

**Arizona Department of Health Services  
Division of Behavioral Health Services  
PROVIDER MANUAL  
NARBHA Edition**

**Section 3.12 Advance Directives**

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**3.12.1 Introduction**

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 behavioral 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 behavioral health care 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 behavioral health care providers with regard to advance directives.

**3.12.2 References**

The following citations can serve as additional resources for this content area: [42 C.F.R. § 422.128](#)  
[42 C.F.R. § 438.642 C.F.R. § 438.10\(g\) \(2\)42 C.F.R. § 489.10042 C.F.R. § 489.102\(a\)A.R.S. § 36-3221A.R.S. § 36-3281A.R.S. § 36-3283AHCCCS/ADHS ContractADHS/RBHA ContractsADHS/TRBHA IGAsSection 3.6, Member Handbooks](#)  
[Section 3.21, Service Package for Non-Title XIX/ XXI 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, Primary Care Providers, and Medicare Providers](#)

**3.12.3 Scope**

All adult persons enrolled in the behavioral health system.

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**3.12.4 Did you know?**

Advance directives not only identify services a person would desire if he or she becomes unable to make a decision, advance directives also:

- Promote individual treatment planning;
- Provide opportunities to create a team approach to treatment; and
- Foster recovery approaches.

The Arizona Secretary of State ([www.azsos.gov](http://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.

**3.12.5 Definitions**

[Advance Directive](#)

Federal regulations define an advance directive as 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.

[Health Care Power of Attorney](#)

A person who is an adult may designate another adult individual or other adult individuals to make health care decisions on that person's behalf by executing a written health care power of attorney that meets all the following requirements:

- Contains language that clearly indicates that the person intends to create a health care power of attorney;
- Is dated and signed or marked by the person who is the subject of the health care power of attorney [except as provided under A.R.S.§ 36-3221 (B)]; and
- Is notarized or is witnessed in writing by at least one adult who affirms the notary or witness was present when the person dated and signed or marked the health care power of attorney [except as provided under A.R.S.§ 36-3221 (B)] and that the person appeared to be of sound mind and free from duress at the time the of execution of the health care power of attorney

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[Mental Health Care Power of Attorney](#)

A designated agent who may make decisions about mental health treatment on behalf of a person if the person is found incapable. These decisions shall be consistent with any wishes the person has expressed in the mental health care directive, mental health care power of attorney, health care power of attorney or other advance directive.

**3.12.6 Objective**

To ensure behavioral health care providers comply with Federal and State laws regarding advance directives for adult persons.

**3.12.7 Procedures**

**3.12.7-A: What does a mental health care power of attorney do?**

A mental health care power of attorney gives an adult person the right to designate another adult person to make behavioral health care 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 mental health care power of attorney is executed.

**3.12.7-B: What are some of the powers and duties of the designee(s)?**

The designee:

- May act in this capacity until his or her authority is revoked by the adult person or by court order;
- 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 treatment;
- Must act consistently with the wishes of the adult person as expressed in the mental health care power of attorney. If, however, the adult person's wishes are not expressed in a mental health care power of attorney and are not otherwise known by the designee, the designee must act in good faith and consent to treatment that she or he believes to be in the adult person's best interest; and
- May consent to admitting the adult person to a level 1 behavioral health facility licensed by the Arizona Department of Health Services if this authority is expressly stated in the mental health care power of attorney or health care power of attorney.

See [A.R.S. § 36-3283](#) for a complete list of the powers and duties of an agent designated under a mental health care power of attorney.

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**3.12.7-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](#)):

- The person's rights, in writing, regarding advance directives under Arizona State law;
- A description of the applicable state law (summarized in 3.12.7-A and 3.12.7-B above); and information regarding the implementation of these rights;
- The behavioral health recipient's right to file complaints directly with AHCCCS; and
- Written policies including a clear and precise statement of limitations if the provider cannot implement an advance directive as a matter of conscience. This statement, at a minimum, should:
  - Clarify institution-wide conscience objections and those of individual physicians;
  - Identify state legal authority permitting such objections; and
  - Describe the range of medical conditions or procedures affected by the conscience objection.

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. Behavioral health providers must also follow up when the person is no longer incapacitated and ensure that the information is given to the person directly.

**3.12.7-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.

**3.12.7-E: What else must health care providers do regarding advance directives?**

T/RBHAs or behavioral health care providers must:

- Document in the adult person's clinical record whether or not the adult person was provided the information and whether an advance directive was executed;
- Not 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;
- 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; and
- Provide education to staff on issues concerning advance directives including notification of direct care providers of services, such as home health care and personal care, of any advance directives executed by behavioral health recipients to whom they are assigned to provide services.