believes that most agencies and facilities do not have the legal expertise necessary to perform these activities. In addition, the commenter suggests that HCFA's interpretive guidelines should address an individual's right to refuse to discuss the subject of advance directives (for example, when an individual's religious or personal beliefs preclude discussion).

Response: Sections 1866(f)(1)(A) and 1902(w)(1)(A) of the Act require providers to provide written information concerning an individual's rights under State law (whether statutory or as recognized by the courts of the State) concerning the right to accept or refuse medical or surgical treatment and to formulate an advance directive. These sections do not require detailed explanations of State law concerning such rights. We believe that the exact content and complexity of laws concerning these rights vary from State to State and thus it may be burdensome for some States to provide detailed explanations of State law. As we stated in the interim final rule, we believe that it would be consistent with the statute to use a summary notice that covered the legally-required elements (that is, describing the purpose and the concept of an advance directive and the individuals' rights under State law to accept or refuse medical or surgical treatment under State law, and describe the provider's policy and procedures). However, we do not wish to discourage providers from voluntarily training staff to assist patients in developing an advance directive, in any way permissible by State law. We do not believe it is necessary to state explicitly in our guidelines that an individual may refuse to discuss advance directives. We expect that providers or other eligible organizations will address this sort of situation merely by documenting in the medical record that the individual was provided written information concerning advance directives and chose not to discuss his or her rights in this area.

Comment: One commenter suggested that a hospital should not be required to distribute exact copies of its policies and procedures to patients upon admission to the hospital. Instead, the commenter suggested that it should be sufficient to supply a statement that the hospital follows the State law and a statement concerning the availability of the hospital's policy and procedures. Other commenters expressed concern that the provision of exact copies of policies and procedures to individuals would mean that they would receive voluminous materials that they would probably find somewhat meaningless, confusing and much less useful than they would find prepared summaries written more for their understanding. Several commenters believe that furnishing patients with written policies with respect to implementation of advance directives can be time-consuming because existing medical policy documents would have to be converted into more easily understood summaries. Yet, these more easily understood summaries may inordinately simplify a complex decision-making process.

Response: We agree that exact copies of medical staff policy documents need not be provided to patients. Sections 1866(f)(1)(A) and 1902(w)(1)(A) of the Act require that the individual receive certain basic information concerning an individual's rights under State law, including the right to accept or refuse medical and surgical treatment, the right to formulate advance directives, and the policy of the hospital or other provider with respect to implementing such rights under the law. While we recognize that preparing this material may be a challenge, the law requires that it be done, and providers must take the necessary steps to ensure the written information is understandable to the patients. We provided a detailed bibliography of published materials on this matter in the March 6, 1992 interim final rule (57 FR 8200), and a number of national groups have continued to work to provide materials that will assist hospitals and other providers in this task. Although we do not intend to prescribe the content and format of the written information, it must clearly convey to individuals the required basic information about the individual's rights under State law to accept or refuse medical or surgical treatment, the right to formulate advance directives and the provider's written policies respecting the implementation of such rights. Further explanation of an individual's rights pertaining to advance directives should be made available upon request.

Comment: One commenter believes that good patient/physician decision-making practices may be hampered since other disciplines such as nurses actually may be disseminating advance directive material to the patient, as well as answering any questions the patient may have concerning advance directives. To avoid misunderstandings and potential trauma to patients, the commenter suggested that physicians or State health officials distribute this information to a patient before admission to a hospital.

Response: We believe that a clear understanding of an individual's rights in this area should improve the quality of patient/physician decision-making, regardless of who disseminates the information. We agree that the optimum time for the individual to receive this sort of information is before entering the hospital and presume that the community education programs will accomplish this over time. As noted above, we have no statutory authority to designate specific disciplines to present this information to individuals and, in the absence of State law, we believe that this matter should be left to the discretion of the provider.

Comment: One commenter opposed the statement in the interim final rule that when a patient is being transferred from a hospital to a nursing home, the hospital discharge planner may provide the information (including the nursing home's policies regarding the implementation of advance directives) on behalf of the nursing home in the course of coordinating the smooth transfer of the patient (57 FR 8197). The commenter believes that such coordination promotes the possibility that some patients may not receive the information. In addition, the commenter expressed concern that these arrangements may result in disputes between hospitals and nursing facilities concerning responsibility for errors in disseminating required information.

Response: While we recognize that coordination between hospitals and nursing homes with respect to advance directives should be carefully planned and implemented, we do not believe that these arrangements should be prohibited. However, providers and organizations are by no means relieved of their responsibility for meeting all advance directive requirements when they enter into a coordinated arrangement such as the one discussed above between a hospital and a nursing home. Any deficiencies found on the part of a hospital or nursing home in complying with the advance directive requirements will be subject to the enforcement procedures described above in section II.D. We note that the illustration of a hospital providing a nursing facility's information about rights under State law on behalf of the nursing facility was an example of permissible coordinating efforts and not a requirement. We have revised §§ 489.102(a)(1)(i) and 483.10(b)(8) to state that providers are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the advance directive requirements are met.

Comment: One commenter suggested that there is a potential conflict between the implementation of an advance