



Monterey County Behavioral Health Policies and Procedures

Policy Number	471
Policy Title	Advance Directives
References	Code of Federal Regulations Title 42, Section 422.128 California Law; Probate Code Division 4.7, Sections 4600- 4678; 4695-4698; and 4735-4736
Effective	March 1 st , 2009 Revised: August 18, 2022

Policy

An Advance Directive is a legal document which allows an adult beneficiary and emancipated minors to state in advance what they want to do about their health care if they become unable to make their own healthcare decisions. The beneficiary may also name a designated health agent who may make these decisions for them. While state law requires certain provisions to appear in an Advance Directive, there is no single form in use to document. As such, Monterey County Behavioral Health (MCBH) has updated the Advanced Directive policy to include a description of all applicable California law.

Monterey County Behavioral Health (MCBH) values and upholds the right and freedom of the individual person to decide every aspect of their life, including end of life decisions. MCBH recognizes and accepts all instruments that protect and safeguard this right and the freedom of the individual to decide, including their right to have an Advance Directive. Beneficiaries will not be discriminated against based on whether they execute an Advance Directive.

MCBH provides education about the subject of Advance Directives through its policies and procedures. MCBH offers written information on Advance Directives to beneficiaries to inform beneficiaries they have the right to establish an Advanced Directive and make decisions concerning their health care. This applies to all adult beneficiaries who receive Behavioral Health services with MCBH and its contracted providers.

Procedure

1. MCBH staff and/or its contracted providers will provide information on Advance Directive at the start of service and/or upon request for beneficiaries 18 and older, and for emancipated minors by:
 - a. Offering resource materials describing Advance Directives

- b. Posting information about Advance Directives in a prominent area at each provider site
 - c. If a beneficiary is incapacitated at the time of initial enrollment and is unable to receive information (due to the incapacitating condition or a mental disorder) or articulate whether or not he or she has executed an advance directive, MCBH staff may give advance directive information to the beneficiary's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated beneficiary or to a surrogate or other concerned persons in accordance with State law. Once the beneficiary is no longer incapacitated or unable to receive such information, MCBH staff will make efforts to offer information regarding Advance Directives.
2. If a New beneficiary:
- a. Has an existing Advance Directive:
 - i. The Care Coordinator (whether it is through MCBH or it's contracted provider) will ensure that the client's record reflects having an active Advanced Directive.
 - ii. A copy of the Advanced Directive will be scanned into the electronic health record (EHR) to be made visible in a prominent place in the beneficiary's record.
 - iii. When applicable, the beneficiary's electronic health record will maintain the existence, revocation, or a designation or disqualification of a designated healthcare agent identified in the beneficiary's Advance Directive.
 - iv. It is the responsibility of the beneficiary, or the designated healthcare agent named on the Advance Directives form, to ensure that all behavioral health treatment providers receive copies. However, the Patients' Rights Advocate is available to assist the beneficiary and/or beneficiary's healthcare agent in determining the appropriate facilities to send a copy of the Advance Directive to, as well as provide information to assist in sending a copy to the California Registry if requested. The Secretary of State maintains the registry and information from Advance Directives is available upon request by the registrant's health care provider, public guardian, or legal representative), if requested.
 - b. Does not have an existing Advance Directive:
 - i. MCBH and/or its contracted provider will offer support, linkage, and/or assistance to the beneficiary to help them execute an Advanced Directive.

- ii. Provide information about how to contact the MCBH's Patient's Rights Advocate (PRA) for assistance at (831) 755-4518, or via Fax at (831) 796-8639 or email at patientsrightsadvocate@co.monterey.ca.us.
 - 1) The PRA may help provide information and training to specified representatives indicated by the beneficiary and/or the beneficiary's case coordinator upon request.
 - 2) If the beneficiary requests assistance in developing an Advanced Directive, they can also request this support directly from their MCBH Treatment Team.
 - iii. Persons directly involved in the treatment of the beneficiary, including department staff or employee or contracted provider employee may not serve as a legal witness to the beneficiary's Advance Directive.
 - iv. MCBH and/or its contracted providers will ensure that the client's record reflects having an active Advanced Directive once this is completed.
 - c. Advance Directives Materials include:
 - i. English Advance Directives for Medical Health Care Brochure
 - ii. Spanish Advance Directives for Medical Health Care Brochure
- 3. Training and Consultation:
 - a. Enrollment in training on Advance Directives is available through the Department's NeoGov Learn portal for all Department staff and contracted providers.
 - b. The Patients' Rights Advocate (PRA) is available to offer training and education to staff or the community upon request. The PRA can help provide consultation to program staff, clients, family members, and the community on Advance Directives and other areas of Healthcare Decision Law including the beneficiary's right to make decisions concerning health care and the right to accept or refuse treatment.
- 4. Filing a Complaint:
 - a. Beneficiaries may file a complaint concerning non-compliance with the Advance Directive requirements with the following entities:
 - i. Monterey County Behavioral Health Quality Improvement Department at 1611 Bunker Hill Way., Suite 120, Salinas, Ca., 93906
 - ii. California Department of Health Services Licensing and Certification Division P.O. Box 997413, Sacramento, CA 95899-1413

5. Notifications:

- a. It is the responsibility of the beneficiary and/or the beneficiary's representative to provide behavioral health programs and providers with any revisions that may occur with respect to the Advanced Directive.
- b. A beneficiary who has capacity has the right to revoke their Advance Directive or replace the completed form at any time.
- c. MCBH and/or its contracted provider is not required to provide care that conflicts with an Advance Directive; and
- d. MCBH and/or its contracted provider is not required to implement an Advance Directive if, as a matter of conscience, MCBH cannot implement an Advance Directive and State law allows any health care provider or any agent of the provider to conscientiously object.
- e. All open clients will be notified of any changes in the Healthcare Decisions Law that would affect an Advance Directive.
- f. Informing material regarding Advance Directives shall be maintained in compliance with existing California State Law and will be updated to reflect changes in State Law within 90 days of the implementation of a change.