As a nurse, you know that patients have the right to make their own treatment decisions, but do your patients know? According to a new federal law, it is up to you to see that they do.

On December 1, 1991 the Patient Self-Determination Act, a federal law enacted to ensure patient rights, went into effect. This law requires Medicare- and Medicaid-certified hospitals, nursing homes, home health agencies, hospices, and health maintenance organizations to implement procedures to increase public awareness regarding the rights of patients to make treatment choices. The law is particularly concerned with advance directives, documents specifying the type of treatment individuals want or do not want under serious medical conditions in which they may be unable to communicate their wishes to the physician.

Advance directives generally take one of two forms: a living will or a durable power of attorney for health care. Living wills, which may vary from state to state, outline the medical care individuals want if they become unable to make their own decision. A durable power of attorney for health care, on the other hand, designates another person to act as an "agent" or a "proxy" in making medical decisions if the individual becomes unable to do so.

The bill was introduced in 1989 in response to a concern that a patient's treatment wishes be followed at the end of life. The proposal was later incorporated into the Omnibus Budget Reconciliation Act of 1990. The law supports communication between patients and their health-care providers; it does not comment on the particular decisions patients may make, nor does it require patients to execute advance directives.

The Act has several statutory provisions that health-care providers must follow. The first is to provide all adults with written information about their rights under state law to make health-care decisions, including their right to accept or refuse treatment and the right to execute advance directives. It is important to note that the federal law does not override any state law that would allow a health-care provider to object to implementing an advance directive.

All patients and residents must be informed about the facility's policy on implementing advance directives (for example, a do not resuscitate policy). This information must be given to the individual on admission or, in cases of home health agencies or hospices, before care is administered.

Advance directives must be documented in the patient's medical record. However, the facility must not discriminate in any way against an individual who has executed an advance directive. The facility is responsible for offering staff and community education on advance directives. The Health Care Financing Administration, the agency responsible for administering the Medicaid and Medicare programs, advises individuals to distribute copies of advance directives to family members and physicians, and to keep a copy in a safe but easily accessible place. However, it is the facility's responsibility to discover this information: individuals are instructed that health-care providers will ask them if they have executed an advance directive. The law does not specify if advance directives executed in one state would be honored in another.

The US Department of Health and Human Services will help states to develop written information on state law and will initiate a campaign to increase public awareness of advance directives.

Cheryl Pokalo

RESOURCES ON ADVANCE DIRECTIVES

The American Bar Association Commission on Legal Problems of the Elderly
1800 M Street, NW
Washington, DC 20036
202-331-2297

American Health Decisions
319 E. 46th Street
#9V
New York, NY 10017
212-266-8900

Hastings Center
Institute of Society, Ethics, and the Life Sciences
255 Elm Road
Briarcliff Manor, NY 10510
914-478-0500

Pacific Center for Health Policy and Ethics
444 Law Center
University of Southern California
Los Angeles, CA 90089
213-740-2541

US Department of Health and Human Services
Office of Public Affairs
Health Care Financing Administration
6325 Security Boulevard
Baltimore, MD 21207
202-245-6977