

## **A-0216**

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**§482.13(h) Standard: Patient visitation rights. A hospital must have written policies and procedures regarding the visitation rights of patients, including those setting forth any clinically necessary or reasonable restriction or limitation that the hospital may need to place on such rights and the reasons for the clinical restriction or limitation. A hospital must meet the following requirements:**

**(1) 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 under this section.**

**(2) 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.**

### **Interpretive Guidelines §482.13(h)(1)&(2)**

Hospitals are required to inform each patient (or the patient's support person, where appropriate) of his/her visitation rights. A patient's "support person" does not necessarily have to be the same person as the patient's representative who is legally responsible for making medical decisions on the patient's behalf. A support person could be a family member, friend, or other individual who supports the patient during the course of the hospital stay. Not only may the support person visit the patient, but he or she may also exercise a patient's visitation rights on behalf of the patient with respect to other visitors when the patient is unable to do so. Hospitals must accept a patient's designation, orally or in writing, of an individual as the patient's support person.

When a patient is incapacitated or otherwise unable to communicate his or her wishes and an individual provides an advance directive designating an individual as the patient's support person (it is not necessary for the document to use this exact term), the hospital must accept this designation, provide the required notice of the patient's visitation rights, and allow the individual to exercise the patient's visitation rights on the patient's behalf.

When a patient is incapacitated or otherwise unable to communicate his or her wishes, there is no advance directive designating a representative on file, and no one has presented an advance directive designating himself or herself as the patient's representative, but an individual asserts that he or she, as the patient's spouse, domestic partner (including a same-sex domestic partner), parent or other family member, friend, or otherwise, is the patient's support person, the hospital is expected to accept this assertion, without demanding supporting documentation, provide the required notice of the patient's visitation rights, and allow the individual to exercise the patient's visitation rights on the patient's behalf. However, if more than one individual claims to be the patient's support person, it would not be inappropriate for the hospital to ask each individual for documentation supporting his/her claim to be the patient's support person.

- Hospitals are expected to adopt policies and procedures that facilitate expeditious and non-discriminatory resolution of disputes about whether an individual is the patient's support person, given the critical role of the support person in exercising the patient's visitation rights.
- A refusal by the hospital of an individual's request to be treated as the patient's support person with respect to visitation rights must be documented in the patient's medical record, along with the specific basis for the refusal.

Consistent with the patients' rights notice requirements under the regulation at §482.13(a)(1), the required notice of the patient's visitation rights must be provided, whenever possible, before the hospital provides or stops care. The notice to the patient, or to the patient's support person, where appropriate, must be in writing. If the patient also has a representative who is different from the support person, the representative must also be provided information on the patient's visitation rights, in addition to the support person, if applicable. In the event that a patient has both a representative and a support person who are not the same individual, and they disagree on who should be allowed to visit the patient, the hospital must defer to the decisions of the patient's representative. As the individual responsible for making decisions on the patient's behalf, the patient's representative has the authority to exercise a patient's right to designate and deny visitors just as the patient would

if he or she were capable of doing so. The designation of, and exercise of authority by, the patient's representative is governed by State law, including statutory and case law. Many State courts have addressed the concept of substituted judgment, whereby the patient's representative is expected to make medical decisions based on the patient's values and interests, rather than the representative's own values and interests. State courts have also developed a body of closely related law around the matter of a representative acting in the patient's best interest. Such case law regarding substituted judgment and best interest may be a resource for hospitals on how to address such conflict situations as they establish visitation policies and procedures. Hospitals may also choose to utilize their own social work and pastoral counseling resources to resolve such conflicts to assure the patient's well-being.

The required visitation rights notice must address any clinically necessary or reasonable limitations or restrictions imposed by hospital policy on visitation rights, providing the clinical reasons for such limitations/restrictions, including how they are aimed at protecting the health and safety of all patients. The information must be sufficiently detailed to allow a patient (or the patient's support person) to determine what the visitation hours are and what restrictions, if any, apply to that patient's visitation rights.

The notice must also inform the patient (or the patient's support person, where appropriate) of the patient's right to:

- Consent to receive visitors he or she has designated, either orally or in writing, including but not limited to, a spouse, a domestic partner (including a same-sex domestic partner), another family member, or a friend;
- Receive the visitors he or she has designated, including but not limited to, a spouse, a domestic partner (including a same-sex domestic partner), another family member, or a friend; and
- Withdraw or deny his/her consent to receive specific visitors, either orally or in writing.

The medical record must contain documentation that the required notice was provided to the patient or, if appropriate, the patient's support person.

### **Survey Procedures §482.13(h)(1)&(2)**

- Determine whether the hospital's visitation policies and procedures require providing notice of the patient's visitation rights to each patient or, if appropriate, to a patient's support person and/or, as applicable, the patient's representative.
- Review the hospital's standard notice of visitation rights. Does it clearly explain the:
  - hospital's visitation policy, including any limitations or restrictions, such as visiting hours, numbers of visitors, unit-specific restrictions, etc., and the clinical rationale for such limitations or restrictions?
  - right of the patient to have designated visitors, including but not limited to, a spouse, a domestic partner (including a same-sex domestic partner), another family member, or a friend, and the right to withdraw or deny consent to visitation?
- Review a sample of medical records to determine if there is documentation that the required notice was provided.

- Ask the hospital to identify how the required notice is provided. Ask staff responsible for providing the notice how they accomplish this. Ask the staff if they are familiar with the concept of a patient's "support person" and what it means.
- Ask a sample of current hospital patients or patients' support persons (where appropriate) whether they were provided notice of their right to have visitors. Ask if they were able to have visitors when they wanted to. If not, verify whether the restriction/limitation on visitors was addressed in the hospital's visitation policies and notice, and does not violate the regulations at §482.13(h)(3)&(4). (See interpretive guidelines for the latter provisions.)
- Ask a sample of current hospital patients or patients' support persons (where appropriate) whether the hospital did not limit some or all visitors, contrary to the patient's wishes.