

DEPARTMENT OF HEALTH SERVICES

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November 18, 1991

TO: ALL HOSPITALS, NURSING FACILITIES, HOME HEALTH AGENCIES, HOSPICES,  
AND HEALTH MAINTENANCE ORGANIZATIONS

SUBJECT: IMPLEMENTATION OF PATIENT SELF-DETERMINATION PROVISIONS OF OBRA 90

Federal law mandates new requirements for specific Medicare and Medi-Cal providers, effective December 1, 1991. These requirements are related to patient self-determination--the right of individuals to make medical treatment decisions and to make advance directives, such as living wills and Durable Powers of Attorney for Health Care. Information about the new requirements and instructions to assist you in meeting this mandate are found below.

While this federal statute applies to health care providers who receive funding from Medi-Cal or Medicare, it is requested that all providers make information available concerning medical treatment decision-making and advance directives. All providers must comply with state law requirements related to advance directives and medical treatment decision-making.

BACKGROUND

These requirements were enacted as part of the federal Omnibus Budget Reconciliation Act (OBRA) of 1990, P.L. 101-508, Sections 4206 and 4751. Changes to the Medicare requirements may be found at 42 U.S.C. 1395cc(a)(1)(Q) et seq. Medicaid changes are at 42 U.S.C. 1396a(a)(57) et seq. These changes take effect on December 1, 1991.

SUMMARY OF THE REQUIREMENTS

Every hospital, nursing facility, home health agency, hospice, and health maintenance organization (HMO) that receives funds under Medicare or Medi-Cal must:

1. Provide written information to each adult individual as required about the right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right, under California law, to formulate advance directives;

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2. Maintain and provide to individuals written information about their policies respecting the implementation of such rights;
3. Document in the individual's medical record whether or not the individual has executed an advance directive;

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4. Not condition the provision of care or otherwise discriminate based on whether or not the individual has executed an advance directive;
5. Ensure compliance with state law regarding medical treatment decision-making and advance directives; and
6. Provide education to staff and the community on issues concerning advance directives. (Providers can demonstrate compliance with this Medicaid requirement by conducting educational campaigns. This can be accomplished by newsletters, articles in the local newspapers, local news reports, or commercials.)

The written information in numbers 1 and 2 above must be provided to adult individuals as follows:

- o A hospital must give information at the time of the individual's admission as an inpatient.
- o A nursing facility must give information at the time of the individual's admission as a resident.
- o A provider of home health care or personal care services must give information to the individual in advance of the individual's coming under the care of the provider.
- o A hospice program must give information at the time of initial receipt of hospice care by the individual.
- o An HMO must give information at the time the individual enrolls with the organization, i.e., when the HMO enrolls or reenrolls the individual.

IMPLEMENTATION

To assist in the implementation of this federal statute, the California Consortium on Patient Self-Determination was formed. The Consortium is composed of health care providers, professionals, consumers, the Commission on Aging, and the California Department of Health Services. The Consortium

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developed a description of the rights of individuals to make medical treatment decisions and advance directives in California. This description is entitled "Your Right to Make Decisions about Medical Treatment" and is presented in brochure format.

~~This brochure has been adopted as the description of California law which must be provided to individuals as required by this law. It is intended to be used as a brochure to provide patients, residents, and HMO enrollees with basic information about their rights. A copy is enclosed and directions for its use are found below.~~

How to Use the Brochure, "Your Right to Make Decisions about Medical Treatment"

You may reproduce the enclosed brochure as provided--or you may use exactly the same wording, but have it printed in a brochure of your own. Please ensure that nothing is added or removed within the text.

Please note that the following statement must appear at the end of the description of law: "The California Consortium on Patient Self-Determination prepared the preceding text, which has been adopted by the California Department of Health Services to implement Public Law 101-508."

Information about your own facility's or organization's policies and procedures related to medical treatment decision-making and compliance with advance directives may be added after this approved text. Space is provided at the end of the brochure to either add written information about your policies or to indicate that policy information can be found on an accompanying brochure.

Customizing of the brochure may begin with the answer to the very last question, "How can I get more information about advance directives?" The answer to this question may be modified to provide specific information about where individuals may obtain more information about advance directives either within your organization or in your community. You may also wish to provide a copy of the more detailed brochure titled "Making an Advance Directive", which may be obtained from the Pacific Center for Health Policy and Ethics (See "Resources for Further Information", Page 4).

UPDATES

You will be notified if further information or direction is received from the U.S. Department of Health and Human Services about the requirements of this

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law. It is anticipated that federal regulations will be issued in the near future to implement this statute. Also, if changes in California law necessitate a change to the text of the description of the law, a revised version will be mailed to you by the California Department of Health Services.

RESOURCES FOR FURTHER INFORMATION

The Consortium has developed the Patient Self-Determination Handbook to assist health care providers in complying with these new requirements. The handbook includes a legal summary and copies of related statutes, model policies and procedures, information on providing education and training, and other information to assist providers in implementation of this federal law. Please see the enclosed "PSDA Handbook" brochure for information on how to order the Handbook. For more information and to order copies of the patient brochure in other languages, please contact the Pacific Center for Health Policy and Ethics at (213) 740-2541.

Questions regarding implementation of this new federal statute may also be directed to Marilyn I. Pearman, Health Program Specialist, Licensing and Certification at (916) 324-8628.



Margaret DeBow  
Deputy Director

Enclosure