

**MEMBER ASSURANCES**

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“In home and community-based service waivers, each state makes a commitment to assure the health and welfare of the person. This is a fundamental difference between HCBS waivers and other programs. Assuring the health and welfare of the person is a higher standard than the obligation to ensure the quality of each service provided under the Medicaid State Plan.” – Centers for Medicare and Medicaid Services

Member Direction is an *ADvantage* Program philosophy and orientation to the delivery of home and community-based services whereby informed Members make choices about the services they receive. Members have the primary authority to make decisions based on what works best for them, regardless of the nature or extent of their disability or the source of the payment for the services.

Other concepts related to Member Direction are self-determination, freedom, autonomy, choice, control, responsibility and support.

### **Guiding Principles in Person-Centered Service Delivery**

Supporting Members to have:

1. Individual Empowerment – by assuring Members have the skills, knowledge and support to make informed choices about service options.
2. Personal Independence – by supporting individuals to freely exercise control over all aspects of one’s life and to self-advocate one’s personal value.

### **Member Assurances**

A Member’s right to self-determination does not diminish with aging, physical or mental illness, disability or life circumstance.

In addition, all people have the right to freedom of choice and action, and freedom from coercion and control.

The following outlines Member rights and the expected manner in which Providers are expected to deliver services within the *ADvantage* Service Program to assure Member rights are protected.

Members have the right to:

- Be treated with respect, dignity; and be treated as competent to make decisions
- Be communicated with effectively, directly, and in a language and format that best meets their needs
- Have accurate, objective, relevant, complete and culturally appropriate information
- Refuse proposed assistance, equipment or treatment
- Appeal decisions and register complaints

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### **I. Members have the right to be treated with respect, dignity; and be treated as competent to make decisions.**

- A. Providers show consideration for the dignity of individual Members when discussing or providing services.
- B. Providers assure that Members have adequate privacy when discussing or providing services.
- C. Providers assure Members have time to think about the information, the opportunity to discuss it with others and to reflect on that information before reaching a decision; the Member can expect not to be coerced or forced to make a choice or a decision with which they are not comfortable.
- D. Providers shall treat all Members or their designated representatives as competent. Treating a Member as “incompetent” or as “not having capacity” removes their autonomy. Unless otherwise determined by a court the Member is presumed to be competent to make his/her own decisions.

### **II. Members have the right to be communicated with effectively, directly, and in a language and format that best meets their needs.**

- A. The Provider shall provide the Member communication supports and information needed to facilitate communication and enable the Member to make informed decisions.
- B. The Provider supplies information in a language and format that best meets their needs to make their informed choice:
- C. In all *ADvantage* services, except CD-PASS, the Providers and/or administrative representatives shall communicate directly with the Member unless a legal document or agreement delegates authority to another person to speak and decide on behalf of the Member in which case the Provider communicates with both the Member and his/her legal representative:
  - 1. Legal documents or agreements that delegate this authority are “durable power of attorney” or “power of attorney”, or a court may delegate this authority to a “curator” or “guardian”.
- D. In CD-PASS the term “authorized representative” shall mean a person designated by the Member to assist in executing employer functions.
- E. In exceptional circumstances, the condition of the Member may make communication impossible and there may be no one authorized or available to consent on the Member's behalf. In medical emergencies, for instance, the primary need is to treat the Member. Where the ability to consent is absent or impaired, treatment should be no more than that needed to treat the immediate

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problem (s) or crisis. Once the emergency is over, the Member must be given information about the treatment they received.

### **III. Members have the right to accurate, objective, relevant, complete and culturally appropriate information.**

- A. The Provider shall assure information is accurate, objective, relevant, and culturally appropriate; Providers are also aware of key cultural values of individuals, and how these values shape worldviews and expectations.
- B. The Provider shall assure the information is specific to the individual situation. Any information that may affect the Member's decision needs to be provided.
- C. At a minimum, the Provider shall assure information provided about provision of assistance, equipment, services, or treatment and/or procedure consists of:
  - 1. The Provider's professional assessment of the condition that the assistance, equipment, services, or treatment is proposed for;
  - 2. The Provider's professional assessment of the nature, likely effects, risks and benefits of the proposed assistance, equipment, services, or treatment;
  - 3. The Provider's professional assessment of the expected outcome;
  - 4. The options - including alternative treatments or services, the risks and benefits of each and that the Member has the right to seek additional opinions about these and other possible options;
  - 5. Information that will answer the specific questions of Members;
  - 6. That the Member has the right to refuse services and the right to enter into a risk negotiation agreement.
- D. The Provider shall have or obtain accurate, current, and comprehensive information, and the Provider has primary responsibility for providing the information that will help a Member to make an informed choice.

### **IV. Members have the right to refuse proposed assistance, equipment, or treatment.**

- A. The Provider shall respect the Member's right to refuse the assistance, the equipment item, a service, a treatment or a procedure without fear of recrimination, penalty, or other adverse action.
  - 1. When Provider and Member disagree on acceptability of a health and safety risk associated with the Member responsibly assuming the risk, the Provider is obligated to work with the Member to develop an addendum to the service plan, to identify and manage risk to Member health and safety;

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- “Responsible assumption of risk” means that the person that assumes the risk has been informed and indicates understanding of the risk, the options to eliminate, reduce or minimize the risk and has made a deliberate, conscientious decision to accept the risk as preferable to agreeing to the presented options/constraints intended to ameliorate risk.
- B. The Provider is responsible for informing the Member of care and treatment options and likely consequences of care and treatment options including the consequences for not pursuing care and treatment options; the Provider documents the information provided to the Member and the Member’s Informed Choice.

### **V. Members have the right to appeal decisions and register complaints.**

- A. The Provider shall inform the Member of his/her Right to present Complaints and the process to register Complaints;
1. The Provider’s policies, procedures and processes support:
    - a. Opportunities for Members to, without fear of recrimination, penalty or other adverse action, register complaints about services, providers or other aspects of service delivery system program performance;
    - b. An expeditious response and attempt to resolve the issue prompting the Member Complaint to the Member’s satisfaction;
- B. The Oklahoma Department of Human Services is responsible for informing the Member of his/her Right to Appeal Decisions that may have adverse eligibility or service consequences for the Member.
1. The Provider shall support the Member in their right to appeal and facilitate the process.
    - a. Appeal Right policies, procedures and processes support a fair, impartial and expeditious review of Member requests for reconsideration of decisions that deny eligibility or adversely impact service provision;
    - b. Pre-existing status of eligibility and levels of service delivery remain in effect until the review of the decision under Appeal is completed;
    - c. During enrollment and prior to implementation of any negative action, the Healthcare Plan or Program informs the Member about the process for initiating an Appeal and how to access help to initiate an Appeal;
    - d. An integral part of the system that supports the Member’s Right to Appeal are safeguards that protect the Member from recrimination, penalty or other adverse action related to the request for Appeal;

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- e. The Provider shall provide assistance with filing for an Appeal Hearing.
- f. The Provider shall continue services as directed by service plan until Appeals process is complete.

Agency \_\_\_\_\_

Authorized Agent \_\_\_\_\_ Date \_\_\_\_\_