

5101:3-3-16.2      Advance directives for nursing facilities (NFs).(A) Definitions.

"Advance directive" means a written instruction that is recognized under state law (whether statutory or as recognized by the courts of the state) and relates to providing health care when a person is incapacitated. Advance directives include living wills, declarations as defined in Chapter 2133. of the Revised Code, and durable powers of attorney for health care as defined in Chapter 1337. of the Revised Code.

(B) NF resident rights concerning advance directives include the following:

- (1) Right to accept or refuse medical or surgical treatment; and
- (2) Right to formulate advance directives; and
- (3) Right to receive a written copy of the NF operator's policy on implementation of advance directives.

(C) Establishment of written policies and procedures.

A NF operator shall establish and maintain written policies and procedures concerning advance directives with respect to all adult residents receiving medical care in the facility. These policies and procedures shall include the following:

- (1) Provide written information to residents concerning their rights under 42 CFR 489.102 (October 1, 2006) and state law, whether statutory or as recognized by the courts of the state, to make decisions concerning their own medical care. This written information shall include a clear and precise statement of limitation if the NF operator cannot implement an advance directive on the basis of conscience. At a minimum, a statement of limitation shall include all of the following:
  - (a) Clarification of the differences between institution-wide conscientious objection and conscientious objection that may be raised by an individual physician; and
  - (b) Identification of Chapters 2133. and 1337. of the Revised Code as the state legal authority permitting conscientious objection; and
  - (c) A description of the range of medical conditions or procedures affected by conscientious objection; and
- (2) Inform residents that complaints concerning compliance with the advance directive requirements may be filed with the Ohio department of health (ODH); and

- (3) Document in a prominent part of a resident's medical record whether or not the resident has executed an advance directive; and
- (4) Not condition the provision of care or otherwise discriminate against a resident based on whether or not the resident has executed an advance directive; and
- (5) Provide staff training concerning a NF operator's policies and procedures on advance directives; and
- (6) Provide documentable community education regarding advance directives, either directly or in conjunction with other providers and organizations. At a minimum, community educational materials shall:
  - (a) Define what constitutes an advance directive; and
  - (b) Emphasize that an advance directive is designed to enhance an incapacitated person's control over their medical treatment; and
  - (c) Identify applicable state law concerning advance directives.

(D) Notification of written policies and procedures.

- (1) A NF operator shall give a copy of the written policies and procedures set forth in paragraph (C) of this rule to each individual upon admission to the facility.
- (2) If an adult resident is incapacitated at the time of admission or at the start of care and is unable to receive the information or articulate whether or not he or she has executed an advance directive, the NF operator shall give the information to the resident's family or representative in accordance with state law.
- (3) A NF operator is not relieved of the obligation to provide advance directive information to a resident once the resident is no longer incapacitated or unable to receive such information. Follow-up procedures shall be in place to provide the information directly to the resident at the appropriate time.

(E) Conscientious objection.

- (1) As set forth in sections 1337.16 and 2133.10 of the Revised Code, nothing in this rule shall be construed as prohibiting a NF operator from objecting to implementing an advance directive on the basis of conscience and in good faith, so long as the NF operator continues life-sustaining treatment and does not prevent or delay the transfer of the resident to a health care facility that is willing and able to comply or allow compliance with the advance directive.
- (2) If a NF operator objects to the implementation of an advance directive, the NF

operator shall, upon the resident's request, assist the resident in locating another NF that is willing to implement the advance directive.

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