requests which cannot be honored by the facility, the directive should not be placed in the person's record. Advise the person and/or his or her guardian of the reasons for not accepting the advance directive.

E. If, for reasons of conscience, the person's physician objects to the advance directive, staff should make a good faith effort to find another physician who will comply with the advance directive.

F. A copy of the person's advance directive must be forwarded to the health care facility when withholding or withdrawal of life support treatment is contemplated at that facility.

G. If the person has a legal guardian and a valid advance directive, the guardian should be contacted if at all possible prior to invoking the advance directive.

H. When the RHC Superintendent believes an advance directive is not in the best interests of the person and has the potential for significantly compromising the person's health, the Superintendent shall contact the Division Director and the Office of the Attorney General for consultation.

II. INFORMED CONSENT

A. When a person is mentally incapacitated or incapable of participating in decisions about health care, seek informed consent in the following consent hierarchy (RCW 7.70.065):

1. Legal guardian appointed to make health care decisions;

2. Person to whom the client has given a Durable Power of Attorney for Health Care;

3. Spouse;

4. Adult children (at least eighteen (18) years of age);

5. Parents;

6. Adult brothers and sisters (at least eighteen (18) years of age).

7. If no one in the consent hierarchy is available and the decision regarding health care requires immediate action, and there are no advance directives to guide RHC staff, the RHC Superintendent shall provide the necessary consent pursuant to his or her authority under RCW 71A.20.050 and RCW 43.20a.110.

B. No family member can give consent for health care procedures if a family member of higher priority has refused to authorize the procedures. When several persons of a single priority level exist, all reasonably available members of the group must agree.

C. The interdisciplinary team (IDT), in collaboration with the attending physician, has the responsibility to determine mental incapacity as it relates to medical care and treatment. An assessment of incapacity must be based on objective findings, which demonstrate:

1. Inability to understand issues discussed;

2. Severe psychiatric disorders which interfere with decision making; and/or

3. Inability to communicate preferences regarding care and advance directives.

III. CODE/NO CODE

Agency staff and health care providers are required to initiate CPR in all cases when a client's heart stops **unless** the following conditions exist:

1. The attending physician diagnoses a terminal condition and the person is in an advanced phase of that illness; **or**

2. Two (2) physicians diagnose the person as in a permanent unconscious condition where the application of life support would serve only to prolong the process of dying; **and**

3. The person or legal guardian must have a valid advance directive or provide informed consent to a DNR ("do not resuscitate") status.

IV. ANNUAL REVIEW

A. Discuss with the person their rights concerning medical care and treatment at least annually as part of the individual habilitation plan (IHP) meeting, or when:

1. The person is incapacitated, but later becomes able to make decisions regarding treatment and care as determined by the IDT; and/or

2. Changes in treatment are made or contemplated.

B. Review any existing advance directive with the person at this time to ensure the directive continues to reflect the person's wishes.

C. Document in the person's individual habilitation plan (IHP) whether an advance directive has been considered.

V. REVOCATION OF DIRECTIVE

A. The person or guardian may revoke an advance directive at any time, without regard to the person's mental state or competency, by any of the following methods in accordance with RCW 70.122.040:

1. By being canceled, defaced, obliterated, burned, torn, or otherwise destroyed by the individual or by some person in the individual's presence and at their direction; or

2. By a written revocation signed and dated by the person or guardian. This revocation becomes effective only upon communication to the attending physician by the person or his or her guardian; or

3. By a verbal expression by the person of their intent to revoke the directive. This revocation becomes effective only upon communication to the attending physician by the person or his or her guardian.

B. The person's physician should record the time, date, and place of the revocation in the person's medical record. The time, date, and place, if different, when the physician received notice of the revocation should also be recorded.

C. Remove from the person's medical record any advance directive that has been revoked, and record any new, resulting treatment decisions in the medical record.

EXCEPTION TO POLICY

None.

SUPERSESSION

Division Policy Directive 9.01
Issued February 14, 1994

Division Policy Directive 9.01
Issued October 8, 1992

Division Policy Directive 330.6
Issued December 17, 1991

Approved: /s/ *Timothy R. Brown* Date: 8/5/1999
Director, Division of Developmental Disabilities