

640 ADVANCE DIRECTIVES

EFFECTIVE DATE: November 17, 2017

REFERENCES: A.R.S. § 36-3231; 42 CFR 489.102; 42 U.S.C. 1396

The Administrative Services Subcontractors (AdSS) of the Division of Developmental Disabilities must ensure their providers (e.g., hospitals, nursing facilities, hospice providers, home health agencies) comply with federal and state laws regarding advance directives for members who are adults. An Advance Directive is a document by which a person makes provision for health care decisions in the event that, in the future, he/she becomes unable to make those decisions.

A. At a minimum, providers must:

- A. Maintain written policies for 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.
- B. Provide written information to members regarding the provider's policies concerning advance directives, including any conscientious objections.
- C. Document in the member's medical record whether or not the member has been provided the information, and whether an advance directive has been executed.
- D. 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.
- E. Provide to 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, written information regarding advance directives as delineated in 42 CFR 489.102(e), concerning:
 - a. The member's rights, regarding advance directives under Arizona State law
 - b. The AdSS'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
 - c. A description of the applicable state law and information regarding the implementation of these rights
 - d. The member's right to file complaints directly with the Division or AHCCCS

- e. 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:
 - i. Clarify institution-wide conscientious objections and those of individual physicians
 - ii. Identify state legal authority permitting such objections
 - iii. Describe the range of medical conditions or procedures affected by the conscience objection.
- B. 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.
- C. The provider must also provide the above information 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.
- D. Providers must provide a copy of a member's executed advance directive, or documentation of refusal, to the member's Primary Care Provider for inclusion in the member's medical record; and, provide education to staff on issues concerning advance directives.