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**MEMORANDUM**

**DATE:** June 1, 2005  
**TO:** CMO Directors  
**FROM:** Monica Deignan, Family Care Program Manager  
**SUBJECT:** CMO Social Workers and Advance Directives

We were asked if there were any state or Family Care program policies that would set parameters for what CMO social workers can do to assist CMO members prepare advance directives (powers of attorney for health care) including acting as witnesses. The short answer is that no, other than Chapter 155, the power of attorney for health care law, there are no policy restrictions around what CMO social workers can do to help members execute advance directives.

Health care providers are not permitted to witness advance directives, EXCEPT for social workers and chaplains. Although CMOs do not seem to fit the definition of health care providers in the statute, even if they did, social workers could serve as witnesses.

The statute also bars any individual who is directly financially responsible for the principal's health care from witnessing the principal's power of attorney for health care. However, though the social worker may be making service authorization decisions for the principal's care plan, the social worker does not have individual financial responsibility for the principal's health care and thus may act as a witness.

There is also no prohibition for a social worker to provide assistance in executing the power of attorney for health care, such as actually helping people fill the form out and counseling them through the process. This assistance is in keeping with the social worker's role in helping members to exercise their rights, including directing their own health care. Of course, providing this assistance requires training to ensure the individual's rights are always kept paramount.

The CMO itself is encouraged to develop its own policies and procedures about assisting members in executing powers of attorney for health care, and to train social workers performing that role to recognize and understand any potential conflicts of interest they may encounter as someone being paid by the CMO, which is at risk financially in caring for the member's health and long-term care needs, and helping enrollees execute powers of attorney for health care. The CMO's policies, procedures and training should include ways to recognize any potential conflict

of interest and to either eliminate it or to acknowledge and minimize it. We assume, but don't require, that the CMO will consult with their corporation counsel in developing these policies and procedures.

cc: Resource Centers  
Charles Wilhelm