



# CORPORATE POLICY & PROCEDURE

	Policy Name: CE09 - Advance Directives/Declaration of Mental Health Treatment
Department: Health Plan Operations	Policy Number: CE09
Version: 6	Creation Date: 05/22/2017
Revised Date: 7/19/17, 3/9/18, 6/21/19, 1/30/20	
Line of Business: <input type="checkbox"/> All	
<input checked="" type="checkbox"/> Umpqua Health Alliance	<input type="checkbox"/> Umpqua Health Management
<input type="checkbox"/> Umpqua Health - Newton Creek	<input type="checkbox"/> Umpqua Health Network
Approved By: F. Douglas Carr, M.D. (Chief Medical Officer)      Date: 09/07/2022	

## POLICY STATEMENT

Umpqua Health Alliance (UHA) ensures compliance with Code of Federal Regulations (CFR) 42 CFR Part 422.128 by maintaining written policies and procedures for Advance Directives. This includes compliance with 42 CFR § 489, Subpart I - Advance Directives, and Oregon Administrative Rules (OAR) 410-120-1380, which establishes the requirements for compliance with Section 4751 of the Omnibus Budget Reconciliation Act of 1991 (OBRA) and Oregon Revised Statutes (ORS) 127.649, Patient Self-Determination Act.

## PURPOSE

UHA is required, by State and Federal law, to provide information to and educate its members regarding their right to be informed about, and to accept or refuse, any medical, dental, or mental health treatment recommended by a physician/health care provider. Members have the right to initiate an advance directive stating their wishes in the event of a serious illness or injury. Including the right to have a member representative make treatment decision when the member is not able to do so.

## RESPONSIBILITY

Clinical Engagement  
Member Services

## DEFINITIONS

Adult: An individual who is 18 years of age or older, who has been adjudicated, an emancipated minor, or who is married.

Advance Care Planning: A process used to identify and update the resident’s preferences regarding care and treatment at a future time, including a situation in which the resident subsequently lacks capacity to do so. For example, when life-threatening treatments are a potential option for care and the resident is unable to make his or her choices known.

Advance Directive: A written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State), relating to the provision of health care when the individual is incapacitated pursuant to 42 CFR § 438.3(j); 42 CFR § 422.128; and 42 CFR § 489.100.

Cardiopulmonary resuscitation (CPR): To a medical intervention used to restore circulatory and/or



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respiratory function that has ceased.

**Conscientious Objector in healthcare:** The refusal to perform a legal role or responsibility because of moral or other personal beliefs.

**Declaration for Mental Health Treatment:** A form a member can fill out and sign to protect themselves when they may be in crisis and are unable to make their own treatment decisions. This is a type of advance directive.

**Durable Power of Attorney for health (aka Medical Power of Attorney):** a document delegating authority to an agent to make health care decisions in case the individual delegating that authority subsequently becomes incapacitated.

**Dental Care Provider:** The dental treatment provider who has primary responsibility for the dental care and treatment of the member.

**Health Care:** The 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 of artificially administered nutrition and hydration.

**Health Care Instruction (or Instruction):** A document executed by a principal to indicate the principal's instructions regarding health care decisions.

**Health Care Provider:** A person licensed, certified or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or practice of a profession, and includes a health care facility.

**Mental Health Care Provider:** The mental health treatment provider who has primary responsibility for the care and treatment of the member.

**Primary Care Physician:** The practitioner who has primary responsibility for the care and treatment of the member.



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## PROCEDURE

1. UHA will maintain a written policy and procedure concerning advance directives with respect to all adult members receiving medical care by UHA. UHA will provide adult members with written information on its advance directive policy and include a description of the Oregon law. The written information provided by UHA must reflect changes in the Oregon law as soon as possible, but no later than 90 days after the effective date of any change to the Oregon law. Information regarding advance directives is available in the UHA Member Handbook and UHA member website.
2. UHA must also provide written information to adult members with respect to the following:
  - a. Their rights under the law of the State in which the organization furnishes services (whether statutory or recognized by the courts of the State) to make medical decisions concerning their medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives. Providers may contract with other entities to furnish this information but remain legally responsible for ensuring that the requirements of this policy are met.
  - b. UHA will maintain written policies respecting the implementation of those rights, including a clear and precise statement regarding any limitations UHA may have on the implementation of an advance directive as a matter of conscience. At minimum, the statement will:
    - i. UHA will not treat its members differently for not having an advance directive. UHA does not limit the implementation of advance directive as a matter of conscience.
    - ii. For question or more information regarding advance directives, contact Oregon Health Decision at 800-422-4805 or 503-692-0894, TTY 711.
    - iii. UHA does not have any conscience objections, members with advance directives should discuss with their providers their advance directive to ensure the provider does not have any conscience objections.
  - c. UHA is not required to provide care that conflicts with an advance directive and is not required to implement an advance directive if, as a matter of conscience, the organization cannot implement an advance directive and State law allows any healthcare provider or any agent of the provider to conscientiously object.
  - d. Provide each member at the time of initial enrollment with written information on advance directives. If the member is incapacitated at the time of initial enrollment and is unable to receive information (due to the incapacitating condition or a mental disorder) or articulate an advance directive has been executed, UHA may give advance directive information to the member’s family or member representative in the same manner that it issues other material about policies and procedures to the family of the incapacitated member or to a member representative or other concerned persons in accordance with State law.



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- e. UHA’s policy (MS2 – Nondiscrimination of Members) respecting the implementation of those rights, including a statement of any limitation regarding the implementation of advance directives as a matter of conscience. UHA must inform members that complaints concerning noncompliance with the advance directive requirements may be filed with the Oregon Health Authority. UHA is prohibited from conditioning the provision of care or otherwise discriminating against a member based on whether or not the individual has executed an advance directive per 42 CFR § 438.3(j) 42 CFR § 422.128; or 42 CFR § 489.102(a)(3).
      - f. Primary care, dental care, and mental health providers are required to ask if the member has executed an Advance Directive and Declaration of Mental Health Treatment. Providers are required to document whether or not a member has an executed Advance Directive and/or Declaration of Mental Health Treatment in a prominent part of the member’s medical record. This requirement is included in the Provider Handbook.
3. UHA educates its employees regarding policies and procedures on advance directive and member’s right to execute a Declaration of Mental Health. New employees are required to read the Advance Directive pamphlet and information about member’s right to execute a Declaration of Mental Health Treatment in accordance with ORS 127.703 which can be obtained at: <http://www.oregon.gov/oha/HSD/amh/forms/declaration.pdf>.
  - a. Employees are also directed to the UHA website that informs them they are not allowed to discriminate against a member based on whether or not the individual has an Advance Directive in place.
4. UHA panel of providers are educated on the requirements to ask if members have executed Advance Directives and/or Declaration of Mental Health Treatment. This is done through the Provider Handbook and provider newsletters. UHA panel of providers and staff are directed to the UHA website that informs them they are not allowed to discriminate against a member based on whether or not the individual has put an advance directive in place.
5. Mental health providers include information on the member’s right to execute a Declaration of Mental Health Treatment when outpatient visits are initiated.
6. Community Education:
  - a. Providers, employees and community members are encouraged to participate in UHA and community sponsored events such as the Community Advisory Council (CAC) where community education on Advanced Directives and Declarations of Mental Health Treatment occurs biannually.
  - b. UHA provides and/or collaborates with providers or other organizations within the community to provide community education regarding advanced directives, including but not limited to, member rights under the State law, in which UHA furnishes services, to make decisions concerning their medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate an advance directive.
  - c. Separate community education materials may be developed and used, at the



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discretion of UHA. The same written materials are not required for all settings, but material should define what constitutes an advance directive, emphasizing that an advance directive is designed to enhance an incapacitated individual's control over medical treatment, and describe applicable State law concerning advance directives.

- d. UHA's Provider Relations Department will track and document its community education efforts.
7. A monthly Advance Directive Report is generated via the electronic medical records (EMR) to identify members who have completed advance directives or declined.
8. Information about advance directives can be obtained by contacting UHA Member Services Department, requesting information from the provider, or by requesting information from the members assigned case manager. UHA's Member Services is required to have updated pamphlets in English and Spanish available to mail, email or fax to members upon request. Members can also access forms and information about advance directive on UHA's member website under Member Forms/Notices.
9. A description of the advance directive is included in the Member Handbook that is mailed to new members. The information advises members of their right to revoke the advance directive and the right to file a grievance concerning non-compliance with the advance directive requirements. If a member is incapacitated at the time of enrollment or is unable to articulate an advance directive has already been executed, UHA will give advance directive information to the member's family, surrogate, or other concerned person in accordance with State law. The member will be given the same information if or when they are able to receive it. The provider and/or UHA is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or able to receive such information.
  - a. UHA will make a referral to and Advance Care Planner once the member has been medically cleared and is no longer incapacitated.
10. UHA's Behavioral Health Coordinator will monitor quarterly by verifying mental health providers are asking, obtaining, and storing Declarations of Mental Health Treatment in the member's medical record.

Department	Standard Operating Procedure Title	SOP Number	Effective Date	Version Number
Health Plan Operations	Advanced Directive	SOP-CE09-06	10/29/19	2