

**Subject:** Advance Directives – CCS303

**Policy Statement:** Colorado Access will provide all members with written information on its Advance Directives policies and a description of applicable State law, and have mechanisms in place to inform adult members of their rights and responsibilities related to Advance Directives.<sup>1 2 3 4 5 6</sup>

**Justification:** Regulatory and Contractual

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

**LOBs Involved:** All LOB with Colorado Access provider networks

**Definition of Terms:**

**Advance Directive:** Written instructions recognized under state and federal 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.<sup>7 8 9</sup>

**Designated Client Representative (DCR):**<sup>10 11</sup>

- (1) A person, including the treating health care professional or a person authorized by Paragraph (2) of this section , 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 all members or their Designated Client Representative with written information about Advance Directives, including Colorado Access policies, the

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<sup>1</sup> ABC Denver Contract, Contract Routing Number 15-68383, Exhibit A, §2.6.7.7., page 36 of 81

<sup>2</sup> ABC NE Contract, Contract Routing Number 15-68387, Exhibit A, §2.6.7.7., page 36 of 83

<sup>3</sup> CHP Health Plan, Contract Amendment No. 4, Contract Routing Number 15-68521, Exhibit A-3, §3.1.1.1.8, page 60 of 90

<sup>4</sup> Medicare Managed Care Manual, Chapter 4, §200 (Rev 115)

<sup>5</sup> 42 CFR §422.128(b)

<sup>6</sup> 10 CCR 2505-10 8.100 HCPF Rule §8.130.3.B.

<sup>7</sup> 42 CFR §489.100

<sup>8</sup> CRS 15-14-102

<sup>9</sup> 10 CCR 2505-10 8.100 HCPF Rule §8.130.3.A.

<sup>10</sup> Medicare Managed Care Manual, Chapter 13, §10.1, 10.4.1 (Rev. 105)

<sup>11</sup> 10 CCR 2505-10, HCPF Rule §8.209.2.6

member's rights under State law to make decisions regarding their medical care, and a description of the applicable Colorado statute.<sup>12 13 14 15</sup> This information will be provided through the member handbook, at the time of initial enrollment, and subsequently upon request. Colorado Access is not required to assist members in developing Advance Directives.<sup>16 17</sup>

- 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 Advance Directives.<sup>18</sup>
  - 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, including but not limited to:<sup>19 20 21</sup>
    - 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.<sup>22</sup>
    - 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.<sup>23 24</sup>
    - 3. That there is actual notice of revocation, fraud, misrepresentation, or improper execution of the Advance Directive.<sup>25</sup>

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<sup>12</sup> Medicare Managed Care Manual, Chapter 4, §200.2 (Rev 115)

<sup>13</sup> ABC Denver Contract, Contract Routing Number 15-68383, Exhibit A, §2.6.7.7., page 36 of 81

<sup>14</sup> ABC NE Contract, Contract Routing Number 15-68387, Exhibit A, §2.6.7.7., page 36 of 83

<sup>15</sup> CHP Health Plan, Contract Amendment No. 4, Contract Routing Number 15-68521, Exhibit A-3, §3.1.7.1., page 69 of 90

<sup>16</sup> 42 CFR §422.128(b)(1)

<sup>17</sup> Medicare Managed Care Manual, Chapter 4, §200.2 (Rev 115)

<sup>18</sup> 42 CFR §422.112(a)(6)(iii)

<sup>19</sup> 10 CCR §2505-10, HCPF Rule §8.130.3(C)3

<sup>20</sup> 42 CFR 422.128(b)(1)(ii)

<sup>21</sup> Medicare Managed Care Manual Chapter 4, §200.4 (Rev 115)

<sup>22</sup> CRS 15-18-104(2)

<sup>23</sup> CRS 15-18-107

<sup>24</sup> CRS 15-18-108 (1)

<sup>25</sup> CRS 15-18-109

- C. The provision of care is not conditioned on the presence or absence of an Advance Directive. Individuals will not be discriminated against based on whether an Advance Directive has been executed, amended, or revoked.<sup>26 27 28</sup>
- 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.<sup>29 30 31</sup>
- IV. Colorado Access will not 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 or DCR, 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.<sup>32</sup>
- VI. Colorado Access will educate the appropriate internal staff concerning its policies and procedures on Advance Directives.<sup>33 34 35</sup>
- 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.<sup>36 37 38</sup>
- 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.<sup>39 40 41</sup>

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<sup>26</sup> 42 CFR §422.128(b)(1)(ii)(F)

<sup>27</sup> Medicare Managed Care Manual Chapter 4, § 200.4 & 200.8 (Rev 115)

<sup>28</sup> 10 CCR §2505-10 HCPF Rule §8.130.3(C)(2)

<sup>29</sup> 42 CFR §422.128(b)(1)(ii)(E)

<sup>30</sup> Medicare Managed Care Manual Chapter 4, §200.4 (Rev 115)

<sup>31</sup> 10 CCR 2505-10 HCPF Rule §8.130.3(C)(1)

<sup>32</sup> CRS 15-18-113(5)

<sup>33</sup> 42 CFR §422.128(b)(1)(ii)(H)

<sup>34</sup> Medicare Managed Care Manual Chapter 4, §200.4 (Rev 115)

<sup>35</sup> 10 CCR §2505-10 HCPF Rule §8.130.3(D)

<sup>36</sup> 42 CFR §438.6(i)(4)

<sup>37</sup> 42 CFR §422.128(b)(1)(i);

<sup>38</sup> Medicare Managed Care Manual Chapter 4, §200.3 (Rev 115)

<sup>39</sup> 42 CFR §422.128(b)(1)(ii)(I)(3)

<sup>40</sup> Medicare Managed Care Manual Chapter 4, §200.4 & 200.8 (Rev 115)

<sup>41</sup> CHP Health Plan, Contract Amendment No. 4, Contract Routing Number 15-68521, Exhibit A-3, §3.1.7.1.3., page 69 of 90