Hospitals, nursing facilities, hospice providers, and providers of home health care or personal care services must comply with Federal and State laws regarding advance directives for adult members [42 U.S.C. § 1396(a)(57)].

At a minimum, providers 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,

2. Provide written information to adult members regarding the provider’s policies concerning advance directives, including any conscientious objections,

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,

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,

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, if any advanced directives are executed by members to whom they are assigned to provide services, and

6. Alternative Home and Community Based Services (HCBS) setting staff must have immediate access to Advance Directive documents to provide to first responder requests.

Adult members, and when the member is incapacitated or unable to receive information, the member’s family or surrogate as defined in A.R.S. 36-3231, must be provided written information regarding advance directives as delineated in 42 CFR 489.102(e) concerning:
CHAPTER 600
PROVIDER QUALIFICATIONS AND PROVIDER REQUIREMENTS

POLICY 640
ADVANCE DIRECTIVES

1. The member’s rights, 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,

3. A description of the applicable state law and information regarding the implementation of these rights,

4. The member’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.

6. 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.

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.

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))

Providers must provide a copy of a member’s executed advance directive, or documentation of refusal, to the member’s Primary Care Provider (PCP) for inclusion in the member’s medical record; and, provide education to staff on issues concerning advance directives.

REFERENCES

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