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## HEALTH CARE LAW UPDATE: CMS FINALIZES RULES REQUIRING EQUAL VISITATION RIGHTS FOR ALL HOSPITAL PATIENTS

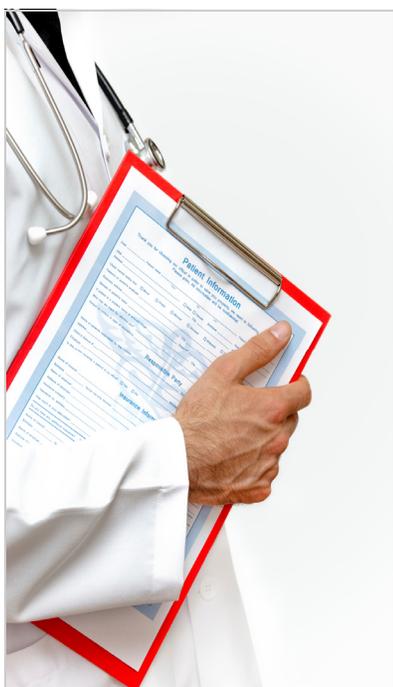
On November 17, 2010, the Centers for Medicare and Medicaid Services (CMS) released the final rule on hospital visitation that allows patients to designate their own visitors during a hospital stay (the Rule). The Rule, which will apply to any hospital that participates in Medicare or Medicaid, will go into effect January 16, 2011, approximately 60 days from when it is published in the *Federal Register*. The Rule will trump previous practices in many American hospitals that restricted visitors for some patients to spouses and immediate family—even in emergency rooms and intensive care units. The Rule creates a new right that applies to visitors in hospitals and will create new liabilities for hospitals that fail to safeguard the rights that a patient has to visitors under the Rule.

## What You Need To Do Now

It is imperative that hospitals develop visitation policies and procedures if they do not have them, or review and revise existing policies and procedures if they do, before the Rule's effective date of January 16, 2011. In doing so, hospitals need to evaluate and identify explicitly those clinically reasonable reasons to allow the hospital to restrict visitation under the Rule and also will likely need to change admission and advanced directive procedures to address the new requirements of the Rule.

## About The Rule

The new Rule implements an April 15, 2010 Presidential Memorandum, in which President Obama tasked CMS with developing proposed requirements for hospitals including Critical Access Hospitals ("CAHs"), that would address the right of patients to choose who may and may not visit during a hospitalization. In the Memorandum, President Obama pointed out the plight of individuals who are denied the comfort of a loved one, family member or a close friend after they are admitted to the hospital. The Memorandum indicated that these individuals are often denied the most basic of human needs simply because the loved ones who provide them comfort and support do not fit into a traditional concept of "family."



## What The Final Rules Say

The final rules will revise the Medicare Conditions of Participation for hospitals and CAHs. Specifically, Medicare and Medicaid hospitals will be required to have written policies and procedures detailing visitation rights and the specific circumstances under which a hospital can restrict a patient's access to visitors based on reasonable clinical needs. Hospitals also must inform incoming patients of their right to choose their visitors, regardless of whether the visitor is a family member, a spouse, a domestic partner (including a same-sex domestic partner), or friend, as well as their right to withdraw such consent to visitation at any time and the right for a "support person" to be identified who, for incapacitated persons can make the visitation decisions given to patients under the Rule. The Rule also creates a new concept of "support person" who is not a legal representative but is the one who can make decisions regarding visitors for incapacitated patients. The only time a hospital or CAH can require written proof of a relationship between a patient and a visitor is when the patient is incapacitated and there is a clear dispute between two or more people over whether a particular person should be allowed to visit.

Under the final rules, a hospital must meet the following requirements:

- Inform each patient (or support person, where appropriate) of his or her visitation rights, including any clinical restriction or limitation on such rights, when he or she is informed of his or her other rights.
- Inform each patient (or support person, where appropriate) of the right, subject to his or her consent, to receive the visitors whom he or she designates, including, but not limited to, a spouse, a domestic partner (including a same-sex domestic partner), another family member, or a friend, and his or her right to withdraw or deny such consent at any time.
- Not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.
- Require proof of a relationship between a patient and a visitor only when the patient is incapacitated and there is a clear dispute between two or more people over whether a particular person should be allowed to visit. The following forms of proof were suggested: an advance directive naming the individual support person, approved visitor or designated decision maker; shared residence; shared ownership of a property or business; financial interdependence; marital/relationship status; existence of a legal relationship recognized in any jurisdiction; and acknowledgment of a committed relationship (i.e. an affidavit). This list of proof and documentation is not intended to be exhaustive of all potential sources of information regarding proof of a relationship to allow patient visitation or support person preferences.
- Develop clinically appropriate restrictions on visitation privileges. Examples of clinically reasonable areas where hospitals and CAHs might impose restrictions or limitations on visitors include: when the patient is undergoing care interventions; when there may be infection control issues; and when visitation may interfere with the care of other patients. There are other, similarly obvious areas where restriction or limitation of visitation would also be appropriate: existing court orders restricting contact of which the hospital or CAH is aware; disruptive, threatening or violent behavior of any kind; patient need for rest or privacy; limitations on the number of visitations for clinical reasons during a specific period of time; minimum age requirements for child visitors; and inpatient substance abuse treatment programs that have clinical necessary protocols limiting visitation.
- Ensure that all visitors enjoy full and equal visitation privileges consistent with patient preferences.

CMS finalized the rules based on thousands of comments from patient advocates, the hospital community and other stakeholders. CMS administrator Donald Berwick, MD, said in a statement that the new rule “makes it easier for hospitals to deliver on some of the fundamental tenets of patient care—care that recognizes and respects the patient as an individual with unique needs, who should be treated with dignity and granted the power of informed choice.”

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## For More Information

If you have questions or need additional information about the requirements imposed on hospitals related to the rights of patients to have visitors, please contact:



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