

Medicare/Medicaid: New CMS Regulations Define A Same-Sex Domestic Partner As A Family Member For Hospital Visitation Rights.

On November 19, 2010 the US Centers for Medicare and Medicaid Services (CMS) announced new regulations for hospitals that expressly include same-sex domestic partners in the definition of “family” for purposes of patients’ visitation rights.

The new regulations take effect on January 18, 2011.

The new regulations were prompted by an April 15, 2010 memorandum from the President to the US Secretary of Health and Human Services addressing the plight of individuals who are denied the comfort of a loved one, whether a family member or a close friend, at their side during a time of pain or anxiety after they are admitted to a hospital.

The President’s memorandum indicated that these individuals are often denied this 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.”

The fundamental rationale for the new regulations is to protect each patient’s basic right to participate in decisions affecting the patient’s own health care.

However, CMS points out that excluding visitors on the basis of no legal relationship with the patient can lead to missed opportunities for physicians and nurses caring for the patient to gain valuable patient information with respect to the patient’s medical history, conditions, medications and allergies from those who know the patient best, particularly if the patient has difficulty recalling or articulating or is totally unable to recall or articulate vital personal information.

According to CMS, many times these individuals who may know the patient best act as intermediaries for patients, helping to communicate patients’ needs to hospital personnel.

Restricted or limited hospital visitation can effectively eliminate these advocates for many patients, potentially to the detriment of the patient’s health and safety.

FEDERAL REGISTER November 19, 2010
Pages 70831-70844

PART 482 CONDITIONS OF PARTICIPATION FOR HOSPITALS

Sec. 482.13 Condition of participation: Patient’s rights.

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(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.

(3) Not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.

(4) Ensure that all visitors enjoy full and equal visitation privileges consistent with patient preferences.

CMS’s announcement dated November 12, 2010 is available on our website at <http://www.nursinglaw.com/CMS111910.pdf>.

FEDERAL REGISTER November 19, 2010
Pages 70831-70844

Editor’s Note: The new regulations appear to be an official response from the Centers for Medicare and Medicaid Services to two recent groundbreaking court cases

A case from Washington State faulted an ICU nurse who excluded the patient’s domestic partner from her bedside. *Definition Of Family Member: Court Allows Suit Against Critical-Care Nurse Who Excluded Life-Partner From The Room.* Legal Eagle Eye Newsletter for the Nursing Profession (16)1, Jan. ‘09 p. 8.

A case from Florida upheld the caregivers’ decision to exclude the life partner, although not for the sole reason she was a same-sex life partner. *Definition Of Family Member: Court Sets Limits On Patients’ Life-Partners’ Rights.* Legal Eagle Eye Newsletter for the Nursing Profession (16)11, Nov. ‘09 p. 1.

When Can Visitors Be Excluded For Medical Reasons?

In the Florida case the court validated the hospital’s decision to exclude the life-partner as well as other visitors who might have got in the way while critical-care interventions were underway.

In the Washington case the court faulted the nurse because other visitors were being allowed in, but not the patient’s life-partner, apparently only because of prejudice against the sexual orientation of the patient who had a female life-partner rather than a male husband.

The opening paragraph of the new regulations requires hospitals to define in advance the criteria for caregivers’ decisions when visitors can and cannot visit.

Same-Sex Domestic Partner Is A Family Member

In the Florida case the patient’s life partner also happened to be the person named in her durable power of attorney as her surrogate healthcare decision-maker.

She was finally allowed to participate in the patient’s care, albeit from the waiting room, only after she had a copy of the power of attorney faxed to the hospital.

Sections (2) through (4) of the new regulations would have made that unnecessary as a same-sex domestic partner is expressly defined as a family member.