



## NEW MEGA REGS POLICY & PROCEDURE (P&P) APPROVAL REQUEST FORM

### I. P&P INFORMATION

Assigned Policy Name: Advance Directive

Assigned Policy Number: 14400

Mega Regs Policy Area(s): Mark All That Apply

- |   |  |
|---|--|
| <input type="checkbox"/> Plan Administration and Organization | <input type="checkbox"/> Provider Network                    |
| <input type="checkbox"/> Scope of Services                    | <input type="checkbox"/> Documentation Requirements          |
| <input type="checkbox"/> Financial Reporting Requirements     | <input type="checkbox"/> Coordination and Continuity of Care |
| <input type="checkbox"/> Management Information Systems       | <input checked="" type="checkbox"/> Beneficiary Rights       |
| <input type="checkbox"/> Quality Improvement System           | <input type="checkbox"/> Beneficiary Problem Resolution      |
| <input type="checkbox"/> Utilization Management Program       | <input type="checkbox"/> Program Integrity                   |
| <input type="checkbox"/> Access and Availability of Services  | <input type="checkbox"/> Reporting Requirements              |

Submitted by: victor Ibabao Date: 3/29/2018

Policy developed by: Mary Harnish

Attach P&P Document For Review In this Section



### II. APPROVAL

#### Section A: HHS Compliance and County Counsel

HHS Compliance: DocuSigned by: Victoria Phan Date: 4/4/2018

County Counsel: 3527B4B4F12742C... DocuSigned by: Lorraine Van Kirk Date: 4/11/2018

#### Section B: BHSD Executive Director

BHSD Executive Director: DocuSigned by: Toni Tullys Date: 4/11/2018

Note - A copy of the Approved Mega Regs P&P Form will be emailed to: BHSD Compliance Unit



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- |                                     |   |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <b>BHSD County Staff</b>                          |
| <input checked="" type="checkbox"/> | <b>Contract Providers</b>                         |
| <input checked="" type="checkbox"/> | <b>Specialty Mental Health</b>                    |
| <input checked="" type="checkbox"/> | <b>Specialty Substance Use Treatment Services</b> |

**Title: Advance Directive**

<b>Approved/Issue Date:</b>	<b>Behavioral Health Services Director:</b>	
<b>Last Review/Revision Date:</b>	<b>Next Review Date:</b>	<b>Inactive Date:</b>

<p><b><u>REFERENCES:</u></b></p> <ul style="list-style-type: none"> <li>• 42 CFR § 417.436(d)(1)(vi) Rules for enrollees.</li> <li>• 42 CFR § 422.128 Information on advance directive.</li> <li>• 42 CFR § 438.3(j) Standard contract requirements</li> <li>• 42 CFR § 489.100 Definitions</li> <li>• 42 CFR § 489.102(a) Requirements for providers.</li> <li>• California Probate Code Division 4.7 Health Care Decisions §§ 4600-4806.</li> <li>• State Department of Mental Health Contract FY13-18, Exhibit A</li> <li>• Valley Medical Center (VMC) P&amp;P #301.5</li> </ul>
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<p><b><u>POLICY:</u></b></p> <p>Behavioral Health Services Department values and upholds the right and freedom of the individual person to decide on every aspect of their life, including end of life decisions. BHSD recognizes and accepts all instruments that protect and safeguard this right and freedom of the individual to decide, including the right to have an Advance Directive. In addition, BHSD provides education about Advance Directive policies and procedures.</p> <p>BHSD provides written information on Advance Directive and on the individual’s rights under California law to all adult beneficiaries who receive behavioral health services at BHSD or BHSD’s contractors.</p>
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**Title: Advance Directive**

**DEFINITIONS:**

**Advance Directive.** Written instructions, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by courts of the State), relating to the provision of the healthcare when the individual is incapacitated.

By law providers are required to have advance directive materials available to individuals. BHSD recommends use of Disability Rights California Advance Directive which contains a section on Individual Mental Health Care instructions and can be obtained at:

Instructions and Form:

- (English) <http://www.disabilityrightsca.org/pubs/508801.pdf>
- (Spanish) <http://www.disabilityrightsca.org/pubs/508802.pdf>

Advance Health Care Directive for Mental Health – A Trainer’s Manual

- (English) <http://www.disabilityrightsca.org/pubs/540701.pdf>

**Beneficiary.** A Medi-Cal recipient who is currently receiving services from BHSD or a BHSD contracted provider.

**Provider.** A person or entity who is licensed, certified, or otherwise recognized or authorized under state law governing the healing arts to provide specialty mental health services and who meets the standards for participation in the Medi-Cal program as described in California Code of Regulations, title 9, Division 1, Chapters 10 or 11 and in Division 3, Subdivision 1 of Title 22, beginning with Section 50000. Provider includes but is not limited to licensed mental health professionals, clinics, hospital outpatient departments, certified day treatment facilities, certified residential treatment facilities, skilled nursing facilities, psychiatric health facilities, general acute care hospitals, and acute psychiatric hospitals. The MHP is a provider when direct services are provided to beneficiaries by employees of the Mental Health Plan.



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**Title: Advance Directive**

<b><u>PROCEDURE</u></b>	
<b>Responsible Party</b>	<b>Action Required</b>
<b>Beneficiary or Agent</b>	<ol style="list-style-type: none"> <li>1. Will not be discriminated against based on whether they execute an advance directive.</li> <li>2. Generally, an Agent has the same authority as the beneficiary to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information. Unless otherwise provided in a power of attorney for health care, the authority of an agent becomes effective only when the beneficiary becomes incapacitated.</li> <li>3. BHSD follows the rights/capacity in the VMC policy.</li> <li>4. May make a complaint concerning non-compliance with the Advance Directive requirements:                     <p style="text-align: center;">California Department of Health Services Licensing and Certification Division (800) 236-9747 P.O. Box 997413, Sacramento, CA 95899-1413.</p> <p style="text-align: center;">California Dept. of Public Health, San Jose District Office 800-554-0348, 408-277-1784, Fax 408-277-1032, 100 Paseo de San Antonio, Suite 235, San Jose, CA 95113.</p> </li> </ol>



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<b>Providers</b>	<ol style="list-style-type: none"> <li>1. Must notify BHSD management, and provider staff if any questions arise concerning an Advance Directive</li> <li>2. May not condition the provision of treatment or otherwise discriminate against a beneficiary based on whether or not the beneficiary has executed or revoked an Advance Directive.</li> <li>3. Must obtain annual Advance Directive education.</li> <li>4. Provides a brochure regarding Advance Directive when the beneficiary first receives face-to-face Behavioral Health services and upon request.             <ol style="list-style-type: none"> <li>a. If unable to provide the brochure at the first face-to-face contact, document the reason(s) in the beneficiary's chart.</li> </ol> </li> <li>5. Offer linkage and assistance to the beneficiary to complete the Advance Directive.</li> <li>6. Place completed, appropriately witnessed and signed Advance Directive in a prominent place in the beneficiary's record.</li> <li>7. Maintain in the record, if applicable, the existence, revocation, or a designation or disqualification of an agent identified in the beneficiary's Advance Directive.</li> <li>8. Refer to VMC 301.5 Advance Directive - Health Care Decisions Laws for detail description of Health Care providers.</li> </ol>
<b>BHSD Quality Assurance Division</b>	<ol style="list-style-type: none"> <li>1. Makes available the Advance Directive brochures in the threshold languages for all providers and contractors.</li> <li>2. Maintains Advance Directive Brochures in compliance with existing California State law.</li> <li>3. Updates Advance Directive to reflect changes in state law within 90 days of the implementation of a change.</li> <li>4. Includes Advance Directive provider monitoring during annual Administrative Review to ensure that providers have the Advance Directive Brochures in all threshold languages and educate their staff regarding this policy.</li> <li>5. Ensures providers maintain brochures in the threshold languages every three (3) year during site certification.</li> <li>6. Educate providers and contractors about the advance directive policy.</li> </ol>
<b>Contractors</b>	<ol style="list-style-type: none"> <li>1. All contractors must adhere to BHSD's requirements on advance directive and as applicable to their contracts and/or agreements.</li> </ol>
<b>Attachments:</b>	