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Applicability: DSN Boards, Contracted Service Providers, DDSN
Regional Centers

PURPOSE

The purpose of this directive is to implement the federal “Patient Self Determination Act” (PSDA) and encourage the execution of advance health care directives. The PSDA requires that each hospital and nursing agency receiving federal Medicare or Medicaid funds provide information to every consumer/resident, about the agency’s policies concerning implementation of Advance Directives, and distribute a written description of State law concerning Advance Directives to the consumer/resident. It is also the declared policy of the State of South Carolina to promote the use of Advance Directives as a means of encouraging consumer self-determination and avoiding uncertainty in a health care crisis.

POLICY

Many **South Carolina** Department of Disabilities and Special Needs (DDSN) consumers are currently competent and capable of making health care decisions for themselves. However, some may experience incapacity at some point in their lives which has an adverse impact on their ability to make appropriate decisions regarding health care. The completion of an Advance Directive stating their desires regarding the provision or withholding of medical care in anticipation of such an event is recommended. However, no **agency board/provider** serving

DDSN consumers will condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance health care directive.

Individuals with an intellectual disability or related disability, autism, head and spinal cord injuries, or other related disabilities are fully entitled to all the human and legal rights available to other citizens. Because the individual's disability may adversely impact his/her decision-making process, close scrutiny must be given when consent from a person with a disability is required for a proposed activity or procedure. Assessment for competency related to health care decisions must be determined in accordance with DDSN Directive 535-07-DD: Obtaining Consent for Minors and Adults, and the South Carolina Adult Health Care Consent Act (S.C. Code Ann. § 44-66-10 [Supp. 2012]). This Directive only applies to those consumers who are capable to make decisions regarding their health care as defined in DDSN Directive 535-07-DD: Obtaining Consent for Minors and Adults.

DEFINITION

Advance Directives:

For purposes of the Patient Self Determination Act and this Directive, "Advance Directive" means a written instruction such as a Living Will or Health Care Power of Attorney, recognized under State law (whether by statute or by a court of competent jurisdiction) and relating to the provision of health care when the individual is incapacitated.

South Carolina provides by statute for two types of Advance Directives:

- A. **Living Will** - The Death with Dignity Act authorizes competent adults to express their wishes regarding the use or withholding of life-sustaining procedures, including artificial nutrition and hydration, in the event they are diagnosed with a terminal condition or are in a state of permanent unconsciousness and in the further event that they are incapacitated or otherwise unable to express their desires. The statute creates a form for this purpose entitled "Declaration of a Desire for a Natural Death" (see Appendix A). This document and those similar in purpose are commonly referred to as a "Living Will." Found at S.C. Code Ann. § 44-77-50.
- B. **Health Care Power of Attorney** - The South Carolina Probate Code authorizes competent adults to designate another person to make decisions on their behalf about their medical care in the event they become incapacitated. The statutory form created for this purpose is entitled "Health Care Power of Attorney" (see Appendix B). Found at S.C. Code Ann. § 62-5-504 (Supp. ~~2012~~ 2015).

Consumers may also have prepared other forms of Advance Directives or put into writing their desires concerning certain types of medical care. State statutes; however, require that alternative forms of Advanced Directives must substantially correspond to the forms referenced above. They must also be signed by the consumer and two (2) witnesses.

PROCEDURE

A. Providing Information

1. Each service provider delivering residential services shall develop policies and procedures to ensure that upon admission, adult consumers will be provided with a written statement of the agency's policy regarding the implementation of Advance Directives, and also be provided with a written explanation of the South Carolina law concerning Advance Directives (see Appendix C).
2. The consumer's medical record maintained by the residential service provider shall be documented to reflect that the required information was provided.

B. Requesting Information

1. Residential service providers' policies shall state that upon admission of adult consumers, staff will inquire into the existence of Advance Directives previously executed by the consumer. The consumer's medical record maintained by the residential service provider shall be documented as to the response to the inquiry.
2. In the event staff are aware that a consumer has executed an Advance Directive, they shall request a copy and maintain it in the consumer's record. In the event of admission to a hospital or nursing home, staff shall contact the hospital/nursing home to make them aware of, and supply, a copy of the consumer's Advance Directive if the consumer's family does not do so.
3. If the consumer is transferred to any other DDSN facility or service provider, the Advance Directive(s) shall be sent to the receiving service provider for inclusion in the individual's chart at such service provider along with other consumer records.

C. Providing Assistance

Residential facilities shall assist apparently competent consumers and consumers who desire to prepare an Advance Directive. Assistance shall include the following:

1. **Information:** Staff will refer consumers to sources of guidance to facilitate informed decision-making. Examples of such guidance can be found at the following internet sites.
 - a. <http://www.re-quest.net/g2g/legal-forms/medical-directives/>
 - b. <http://www.agingwithdignity.org/five-wishes.php>
2. **Provision of approved forms:** Staff shall make available to those interested individuals copies of the approved State forms for Advance Directives (see Appendix A and B).

3. Staff shall not serve as a witness to the declarant's signature if they are or have been directly involved in the consumer's care. Staff shall not accept appointment as an agent in a Health Care Power of Attorney or Declaration of a Desire for a Natural Death.

Staff need not provide assistance to a consumer in circumstances in which staff believe the consumer is unable to make an informed decision regarding the execution of an Advance Directive.

Susan Kreh Beck, Ed.S., NCSP
Associate State Director-Policy
(Originator)

Beverly A. H. Buscemi, Ph.D.
State Director
(Approved)

To access the following attachments, please see the agency website page "Attachments to Directives" under this directive number at <http://www.ddsn.sc.gov/about/directives-standards/Pages/AttachmentstoDirectives.aspx>.

- Appendix A: Declaration of a Desire for a Natural Death
- Appendix B: Health Care Power Of Attorney
- Appendix C: Your Right To Make Decisions About Your Health Care