



Center for Medicaid, CHIP, and Survey & Certification/Survey & Certification Group

Ref: S&C: 11-36-Hospital/CAH

DATE: September 7, 2011

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Hospital Patients' Rights to Delegate Decisions to Representatives; New Hospital and Critical Access Hospital (CAH) Patient Visitation Regulation

Memorandum Summary

- **President's Directive:** On April 15, 2010 the President issued a memo concerning hospital visitation and designation of representatives.
- **Clarification of Patients' Rights Concerning Designation of Representatives:** Hospitals are obligated under certain circumstances to extend patients' rights to patients' representatives. The Centers for Medicare & Medicaid Services (CMS) expects hospitals to give deference to patients' wishes concerning their representatives, whether expressed in writing, orally, or through other evidence. Hospital Appendix A is being revised to clarify the applicable requirements.
- **Hospital Visitation Policies:** CMS has amended the hospital and CAH Conditions of Participation (CoPs) to require protection of a patient's right to have and designate visitors. Hospital Appendix A and CAH Appendix W are being updating accordingly.

On April 15, 2010 the President issued a memorandum to the Secretary of Health and Human Services (copy enclosed) directing the initiation of rulemaking to ensure that hospitals respect the right of patients to have and designate visitors. The memorandum also directs the Secretary to issue guidance that clarifies existing regulatory requirements at 42 CFR 482.13, governing the right of a patient's representatives to make informed decisions concerning the patient's care, and 42 CFR 489.102(a), concerning advance directives, such as durable powers of attorney and health care proxies. This Survey & Certification Memorandum provides the clarifications of existing regulations and policy guidance concerning new regulations that fulfill the expectations of the President's memorandum.

Hospital Patients' Rights and Patient Representatives. The hospital CoP at 42 CFR 482.13 establishes a number of requirements regarding patients' rights, several of which may be exercised by or involve representatives designated by patients:

- Notice of the patient's rights must be given to the patient or patient's representative. (§482.13(a)(1))
- Patients (or their representatives) have the right to participate in the development and implementation of their plan of care. (§482.13(b)(1))
- The right to make informed decisions regarding the patient's care may also be exercised by the patient's representative as permitted under State law. This right to make informed decisions includes being informed about the patient's health status, being involved in care planning and treatment, and being able to request or refuse treatment. (§482.13(b)(2))
- The patient has the right to formulate an advance directive, which may include delegation of the right to make decisions about the patient's care to a representative, as well as designation of a support person. The regulation further requires that notice be given to the patient concerning the hospital's advance directives policy. (§482.13(b)(3), which references §489.102)
- A family member or representative of the patient's choice must be promptly notified of the patient's admission to the hospital. (§482.13(b)(4))

CMS expects hospitals to give deference to patients' wishes concerning their representatives, whether expressed in writing, orally, or through other evidence. We are revising relevant portions of the State Operations Manual Hospital Appendix A to clarify CMS's expectations regarding hospitals' recognition of patients' representatives. We are also taking this opportunity to incorporate into Appendix A revisions that were made to the required patient disclosure provisions of Part 489 and that are enforced under §482.13(b)(2). These revisions were discussed in S&C-08-07, December 14, 2007, and S&C-09-25, February 13, 2009.

CAHs and Advance Directives

Sections 42 C.F.R. 489.100, 489.102 and 489.104 of the provider agreement regulations govern advance directive requirements that apply to CAHs as well as to hospitals. When surveyors assess a CAH's compliance with the requirements at §485.608(a), which specify that the CAH must be in compliance with applicable Federal laws and regulations related to the health and safety of patients, they must include evaluation of the CAH's policies, procedures and practices concerning advance directives. We are adding guidance to Appendix W that explains the advance directives requirements CAHs must comply with. We are also updating the guidance for §485.608(a) to incorporate into Appendix W revisions that were made to the required patient

disclosure provisions of Part 489 and that are enforced under §482.13(b)(2), that were discussed in S&C-08-07, December 14, 2007 and S&C-09-25, February 13, 2009.

Hospital and CAH Patients' Visitation Rights

CMS has adopted new standards at §482.13(h) for hospitals and §485.535(f) for CAHs that require hospitals and CAHs to:

- 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, subject to the patient's consent, visitors designated by the patient, including but not limited to 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; and
- Ensure that all visitors enjoy full and equal visitation privileges consistent with the patient's preferences.

Attached is an advance copy of the revised Appendix A and Appendix W provisions. The final version will be released as a Publications Manual transmittal at a later date and may differ slightly from this advance copy.

Questions about this guidance should be addressed to Marilyn Dahl at marilyn.dahl@cms.hhs.gov or Georganne Kuberski at georganne.kuberski@cms.hhs.gov.

Effective Date: Immediately. Please ensure that all appropriate staff are fully informed within 30 days of the date of this memorandum.

Training: This policy should be shared with all survey and certification staff and their managers.

/s/

Thomas E. Hamilton

Attachments (2)

cc: Survey & Certification Regional Office Management