



## Advance Directives and Declarations for Mental Health Treatment

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<b>State(s):</b> <input checked="" type="checkbox"/> Idaho <input checked="" type="checkbox"/> Montana <input checked="" type="checkbox"/> Oregon <input checked="" type="checkbox"/> Washington <input type="checkbox"/> Other:	<b>LOB(s):</b> <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Medicare <input checked="" type="checkbox"/> Medicaid <input type="checkbox"/> PSA
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### Government Policy

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PacificSource Community Health Plans, Inc. and PacificSource Community Solutions (PCS) maintain written policies and procedures for Advance Directives in compliance with 42 CFR Part 422.128, 42 CFR 489, Subpart I, OAR 410-120-1380, and ORS 127.649. PacificSource ensures timely and appropriate information and instructions are distributed to beneficiaries regarding Advance Directives and Declarations for Mental Health Treatment. PCS establishes Advance Directive expectations for its contracted provider entities and monitors compliance.

### Procedure: Government Marketing & Communications

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#### **Member Disclosures**

PacificSource will provide to its adult enrollees, at the time of initial enrollment, written information regarding their rights under state law to make decisions concerning their medical care. This will include information regarding their right to accept or refuse medical or surgical treatment, and the right to formulate Advance Directives.

Members will be notified of changes in State law within 90 days of the effective date of the State law.

PacificSource will provide, at a minimum, the following information to all enrollees at the time of enrollment and provide notification if there are significant changes:

- A description of PacificSource written policies with respect to the implementation of the rights of the individual under Oregon law to make health care decisions;
- Information on the rights of the individual under Oregon law to make health care decision, including the right to accept or refuse medical or surgical treatment and the right to execute Advance Directives;
- Notification that we cannot refuse care or otherwise discriminate against an individual based on whether or not the individual has executed an Advance Directive;
- Information on their right to file a complaint about an organization's noncompliance with Advance Directive requirements, and where to file the complaint;
- Notification that the plan must document in a prominent part of the individual's current medical record whether or not the individual has executed an Advance Directive;
- Notification that PacificSource is required to comply with State law;
- Notification that PacificSource must educate its staff about its policies and procedures for Advance Directives; and
- Notification that PacificSource must provide community education regarding Advance Directives.

This disclosure will be made as part of the Evidence of Coverage for Medicare enrollees and as part of the Member Handbook for Medicaid enrollees.

#### **Incapacitated Enrollees**

In instances where an enrollee is unable to make decisions, communicate decisions, receive information, or manage their own affairs due to an incapacitating condition, PacificSource will give Advance Directive to the enrollee's family or surrogate. Upon notification by the enrollee that they are no longer incapacitated, PacificSource will resume with providing Advance Directive information directly to the enrollee.

### **Community Education**

PacificSource will educate members through written information via newsletters and information on public websites ([www.CommunitySolutions.PacificSource.com](http://www.CommunitySolutions.PacificSource.com) for Medicaid and [www.Medicare.PacificSource.com](http://www.Medicare.PacificSource.com) for Medicare). PacificSource Medicare may also provide information at member events, health and wellness fairs, or other events in collaboration with the communities served. Information provided will include important information about the advance directives, that they are designed to enhance an incapacitated individual's control over medical treatment, and will describe applicable State law concerning Advance Directives. PacificSource will document its community education efforts.

### **Appeal and Anti-Discrimination Rights**

PacificSource and its contracted providers will not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an Advance Directive. Furthermore, PacificSource will inform individuals that complaints concerning non-compliance with the Advance Directive requirements may be filed with the State Survey and Certification Agency.

### **Contracted Provider Entities**

PCS determines the applicability of the Advance Directives rule across provider type, setting, and the likelihood that the care received by a particular provider type would invoke an Advance Directive. Providers are expected to be in compliance with the Advance Directives rule, in accordance with 42 CFR 489, Subpart I. "Advance Directives" are required as follows:

- *At the time of a hospital inpatient admission;*
- *At the time of a skilled nursing facility resident admission;*
- *Prior to initiating home health care services;*
- *Prior to initiating personal care services;*
- *At the time of admission into a hospice program; and*
- *In cases where dental treatment is provided in conjunction with administering general anesthesia, in office (not in hospital).*

### **Conscience Objections**

If a PacificSource contracted provider cannot implement an Advance Directive as a matter of conscience, the provider will issue a clear and precise written statement. The statement will include:

- Explanation of the differences between institution-wide objections based on conscience and those that may be raised by individual physicians;
- Identification of the State legal authority permitting such objection; and description of the range of medical conditions or procedures affected by the conscience objection.

### **PacificSource Rights**

PacificSource and its contracted providers are not required to provide care that conflicts with an Advance Directive. PacificSource and its contracted providers are not required to implement an Advance Directive if, as a matter of conscience, they cannot implement an Advance Directive as State law allows any health care provider or any agent of the provider to conscientiously object.

### **Monitoring for Presence of Advance Directives and Declarations for Mental Health Treatment**

PacificSource monitors for the presence of Advance Directives and Declarations for Mental Health Treatment through the following methods:

- Medicare members are asked if they have completed an Advance Directive on their health risk assessment after they enroll on PacificSource Medicare and annually thereafter.

- A sample of charts from health care organizations serving PCS Medicaid members that are selected for medical record review are reviewed for the presence of Advance Directives and/or if they have been asked to complete the forms.
- A sample of mental health providers are asked annually to attest they have written policies and procedures, applicable to all capable adults, indicating they provide information on their rights to make mental health treatment decisions and how to complete a Declaration for Mental Health Treatment.

## **Definitions**

Advance Directive: written instructions, such as living wills or durable powers of attorney for health care, recognized under state law and signed by a patient, that explain the patient's wishes concerning the provision of health care if the patient becomes incapacitated and is unable to make those wishes known.

Declaration for Mental Health Treatment: a document making a declaration of preferences or instructions regarding mental health treatment should a patient not be able to make decisions due to an inability to receive and evaluate information effectively or communicate decisions.

Health care organization: a home health agency, hospice program, hospital, long term care facility, or health maintenance organization.

Incapable: means that in the opinion of the court in a proceeding to appoint or confirm authority of a health care representative, or in the opinion of the principal's attending physician or attending health care provider, a principal lacks the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the principal's manner of communicating if those persons are available.

