

Advance Directive Information for Virginia Members

- A. Adult Medicare and Medicaid Members in their respective insurance packets and/or website are provided information about their rights under state law to make decisions concerning their own health care, including the right to accept or refuse treatment and the right to formulate advance directives. Insurance packets include Evidence of Coverage, Certificate of Insurance, Benefit Information Guide, and/or Member Guides and may include any or all of:
1. Advance Directives information
 2. Living Wills information
 3. Appointment of a Healthcare Agent information
 4. Organ Donation and Anatomical Gift Designation
 5. “What is an Advance Directive and How Do I Make One?” (Medicaid Members)
 6. Optima Health policy on Patient Rights
 7. Optima Health policy on Advance Directives
 8. Member Statement Regarding Advance Directives that allows the Member to inform their Provider of the advance directive (Medicaid Members)

Optima Health will provide advance directive information to family members of Members who are incapacitated at the time of enrollment and to the Member once the Member is no longer incapacitated. Customer Operations staff will distribute, upon request, additional information related to advance directives including a valid Virginia Advance Directive form and a booklet entitled “Your Right to Decide: Communicating Your Health Care Choices.” Members will also be directed to <http://www.optimahealth.com/providers> for additional information. Case Management and other identified staff having contact with Members will provide education of executing an advance directive as appropriate.

- B. Under the Health Care Decisions Act (Virginia law), a competent adult may:
1. Sign a document that gives his advance choice about treatment including the providing, withholding, or withdrawing life-prolonging procedures if the person is terminal;
 2. Name someone to make health care decisions if he is unable;
 3. Decide, prior to death, to donate an organ, tissue or to make an anatomical gift of the body.
- C. With an advance directive, an adult may make two types of decisions:
1. Decisions about care, including the use of life-prolonging procedures, if a terminal condition exists and the person is unable to make decisions (living will);
 2. Name someone to make treatment decisions if the person is unable to make decisions, but is not terminal (durable power of attorney for health care or health care proxy or medical power of attorney).

D. Valid advance directives must:

1. Be in a written document or oral statement in which instructions are given by an adult;
2. Include language that shows an intent to create an advance directive;
3. Be dated and signed by the patient or be dated and signed in the patient's presence at his direction;
4. Contain the signatures of two witnesses, who are not a blood relative or spouse, following a declaration that the witnesses were present when the patient dated and signed the directive.

E. Consideration should be given to the following when initiating an advance directive:

1. State laws.
2. Duration of the advance directive.
3. Description of preferences regarding emergency interventions versus non-emergency treatment, treatment Facilities, Providers, types of approved treatment, helpful non-medical services, acceptable medications, notification of others, visitors, custody of children.
4. Determine if appointing an agent is required per state laws.
5. Designate an alternative agent in case the primary agent is not available.
6. Ensure that the agent accepts the responsibilities.

F. Whenever there is no advance directive or an advance directive that does not indicate wishes with respect to the specific course of treatment at issue or does not appoint an agent to make health care decisions, the physician may make healthcare decisions to provide, withhold, or withdraw treatment upon the authorization of:

1. A guardian or committee for the patient;
2. The patient's spouse except where a divorce has been filed and is final;
3. An adult child of the patient;
4. A parent of the patient;
5. An adult brother or sister of the patient;
6. Any other relative of the patient in descending order of blood relationship.

G. When acting under the authority of a directive, the provisions of the directive will be followed to the fullest extent possible, except for the following reasons:

1. Compliance with the provisions of the advance directive would violate the accepted standard of care;
2. The requested treatment is not available or is infeasible;
3. Compliance would violate the law; or
4. The situation constitutes an emergency and compliance would endanger any person's life or health.

H. If the Provider cannot comply with any or all of the advance directive:

1. Inability to carry out one part of the advance directive does not negate the responsibility to carry out other parts.
 2. Notify the patient or his agent.
 3. Document reasons for not complying.
- I. Advance directives are voluntary in the state of Virginia and therefore Members who have a conscientious objection may refuse to implement one. The state of Virginia does not specify treatments or medical procedures that cannot be listed in the advance directives. In addition, conscience objections to specific treatments or procedures or life-prolonging measures may be documented in an advance directive. An attending physician or institution that refuses to comply with the advance directive is to make a reasonable effort to transfer the patient to another physician or institution. Information on this Patient Right is provided to Members in the OFC Member Guide – “What is an Advance Directive and How Do I Make One?” and on the Optima Health website.
- J. Optima Health is not required to provide care that conflicts with an advance directive or to implement an advance directive if, as a matter of conscience, it cannot implement the advance directive. State law allows any health care Provider to conscientiously object. In accordance with CMS requirements, this includes plan counseling and referral services. At any time Optima Health is not able to implement an advance directive as a matter of conscience, a written statement will be provided to the Member. The statement will include:
1. Those objections that are specific to Optima Health and those that are specific to individual physicians;
 2. The State regulations providing authority to permit the objection; and
 3. The medical conditions or procedures affected by the conscience objection.
- K. Optima Health and its Providers may not condition the provision of care or otherwise discriminate against a Member based on whether or not the Member has executed an advance directive. Member complaints will be investigated through the Optima Health Complaint Process and founded complaints would be referred to Credentialing. Members, patients, patients’ families, Physicians and staff have access to the Sentara Ethics Committee without fear of retaliation or retribution, changes in quality of care or disciplinary action. Ethical dilemmas, questions, and concerns regarding end-of-life decisions, advance directives, conflicts in treatment decisions and patient rights can be brought to the Sentara Ethics Committee.
- L. The Plan does not, in any way, restrict the implementation or refusal to implement an advance directive, Living Will, organ donation decision, or appointment of an agent. A patient with capacity may revoke an advance directive in whole or part by a written statement, destruction of the advance directive, or by witnessed oral expression. The revocation becomes effective immediately. Subsequent advance directives revoke the

previous directive. If an advance directive is scheduled to expire while the patient is incapacitated, it remains in effect unless the directive specifies that the patient is able to revoke while incapacitated and the patient does so.

- M. A Member's executed advance directive is documented in eCase under *Life Planning*. It is the responsibility of the Member to provide notification to the Provider of an executed advance directive. Copies of advance directives will be maintained in the individual's medical record.
- N. Quality Improvement audits the execution of advance directives annually using the Medical Record Documentation Guidelines per NCQA requirements. Results are reported to the Quality Improvement Committee and are published in the Provider newsletter. Changes in state laws will be identified by the Compliance Department through daily review of listservs including "Mediregs". Policies and forms will be changed based on law revisions within 90 days of the effective date. Any new documents or policies will be posted on the Optima Health website. Information will be included in the Optima Health newsletter, Family Care News, and at <http://www.optimahealth.com/NR/rdonlyres/DC16E36A-7EC5-408C-8FE8-70041E506257/20929/OFCNewsletter1207.pdf>. The Compliance Committee reviews and revises this and related policies annually.
- O. Staff will be educated upon hire and periodically thereafter on advance directives. Information for staff regarding Medical Ethics may be obtained from the Ethics web-site on WaveNet. Ethics consults are available 24 hours a day, 7 days a week. Medicaid and Medicare Providers will be educated through Provider manuals and newsletters. Information for the community may be found on the Sentara Healthcare website at <http://www.sentara.com/sentara> and Optima Health website at <http://www.optimahealth.com>. Sentara also provides a yearly Advance Directive Awareness week to the public.
- P. Complaints by Members may be filed with the Office of the Secretary of Health and Human Resources, P.O. Box 1475, Richmond, VA 23218. Complaints against an agency may be filed with the Virginia Department of Health, P.O. Box 2448, Richmond, Virginia 23218-2488.