

A-0130

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§482.13(b)(1) The patient has the right to participate in the development and implementation of his or her plan of care.

Interpretive Guidelines §482.13(b)(1)

This regulation requires the hospital to actively include the patient in the development, implementation and revision of his/her plan of care. It requires the hospital to plan the patient's care, with patient participation, to meet the patient's psychological and medical needs.

The patient's (or patient's representatives, as allowed by State law) right to participate in the development and implementation of his or her plan of care includes at a minimum, the right to: participate in the **development and implementation** of his/her **inpatient treatment/care plan, outpatient treatment/care plan**, participate in the development and implementation of his/her **discharge plan**, and participate in the development and implementation of his/her **pain management plan**.

Hospitals are expected to take reasonable steps to determine the patient's wishes concerning designation of a representative to exercise the patient's right to participate in the development and implementation of the patient's plan of care. Unless prohibited by applicable State law:

- When a patient who is not incapacitated has designated, either orally to hospital staff or in writing, another individual to be his/her representative, the hospital must involve the designated representative in the development and implementation of the patient's plan of care. The explicit designation of a representative by the patient takes precedence over any non-designated relationship and continues throughout the patient's inpatient stay or outpatient visit, unless expressly withdrawn, either orally or in writing, by the patient.
- In the case of a patient who is incapacitated, when an individual presents the hospital with an advance directive, medical power of attorney or similar document executed by the patient and designating an individual to make medical decisions for the patient when incapacitated, the hospital, when presented with the document, must involve the designated representative in the development and implementation of the patient's plan of care. The explicit designation of a representative takes precedence over any non-designated relationship and continues throughout the patient's inpatient stay or outpatient visit, unless the patient ceases to be incapacitated and expressly withdraws the designation, either orally or in writing.
- When a patient is incapacitated or otherwise unable to communicate his or her wishes, there is no written advance directive on file or presented, and an individual asserts that he or she is the patient's spouse, domestic partner (whether or not formally established and including a same-sex domestic partner), parent (including someone who has stood in loco parentis for the patient who is a minor child) or other family member and thus is the patient's representative, the hospital is expected to accept this assertion, without demanding supporting documentation, and must involve the individual as the patient's representative in the development and implementation of the patient's plan of care, unless:
- More than one individual claims to be the patient's representative. In such cases, it would be appropriate for the hospital to ask each individual for documentation supporting his/her claim to be the patient's representative. The hospital should make its determination of who is the patient's representative based upon the hospital's determination of who the patient would most want to make decisions on his/her behalf. Examples of documentation a hospital might consider could include, but are not limited to, the following: proof of a legally recognized marriage, domestic partnership, or civil union; proof of a joint household; proof of shared or co-mingled finances; and any other documentation the hospital considers evidence of a special relationship that indicates familiarity with the patient's preferences

concerning medical treatment;

- Treating the individual as the patient's representative without requesting supporting documentation would result in the hospital violating State law. State laws, including State regulations, may specify a procedure for determining who may be considered to be the incapacitated patient's representative, and may specify when documentation is or is not required; or
- The hospital has reasonable cause to believe that the individual is falsely claiming to be the patient's spouse, domestic partner, parent or other family member.

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 representative, given the critical role of the representative in exercising the patient's rights.

A refusal by the hospital of an individual's request to be treated as the patient's representative, based on one of the above-specified familial relationships, must be documented in the patient's medical record, along with the specific basis for the refusal.

Survey Procedures §482.13(b)(1)

- Does the hospital have policies and procedures to involve the patient or the patient's representative (as appropriate) in the development and implementation of his/her inpatient treatment/care plan, outpatient treatment/care plan, discharge plan, and pain management plan?
- Review records and interview staff and patients, or patients' representatives (as appropriate), to determine how the hospital involves the patient or the patient's representative (as appropriate) in the development and implementation of his/her plan of care?
- Does the hospital's policy provide for determining when a patient has a representative who may exercise the patient's right to participate in developing and implementing his/her plan of care, and who that representative is, consistent with this guidance and State law?
- Is there evidence that the patient or the patient's representative was included or proactively involved in the development and implementation of the patient's plan of care?
- Were revisions in the plan of care explained to the patient and/or the patient's representative (when appropriate)?