

Oklahoma Health Care Providers' Responsibilities and Rights Under Certain Medical Treatment Laws



Basic nondiscrimination obligation:

Medical treatment, care, nutrition or hydration may not be withheld or withdrawn from an incompetent patient because of the mental disability or mental status of the patient.

Required by Section 3080.5(B) of Title 63 of the Oklahoma Statutes

What if you disagree with a direction by or on behalf of your patient to provide medical treatment?

Key-Concepts

“Life-preserving health care service”: a health care service the denial of which, in reasonable medical judgment, will result in or hasten the death of the patient.

“Person authorized to make health care decisions for the patient”:

- For minors not legally able to consent to health care services, a custodial parent or guardian.
- For others currently incapable of making their own health care decisions:
 - guardian with authority to make medical decisions;
 - health care proxy or attorney-in-fact; or
 - other person authorized under common law (consult attorney for help in determining).

If a patient or person authorized to make health care decisions for the patient directs life-preserving treatment for the patient that you provide to other patients, you may not deny it:

- On the basis of a view that treats extending the life of an elderly, disabled or terminally ill individual as of lower value than extending the life of an individual who is younger, nondisabled or not terminally ill; or
- On the basis of disagreement with how the patient or person legally authorized to make health care decisions for the patient values the trade-off between extending the length of the patient’s life and the risk of disability.

Required by Nondiscrimination in Treatment Act (Sections 3090.2 and 3090.3 of Title 63 of the Oklahoma Statutes)

For treatment not required under the Nondiscrimination in Treatment Act, but that is directed by a patient with decision-making capacity, or by or on behalf of the patient under a valid advance directive:

- You must, as promptly as practicable, take all reasonable steps to arrange care of a qualified patient by another physician or health care provider willing to comply; and
- Pending completion of the transfer, you must provide any directed treatment whose denial would in reasonable medical judgment be likely to result in the death of the patient,

except

- Treatment you are physically or legally unable to provide;
- Treatment you are physically or legally unable to provide without thereby denying the same treatment to another patient; or
- The requirement does not change any legal obligation or lack of legal obligation you may have to provide treatment, nutrition or hydration to a patient who refuses or is unable to pay for them.

Required by Oklahoma Advance Directive Act (Section 3101.9 of Title 63 of the Oklahoma Statutes)

What if you disagree with a direction by or on behalf of your patient to withhold or withdraw medical treatment?

You must, as promptly as practicable, take all reasonable steps to arrange care of a qualified patient by another physician or health care provider willing to comply.

Required by Oklahoma Advance Directive Act (Section 3101.9 of Title 63 of the Oklahoma Statutes)

What does, and does not, violate Oklahoma’s law against assisting suicide?

It IS a violation if, with the purpose of assisting another person to commit or attempt to commit suicide, you knowingly:

- Provide the physical means by which another person commits or attempts to commit suicide; or
- Participate in a physical act by which another person commits or attempts to commit suicide.

It is NOT a violation if you are a licensed health care professional and you:

- Administer, prescribe or dispense medications or procedures for the purpose of alleviating pain or discomfort, even if their use may increase the risk of death, so long as such medications or procedures are not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason; or
- Withhold or withdraw a medically administered, life-sustaining procedure. However, this does not change your duty of care or the legal requirements concerning acts or omissions regarding medications or procedures to alleviate pain or discomfort or the withholding or withdrawal of life-sustaining procedures.

Required by Assisted Suicide Prevention Act (Sections 3141.3 and 3141.4 of Title 63 of the Oklahoma Statutes)

What are the legal requirements regarding cardiopulmonary resuscitation and do not resuscitate (CPR & DNR)?

You must assume patient consent to CPR whenever the patient undergoes cardiac or respiratory arrest UNLESS you have actual knowledge of one of the following:

- The patient’s medical record accurately records the patient’s refusal to consent to CPR, given to the attending physician;
- A DNR under the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act was executed for the patient; or
- The patient’s valid advance directive directs that life-sustaining treatment not be performed in the event of cardiac or respiratory arrest.

A minor’s medical records accurately record the parent or guardian’s refusal to consent to CPR for the minor, provided:

- If the minor has sufficient understanding and appreciation of the nature and consequences of the refusal and is capable of objecting, the medical record accurately records that the minor has not objected; or
- In the case of a disabled infant with life-threatening conditions, if in reasonable medical judgment CPR will be most likely to be effective in correcting or ameliorating the life-threatening conditions, in reasonable medical judgment:
 - the infant is chronically and irreversibly comatose;
 - the provision of such treatment would merely prolong dying; not be effective in ameliorating or correcting all of the infant’s life

- threatening conditions; or otherwise be futile in terms of the survival of the infant; or
- the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

The patient’s medical record accurately records refusal to consent to CPR based on the known wishes of the patient by an incapacitated patient’s guardian, health care proxy or attorney-in-fact for health care decisions; AND

- The reason the guardian, proxy or attorney-in-fact, rather than the patient, directed the DNR is recorded in the patient’s medical record; or
- Prior to the decision, the patient’s attending physician has:
 - instructed the guardian, proxy or attorney-in-fact in writing that he or she is deciding what the incapacitated patient would have wanted if the patient could speak for himself or herself;
 - encouraged consultation among all reasonably available representatives, family members and persons close to the incapacitated patient to the extent feasible in the circumstances of the case; and
 - whenever possible, explained to the guardian, proxy or attorney-in-fact and family members the nature and consequences of the decision to be made; evidence of its provision is to be documented in the patient’s medical record.

The attending physician for an incapacitated patient without a representative knows by clear and convincing evidence that when competent, on the basis of information sufficient to constitute informed consent, the patient refused to consent to CPR. “Clear and convincing evidence” includes oral, written, or other acts of communication between the patient, when competent, and family members, health care providers or others close to the patient with knowledge of the patient’s personal desires.

You are not required to begin or continue CPR when, in reasonable medical judgment, it would not prevent the imminent death of the patient.

A health care agency is not required to institute or maintain the ability to provide CPR or to expand its equipment, facilities or personnel to provide CPR, but an agency must communicate in writing to a patient or the patient’s representative prior to the person coming under the care of the health care agency that it does not provide CPR.

Required by Oklahoma Do-Not-Resuscitate Act (Section 3131.4 of Title 63 of the Oklahoma Statutes) and 42 U.S.C. §§ 5106a(b)(2)(C)(iii) & 5106g(5)

What are Oklahoma’s requirements concerning nutrition and hydration for patients?

Key-Concepts

“Incompetent patient”: one who is a minor, has been declared legally incompetent to make decisions affecting medical treatment or care, or, in the reasonable judgment of the attending physician, is unable to make decisions affecting medical treatment or other health care services.

“Nutrition”: sustenance administered by way of the gastrointestinal tract.

I hereby certify that I have read this brochure in its entirety and that I understand my legal duties pursuant to the laws described in it.

Printed name _____

Licensing entity _____

Employer _____ Date _____

Signature _____

Please complete all information requested above the signature line.

Once complete give to your employer to be placed in your personnel file for a minimum of four (4) calendar years.

Pursuant to state law (Title 63, Okla. Stat. Ann, Section 3162), inpatient health care services entities¹ shall ensure that all health care providers and other defined officials² associated with the inpatient health care services entity are provided with a copy of this brochure and sign a certification that they have read the brochure and are familiar with their responsibilities and rights as set forth therein:

- Within fourteen (14) days of beginning employment with, beginning service on the board of directors of, or beginning to provide services to patients at the entity; and
- At least once during each calendar year.

In addition to the requirements relating to this brochure, at least once during each consecutive two calendar-year period all health care providers and other defined officials associated with an inpatient health care services entity shall observe an online presentation prepared by the State Board of Medical Licensure and Supervision regarding medical treatment laws information. The time required for observation of this presentation shall count as part of, rather than being in addition to, continuing education otherwise required for licensed health care providers. Inpatient health care services entities shall ensure that all health care providers and other defined officials associated with the inpatient health care services entity provide the entity with a copy of each dated certification by the Board verifying that the provider or official observed the online presentation described in subsection A of this section in compliance with this requirement, and shall maintain such copies on file for a minimum of four (4) calendar years following the calendar year to which they apply. The files of such copies shall be subject to inspection under subsection B of Section 1-705, and Sections 1-829 and 1-1911 of Title 63 of the Oklahoma Statutes.

1. “Inpatient health care services entities” means those hospitals defined in paragraphs 2, 3 and 5 of Section 1-701 of Title 63 of the Oklahoma Statutes, a nursing facility as defined in paragraph 10 of Section 1-1902 of Title 63 of the Oklahoma Statutes, a specialized facility as defined in paragraph 11 of Section 1-1902 of Title 63 of the Oklahoma Statutes, and those long-term care facilities described in subparagraphs e and f of paragraph 1 of Section 1-1945 of Title 63 of the Oklahoma Statutes.
 2. “Other defined officials” means, with regard to a particular health care services entity, to the extent such officials exist, the members of the board of directors, the administrator or chief executive officer, and the general counsel, by whatever titles those serving these functions may be called.

You must assume any incompetent patient has directed hydration and nutrition to a degree that is sufficient to sustain life UNLESS its withdrawal or withholding would not be because of the mental disability or mental status of the patient, AND:

- The patient's advance directive specifically authorizes the withholding or withdrawal of nutrition and/or hydration and:
 - is an Oklahoma advance directive (under current or prior law) that is either in the statutory form or that specifically authorizes the withholding or withdrawal of artificially administered nutrition and/or hydration in the patient's own words or by a separate section, separate paragraph or other separate subdivision that deals only with nutrition and/or hydration and which is separately initialed, separately signed or otherwise separately marked by the patient;
 - is an out-of-state advance directive that was executed by a person who was not a resident of Oklahoma at the time of execution or specifically authorizes the withholding or withdrawal of artificially administered nutrition and/or hydration in the declarant's own words or by a separate section, separate paragraph or other separate subdivision that deals only with nutrition and/or hydration and which section, paragraph or other subdivision is separately initialed, separately signed or otherwise separately marked by the person executing the advance directive;
 - a court has directed that artificially administered hydration or nutrition be withheld or withdrawn (a court can do so only based on clear and convincing evidence that the patient, when competent, decided on the basis of information sufficient to constitute informed consent to reject it);
 - the attending physician knows that the patient, when competent, decided on the basis of information sufficient to constitute informed consent that artificially administered hydration or nutrition should be withheld or withdrawn from the patient; or
 - withholding or withdrawal of hydration or nutrition would not result in death from dehydration or starvation rather than from the underlying terminal illness or injury; and in the reasonable medical judgment of the attending physician and a second consulting physician:
 - » the patient is chronically and irreversibly incompetent,
 - » the patient is in the final (last) stage of a terminal illness or injury (meaning that, even with the use of medical treatment, the patient is in the dying process and will die within a reasonably short period of time), and
 - » the patient's death is imminent.

Required by Hydration and Nutrition for Incompetent Patients Act (Sections 3080.2 through 3080.5 of Title 63 of the Oklahoma Statutes)

Reporting of violations

Alleged violations of any of the laws summarized in this brochure should be reported to the licensing entity for the health care entity or individual alleged to be in violation.

If the identity of the entity or person alleged to be in violation is unknown, or if the proper licensing entity is unknown, then the allegation should be reported to the State Board of Medical Licensure and Supervision. In addition, suspected violations of the Assisted Suicide Prevention Act should also be reported to the Department of Human Services.

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