

# Know in Advance What a Patient Wants You to Do When They Can't Tell You

**By Justin Joy, JD, CIPP**

As the patient population ages, the likelihood of encountering a patient unable to make decisions regarding his or her care will increase. Unexpected and emergency situations however can obviously affect a patient at any age, rendering the patient unable to make care decisions for themselves.

Whether treating a geriatric or a mature pediatric patient, providers should be knowledgeable on steps that patients should take to communicate their desires regarding care in the event they become unable to make their own decisions about their care. Providers should also assess procedures within their practice regarding how patients' desires for care are communicated and handled. In many situations when these desires need to be known, little time is available for figuring out whether or not the patient has made healthcare plans known in advance and, if so, definitively determining what those desires are.

Adult patients and emancipated minors who can make healthcare decisions on their own should be encouraged to create advanced directives. Legal documents memorializing a patient's desires may go by various names, such as living will, advance care plan, medical power of attorney, or appointment of healthcare agent. Regardless of the form of the document, at a minimum, an advanced directive should contain at least two pieces of information: (1) wishes for levels of medical treatment (CPR, artificial life support, tube feeding, etc.) relative to qualities of life deemed as unacceptable (permanent unconscious state, end stage illness, etc.); and (2) the appointment of an individual, preferably with the identification of an alternate or successor individual, to make healthcare decisions on behalf of the individual in the event of incapacitation. Other items such as organ disposition, burial preferences, and care directions can also be provided in an advanced directive.

While requirements for executing advanced directive documents vary from state to state, in addition to being signed by the individual, the documents also typically must be witnessed by two other competent adults or be notarized. Many states have a form available on medical or bar association websites or on state agency sites. In Tennessee, a number of

elements of different forms have been combined into one model Advance Directive for Health Care form adopted by the Board for Licensing Health Care Facilities effective May 9, 2017 and is available online. In using a model form however, it is important to confirm that it conforms to the latest laws and regulations in the state.

Outside of a hospital or long-term care setting, advanced directives also play an important role in healthcare. Providers should encourage patients to have advance directives in place, even in an office practice setting. There are a number of clinical scenarios that may unfortunately arise implicating a need for an advanced directive.

While it is essential to rapidly identify a patient's code status, it is just as important to determine whether a patient has provided your practice with an advanced directive, which can provide more nuanced information than simply to resuscitate or not. Additionally, from a primary care office perspective, a hospital or other facility may contact the patient's primary care provider if the hospital is unable to locate information about a patient's advanced directive.

Your practice should have a written procedure in place documenting the system for receiving, maintaining, and identifying advanced directives, as well as incorporating any changes to a patient's advanced directive. The system should be established in a way that a definitive determination can quickly be made whether or not a patient has provided the practice with an advanced directive. In the chaos that often accompanies serious adverse occurrences, where a patient's wishes stated in an advance directive may unfortunately and suddenly become relevant, providers should be familiar how to ascertain whether the patient has executed an advanced directive regarding his or her care. Otherwise, very serious ethical and legal dilemmas may arise.

One way to determine a patient's advanced directive status is to request such information on a new patient registration form. If a patient has executed an advanced directive document, the practice needs to determine whether the patient has provided a copy to the office. If the patient has not provided the document, the practice should state the obvious to the patient that, without the advanced directive, the patient's wishes are unknown and the document should be provided as soon as possible. Inquiries regarding a patient's advance directive status can be made at regular intervals, such as when an existing patient is asked to verify and update data such as address and insurance information.

Advanced directives provide a way for patients to express their wishes regarding healthcare in very difficult and in some cases, unforeseen circumstances. When thoughtfully executed, in consultation with their family and physician, advanced directives can spare patients, their families, and their healthcare providers the often anguish-filled process of determining the best course for a patient when the individual has become incapacitated. It is incumbent upon providers who receive advanced directives to honor those patients' wishes. Practices should have the proper procedures in place to ensure these wishes, when made known by a patient, are identified and fulfilled.

---



---

The contents of The Sentinel are intended for educational/informational purposes only and do not constitute legal advice. Policyholders are urged to consult with their personal attorney for legal advice, as specific legal requirements may vary from state to state and/or change over time.