

Subject: Advance Directives – CCS303

Policy Statement: Colorado Access will provide all adult members with written information on its Advance Directives policies and a description of applicable State law, and have mechanisms in place to inform providers of their rights and responsibilities related to Advance Directives.¹

Justification: Regulatory and Contractual

Departments Involved: Coordinated Clinical Services
Customer Service
Medical Services
Provider Network Services

LOBs Involved: All

Definition of Terms:

Advance Directive: Written instructions recognized under State law relating to the making of medical treatment decisions and the provision of healthcare when or if an individual is incapacitated. Advance Directives recognized under Colorado law include medical durable powers of attorney, living wills, and cardiopulmonary resuscitation (CPR) directives.^{2 3}

Designated Client Representative:⁴

- (1) A person, including the treating health care professional or a person authorized by Paragraph (2) of this subsection F, to whom a member has given express written consent to represent the covered person; or
- (2) A person authorized by law to provide substituted consent for a member, including but not limited to a guardian, agent under a power of attorney, or a proxy; or
- (3) In the case of urgent care request, a healthcare professional with knowledge of the member’s medical condition.

Procedure:

- I. Colorado Access will provide adult members, their Designated Client Representative (DCR), or their Authorized Representative with written information about Advance Directives, including Colorado Access policies, the member’s rights under State law to make decisions regarding their medical care, and a description of applicable Colorado statute.⁵ This information will be provided through the member handbook, at the time of

¹ ABC July 2007 - June 2008, §II.H.7.a.

² 42 C.F.R. §489.100 (2005)

³ C.R.S. §26-4-403.5(1) (2005)

⁴ Colorado DOI Amended Regulation 4-2-17, Section 4.E.

⁵ 42 C.F.R. §438.6(i)(2) (2005)

initial enrollment, and subsequently upon request. Colorado Access is not required to assist members in developing Advance Directives.^{6 7 8}

- II. Members are responsible for giving a copy of their Advance Directive to their provider(s) and/or applicable facilities. Applicable facilities include hospitals, nursing care facilities, home health agencies, providers of home healthcare or personal care services, and hospices.
- III. Colorado Access will educate providers of their rights and responsibilities to Colorado Access members related to Advance Directives by means of the provider manual. Provider responsibilities include the following:
 - A. To consider member input in treatment planning and advanced directives.⁹
 - B. Applicable facilities are required to provide written information at the time of admission or prior to the delivery of services. This information must include any limitations on the provider's ability to execute or implement an Advance Directive, based on moral convictions, religious beliefs, or other conscientious objections, or based on exceptions identified in State statute (C.R.S. §26-4-403.5), including but not limited to:^{10 11}
 - 1. That the individual is known to the attending physician to be pregnant, and a medical evaluation has determined that the fetus is viable and could, with a reasonable degree of medical certainty, develop to live birth with continued application of life-sustaining procedures.
 - 2. That a court petition to challenge the validity of an Advance Directive has been filed by the individual's spouse, adult children, parent, or attorney-in-fact under durable power of attorney, within forty-eight (48) consecutive hours after the certification by two physicians that the individual has a terminal condition, in which case a temporary restraining order is issued until a final determination as to validity is made.
 - 3. That there is actual notice of revocation, fraud, misrepresentation, or improper execution of the Advance Directive.
 - C. The provision of care is not conditioned on the presence or absence of an Advance Directive. Individuals will not be discriminated against on the basis of whether an Advance Directive has been executed, amended, or revoked.^{12 13}
 - D. The execution, amendment, or revocation of an Advance Directive shall be documented in a prominent part of the individual's current medical or patient care record.^{14 15}

⁶ 42 C.F.R. §422.128(b)(1) (2005)

⁷ 10 C.C.R. §2505-10 §8.130.8(B) (2005) (HCPF Rules)

⁸ ABC July 2007 - June 2008, §II.G.4.g.14) and II.H.7.c.1)

⁹ 42 C.F.R. §422.112 (2005)

¹⁰ 10 C.C.R. §2505-10 §8.130.3(C)(4) (2005) (HCPF Rules)

¹¹ ABC July 2006 - June 2007, §II.G.7.c.2)

¹² 42 C.F.R. §422.128(b)(ii)(F) (2005)

¹³ 10 C.C.R. §2505-10 §8.130.3(C)(2) (2005)

¹⁴ 42 C.F.R. §422.128(b)(ii)(E)(2005)

¹⁵ 10 C.C.R. 2505-10 §8.130.3(C)(1) (2005) (HCPF Rules)

- IV. Colorado Access will make no attempt to persuade a member to revoke or alter an existing Advance Directive.
- V. In the event that an attending physician or healthcare facility refuses to comply with an Advance Directive on the basis of policies based on moral convictions, religious beliefs, or other conscientious objections, at the request of the member, DCR, or Authorized Representative, Colorado Access will facilitate transfer of the individual to the care of another healthcare provider or healthcare facility willing to comply with the Advance Directive.
- VI. Colorado Access will educate the appropriate internal staff concerning its policies and procedures on Advance Directives.^{16 17}
- VII. Information provided to members must reflect any changes in State law as soon as possible, but no later than 90 calendar days after the effective date of the change.^{18 19 20 21}
- VIII. Members, providers, Colorado Access employees or other interested parties may file a complaint concerning Advance Directives with Colorado Access or the Colorado Department of Public Health and Environment.^{22 23}

¹⁶ 42 C.F.R. §422.128(b)(ii)(H) (2005)

¹⁷ 10 C.C.R. 2505-10 §8.130.3(D) (2005) (HCPF Rules)

¹⁸ 42 C.F.R. §438.6(l)(4)

¹⁹ C.R.S. §10-16-409

²⁰ 10 C.C.R. §2505-10 §8.209

²¹ ABC July 2007 - June 2008, §II.H.7.b.

²² 42 C.F.R. §422.128(b)(ii)(l)(3)

²³ ABC July 2006 - June 2007, §II.G.7.c.3)