

**DATE:** March 18, 1997

**FROM:** Acting Deputy Bureau Director  
Office of Survey and Certification  
Health Standards and Quality Bureau

**SUBJECT:** Clarification of Advance Directives Requirements

**TO:** Associate Regional Administrator  
Division of Health Standards and Quality  
Regions I - X

The purpose of this memorandum is to issue a clarification of advance directive requirements. In earlier correspondence, this office indicated,

A Medicare or Medicaid certified long term care facility may not establish and implement a do not resuscitate policy for its residents. The right to formulate an advance directive applies to each individual resident without condition. A facility, therefore, that wishes to establish as a matter of policy that it is a "do not resuscitate facility" would violate the right of residents to formulate an advance directive, specified at sections 1876© and 1902(a)(57) and (58) of the Social Security Act and implemented by regulations at 42 CFR 489.102(a). Certified facilities are required to inform residents of their right to formulate an advance directive at their option.

That statement requires further clarification. Section 42 CFR 489.102 specifies that if and to the extent that State law allows a provider not to implement an advance directive on the basis of conscience, the provider must issue a clear and precise statement to that effect. At a minimum, such a statement of limitation should:

- (a) clarify any differences between institution-wide conscientious objections and those that may be raised by individual physicians;
- (b) identify the state legal authority permitting such objection; and
- © describe the range of medical conditions or procedures affected by the conscientious objection.

Thus, while each resident has the right without condition to formulate an advance directive, within certain limited circumstances, only if allowed under State law, a facility or an individual physician may conscientiously object to an advance directive. If State law permits conscientious objection, the facility is required to stay within the limits of State law and to follow the requirements

specified at 483.10(b) and 489.102. If State law is silent about this issue, then the facility may not conscientiously object to an advance directive that is permissible in that State.

/s/

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