Sharing the Experience 2016

Rules and Regulations Breakout Session
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Objectives

Upon completion of the session the participants will:

- Be aware of state and federal regulations regarding ACP
- Identify potential negative outcomes

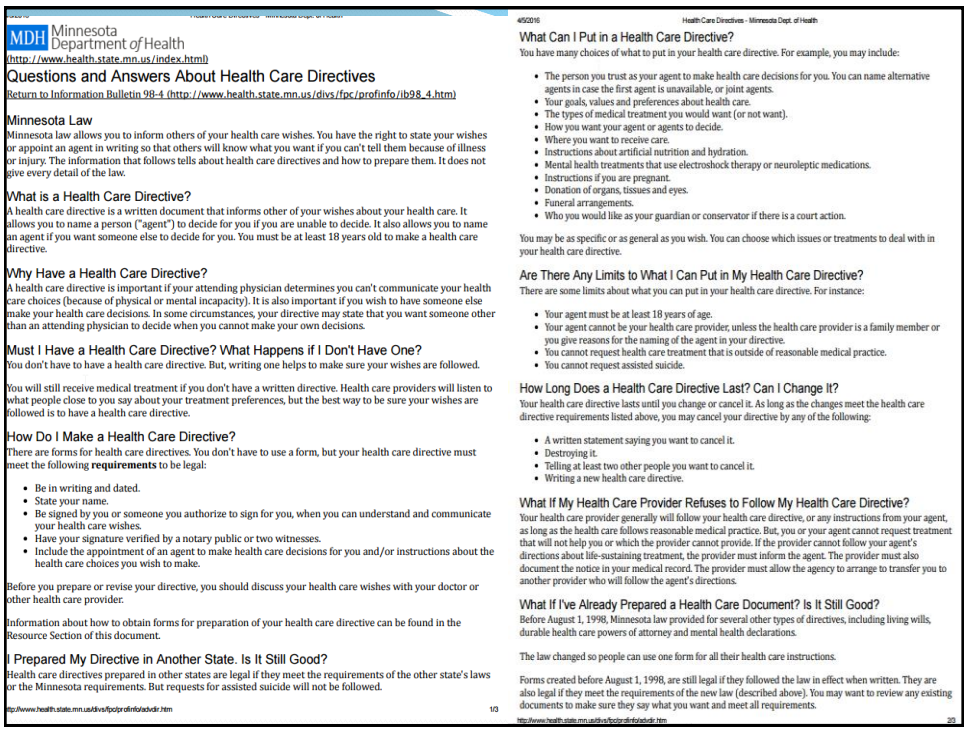
Regulatory Summary

Advance Directives/Advance Care Planning Regulatory and Statutory Requirements Summary

Key: H=Hospital, HH=Home Health, AL=Assisted Living (required to follow HH regs), HO=Hospice, SNF=Skilled Nursing Facility (Nursing Home), TCU=Transitional Care Facility (qualifies as a "Nursing Facility" under CMS and follows SNF regs), ASC=Ambulatory Surgical Center, HOD=Hospital Outpatient Department, BEH=Behavioral Unit, HCH=Health Care Home Clinic

• Provide and document Advance Directive rights information given –in advance of providing care -includes ED, SDS, Obs care-any person likely to be incapacitated -must use exact written description provided @ MN Dept of Health to comply with MN state law	H	HH AL	HO	SNF/TCU	ASC	HOD		
• If patient incapacitated Advance Directive rights information given to designated representative(agent) -Follow up procedures must be in place to provide information to patient once no longer incapacitated	H	HH AL	HO	SNF/TCU	ASC	HOD		
• Assess, document and periodically reassess if resident has capacity				SNF/TCU				
• Document in prominent, readily noticeable part of medical record if patient has a directive -SNF/TCU: obtain, incorporate and consistently maintain documents	H	HH/AL	HO	SNF/TCU	ASC			
• Determine/identify and document the name of any legally authorized representative(agent)/decision maker -SNF/TCU: verify representative has the legal authority	H			SNF/TCU			BEH	
• If patient incapacitated and has designated a "support person" to exercise visitation rights, support person must receive visitation rights handouts in addition to legally designated decision maker (agent) -Patient must also receive once no longer incapacitated. -Must be documented in the medical record	H							
• Mechanism in place to create and/or update advance directive. Ability to refer pt to resources for assistance. -ASC-provide health care directive document if requested	H			SNF/TCU	ASC	HOD	BEH	HCH
• Staff and practitioners are aware of the directives of the patients in their care and honor them in accordance with law, regulation and capabilities. -SNF and TCU- Facility's care must reflect a resident's wishes as expressed in the directive. ACP is ongoing and an integral aspect of comprehensive care planning process. Facility responsible to incorporate information and discussions into medical record and care plan and communicating resident's wishes to staff.	H			SNF/TCU	ASC		BEH	
• Transfer of patients to other facilities includes a copy of the patient's advance directive	H		HO		ASC			
• Pts with care plan must include goals and action plan for end-of-life care and health care directives when appropriate. Goals should be updated in care plan with the pt as frequently as is warranted by their condition.								HCH
• Staff education on policies and procedures for advance directives	H	HH/AL	HO	SNF/TCU	ASC			
• Community education on advance directives. Must document efforts	H	HH/AL	HO	SNF/TCU				
• Written policy on ADs, forgoing or withdrawing life sustaining treatment, & withholding resuscitative services	H					HOD		
• Patient or representative has right to make informed decisions, be informed of health status, be involved in care planning, request/refuse treatment. Hospitals must provide written information on directives, forgoing or withholding treatment and resuscitation.	H		HO					
• Not condition provision or access of care or otherwise discriminate based on the presence of a directive	H	HH/AL	HO	SNF/TCU	ASC			
• Providers may consciously object to follow a directive if allowed by State law -note MN law does not provide clarity on reasons for declination-must transfer if unwilling to provide	H	HH/AL	HO	SNF/TCU	ASC			
• Document wishes re: organ donation when made known & honor within limits of law, regulation, & capability.	H							
• CPR must be initiated in accordance with directive or POLST orders pending EMS unless obvious signs of clinical death or peril to rescuer.CPR certified staff must be available at all times. "No CPR" policies are prohibited.				SNF/TCU				
• Other: Meaningful Use (H): document whether admitted pts 65+ have an advance directive	H							

Informational only. May not reflect most recent regulations. Last reviewed: 7/8/16. Heidi Meyers-Fairview Health Services/Ebenezer/MHealth hmeyers1@fairview.org



MDH Minnesota Department of Health
(http://www.health.state.mn.us/index.html)

Questions and Answers About Health Care Directives

Return to Information Bulletin 98-4 (http://www.health.state.mn.us/divs/fpc/profinfo/ib98_4.htm)

Minnesota Law

Minnesota law allows you to inform others of your health care wishes. You have the right to state your wishes or appoint an agent in writing so that others will know what you want if you can't tell them because of illness or injury. The information that follows tells about health care directives and how to prepare them. It does not give every detail of the law.

What is a Health Care Directive?

A health care directive is a written document that informs other of your wishes about your health care. It allows you to name a person ("agent") to decide for you if you are unable to decide. It also allows you to name an agent if you want someone else to decide for you. You must be at least 18 years old to make a health care directive.

Why Have a Health Care Directive?

A health care directive is important if your attending physician determines you can't communicate your health care choices (because of physical or mental incapacity). It is also important if you wish to have someone else make your health care decisions. In some circumstances, your directive may state that you want someone other than an attending physician to decide when you cannot make your own decisions.

Must I Have a Health Care Directive? What Happens if I Don't Have One?

You don't have to have a health care directive. But, writing one helps to make sure your wishes are followed.

You will still receive medical treatment if you don't have a written directive. Health care providers will listen to what people close to you say about your treatment preferences, but the best way to be sure your wishes are followed is to have a health care directive.

How Do I Make a Health Care Directive?

There are forms for health care directives. You don't have to use a form, but your health care directive must meet the following **requirements** to be legal:

- Be in writing and dated.
- State your name.
- Be signed by you or someone you authorize to sign for you, when you can understand and communicate your health care wishes.
- Have your signature verified by a notary public or two witnesses.
- Include the appointment of an agent to make health care decisions for you and/or instructions about the health care choices you wish to make.

Before you prepare or revise your directive, you should discuss your health care wishes with your doctor or other health care provider.

Information about how to obtain forms for preparation of your health care directive can be found in the Resource Section of this document.

I Prepared My Directive in Another State. Is It Still Good?

Health care directives prepared in other states are legal if they meet the requirements of the other state's laws or the Minnesota requirements. But requests for assisted suicide will not be followed.

What Can I Put in a Health Care Directive?

You have many choices of what to put in your health care directive. For example, you may include:

- The person you trust as your agent to make health care decisions for you. You can name alternative agents in case the first agent is unavailable, or joint agents.
- Your goals, values and preferences about health care.
- The types of medical treatment you would want (or not want).
- How you want your agent or agents to decide.
- Where you want to receive care.
- Instructions about artificial nutrition and hydration.
- Mental health treatments that use electroshock therapy or neuroleptic medications.
- Instructions if you are pregnant.
- Donation of organs, tissues and eyes.
- Funeral arrangements.
- Who you would like as your guardian or conservator if there is a court action.

You may be as specific or as general as you wish. You can choose which issues or treatments to deal with in your health care directive.

Are There Any Limits to What I Can Put in My Health Care Directive?

There are some limits about what you can put in your health care directive. For instance:

- Your agent must be at least 18 years of age.
- Your agent cannot be your health care provider, unless the health care provider is a family member or you give reasons for the naming of the agent in your directive.
- You cannot request health care treatment that is outside of reasonable medical practice.
- You cannot request assisted suicide.

How Long Does a Health Care Directive Last? Can I Change It?

Your health care directive lasts until you change or cancel it. As long as the changes meet the health care directive requirements listed above, you may cancel your directive by any of the following:

- A written statement saying you want to cancel it.
- Destroying it.
- Telling at least two other people you want to cancel it.
- Writing a new health care directive.

What If My Health Care Provider Refuses to Follow My Health Care Directive?

Your health care provider generally will follow your health care directive, or any instructions from your agent, as long as the health care follows reasonable medical practice. But, you or your agent cannot request treatment that will not help you or which the provider cannot provide. If the provider cannot follow your agent's directions about life-sustaining treatment, the provider must inform the agent. The provider must also document the notice in your medical record. The provider must allow the agency to arrange to transfer you to another provider who will follow the agent's directions.

What If I've Already Prepared a Health Care Document? Is It Still Good?

Before August 1, 1998, Minnesota law provided for several other types of directives, including living wills, durable health care powers of attorney and mental health declarations.

The law changed so people can use one form for all their health care instructions.

Forms created before August 1, 1998, are still legal if they followed the law in effect when written. They are also legal if they meet the requirements of the new law (described above). You may want to review any existing documents to make sure they say what you want and meet all requirements.

Skilled Nursing Survey Deficiencies

F152: The facility should verify that a surrogate or representative has the necessary authority

F-155 : Need to provide written policies and procedures on Advance Directives and provide option to formulate an Advance Directive

F-309: Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care

F 314: If a resident has a valid Advance Directive, the facility's care must reflect a resident's wishes as expressed in the Directive, in accordance with State law

F 325: The facility's care reflects a resident's choices

F 329: Whether or not a resident has a directive, the facility is responsible for giving treatment, support, and other care that is consistent with the resident's condition and applicable care instructions.

Assist Living Comprehensive Survey

144A.4191 must include names and contact information of persons the client wishes to have notified in an emergency or if there is a significant adverse change in the clients condition, who has the authority to sign for the client in an emergency, when EMS are not to be summoned

144A.4194 needs to include the name address and telephone number of an emergency contact, clients advance directives if any and documentation of significant changes in the clients status and actions taken in response to the needs of the client

Court cases-

Clinicians May Not Administer LSMT without Consent

Doctors Hospital of Augusta v. Alicea (Ga. 2016)
Doctors Hospital v. Alicea (Ga App 2015)
Daniels v. GGNSC Trussvilee (N.D. Ala. Dec. 29, 2014) (Complaint)
Florida v. Jacaranda Manor (June 2014)
Hallada v. Lakeland Regional Med. Ctr. (Fla. Cir. Ct. Apr. 2013) (Complaint)
Self v. Milyard (D. Colo. 2012)
Sekerez v. Rush Univ. Med. Center. (Ill. App. 2011)
DeArmond v. Permanente Medical (OCSC Nov. 2011) (complaint)
Self v. Milyard (D. Colo. 2011) (complaint)
Jones v. Ruston Hospital (La. App. 2011)
DiGeronimo v. Fuchs (NY Supr. 2011)
Johnson v. University Hospital of North Staffordshire (UK 2010)
Cronin v. Jamaica Hospital (NY Supr. 2009)
Hoslton v. Englewood Hosp. (NJ Super. 2009)
Karem v. Jefferson Manor (Ky. CHFS 2008)
Scheible v Morse Geriatric (Fla. App. 2008)
Terry v. Red River Corp (La. App. 2006)
Folley v. United Surgical (NM complaint 2006)
Marasovic v. Eberhard (Cal. App. 2006)
Loveless v. Colo Springs Mem Hosp (El Paso Cty. Colo 2005)
Furlong v. Catholic Health East (Cal. App. 2004)
Montalvo v. Borkovec (Wis. App. 2002)
Taylor v. Muncie Med. (Ind. App. 2000)
HCA v. Miller (Tex. App. 2000)
Wright v. Johns Hopkins (Md. 1999)
Klavan v. Crozer-Chester Med. (E.D. Pa. 1999)
Gragg v. Calandra (Ill. App. 1998)
Anderson v. St. Francis Hosp. (Ohio 1996)
Osgood v. Genesys Regional Medical Center (Genesee Cty. Mich. 1996)
Strachan v. JFK Hosp. (NJ 1988)
Foster v. Toutellottee (9th Cir. 1983)

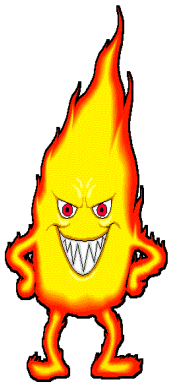
Potential Negative Outcomes

- Patient-safety Actual harm to patients
- Patient wishes are not honored CPR/treatments either done or not done
- Dissatisfied consumers
- Poor patient satisfaction scores
- Negative press
- Dissatisfied staff- caregiver fatigue/distress/ethical dilemmas
- What if this was you or your family member

Wrap Up

- Joint Commission, CMS and MDH are all asking questions on Advance Care Planning
- What if this was you or your family member that wishes were not honored
- It's Everyone's Responsibility
- Increases Patient Satisfaction
- It can save time
- Need to get documents in systems timely
- Its just GREAT PATIENT CARE

Burning Questions???



Contact information

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