



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

October 23, 2019

Re: DAL NH 19-12
Advance Directives & Advance Care
Planning

Dear Nursing Home Administrator:

The purpose of this letter is to communicate, as well as clarify, the New York State Department of Health's current policy and guidelines regarding advance directives and the recommended use of advance care planning as part of the facility's comprehensive care planning process.

Advance directives are documents, recognized under State law, in which a person specifies what actions should be taken regarding medical treatment, should the person be unable to communicate them. Types of advance directives include but are not limited to: a living will, power of attorney, Medical Orders for Life-Sustaining Treatment (MOLST), and physician orders for Cardiopulmonary Resuscitation (CPR), Do Not Resuscitate (DNR), and Do Not Intubate (DNI).

Advance care planning is an ongoing process in which residents, their families, and their interdisciplinary health care team reflect upon the resident's goals and values, and discuss how they should inform both current and future medical care. This process is essential to ensure residents receive medical care that is consistent with their preferences. The process should include an evaluation of the resident's wishes on a routine basis.

As skilled nursing facilities continue to admit and care for individuals with increasing complex diagnoses, the potential and occurrence for cardiopulmonary arrest within these facilities has also risen. Directed and guided by State (Title 10, Parts 400.21 and 415.3) and Federal (42 CFR, Parts 483.10 & 489, Subpart I) rules and regulations, the Department of Health requires skilled nursing facilities to establish, maintain and implement written policies and procedures regarding the resident's right to formulate an advance directive, as well as the right of refusal of medical and surgical treatment. It is imperative that facility management ensure staff are able to quickly identify a resident's advance directives in cases of emergency, and follow such policies and procedures to ensure resident wishes are maintained. Facility policies and procedures should delineate the various steps necessary to promote and implement these rights, including but not limited to the following as outlined in Appendix PP of the State Operations Manual, under guidance for F-tag 578 - Request/Refuse/Discontinue Treatment; Formulate Advance Directive:

- Determining upon, or near time of admission whether the resident has an advance directive, and if not, if the resident wishes to formulate one;
- Providing information to the resident or resident representative, in a manner easily understood, about the right to formulate an advance directive or refuse medical or surgical treatment;
- Periodically assessing the resident for decision-making capacity and reviewing, as part of the comprehensive care planning process, existing care instructions and whether the resident wishes to continue or change those instructions;

- Establishing mechanisms for documenting and communicating the resident's wishes to those responsible for the resident's direct care, in addition to ensuring that ample, qualified staff trained in emergency procedure and protocol are always available within the facility;
- Ensuring the system utilized by the facility to identify resuscitative status is consistent throughout the facility and readily available in order to provide appropriate emergency intervention without delay; and
- Providing in-services for the purpose of informing and maintaining staff awareness of the facility's advance directive policies and procedures.

The Department of Health thanks you for your attention to this important issue and your continued commitment to quality care and resident safety. For questions or clarification regarding the regulations associated with advance directives, or any part of this guidance please contact the New York State Department of Health, Bureau of Quality Assurance and Surveillance at (518) 408-1267.

Sincerely,

Sheila McGarvey
Division of Nursing Homes & ICF/IID
Surveillance
Center for Health Care Provider Services
and Oversight