

Advance Directives

Federal law mandates requirements for specific Medicare and Medi-Cal providers related to patient self-determination – the right of individuals to make medical treatment decisions and to make advance directives, such as Living Wills and Durable Power of Attorney for health care. A summary of the requirements is as follows:

Every hospital, nursing facility, home health agency, hospice, and health maintenance organization (HMO) that receives funds under Medicare or Medi-Cal must:

1. Provide written information to each adult individual, as required, about the right to make decisions concerning medical care, including the right to accept, or refuse, medical or surgical treatment, and the right, under California law, to formulate advance directives.
2. Maintain and provide to individuals written information about their policies respecting the implementation of such rights.
3. Document in the individual's medical record whether or not the individual has executed an advance directive.
4. Not condition the provision of care, or otherwise discriminate based on whether or not the individual has executed an advance directive.
5. Ensure compliance with state law regarding medical treatment, decision making and advance directives.
6. Provide education to staff and the community on issues concerning advance directives. (Providers can demonstrate compliance with this Medi-Cal requirement by conducting educational campaigns, including newsletters, articles in the local newspapers, local news reports, or commercials.)
7. Revise and disseminate their informational materials when they receive information from the Department of Health Care Services (DHCS) regarding changes in state law which affect patients' rights related to patient self-determination. Materials must be revised as soon as possible, but no later than 90 days from the effective date of the change in state law.
8. Furnish written description of legal rights that includes a statement that the resident may file a complaint with their local Licensing and Certification district office, concerning non-compliance with their advance directives, resident abuse, neglect or misappropriation of resident property in the facility.

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In addition to the above requirements, facilities *may*:

- Contract with other entities to furnish information concerning advance directive requirements and patients' rights to accept or refuse medical or surgical treatment. Despite the availability of information from other sources, providers are still legally responsible for ensuring that the statutory requirements are met, i.e., providers must, at a minimum, still provide the required brochure entitled “Your Right to Make Decisions About Medical Treatment”.
- Provide information about advance directives to family members, or a representative, when an adult individual is incapacitated at the time of admission and is unable to receive information (due to the incapacitating condition or mental disorder), or articulate whether or not he or she has executed an advance directive. If the individual regains his/her capacity, the facility is obligated to provide this information to the individual.

The information required in 1 and 2 above must be provided to adult individuals as follows:

- A hospital must give information at the time of the individual’s admission to inpatient.
- A nursing facility must give information at the time of the individual’s admission as a resident.
- A provider of home health care or personal care service must give information to the individual in advance of the individual’s coming under the care of the provider.
- A hospice program must give information at the time of initial receipt of hospice care by the individual.
- An HMO must give information at the time the individual enrolls with the organization, i.e., when the HMO enrolls or re-enrolls the individual.

To request copies of the California Advance Directive for Health Care, call Blue Shield Medicare Advantage Plan Member Services at (800) 776-4466 (TTY 711) 8 a.m. to 8 p.m., seven days a week, from October 1 through March 31, and 8 a.m. to 8 p.m., weekdays (8 a.m. to 5 p.m. Saturday and Sunday) from April 1 through September 30.