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| **F153** | **483.10(b)(2)** | The resident or his or her legal representative has the right—  

(i) Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and  

(ii) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and 2 working days advance notice to the facility.  

**Interpretive Guidelines §483.10(b)(2)**  
An oral request is sufficient to produce the current record for review.  
In addition to clinical records, the term “records” includes all records pertaining to the resident, such as trust fund ledgers pertinent to the resident and contracts between the resident and the facility.  
“Purchase” is defined as a charge to the resident for photocopying. If State statute has defined the “community standard” rate, facilities should follow that rate. In the absence of State statute, the “cost not to exceed the community standard” is that rate charged per copy by organizations such as the public library, the Post Office or a commercial copy center, which would be selected by a prudent buyer in addition to the cost of the clerical time needed to photocopy the records. Additional fees for locating the records or typing forms/envelopes may not be assessed. |
| **F154** | **$483.10(b)(3)** | The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition;  

**Interpretive Guidelines §483.10(b)(3)**  
“Total health status” includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments. Information on health status must be presented in language that the resident can understand. This includes minimizing use of technical jargon in communicating with the resident, having the ability to communicate in a foreign language and the use of sign language or other aids, as necessary. (See §483.10(d)(3), F175, for the right of the resident to plan care and treatment.) |
The resident has the right to be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident’s well-being;

§483.10(b)(4)

The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (8) of this section; and

§483.10(b)(8)

The facility must comply with the requirements specified in subpart I of

Procedures §483.10(b)(3)

Look, particularly during observations and record reviews, for on-going efforts on the part of facility staff to keep residents informed. Look for evidence that information is communicated in a manner that is understandable to residents and communicated at times it could be most useful to residents, such as when they are expressing concerns, or raising questions, as well as on an on-going basis.

Interpretive Guidelines §483.10(d)(2)

“Inform ed in advance” means that the resident receives information necessary to make a health care decision, including information about his/her medical condition and changes in medical condition, about the benefits and reasonable risks of the treatment, and about reasonable available alternatives.

Interpretive Guidelines §483.10(b)(4) and b(8)

INTENT: (F155) §483.10(b)(4) and (8) Rights Regarding Treatment and Participation in Experimental Research and Advance Directives

The intent of this requirement is that the facility promotes these rights by:

• Establishing and maintaining policies and procedures regarding these rights;

• Informing and educating the resident about these rights and the facility’s policies regarding exercising these rights;
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| F155 cont. | part 489 of this chapter relating to maintaining written policies and procedures regarding advance directives. These requirements include provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the individual’s option, formulate an advance directive. This includes a written description of the facility’s policies to implement advance directives and applicable State law. | • Helping the resident to exercise these rights; and  
• Incorporating the resident’s choices regarding these rights into treatment, care and services.  

NOTE: While the language of 42 C.F.R §483.10(b)(8) applies only to adults, states may have laws that govern the rights of parents or legal guardians of children to formulate an advance directive. The CMS believes that this is an important issue for the parents/guardians of terminally ill or severely disabled children. Therefore surveyors are encouraged to refer to state law in cases where concerns arise regarding advance directives in non-adult populations. The regulatory language found under 42 C.F.R. § 483.10(b)(4) applies to all residents, regardless of age.  

**While the statute and regulation include the term “all adult residents,” this guidance should be interpreted to include all residents regardless of age, including children and their legal representatives.**  

**DEFINITIONS**  

“Advance care planning” is a process used to identify and update the resident’s preferences regarding care and treatment at a future time including a situation in which the resident subsequently lacks the capacity to do so; for example, when a situation arises in which life-sustaining treatments are a potential option for care and the resident is unable to make his or her choices known.  

“Advance directive” means, according to §489.100, a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State), relating to the provision of health care when the individual is incapacitated. Some States also recognize a documented oral instruction.  

“Cardiopulmonary resuscitation (CPR)” refers to any medical intervention used to restore circulatory and/or respiratory function that has ceased.
“Durable Power of Attorney for Health Care” (a.k.a. “Medical Power of Attorney”) is a document delegating to an agent the authority to make health care decisions in case the individual delegating that authority subsequently becomes incapacitated.

“Experimental research” refers to the development, testing and use of a clinical treatment, such as an investigational drug or therapy that has not yet been approved by the FDA or medical community as effective and conforming to accepted medical practice.

“Health care decision-making” refers to consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or a procedure to maintain, diagnose, or treat an individual’s physical or mental condition.

“Health care decision-making capacity” refers to possessing the ability (as defined by State law) to make decisions regarding health care and related treatment choices.

“Investigational or experimental drugs” refer to new drugs that have not yet been approved by the FDA or approved drugs that have not yet been approved for a new use, and are in the process of being tested for safety and effectiveness.

“Life-sustaining treatment” is treatment that, based on reasonable medical judgment, sustains an individual’s life and without it the individual will die. The term includes both life-sustaining medications and interventions (e.g. mechanical ventilation, kidney dialysis, and artificial hydration and nutrition). The term does not include the administration of pain medication or other pain management interventions, the performance of a medical procedure related to enhancing comfort, or any other medical care provided to alleviate a resident’s pain.²

“Legal representative” (e.g., “Agent,” “Attorney in fact,” “Proxy,” “Substitute decision-maker,” “Surrogate decision-maker”) is a person designated and authorized by an advance directive or State law to make a treatment decision for another person in the event the other person becomes unable to make necessary health care decisions.
“Treatment” refers to interventions provided to maintain or restore health and well-being, improve functional level, or relieve symptoms.

**OVERVIEW**

Traditionally, questions of care were resolved at the bedside through decision-making by an individual, his or her family and health care practitioner. As technological advances have increased the ability of medicine to prolong life, questions have arisen concerning the use, withholding, or withdrawing of increasingly sophisticated medical interventions.

The Federal Patient Self-Determination Act contained in Public Law 101-508 is the authority on an individual’s rights and facility responsibilities related to Advance Directives. The right of an individual to direct his or her own medical treatment, including withholding or withdrawing life-sustaining treatment, is grounded in common law (judge-made law), constitutional law, statutory law (law made by legislatures) and regulatory mandates governing care provided by facilities. Several landmark legal decisions have established an enduring judicial precedence for the legal principles of advance directives and the right to refuse or withhold treatment.3,4,5,6

These legal developments have influenced standards of professional practice in the care and treatment of individuals in health care facilities. Several decades of professional debate and discussion have simultaneously advanced the thinking on these matters and promoted implementation of pertinent approaches to obtaining and acting on patient/resident wishes.7,8

**ESTABLISHING AND MAINTAINING POLICIES AND PROCEDURES REGARDING THESE RIGHTS**

The facility is required to establish, maintain, and implement written policies and procedures regarding the residents’ right to formulate an advance directive, refuse medical or surgical treatment and right to refuse to participate in experimental research. In addition, the facility is