



JEFFERSON  
BEHAVIORAL  
HEALTH

Managed Mental Health Care Organization for Coos, Curry, Jackson, Josephine, and Klamath Counties

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# Mental Health Declarations and Advance Directives Policy and Procedures

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Board Approved Date: November 2, 2009

State Approved Date goes here

**JBH POLICY & PROCEDURE**

**Mental Health Declaration and Advance Directive**

Approved by JBH Board of Directors: \_\_11/2/09\_\_ Approved by State of Oregon – DHS/AMH:  
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## JBH POLICY & PROCEDURE

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## PART I: JBH POLICY ON MENTAL HEALTH DECLARATIONS AND ADVANCE DIRECTIVES.

### A. Policy Description

The purpose of this policy is to ensure a consistent method for providing Members with information concerning their rights under Oregon State Law regarding Declarations of Mental Health Care and Advance Directives.

The following procedures set forth in this policy should serve as a tool to assist JBH staff, Participating Provider agency staff, OHP Members and/or their Representatives, stakeholders, and regional and/or allied agencies in implementing an efficient system for promoting the rights and responsibilities of Members during the process of creating, executing and/or revoking a Mental Health Declarations or Advance Directive.

### B. Applicability

For the purposes of this policy, the term Jefferson Behavioral Health (JBH) includes the Jefferson Behavioral Health staff and its authorized representatives. JBH shall follow this policy as it applies to the OHP mental health services governed by the Mental Health Organization Agreement between the State of Oregon and JBH. Participating Providers shall follow this policy to the extent that it applies to the mental health services that they provide to JBH Members. The responsibilities outlined in this policy shall also include, but not be limited to, the Local Mental Health Authorities (LMHA) in the JBH service area, and any agency delegated with the responsibility for managing non-inpatient mental health services for JBH members in the LMHA's county.

## PART II: POLICY DEFINITIONS

### A. Definitions

The following key terms relate to and/or support this procedure have been included in this Section.

1. **Mental Health Declaration:** A document that allows an individual to state in writing their wishes for mental health care if they were in a mental health crisis or if something prevented them from making decisions about their mental health treatment. This document is completed prior to a crisis when the individual can understand and make decisions about their mental health care. This document allows an individual to name an adult representative to make decisions about their care. This person named must agree to represent the individual and must follow their wishes. If their wishes are unknown, this person must decide what the

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individual would want. A declaration form is only good for three (3) years. If during those three (3) years the individual becomes unable again to make their own decisions then the declaration will remain good until the individual can make their own decisions. The individual may change or cancel their declaration if they can understand and make choices about their care. The individual must give the new form to their Primary Care Physician, their mental health provider and the person they named to make decisions. Completing the Mental Health Declaration is voluntary; if an individual chooses not to fill out and sign the Mental Health Declaration it will not affect their health plan coverage or access to care.

2. **Advance Directive:** A document that allows an individual to say in writing, ahead of time, how they would want to be treated if seriously ill or injured. The Advance Directive allows individuals to name a health care representative. The health care representative does not need to be a lawyer or health care professional but must agree in writing to represent the needs and wishes of the individual. This will allow the health care representative to work with health care providers to make decisions based on the wishes of that person if they become unable to direct their own care. The Advance Directive is only valid if voluntarily signed while the person is in sound mind. It will not expire unless the writer limits the duration. An individual may revoke their Advance Directive at any time. Even with an advance directive, individuals have the right to decide their own health care as long as they are able. Completing the Advance Directive is voluntary; if an individual chooses not to fill out and sign the Advance Directive it will not affect their health plan coverage or access to care. Any changes in the Oregon law regarding Advance Directives will be reflected no later than ninety (90) days after the effective date of that change.
3. **Member:** An individual found eligible by a program of the Oregon Department of Human Services (DHS) to receive health care services under the Oregon Health Plan (OHP) Medicaid Demonstration Project or State Children's Health Insurance Program (SCHIP) and who, for purposes of this policy, is assigned to JBH for mental health services.
4. **Member Representative:** A person who can make OHP related decisions for a Member who is not able to make such decisions him or herself. A Member Representative may be, in the following order of priority:
  - A person who is designated as the Member's health care representative;
  - A court-appointed guardian, a spouse, or other family member as designated by the Member;

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- The Individual Service Plan Team (for OHP Members with developmental disabilities);
  - The DHS case manager, or other DHS designee.
  - For Members in the care or custody of DHS's Children, Adults and Families division or the Oregon Youth Authority (OYA), the Member Representative is DHS or OYA, as applicable.
  - For Members placed by DHS through a Voluntary Placement Agreement (CF Form 499), the Member shall be represented by his or her parent or legal guardian.
5. **Mental Health Practitioner:** An individual with current and appropriate licensure, certification, or accreditation in a mental health profession, which includes, but is not limited to: psychiatrists, psychologists, registered psychiatric nurses, Qualified Mental Health Associates, and Qualified Mental Health Professionals.
6. **Community Mental Health Program (CMHP):** The organization of all services for persons with mental or emotional disorders and developmental disabilities operated by, or contractually affiliated with, an LMHA, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with DHS.
7. **Participating Provider:** An individual, facility, corporate entity, or other organization credentialed by JBH as a Provider of non-inpatient or inpatient mental health services and approved by JBH's Board of Directors as a sub-contractor to provide mental health services to JBH Members. Participating Providers must enter into a formal contract with JBH and agree to bill and/or submit encounter data in accordance with that contract.
- For purposes of this policy, the responsibilities listed for Participating Providers shall also apply to the LMHA's in JBH's Service Area, to each of which JBH has delegated responsibility for managing non-inpatient or inpatient mental health services for JBH Members in the LMHA's county..

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8. Provider: An organization, agency or individual licensed, certified and/or authorized by law to render professional health services to OHP Members.
9. Service Authorization Request: A request from an OHP Member or Member Representative for provision of a service.

## PART III: GENERAL PROCEDURE FOR MENTAL HEALTH DECLARATIONS

### A. Member's Rights and Responsibilities for an Mental Health Declaration

1. Any Member age 18 and older shall be provided information concerning his or her rights under Oregon State Law regarding Declarations for Mental Health Treatment at the Member's first face-to-face contact for services and thereafter upon request.
2. A Member may choose to complete a Declaration for Mental Health and should not under any circumstances be coerced into agreeing to sign one by staff, friends, or family members.
3. Participating Providers shall incorporate and encourage the development of Mental Health Declaration into a client's treatment planning process.
4. The existence of a Mental Health Declaration shall not affect a Member's right to make decisions about his or her treatment when the Member is capable of making such decisions.

### B. Member's Rights and Responsibilities for Revoking a Mental Health Declaration.

1. If a Member is interested in revoking a Declaration for Mental Health Treatment, he or she must:
  - Provide written notice in any form to their Physician, Health Care Provider, Participating Provider or anyone else that has a copy indicating that they would like to revoke their Declaration for Mental Health Treatment.
2. Once written notice is provided, anyone having a Member's Declaration for Mental Health Treatment must surrender the Declaration to the Member.
3. A Member should destroy the Declarations for Mental Health Treatment (i.e., shredding).

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4. A Declaration for Mental Health Treatment cannot be revoked during a time that a Member is determined to be incapable.

#### **C. JBH and Participating Provider Roles and Responsibilities in the Mental Health Declaration Process.**

1. A Participating Provider may, without any constraint from JBH, advise or advocate on behalf of a Member regarding:
  - The Member's health status, medical care or treatment options, including any alternative treatment that may be self-administered.
  - Any information a Member needs in order to decide among all the appropriate and relevant treatment options.
  - The risks, benefits and consequences of treatment or non-treatment.
  - The Member's right to participate in decisions regarding personal health care, including the right to refuse treatment, and to express preferences about future treatment decisions.
2. Neither JBH nor its Participating Providers shall impose any limitation on the manner and practice for implementing a Mental Health Declaration upon its Members. A Member shall be free from any moral or religious objection from JBH or its Participating Providers in receiving care or being administered care.
3. A Member's mental health treatment shall not be contingent upon whether a Mental Health Declaration has been executed.

#### **D. Process for Invoking an Mental Health Declaration**

1. A Mental Health Declaration shall become effective when a Member is determined to be incapable.
2. Only a Court or two physicians can determine if a Member does not have the capability to make his or her own mental health treatment decisions.
3. Admittance into a psychiatric facility does not signify that a Member lacks the capability of making decisions about his or her mental health treatment.
4. If a Member has been determined to lack the capacity at the time of initial enrollment and is unable to understand the information being presented or to

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articulate whether or not he or she has executed an Mental Health Declaration, then the Participating Providers may provide the Member's family, surrogate or concerned persons with information on Mental Health Declarations and any relevant policies and procedures to assist those persons with understanding the Member's condition and treatment.

5. Once a Member is no longer incapacitated, all background and follow-up information shall be provided directly to the Member.

#### E. Procedures for Completing a Declaration for Mental Health Treatment

1. Participating Providers shall offer *A Guide to Oregon's Declaration for Mental Health Treatment* at the first face-to-face meeting or during the intake process and thereafter upon request.
2. Participating Provider staff shall be available and knowledgeable in explaining critical information to Members, such as: what Mental Health Declarations are used for, how a Member can complete a Declaration, how a Declaration can be revised or revoked, and when a Declaration is invoked.
3. Members may at anytime contact JBH or its Participating Providers for assistance in completing the Declaration. Assistance may include but not be limited to language interpretation for individuals with Limited English Proficiency (LEP) and for individuals with hearing or visually impairments. These services shall be provided at **no cost** to a Member.
4. A Member shall be free to complete a Declaration for Mental Health Treatment independently without any undue influence from JBH or its Participating Providers.
5. A Declaration for Mental Health Treatment shall remain in effect for three years unless it is revoked. After three years a new Declaration for Mental Health Treatment must be developed and signed.
6. If a Member is incapable at the end of three years to sign a new Declaration for Mental Health Treatment, then the current Declaration shall stay in effect until the Member is capable.
7. A Member may revise his/her Declaration for Mental Health Treatment at any time.

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## PART IV: GENERAL PROCEDURE FOR ADVANCE DIRECTIVES

### A. Member's Rights and Responsibilities for an Advance Directive

1. Any Member age 18 and older shall be provided information concerning his or her rights under Oregon State Law regarding Advance Directives at the Member's first face-to-face contact for services and thereafter upon request.
2. A Member may choose to complete an Advance Directive and should not under any circumstances be coerced into agreeing to sign one by staff, friends, or family members.
3. Participating Providers shall incorporate and encourage the development of an Advance Directive into a client's treatment planning process.
4. The existence of an Advance Directive shall not affect a Member's right to make decisions about his or her treatment when the Member is capable of making such decisions.

### B. Member's Rights and Responsibilities for Revoking a Advance Directive

1. If an individual is interested in revoking an Advance Directive, he or she must notify their Physician, Health Care Provider or Health Care representative. The health care representative must promptly notify the Physician or Health Care provider of the individuals wishes to revoke the Advance Directive.
2. Your Oregon Advance Directive will automatically revoke if you execute a new Advance Directive, unless you have specified otherwise in the document.

### C. JBH and Participating Provider Roles and Responsibilities in the Advance Directive Process

1. A Participating Provider may, without any constraint from JBH, advise or advocate on behalf of a Member regarding:
  - The Member's health status, medical care or treatment options, including any alternative treatment that may be self-administered.
  - Any information a Member needs in order to decide among all the appropriate and relevant treatment options.
  - The risks, benefits and consequences of treatment or non-treatment.

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- The Member's right to participate in decisions regarding personal health care, including the right to refuse treatment, and to express preferences about future treatment decisions.
2. Neither JBH nor its Participating Providers shall impose any limitation on the manner and practice for implementing an Advance Directive upon its Members. A Member shall be free from any moral or religious objection from JBH or its Participating Providers in receiving care or being administered care.
  3. A Member's mental health treatment shall not be contingent upon whether an Advance Directive has been executed.

#### D. Process for Invoking an Advance Directive

1. An Advance Directive shall become effective when a Member is determined to be incapable by their Physicians or Health Care Provider.

#### E. Procedures for Completing a Declaration for Mental Health Treatment

1. Participating Providers shall offer an Advance Directive at the first face-to-face meeting or during the intake process and thereafter upon request.
2. Participating Provider staff shall be available and knowledgeable in explaining critical information to Members, such as: what Advance Directives are used for, how a Member can complete a Directive, how a Directive can be revised or revoked, and when a Directive is invoked.
3. Members may at anytime contact JBH or its Participating Providers for assistance in completing the Directive. Assistance may include but not be limited to language interpretation for individuals with Limited English Proficiency (LEP) and for individuals with hearing or visually impairments. These services shall be provided at **no cost** to a Member.
4. A Member shall be free to complete an Advance Directive independently without any undue influence from JBH or its Participating Providers.
5. An Advance Directive unless it is revoked or a new Advance Directive is executed.

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6. A Member may revise his/her Advance Directive at any time.

## PART V: RECORD KEEPING REQUIREMENTS

### A. Recordkeeping Requirements

1. Participating Provider agencies shall document in the Member's case record a written acknowledgement that a Member was informed of their right to execute and a received a copy of when requested a Declaration of Mental Health Treatment and an Advance Directive.
2. A completed and signed Declaration for Mental Health Treatment and/ or Advance Directive shall be placed in the Member's clinical record and documented in the Member's case notes that a signed Declaration/ Directive was received.
3. Participating Provider agencies shall document in a prominent part of the clinical case record that an Advance Directive in the form of a Declaration of Mental Health Treatment has been executed.
4. In the event that a Declaration for Mental Health Treatment and/ or Advance Directive has been revoked, a written statement to that effect from the Member shall be placed in the Member's clinical record and documented in the case notes.

### B. Right for a Member to Complain

1. If a Member becomes dissatisfied with any aspect of the Mental Health Directive and/or Advance Directive process, he/she has the right to initiate a complaint with JBH or the Participating Provider. Complaints regarding noncompliance of Mental Health Declarations or Advance Directives may be filed with the State Survey and Certification Agency.
2. Complaints shall follow the guidelines set forth in JBH's Client Notices, Grievances, Appeals and Hearing Process, which are outlined in the Grievance and Appeal Policy and Procedure.
3. A Member or Member Representative needing assistance in filing a complaint shall contact JBH or its Participating Providers.