

TO: Nursing Facilities

SUBJECT: Patient Self Determination Act (OBRA 1990)

EFFECTIVE: December 1, 1991

BACKGROUND: Effective December 1, 1991, the Federal Omnibus Budget Reconciliation Act of 1990, Section 4751, requires that agencies (hospitals, nursing facilities, home health agencies, personal care assistant service agencies, private duty nursing agencies, hospices, health maintenance organizations) participating in the New Jersey Medicaid Program, must:

1. Notify individuals about their rights under State law to make decisions concerning their medical care and the right to formulate an advance directive; and,
2. Implement policies regarding advance directives.

ACTION: The above listed Medicaid providers are required to do the following:

1. Maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider about their rights under State law to make decisions concerning their medical care and the right to formulate an advance directive.
2. Provide written information to individuals regarding their rights under State law to make decisions concerning their medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate an advance directive for their health care.
3. Provide written information to individuals concerning the provider's written policies respecting the implementation of such rights.

4. Document in the individual's medical record whether or not the individual has executed an advance directive.
5. Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive.
6. Ensure compliance with requirements of State law respecting advance directives.
7. Provide education for staff and the community on issues concerning advance directives.

The written information described in the actions in #2 and #3 above, must be provided to adult individuals at the time specified below:

1. Admission to a hospital as an inpatient.
2. Admission to a nursing facility as a resident.
3. Prior to an individual coming under the care of a home health, personal care assistant, or private duty nursing agency.
4. Upon initial receipt of hospice care from a hospice agency.
5. Upon enrollment into a health maintenance organization.

The new provisions are not to be construed as prohibiting the application of a State law which allows a health care provider to refuse to implement an advance directive based upon a conscientious objection. The New Jersey Advance Directives for Health Care Act, P.L. 1991, Chapter 201, does allow private religious affiliated health care institutions to develop institutional policies and practices defining circumstances in which they will decline to participate in the withholding or withdrawing of specified measures to sustain life. Such policies and practices are to be included in the provider's written statement of its policies.

The statement of New Jersey law approved by the New Jersey State Department of Health concerning a person's right to make health care decisions is attached for your use.

If you have any further questions, please contact Gregory Danese, Esq.,
Chief, Provider
Enrollment Unit,
at (609) 588-2905.