

Patient Rights & Responsibilities
and
Advance Directives

Annual Training Program



COMMUNITY HEALTH PLAN
of Washington™

Background on Patient Rights

The legal interests of persons who submit to medical treatment.

For many years, common medical practice meant that Providers made decisions for their Patients. This view has gradually been changed by:

- **Promoting Patient autonomy, whereby Patients and Providers share the decision-making responsibility.**

Consequently Provider-Patient relationships are very different now than they were a few decades ago.

Consent to Treat

Consent, particularly **informed consent**, is the cornerstone of **Patient Rights**.

Consent is based on the inviolability of one's person. It means that the Provider does not have the right to touch or treat a Patient without the Patient's approval, because the Patient must live with the consequences and deal with any discomfort caused by treatment.

A doctor can be held liable for committing a battery if the doctor touches the patient without first obtaining the Patient's consent.

Consent to Treat

Consent must be:

- **Voluntary**
- Competent, *and*
- Informed

Voluntary means that, when the Patient gives consent, he or she is free from extreme duress, is not intoxicated, under the influence of medication and/or the Provider has not coerced the Patient into giving consent.

Consent to Treat

Consent must be:

- Voluntary
- **Competent**, *and*
- Informed

The law presumes that an adult is **Competent**. Competence is typically only challenged when a Patient disagrees with a Providers recommended treatment or refuses treatment altogether. If an individual understands the information presented regarding treatment, he or she is competent to consent to or refuse treatment.

Consent to Treat

Consent must be:

- Voluntary
- Competent, *and*
- **Informed**

Simply consenting to treatment is not enough. A Patient must give **Informed** consent. In essence, informed consent means that before a Provider can treat or touch a Patient, they must be given some basic information about what the Provider proposes to do. Informed consent has been called the most important legal doctrine in Patient Rights.

State laws and court decisions vary regarding informed consent, but the trend is clearly toward **more disclosure** rather than less. Informed consent is required not only in life-or-death situations but also in clinic and outpatient settings as well. A healthcare Provider must first present information regarding risks, alternatives, and success rates.

Consent to Treat

Consent must be:

- **Informed**

A healthcare Provider must first present information regarding risks, alternatives, and success rates. The information must be presented in language the Patient can understand and typically should include the following:

- A description of the recommended treatment or procedure;
- A description of the risks and benefits—particularly exploring the risk of serious bodily disability or death;
- A description of alternative treatments and the risks and benefits of alternatives;
- The probable results if no treatment is undertaken;
- The probability of success and a definition of what the Provider means by success;
- Length and challenges of recuperation; *and*
- Any other information generally provided to Patients in this situation by other qualified physicians.

Background on Rights to Treatment

In 1986, Congress passed the Emergency Medical Treatment and Active Labor Act (EMTALA) (42 U.S.C.A. § 1395dd), which established criteria for emergency services and criteria for safe transfer of patients between hospitals. This statute was designed to prevent "patient dumping," that is, transferring undesirable patients to another facility. The law applies to all hospitals receiving federal funds, such as Medicare (almost all do).

The law requires hospitals to provide a screening exam to determine if an emergency condition exists, provide stabilizing treatment to any emergency patient or to any woman in active labor before transfer, and continue treatment until a patient can be discharged or transferred without harm. It also delineates strict guidelines for the transfer of a patient who cannot be stabilized.

A hospital that negligently or knowingly and willfully violates any of these provisions can be terminated or suspended from Medicare. The physician, the hospital, or both can also be penalized up to \$50,000 for each knowing violation of the law.



Right to Treatment

In an emergency situation, a Patient has a right to treatment, regardless of ability to pay. If a situation is likely to cause death, serious injury, or disability if not attended to promptly, it is an emergency. Cardiac arrest, heavy bleeding, profound shock, severe head injuries, and acute psychotic states are some examples of emergencies. Less obvious situations can also be emergencies: broken bones, fever, and cuts requiring stitches may also require immediate treatment.

Both public and private hospitals have a duty to administer medical care to a person experiencing an emergency. If a hospital has emergency facilities, it is legally required to provide appropriate treatment to a person experiencing an emergency. If the hospital is unable to provide emergency services, it must provide a referral for appropriate treatment. Hospitals cannot refuse to treat prospective patients on the basis of race, religion, or national origin, or refuse to treat someone with HIV or AIDS.

Right to Treatment

Once a Patient has been duly admitted to a hospital, he or she has a right to leave at any time, or the hospital could be liable for False Imprisonment. This applies even if the Patient has not paid the bill or if the Patient wants to leave against all medical advice. In rare cases, such as contagious disease cases, public health authorities may have state statutory or regulatory authority to quarantine a Patient.

In addition, state laws governing involuntary commitment of the mentally ill may be used to prevent a person of unsound mind from leaving the hospital if a qualified psychiatrist determines that the person is a danger to himself or herself or to the lives of others.

A Provider familiar with a Patient's condition determines when a Patient is ready for discharge and signs a written order to that effect. If the Patient disagrees with a decision to discharge, she or he has the right to demand a consultation with a different Provider before the order is carried out. The decision to discharge must be based solely on the Patient's medical condition and not on nonpayment of medical bills.

Patient Rights List

The following is an *example* list of rights and responsibilities that **Providers** should post in their clinics and hospitals with the intent to show the Providers concern for the Patient, and to emphasize the need for observance of these rights and responsibilities.

As a Patient you have the right to . . .

- Considerate and respectful care provided in a safe environment, free from all forms of abuse, harassment or discrimination.
- Participate in the development and implementation of your plan of care and actively participate in decisions regarding your medical care. To the extent permitted by law, this includes the right to request and/or refuse treatment.
- Be well informed about your illness, possible treatments, and likely outcomes of care (including unanticipated outcomes) and to discuss this information with your doctor. In an emergency, when you lack decision-making capacity and the need for treatment is urgent, the information is made available to another person on your behalf.

Patient Rights List

- Have an advance directive (such as health care proxy, organ donation or living will) and the expectation that we will honor the intent of the directive to the extent permitted by law and hospital policy.
- Upon your request, have a family member, chosen representative and/or your own physician notified promptly of your admission to the hospital.
- Access to people outside the hospital by means of visitors and by verbal or written communication.

Expect effective pain management to include the following:

- Express your pain and have that expression accepted and respected as the most reliable indicator of pain,
- Have your pain assessed systematically and thoroughly,
- Have your pain managed according to the most currently accepted methods,
- Receive a prompt response to unrelieved pain, and
- Be informed and involved in all decisions regarding all aspects of your pain care.

Patient Responsibilities

Healthcare Providers and Organizations are entitled to reasonable and responsible behavior on the part of the **Patient and his/her Family**. Such responsibilities may include, but need not be limited to the following:

As a Patient you have the responsibility to . . .

- Report perceived risks in your care and unexpected changes in your condition to the person in charge of your care.
- Follow the treatment plan recommended by your doctor. This may include following the instructions of nurses and other health care personnel who carry out doctor's orders and/or plan of care.
- Notify your Provider if you are unable to keep appointments for outpatient services.
- Provide, to the best of your knowledge, accurate and complete information about present complaints, past illnesses, hospitalization, medications and other matters concerning your health.
- Ask questions whenever you do not understand the information or instructions being provided.

Patient Responsibilities

Assist with pain management by:

- Discussing relief with your healthcare providers
- Asking for pain medication when pain first begins
- Advising your Provider-Physician or Nurse if you are in pain

- Meet financial obligations regarding your health care as promptly as possible.
- Treat other patients and personnel with respect.
- Accept the consequences of your actions if you refuse treatment or if instructions are not followed.
- Be courteous and considerate of the needs of other patients, staff and hospital property. You are responsible for assisting in the control of noise and the number of visitors to your room.
- Respect the property of other patients, the staff and the hospital.
- Inform healthcare personnel of desired changes in your Advance Directives.
- Provide own safekeeping of clothing, money or any other personal possessions you choose to keep with you while you are in the facility.
- Recognize the effect of life-style on your personal health. Your health depends not just on your hospital care, but also on the decisions made in day-to-day living.

CHPW's Responsibilities

CHPW has contractual and regulatory obligations to ensure that all Members eligible for State and Federal programs receive a copy of their health care Member Rights and Responsibilities, which:

- Inform patients of their rights under the law for treatment, drug prescription, and care management decisions;
- Guarantee that members will be treated with respect; and
- Outline what members, in return, are responsible for to their Providers.

Member Rights and Responsibilities should not be confused with Member Rights under HIPAA.

CHPW's Responsibilities

Member Rights and Responsibilities may vary by CHPW line of business:

- For programs administered by Washington State, Member Rights and Responsibilities can be found for each product on CHPW's website at www.chpw.org/our-products/.
- For Medicare Member Rights and Responsibilities can be found on the Community HealthFirst™ website (www.healthfirst.chpw.org/). Select For Current Members under Quick Links, and follow the link to the rights and responsibilities document.

Background on Advance Directives

The federal Patient Self-Determination Act (PSDA), enacted in 1991, dictates that health care institutions certified by Medicare and/or Medicaid must take steps to educate all adult patients and the larger community on their right to accept or refuse medical care.

This law also directs facilities to inquire on admission whether a Patient has made an advance directive, maintain policies and procedures on advance directives, and provide this information to Patients upon admission. Organizations must comply with the PSDA in order to receive reimbursement through the Medicare and Medicaid programs.

Advance Directives

The Patient Self-Determination Act (PSDA) requires providers to inform patients of their rights, under state law, to make decisions about their medical care and the right to formulate advance directives. The PSDA defines an advance directive as a, "written instrument, such as a living will or durable power of attorney for health care, recognized under state law relating to the provision of such care when the individual is incapacitated."

In Washington State, an individual's right to control decisions involving their health care and to make an advance directive is codified in two places:

- An individual's right to control decisions involving health care via an advance directive is codified in the Natural Death Act in chapter 70.122 of the Revised Code of Washington.
- An individual's right to control decisions involving mental health care by making a mental health advance directive is codified in chapter 71.32 RCW, concerning mental health advance directives.

Advance Directives

To ensure compliance with the PSDA, hospitals, including rural primary care hospitals, nursing facilities, providers of home health care, health maintenance organizations, competitive medical plans, and hospice programs certified by Medicare and/or Medicaid must:

- Maintain written policies and procedures on advance directives with respect to all adult individuals receiving medical care by or through the provider or organization;
- Provide written information to each such individual concerning the individual's rights under state law (whether statutory or recognized by the state's courts) to make decisions concerning medical care including: The right to accept or refuse medical or surgical treatment -- The right to formulate advance directives, and the hospital's policies respecting the implementation of such rights;

Advance Directives

- Document in the individual's medical record whether or not the person has executed an advance directive;
- Not condition the provision of care or otherwise discriminate against an individual based upon whether or not the individual has executed an advance directive;
- Ensure their written policies on advance directives include a clear and precise statement of limitation if the provider cannot implement an advance directive based on moral or ethical objections, including the legal authority for such objection (see the Natural Death Act or the Mental Health Advance Directive chapter) and whether the objection is institution-wide or may be raised by an individual provider;

Advance Directives

- Inform individuals that complaints concerning the advance directives requirements may be filed with the state survey and certification agency;
- Ensure that the facility complies with state law concerning advance directives (see the Natural Death Act and the Mental Health Advance Directive chapter);
- Educate staff on the facility's policies and procedures concerning advance directives; and provide for community education.

The educational materials must inform the public of their rights under state law to make decisions about their medical care, the right to formulate advance directives, and the facility's implementation policies concerning an individual's advance directive.

Advance Directives

The written information concerning advance directives must be provided to an adult individual by:

- Hospitals, at the time of inpatient admission;
- Nursing facilities, at the time of admission;
- Home Health care or personal care services, in advance of the individual coming under the care of the provider;
- Hospices, at the time of initial receipt of hospice care; and
- HMOs, at the time of enrollment.

If an individual is incapacitated at the time of admission or is otherwise unable to articulate whether or not he or she has executed an advance directive, information about advance directives may be given to an individual's family or surrogate.

CHPW's Advance Directives Policy and Procedure

Anyone who asks for a copy of the Community Health Plan of Washington (CHPW) advance directives policy and procedures will be given a copy. You do not have to be a Member to see the policy and procedure.

Community Health Plan of Washington puts its policy and procedure about advance directives online at www.chpw.org/integrity-program. You can also ask for the advance directives policy and procedure by calling the CHPW's customer service team at 800 440-1561.

Member Complaints About Advance Directives

- If you think that Community Health Plan of Washington or its providers, contractors, vendors, or business associates are not following the rules for advance directives, you may file a grievance.

Member information on filing a grievance or complaint, see the Grievance and Appeal Process for your program.



CHPW's Advance Directives Policy and Procedure

For more information, resources, and forms about Patient Advance Directive Rights are on the Washington State Medical Association Advance Directives Q & A web page:

www.wsma.org/paient_resources/advance-directives-qa.cfm

Sign-up for CHPW Updates/Notifications

You will conveniently receive:

- Semiannual Provider Network Newsletter
- Latest News and Important Announcements
- Training and Compliance Notifications
- Other Communications

Provide us with your email addresses from the following staff/departments:

- Payor Contract Managers
- Billing Managers
- Clinic Managers
- Team Members (billers, receptionists, medical record clerks, etc.)

Sign-up now at: <http://bit.ly/1n9zUJj>

Attestation Required

Thank you for completing the Patient Rights & Responsibilities and Advance Directive Training. Please take a moment to submit the required attestation, by clicking the following link:

[Attest Now!](#)