

## SECTION C: ADMINISTRATIVE & MISCELLANEOUS ISSUES

### ADVANCE DIRECTIVES

Patients have the right to formulate and execute Advance Directives, both the Living will and the Durable Power of Attorney for Health Care. PFMC providers have an obligation to inform patients of this right. Illustrated below is what should be explained to patients with regards to this right of theirs:

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**You can decide in advance what medical treatment you want to receive in the event you become physically or mentally unable to communicate your wishes**

#### **Your Rights as a Patient**

All adults in hospitals, skilled nursing facilities, and health care settings have certain rights. For example, you have a right to confidentiality of your personal and medical records and to know what treatment you will receive.

You also have another right. You have the right to prepare a document called an "advance directive." In one type of advance directive, you state in advance what kind of treatment you want or do not want if you ever become mentally or physically unable to choose or communicate your wishes. In a second type, you authorize another person to make those decisions for you if you become incapacitated. Federal law requires hospitals, skilled nursing facilities, hospices, home health agencies and health maintenance organizations (HMOs) serving persons covered by either Medicare or Medicaid to give you information about advance directives and explain your legal choices in making decisions about medical care.

The law is intended to increase your control over medical treatment decisions. Be mindful, however, that state laws governing advance directives do differ. The health care provider is required to give to you information about the laws with respect to advance directives for the state in which the provider is located. If you reside in another state, you may wish to gather information about your state laws from another source such as the office of the state attorney general.

#### **What is an Advance Directive?**

Generally, an advance directive is a written document you prepare stating how you want medical decisions made if you lose the ability to make decisions for yourself. The two most commonly prepared advance directives are:

- A "Living Will"; and
- A "Durable Power of Attorney for Health Care."

The value of an advance directive is that it allows you to state your choices for health care or to name someone to make those choices for you, if you become unable to make decisions about your medical treatment. In short, an advance directive ensures your right to accept or refuse medical care. You can say, "yes" to treatment you want, or "no" to treatment you don't want.

#### **Living Will**

A living will generally states the kind of medical care you want (or do not want) if you become unable to make your own decision. It is called a living will because it takes effect while you are still living. Most states have their own living will forms, each somewhat different. It may also be possible to complete and sign a preprinted living will form available in your own community, draw up your own form, or simply write a statement of your preferences for treatment. You may also wish to speak to an attorney or your physician to be certain you have completed the living will in a way that your wishes will be understood and followed.

### **Durable Power of Attorney for Health Care**

In many states, a durable power of attorney for health care is a signed, dated, and witnessed paper naming another person, such as a husband, wife, daughter, son, or close friend, as your authorized spokesperson to make medical decisions for you if you should become unable to make them for yourself. You can also include instructions about any treatment you want to avoid. Some states have specific laws allowing a health care power of attorney, and provide printed forms.

### **Which is Better: a Living Will or a Durable Power of Attorney for Health Care?**

In some states, laws may make it better to have one or the other. It may also be possible to have both, or to combine them in a single document that describes treatment choices in a variety of situations (ask your doctor about these) and names someone (patient advocate) to make decisions for you, should you be unable to make decisions for yourself.

The law on honoring an advance directive from one state to another is unclear. However, because an advance directive specifies your wishes regarding medical care, it may be honored wherever you are, if you make it known that you have an advance directive. But if you spend a great deal of time in a state other than your home state, you may wish to consider having your advance directive meet the laws of both states, as much as possible.

### **Advance Directives are not Required and may be Canceled at any Time**

You do not have to prepare an advance directive if you do not want one. If you do prepare one, you have the right to change or cancel it at any time. Any change or cancellation should be written, signed, and dated in accordance with state law, and copies should be given to your doctor, or to others to whom you may have given copies of the original. In addition, some states allow you to change an advance directive by oral statement.

If you wish to cancel an advance directive while you are in the hospital, you should notify your doctor, your family, and others who may need to know. Even without a change in writing, your wishes stated in person directly to your doctor generally carry more weight than a living will or durable power of attorney, as long as you can decide for yourself and can communicate your wishes. But be sure to state your wishes clearly and be sure that they are understood.

Make sure that someone, such as your lawyer or a family member, knows that you have an advance directive and knows where it is located. You might also consider the following:

- If you have a durable power of attorney, give a copy or the original to your agent or proxy.
- Ask your physician to make your advance directive part of your permanent medical record.
- Keep a copy of your advance directive in a safe place where it can be found easily, if it is needed.
- Keep a small card in your purse or wallet stating that you have an advance directive, where it is located and who your agent or proxy is, if you have named one.

### **Who Should Prepare an Advance Directive?**

You may want to consider preparing an advance directive if:

- You want your physician or other health care provider to know the kind of medical care you want or don't want if you become incapacitated.
- You want to relieve your family and friends of the responsibility, for making decisions regarding life-prolonging actions.

### **Additional Information**

If you need help in preparing an advance directive, or if you would like more information, you may want to contact a lawyer, a nearby hospital, hospice or long-term care facility, or your state attorney general's office.