



Center for Medicaid, CHIP, and Survey & Certification/Survey & Certification Group

Ref: S&C: 11-36-Hospital/CAH

DATE: September 7, 2011

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Hospital Patients' Rights to Delegate Decisions to Representatives; New Hospital and Critical Access Hospital (CAH) Patient Visitation Regulation

Memorandum Summary

- **President's Directive:** On April 15, 2010 the President issued a memo concerning hospital visitation and designation of representatives.
- **Clarification of Patients' Rights Concerning Designation of Representatives:** Hospitals are obligated under certain circumstances to extend patients' rights to patients' representatives. The Centers for Medicare & Medicaid Services (CMS) expects hospitals to give deference to patients' wishes concerning their representatives, whether expressed in writing, orally, or through other evidence. Hospital Appendix A is being revised to clarify the applicable requirements.
- **Hospital Visitation Policies:** CMS has amended the hospital and CAH Conditions of Participation (CoPs) to require protection of a patient's right to have and designate visitors. Hospital Appendix A and CAH Appendix W are being updating accordingly.

On April 15, 2010 the President issued a memorandum to the Secretary of Health and Human Services (copy enclosed) directing the initiation of rulemaking to ensure that hospitals respect the right of patients to have and designate visitors. The memorandum also directs the Secretary to issue guidance that clarifies existing regulatory requirements at 42 CFR 482.13, governing the right of a patient's representatives to make informed decisions concerning the patient's care, and 42 CFR 489.102(a), concerning advance directives, such as durable powers of attorney and health care proxies. This Survey & Certification Memorandum provides the clarifications of existing regulations and policy guidance concerning new regulations that fulfill the expectations of the President's memorandum.

Hospital Patients' Rights and Patient Representatives. The hospital CoP at 42 CFR 482.13 establishes a number of requirements regarding patients' rights, several of which may be exercised by or involve representatives designated by patients:

- Notice of the patient's rights must be given to the patient or patient's representative. (§482.13(a)(1))
- Patients (or their representatives) have the right to participate in the development and implementation of their plan of care. (§482.13(b)(1))
- The right to make informed decisions regarding the patient's care may also be exercised by the patient's representative as permitted under State law. This right to make informed decisions includes being informed about the patient's health status, being involved in care planning and treatment, and being able to request or refuse treatment. (§482.13(b)(2))
- The patient has the right to formulate an advance directive, which may include delegation of the right to make decisions about the patient's care to a representative, as well as designation of a support person. The regulation further requires that notice be given to the patient concerning the hospital's advance directives policy. (§482.13(b)(3), which references §489.102)
- A family member or representative of the patient's choice must be promptly notified of the patient's admission to the hospital. (§482.13(b)(4))

CMS expects hospitals to give deference to patients' wishes concerning their representatives, whether expressed in writing, orally, or through other evidence. We are revising relevant portions of the State Operations Manual Hospital Appendix A to clarify CMS's expectations regarding hospitals' recognition of patients' representatives. We are also taking this opportunity to incorporate into Appendix A revisions that were made to the required patient disclosure provisions of Part 489 and that are enforced under §482.13(b)(2). These revisions were discussed in S&C-08-07, December 14, 2007, and S&C-09-25, February 13, 2009.

CAHs and Advance Directives

Sections 42 C.F.R. 489.100, 489.102 and 489.104 of the provider agreement regulations govern advance directive requirements that apply to CAHs as well as to hospitals. When surveyors assess a CAH's compliance with the requirements at §485.608(a), which specify that the CAH must be in compliance with applicable Federal laws and regulations related to the health and safety of patients, they must include evaluation of the CAH's policies, procedures and practices concerning advance directives. We are adding guidance to Appendix W that explains the advance directives requirements CAHs must comply with. We are also updating the guidance for §485.608(a) to incorporate into Appendix W revisions that were made to the required patient

disclosure provisions of Part 489 and that are enforced under §482.13(b)(2), that were discussed in S&C-08-07, December 14, 2007 and S&C-09-25, February 13, 2009.

Hospital and CAH Patients' Visitation Rights

CMS has adopted new standards at §482.13(h) for hospitals and §485.535(f) for CAHs that require hospitals and CAHs to:

- Adopt written policies and procedures concerning patients' visitation rights, including any clinically reasonable and necessary restrictions or limitations on visitation;
- Provide notice to patients or their support persons (where appropriate) of their visitation rights, including the right to receive, subject to the patient's consent, visitors designated by the patient, including but not limited to a spouse, domestic partner (including a same-sex domestic partner), another family member, or a friend. The notice must also advise of the patient's right to withdraw or deny consent at any time;
- Not restrict, limit, or deny visitation privileges based on race, color, national origin, religion, sex, gender identity, sexual orientation, or disability; and
- Ensure that all visitors enjoy full and equal visitation privileges consistent with the patient's preferences.

Attached is an advance copy of the revised Appendix A and Appendix W provisions. The final version will be released as a Publications Manual transmittal at a later date and may differ slightly from this advance copy.

Questions about this guidance should be addressed to Marilyn Dahl at marilyn.dahl@cms.hhs.gov or Georganne Kuberski at georganne.kuberski@cms.hhs.gov.

Effective Date: Immediately. Please ensure that all appropriate staff are fully informed within 30 days of the date of this memorandum.

Training: This policy should be shared with all survey and certification staff and their managers.

/s/

Thomas E. Hamilton

Attachments (2)

cc: Survey & Certification Regional Office Management

**The White House
Office of the Press Secretary
For Immediate Release
April 15, 2010
Presidential Memorandum - Hospital Visitation**

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES
SUBJECT: Respecting the Rights of Hospital Patients to Receive Visitors and to Designate Surrogate Decision Makers for Medical Emergencies

There are few moments in our lives that call for greater compassion and companionship than when a loved one is admitted to the hospital. In these hours of need and moments of pain and anxiety, all of us would hope to have a hand to hold, a shoulder on which to lean -- a loved one to be there for us, as we would be there for them.

Yet every day, all across America, patients are denied the kindnesses and caring of a loved one at their sides -- whether in a sudden medical emergency or a prolonged hospital stay. Often, a widow or widower with no children is denied the support and comfort of a good friend. Members of religious orders are sometimes unable to choose someone other than an immediate family member to visit them and make medical decisions on their behalf. Also uniquely affected are gay and lesbian Americans who are often barred from the bedsides of the partners with whom they may have spent decades of their lives -- unable to be there for the person they love, and unable to act as a legal surrogate if their partner is incapacitated.

For all of these Americans, the failure to have their wishes respected concerning who may visit them or make medical decisions on their behalf has real consequences. It means that doctors and nurses do not always have the best information about patients' medications and medical histories and that friends and certain family members are unable to serve as intermediaries to help communicate patients' needs. It means that a stressful and at times terrifying experience for patients is senselessly compounded by indignity and unfairness. And it means that all too often, people are made to suffer or even to pass away alone, denied the comfort of companionship in their final moments while a loved one is left worrying and pacing down the hall.

Many States have taken steps to try to put an end to these problems. North Carolina recently amended its Patients' Bill of Rights to give each patient "the right to designate visitors who shall receive the same visitation privileges as the patient's immediate family members, regardless of whether the visitors are legally related to the patient" -- a right that applies in every hospital in the State. Delaware, Nebraska, and Minnesota have adopted similar laws.

My Administration can expand on these important steps to ensure that patients can receive compassionate care and equal treatment during their hospital stays. By this memorandum, I request that you take the following steps:

1. Initiate appropriate rulemaking, pursuant to your authority under 42 U.S.C. 1395x and other relevant provisions of law, to ensure that hospitals that participate in Medicare or Medicaid respect the rights of patients to designate visitors. It should be made clear that

designated visitors, including individuals designated by legally valid advance directives (such as durable powers of attorney and health care proxies), should enjoy visitation privileges that are no more restrictive than those that immediate family members enjoy. You should also provide that participating hospitals may not deny visitation privileges on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, or disability. The rulemaking should take into account the need for hospitals to restrict visitation in medically appropriate circumstances as well as the clinical decisions that medical professionals make about a patient's care or treatment.

2. Ensure that all hospitals participating in Medicare or Medicaid are in full compliance with regulations, codified at 42 CFR 482.13 and 42 CFR 489.102(a), promulgated to guarantee that all patients' advance directives, such as durable powers of attorney and health care proxies, are respected, and that patients' representatives otherwise have the right to make informed decisions regarding patients' care. Additionally, I request that you issue new guidelines, pursuant to your authority under 42 U.S.C. 1395cc and other relevant provisions of law, and provide technical assistance on how hospitals participating in Medicare or Medicaid can best comply with the regulations and take any additional appropriate measures to fully enforce the regulations.
3. Provide additional recommendations to me, within 180 days of the date of this memorandum, on actions the Department of Health and Human Services can take to address hospital visitation, medical decision making, or other health care issues that affect LGBT patients and their families.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. You are hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA