

## 930 MEMBER RIGHTS AND RESPONSIBILITIES

EFFECTIVE DATE: October 1, 2019

REFERENCES: 9 A.A.C. 34; 42 CFR 438.6, 438.100, 493.3(a)(2); 45 CFR 164, 164.501, 164.524, 164.526; 5 U.S.C. 552(a)

**Purpose:** To establish guidelines for the Administrative Services Subcontractors (AdSS) to ensure compliance with applicable federal and state laws pertaining to member rights.

**Policy:** All members have the right to be treated with dignity and respect. The Division of Developmental Disabilities (Division) is committed to protecting the rights of all individuals who are receiving supports and services operated by, supervised by, or financially supported by, the Division. The AdSS must have written policies and procedures that address, at a minimum, the following member rights and how these rights are disseminated to members and providers.

A. Each member has the right to:

1. Be treated with respect and with recognition of the member's dignity and need for privacy.
  - a. The right to privacy includes protection of any information that identifies a particular member except when otherwise required or permitted by law.
  - b. The AdSS must implement procedures to ensure the confidentiality of health, service and medical records, and of other member information.
2. Not be discriminated against in the delivery of health care services based on race, ethnicity, national origin, religion, gender, age, behavioral health condition (intellectual) or physical disability, sexual preference, genetic information, or source of payment.
3. Have services provided in a culturally competent manner, with consideration for members with limited English proficiency or reading skills, and those with diverse cultural and ethnic backgrounds, and members with visual or auditory limitations. Options include access to a language interpreter, a person proficient in sign language for the hearing impaired, and written materials available in Braille for the blind or in different formats, as appropriate.
4. Have the opportunity to choose a Primary Care Provider (PCP), within the limits of the provider network, and choose other providers, as needed, from among those affiliated with the network. This also includes the right to refuse care from specified providers.
5. Participate in decision-making regarding his/her health care, including:
  - a. The right to refuse treatment (42 CFR 438.100), and/or
  - b. Have a representative facilitate care or treatment decisions when the member is unable to do so.
6. Be free from any form of restraint or seclusion used as a means of coercion,



discipline, convenience, or retaliation.

7. Be provided with information about formulating Advance Directives (the AdSS must ensure involvement by the member or his/her representative in decisions to withhold resuscitative services, or to forgo or withdraw life-sustaining treatment within the requirements of federal and state law with respect to Advance Directives [42 CFR 438.6]).
8. Complete an Advance Directive. For members in a behavioral health residential setting that have completed an Advance Directive, the document must be kept confidential but readily available (e.g., in a sealed envelope attached to the refrigerator).
9. Receive information, in a language and format that the member understands, about member rights and responsibilities, the amount, duration and scope of all services and benefits, service providers, services included and excluded as a condition of enrollment, and other information including:
  - a. Provisions for after hours and emergency health care services. Information provided must notify members that they have the right to access emergency health care services from contracting or non-contracting providers without prior authorization, consistent with the member's determination of the need for such services as a prudent layperson.
  - b. Information about available treatment options (including the option of no treatment) or alternative courses of care.
  - c. Procedures for obtaining services, including authorization requirements and any special procedures for obtaining mental health and substance use services, or referrals for specialty services not furnished by the member's Primary Care Provider.
  - d. Procedures for obtaining services outside the geographic service area of the AdSS.
  - e. Provisions for obtaining Division covered services that are not offered or available through the AdSS and notice of the right to obtain family planning services from an appropriate AHCCCS registered provider.
  - f. A description of how the organization evaluates new technology for inclusion as a covered benefit.
10. Receive information regarding grievances, appeals, and requests for hearings.
11. Complain about the managed care organization.
12. Have access to review his/her medical records in accordance with applicable federal and state laws.
13. Request and receive annually, at no cost, a copy of his/her medical records as specified in 45 CFR 164.524.



- a. The member's right of access to inspect and obtain a copy of his/her medical records may be denied if the information is:
  - i. Psychotherapy notes,
  - ii. Compiled for or in reasonable anticipation of a civil, criminal, or administrative action, or
  - iii. Protected health information that is subject to the Federal Clinical Laboratory Improvements Amendments of 1988, or exempt pursuant to 42 CFR 493.3(a)(2).
- b. An individual may be denied access to read or receive a copy of medical record information without an opportunity for review in accordance with 45 CFR Part 164 if:
  - i. The information meets the criteria stated in section M above.
  - ii. The provider is a correctional institution or acting under the direction of a correctional institution as defined in 45 CFR 164.501.
  - iii. The information is obtained during the course of current research that includes treatment and the member agreed to suspend access to the information during the course of research when consenting to participate in the research.
  - iv. The information was compiled during a review of quality of care for the purpose of improving the overall provision of care and services.
  - v. The denial of access meets the requirements of the Privacy Act, 5 USC 552a.
  - vi. The information was obtained from someone other than a health care provider under the protection of confidentiality, and access would be reasonably likely to reveal the source of the information.
- c. Except as provided in Section M above, a member must be informed of the right to seek review if access to inspect or request to obtain a copy of medical record information is denied when:
  - i. A licensed health care professional has determined the access requested would reasonably be likely to endanger the life or physical safety of the member or another person, or
  - ii. The protected health information makes reference to another person and access would reasonably be likely to cause substantial harm to the member or another person.
- d. The AdSS must respond within 30 days to the member's request for a copy of the records. The response may be a copy of the records, or if necessary to deny the request, the written denial must include the basis for the denial and written information about how to seek review of the denial in

accordance with 45 CFR Part 164.

14. Amend or correct his/her medical records as specified in 45 CFR 164.526:
  - a. The AdSS may require the request be made in writing but may not require a specific form be used.
  - b. If the AdSS agrees to amend information in the member's medical record, in whole or in part, at a minimum the AdSS must:
    - i. Identify the information in the member's record that is affected and attach or link to the amended information.
    - ii. Inform the member, in a timely manner, of the amendment.
    - iii. Obtain the member's agreement to allow the AdSS to notify relevant persons with whom the amendment needs to be shared.
    - iv. The AdSS must make reasonable efforts to inform and provide the amendment, within a reasonable time, to:
      - a) Persons identified by the member as having received protected health information and who need the amendment, and
      - b) Persons, including business associates, that are known to the AdSS as having member information affected by the amendment and who have relied on or may in the future rely on the original information to the detriment of the member.
  - c. The AdSS may deny the request for amendment or correction if the information:
    - i. Would not be available for review (as stated above),
    - ii. Was not created by the AdSS or one of its contracted providers, unless the individual provides a reasonable basis to believe that the originator of protected health information is no longer available to act on the requested amendment,
    - iii. Is not a part of the member's medical record, or
    - iv. Is already accurate and complete.
  - d. If the request is denied, in whole or in part, the AdSS must provide the member with a written denial within 60 days that includes:
    - i. The basis for the denial;
    - ii. The member's right to submit a written statement disagreeing with the denial, and how to file the statement;



- iii. A statement that, if the member does not submit a statement of disagreement, the member may request that the AdSS provide the member's request for amendment and the denial with any future disclosures of the protected health information that is related to the amendment; and
- iv. A description of how the member may seek review of the denial in accordance with 45 CFR 164.
- e. The AdSS must ensure that each member is free to exercise his/her rights, and that the exercising of those rights will not adversely affect the treatment of the member by the AdSS or its contracted providers.
- f. The Division has adopted the 12 Principles implemented by AHCCCS meant to maintain the integrity of the best practices and approaches to providing behavioral health services for children. AdSS are required to consider and integrate these principles in the provision of behavioral health services for members under the age of 18 years.
- g. Each AdSS must have a written policy addressing member responsibilities. Member responsibilities include:
  - i. Providing, to the extent possible, information needed by professional staff in caring for the member;
  - ii. Following instructions and guidelines given by those providing health care;
  - iii. Knowing the name of the assigned Primary Care Provider;
  - iv. Scheduling appointments during office hours, whenever possible, instead of using urgent care facilities and/or emergency rooms;
  - v. Arriving for appointments on time;
  - vi. Notifying the provider in advance when it is not possible to keep an appointment; and
  - vii. Bringing immunization records to every appointment for children 18 years of age or younger.
- h. The AdSS must refer to the Division contract for requirements concerning member handbooks and notification of members regarding their rights and responsibilities. Member rights must be included in the member handbook.
- i. The AdSS must refer to 9 A.A.C. 34 and the Division contract for information regarding requirements for the grievance system for members and providers.