



**640 ADVANCE DIRECTIVES<sup>1</sup>**

REVISION DATES: 07/01/16<sup>2</sup>, 02/01/08, 04/01/05, 10/01/01, 03/14/97

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~~H~~ospitals, nursing ~~facility~~facilities, ~~hospice providers, and providers of home health care or personal care services, hospice program, Medicaid managed care organizations agency and individual providers<sup>4</sup>~~—must comply with Federal and State laws regarding advance directives for adult members [42 U.S.C. § 1396(a)(57)].<sup>5</sup>

At a minimum, providers ~~must~~shall:

1. Maintain written policies for adult members receiving care through their organization regarding the member's ability to make decisions about medical care, including the right to accept or refuse medical care and the right to execute ~~an~~ advance directive.<sup>2</sup>
2. Provide written information to adult members regarding the provider's policies concerning advance directives, including any conscientious objections.<sup>6</sup>
3. Documenting in the member's medical record whether or not the adult member has been provided the information, and whether an advance directive has been executed, ~~Document whether the adult member has executed an advance directive<sup>7</sup>~~
4. Prevent discrimination against a member because of his or her decision to execute or not execute an advance directive, and not place conditions on the provision of care to the member, because of his/her decision to execute or not execute an advance directive, ~~and~~
5. Provide education for staff on issues concerning advance directives including notification of direct care providers of services, such as home health care and personal care services,

<sup>1</sup> DBHS Policy 801, Advance Directives policy merged with AMPM policy 640 as appropriate.

<sup>2</sup> Arizona Laws 2015, Chapter 19, Section 9 (SB 1480) enacts that from and after June 30, 2016, the provision of behavioral health services under DBHS in the Department of Health Services is transferred to and shall be administered by the AHCCCS.

<sup>3</sup> MCOs requirements reside in the AHCCCS MCO Contracts, this policy applies to providers

<sup>4</sup> Removed – not found in the regulations that this applies to individual providers

<sup>5</sup> Updated with those the law is applicable to and to included citation

<sup>6</sup> Added to align with regulation

<sup>7</sup> Rewritten to align with regulation



if any advanced directives are executed by members to whom they are assigned to provide services, and;<sup>8</sup>

5.6. Alternative Home and Community Based Services (HCBS) Setting staff must have immediate access to Advance Directive documents to provide to first responder requests.<sup>9</sup>

RBHA Requirements:

A Health Care Power of Attorney or Mental Health Power of Attorney designee(s):

- May act in this capacity until his or her authority is revoked by the adult person, a legal guardian, or by court order;
- Has the same right as the adult person to receive information and to review the adult person's medical records regarding proposed health treatment and to receive, review, and consent to the disclosure of medical records relating to the adult person's treatment;
- Must act consistently with the wishes of the adult person or legal guardian as expressed in the mental health care power of attorney or health care power of attorney. If, however, the adult person's wishes are not expressed in a mental health care power of attorney or health care power of attorney and are not otherwise known by the designee, the designee must act in good faith and consent to treatment that she or he believes to be in the adult person's best interest; and
- May consent to admitting the adult person to a Behavioral Health Inpatient Facility licensed by the Arizona Department of Health Services if this authority is expressly stated in the mental health care power of attorney or health care power of attorney.
- See A.R.S. § 36-3283 for a complete list of the powers and duties of an agent designated under a mental health care power of attorney.

At the time of enrollment, all Adult memberspersons, and when the memberindividual is incapacitated or unable to receive information, the memberenrollee's family or surrogate as defined in A.R.S. 36-3231, must receivebe provided written information regarding advance directives as delineated in 42 CFR 489.102(e)<sup>10</sup> concerning: :

1. The memberperson's rights, in writing, regarding advance directives under Arizona State law;
2. The organization's policies respecting the implementation of those rights, including a statement of any limitation regarding the implementation of advance directives as a matter of conscience,

<sup>8</sup> Added to align with plan contractual requirements and to address education regarding provision of notification to direct care workers and other providers of service should the member have an advance directive

<sup>9</sup> Included to ensure adequate access to documents needed by providers of service

<sup>10</sup> Section updated with CFR and regulation requirements



3. A description of the applicable state law and information regarding the implementation of these rights.;
4. The memberperson's right to file complaints directly with AHCCCS; and
5. Written policies including a clear and precise statement of limitations if the provider cannot implement an advance directive as a matter of conscience.

This statement, at a minimum, should:

- a. Clarify institution-wide conscientious objections and those of individual physicians;
- b. Identify state legal authority permitting such objections; and
- c. Describe the range of medical conditions or procedures affected by the conscience objection.

~~If an enrollee is incapacitated at the time of enrollment, providers may give advance directive information to the enrollee's family or surrogate in accordance with state law. Providers must also follow up when the memberperson is no longer incapacitated and ensure that the information is given to the memberperson directly. The provider is not relieved of its obligation to provide the above information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.<sup>11</sup>~~

~~The above information shall also be provided to an individual upon each admission to a hospital or nursing facility and each time the individual comes under the care of a home health agency, hospice or personal care provider. (42 U.S.C. § 1396a (w)-(2))<sup>12</sup>~~

~~The RBHA must ensure that subcontracted providers will assist adult persons or their legal guardians who are interested in developing and executing an advance directive.~~

~~Providers must provide a copy of a memberperson's executed advanced directive, or documentation of refusal, to the member's acute care-primary care provider (PCP) for inclusion in the memberperson's medical record; and, provide education to staff on issues concerning advance directives, including notification of direct care providers of services, such as home health care and personal care, of any advance directives executed by memberspersons to whom they are assigned to provide services.<sup>13</sup>~~

<sup>11</sup> Reworded to align with 42 CFR 489.102

<sup>12</sup> Added regulation

<sup>13</sup> Included to address the provision of advance directives to PCPs



REFERENCES

- [42 U.S.C. § 1396\(a\)\(57\)](#)
- [A.R.S. 36-3231](#)
- [42 CFR 489.102](#)
- [42 U.S.C. § 1396a \(w\)\(2\)](#)

PUBLIC COMMENT UNTIL 09/19/16