Advance Medical Directives

Protocols for Mental Health

While every effort has been taken to verify the accuracy of the content of this presentation, ValueOptions Colorado cannot accept any responsibility or liability for the improper use of the information contained in the presentation. This is not intended as legal advice. For legal advice, the user should contact an attorney.

ValueOptions Colorado, 2014
Statutory / Contractual Requirements

• Colorado Revised Statute – 25.5-4-413 and 15-18-101 -112
• Code of Federal Regulations – 42CFR 422.128
• BHO contracts
Colorado Revised Statute – 25.5-4-413
• ....each hospital, nursing care facility, home health agency, hospice program, and health maintenance organization participating in the state medical assistance program ...shall provide written information to all adult patients ...concerning patients' rights ...to make medical treatment decisions, including the right to ...formulate advance directives.
Providers … shall provide educational programs for staff and the community concerning advance directives and shall maintain written policies … for safeguarding patients' rights concerning medical treatment decisions, including documenting in the patient's medical …record whether the patient has executed, amended, or revoked an advance directive.
No provider shall condition the provision of services or otherwise discriminate against a patient on the basis of whether the patient has executed an advance directive.
What is an advance Directive?

• Include but are not limited to:
  – Medical durable powers of attorney
  – Durable powers of attorney
  – Living wills
  – CPR Directive
Advance Directives are NOT:

• WRAP (Wellness Recovery Action Plan) plans
• **Psychiatric** Advance Directives  
  – Legally recognized in many states but **NOT** Colorado.
• Mental health crisis plans
Advance Medical Directive – definition

• …any written instructions concerning the making of medical treatment decisions on behalf of the person who has provided the instructions.
Medical Durable Power of Attorney

- Consumer names another person (agent or “attorney in fact) to make decisions if are unable to express their wishes to family or health care providers.
Medical Durable Power of Attorney -

• Decisions can be related to health or mental health care

• Decisions can also address:
  – Resuscitation
  – Artificial nourishment & hydration
  – Anatomical gifts

• Power of Attorney cannot make a decision that would be contrary to that person’s beliefs.
Agent or Attorney In Fact

- Named by consumer in writing
- 18 y/o or older
- Mentally competent
- Willing to serve as consumer’s agent
- Can access consumer’s medical records and other information to make medical decisions.
Mental Health Crisis Plan and Medical Durable Power of Attorney

• Medicaid Member can attach MH crisis plan and require agent to follow (unless it conflicts with Colorado law).
What a Medical Durable Power of Attorney will NOT do

A MDPOA will NOT:

– Supersede action taken under the state mental health statutes (i.e. 27-65)
– Change medical standards of practice
– Change medical ethics or protocols
– Authorize treatment that would otherwise be illegal.
CPR Directive

- Colorado law presumes most people want CPR unless they, or their agent, have signed a form refusing CPR.
- If a person does not want CPR, they can sign a CPR directive.
- If a person’s heart or lungs stop and the person has a CPR directive, medical professionals WILL NOT carry out medical treatments to purposely start the heart or lungs.
Living Will

• Instructs a person’s doctor about life sustaining procedures, artificial nourishment and organ donation decisions.
Living Wills

• Life sustaining procedures can only be withheld if the person is:
  – Terminally ill, or
  – Has been unconscious, comatose or otherwise incompetent for a period of time specified by law.
  – Unable to make or communicate responsible health care decisions.
Living Wills, continued

• Any competent person 18 years of age or older can execute a Living Will.
• Best for a person to sign his/her own living will.
• Must be witnessed by 2 people, but witness can’t be any of the people noted on the next slide (persons with a vested interest).
Living Wills, Cont.

• If a person is physically unable to sign the document, he or she can direct someone to sign the document. This person can’t be:
  – The person’s doctor
  – The patient’s employee or employee of a health care facility where the patient is staying
  – A person who is owed money by the patient
  – A person who believes he or she is entitled to the patient’s estate.
Proxy Decision Maker for Medical Treatment

• When an adult does not have an advance directive or living will, someone can be chosen to carry out those duties.

• Person chosen from among a group of interested persons – i.e. spouse, parents, adult child, sibling, grandchild or patient’s close friend.
Proxy Decision Maker

- Attending physician determines the patient lacks ability to make decision, after effort has been made to tell patient that this is forthcoming.
- Physician or designee locates as many interested parties as possible who would be willing to act as PDM.
- Group of interested parties reaches consensus about who should act as decision maker.
Proxy Decision Maker

• The physician informs the patient about who was chosen as PDM.
• If the patient disagrees with the choice, guardianship proceedings are initiated.
• The proxy decision maker may authorize all decisions except removal of artificial nourishment.
• Proxy decision maker can ask Medical ethics committee to provide guidance.
Mental Health & Advance Medical Directives

• In the recovery model, people with mental illness are assumed to be able to make decisions regarding their medical care.

• There has been a long-standing debate over a consumer’s individual liberty interest in making medical decisions vs. state interests in limiting such rights.
Mental Health & Advance Medical Directives

• Psychiatric Advance Directives are not recognized by Colorado Statute but...

• Having a mental health crisis plan or similar document may provide guidance to care providers if the Member becomes unable to voice preferences him/herself.
Mental Health & Advance Medical Directives

- Medical Durable Power of Attorney, combined with a mental health crisis plan is a good combination but has limitations.
- Does not guarantee against:
  - involuntary commitment
  - involuntary medication petition
  - Restraint/seclusion when allowed by law or authorized by an appropriate health care provider.
What mental health providers can do to help

• Provide information on intake about consumer’s right to make medical decisions, including advance directives
• Refer to other agencies (Legal Aid, Legal center) when consumer has questions.
• Provide help in formulating WRAP plans.
What mental health providers can do to help

- Encourage Members to provide copies of medical advance directives, crisis plans, etc. to physician, family, agent.
- Document in the Member’s medical record whether or not the Member has an advance directive.
What mental health providers can do to help

• Advise Members of their right to revoke a medical advance directive
• Advise Members that an advance directive or crisis plan will not guarantee the Member will be free from institutionalization, medication or contact with law enforcement if the action is according to state law.
Staff / Community Education

- Provides training to clinical staff, Member/family advocates on
  - client’s right to make medical treatment decisions
  - Colorado law requiring advance medical treatment decisions
  - Use of proxy decision makers
Client/Family Advocates

• Client/ family advocate become knowledgeable about Colorado law and be available to do consumer, community education, make referrals and help with crisis plans.
Thank You

For More Information, call
1-800-804-5040