



Administrator Program
Monday, November 17, 2025
12:45pm-2:00pm

2b. Advanced Concepts in Risk Management

Presented by:
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ADVANCE DIRECTIVES

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WE WILL BE TALKING ABOUT

1. What are Advance Directives
2. Out-of-Hospital DNR
3. Other Descriptions
4. HCSSA Requirements
5. Medicare Conditions of Participation



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WHAT ARE ADVANCE DIRECTIVES?

- “Advance directives are legal documents that allow you to convey your decisions about end-of-life care ahead of time. They provide a way for you to communicate your wishes to family, friends and health care professionals, and to avoid confusion later on.”
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- See, <https://hhs.texas.gov/laws-regulations/forms/advance-directives>

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DEFINED BY ADVANCE DIRECTIVES ACT AS:

- 1. a written instruction made by a competent adult; a nonwritten instruction by a competent qualified patient who is an adult; or a written instruction executed on behalf of a patient younger than 18 years of age; to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition;
- an out-of-hospital DNR order, as that term is defined by Section 166.081; or
- a medical power of attorney.
- <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.166.htm#166.032>

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OUT-OF-HOSPITAL DNR

- a. a “legally binding out-of-hospital do-not-resuscitate order, in the form specified by department rule under Section 166.083, 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 treatment:

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AN OUT-OF-HOSPITAL DNR APPLIES TO

- (i) cardiopulmonary resuscitation;
- (ii) advanced airway management;
- (iii) artificial ventilation;
- (iv) defibrillation;
- (v) transcutaneous cardiac pacing; and
- (vi) other life-sustaining treatment specified by department rule under Section 166.101(a); and

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AN OUT-OF-HOSPITAL DNR DOES NOT APPLY TO PALLIATIVE CARE

- b. 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.
- See: <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.166.htm#166.088>

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WHERE TO KEEP OUT-OF-HOSPITAL DNR

- The Out of Hospital DNR can be located anywhere that is discoverable by healthcare personnel including first responders.
- Texas Health & Safety Code § 166.089

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MINIMUM REQUIREMENTS FOR OUT-OF-HOSPITAL DNR

- The standard form of an out-of-hospital DNR order specified by department rule must, at a minimum, contain the following:
- a distinctive single-page format that readily identifies the document as an out-of-hospital DNR order;
- a title that readily identifies the document as an out-of-hospital DNR order;
- the printed or typed name of the person;

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MINIMUM REQUIREMENTS FOR OUT-OF-HOSPITAL DNR

- a statement that the physician signing the document is the attending physician of the person and that the physician is directing health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life-sustaining treatment on behalf of the person, and a listing of those procedures not to be initiated or continued;
- a statement that the person understands that the person may revoke the out-of-hospital DNR order at any time by destroying the order and removing the DNR identification device, if any, or by communicating to health care professionals at the scene the person's desire to revoke the out-of-hospital DNR order;

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STATE OPERATIONS MANUAL

- “The two most common forms of advance directives are a living will and a durable medical power of attorney for health care. It is the patient’s right to formulate an advance directive should he/she wish to do so. The patient’s admission to hospice should not be affected by his/her desire not to formulate an advance directive or by the contents of an advance directive. There may be State specific requirements for advance directives that must be followed.”

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STATE OPERATIONS MANUAL

The Center for Medicare and Medicaid Services (“CMS”) State Operations manual, Appendix M – Guidance to Surveyors: Hospice (“SOM”), indicates in its Interpretive Guidelines that Advanced Directives generally are:

“...refer to written statements or instructions, completed in advance of a serious illness, about how an individual wants medical decisions made.”

Available at: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Hospice>

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TEXAS HEALTH AND HUMAN SERVICES GUIDANCE

Texas Health and Human Services identifies the following Advance Directives and provides information and forms for providers and customers:

1. Declaration of Mental Health Treatment;
2. Directive to Physicians and Family or Surrogates;
3. Medical Power of Attorney (differs from a Statutory Durable Power of Attorney); and
4. Out-of-Hospital Do Not Resuscitate.

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OUT OF STATE (FOREIGN) ADVANCE DIRECTIVES

An advance directive or similar document validly executed in another state or jurisdiction shall be given the same effect as a one executed under Texas law, as long as the administration, withholding, or withdrawal of health care is not otherwise prohibited by the laws of Texas.

If there is conflict between 2 or more directives, the latest one executed will control.

Texas Health and Safety Code §166.005

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I TEX.ADMIN. CODE §558.283

- (a) An agency must maintain a written policy regarding implementation of advance directives. The policy must comply with the Advance Directives Act, Texas Health and Safety Code Chapter 166. The policy must include a clear and precise statement of any procedure the agency is unwilling or unable to provide or withhold in accordance with an advance directive.

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NOTICE

- (b) The agency must provide written notice to a client of the written policy required by subsection (a) of this section. The notice must be provided at the earlier of:
 - (1) the time the client is admitted to receive services from the agency; or
 - (2) the time the agency begins providing care to the client.

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WHO RECEIVES?

(c) If, at the time notice must be provided under subsection (b) of this section, the client is incompetent or otherwise incapacitated and unable to receive the notice, the agency must provide the required written notice, in the following order of preference, to:

- (1) the client's legal guardian;
- (2) a person responsible for the health care decisions of the client;
- (3) the client's spouse;
- (4) the client's adult child;
- (5) the client's parent; or
- (6) the person admitting the client.



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WHO RECEIVES NOTICE (CONT'D)

(d) If subsection (c) of this section applies, except as provided by subsection (e) of this section, and an agency is unable, after a diligent search, to locate an individual listed by subsection (c) of this section, the agency is not required to provide the notice.

(e) If a client who was incompetent or otherwise incapacitated and unable to receive the notice required by this section, at the time notice was to be provided under subsection (b) of this section, later becomes able to receive the notice, the agency must provide the written notice at the time the client becomes able to receive the notice.



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THE PENALTY

(f) HHSC assesses an administrative penalty of \$500 without an opportunity to correct against an agency that violates this section.



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HHA CONDITIONS OF PARTICIPATION

- G574 - 42 C.F.R. §484.60(a)(2)(xv) – The individualized plan of care must include, among others, information related to any advanced directives.
- L503 – §418.52(a)(2) - The hospice must comply with the requirements of subpart I of part 489 of this chapter regarding advance directives. The hospice must inform and distribute written information to the patient concerning its policies on advance directives, including a description of applicable State law.

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HOSPICE CONDITIONS OF PARTICIPATION

- A clinical record containing past and current findings is maintained for each hospice patient. The clinical record must contain correct clinical information that is available to the patient's attending physician and hospice staff. The clinical record may be maintained electronically.
- (a) Standard: Content. Each patient's record must include the following:
 - ...
 - (6) Any advance directives as described in § 418.52(a)(2).

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L781 – 42 CFR §418.112(E)(3)

Requires hospice agencies to provide the SNF/NF or ICF/IID with the following information:

...

(ii) Hospice election form and any advance directives specific to each patient...

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DISCLAIMER

The purpose of this presentation is not to offer legal advice, but to walk you through statutory and regulatory requirements for Home and Community Support Services Agencies regarding Advance Directives. Consult your attorney if you have specific questions regarding your legal obligations and risks.

