

## **Guidance – Advance Directive Community Education**

Regulatory reference: 42 CFR 489.102(a)(ii)(6)

Provide for community education regarding issues concerning advance directives that may include material required in paragraph (a)(1) of this section, either directly or in concert with other providers and organizations. Separate community education materials may be developed and used, at the discretion of providers. The same written materials do not have to be provided in all settings, but the material should define what constitutes an advance directive, emphasizing that an advance directive is designed to enhance an incapacitated individual's control over medical treatment, and describe applicable State law concerning advance directives. A provider must be able to document its community education efforts.

Guidance from the Federal Register vol. 60, No. 123

Two commenters asserted that the interim final rule lacks guidance on what constitutes minimally sufficient educational efforts. The commenters suggested that the final rule should require that the provider's written community education plan include at a minimum: (1) its intended target audiences, (2) the frequency of its educational efforts, and (3) the expected penetration of the target population to be attained by the educational efforts.

Response: We believe that the intent of the community education requirement is to educate as large a number of individuals as would be reasonable for that provider. However, as noted by the commenters, the interim final rule did not specify a minimum level of activity for the community education effort. In an effort to determine if further guidance was needed in this area, our regional offices recently conducted a survey of a small sample of providers to determine the level of community education efforts among providers. For sample purposes, the regional offices accepted copies of any document generated to publicize and conduct community education efforts. The results indicated that providers are using a variety of methods, for example, workshops, seminars, public meetings, health fairs, civic affairs, and the media.

Our review of the many methods and types of community education documentation maintained by providers leads us to believe that providers are reaching targeted audiences, are conducting frequent campaigns, and raising the advance directive issue [[Page 33274]] before new audiences. Therefore, most of the commenter's suggestions are currently being achieved by providers without explicit guidance.

Based on the survey, we do not feel it is necessary to establish the type of prescriptive requirements suggested by the commenters. Instead, we are revising the regulations at Secs. 417.436(d)(1)(B)(vii) and 489.102(a)(6) to require that providers must be able to document their community education efforts. Although we are not limiting provider flexibility in meeting this requirement, one possible method for a provider to document its efforts would be to maintain copies of any materials used as part of its community education programs. We believe that the maintenance of community education documentation will strengthen our ability to enforce the community education requirement without limiting provider flexibility in this area. While we believe that the requirement that providers maintain documentation will assist us in evaluating the level of community education efforts achieved by providers, we considered whether it would be an added burden to require the maintenance of such documentation. However, in all likelihood, providers will maintain copies of the materials used as part of their community

education efforts for their own purposes, and we are not limiting the type of documentation that would be acceptable. Thus, we do not believe that this requirement constitutes an added burden.

### Guidance from the DHCFP On Meeting Community Education Requirements

The Patient Self-Determination Act requires providers to educate the community about advance directives. The educational materials must inform members of the public of their rights under state law to make decisions about their medical care, the right to formulate an advance directive, and the provider's implementation policies concerning an individual's advance directive.

The community efforts may be carried out in a variety of methods or formats – such as health fairs, seminars, or workshops. The statute allows facilities to join with others to fulfill the education requirements. A provider must be able to document its community education efforts. Documentation may include maintaining copies of any materials used, such as a brochure.

The same materials used to inform patients of their rights regarding advance directives may also be used to meet the community education requirement.

Here are some possible ways to accomplish the community education required by law:

- Distribute written materials at every opportunity, not just when patients are admitted. Here are some ways this might be done:
  - Medical staff can provide information to patients in their offices.
  - Senior citizens centers or senior citizen groups may distribute the information in a variety of ways.
  - The local library might put materials in its collection.
  - If community groups ask for information about your business, include materials on advance directives.
  - Employers and labor unions may be interested in providing the information to their staff and members.
  - Give this material to adults who tour or visit the facility.
  - Use public service announcements on radio and/or television, and newspaper stories or advertisements to offer the brochures to the public.
  - Make materials available on your website. Ensure that you are compliant with Section 508 of the Rehabilitation Act.

Keep track of how materials are distributed, periodically reviewing the program to decide if there are other opportunities to reach people.

- Sponsor periodic community forums.

Though forums are time consuming because they require careful planning, they are often worth the effort. A provider may hold them as frequently or infrequently as needed in the community. They

can be as simple as one knowledgeable person explaining the law or more complicated, such as convening a panel to present information and answer questions.

- Seek opportunities to meet with community groups.

Some groups may want to join with your business to develop and present community education programs. Good liaisons can enhance the quality of the program and increase the number of people reached. Another idea is to seek out community organizations and ask if they are receptive to a presentation during a meeting.

Keep records of contacts. Review the list periodically to decide which groups have been missed and what opportunities are available for reaching new groups.

- Work with news media.

News media can be helpful in any community education program. Here are some ways to incorporate them:

- Use news releases to tell the media about the law and education programs undertaken.
- Offer an expert spokesperson to the media for interviews. This could result in a routine news story, feature story, television or radio interview, or an appearance on a talk show. The media will find real stories about the ethical dilemmas and struggles of medical providers compelling, but remember the duty to guard the privacy of individual patients.
- Offer patient information materials or announce events through radio and television public service announcements.
- Talk to the local media owners, editors, and/or managers about the project and ask for editorial support. Submit opinion pieces stating views on the need for advance directives.

Any combination of these suggestions may be utilized to undertake community education. The most important part of doing this correctly is knowing the community and assessing how best to reach it. Think about the community and the people who might be interested in advance directives. Elderly and retired people come immediately to mind – but what about younger people just starting families? They may be ready to make orderly life plans. An obstetrics unit may provide a link to these younger individuals.

A second important step is to develop at least one expert on the subject of advance directives. Chances are that there is someone in the community with an interest in this issue. If no one on staff is available, there might be an attorney, clergy member, or physician with particular expertise. Finding a person or persons truly interested in this topic, who has the sensitivity and enthusiasm to talk about it, can make or break a project.