
CMS Manual System

Pub. 100-07 State Operations Provider Certification

Department of Health &
Human Services (DHHS)
Centers for Medicare &
Medicaid Services (CMS)

Transmittal 75

Date: December 2, 2011

SUBJECT: Revised Appendix A, Interpretive Guidelines for Hospitals, and Appendix W, Interpretive Guidelines for Critical Access Hospitals (CAHs)

I. SUMMARY OF CHANGES: Clarification is provided for existing hospital regulations 42 CFR 482.13(a) and (b), and new 42 CFR 482.13(h), concerning hospital patients' rights, including advance directives and visitation rights. Clarification is provided for existing CAH regulations at 42 CFR 485.608(a), concerning compliance with Federal laws and regulations, including regulations governing advance directives and required patient disclosures. Guidance is provided for new 42 CFR 485.635(f), concerning CAH patients' visitations rights.

**NEW/REVISED MATERIAL - EFFECTIVE DATE: December 2, 2011
IMPLEMENTATION December 2, 2011**

The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

**II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual not updated.)
(R = REVISED, N = NEW, D = DELETED) – (Only One Per Row.)**

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	Appendix A/§482.13(a) Standard: Notice of Rights/A-0117
R	Appendix A/§482.13(b) Standard: Exercise of Rights/A-0130
R	Appendix A/§482.13(b) Standard: Exercise of Rights/A-0131
R	Appendix A/§482.13(b) Standard: Exercise of Rights/A-0132
R	Appendix A/§482.13(b) Standard: Exercise of Rights/A-0133
N	Appendix A/§482.13(h) Standard: Patient Visitation Rights/A-0215
N	Appendix A/§482.13(h) Standard: Patient Visitation Rights/A-0216
N	Appendix A/§482.13(h) Standard: Patient Visitation Rights/A-0217
R	Appendix W/§485.608(a) Standard: Compliance With Federal Laws and Regulations/A-0151
N	Appendix W/§485.635(f) Standard: Patient Visitation Rights/C-1000
N	Appendix W/§485.635(f) Standard: Patient Visitation Rights/C-1001
N	Appendix W/§485.635(f) Standard: Patient Visitation Rights/C-1002

III. FUNDING: No additional funding will be provided by CMS; contractor activities are to be carried out within their FY 2011 operating budgets.

IV. ATTACHMENTS:

	Business Requirements
X	Manual Instruction
	Confidential Requirements
	One-Time Notification
	Recurring Update Notification

Revisions to Appendix A Hospital Interpretive Guidelines

A-0117

(Rev.75, Issued: 12-02-11, Effective: 12-02-11, Implementation: 12-02-11)

§482.13(a)(1) A hospital must inform each patient, or when appropriate, the patient's representative (as allowed under State law), of the patient's rights, in advance of furnishing or discontinuing patient care whenever possible.

Interpretive Guidelines §482.13(a)(1)

The hospital must inform each patient, or when appropriate, the patient's representative as allowed by State law, of the patient's rights. Whenever possible, this notice must be provided before providing or stopping care. All patients, inpatient or outpatient, must be informed of their rights as hospital patients. The patient's rights include all of those discussed in this condition, as well as any other rights for which notice is required under State or Federal law or regulations for hospital patients. (See [42 CFR 482.11](#).) The patient's rights should be provided and explained in a language or manner that the patient (or the patient's representative) can understand. *This is consistent with the guidance related to Title VI of the Civil Rights Act of 1964 issued by the Department of Health and Human Services - "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (August 8, 2003, 68 FR 47311). In accordance with §482.11, hospitals are expected to comply with Title VI and may use this guidance to assist it in ensuring patient's rights information is provided in a language and manner that the patient understands. Surveyors do not assess compliance with these requirements on limited English proficiency, but may refer concerns about possible noncompliance to the Office for Civil Rights in the applicable Department of Health and Human Services Regional Office.*

Hospitals are expected to take reasonable steps to determine the patient's wishes concerning designation of a representative. 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 provide the designated individual with the required notice of patients' rights in addition to the patient. 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 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, then the hospital must, when presented with the document, provide the required notice of its policies to the designated representative. 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 provide the required notice to the individual, 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.

In addition, according to the regulation at [42 CFR 489.27\(a\)](#), (which cross references the regulation at [42 CFR 405.1205](#)), each Medicare beneficiary who is an inpatient (*or his/her representative*) must be provided the standardized notice, "An Important Message from Medicare" (IM), within 2 days of admission. Medicare beneficiaries who have not been admitted (e.g., patients in observation status or receiving other care on an outpatient basis) are not required to receive the IM. The IM is a standardized, OMB-approved form and cannot be altered from its original format. The IM is to be signed and dated by the patient to acknowledge receipt. See [Exhibit 16](#) for a copy of the IM. Furthermore, [42 CFR 405.1205\(c\)](#) requires that hospitals present a copy of the *signed* IM in advance of the patient's discharge, but not more than two calendar days before the patient's discharge. In the case of short inpatient stays, however, where initial delivery of the IM is within 2 calendar days of the discharge, the second delivery of the IM is not required.

The hospital must establish and implement policies and procedures that effectively ensure that patients and/or their representatives have the information necessary to exercise their rights.

Survey Procedures §482.13(a)(1)

- Determine the hospital's policy for notifying all patients of their rights, both inpatient and outpatient;
- *Determine that the hospital's policy provides for determining when a patient has a representative and who that representative is, consistent with this guidance and State law.*
- Determine that the information provided to the patients by the hospital complies with Federal and State law;
- Review records and interview staff to examine how the hospital communicates information about their rights to diverse patients, including individuals who need assistive devices or translation services. Does the hospital have alternative means, such as written materials, signs, or interpreters (when necessary), to communicate patients' rights?
- *Review records and interview staff and patients or patients' representatives (as appropriate) to examine how the hospital determines whether the patient has a representative, who that representative is, and whether notice of patients' rights is provided as required to patients' representatives.*
- Ask patients to tell you what the hospital has told them about their rights;
- Does staff know what steps to take to inform a patient about their patients' rights, including those patients' with special communication needs?; and
- Review a sample of inpatient medical records for Medicare beneficiaries, to determine whether the records contain a signed and dated IM provided within 2 days of the admission of the patient. For patients whose discharge occurred more than 2 days after the initial IM notice was issued, determine whether the hospital provided another copy of the IM to the patient prior to discharge in a timely manner.

A-0130

(Rev.75, Issued: 12-02-11, Effective: 12-02-11, Implementation: 12-02-11)

§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)?

A-0131

(Rev.75, Issued: 12-02-11, Effective: 12-02-11, Implementation: 12-02-11)

§482.13(b)(2) The patient or his or her representative (as allowed under State law) has the right to make informed decisions regarding his or her care. The patient's rights include being informed of his or her health status, being involved in care planning and treatment, and being able to request or refuse treatment. This right must not be construed as a mechanism to demand the provision of treatment or services deemed medically unnecessary or inappropriate.

Interpretive Guidelines §482.13(b)(2)

The right to make informed decisions means that the patient or patient's representative is given the information needed in order to make "informed" decisions regarding his/her care.

A patient may wish to delegate his/her right to make informed decisions to another person (as allowed under State law).

Hospitals are expected to take reasonable steps to determine the patient's wishes concerning designation of a representative. 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 provide the designated individual with the information required to make an informed decision about the patient's care. The hospital must also seek the written consent of the patient's representative when informed consent is required for a care decision. 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 must, when presented with the document, provide the designated individual the information required to make informed decisions about the patient's care. The hospital must also seek the consent of the designated individual when informed consent is required for a care decision. 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 provide the individual the information required to make informed decisions about the patient's care. The hospital must also seek the consent of the individual when informed consent is required for a care decision. Hospitals are expected to treat the individual as the patient's representative 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 must, along with the specific basis for the refusal.

The right to make informed decisions regarding care presumes that the patient *or the patient's representative* has been provided information about his/her health status, diagnosis, and prognosis. Furthermore, it includes the patient's *or the patient's representative's* participation in the development of *his/her* plan of care, including providing consent to, or refusal of, medical or surgical interventions, and in planning for care after discharge from the hospital. The patient or the patient's representative should receive adequate information, provided in a manner that the patient or the patient's representative can understand, to assure that the patient *or the patient's representative* can effectively exercise the right to make informed decisions.

Hospitals must establish processes to assure that each patient or the patient's representative is given information on the patient's health status, diagnosis, and prognosis.

Giving informed consent to a treatment or a surgical procedure is one type of informed decision that a patient or patient's representative may need to make regarding the patient's plan of care. Hospitals must utilize an informed consent process that assures patients or their representatives are given the information and disclosures needed to make an informed decision about whether to consent to a procedure, intervention, or type of care that requires consent. See the guidelines for [42 CFR 482.51\(b\)\(2\)](#) pertaining to surgical services informed consent and the guidelines for [42 CFR 482.24\(c\)\(2\)\(v\)](#) pertaining to medical records for further detail.

Informed decisions related to care planning also extend to discharge planning for the patient's post-acute care. See the guidelines at [42 CFR 482.43\(c\)](#) pertaining to discharge planning for discussion of pertinent requirements.

Hospitals must also establish policies and procedures that assure a patient's right to request or refuse treatment. Such policies should indicate how the patient's request will be addressed. However, hospitals are under no obligation to fulfill a patient's request for a treatment or service that the responsible practitioner has deemed medically unnecessary or even inappropriate.

In addition, there are certain provisions of the Medicare provider agreement rules concerning disclosures that certain hospitals are required to make which are enforced under [42 CFR 482.13\(b\)\(2\)](#):

- *[42 CFR 489.3](#) defines a "physician-owned hospital" as any participating hospital in which a physician or immediate family member of a physician (as defined in §411.351) has an ownership or investment interest in the hospital, except for those satisfying an exception found at [§411.356\(a\) or \(b\)](#).*

- *42 CFR 489.20(u)(1) requires that all physician-owned hospitals provide written notice to their patients at the beginning of each patient's hospital inpatient stay or outpatient visit stating that the hospital is physician-owned, in order to assist the patient in making an informed decision about his or her care, in accordance with the requirements of §482.13(b)(2).*
 - *The notice must disclose, in a manner reasonably designed to be understood by all patients, that the hospital is physician-owned and that a list of owners or investors who are physicians or immediate family members of physicians is available upon request. If the patient (or someone on behalf of the patient) requests this list, the hospital must provide it at the time of the request.*
 - *However, the notice requirement does not apply to any physician-owned hospital that does not have at least one referring physician (as defined at §411.351) who has an ownership or investment interest in the hospital or who has an immediate family member who has an ownership or investment interest in the hospital. In such cases, the hospital must sign an attestation statement that it has no referring physician with an ownership or investment interest or whose immediate family member has an ownership or investment interest in the hospital. The hospital must maintain this attestation in its records.*
- *42 CFR 489.20(u)(2) provides that physician-owned hospitals must require each physician owner who is a member of the hospital's medical staff to agree, as a condition of obtaining/retaining medical staff membership or admitting privileges, to disclose in writing to all patients they refer to the hospital their ownership or investment interest in that hospital or that of any immediate family member. The hospital must require that this disclosure be made at the time of the referral and the requirement should be reflected in the hospital's policies and procedures governing privileges for physician owners.*
 - *The hospital may exempt from this disclosure requirement any physician owner who does not refer any patients to the hospital.*
- *42 CFR 489.12 permits CMS to refuse to enter into a provider agreement with a physician-owned hospital applicant that does not have procedures in place to notify patients of physician ownership in the hospital as required under §489.20(u).*
- *42 CFR 489.20(w) mandates that all hospitals provide written notice to all patients at the beginning of an inpatient stay or outpatient visit **if** there is no doctor of medicine or doctor of osteopathy present in the hospital 24 hours per day, seven days per week, in order to assist the patient in making an informed decision about his/her care, in accordance with [42 CFR 482.13\(b\)\(2\)](#). The notice must also indicate how the hospital will meet the medical needs of any patient who develops an emergency medical condition, as defined in [42 CFR 489.24\(b\)](#) [the EMTALA definition], at a time when no physician is present in the hospital.*

Hospitals that have an MD/DO on-site 24/7 do not need to issue any disclosure notice about emergency services capability.

A hospital that participates in Medicare with multiple campuses, satellites, remote, and/or provider-based locations all covered under one CMS Certification Number, does not need to issue a disclosure notice about emergency services capability if there is an MD/DO 24 hours per day, seven days per week in any portion of the hospital. For example, if a hospital has three campuses, only two of which have a physician present 24/7, there is no requirement for the third campus to make a disclosure that there is no physician present 24/7 at that campus. Likewise, if a

hospital's main campus has a physician present 24/7, there is no requirement for a disclosure by any of its provider-based locations that do not have a physician at that location 24/7.

For purposes of disclosure requirements pertaining to both physician ownership/investment and capability to handle medical emergencies, the hospital inpatient stay or outpatient visit begins with the provision of a package of information regarding scheduled preadmission testing and registration for a planned hospital admission for inpatient care or outpatient service.

42 CFR 489.53 permits CMS to terminate a provider agreement with a physician-owned hospital if the hospital fails to comply with the requirements at §489.20(u). *It also permits termination if a hospital fails to provide the required notice in accordance with §489.20(w) when it does not have an MD or DO on-site 24/7.*

Survey Procedures §482.13(b)(2)

- Is there a hospital policy addressing the patient's *or the patient's representative (as appropriate)* right to make informed decisions? Does it articulate how the hospital assures patients' ability to exercise this right?
- *Review records and interview staff and patients or patients' representatives (as appropriate) to determine how the hospital assures the patient or the patient's representative (as appropriate) ability to exercise the right to make informed decisions.*
- *Does the hospital's policy provide for determining when a patient has a representative who may exercise the patient's right to make informed decisions, and who that representative is, consistent with this guidance and State law?*
- Is there a hospital policy addressing the patient's right to have information on his/her medical status, diagnosis, and prognosis? Does it articulate the hospital's process for assuring that patients have this information?
- Is there a hospital policy addressing how the patient will be involved in his/her care planning and treatment?
- Are there also State laws or regulations governing patients' rights and do the hospital's policies comply with them?
- Is there evidence that the hospital routinely complies with its policies? Evidence would be obtained through review of medical records, interviewing current patients and/or interviewing hospital personnel to determine their understanding of the hospital's informed decision-making policies and how they are implemented. Review of evidence would be designed to determine whether patients/patient representatives are provided adequate information about the patient's medical status, diagnosis, and prognosis, and then allowed to make informed decisions about their care planning and treatment.

- *If the hospital is physician-owned, does it issue the required written disclosure notices to all patients at the beginning of an inpatient stay or outpatient visit? Is there a list of the physician owners or investors available, and is it provided to patients requesting it **at the time of the request**?*
 - Is the written notice reasonably designed to be understood by all patients?
 - Surveyors may also interview hospital staff to assess their knowledge and understanding of the physician ownership notice requirements, including the hospital's process for delivering the notice and responding to requests for the list of physician owners or investors. Surveyors may also interview patients to verify that the hospital is providing them with the written notice in compliance with the regulatory requirements.
 - *Do the medical staff bylaws or policies require all physician owners who refer patients to the hospital to agree to disclose to the patient, at the time of referral and in writing, that they or their immediate family have an ownership/investment interest in the hospital?*
 - *If the hospital indicates that it is physician-owned but is exempt from the disclosure requirement under §489.20(u)(2), ask to see the signed attestation that it does not have any referring physicians with an ownership/investment interest or whose immediate family member has an ownership/investment interest in the hospital. (As with any other on-the-spot correction of a deficiency during a survey, creation of an attestation at the time of a survey does not mean that there was no deficiency and that the hospital would not be cited.)*
- Determine whether an MD/DO is on-site 24 hours/day, seven days/week. If an MD/DO is not on-site at a hospital at all times, verify that the hospital has appropriate policies and procedures in place to ensure that written notice of this is provided to all patients at the beginning of an inpatient stay or outpatient visit. Verify that the notice also indicates how the hospital will meet the medical needs of a patient who develops an emergency medical condition when there is no doctor of medicine or osteopathy on site. Surveyors may also interview hospital staff to assess their knowledge and understanding of the notice requirements when a physician is not on site 24/7. If appropriate in terms of the scope of the survey underway at the facility, surveyors may also survey the hospital for its compliance with the applicable requirements concerning provision of emergency services. (See [§482.12\(f\)](#) and [§482.55.](#))

A-0132

(Rev.75, Issued: 12-02-11, Effective: 12-02-11, Implementation: 12-02-11)

§482.13(b)(3) The patient has the right to formulate advance directives and to have hospital staff and practitioners who provide care in the hospital comply with these directives, in accordance with §489.100 of this part (Definition), §489.102 of this part (Requirements for providers), and §489.104 of this part (Effective dates).

Interpretive Guidelines §482.13(b)(3)

An advance directive is defined at §489.100 as “a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or

as recognized by the courts of the State), relating to the provision of health care when the individual is incapacitated.” The patient (inpatient or outpatient) has the right to formulate advance directives, and to have hospital staff implement and comply with their advance directive. The regulation at [42 CFR 489.102](#) specifies the rights of a patient (as permitted by State law) to make medical care decisions, *including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual’s option, advance directives.*

In the advance directive, the patient may provide guidance as to his/her wishes concerning provision of care in certain situations; alternatively the patient may delegate decision-making authority to another individual, as permitted by State law. (In addition, the patient may use the advance directive to designate a “support person,” as that term is used in §482.13(h), for purposes of exercising the patient’s visitation rights.) When a patient who is incapacitated has executed an advance directive designating a particular individual to make medical decisions for him/her when incapacitated, the hospital must, when presented with the document, provide the designated individual the information required to make informed decisions about the patient’s care. (See also the requirements at §482.13(b)(2).) The hospital must also seek the consent of the patient’s representative when informed consent is required for a care decision. The explicit designation of a representative in the patient’s advance directive takes precedence over any non-designated relationship and continues throughout the patient’s inpatient stay or, as applicable, outpatient visit, unless the patient ceases to be incapacitated and expressly withdraws the designation, either orally or in writing.

§489.102 also requires the hospital to:

- *Provide written notice of its policies regarding the implementation of patients’ rights to make decisions concerning medical care, such as the right to formulate advance directives. If an individual is incapacitated or otherwise unable to communicate, the hospital may provide the advance directive information required under §489.102 to the individual’s “family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law.” (§489.102(e)) The guidance concerning the regulation at §482.13(a)(1) governing notice to the patient or the patient’s representative of the patient’s rights applies to the required provision of notice concerning the hospital’s advance directive policies. Although both inpatients and outpatients have the same rights under §482.13(a)(1), §489.102(b)(1) requires that notice of the hospital’s advance directive policy be provided at the time an individual is admitted as an inpatient. However, in view of the broader notice requirements at §482.13(a)(1), the hospital should also provide the advance directive notice to outpatients (or their representatives) who are in the emergency department, who are in an observation status, or who are undergoing same-day surgery. The notice should be presented at the time of registration. Notice is not required for other outpatients, given that they are unlikely to become incapacitated.*
- *The notice must include* a clear and precise statement of limitation if the hospital cannot implement an advance directive on the basis of conscience. At a minimum, a statement of limitation should:
 - Clarify any differences between institution-wide conscience objections and those that may be raised by individual *physicians or other practitioners*;
 - Identify the State legal authority permitting such an objection; and

- Describe the range of medical conditions or procedures affected by the conscience objection.

It should be noted that this provision allowing for certain conscience objections to implementing an advance directive is narrowly focused on the directive's content related to medical conditions or procedures. This provision would not allow a hospital or individual physician or practitioner to refuse to honor those portions of an advance directive that designate an individual as the patient's representative and/or support person, given that such designation does not concern a medical condition or procedure.

Issuance of the written notice of the hospital's advance directive policies to the patient or the patient's representative must be documented in the patient's medical record.

- Document in a prominent part of the patient's medical record whether or not the patient has executed an advance directive;
- Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;
- Ensure compliance with requirements of State law concerning advance directives and inform individuals that complaints concerning the advance directive requirements may be filed with the State survey and certification agency;
- Provide for the education of staff concerning its policies and procedures on advance directives. The right to formulate advance directives includes the right to formulate a psychiatric advance directive (as allowed by State law); and
- Provide community education regarding advance directives and the hospital must document its efforts.

A **psychiatric advance directive** is akin to a traditional advance directive for health care. This type of advance directive might be prepared by an individual who is concerned that at some time he or she may be subject to involuntary psychiatric commitment or treatment. The psychiatric advance directive may cover a range of subjects, and may name another person who is authorized to make decisions for the individual if he or she is determined to be legally incompetent to make his/her own choices. It may also provide the patient's instructions about hospitalization, alternatives to hospitalization, the use of medications, types of therapies, and the patient's wishes concerning restraint or seclusion. The patient may designate who should be notified upon his/her admission to the hospital, as well as who should not be permitted to visit him or her. State laws regarding the use of psychiatric advance directives vary.

In accordance with State law, a psychiatric advance directive should be accorded the same respect and consideration that a traditional advance directive for health care is given. Hospitals should carefully coordinate how the choices of a patient balance with the rights of other patients, staff, and individuals in the event that a dangerous situation arises.

However, even if State law has not explicitly spoken to the use of psychiatric advance directives, consideration should be given to them inasmuch as this regulation also supports the patient's right to participate in the development and implementation of his or her plan of care. When the patient is, for whatever reason, unable to communicate his/her wishes, the preferences expressed

in the psychiatric advance directive can give critical insight to the MD/DOs, nurses, and other staff as they develop a plan of care and treatment for the patient.

Survey Procedures §482.13(b)(3)

- *Review the hospital's advance directive notice. Does it advise inpatients or applicable outpatients, or their representatives, of the patient's right to formulate an advance directive and to have hospital staff comply with the advance directive (in accordance with State law)? Does it include a clear, precise and valid statement of limitation if the hospital cannot implement an advance directive on the basis of conscience?*
- Review the records of a sample of patients for evidence of hospital compliance with advance directive notice requirements. *Does every inpatient or applicable outpatient record contain documentation that notice of the hospital's advance directives policy was provided at the time of admission or registration?* Is there documentation of whether or not each patient has an advance directive? For those patients who have reported an advance directive, has *a copy of* the patient's advance directive been placed in the medical record?
- What mechanism does the hospital have in place to allow patients to formulate an advance directive or to update their current advance directive? Is there evidence that the hospital is promoting and protecting each patient's right to formulate an advance directive?
- *Determine to what extent the hospital complies, as permitted under State law, with patient advance directives that delegate decisions about the patient's care to a designated individual.*
- Determine to what extent the hospital educates its staff regarding advance directives.
- Interview staff to determine their knowledge of the advance directives of the patients in their care.
- Determine to what extent the hospital provides education for the patient population (inpatient and outpatient) regarding one's rights under State law to formulate advance directives.

A-0133

(Rev.75, Issued: 12-02-11, Effective: 12-02-11, Implementation: 12-02-11)

§482.13(b)(4) - The patient has the right to have a family member or representative of his or her choice and his or her own physician notified promptly of his or her admission to the hospital.

Interpretive Guidelines §482.13(b)(4)

Identifying Who Is to Be Notified

For every inpatient admission, the hospital must ask the patient whether the hospital should notify a family member or representative about the admission. If the patient requests such notice and identifies the family member or representative to be notified, the hospital must provide such notice promptly to the designated individual. The explicit designation of a family member or representative by the patient takes precedence over any non-designated relationship.

The hospital must also ask the patient whether the hospital should notify his/her own physician. In the case of scheduled admissions, the patient's own physician likely is already aware of the admission. However, if the patient requests notice to and identifies the physician, the hospital must provide such notice promptly to the designated physician, regardless of whether the admission was scheduled in advance or emergent.

When a patient is incapacitated or otherwise unable to communicate and to identify a family member or representative to be notified, the hospital must make reasonable efforts to identify and promptly notify a family member or patient's representative. If an individual who has accompanied the patient to the hospital, or who comes to or contacts the hospital after the patient has been admitted, 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, the hospital is expected to accept this assertion, without demanding supporting documentation, and provide this individual information about the patient's admission, unless:

- More than one individual claims to be the patient's family member or representative. In such cases it would not be inappropriate for the hospital to ask each individual for documentation supporting his/her claim to be the patient's family member or 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 family member or 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 family member or 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 should be notified as the patient's family member or representative, given the critical role of the representative in exercising the patient's rights. Hospitals may also choose to provide notice to more than one family member.

When a patient is incapacitated and the hospital is able through reasonable efforts to identify the patient's own physician – e.g., through information obtained from a family member, or from

review of prior admissions or outpatient encounters, or through access to the patient's records in a regional system of electronic patient medical records in which the hospital participates – the hospital must promptly notify the patient's physician of the admission.

Prompt Notice

The hospital must provide the required notice promptly. "Promptly" means as soon as possible after the physician's or other qualified practitioner's order to admit the patient has been given. Notice may be given orally in person, by telephone, by e-mail or other electronic means, or by other methods that achieve prompt notification. It is not acceptable for the hospital to send a letter by regular mail.

Medical Record Documentation

The hospital must document that the patient, unless incapacitated, was asked no later than the time of admission whether he or she wanted a family member/representative notified, the date, time and method of notification when the patient requested such, or whether the patient declined to have notice provided. If the patient was incapacitated at the time of admission, the medical record must indicate what steps were taken to identify and provide notice to a family member/representative and to the patient's physician.

Survey Procedures §482.13(b)(4)

- *Determine if the hospital has policies that address notification of a patient's family or representative and physician when the patient is admitted as an inpatient.*
- *Ask the hospital who is responsible for providing the required notice. Interview person(s) responsible for providing the notice to determine how they identify the persons to be notified and the means of notification. What do they do in the case of an incapacitated person to identify a family member/representative and the patient's physician?*
- *Review a sample of inpatient medical records. Do the medical records provide evidence that the patient was asked about notifying a family member/representative and his/her physician? Is there a record of when and how notice was provided? Was notice provided promptly? Is there a record of the patient declining to have notice provided to a family member/representative and his/her physician? Is there documentation of whether the patient was incapacitated at the time of admission, and if so, what steps were taken to identify a family member/representative and the patient's physician?*

* * *

A-0215

(Rev.75, Issued: 12-02-11, Effective: 12-02-11, Implementation: 12-02-11)

§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....

Interpretive Guidelines, §482.13(h)

Visitation plays an important role in the care of hospital patients. An article published in 2004 in the Journal of the American Medical Association (Berwick, D.M., and Kotagal, M.: "Restricted visiting hours in ICUs: time to change." JAMA. 2004; Vol. 292, pp. 736-737) discusses the health and safety benefits of open visitation for patients, families, and intensive care unit (ICU) staff and debunks some of the myths surrounding the issue (physiologic stress for the patient; barriers to provision of care; exhaustion of family and friends). The article ultimately concluded that "available evidence indicates that hazards and problems regarding open visitation are generally overstated and manageable," and that such visitation policies "do not harm patients but rather may help them by providing a support system and shaping a more familiar environment" as they "engender trust in families, creating a better working relationship between hospital staff and family members." Hospitals that unnecessarily restrict patient visitation often miss an opportunity to gain valuable patient information from those who may know the patient best with respect to the patient's medical history, conditions, medications, and allergies, particularly if the patient has difficulties with recall or articulation, or is totally unable to recall or articulate this vital personal information. Many times visitors who may know the patient best act as an intermediary for the patient, helping to communicate the patient's needs to hospital staff.

Although visitation policies are generally considered to relate to visitors of inpatients, "visitors" also play a role for outpatients who wish to have a support person present during their outpatient visit. For example, a same-day surgery patient may wish to have a support person present during the pre-operative patient preparation or post-operative recovery. Or an outpatient clinic patient may wish to have a support person present during his or her examination by a physician. Accordingly, hospital visitation policies must address both the inpatient and outpatient settings.

Hospitals are required to develop and implement written policies and procedures that address the patient's right to have visitors. If the hospital's policy establishes restrictions or limitations on visitation, such restrictions/limitations must be clinically necessary or reasonable. Furthermore, the hospital's policy must include the reasons for any restrictions/limitations. The right of a patient to have visitors may be limited or restricted when visitation would interfere with the care of the patient and/or the care of other patients. The regulation permits hospitals some flexibility, so that health care professionals may exercise their best clinical judgment when determining when visitation is, and is not, appropriate. Best clinical judgment takes into account all aspects of patient health and safety, including the benefits of visitation on a patient's care as well as potential negative impacts that visitors may have on other patients in the hospital.

Broad examples of circumstances reasonably related to the care of the patient and/or the care of other patients that could provide a basis for a hospital to impose restrictions or limitations on visitors might include (but are not limited to) when:

- *there may be infection control issues;*
- *visitation may interfere with the care of other patients;*
- *the hospital is aware that there is an existing court order restricting contact;*
- *visitors engage in disruptive, threatening, or violent behavior of any kind;*
- *the patient or patient's roommate(s) need rest or privacy;*
- *in the case of an inpatient substance abuse treatment program, there are protocols limiting visitation; and*
- *the patient is undergoing care interventions. However, while there may be valid reasons for limiting visitation during a care intervention, we encourage hospitals to try to*

accommodate the needs of any patient who requests that at least one visitor be allowed to remain in the room to provide support and comfort at such times.

It may also be reasonable to limit the number of visitors for any one patient during a specific period of time, as well as to establish minimum age requirements for child visitors. However, when a hospital adopts policies that limit or restrict patients' visitation rights, the burden of proof is upon the hospital to demonstrate that the visitation restriction is reasonably necessary to provide safe care.

Hospitals are expected to provide a clear explanation in their written policy of the clinical rationale for any visitation restrictions or limitations reflected in that policy. Hospitals are not required, however, to delineate each specific clinical reason for policies limiting or restricting visitation, given that it is not possible to anticipate every instance that may give rise to a clinically appropriate rationale for a restriction or limitation. If visitation policies differ by type of unit, e.g., separate policies for intensive care units, or for newborn nurseries, the hospital policy must address the clinical rationale for this differentiation explicitly.

The hospital's policies and procedures are expected to address how hospital staff who play a role in facilitating or controlling visitor access to patients will be trained to assure appropriate implementation of the visitation policies and procedures and avoidance of unnecessary restrictions or limitations on patients' visitation rights.

Survey Procedures §482.13(h)

- *Verify that the hospital has written policies and procedures that address the right of patients to have visitors.*
- *Review the policy to determine if there are limitations or restrictions on visitation. If there are, does the policy explain the clinical rationale for the restrictions or limitations? Is the rationale clear and reasonably related to clinical concerns?*
- *Is there documentation of how the hospital identifies and trains staff who play a role in facilitating or controlling access of visitors to patients?*
- *Are hospital staff aware of the visitation policies and procedures? Can staff on a given unit correctly describe the hospital's visitation policies for that unit?*

A-0216

§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.*

A-0217

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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:

(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.

Interpretive Guidelines §482.13(h)(3)&(4)

The hospital's visitation policies and procedures may not use the race, color, national origin, religion, sex, gender identity, sexual orientation, or disability of either the patient (or the patient's support person or representative, where appropriate) or the patient's visitors (including individuals seeking to visit the patient) as a basis for limiting, restricting, or otherwise denying visitation privileges.

The hospital's policies and procedures must ensure that all visitors (including individuals seeking to visit the patient) enjoy full and equal visitation privileges, consistent with the preferences the patient (or, where appropriate, the patient's support person) has expressed concerning visitors. In other words, it is permissible for the patient (or the patient's support person, where appropriate) to limit the visiting privileges of his/her visitors, including providing for more limited visiting privileges for some visitors than those for others. But it is not permissible for the hospital, on its own, to differentiate among visitors without any clinically necessary or reasonable basis. This includes visitors designated by the patient who have characteristics not addressed specifically in §482.13(h)(3), when those characteristics do not reasonably relate to a clinically reasonable basis for limiting or denying visitation. For

example, it would not be appropriate to prohibit a designated visitor based on that individual's style of dress, unless there was a clinically reasonable basis for doing so.

The hospital is responsible for ensuring that hospital staff treat all individuals seeking to visit patients equally, consistent with the preferences of the patient (or, where appropriate, the patient's support person) and do not use the race, color, national origin, religion, sex, gender identity, sexual orientation, or disability of either the patient (or the patient's support person or representative, where appropriate) or the patient's visitors (including individuals seeking to visit the patient) as a basis for limiting, restricting, or otherwise denying visitation privileges. Hospitals are expected to educate all staff who play a role in facilitating or controlling visitors on the hospital's visitation policies and procedures, and are responsible for ensuring that staff implement the hospital's policies correctly. Hospitals are urged to develop culturally competent training programs designed to address the range of patients served by the hospital.

Survey Procedures §482.13(h)(3)&(4)

- Review the hospital's visitation policies and procedures to determine whether they restrict, limit, or otherwise deny visitation to individuals on a prohibited basis.*
- Ask the hospital how it educates staff to assure that visitation policies are implemented in a non-discriminatory manner.*
- Ask hospital staff who play a role in facilitating or controlling visitors to discuss their understanding of the circumstances under which visitors may be subject to restrictions/limitations. Are the restrictions/limitations appropriately based on the hospital's clinically-based policies?*
- Ask hospital patients (or patients' support persons, where appropriate) whether the hospital has restricted or limited visitors against their wishes. If yes, verify whether the restriction/limitation on visitors was addressed in the hospital's visitation policies and in the patient notice, and whether it was appropriately based on a clinical rationale rather than impermissible discrimination.*

Appendix W Critical Access Hospital Interpretive Guidelines

C-0151

(Rev.75, Issued: 12-02-11, Effective: 12-02-11, Implementation: 12-02-11)

§485.608(a) Standard: Compliance With Federal Laws and Regulations

The CAH is in compliance with applicable Federal laws and regulations related to the health and safety of patients.

Survey Procedures §485.608(a)

Each CAH must be in compliance with applicable Federal laws and regulations related to the health and safety of patients. This includes other Medicare regulations and Federal laws and regulations not specifically addressed in the CoPs. State Survey Agencies are expected to assess the CAH's compliance with the following Medicare provider agreement regulation provisions when surveying for compliance with §485.608(a):

Advance Directives

An advance directive is defined at 42 CFR 489.100 as “a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State), relating to the provision of health care when the individual is incapacitated.” In accordance with the provisions of 42 CFR 489.102(a), the advance directives regulations apply to CAHs. The CAH patient (inpatient or outpatient) has the right to formulate advance directives, and to have CAH staff implement and comply with the individual's advance directive. The regulation at 42 CFR 489.102 specifies the rights of a patient (as permitted by State law) to make medical care decisions, including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual's option, advance directives.

In the advance directive, the patient may provide guidance as to his/her wishes concerning provision of care in certain situations; alternatively, the patient may delegate decision-making authority to another individual, as permitted by State law. (In addition, the patient may use the advance directive to designate a “support person,” as specified in §485.635(f), for purposes of exercising the patient's visitation rights.) When a patient who is incapacitated has executed an advance directive designating a particular individual to make medical decisions for him/her when incapacitated, the CAH must, when presented with the document, provide the designated individual the information required to make informed decisions about the patient's care. The CAH must also seek the consent of the patient's representative when informed consent is required for a care decision. The explicit designation of a representative in the patient's advance directive takes precedence over any non-designated relationship and continues throughout the patient's inpatient stay or, as applicable, outpatient visit, unless the patient ceases to be incapacitated and expressly withdraws the designation, either orally or in writing.

§489.102 also requires the CAH to:

- *Provide written notice of its policies regarding the implementation of patients' rights to make decisions concerning medical care, such as the right to formulate advance directives. If an individual is incapacitated or otherwise unable to communicate, the CAH may provide the advance directive information required under §489.100 to the individual's "family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law." (§489.102(e)) §489.102(b)(1) requires that notice of the CAH's advance directive policy be provided at the time an individual is admitted as an inpatient. However, the CAH should also consider providing the advance directive notice, at the time of registration, to outpatients (or their representatives) who are in the emergency department, who are in an observation status, or who are undergoing same-day surgery.*
- *The notice must include a clear and precise statement of limitation if the CAH cannot implement an advance directive on the basis of conscience. At a minimum, a statement of limitation should:*
 - *Clarify any differences between institution-wide conscience objections and those that may be raised by individual physicians or other practitioners;*
 - *Identify the State legal authority permitting such an objection; and*
 - *Describe the range of medical conditions or procedures affected by the conscience objection.*

It should be noted that this provision allowing for certain conscience objections to implementing an advance directive is narrowly focused on the directive's content related to medical conditions or procedures. This provision would not allow a CAH or individual physician or practitioner to refuse to honor those portions of an advance directive that designate an individual as the patient's representative and/or support person, given that such designation does not concern a medical condition or procedure.

Issuance of the written notice of the CAH's advance directive policies to the patient or the patient's representative must be documented in the patient's medical record.

- *Document in a prominent part of the patient's medical record whether or not the patient has executed an advance directive;*
- *Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;*
- *Ensure compliance with requirements of State law concerning advance directives and inform individuals that complaints concerning the advance directive requirements may be filed with the State survey and certification agency;*
- *Provide for the education of staff concerning its policies and procedures on advance directives. The right to formulate advance directives includes the right to formulate a psychiatric advance directive (as allowed by State law); and*
- *Provide community education regarding advance directives and the CAH must document its efforts.*

*A **psychiatric advance directive** is akin to a traditional advance directive for health care. This type of advance directive might be prepared by an individual who is concerned that at some time he or she may be subject to involuntary psychiatric commitment or treatment. The psychiatric advance directive may cover a range of subjects, and may name another person who is authorized to make decisions for the individual if he or she is determined to be legally incompetent to make his/her own choices. It may also provide the patient's instructions about hospitalization, alternatives to hospitalization, the use of medications, types of therapies, and the patient's wishes concerning restraint or seclusion. The patient may designate who should be notified upon his/her admission to the CAH, as well as who should not be permitted to visit him or her. State laws regarding the use of psychiatric advance directives vary.*

In accordance with State law, a psychiatric advance directive should be accorded the same respect and consideration that a traditional advance directive for health care is given. CAHs should carefully coordinate how the choices of a patient balance with the rights of other patients, staff, and individuals in the event that a dangerous situation arises.

However, even if State law has not explicitly spoken to the use of psychiatric advance directives, consideration should be given to them. When the patient is, for whatever reason, unable to communicate his/her wishes, the preferences expressed in the psychiatric advance directive can give critical insight to the CAH's professional staff as they develop a plan of care and treatment for the patient.

Required CAH Disclosures to Patients:

- *42 CFR 489.3 defines a "physician-owned hospital" as any participating hospital, including a CAH, in which a physician or immediate family member of a physician (as defined in §411.351) has an ownership or investment interest in the CAH, except for those satisfying an exception found at §411.356(a) or (b).*
- *42 CFR 489.20(u)(1) requires that all physician-owned CAHs provide written notice to their patients at the beginning of each patient's CAH inpatient stay or outpatient visit stating that the CAH is physician-owned, in order to assist the patient in making an informed decision about his or her care.*
 - *The notice must disclose, in a manner reasonably designed to be understood by all patients, that the CAH is physician-owned and that a list of owners or investors who are physicians or immediate family members of physicians is available upon request. If the patient (or someone on behalf of the patient) requests this list, the CAH must provide it at the time of the request.*
 - *However, the notice requirement does not apply to any physician-owned CAH that does not have at least one referring physician (as defined at §411.351 of this chapter) who has an ownership or investment interest in the CAH or who has an immediate family member who has an ownership or investment interest in the CAH. In such cases, the CAH must sign an attestation statement that it has no referring physician with an ownership or investment interest or whose immediate family member has an ownership or investment interest in the CAH. The CAH must maintain this attestation in its records.*
- *42 CFR 489.20(u)(2) provides that physician-owned CAHs must require each physician owner who is a member of the hospital's medical staff to agree, as a condition of*

obtaining/retaining CAH medical staff membership or admitting privileges, to disclose in writing to all patients they refer to the CAH their ownership or investment interest or that of any immediate family member in the CAH. The CAH must require that this disclosure be made at the time of the referral and the requirement should be reflected in the hospital's policies and procedures governing privileges for physician owners.

- *The CAH may exempt from this disclosure requirement any physician owner who does not refer any patients to the CAH.*
- *42 CFR 489.12 permits CMS to refuse to enter into a provider agreement with a physician-owned CAH applicant that does not have procedures in place to notify patients of physician ownership in the hospital, as required under §483.20(u).*
- *42 CFR 489.20(w) mandates that all CAHs provide written notice to all patients at the beginning of an inpatient stay or outpatient visit **if** there is no doctor of medicine or doctor of osteopathy present in the CAH 24 hours per day, seven days per week, in order to assist the patient in making an informed decision about his/her care. The notice must also indicate how the CAH will meet the medical needs of any patient who develops an emergency medical condition, as defined in 42 CFR 489.24(b) [the EMTALA definition], at a time when no physician is present in the CAH.*

CAHs that have an MD/DO on-site 24/7 do not need to issue any disclosure notice about emergency services capability.

A CAH that participates in Medicare with multiple campuses (e.g., a main campus and a separate campus for a psychiatric or rehabilitation distinct part unit (DPU)) and/or provider-based locations all covered under one CMS Certification Number does not need to issue a disclosure notice about emergency services capability if there is an MD/DO 24 hours per day, seven days per week in any portion of the CAH. For example, if a CAH has a main campus with 25 inpatient beds and a remote location with 10 psychiatric DPU beds and 10 rehabilitation DPU beds, and a physician is present 24/7 on the main campus, there is no requirement for the DPUs to make a disclosure that there is no physician present 24/7 at that location.

- *42 CFR 489.53 permits CMS to terminate a provider agreement with a physician-owned CAH if the CAH fails to comply with the requirements at §489.20(u). It also permits termination of the provider agreement if a CAH fails to provide the required notice in accordance with §489.20(w) when it does not have an MD or DO on-site 24/7.*

For purposes of disclosure requirements pertaining to physician-ownership/investment and capability of handling medical emergencies, the CAH inpatient stay or outpatient visit begins with the provision of a package of information regarding scheduled preadmission testing and registration for a planned CAH admission for inpatient care or outpatient service.

42 CFR 489.53 permits CMS to terminate a provider agreement with a physician-owned CAH if the CAH fails to comply with the requirements at §489.20(u). It also permits termination if a CAH fails to provide the required notice in accordance with §489.20(w) when it does not have an MD or DO on-site 24/7.

Other Federal Requirements

Other Federal requirements also apply to patient health and safety in the CAH. For example, Federal laws and regulations govern both the disposal of medical waste and occupational health. However, surveyors are not expected to be knowledgeable about the requirements of other Federal agencies and therefore do not assess compliance with non-CMS regulations. A surveyor who suspects a CAH may not be in compliance with other Federal requirements may refer the matter to the appropriate Federal agency. If CMS is notified or becomes aware of another Federal agency's final enforcement action, action will be taken only if the final enforcement action remains in effect.

Survey Procedures §485.608(a)

Assessing Compliance with Advance Directives Requirements

- Review the CAH's advance directive notice. Does it advise inpatients or applicable outpatients, or their representatives, of the patient's right to formulate an advance directive and to have CAH staff comply with the advance directive (in accordance with State law)? Does it include a clear, precise, and valid statement of limitation if the CAH cannot implement an advance directive on the basis of conscience?*
- Review the records of a sample of patients for evidence of CAH compliance with advance directive notice requirements. Does every inpatient or applicable outpatient record contain documentation that notice of the CAH's advance directives policy was provided at the time of admission or registration? Is there documentation of whether or not each patient has an advance directive? For those patients who have reported an advance directive, has a copy of the patient's advance directive been placed in the medical record?*
- What mechanism does the CAH have in place to allow patients to formulate an advance directive or to update their current advance directive? Is there evidence that the CAH is promoting and protecting each patient's right to formulate an advance directive?*
- Determine to what extent the CAH complies, as permitted under State law, with patient advance directives that delegate decisions about the patient's care to a designated individual.*
- Determine to what extent the CAH educates its staff regarding advance directives.*
- Interview staff to determine their knowledge of the advance directives of the patients in their care.*
- Determine to what extent the CAH provides education for the patient population regarding one's rights under State law to formulate advance directives.*

Assessing Required Disclosures

- Surveyors are not required to make an independent determination regarding whether a CAH meets the Medicare definition of "physician-owned," but they must ask whether the CAH is physician-owned.*
- If the CAH indicates that it is physician-owned but is exempt from the disclosure requirement under §489.20(u)(2), ask to see the signed attestation that it does not have any referring physicians with an ownership/investment interest or whose immediate family*

member was has an ownership/investment interest in the CAH. (As with any other on-the-spot correction of a deficiency during a survey, creation of an attestation at the time of a survey does not mean that there was no deficiency and that the CAH would not be cited.)

- *If the CAH is physician-owned but not exempt from the disclosure requirement:*
 - *Verify that appropriate policies and procedures are in place to ensure that written notices are provided to all patients at the beginning of an inpatient or outpatient stay.*
 - *Review the notice the CAH issues to each patient to verify that it discloses, in a manner reasonably designed to be understood by all patients, that the CAH meets the Federal definition of “physician-owned,” that a list of owners and investors who are physicians or immediate family members of physicians is available upon request, and that such list is provided to the patient at the time the request is made by or on behalf of the patient.*
 - *Determine through staff interviews, observation, and a review of policies and procedures whether the CAH furnishes its list of physician owners and investors at the time a patient or patient’s representative requests it.*
 - *Determine through staff interviews and review of policies, procedures, and staff records whether a physician-owned CAH’s medical staff membership and admitting privileging requirements include a requirement that, as a condition of continued membership or admitting privileges, physician owners who refer patients to the CAH agree to provide written disclosure of their own or any immediate family member’s ownership or investment interest to all patients at time of referral to the CAH.*
- *Determine through interviews, observation, and medical record review whether an MD/DO is present in the CAH 24 hours per day, 7 days per week. If one is not present:*
 - *Verify that appropriate policies and procedures are in place to ensure that written notices that a MD/DO is not present are provided to all patients at the beginning of an inpatient or outpatient stay.*
 - *Review the notice the CAH issues to verify that it indicates how the CAH will meet the medical needs of any patient who develops an emergency medical condition at a time when no physician is present in the CAH.*

Other Federal Requirements

Surveyors do not assess compliance with Medicare payment provisions or non-Medicare requirements. However, a surveyor may refer suspected noncompliance with Federal laws and regulations to the appropriate agency having jurisdiction (e.g., hazardous chemical and waste issues to EPA, blood-borne pathogens and TB control to OSHA, etc.).

C-1000

(Rev.75, Issued: 12-02-11, Effective: 12-02-11, Implementation: 12-02-11)

§485.635(f) Standard: Patient visitation rights. A CAH 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 CAH may need to place on such rights and the reasons for the clinical restriction or limitation....

Interpretive Guidelines §485.635(f)

Visitation plays an important role in the care of hospital patients, including CAHs. An article published in 2004 in the Journal of the American Medical Association (Berwick, D.M., and Kotagal, M.: “Restricted visiting hours in ICUs: time to change.” JAMA. 2004; Vol. 292, pp. 736-737) discusses the health and safety benefits of open visitation for patients, families, and intensive care unit (ICU) staff and debunks some of the myths surrounding the issue (physiologic stress for the patient; barriers to provision of care; exhaustion of family and friends). The article ultimately concluded that “available evidence indicates that hazards and problems regarding open visitation are generally overstated and manageable,” and that such visitation policies “do not harm patients but rather may help them by providing a support system and shaping a more familiar environment” as they “engender trust in families, creating a better working relationship between hospital staff and family members.” CAHs that unnecessarily restrict patient visitation often miss an opportunity to gain valuable patient information from those who may know the patient best with respect to the patient’s medical history, conditions, medications, and allergies, particularly if the patient has difficulties with recall or articulation, or is totally unable to recall or articulate this vital personal information. Many times visitors who may know the patient best act as an intermediary for the patient, helping to communicate the patient’s needs to CAH staff.

Although visitation policies are generally considered to relate to visitors of inpatients, “visitors” also play a role for outpatients who wish to have a support person present during their outpatient visit. For example, a same-day surgery patient may wish to have a support person present during the pre-operative patient preparation or post-operative recovery. Or an outpatient clinic patient may wish to have a support person present during their examination by a physician. Accordingly, CAH visitation policies must address both the inpatient and outpatient settings.

CAHs are required to develop and implement written policies and procedures that address the patient’s right to have visitors. If the CAH’s policy establishes restrictions or limitations on visitation, such restrictions/limitations must be clinically necessary. Furthermore, the CAH’s policy must include the reasons for any restrictions/limitations. The right of a patient to have visitors may be limited or restricted when visitation would interfere with the care of the patient and/or the care of other patients. The regulation permits CAHs some flexibility, so that health care professionals may exercise their best clinical judgment when determining when visitation is, and is not, appropriate. Best clinical judgment takes into account all aspects of patient health and safety, including the benefits of visitation on a patient’s care as well as potential negative impacts that visitors may have on other patients in the CAH.

Broad examples of clinically reasonable bases for a CAH to impose restrictions or limitations on visitors might include (but are not limited to) when:

- *there may be infection control issues;*
- *visitation may interfere with the care of other patients;*
- *the CAH is aware that there is an existing court order restricting contact;*
- *visitors engage in disruptive, threatening, or violent behavior of any kind;*
- *the patient or patient’s roommate needs rest or privacy;*

- *in the case of an inpatient substance abuse treatment program, there are protocols limiting visitation; and*
- *the patient is undergoing care interventions. However, while there may be valid reasons for limiting visitation during a care intervention, we encourage CAHs to try to accommodate the needs of any patient who requests that at least one visitor be allowed to remain in the room to provide support and comfort at such times.*

It may also be reasonable to limit the number of visitors for any one patient during a specific period of time, as well as to establish minimum age requirements for child visitors. However, when a CAH adopts policies that limit or restrict patients' visitation rights, the burden of proof is upon the CAH to demonstrate that the visitation restriction is reasonably necessary to provide safe care.

CAHs are expected to provide a clear explanation in their written policy of the clinical rationale for any visitation restrictions or limitations reflected in that policy. CAHs are not required, however, to delineate each specific clinical reason for policies limiting or restricting visitation, given that it is not possible to anticipate every instance that may give rise to a clinically appropriate rationale for a restriction or limitation. If visitation policies differ by type of unit, e.g., separate policies for intensive care units, or for newborn nurseries, the CAH policy must address the clinical rationale for this differentiation explicitly.

The CAH's policies and procedures are expected to address how CAH staff who play a role in facilitating or controlling visitor access to patients will be trained so as to assure appropriate implementation of the visitation policies and procedures and avoidance of unnecessary restrictions or limitations on patients' visitation rights.

Survey Procedures §485.635(f)

- *Verify that the CAH has written policies and procedures that address the right of patients to have visitors.*
- *Review the policy to determine if there are limitations or restrictions on visitation. If there are, does the policy explain the clinical rationale for the restrictions or limitations? Is the rationale clear and reasonably related to clinical concerns?*
- *Is there documentation of how the CAH identifies and trains staff who play a role in facilitating or limiting/restricting access of visitors to patients?*
- *Are CAH staff aware of the visitation policies and procedures? Can staff on a given unit correctly describe the CAH's visitation policies for that unit?*

C-1001

(Rev.75, Issued: 12-02-11, Effective: 12-02-11, Implementation: 12-02-11)

§485.635(f) Standard: Patient visitation rights. A CAH 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 CAH may need to place on such rights and the reasons for the clinical restriction or limitation. A CAH 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, in advance of furnishing patient care whenever possible.

(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 §482.635(f)(1)&(2)

CAHs 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 designated under an advance directive who is legally responsible for making medical decisions on the patient's behalf. A patient's support person could be a family member, friend, or other individual who supports the patient during the course of the CAH 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. CAHs 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, there is no advance directive designating a representative on file, 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 CAH 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 and no one has presented an advance directive designating them as the patient's support person, 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 CAH 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 CAH to ask each individual for documentation supporting his/her claim to be the patient's support person.

- CAHs 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 CAH 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 must, along with the specific basis for the refusal.*

The required notice of the patient's visitation rights must be provided, whenever possible, before the CAH provides patient care. The notice to patients must be in writing in a language or manner that the patient (or the patient's support person) can understand. This is consistent with the guidance related to Title VI of the Civil Rights Act of 1964 issued by the Department of

Health and Human Services - “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (August 8, 2003, 68 FR 47311). In accordance with §485.608(a), CAHs are expected to comply with Title VI and may use this guidance to assist the CAH in ensuring patient’s rights information is provided in a language and manner that the patient understands. Surveyors do not assess compliance with this guidance on limited English proficiency, but may refer concerns about possible noncompliance to the Office of Civil Rights in the applicable Department of Health and Human Services Regional Office.

The required visitation rights notice must address any clinically necessary or reasonable limitations or restrictions imposed by CAH 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 §485.635(f)(1) & (2)

- *Determine whether the CAH'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 CAH's standard notice of visitation rights. Does it clearly explain the:*
 - *CAH's visitation policy, including any limitations or restrictions, such as visiting hours, numbers of visitors, or 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 and if it was provided in advance of care, unless circumstances made this not feasible.*
- *Ask the CAH 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 CAH 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 CAH's visitation policies and notice, or was inappropriate.*
- *Ask a sample of current CAH patients or patients' support persons (where appropriate) whether the CAH did not limit some or all visitors, contrary to the patient's wishes.*

C-1002

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§485.635(f) Standard: Patient visitation rights. A CAH 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 CAH may need to place on such rights and the reasons for the clinical restriction or limitation. A CAH must meet the following requirements:

(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.

Interpretive Guidelines §485.635(f)(3)&(4)

The CAH's visitation policies and procedures may not use the race, color, national origin, religion, sex, gender identity, sexual orientation, or disability of either the patient (or the patient's support person, where appropriate) or the patient's visitors (including individuals seeking to visit the patient) as a basis for limiting, restricting, or otherwise denying visitation privileges.

The CAH's policies and procedures must ensure that all visitors (including individuals seeking to visit the patient) enjoy full and equal visitation privileges, consistent with the preferences the patient (or, where appropriate, the patient's support person) has expressed concerning visitors. In other words, it is permissible for the patient (or the patient's support person, where appropriate) to limit the visiting privileges of his/her visitors, including providing for more limited visiting privileges for some visitors than those for others. But it is not permissible for the CAH, on its own, to differentiate among visitors without any clinically necessary or reasonable basis. This includes visitors designated by the patient who have characteristics not addressed specifically in §485.635(f)(3), when those characteristics do not reasonably relate to a clinically reasonable basis for limiting or denying visitation. For example, it would not be appropriate to prohibit a designated visitor based on that individual's style of dress, unless there was a clinically reasonable basis for doing so.

The CAH is responsible for ensuring that CAH staff treat all individuals seeking to visit patients equally, consistent with the preferences of the patient (or, where appropriate, the patient's support person) and do not use the race, color, national origin, religion, sex, gender identity, sexual orientation, or disability of either the patient (or the patient's support person, where appropriate) or the patient's visitors (including individuals seeking to visit the patient) as a basis for limiting, restricting, or otherwise denying visitation privileges. CAHs are expected to educate all staff who play a role in facilitating or controlling visitors on the CAH's visitation policies and procedures, and are responsible for ensuring that staff implement the CAH's policies correctly. CAHs are urged to develop culturally competent training programs designed to address the range of patients served by the CAH.

Survey Procedures §485.635(f)(3)&(4)

- Review the CAH's visitation policies and procedures to determine whether they restrict, limit, or otherwise deny visitation to individuals on a prohibited basis.*
- Ask the CAH how it educates staff to assure that visitation policies are implemented in a non-discriminatory manner.*
- Ask CAH staff who play a role in facilitating or controlling visitors to discuss their understanding of the circumstances under which visitors may be subject to restrictions/limitations. Are the restrictions/limitations appropriately based on the CAH's clinically-based policies?*
- Ask CAH patients (or patients' support persons, where appropriate) whether the CAH has limited visitors against their wishes? If yes, verify whether the restriction/limitation on visitors was addressed in the CAH's visitation policies and in the patient notice, and whether it was appropriately based on a clinical rationale rather than impermissible discrimination.*