

Implementing the New CMS and Joint Commission Inclusive Visitation Requirements

Hospital visitation policies have evolved over the years in response to changes in medicine, social customs and patient/family demands. Today another change is at hand. The revised standards of The Joint Commission and the new Medicare Conditions of Participation (CoPs) directly address the scope and inclusiveness of hospital visitation policies. CoPs are the health and safety standards all Medicare- and Medicaid-participating hospitals and critical access hospitals must meet. The revised CoPs and Joint Commission standards require hospitals to explain to all patients their right to choose who may visit them during an inpatient stay regardless of whether the visitor is a family member, a spouse, a domestic partner, or another type of visitor. These changes also protect the rights of hospital patients to choose a representative to act on their behalf. Hospitals must give deference to patient's wishes concerning their representatives.

This Resource will assist hospitals in revising their visitation policies to satisfy these new requirements and to ensure that patients and their representatives are best positioned to make health decisions.

Ensuring Compliance with Requirements Revised Medicare CoPs

As of January 18, 2011, in order to comply with the revised CoPs, hospitals participating in the Medicare Program must:

- » 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 visitors designated by the patient. A patient may designate virtually anyone – 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;
- » Ensure that all visitors enjoy full and equal visitation privileges consistent with the patient's preferences;
- » Respect the rights of a same-sex partner as a patient representative to make decisions on behalf of his or her partner with respect to visitation if the patient is incapacitated. Documentation to establish representative rights in order to exercise the patient's visitation rights should be required only in the limited circumstances when two or more individuals claim to be an incapacitated individual's support person;



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- » Inform patient representatives of their rights to serve as the support person for an incapacitated same-sex partner.¹

Revised Joint Commission Standards

The Joint Commission has aligned its standards to the CMS CoPs requirements above. As of July 2011, in order to comply with these revised standards, hospitals must:

- » Respect, protect, and promote patient rights;
- » Allow a family member, friend, or other individual to be present with the patient for emotional support during the course of stay;
- » Allow for the presence of a support individual of the patient's choice unless the individual's presence infringes on others' rights, safety, or is medically contraindicated. The support person may or may not be the patient's surrogate decision-maker or legally authorized representative; and
- » Prohibit discrimination based on age, race, ethnicity, religion, culture, language, physical or mental disability, socioeconomic status, sex, sexual orientation, and gender identity or expression.

The Joint Commission's free monograph, *Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care for the Lesbian, Gay, Bisexual, and Transgender (LGBT) Community: A Field Guide*,² includes example practices, information on laws and regulations, and links to information that may help organizations implement the new requirements.

Sample hospital visitation policies and forms patients or patient representatives may use to designate visitors can be found at www.healthlawyers.org/HospitalVisit.

Revisiting Visitation: What's a Hospital to Do?

First, review your existing visitation policy to determine if changes are necessary.

Second, draft a revised policy that meets the requirements of the Medicare CoPs and the Joint Commission's standards. Changes to collateral documentation may be needed to demonstrate that you appropriately informed the patient of the Visitation Policy. For example, you could issue a directive to hospital staff stating:

Patients have 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.

Third, have the Policy reviewed and officially adopted in the manner required by your institution's governing documents.

Fourth, announce the Policy and train staff on how the Policy should be implemented.

Fifth, monitor operations to ensure that the Policy is working as it should.

Implications for the LGBT Community

The Lesbian, Gay, Bisexual, and Transgender (LGBT) community will benefit from the new hospital visitation policy requirements. The new regulations will obviate the need for same-sex couples to present their relationship as siblings or other blood relatives when seeking emergency care in order to avoid real or perceived discriminatory treatment. Although many hospitals have already adopted more inclusive and patient friendly policies, the new Medicare CoPs and Joint Commission Standards are the first federal protections for LGBT patients and their families. These standards will help ensure that hospital visitation policies are designed to address the needs of LGBT patients and that all families are treated with respect and compassion.

1. See Medicare and Medicaid Programs: Changes to the Hospital and Critical Access Hospital Conditions of Participation to Ensure Visitation Rights for All Patients, 75 Fed. Reg. 70,831 (Nov. 19, 2010) (to be codified at 42 CFR pts. 482 and 485).

2. See <http://www.jointcommission.org/assets/1/18/LGBTFieldGuide.pdf>