



Section 3.12 Advance Directives

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I. STATEMENT OF PURPOSE:

An advance directive is a written set of instructions developed by an adult person in the event the person becomes incapable of making decisions regarding his or her health treatment. An advance directive instructs others regarding the person's wishes if he/she becomes incapacitated and can include the appointment of a friend or relative to make health decisions for the person. A person prepares an advance directive when capable and the directive is followed when the person is incapable of making treatment decisions. This section outlines the requirements of health care providers regarding advance directives.

The Arizona Secretary of State (www.azsos.gov) maintains a free registry called the "Arizona Advance Directive" where individuals can send advance directives for secure storage and can be accessible to individuals, loved ones and health care providers. This webpage also has other resources available on advanced directives.

If changes occur in State law regarding advance directives, adult persons receiving behavioral health services must be notified by their provider regarding the changes as soon as possible, but no later than 90 days after the effective date of the change.

II. REFERENCES:

The following Pascua Yaqui (PY) Centered Spirit Program (CSP) Provider Manual Sections can serve as additional resources for this content area:

Section 3.6, Member Handbooks

Section 3.21, Service Prioritization for Non-Title XIX/ XXI Funding, Persons Determined to Have a Serious Mental Illness (SMI)

Section 4.2, Behavioral Health Medical Record Standards

Section 4.3, Coordination of Care with AHCCCS Health Plans and Primary Care Providers

The following citations and AHCCCS document also serve as resources for this content area:

42 CFR 435.911

A.R.S. Title 36, Chapter 5

9 A.A.C. 21



AHCCCS/TRBHA Intergovernmental Agreement (IGA) 2021

III. STANDARDS:

The Pascua Yaqui (PY) Centered Spirit Program (CSP) complies with Federal and State laws regarding advance directives for adult persons.

IV. PROCEDURES:

A. What does a behavioral health power of attorney do?

A behavioral health power of attorney gives an adult person the right to designate another adult person to make behavioral health treatment decisions on his or her behalf. The designee may make decisions on behalf of the adult person if/when she or he is found incapable of making these types of decisions. The designee, however, must not be a provider directly involved with the behavioral health treatment of the adult person at the time the behavioral health power of attorney is executed.

B. What are some of the powers and duties of the designee(s)?

The designee:

1. May act in this capacity until his or her authority is revoked by the adult person or by court order;
2. Has the same right as the adult person to receive information and to review the adult person's medical records regarding proposed behavioral health treatment and to receive, review, and consent to the disclosure of medical records relating to the adult person's behavioral health treatment;
3. Must act consistently with the wishes of the adult person as expressed in the behavioral health power of attorney. If, however, the adult person's wishes are not expressed in a behavioral health power of attorney and are not otherwise known by the designee, the designee must act in good faith and consent to behavioral health treatment that she or he believes to be in the adult person's best interest; and
4. May consent to admitting the adult person to a level 1 behavioral health facility licensed by the Bureau of Medical Facility Licensing (BMFL); this authority is expressly stated in the behavioral health power of attorney or health power of attorney.

See A.R.S. § 36-3283 for a complete list of the powers and duties of an agent designated under a behavioral health power of attorney.

C. What must be provided to an adult person at the time of enrollment?



At the time of enrollment, all adult persons, and when the individual is incapacitated or unable to receive information, the enrollee's family or surrogate, must receive information regarding (see 42 C.F.R. § 422.128):

1. The person's rights regarding advance directives under Arizona State law;
2. A description of the applicable state law (summarized in *Subsections 3.12.7-A* and *3.12.7-B* above); and information regarding the implementation of these rights; and
3. The person's right to file complaints directly with AHCCCS; and
4. Written policies including a clear and precise statement of limitations if the provider cannot implement an advance directive as a matter of conscience. The 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 conscientious objection.
 - d. If an enrollee is incapacitated at the time of enrollment, behavioral health providers may give advance directive information to the enrollee's family or surrogate in accordance with state law. Providers must also follow up when the person is no longer incapacitated and ensure that the information is given to the person directly.

D. How do I help an adult person develop an advance directive?

Behavioral health providers must assist adult persons who are interested in developing and executing an advance directive. If clients are interested in developing and executing an advance directive, CSP provides assistance through tribal health advocate services to assist clients with developing the proper documentation for an advanced directive. CSP maintains written policies that address the rights of adult members to make decisions about medical care including the right to accept or refuse medical care, and the right to execute an advance directive.



E. What else must health providers do regarding advance directives?

CSP behavioral health providers must:

1. Document in the adult person's clinical record whether the adult person was provided the information and whether an advance directive was executed;
2. Note condition provision of care or discriminate against an adult person because of his or her decision to execute or not to execute an advance directive; and
3. Provide a copy of a person's executed advanced directive, or documentation of refusal, to the acute care primary care provider (PCP) for inclusion in the person's medical record.
4. Provide education to staff on issues concerning advance directives including notification of direct care providers of services, such as home health and personal care, of any advance directives executed by behavioral health recipients to whom they are assigned to provide services.