

Yamhill Community Care

POLICY AND PROCEDURE



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| POLICY NUMBER: ENR-004 | TITLE: Advance Directive |
| DEPARTMENT: Quality | APPROVED BY: Chief Medical Officer & President/CEO |
| EFFECTIVE DATE: 1/31/2017 | REVISION DATE: 12/20/2023 |
| REVIEW DATES: 08/01/2020, 12/05/2022 | |
| APPLIES TO: Yamhill Community Care, Providers, and Subcontractors | |

DEFINITIONS:

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| <u>Advance Directive</u> | Written instructions, such as a living will or Durable Power of Attorney for health care, recognized under Oregon law (whether statutory or as recognized by the courts of the State), relating to the provision of health care when the individual is incapacitated. A Durable Power of Attorney can be combined with a living will into a single document that describes one's treatment preferences in various situations and names a proxy. |
| <u>Adult</u> | An individual who is 18 years of age or older, who has been adjudicated, or emancipated minor, or who is married |
| <u>Healthcare Representative (proxy)</u> | The individual designated to make healthcare decisions on the declarant's behalf in accordance with the terms and order of priority stated in a living will and/or with the member's previously expressed wishes. |
| <u>Healthcare</u> | Diagnosis, treatment or care of disease, injury and congenital or degenerative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining procedures and the use, maintenance, withdrawal or withholding or artificially administered nutrition and hydration |
| <u>Incapacitated</u> | A person temporarily or permanently impaired by mental and /or physical deficiency, disability, illness, or by the use of drugs to the extent they lack sufficient understanding to make rational decisions or engage in responsible actions |
| <u>Living Will</u> | A document specifying a member's preferences regarding medical decisions to withhold or withdraw life- |

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| | sustaining treatment if the member is seriously ill and unable to communicate their decisions. |
| <u>Durable Power of Attorney or Proxy Directive</u> | A witnessed legal document in which a member names another person to make medical decisions if the member becomes unable to make them. Instructions about treatment preferred or to be provided, such as surgery or artificial nutrition and hydration, can also be included. |
| <u>Subcontractor</u> | An individual or entity that has a contract with an MCE that relates directly or indirectly to the performance of the MCE's obligations under its contract with the State. A Participating Provider is not a Subcontractor solely by virtue of having entered into a Participating Provider agreement with an MCE. |

POLICY:

Yamhill Community Care (YCCO) and subcontractors comply with all applicable federal, state, contractual rules and regulations.

YCCO shall notify enrollees and established members about their right to be involved in decisions regarding their care including documentation of advance directives and allowance of the member's representative to facilitate care or make treatment decisions when the member is unable to do so.

YCCO ensures that physical health, oral health, and behavioral/ chemical health providers are providing written information to all adult members receiving care with respect to their rights under Oregon law (whether statutory or recognized by the courts of the State) to make decisions concerning their care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives and information regarding the implementation by:

- Honoring a member's advance directive as long as it does not violate State and Federal laws. The existence or lack of an advance directive does not determine an individual's access to care, treatment, and services.
- Following a member's advance directive regardless of the member's race, religion, national origin, sex, sexual preferences, handicap, diagnosis, ability to pay and source of payment. No member will be discriminated against with regard to the provision of care or based on whether the member has executed an advance directive
- Ensuring that if a member is incapacitated at the time of initial enrollment or at the time that medical care is initiated and is unable to receive information (due to the incapacitating condition or a mental disorder) or articulate whether or not they have executed an advance directive, YCCO may give advance directive information to the member's family or surrogate in accordance with Oregon law. If the member's incapacitating condition is temporary in nature, YCCO shall ensure communication of this information directly to the member once they are no longer incapacitated.
- In Network providers will comply with all state and federal laws and regulations by maintaining written notices and procedures respecting advance directives.

YCCO will provide adult members with written information on advance directive policies including rights and limitations.

Rights:

1. A member's right to make decisions concerning their medical care;
2. The right to accept or refuse medical or surgical treatment;
3. The right to formulate advance directives; and
4. Provided direct link to advance directive form and informs the member where to call to obtain a hard copy version of the form.

This information will be shared with members via the member handbook, YCCO website, and upon request.

Limitations:

Should YCCO decide to limit the implementation of an advance directive as a matter of conscience it will update the YCCO website and handbook with a precise statement of limitation. Currently YCCO has no limitations. Should YCCO make a change to the limitation notification to OHA per the current OHA CCO Health Plan Services contract as well as updates to the YCCO member handbook, website, and provider handbook, these updates will include information on how members can contact OHA OHP Member Services and how to access the services.

YCCO provides limitation information to contracted providers so they are aware of YCCO limitations. In the event that a YCCO contracted provider has a limitation they are required to have written policies regarding advance directives with a clear and precise statement of the limitation. Should a provider refuse a service due to conscientious objection members are encouraged to contact YCCO Customer Service who will assist them in finding an alternate provider.

YCCO is not required to do the following:

Provide care that conflicts with an advance directive; and

Implement an advance directive if, as a matter of conscience, YCCO cannot implement an advance directive and Oregon law allows YCCO or any health care provider to conscientiously object.

Advance Directive Form

Advance directive form provided in ORS 127.531 with all requirements set forth in the form will be used.

A. Advance Directive for Mental Health Treatment (Declaration for Mental Health Treatment)

Advanced Directives and Declarations for Mental Health Treatment may be implemented in the event that the member becomes incapacitated or is otherwise not able to exercise their right to participate in treatment planning decisions. It is the policy of YCCO that members are informed of their rights to initiate Advanced Directives and Declarations. Contracted providers will have policies and procedures relating to Advanced Directives and Declarations for members of their programs.

YCCO expects that subcontractors will:

- Make Declaration and Advanced Directive forms available to adult members upon request;
- Establish procedures for informing adult members of their rights to have a Declaration and Advanced Directive;
- Provide assistance to members in the completion of a Declaration; and
- Document in a prominent part of the clinical record whether or not the member has executed a Declaration and/or Advanced Directive.

B. It is the policy of YCCO that all subcontractors educate and document staff trainings regarding the purpose and completion of Declaration and/or Advanced Directives, member rights related to Declarations and/or Advanced Directives, and right of members to refuse treatment.

C. It is the policy of YCCO that documentation shows in member's current physical health, mental, and dental record states an advance directive is in effect.

D. Advance directive information must remain current and reflect changes in Oregon law as soon as possible, but no later than 90 calendar days after the effective date of change to the law.

PROCEDURE:

Upon enrollment, all new YCCO members receive a member handbook containing information regarding advance directives that includes the following information:

- The member has the right to accept or refuse treatment under Oregon Law,
- The member has the right to complete an advance directive and how to implement that right,
- Members or authorized representatives may also contact YCCO's Members Services Department or access the plan's web site to request information on Advance Directives,
- Information regarding filing complaints concerning noncompliance with advance directive requirements through the Oregon Health Authority (OHA), and
- A guide to Oregon's Declaration for Mental Health Treatment and forms online links.

Complaints

YCCO will inform members through the grievance system that Members and authorized Health Care Representatives may file a complaint if a health care provider has not followed an Advance Directive or Declaration for Mental Health Treatment. Information on how to file Advance Directive complaints with the State Survey and Certification office can be obtained from:

- Health Care Regulation and Quality Improvement Office of Community Health and Health Planning Oregon Health Authority
800 NE Oregon Street, Suite 465
Portland, OR 97232
Phone: 971-673-0540
Fax: 971-673-0556

COMPLIANCE & OVERSIGHT:

YCCO shall monitor subcontractors to ensure:

1. Policies and Procedures are collected and updated either biennially or when review/revision date have been documented.
2. Sample documentation or attestation for proof of routine monitoring of mental health clinical treatment records will be requested and reviewed annually from mental health subcontractor as it relates to advance directives.
3. Sample documentation annually from subcontractors for member notification.
4. Documentation of notification within Provider Manual.
5. Documentation or attestation for staff trainings.

YCCO shall ensure the following are reviewed and updated annually to reflect any changes to state and/or federal rules and regulations pertaining to advance directives:

- Member handbook,
- Advance Directive and/or Oregon's Declaration for Mental Health Treatment forms,
- Website form links,
- Website information pertaining to advance directives,
- Information on how to file a complaint if an advance directive is not followed, and
- Policy updates

YCCO ensures that all YCCO staff are provided education on the Advance Directive policy and made aware when any content updates are made to the policy.

In the event that YCCO provides community education regarding advance directives YCCO will document any education efforts in the appropriate report or quality improvement project as well as placing documentation from the education on the YCCO website. YCCO will also post education notifications on the website in addition to sending notification to YCCO providers via the YCCO Provider ENews.

REFERENCES:

OAR 410-120-1380(1)(c)(M)(iii), 410-141-3320(w), 410-141-3585(12), 410-141-3590(2)(w)
ORS 127.531, 127.649
42 CFR 422.128, 431.107(b)(1),(2) & (4), 438.3(j)(3), 438.6(i)(1), 438.10 (g)(2)(xii),
457.950(a)(3), 489 subpart I, 489.100, 489.102,
42 USC Section 1396a(a)(27), (57), & (w)
OHA CCO Health Plan Services Contract

RELATED POLICIES & DOCUMENTS:

ENR-001 Member Rights, Protections, and Responsibilities
QA-007 Subcontractor Oversight
QA-008 Audit and Monitoring

Log of Review/Revisions

| Date | Review/Revision | By Whom |
|-------------|---|--------------------------|
| 1/31/2017 | Approved | S. McCarthy, Interim CEO |
| 07/28/2019 | Branding and formatting, | Jroe, QA Specialist |
| 08/01/2020 | Bulleting to enhance policy information clarifications. | Jroe, QA Specialist |

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| 04/09/2022 | Formatting and subcontractor clarification updates only, no content change | JRoe, Benefit Administration Supervisor |
| 12/05/2022 | Updates to state and federal rules and regulations, reorganization of information with addition of pertinent updates of state and federal rules. | JRoe, Benefit Administration Supervisor |
| 11/29/2023 | Correction on 42 CFR 438.3(j)(3) citation and policy alignment with this CFR and 422.128. filing a complaint information added and clarification that YCCO staff are education on the Advance Directive policy. | JRoe, Health Plan Operations Manager |
| 12/20/2023 | Addition of sharing info with members, documentation of community ed efforts and additional details on conscientious objections. | JRoe, Health Plan Operations Manager |