

Section 21 - Advance Health Care Directives



**SECTION 21 - ADVANCE HEALTH CARE DIRECTIVES**

**21.1 DEFINITION ..... 2**

**21.2 ADDITIONAL REQUIREMENTS FOR PROVIDERS..... 2**

**21.3 RELEASE FOR ETHICAL REASONS ..... 3**

**21.4 MISSOURI STATUTES ..... 3**

**21.5 WHEN WRITTEN INFORMATION SHALL BE PROVIDED..... 3**

**21.6 ADMISSION OF AN INCAPACITATED PERSON ..... 4**

**21.7 ADDITIONAL SOURCES OF INFORMATION ABOUT ADVANCE HEALTH CARE DIRECTIVES..... 4**

Section 21 - Advance Health Care Directives**SECTION 21-ADVANCE HEALTH CARE DIRECTIVES**

Federal law (42 U.S.C. 1396a(w) and 42 CFR 434.28 and 42 CFR 489 Subpart I) requires

- hospitals;
- nursing facilities;
- providers of home health care services;
- providers of personal care services;
- hospices; and
- health plans (prepaid health plans, health maintenance organizations)

who receive MO HealthNet (Title XIX) payments to maintain written policies and procedures concerning advance health care directives for all adults receiving medical care by or through the provider.

**21.1 DEFINITION**

An advance health care directive is a written instruction, such as a health care treatment directive, living will, or a durable power of attorney for health care decisions, recognized under state law that relates to the provision of health care in the event a person loses decision making capacity.

An advance health care directive allows an individual to communicate health care treatment preference when decision making capacity is lost. The United States' Supreme Court decision in *CRUZAN V. DIRECTOR, MISSOURI DEPARTMENT OF HEALTH* clearly established the constitutional right for an adult to choose their medical care including the right to refuse any medical treatment, including life-prolonging procedures. Further the Court's decision affirmed the right to name an agent to be a surrogate decision-maker for health care issues in the event a person lacks the capacity to make or to communicate decisions for themselves.

**21.2 ADDITIONAL REQUIREMENTS FOR PROVIDERS**

The above listed MO HealthNet providers are also required to:

- provide written information to each adult regarding the individual's right under state law to make decisions concerning medical care, including the right to accept or refuse medical treatment and the right to formulate advance health care directives; and
- document in the patient's record that an advance health care directive has or has not been executed; and



## Section 21 - Advance Health Care Directives

- provide care whether or not the individual has executed an advance health care directive; and
- ensure compliance with requirements of state law; and
- provide for, individually or with others, education for staff and the community on issues concerning advance directives.

### **21.3 RELEASE FOR ETHICAL REASONS**

No individual who is a health care provider can be required to provide care that conflicts with an advance health care directive.

No individual who is a health care provider can be required to implement an advance directive if such refusal is based upon the individual's religious beliefs, or sincerely held moral convictions.

Each above listed MO HealthNet provider shall have a process by which the individual who is a health care provider may refer the patient to another health care provider licensed to provide care appropriate to the patient's medical condition and advance health care directives.

### **21.4 MISSOURI STATUTES**

Missouri laws concerning advance health care directives are contained in two chapters of its statutes:

- Chapter 404, Missouri Revised Statutes (404.800-404.872), entitled "Durable Power of Attorney—Health Care;" and
- Chapter 459, Missouri Revised Statutes, entitled "Declarations, Life Support."

### **21.5 WHEN WRITTEN INFORMATION SHALL BE PROVIDED**

The written information about advance health care directives *must* be provided to an adult individual:

- in the case of a hospital, at the time of the individual's admission as an inpatient;
- in the case of a nursing facility, at the time of the individual's admission as a resident;
- in the case of a provider of home health care or personal care services, in advance of the individual coming under the care of the provider; or
- in the case of a health plan (health maintenance organization, prepaid health plan), at the time of enrollment of the individual with the organization.

Section 21 - Advance Health Care Directives**21.6 ADMISSION OF AN INCAPACITATED PERSON**

If the provider distributes information about its policies and procedures to the incapacitated person's family, surrogates or other concerned person, all advance health care directive information normally provided *must* also be given.

**21.7 ADDITIONAL SOURCES OF INFORMATION ABOUT ADVANCE HEALTH CARE DIRECTIVES**

Midwest Bioethics Center

1100 Pennsylvania, Suite 4041

Kansas City, MO 64105

(816) 221-1100

Missouri Bar Association

326 Monroe

P.O. Box 119

Jefferson City, MO 65101

(573) 635-4128

AARP

P.O. Box 7000

Allentown, PA 18175-0400

(800) 523-5800

American Bar Association Commission

of Legal Problems of the Elderly

740 15th Street, N.W.

National Health Lawyers Association

1120 Connecticut Avenue

Suite 950

Washington, D.C. 20036

(202) 833-1100

American Medical Association

Order Department

P.O. Box 7046

Dover, DE 19903

(800) 621-8335

Legal Counsel for the Elderly

601 E. Street, N.W.

Washington, D.C. 20049

(202) 434-2120

Division Counsel

MO HealthNet Division



Section 21 - Advance Health Care Directives

Washington, D.C. 20005-1009

P.O. Box 6500

(202) 662-8690

Jefferson City, MO 65102-6500

(573) 751-6922

**END OF SECTION**  
**[TOP OF PAGE](#)**