

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

SUBCHAPTER 140-10.5 LIVING WILL POLICY RULES AND REGULATIONS

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Exhibit A Living Will

Subchapter Authority: 1 CMC § 2605.

Subchapter History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

Commission Comment: PL 1-8, tit. 1, ch. 12, codified as amended at 1 CMC §§ 2601-2633, created the Department of Public Health and Environmental Services within the Commonwealth government. See 1 CMC § 2601. 1 CMC § 2603(f) grants the Department the power and duty to administer all government-owned health care facilities. 1 CMC § 2605 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles, and effected numerous other revisions. According to Executive Order 94-3 § 105:

Section 105. Department of Public Health.

The Department of Public Health and Environmental Services is re-designated the Department of Public Health.

The full text of Executive Order 94-3 is set forth in the commission comment to 1 CMC § 2001.

Public Law 16-51 (effective Jan. 15, 2010), the "Commonwealth Healthcare Corporation Act of 2008," codified at 3 CMC § 2801 et seq., established the Commonwealth Healthcare Corporation, which assumed the duties of the Department of Public Health as of January 15, 2011.

Part 001 - General Provisions

§ 140-10.5-001 Policy

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The rules and regulations in this subchapter shall be referred to as the “Living Will Policy.”

Modified, 1 CMC § 3806(d), (f).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

§ 140-10.5-005 Findings and Declarations

(a) An adult person has the fundamental right to control the decisions about his or her own medical care, including the decision to have life-sustaining treatment started, withheld or withdrawn in instances where the person is afflicted with a terminal condition or is in a permanent unconscious condition.

(b) Prolonging the process of dying for a person afflicted with a terminal condition or in a permanent unconscious condition, when continued medical treatment will not improve the prognosis for recovery, may violate patient dignity and cause unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the person. It is therefore the objective of this policy to protect individual autonomy by allowing persons to make decisions about their treatment and their death.

(c) In recognition of the dignity and privacy that a person has a right to expect, this policy is aimed at upholding the right of an adult person to make a declaration instructing his or her physician regarding life sustaining treatment, including the right to initiate, maintain, or withdraw such treatment, in the event of a terminal condition or permanent unconscious condition, or in the event that the person is unable to make those decisions for himself or herself.

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

Part 100 - Living Will Policy

§ 140-10.5-101 Preparing a Living Will

(a) A person who is 18 years or older, and who is of sound mind, may state verbally or in writing his or her wishes regarding life sustaining treatment, including the withdrawal or maintenance of such treatment, as provided in this policy. Persons are encouraged to document their decisions in writing.

(b) A person’s verbal statements regarding life sustaining treatment must be made to a family member or friend, and witnessed by at least one other individual.

(c) A form for a written living will is attached to this policy as exhibit A. The living will forms can be found throughout the Commonwealth Health Center, including the Hospital Administrator’s office.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

§ 140-10.5-105 Operative Effect of a Living Will

(a) A living will becomes operative when:

- (1) It is communicated to the attending physician by the patient or the patient's family members or friends to whom the patient has communicated his or her desires; and
- (2) The patient is diagnosed and certified in writing by the attending physician, and a second physician who has personally examined the patient, and both concur that the patient is:
 - (i) Close to death, and that starting or maintaining life support would postpone death;
 - (ii) Unconscious, and it is very unlikely that the patient will become conscious again; or
 - (iii) In an advanced state of a progressive illness that will be fatal, and that the patient is consistently and permanently unable to communicate by any means, swallow food and water safely, care for himself or herself, recognize family members or other people close to the patient, and it is very unlikely that the patient's condition will significantly improve; and
- (3) The patient is no longer able to make decisions regarding administration of life-sustaining treatment.

(b) When the living will becomes operative, the attending physician and other health care providers must act in accordance with its provisions, or comply with the transfer requirements set forth in § 140-10.5-125.

(c) This policy does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort care or alleviation of pain.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

§ 140-10.5-110 Revocation of a Living Will

(a) A person may revoke a living will at any time and in any manner, without regard to his or her mental or physical condition. A revocation of the living will is effective when the person's intent to revoke is communicated to the attending physician or other health care provider by the person, or by a witness to the person's act of revocation.

(b) The attending physician or other health care provider must indicate the person's revocation of the living will in such person's medical record.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 140-10.5-115 Recording the Living Will in the Medical Record

When a patient's attending physician determines that the patient is in a condition described in § 140-10.5-105, the attending physician who knows of a living will must record the living will and the terms of the living will in the patient's medical record. The medical record of a patient with a living will will contain a sticker on the outside folder indicating that a living will is included inside the medical record. A person who has signed a living will is encouraged to give a copy of the living will to their family members, close friends, or health care provider.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

§ 140-10.5-120 Patient's Right to Self-determination; Pregnant Patients

(a) A person who is 18 years or older, and who is of sound mind, may make decisions regarding life-sustaining treatment as long as he or she is able to do so, regardless of whether he or she has signed a living will.

(b) If the patient is pregnant and that diagnosis is known to the attending physician, the living will shall have no force or effect during the course of the pregnancy, unless the patient has explicitly specified in writing that the living will should remain in effect in instances of pregnancy.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 140-10.5-125 Physician or Health Care Provider Unwilling to Comply with the Living Will Policy; Transfer of Patient

An attending physician or other health care provider who is unwilling to comply with the living will policy shall take all reasonable steps as promptly as practicable to transfer care of the patient to another physician or health care provider who is willing to comply with the terms of the patient's living will.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

§ 140-10.5-130 Health Care Provider Acting in Good Faith

(a) The Department of Public Health will not subject a physician or other health care provider to disciplinary action for unprofessional conduct for acting on the terms of a patient's living will when the physician or other health care provider clearly demonstrates that he or she

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had no knowledge of the revocation of the living will.

(b) A physician or other health care provider whose action under this policy is in accord with reasonable medical standards will not be subject to disciplinary action for unprofessional conduct, administrative sanction, or other punishment by the Department of Public Health if the physician or health provider believes in good faith that his or her actions were consistent with this policy and the desires of the patient as expressed in the patient's living will.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). In subsection (a), the Commission inserted the first word "The."

§ 140-10.5-135 Health Care Provider Not Acting in Good Faith

It is the Department of Public Health's expectation that all employees will comply with this policy. The Department of Public Health will subject any physician or health care provider to disciplinary action who willfully fails to record the terms of a living will in a person's medical record. Furthermore, any individual who willfully:

- (a) Conceals, cancels, or obliterates the living will of another individual without that individual's consent; or
- (b) Falsifies or forges a revocation of the living will of another individual, will be reported to the Office of the Attorney General for prosecution.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

§ 140-10.5-140 Policy Consistent with Other Rights and Laws

- (a) This policy does not affect the right of a person to make decisions regarding the use of life-sustaining treatment, as long as the person is able to do so, or impair or supersede a right or responsibility that a person has to effect the withholding or withdrawal of medical care.
- (b) This policy does not require any physician or other health care provider to take any action contrary to reasonable medical standards.
- (c) This policy does not condone, authorize, or approve mercy killing or assisted suicide, or permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

§ 140-10.5-145 Living Will Presumed to Be in Compliance with Policy and Valid

In the absence of any knowledge to the contrary, a physician or other health care provider may presume that a living will complies with the policy in this subchapter and is valid.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

§ 140-10.5-150 Instruments Executed in Other States

An instrument governing the withholding or withdrawal of life-sustaining treatment executed in another jurisdiction in compliance with the laws of that jurisdiction is valid for the purposes of the policy in this subchapter.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

§ 140-10.5-155 Instruments Executed in the CNMI Prior to Adoption of this Policy

An instrument governing the withholding or withdrawal of life-sustaining treatment executed in the CNMI prior to the adoption of the policy in this subchapter is valid for the purposes of this subchapter.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).

**Exhibit A
Living Will**

HEALTH CARE INSTRUCTIONS:

I, _____, hereby set forth my desires about my health care in the event my doctor and another doctor who has personal knowledge about my care confirm that I am in a medical condition described below:

1. If I am close to death and life support would postpone the moment of my death:

A. Initial One

_____ I want to receive artificially administered nutrition and water.

_____ I DO NOT want to receive artificially administered nutrition and water.

B. Initial One

_____ I want other life support that may apply: _____

_____ I want NO life support.

2. If I am unconscious and it is very unlikely that I will ever become conscious again:

A. Initial One

_____ I want to receive artificially administered nutrition and water.

_____ I DO NOT want to receive artificially administered nutrition and water.

B. Initial One

_____ I want other life support that may apply: _____

_____ I want NO life support.

3. If I have a progressive illness that will be fatal and is in an advanced state, and I am consistently and permanently unable to communicate by any means, swallow food and water safely, care for myself, and recognize my family and other people, and it is very unlikely that my condition will significantly improve:

A. Initial One

_____ I want to receive artificially administered nutrition and water.

_____ I DO NOT want to receive artificially administered nutrition and water.

B. Initial One

_____ I want other life support that may apply: _____

_____ I want NO life support.

4. Additional Conditions and Instructions: (Insert description of what you want done.)

I hereby declare that Living Will was voluntarily prepared by me and that I have independently made the choices specified above on my own after significant thought and consideration.

Signature

Date

Declaration of Witnesses

We the witnesses to this Living Will hereby declare that the person signing the living will: (a) is personally known to us or has provided proof of identity; (b) signed the Living Will, or instructed another to sign the Living Will on their behalf, in our presence; and (c) appears to be of sound mind and not under duress, fraud, or undue influence:

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Witnessed By:

Signature of Witness Date

Printed Name of Witness

Signature of Witness Date

Printed Name of Witness

NOTE: Witnesses must not be related to (by blood, marriage, or adoption) the person signing this Living Will, and must not be entitled to any portion of the person's estate upon such person's death.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15161 (Feb. 15, 1997); Proposed 18 Com. Reg. 14804 (Dec. 15, 1996).