




United Behavioral Health

Advance Directives		Policy Identifier/Number: CR-07	
Annual Review Completed Date: February 2018			
Policy Category: Government – Pierce Regional Support Network	Applicable Lines of Business: Medicaid	Entity/Plan: Optum Pierce Behavioral Health Organization	State: Pierce County, Washington
Approved by: Bea Dixon, Executive Director		Signature: 	

Policy Statement and Purpose

Competent adult Individuals may anticipate the possibility of later incapacity and may prepare behavioral health advance directives stating their desires regarding the provision or withholding of behavioral health care in such an event, including identification of a person the Individual would want to act on his or her behalf.

It is Optum Pierce Behavioral Health Organization's (BHO's) practice to encourage the use of behavioral health *Advance Directives* and to honor behavioral health advance directives. However, neither the Optum Pierce BHO nor its behavioral health care providers place conditions on the provision of behavioral health care, or otherwise discriminate against an Individual based on whether or not the Individual has executed a behavioral health advance directive.

To ensure Optum Pierce BHO-contracted behavioral health care providers furnish adult Individuals and their families with written information about behavioral health advance directives and applicable *Washington State Law, Washington Administrative Code (WAC)*, and the *Revised Code of Washington (RCW) 71.32* in order to support the Individual in making treatment decisions, facilitate communication between the Individual and clinician, and improve clinical outcomes for the Individual.

Policy Audience and Applicability

This policy is applicable to the Optum Pierce BHO and benefits administered through the Washington State Department of Social and Health Services (DSHS) current Prepaid Inpatient Health Plan (PIHP).

Policy Definitions

- **Adult:** Any individual who has attained the age of majority, 18 or older, or who is an emancipated minor.
- **Agent:** A person with authority to make behavioral health treatment decisions on the principal's behalf consistent with instructions in the behavioral health *Advance*

Optum is responsible for adhering to all applicable state and/or federal laws governing activities within the scope of this policy, including the Mental Health Parity and Addiction Equity Act (MHPAEA) and the Health Insurance Portability and Accountability Act (HIPAA) privacy requirements, as well as the applicable requirements, standards and regulations as set forth by the Employee Retirement Income Security Act (ERISA), the Center for Medicare and Medicaid Services (CMS), the Department of Labor (DoL), and any applicable accrediting organizations.

Directive.

- **Behavioral Disorder:** Any organic, mental, emotional, behavioral or substance use impairment which has substantial adverse effects on an individual's cognitive or volitional functions.
- **Capacity:** An adult who has not been found to be incapacitated pursuant to the definition of *Incapacitated* below.
- **Court:** A superior court under *RCW 2.08*.
- **Health Care Facility:** A hospital, as defined in *RCW 70.41.020*, an institution, as defined in *RCW 71.12.455*, a state hospital, as defined in *RCW 72.23.010*, a nursing home, as defined in *RCW 18.51.010*; or a clinic that is part of a behavioral health service delivery system, as defined in *RCW 71.24.025*.
- **Health Care Provider:** An osteopathic physician or osteopathic physician's assistant licensed under *RCW 18.57* or *18.57A*, a physician or physician's assistant licensed under *RCW 18.71* or *18.71A* or an advanced registered nurse practitioner licensed under *RCW 18.79.050*.
- **Incapacitated:** An adult who (a) is unable to understand the nature, character and anticipated results of proposed treatment or alternatives, unable to understand the recognized serious possible risks, complications and anticipated benefits in treatments and alternatives, including non-treatment, or unable to communicate his or her understanding of treatment decisions; or (b) has been found to be incompetent pursuant to *RCW 11.88.010(1) (e)*.
- **Informed Consent:** Consent that is given after the person (a) is provided with a description of the nature, character and anticipated results of proposed treatments and alternatives, and the recognized serious possible risks, complications, and anticipated benefits of the treatments and alternatives, including non-treatment, in language that the person can reasonably be expected to understand; or (b) elects not to be given the information specified in (a).
- **Long-term Care Facility:** A facility which: (1.a) Maintains and operates twenty-four hour skilled nursing services for the care and treatment of chronically ill or convalescent patients, including mental, emotional, or behavioral problems, mental retardation, or alcoholism; (1.b) Provides supportive, restorative, and preventive health services in conjunction with a socially oriented program to its residents, and which maintains and operates twenty-four hour services including board, room, personal care, and intermittent nursing care. *Long-term health care facility* includes nursing homes and nursing facilities, but does not include acute-care hospital or other licensed facilities except for that distinct part of the hospital or facility which provides nursing facility services; (2) Any family home, group care facility, or similar facility determined by the secretary for twenty-four hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual; (3) Any swing bed in an acute care facility.
- **Mental Health Advance Directive:** A written document in which a principal makes a declaration of instructions or preferences and/or appoints an agent to make decisions on behalf of the principal regarding the principal's behavioral health treatment, and that is consistent with the provisions of *RCW 71.32*.
- **Mental Health Professional:** A psychiatrist, psychologist, psychiatric nurse or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary of the Department of Social and Health Services pursuant to the provisions of *RCW 71.05*.
- **Principal:** An adult who has executed a behavioral health Advance Directive.

- **Professional Person:** A mental health professional, physician, registered nurse and others as defined by rules adopted by the secretary pursuant to the provisions of *RCW 71.05*.

Policy Provisions

1. Mental Health Advance Directives

- 1.1. An adult with capacity may execute a behavioral health Advance Directive.
- 1.2. An Advance Directive executed in accordance with *Washington's Mental Health Advance Directive statute (RCW 71.32)* is presumed to be valid. The inability to honor one or more provisions of a directive does not affect the validity of the remaining provisions.
- 1.3. A directive executed in accordance with *Washington's Mental Health Advance Directive statute* may include any provision relating to behavioral health treatment or the care of the principal or the principal's personal affairs. Without limitations, an Advance Directive may include:
 - 1.3.1. The principal's preferences and instructions for behavioral health treatment;
 - 1.3.2. Consent to specific types of behavioral health treatment;
 - 1.3.3. Refusal to consent to specific types of behavioral health treatment;
 - 1.3.4. Consent to admission to and retention in a facility for behavioral health treatment for up to 14 days;
 - 1.3.5. Descriptions of situations that may cause the principal to experience a behavioral health crisis;
 - 1.3.6. Suggested alternative responses that may supplement or be in lieu of direct behavioral health treatment, such as treatment approaches from other providers;
 - 1.3.7. Appointment of an agent pursuant to *RCW 11.94* to make behavioral health treatment decisions on the principal's behalf, including authorizing the agent to provide consent on the principal's behalf to voluntary admission to inpatient behavioral health treatment; and
 - 1.3.8. The principal's nomination of a guardian or limited guardian as provided in *RCW 11.94.010* for consideration by the court if guardianship proceedings are commenced.
- 1.4. An *Advance Directive* may be combined with, or be independent of, a nomination of a guardian or other *Durable Power of Attorney* under *RCW 11.94*, as long as the processes for each are executed in accordance with its own statutes.

2. Providing Information

- 2.1. Each Optum Pierce BHO contracted behavioral health care provider:
 - 2.1.1. Ensures that a written statement of the agency's policy regarding the implementation of behavioral health Advance Directives and a written description of the Washington State law concerning behavioral health *Advance Directive* is given to individuals at the intake assessment.
 - 2.1.1.1. The individual's clinical record is to contain documentation to reflect that the he/she has received and understands the information regarding advance directives, and either has or has not chosen to execute an Advance Directive.
 - 2.1.2. Provides *Advance Directive* information to the individual's family,

surrogate, or agent in the same manner that it issues other materials about policies and procedures (in accordance with Washington State law) to an individual who is incapacitated and therefore unable to receive information regarding Advance Directives or to articulate whether he/she has executed an Advance Directive.

2.1.3. Behavioral health care providers ensure that this information is given to the individual once he/she is no longer incapacitated or unable to receive it. Determinations of capacity are made in accord with the provisions of *RCW 71.32.110* and *71.32.130*. Informs individuals that complaints concerning noncompliance with Advance Directives may be filed with the Department of Health by calling 1--800-446-0259, or by following the written instructions contained in the Behavioral Health Benefit Booklet; and,

2.1.4. Includes information and instruction concerning behavioral health *Advance Directives* in any ongoing Individual education programs.

3. Requesting/Utilizing Information

3.1. During the intake evaluation of adult individuals, contracted behavioral health care provider staff inquire into the existence of behavioral health *Advance Directives* previously executed by the Individual. The individual's clinical record is to include documentation that reflects the response to the inquiry.

3.2. If the individual indicates that she/he has a behavioral health *Advance Directive*, behavioral health care providers are to request a copy and maintain it in the Individual's current clinical record (i.e., this document should not be archived to a historical file).

3.2.1. If the behavioral health care provider receives an individual's *Advance Directive*, it is to become part of the individual's medical record and the behavioral health care provider is considered to have knowledge of its contents.

3.3. The behavioral health care provider is required to act in accordance with the *Advance Directive* to the fullest extent possible, unless compliance would violate the accepted standard of care established in *RCW 7.70.40*, the requested treatment is not available, compliance would violate applicable law, or it is an emergency situation and compliance would endanger any person's life or health. (More information regarding compliance and conditions for noncompliance can be found in *RCW 71.32.150*.)

3.4. In the event that the Optum Pierce BHO behavioral health care provider staff become aware of the individual's subsequent admission to a hospital, nursing home or other residential facility, provider staff are to contact the facility to make them aware of and supply a copy of the individual's behavioral health *Advance Directive* in a timely manner.

4. Providing Assistance

4.1. Optum Pierce BHO providers are to assist adult individuals who appear competent and who desire to prepare a behavioral health *Advance Directive*.

4.2. Assistance includes the following:

4.2.1. Information

4.2.1.1. The behavioral health professionals and other trained staff endeavor to answer questions about behavioral health advance directives and the effect of a particular behavioral health advance directive on the individual's circumstances.

4.2.2. Provision of Approved Forms

The behavioral health professional and other trained staff are to make available to interested individuals copies of the approved Washington State forms for behavioral health *Advance Directives*, as well as the addendum of the Durable Power of Attorney. (These forms can be found on the DBHR website).

4.2.3. Assistance in Locating Witnesses

4.2.3.1. A behavioral health *Advance Directive* requires a minimum of 2 witnesses to the principal's signature. However, state law prohibits certain individuals (i.e., family members, prospective beneficiaries and attending behavioral health care personnel) from serving as witnesses. If needed, staff assists in locating willing disinterested individuals to witness the individual's execution of the form(s).

4.2.3.2. Optum Pierce BHO and behavioral health care provider staff may not serve as a witness to the individual's signature if they are or have been directly involved in the individual's care. Staff may not accept appointment as a guardian or other agent in a *Durable Power of Attorney or Declaration of a Desire for a Natural Death*.

5. Transfer to Another Provider

5.1. If the individual is transferred from one Optum Pierce BHO behavioral health care provider to another, the behavioral health *Advance Directive(s)* is to be sent to the receiving agency for inclusion in the individual's clinical record once appropriate authorization to release information is obtained from the individual.

6. Staff Training/Community Education

6.1. All behavioral health care providers provide staff training on behavioral health *Advance Directives*. Behavioral health care providers provide direct care staff with information concerning behavioral health *Advance Directives* and the provisions of *Advance Directives*. The Optum Pierce BHO works with behavioral health care providers to assist in this training, utilizing the Recovery & Resiliency staff as appropriate.

6.2. Optum Pierce BHO seeks appropriate opportunities to provide community education and disseminate information concerning behavioral health *Advance Directives*.

6.3. The Optum Pierce BHO is responsible for monitoring changes in the *Washington Mental Health Advance Directives statute*, for notifying behavioral health care providers of such changes, and for assuring that a revised policy is available to all contracted behavioral health care providers within 90 days of the effective date of a revision to Washington State law. The Optum Pierce BHO and behavioral health care providers ensure that all subsequent changes are provided to adult individuals as soon as possible, but no later than 90 days after the effective date of the change.

7. Monitoring

7.1. Annual clinical, quality and administrative reviews of contracted behavioral health care providers conducted by the Optum Pierce BHO include verification of compliance with the provisions of this policy.

7.2. If a behavioral health care provider performs below expected standards during the annual review, a *Corrective Action Plan* will be required for approval by the Optum Pierce BHO. Contracted behavioral health care providers are to address compliance issues via their quality improvement processes and provide evidence

of sustained improvement.

8. The Optum Pierce BHO Quality Management staff review audit findings for trends requiring system level intervention, and report such to the Quality Assurance/Performance Improvement Committee.

Related Policies, Procedures & Materials

- Pierce Behavioral Health Organization policy: CR-01 - *Individual Rights and Responsibilities*
- Pierce Behavioral Health Organization policy: CR-02A - *Grievance and Appeal System: Grievance Process*
- Pierce Behavioral Health Organization policy: CR-02B - *Grievance and Appeal System: Medicaid Enrollee's Right to Appeal Notices of Adverse Benefit Determination*
- Pierce Behavioral Health Organization policy: CR-02C *Grievance and Appeal System: Medicaid Enrollee's Adverse Benefit Determination Notice*
- Pierce Behavioral Health Organization policy: CR-06 - *Ombuds Services*

Attachments

N/A

Approval History

- Policy created and effective: 07/2009
- Policy and Procedure Committee review and approval: 10/26/2009
- Policy and Procedure Committee review and approval: 08/23/2010
- Policy and Procedure Committee review and approval: 09/26/2011
- Policy and Procedure Committee review and approval: 08/27/2012
- Policy and Procedure Committee review and approval: 12/02/2013
- Policy and Procedure Committee review and approval: 12/15/2014
- Policy and Procedure Committee review and approval: 02/24/2016
- Operation Procedures and Standards Committee reviewed and accepted: 01/25/2017
- Optum Pierce BHO reviewed and accepted: February 2018