

Joseph E. Kernan
Governor

Gregory A. Wilson, M.D.
State Health Commissioner



Indiana State Department of Health

An Equal Opportunity Employer

July 19, 2004

Re: Changes in ISDH Advance Directive Brochure
Statutory Change Affecting Compliance with Federal Conditions of Participation: Patient Rights and State Rules

Dear Administrator:

I am writing to discuss Indiana statute changes relating to advance directives and the resulting issues relating to compliance with federal conditions of participation.

Senate Enrolled Act 133 (2004), as signed by Governor Kernan, becomes effective July 1, 2004. The act sets forth the requirements for a psychiatric advance directive. This change in Indiana law triggers the requirement at Title 42, Chapter IV, Part 489, Subpart I (Advance Directives), Section 489.102 which states, in part, "Providers are to update and disseminate amended information as soon as possible, but not later than 90 days from the effective date of the changes to State law; and..."

The Federal Patient Self Determination Act, 1990, 42 U.S.C. 1395cc(a), Subpart E, Section 4751, requirements for advanced directives under state plans for medical assistance, states, in part, "(58) provide that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations under the requirements of subsection (w)."

As required by the Patient Self Determination Act, the Indiana State Department of Health (ISDH) published a brochure on advance directives. The brochure was last revised in March 1999. The ISDH has updated the brochure to include the psychiatric advance directive statute. The updated brochure adds information on psychiatric advance directives and updates other advance directive information. A copy of the revised brochure is enclosed. The revised brochure may also be found on the ISDH web site at <http://www.in.gov/isdh/regsvcs/providers/consumers.htm>.

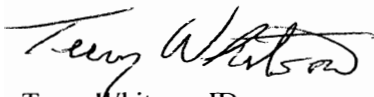
In implementing the new advance directive information, the ISDH recommends the following:

1. By September 29, 2004, providers must provide patients with information on psychiatric advance directives. The advance directive information provided to patients must use the language provided in the ISDH brochure *Advance Directives Your Right to Decide*, Indiana State Department of Health, Revised May 2004.
2. The facility may re-format the ISDH Advance Directives brochure (e.g. facility letterhead, print into facility's own brochure style, duplication of the enclosed document, etc.). The language however must not be altered.
3. For facilities with patients/clients/residents who were admitted prior to September 29, 2004 and who are still in the facility after September 29, 2004, the ISDH recommends that those individuals receive, at a minimum, notice of the new section on psychiatric advance directives.

4. Although the required date for providing information on the new state law is September 29, 2004, the ISDH recommends that providers include information on psychiatric advance directives as soon as possible. While providers may continue to use their current supply of advance directives information until exhausted, an insert on psychiatric advance directives would be appropriate.

If you have any questions or need additional information regarding the implementation of this requirement, please contact Randy Snyder, ISDH Health Care Regulatory Services, 2 North Meridian Street #5A, Indianapolis, IN, 46204; (317) 233-7948; rsnyder@isdh.state.in.us.

Sincerely,



Terry Whitson, JD
Assistant Commissioner
Health Care Regulatory Services

Enclosure: Advance Directives Your Right to Decide, ISDH, Revised May 2004

TW/rds