

## 5. Who may fill out an Advance Directive?

Any person 18 years or older who has the "capacity" to make health care decisions may fill out an Advance Directive.

"Capacity" to make healthcare decisions means the person understands the nature of the proposed healthcare, including the possible risks and benefits and is able to make and communicate decisions about that healthcare. Legally, a person is assumed to be competent unless proven otherwise.

## 6. How does an Advance Directive become official?

An Advance Directive must contain all of the following to be official:

- ♦ A statement of the person's intent to create an Advance Directive.
- ♦ The signature of the person writing the Advance Directive
- ♦ The signatures of either two witnesses or a notary public

The date the Advance Directive was signed.

## 7. When does an Advance Directive go into effect?

An Advance Directive only goes into effect when the person's primary physician decides that the person does not have the "capacity" to make her own healthcare decisions. This means the physician believes that the person is not able to understand the nature and consequences of proposed healthcare or is not able to make or communicate her healthcare decisions. The fact that a person has been

admitted to a mental health facility does not, in itself, mean that the person lacks capacity to make his/her own healthcare decisions.

The Advance Directive is no longer in effect as soon as the person regains the capacity to make her own healthcare decisions.

## 8. Who may help with filling out an Advance Directive?

Writing an Advance Directive can sometimes seem confusing or complicated. If a person needs help writing an Advance Directive, he/she should ask someone who respects his/her right to make these decisions and will help without pressuring the individual into making a particular decision.

It is also good to ask someone who is knowledgeable or experienced in writing Advance Directive to help. The Patients' Rights Advocate can assist you in completing an Advance Directive. Call for assistance at (831) 755-4518

## Advance Directives Forms and Instructions

Advance Directives forms and instructions are available at Behavioral Health Clinics, and at the Patients' Rights Advocate Office.

Clients with questions or concerns regarding Advance Directives may be referred to the Department of Health Services, Licensing and Certification Division at 1-800-236-9747.



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# Advance Directives for Medical Health Care



## Your Right To Make Healthcare Decisions

Patients' Rights Advocate  
Monterey County Behavioral  
Health

**Telephone:** (831) 755-4518

**Fax:** (831) 796-8639 or **Email at:**  
patientsrightsadvocate@co.monterey.ca.us

If you want to find out more about Advance Directives, contact the Patients' Rights Advocate at (831) 755-4518.

## Background

Under Federal and California Law, people have the right to make healthcare decisions regarding their wishes for future medical and/or psychiatric care using an Advance Directive. This is a document that allows a person to state her/his wishes regarding medical and/or psychiatric healthcare, including the right to accept or refuse treatment. Advance Directives may be used in hospitals, skilled nursing facilities and psychiatric health facilities. It is the policy of MCBH to respect individuals' decisions regarding the establishment of Advance Directives.

### 1. What is an Advance Directive?

An Advance Directive provides a way for people to direct their own healthcare even when they are in a coma, have dementia or are mentally incapacitated or unable to communicate. A person may use an Advance Directive to spell out her wishes regarding physical and mental healthcare and to select someone to make health care decisions when she is unable to do so.

In California, an Advance Directive is made of up two parts, (1) Appointment of an Agent for Healthcare and (2) Individual Health Care Instructions. A person may choose to complete either one or both of these parts. Either part is legally binding by itself.

### 2. What is a Healthcare Agent?

A person may use her Advance Directive to appoint a Healthcare Agent. A Healthcare Agent is responsible for making healthcare decisions should the person lose the ability to make these decisions for herself. A Healthcare Agent is responsible for carrying out the person's wishes as she has expressed them in her Advance Directive or in discussions with the Agent.

It is not necessary to name a Healthcare Agent in order to complete an Advance Directive. If the person has not chosen a Healthcare Agent, the healthcare provider is still required to follow the person's wishes, as expressed in the Individual Healthcare Instructions.

### 3. What are Individual Healthcare Instructions?

If both parts of the Advance Directive are filled out, the Healthcare Agent must follow the specific wishes spelled out in the second part of the document which is called the Individual Healthcare Instructions. Individual Healthcare Instructions are the way in which a person can tell her doctor, family or Agent what her decisions are regarding physical or mental health treatment. Individual Healthcare Instructions are verbal or written directions about health care. A person can use Individual Healthcare Instructions to let her healthcare provider know what she wants done and under what circumstances. This may include agreeing to certain treatments or refusing specific treatments or services.

### 4. What can an Advance Directive do for an individual?

Individuals can benefit from having an Advance Directive in a number of ways:

- ✓ An Advance Directive can empower the person to make her treatment choices known in the event she needs mental health treatment and is found to be incapable of making healthcare decisions.
- ✓ An Advance Directive can improve communication between the person and her doctor. Completing an Advance Directive is a good way to open up discussion with healthcare providers about treatment plans and the full spectrum of choices in treatment.
- ✓ An Advance Directive can help the person prevent clashes with family members and/or healthcare providers over treatment during a crisis by allowing those discussions to take place when a person is filling out her Advance Directive.
- ✓ Completing an Advance Directive creates an opportunity for the person to discuss her wishes in detail with family and/or friends. This may help family and/or friends more effectively advocate for the person when she is unable to advocate for herself and to advocate in ways that reflect the person's wishes.
- ✓ An Advance Directive may prevent forced treatment.
- ✓ An Advance Directive may reduce the need for long hospital stays.