

## TO BE RESCINDED

5101:3-3-16.2 **Advance directives for nursing facilities.**

- (A) "Advance directive" means a written instruction, such as a living will, a declaration, as defined in Chapter 2133. of the Revised Code, or a durable power of attorney for health care, as defined in Chapter 1337. of the Revised Code, which is recognized under state law (whether statutory or as recognized by the courts of the state) and relates to the provisions of health care when the individual is incapacitated.
- (B) Nursing facilities (NFs) must maintain written policies and procedures, concerning advance directives, which comply with state and federal laws. These policies and procedures, with respect to all adult residents receiving medical care by the provider, must:
- (1) Provide for the release of written information to residents concerning their rights under federal law (42 CFR 489.102 as amended November 30, 1999) and state law (whether statutory or as recognized by the courts of the state) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment, the resident's right to formulate advance directives and the provider's policy on respecting the implementation of advance directives. The provider's policy, at a minimum, shall include:
    - (a) The clarification of any differences between institution wide conscientious objections and those that may be raised by individual physicians; and
    - (b) The identification of Chapters 2133. and 1337. of the Revised Code as the state legal authority permitting such objections; and
    - (c) A description of the range of medical conditions or procedures affected by the conscientious objection.
  - (2) Provide a method for informing residents that complaints concerning the advance directive requirements may be filed with the state survey and certification agency; and
  - (3) Provide for documentation in the resident's medical record stating 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 for staff training concerning provider's policy on advance directives;

and

- (6) Provide for documentable community education efforts regarding advance directives either directly or in conjunction with other providers and organizations. At a minimum community educational materials should:
  - (a) Define what constitutes an advance directive; and
  - (b) Emphasize that an advance directive is designed to enhance an incapacitated individual's control over his/her medical treatment; and
  - (c) Identify applicable state law concerning advance directives.
- (C) The information set forth in paragraph (B) of this rule shall be furnished to each individual upon admission as a resident in a NF. If an adult resident is incapacitated at the time of admission or at the start of care and is unable to receive information, or articulate whether or not he or she has executed an advance directive, then the provider may give advance directive information to the resident's family or surrogate in accordance with state law. The provider is not relieved of the obligation to provide advance directive information to the resident once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information directly to the resident at the appropriate time.
- (D) As set forth in Chapters 1337. and 2133. of the Revised Code, nothing in this rule shall be construed to prohibit a NF from objecting, on the basis of conscience and in good faith, to implementing an advance directive, if the NF continues life-sustaining treatment and does not prevent or delay the transfer of the resident to the care of a health care facility that is willing and able to comply or allow compliance with an advance directive.
- (E) Should a NF have an objection to implementing an advanced directive as stated in paragraph (D) of this rule, the NF shall assist the resident upon request in locating a NF that is willing to implement advance directives.

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CERTIFIED ELECTRONICALLY

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Certification

03/10/2008

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Date

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