

## Advance Directives

### Policy:

#### Member Rights to Make Health Care Decisions

Advance Directives are documents signed in “advance” which state a member’s legally valid choices about medical treatment or name a specific person to make decisions about his/her medical treatment when the member is unable to make those decisions or choices by themselves.

All hospitals, nursing homes, home health agencies, HMO’s and all other health care facilities that accept federal funds must ask if a member has an advance directive. If the member does have an Advance Directive, the facility or agency must make that Advance Directive part of the member’s medical record.

By federal law, all health care agencies must comply with a member’s wishes in the Advance Directive. If an Advance Directive cannot be honored for any reason – including moral, religious or professional reasons – the facility or agency must immediately inform the member and make arrangements for that member to be transferred to a facility where their Advance Directives will be honored.

California Law recognized 2 types of Advance Directives:

#### 1. A Declaration or *Living Will*

A living will is a document – which takes effect while the member is still “living” – which tells the member’s doctor or other health care provider whether or not the member wants life sustaining treatments or procedures administered to the member if he/she is in a terminal condition or a permanent unconscious state. A living will is not a will or a living trust. A living will only deals with medical issues while the member is still lives.

A living will goes into effect when:

- The member’s doctor has a copy of the document
- The member’s doctor and another doctor have concluded that the member is no longer able to make his/her own health care decisions.
- The member’s doctor and another doctor have determined that the member is in a terminal condition or a permanent unconscious state.

#### ***Important Notice***

- A California living will cannot go into effect if the member is a pregnant woman
- A California living will is not a “Do Not Resuscitate (DNR)” order.

#### 2. A Durable Power of Attorney for Health Care

A durable power of attorney or DPAHC is a legal document which allows the member or the “principal” to appoint another person (“attorney in fact” or “agent”) to make medical decisions for the member if the member becomes temporarily or permanently unable to make medical decisions for himself/herself. The attorney in

fact or agent does not have to be a lawyer. The DPAHC takes effect only when the member becomes unable to make medical decisions for himself/herself. A DPAHC can be any family member, spouse (unless divorced), child, sibling or close friend.

Members are not required to have an Advance Directive and Advance Directives are not required by the member to receive any medical treatment. However, if a member chooses to create an Advance Directive, it is recommended that the member speak with those people closest to the member or those people who will be involved should the member become unable to make medical decisions for themselves. ***Advance Directives go into effect only when the member is unable to make his/her own medical decisions.*** And under the following conditions:

- Member is unable to give “informed consent”. Informed consent means:
  - The member is able to understand the nature, extent and probable consequences of proposed medical treatments
  - The member is able to make rational evaluations of the risks and benefits of those treatments as compared with the risks and benefits of alternate procedures *and*
  - The member is able to communicate his/her understanding in any way
- A member may at any time express in any form their desire to change or cancel their Advance Directive. A member may cancel their Advance Directive by:
  - Destroying the document OR
  - Informing any person who has a copy of the Advance Directive that the Advance Directive has been cancelled
  - The member simply need write and date a new Advance Directive and give copies of the revised document to all appropriate parties, including his/her doctor.
- A lawyer is not required to create an Advance Directive. However, the Advance Directive must be signed and witnessed.

*Health care providers, operators or employees of an operator of a community care facility, operators or employees of an operator of a residential care facility for the elderly cannot sign or witness an Advance Directive for a member.*

- The presence of an Advance Directive will not affect the member’s insurance in any way. In addition, the removal of life-support shall not constitute suicide, homicide or euthanasia, nor shall it be deemed the cause of death for purposed of insurance coverage.

**If the member chooses, he/she may use the enclosed documents to create and Advance Directive.**

After creating an Advance Directive, the member is encouraged to:

- Keep a small wallet card in the member’s wallet or purse stating the member does have an Advance Directive
- Keep the document in a safe place accessible to the member and the member’s family

- The member SHOULD NOT keep the original document in a safe deposit box
- Give several copies of the document to as many of the following people as the member is comfortable with including the member's:
  - Spouse and other family members
  - Doctors
  - Lawyers
  - Clergy person
  - Local Hospital or Nursing Home where the member might be residing

The state of California honors Advance Directives executed in compliance with another state's laws to the extent permitted by California law. Members should be informed that the expressed wishes in their Advance Directive shall be acknowledged in all 50 states. However, should the member be planning to spend a considerable amount of time in another state other than California, he/she should make sure that the directions in their Advance Directives meet the legal requirements of the state wherein they will be spending the majority of their time.

California and Federal law give every competent adult, 18 years or older, the right to make their own health care decisions, including the right to decide what medical care or treatment to accept, reject or discontinue. If a member does not want to receive certain types of treatment or a member wishes to name someone to make health care decisions for him/her, the member has the right to make these desires known to his/her doctor, hospital or other health care providers, and in general, have these rights respected. Members also have the right to be told about the nature of their illness in terms that he/she can understand, the general nature of these proposed treatments, the risks of failing to undergo these treatments and any alternative treatments or procedures that may be available to the member.