

Federal Government Reinforces Rule Prohibiting Hospitals From Restricting Patient Visitors to “Immediate Family Members Only”

The U.S. Department of Health and Human Services (HHS) has issued new instructions which are intended to enforce a recently promulgated rule that requires hospitals to protect every patient's right to choose his or her own visitors during a hospital stay, including a visitor who is a same-sex domestic partner.

The rule applies to all hospitals that participate in Medicare and Medicaid and updates hospital “conditions of participation” to specify that visitors chosen by the patient must enjoy visitation privileges that are no more restrictive than those for immediate family members. As such, hospitals participating in Medicare and Medicaid must allow patients to request visitation from persons other than their immediate family members.

In the Presidential Memorandum issued last year by President Obama in connection with this new rule, he stated:

“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.”

The government's updated guidance for the rule emphasizes that hospitals should give deference to patients' wishes concerning their representatives, whether expressed in writing, orally, or through other evidence, unless prohibited by state law.

The guidance states that it "is intended to make it easier for family members, including a same-sex domestic partner, to make informed care decisions for loved ones who have become incapacitated."

"This announcement is another step toward equal rights for all Americans, and it is another step toward putting the patient at the center of our health care system," said Centers for Medicare and Medicaid Services (CMS) Administrator Donald M. Berwick, M.D. "All patients should be afforded the same rights and privileges when they enter our health care system, and that includes the same opportunity to see their significant other."

As part of the stepped up enforcement of the rule, CMS sent a letter to State Survey Agencies (SSAs), which conduct on-site inspections of hospitals on behalf of CMS. The letter highlights the equal visitation and representation rights requirements and directs SSAs to be aware of the guidance when evaluating hospitals' compliance with their "conditions of participation" under the Medicare and Medicaid programs.

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For more information on this issue, please contact your attorney contact at our firm.