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CMS Regulatory Update at a Glance Q&A

Q

Does the advance directive information need to be made available in other languages?

A

The 416.50 (a) interpretive guidelines state the following:

The notice must be provided and explained in a language and manner that the patient or the patient's representative or surrogate understands, including patients who do not speak English or with limited communication skills. The patient has the choice of using an interpreter of his or her own, or one supplied by the ASC. A professional interpreter is not considered to be a patient's representative or surrogate. Rather, it is the professional interpreter's role to pass information from the ASC to the patient. In following translation practices, CMS recommends, but does not require, that a written translation be provided in languages that non-English speaking patients can read, particularly for languages that are most commonly used by non-English-speaking patients of the ASC.

Q

Does the TB surveillance apply to medical staff - non-employees?

A

According to the CDC, TB Surveillance applies to full time, part time, per diem and contracted staff. I inquired about physicians and allied health staff who have been granted privileges, as they do not fit into those categories. The CDC recommended asking your local public health department for their recommendation.



Is it enough to laminate a copy of the patient rights to show to the patient when they check-in for the procedure or do they have to actually receive a copy?



The patient must actually receive a copy.

416.50 (a) states: An ASC must, prior to the start of the surgical procedure, provide the patient, or the patient's representative, or the patient's surrogate with verbal and written notice of the patient's rights in a language and manner that ensures the patient, the representative, or the surrogate understand all of the patient's rights as set forth in this section.



Does the patient have to sign a form acknowledging they received or declined receiving a copy of the rights?



There is not a requirement that a patient sign acknowledging receipt. However, the ASC needs to be able to demonstrate that patients receive a copy. The old adage of "if it isn't written, it wasn't done" applies here.



We lease our surgery center space from a hospital but we are our own entity. Do we follow the TB program shown in the webinar or do we follow the hospital's protocol?



Your leasor does not matter unless you are an HOPD operating under the hospital license. If you are a separate and distinct entity, as defined by Medicare, you can follow your own facility policies.



Does every patient, no matter the reason for visit, need to be asked about the Advance Directive?



Yes. Medicare does not exempt any patient procedure or sedation level within the Advance Directive regulation.



Q

I am unclear about whether or not we can choose not to honor an Advance Directive in an out patient setting?

A

You cannot give a blanket statement that you do not honor any advance directives. You can still, on the basis of conscience which you must document in your policy, decide to not honor the element of resuscitation in a patients advance directive, as long as your state allows this. 416.50 c states:

- The ASC must include in the information concerning its advance directive policies a clear and precise statement of limitation if the ASC cannot implement an advance directive on the basis of conscience or any other specific reason that is permitted under State law. A blanket statement of refusal by the ASC to comply with any patient advance directives is not permissible. However, if and to the extent permitted under State law, the ASC may decline to implement elements of an advance directive on the basis of conscience or any other reason permitted under State law if it includes in the information concerning its advance directive policies a clear and precise statement of limitation.

416.50 c. goes on to state:

- For example, the ASC's notice of limitation could, if permitted by State law, indicate that it would always attempt to resuscitate a patient and transfer that patient to a hospital in the event of deterioration.



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