The New CMS CoP Patient Visitation Rights - Complexity of New Changes Underestimated As Evidenced by Recent CMS Deficiency Report

Monday, December 8th, 2014

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Learning Objectives

1. Summarize the CMS Visitation standard including the key components required for compliance.
2. Explain the role of the patient advocate including the patient's rights regarding informed consent and patient right's statements.
3. Discuss CMS requirements for staff education on the visitation standard.
4. Explain new and revised standards, regulations, and laws put forth by CMS, TJC and the federal government.
5. Evaluate compliance requirements and penalties.
Visitation Law in a Nutshell

- Require all hospitals that accept Medicare or Medicaid reimbursement
- To allow adult patients to designate visitors
- Not legally related by marriage or blood to the patient
- To be given the same visitation privileges as an immediate family member of the patient

Visitation Rights The Law and IGs

- First, there is a federal regulation on visitation that went into effect January 18, 2011
- Second, CMS issues a 34 page memo implementing interpretive guidelines for hospitals including critical access hospitals
  - These went beyond just visitation
  - These amended consent, advance directives, plan of care, and other important sections of the hospital CoP
  - These were issued September 7, 2011
  - Transmittal issued December 2, 2011 and now in current CMS CoP manual
Location of CMS Hospital CoP Manual

Medicare State Operations Manual
Appendix

- Each Appendix is a separate file that can be accessed directly from the SOM Appendix Table of Contents, as listed below.
- The appendices are in PDF format, which is the format generally used in the SOP to display files. Click on the file link to view or download the file.

CMS CoP Manuals are now located at:

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>PDF File</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Hospitals</td>
<td>1.2MB</td>
</tr>
<tr>
<td>9</td>
<td>Privacy hospitals</td>
<td>105Kb</td>
</tr>
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</table>

Final Rule FR Effective January 18, 2011

Visitation Memo

- Make sure your policies and procedures include the information in the visitation memo
- Since amends 8 sections of the hospital CoP manual use the survey memo or transmittal to go through each section to include all information is included in your policy
- Make sure all staff are educated on your visitation policy
  - Include in orientation
  - Train existing staff
- Don’t forget to educate your physicians and licensed independent practitioners (LIPs)
CMS Visitation Interpretive Guidelines

10/12/2014

CMS Survey and Certification Website


Visitation Transmittal

CMS Manual System

Pub. 100-07, Manual of Operations

Provider Certification

Transmittal

SUBJECT: Revised Appendix A: Interpretive Guidelines for Hospital and Applicable Skilled Nursing Facilities and Related Health Care Services (CABP)

I. SUMMARY OF CHANGES: This transmittal provides the policy manual guidance on all visits to patients, including hospital and long-term care facilities. The document contains a list of all visits to patients and their associated documentation requirements. The revised guidelines aim to streamline the process and ensure consistent documentation. The document is effective immediately and will be incorporated into the published policy manual.

II. CHANGES TO PARAGRAPH: A list of changes to paragraphs is provided at the end of this transmittal.


Click on Policy & Memos
Access to Hospital Complaint Data

- CMS issued Survey and Certification memo on March 22, 2013 regarding access to hospital complaint data
- Includes acute care and CAH hospitals
  - Does not include the plan of correction but can request
  - Questions to bettercare@cms.hhs.com
- This is the CMS 2567 deficiency data and lists the tag numbers
- Will update quarterly and updated June & Nov 2013
  - Available under downloads on the hospital website at www.cms.gov

Access to Hospital Complaint Data

- There is a list that includes the hospital’s name and the different tag numbers that were found to be out of compliance
  - Many on restraints and seclusion, EMTALA, infection control, consent, advance directives and grievances and patient rights and visitation
- Two websites by private entities also publish the CMS nursing home survey data and hospitals
  - The ProPublica website for LTC
  - The Association for Health Care Journalist (AHCJ) websites for hospitals
Updated Deficiency Data Reports

Visitation Memo Deficiencies July 2014

<table>
<thead>
<tr>
<th>Name</th>
<th>Tag Number</th>
<th>Number of Deficiencies</th>
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<tbody>
<tr>
<td>Notice of Patient Rights</td>
<td>117</td>
<td>144</td>
</tr>
<tr>
<td>Care Planning</td>
<td>130</td>
<td>87</td>
</tr>
<tr>
<td>Informed Consent</td>
<td>131</td>
<td>186</td>
</tr>
<tr>
<td>Informed Decisions</td>
<td>132</td>
<td>55</td>
</tr>
<tr>
<td>Patient Admission Status</td>
<td>133</td>
<td>12</td>
</tr>
<tr>
<td>Patient Visitation Rights</td>
<td>215</td>
<td>4</td>
</tr>
<tr>
<td>Patient Visitation Rights</td>
<td>216</td>
<td>12</td>
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<tr>
<td>Patient Visitation Rights</td>
<td>217</td>
<td>6</td>
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<td></td>
<td></td>
<td>Total 506</td>
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</table>

Who is a Patient Representative?

- Parent of a minor child
- Guardian
- DPOA of a patient who is incapacitated
- Support person/visitation advance directive who is also referred to as the patient advocate by the Joint Commission
  - Called care partner by some hospitals
- If patient has no advance directives on file it can be whoever shows up and claims to be the patient representative like the spouse, same sex partner, friend, etc.
CMS Gives Rights to Support Persons

- Right to be involved in the plan of care
- CMS says patient representative should sign the consent form even if the patient is competent
- CMS says the patient advocate or support person is to be given a copy of the patient rights even if the patient is competent (not incapacitated)
- CMS says has right to chose who visitors will be if patient is not competent to make the decision
- Suggest a form be signed so patient is aware and to protect HIPAA rights and include all four

TJC Speak Up Patient Advocates

- CMS gives rights to support persons
- Right to be involved in the plan of care
- Right of patient or guardian to choose or refuse care
- Right to be given a copy of patient rights
- Right to chose who visits
- Suggest a form be signed so patient is aware and to protect HIPAA rights and include all four

TJC Speak Up Patient Advocate

- CMS gives rights to support persons
- Right to be involved in the plan of care
- Right of patient or guardian to choose or refuse care
- Right to be given a copy of patient rights
- Right to chose who visits
- Suggest a form be signed so patient is aware and to protect HIPAA rights and include all four

www.jointcommission.org/speak_up_help_prevent_errors_in_your_care/
Patient Visitation Right

- This rule revises the hospital CoPs to ensure visitation rights of all patients including same sex domestic partners
- Hospitals are required to have policies and procedures (P&P) on this
- P&P must set forth any clinically necessary or reasonable restrictions or limitations
- Hospitals will have to train all staff
- Hospitals will be required to give a written copy of this right to all patients in advance of providing treatment

Visitation Rights for All Patients

- The new law implemented the April 15, 2010 Presidential memo which is what started this change.
- The President gave HHS (Health and Human Services) the task of requiring any hospital that receives Medicare reimbursement to preserve the rights of all patients to choose who can visit them
- Patients or their representative have a right to visitation privileges that are no more restrictive than those for immediate family members

2 http://www.access.gpo.gov/su_docs/fedreg/a100628c.html (June 28, 2010 Federal Register)

Started with a Presidential Memo
<table>
<thead>
<tr>
<th>Visitation Rights for All Patients</th>
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<tbody>
<tr>
<td><strong>Memo</strong> was entitled &quot;Respecting the Rights of Hospital Patients to Receive Visitors and to Designate Surrogate Decision Makers for Medical Emergencies&quot;</td>
</tr>
<tr>
<td>President says there are few moments in our lives that call for greater compassion and companionship that when a loved one is admitted to the hospital</td>
</tr>
<tr>
<td>A widow with no children is denied the support and comfort of a good friend</td>
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<tr>
<td>Members of religious organizations unable to make medical decisions for them (can do DPOA)</td>
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<table>
<thead>
<tr>
<th>Visitation Rights for All Patients</th>
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</thead>
<tbody>
<tr>
<td><strong>Medical staff</strong> may not have best information on H&amp;P and medications if friends or certain family members are unable to serve as intermediaries</td>
</tr>
<tr>
<td>Notes that some states have passed laws on this already such as North Carolina in the Patient's Bill of Rights</td>
</tr>
<tr>
<td>Gives each patient the right to designate visitors who shall receive the same visitation privileges as the patient's immediate family members, regardless of whether the visitors are legally related to the patient</td>
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<table>
<thead>
<tr>
<th>Followed By HHS Memo</th>
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<tr>
<td><strong>News Release</strong></td>
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<tr>
<td>Medicare Proposes New Roles to Ensure Equal Visitation Rights for All Hospital Patients</td>
</tr>
<tr>
<td>Medicare beneficiaries across the United States would have new access to hospital visitation options. Medicare beneficiaries who are not covered under the Category of Preferences (as defined in the regulations of Medicare) would be able to select visitors who are not in their immediate families or are not legally related to the patient.</td>
</tr>
<tr>
<td>The proposal is intended to give patients the right to designate visitors who are not immediate family members and who are not legally related to the patient.</td>
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<tr>
<td>The proposal would allow Medicare beneficiaries to designate visitors who are not immediate family members and who are not legally related to the patient.</td>
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Visitation Rights for All Patients

- “Every patient deserves the basic right to designate whom they wish to see while in the hospital.”
- “Today’s rules would ensure that all patients have equal access to the visitors of their choosing—whether or not those visitors are, or are perceived to be, members of a patient’s family.” HHS Secretary Kathleen Sebelius.
- Aimed at providing equal rights and privileges from the healthcare system regardless of their personnel and family situation

We knew it would be included in the CAH and PPS hospital CoPs

- All hospitals that accept Medicare payments are required to follow the CoP
- This is a requirement for all patients and not just Medicare patients such as private insurance, no pay, worker compensation patients etc.
- Medicare hospitals (about 98% of hospitals in the US, not VA Hospitals since don’t take Medicare)
  - TJC has visitation standard located in patient centered communication

Hospitals would have to explain to all patients their right to choose who may visit them during their inpatient stay

- Regardless of whether the visitor is a family member, a spouse, or a domestic partner (including a same-sex domestic partner)
- As well as the right to withdraw such consent at any time
- Reasonable or necessary restrictions would be in the P&P
Visitation Rights Federal Register

- FR discusses the President’s memo when the changes were published
- Some patients are denied most basic of human needs because their loved ones and close friends do not fit the traditional concept of family
- Discusses current requirements of the hospital CoPs and CMS adds 34 page guidelines
- These patient rights are in the PPS hospital CoP under Tags 117, 130, 131, 132, 215-217, & 151
- Included changes to CAH under Tag 1000-1002 which is located behind Tag 298

CAH Tag 1000 on Visitation Follows 298

- Final Language on Patient Visitation Rights
  - Standard: Patient visitation rights
  - A hospital must have written P&P regarding the visitation rights of patients
  - This includes 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
Final Language on Patient Visitation Rights

- A hospital must meet the following 4 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 (previously mentioned)
  2. Inform each patient (or support person, where appropriate) of the right
     - Subject to his or her consent
     - To receive the visitors whom he or she designates
     - Including, but not limited to, a spouse, a domestic partner (including a same sex domestic partner),
     - Another family member, or a friend, and his or her right to withdraw or deny such consent at any time
  3. Not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability
  4. Ensure that all visitors enjoy full and equal visitation privileges consistent with patient preferences

So what does this mean??
- Explained in more detail in the 34 pages of Interpretive Guidelines
Visitation Interpretive Guidelines

- CMS published 34 page interpretive guidelines which amended the hospital CoP manual
- CAHs CoPs have similar language and the exact language and tag numbers are at the end
- Also discusses extending patient rights to patient representatives
- Reiterated many of the patient rights like notice of patient right must be given to the patient and/or their representative
- Need to take reasonable steps to determine patient wishes concerning designation of a representative

Visitation Interpretive Guidelines CMS

CMS Visitation Transmittal Dec 2 2011

Interpretive Guidelines (401.31a)(1)

The hospital must inform each patient, or other appropriate, the patient's representative as allowed by their laws, of the patient's rights. Whenever possible, this notice must be provided before providing or stopping care. All patients, irrespective of competence, must be informed of their rights as hospital patients. The patient’s rights include all of those described in this condition, as well as such other rights as described in the facility's policies and procedures, written in a language the patient can understand. The hospital must provide, in a language the patient can understand, patient information and notice about health care services, patient rights, and the hospital’s grievance and complaints procedure. The hospital must also provide, in a language the patient can understand, information about visiting hours and visitors, including the hospital’s policies for patients who are on hospice care.
Patient Notified of their Patient Rights

- **The standard**: A hospital must inform the patient, and when appropriate, the patient representative (PR) of the patient’s rights in advance of furnishing or discontinuing patient care.
- All inpatients and outpatients must be informed of their rights as hospital patients.
- This has to be provided and explained in a language or manner that the patient or the PR can understand.
- This brings in the issue of low health literacy and limited English proficiency (the use of interpreters).

Limited English Proficiency or LEP

- Limited English proficiency is abbreviated LEP.
- LEP means the patient is unable to communicate effectively in English.
  - Because their primary language is not English.
  - And they have not developed fluency in the English language.
  - For example, the patient may speak Spanish and no English at all or limited English.
- The US Department of Health and Human Services (HHS) has resources on the Office of Civil Rights (OCR) website.
Limited English Proficiency or LEP

- There are 50 million Americans who primary language is not English and 90 million with low health literacy
  - So we need to provide qualified or certified interpreters to patients and put things in easy to understand language
  - We need to provide interpreters at critical parts of their care such as discharge instructions, doing the H&P, consent etc.
  - Be sure to document the use of an interpreter in the medical record
  - Will help reduce unnecessary readmissions

Low Health Literacy or LHL

- 20% of patients read at a fifth grade level
- Another 20% read at an eighth grade level
- 52% of patients were unable to read or understand their discharge instructions or medication sheets
- So we need to provide information in a manner the patient can understand
- Can do teach back and ask the patient to repeat the information back to make sure they understand it
- Ask me three is a good way to keep information basic
Provide Patient a Copy of Their Rights

- Hospitals are expected to take reasonable steps to determine the patient’s wishes concerning designation of a representative.

- If the patient is not incapacitated, they can still orally or in writing designate another to be their representative.
  - Recommend getting it in writing.

- The hospital must give this person and the patient the required notice of patient rights.

- This is a change and the first time that the patient rights must be given not only to a competent patient but also to their representative.

The Exact Language

- 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 or in writing, another individual to be his/her representative, the hospital must provide the designated individual with the required notice of the patient’s rights in addition to the notice. The written designation of a representative takes precedence over any more designated relationship and continues throughout the patient’s inpatient stay or outpatient visit, unless expressly withdrawn, either orally or in writing, by the patient.
Visitation Interpretive Guidelines

- If the patient is incapacitated and an individual presents with an AD or durable power of attorney then hospital proceeds with its P&P
  - This designation takes precedence over any non-designated relationship and continues throughout stay
  - In other word, the written advance directive take precedence over anyone who shows up and says they are the patient representative and wants to make healthcare decisions

- If incapacitated and unable to state wishes and no ADs and person asserts is spouse or domestic partner (including same sex partners) hospital is expected to accept without demanding supporting documentation
  - However, if more than one person claims to be the patient representation (PR) then appropriate to ask for documentation to support their claim
  - Such as proof of marriage, domestic partnership, joint household, co-mingled finances
  - State law can specify a procedure for determining who is a patient representative if patient incapacitated

The Exact Language

- 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 requested 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 revokes or 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 preseant, and an individual asserts that he or she is the patient’s spouse, domestic partner (whether or not formally committed and including a same-sex domestic partner), parent (including stepparent) who has standing to act or to make decisions for the patient who is a minor (child) or other family member, the hospital is expected to accept this
Patient Rights

- State laws may specify a procedure for determining who may be considered a representative of an incapacitated patient.
- State law can also specify when documentation is or is not required.
- CMS says the hospital must adopt P&P to 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.

Survey Procedure 117

- Surveyor is to review the medical records and interview staff and patients or PR (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?

Survey Procedure 117

- 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.
Survey Procedure

- How does the hospital communicate 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?
- Does staff know what steps to take to inform a patient about their patients' rights, including those patients' with special communication needs?
- Was the IM Notice given as required?

Patient Representative

- A refusal by the hospital of a person requested to be treated as a patient representative must be documented in the medical record along with a specific basis for the refusal (117).
- IM Notice must be signed by Medicare patient or their representative (117).
- Patient who is not incapacitated must involve designated patient representative in the plan of care.
- If incapacitated then DPOA makes medical decisions for patient or similar documents rea plan of care.

CMS IM Notice

www.cms.hhs.gov/bni/
Plan of Care 130

- Standard: The patient has the right to participate in the development and implementation of his or her plan of care

- Plan of care is important to CMS and TJC

- Need a written plan of care started soon after the patient is admitted and must be maintained in the medical record

- Patients and their PR have a right to participate in both the inpatient and outpatient plan of care including their discharge plan or 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

- If patient is incapacitated and unable to communicate and no ADs

- then an individual who is the spouse or domestic partner, parent of minor child, and other family member must be involved in plan of care
Plan of Care 130

- Express designation of a PR takes precedence
- CMS says should get it in writing or orally when patient is not incapacitated
  - Author recommends you get it in writing
- CMS says if patient is not incapacitated and has PR then must be involved both in the patient's plan of care
- Again important to note that both must be involved in the plan of care
- If patient is incapacitated then the person with the AD gets to make decisions re the plan of care

Plan of Care 130

- If patient is incapacitated and no AD on file then who ever asserts they are the PR such as spouse, domestic partner, parent of child, or other family member
- Hospitals are not expected to demand documentation unless more than one person claims to be the representative
  - Refusal to allow must be documented in the medical record along with the refusal
  - State law can define this as far as order of priority
- Must have P&P on this

Plan of Care Survey Procedure 130

- Does the hospital have a P&P to involve patient or their PR in the development of their plan of care for both inpatients and outpatients?
- Surveyor to review the medical record and interview staff to make sure they know this section on plan of care requirements
- Does the hospital P&P provide for determining when a patient has a representative who can exercise the patient’s rights in implementing the plan of care
- Were revisions to the plan explained to the patient?
Consent   Informed Decisions   131

- Standard: the patients or their representatives has the right to make informed decisions regarding their care.

- This includes the right to be informed of their health status, be involved in the care planning, and can request or refuse treatment.

- The right to make informed decisions means the patient is given information in order to be able to make this decision.

- This is important to make sure informed consent is given.

Consent & Informed Decisions   A-0131

- Competent patient asks someone to be their representative, orally or in writing, then person must be given information on informed decisions about patient care.

- So both the patient is given information along with the PR.

- This included getting informed consent from them when required.

- CMS states "The hospital must also seek the written consent of the patient’s representative when informed consent is required for a care decision.”

Consent from Competent Patient & PR

- Hospitals are expected to take reasonable steps to determine the patient’s wishes concerning designation of a representative, unless prohibited by applicable State laws.

- When a patient is not incapacitated and designated, either orally to hospital staff or in writing, another individual to be further designated, 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 is incapacitated or unconscious, unless expressly withdrawn, either orally or in writing, by the patient.
Consent & Informed Decisions 131

- Again suggest you get it in writing from the competent patient designating their PR
- May want to include language about being a support person/visitation, decisions about who can visit, language making it clear that patient understands that medical record information (PHI) will be shared with PR
- Incapacitated and no AD then person who asserts is spouse, domestic partner, parent of child decides
- Incapacitated patient then consent is from the patient representative (DPOA, guardian, parent for child, designated representative, etc.)

Consent & Informed Decisions A-0131

- Same requirement about having a P&P in case there is a dispute so it can quickly be resolved
- Same provision if hospital refuses to let someone be treated as the PR then this must be documented in the medical record along with the specific refusal
- The right to know the diagnosis, prognosis, is afforded so informed decisions and informed consent can be obtained
- CMS has a section in the medical record and surgery section on what is required to be in the consent form

Diagnosis Ownership 131

- Must notify patient if physician owned hospital
  - Must give list of owner if patient requests and this include family members of physicians who are owners
  - Physicians must also notify all their patients if they are an owner or investor in the hospital before sending them to the hospital for test or procedures
  - Must do as condition for retaining MS privileges
  - Hospital must sign an attestation that there is no referring physician with an ownership or investment interest in the hospital along with no immediate family members (related to physician owned hospital only)
Advance Directives 132

- In advance directive can delegate decision making to another person.
- Patient may also delegate support person.
  - Also referred to as the patient advocate.
- Designation in the AD takes precedence.
- Notice of the hospital's AD policy must be provided to inpatients when admitted at time of registration.
  - Such as right to make an AD & document this in the MR.
- Also to outpatients or their representatives in the ED, observation or undergoing same day surgery.

The Exact Language Tag 132

[Enter text from page 132 here]

Notify Family or Representative 133

- Hospital must ask every patient who is admitted if they want to notify a family member or patient representative about the admission.
- Hospital must ask EVERY patient if they want their own physician notified unless already aware of this.
- If patient is incapacitated then hospital must notify family member.
- If spouse, domestic partner, parent of child, or other family member comes to the hospital is expected to accept unless more than one claim and then can ask for documentation.
Notification of Family and Physician

- Hospital must have P&P to facilitate quick resolution of issues of disputes
- Hospital can choose to provide notice to more than one family member
- If patient is incapacitated must promptly notify patient’s own physician if can be reasonably identified
- Hospital must document that the patient was asked if wanted family and physician notified
  - Be sure to have P&P on notification of family and physician

Visitation

- Need written P&P regarding visitation including any clinically necessary or reasonable restrictions
- Supports open visitation even in the ICU
- Hospital P&P must include the reasons for any restrictions or limitations
- There are reasons to restrict or limit visitation and include but are not limited to the following;
  - There may be infection control issues
  - Visitation may interfere with the care of other patients

Reasons to Restrict Visitors

- 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 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
Reasons to Restrict Visitors  215

- May establish minimum age requirement for child visitors
- Burden is on the hospital to establish that the restriction is necessary for safe care
- Policy must have clear explanation of the rationale for visitor restrictions in their policy
- Policy must address how staff will be trained to assure proper implementation of visitor P&P
- Need to document training done of staff

Informing the Patient  216

- Must inform each patient of their visitation rights or support person when appropriate
- Patient can withdrawal consent for visitors at anytime
- If patient is incapacitated or unable to communicate then provide information to their advance directive designating a support person
  - Could be a visitation advance directive and can be different than the DPOA

Advance Directives  216

- If no AD designating a representative then individual who asserts is spouse, domestic partner, parent of a child, or other family friend or family, the hospital will accept this without requiring proof
  - Unless more than one person claims to be the support person then ask for documentation
- Need to have non-discriminatory resolution of disputes
- Refusal to honor request of person to be treated as the support person must be documented in the medical record along with basis for refusal
Incapacitated Patient with No AD

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 is the patient’s spouse, 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.

Visitors 217

- All visitors enjoy full and equal visitation consistent with patient preferences
- Can not discriminate on basis of color, race, sexual orientation or gender identity
- Surveyor will review the hospital visitation policy to make sure it conforms with these standards
- Will ask hospital how it educated the staff on visitation policies and to make sure implemented in a non-discriminatory manner

State Visitation Laws

- States like Delaware, Nebraska, North Carolina and Minnesota have adopted similar laws
- States that have passes a specific state law will need to review the final CMS Hospital CoP section
- Will need to contrast it with their state law requirement
- State law must be at least as stringent as CMS but okay if it is more stringent
- Consider consent and DNR issues with surrogate decision maker such as guardian or DPOA
Patient Visitation North Carolina

“A patient has the right to designate visitors who shall receive the same visitation privileges as the patient’s immediate family members, regardless of whether the visitors are legally related to the patient.” (10A NCAC 13B.3302 Amend. Eff. April 1, 2008.)

Patient Visitation Rights In Summary

- All hospitals should inform all patients of their visitation rights in writing in advance of care furnished.
- This includes the right to decide who may and may not visit them.
- Some hospitals may give a one page sheet to each patient upon admission.
- Hospitals would want to amend their patient rights statement to include this information.
  - Example: written patient rights given to patients on admission and could have also brochure in admission packet.

Patient Visitation Rights In Summary

- Competent patients can verbally give this information on admission.
- There is no requirement that designation of patient advocate be in writing if a competent patient gives oral confirmation as to who he or she would like to visit.
  - However, recommend you have them sign a form.
  - Some patients may sign a written patient visitation advance directive/support person.
  - Some patients may add a section to their advance directive adding a section on who they would like to visit or deny visitation.
Patient Visitation Rights In Summary

- CMS does suggest that this be documented in the medical record for future reference if they specify a support person
  - Include the question in the admission assessment and ask during registration
  - Reading of the Federal Register helps to provide an understanding of what it means and how to implement it
  - CMS hospital interpretive guidelines should be incorporated into the hospital policy
  - Train all staff on this

Patient Visitation Right Restrictions

- Can still have restrictions or limitation if based on a clinically necessary or reasonable restrictions
- These must include these in your P&P
- CMS mentions 3 broad examples of where hospitals may want to impose restrictions
  - When the patient is undergoing care interventions
  - When there may be infection control issues
  - When visitors may interfere with the care of other patients

Patient Visitation Rights In Summary

- There are other obvious areas where restrictions or limitation of visitation would be appropriate
- Be sure to state in the P&P that it is impossible to delineate or anticipate every clinical reason that could warrant restrictions or limitations
- The hospital reserves the right to determine any other situation where it is necessary to limit visitation
- Other clinically appropriate or reasonable restrictions to visitation might include:
Patient Visitation Right Restrictions

- Disruptive behavior of the visitor
- Patient or room mate need for privacy (especially during procedures or tests)
- Care of other patients in a shared room such as the room mate
- Court order limiting or restraining contact
- Substance abuse treatment protocols requiring restricted visitation in the plan of care
- Behavior presenting a direct risk or threat to other patients or staff

Patient Visitation Rights In Summary

- Failure to follow the visitation regulation could result in the hospital’s loss of Medicare and Medicaid reimbursement
- Could file a grievance against the hospital or a complaint with the Joint Commission or accreditation organization (also DNV, CIHQ, or AOA)
- Mentions Title VI of the Civil Rights Act of 1964
  - Patients must be notified in writing of the right to receive visitors of their choosing before care is furnished
  - Regarding patients with limited English proficiency need to provide notice in a manner and language that patients can understand

Patient Visitation Rights In Summary

- CMS said in FR no requirement to have wall signage but hospitals can post this on their own volition
- CMS does not have any particular format
- Hospitals are encouraged during the staff training sessions to address issues of cultural competence specific to the needs of individual patients
- May want to add to the P&P if 2 or more individuals claim to be the patient’s support person if the patient is incapacitated
  - Person may need to leave to obtain written documentation of the patient’s wishes
So What’s in Your Policy?

Considerations

- Restrictions for chemo patients for visitors with fever, cough, or cold like symptoms
- Restrictions for pandemic flu or other infectious disease outbreaks
- Any limitations on age such as no visitors under the certain age as in children under 12 with exceptions
- How many visitors are allowed and what about doula?
- Patients in Isolation, visitor behavior that presents a direct threat to staff or other patients
- Prison guarded patients, disruptive visitors, privacy or rest issues for the roommate

Considerations

- Pastoral care visit or clergy visits
- Over night stays, substance abuse treatment protocols on restricted visitation
- Recall under the federal HIPAA law if patients read the Notice of Privacy Practices and elect to be a no publicity
  - This means the patient is not listed in the directory so if anyone calls then the hospital will say “I’m sorry that patient is not listed in the directory”
  - Hospitals may decline mail or flowers also
Visitation Rights

- Current hospice CoP allows visitors at any hour include small children
- Current LTC CoP allows residents to receive visitors any time or to withdraw or deny consent to visit for immediate family members
- So would need written P&P on visitation including any reasonable limitations and if justified
- Each patient must be informed of their right to receive visitors they want whether friend or family
  - Denial of visitation only if health and safety of the patient are effected

The End! Questions???

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Visitation 1001 CAH

- Support person does not have to be the same person as the DPOA
- Support person can be friend, family member or other individual who supports the patient during their stay
- TJC calls it a patient advocate
- Support person can exercise patient’s visitation rights on their behalf if patient unable to do so
**TJC Help Prevent Errors in Your Care**

- As a trusted family member or friend to be your advocate (advisor or supported).
- Your advocate can ask questions that you may not think about when you are admitted. Your advocate can also help you to understand what is going on and help you to write down information being discussed.
- Ask the person to stay with you, even overnight, when you are hospitalized. Your advocate can help you get the correct medicines and treatments.
- Your advocate should be someone who can communicate well and work appropriately with medical staff and your family.
- Your advocate should be involved in discussions about your care so you can make choices about your care. Your advocate should be involved in all the discussions of what you want and respect your decisions.
- Your advocate should know who your health care proxy or decision-maker is, a proxy is a person you choose to sign a legal document so he or she can make decisions about your care when you are not able to do so.
- Your advocate may also be your proxy under certain circumstances. They should know this ahead of time.
- Do the same for treatment with your advocate and healthcare proxy. If your proxy is available, before you might have to make decisions, your advocate should understand exactly what you are about to agree to.
- Make sure your advocate understands the type of care you will need when you get home. Your advocate should know what to look for if your condition is getting worse. He or she should also know who to call for help.

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**Visitation 1001 CAH**

- Hospital must accept patient’s designation of an individual as a support person
  - Either orally or in writing
  - Suggest you get it in writing from the patient
- When patient is incapacitated and no advance directives on file then must accept individual who tells you they are the support person
  - Must allow person to exercise and give them notice of patients rights and exercise visitation rights

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**Visitation 1001 CAH**

- Hospital expected to accept this unless two individuals claim to be the support person then can ask for documentation
  - This includes same sex partners, friends, or family members
  - Need policy on how to resolve this issue
- Any refusal to be treated as the support person must be documented in the medical record along with specific reason for the refusal
**Visitation 1001**
- Patient can withdraw consent and change their mind
- Must document in the medical record that the notice was given
- Surveyor is to look at the standard notice of visitation rights
- Will review medical records to make sure documented
- Will ask staff what is a support person and what it means

**Visitation 1002**
- Must have written P&P
- Must not restrict visitors based on race, color, sex, gender identify, sexual orientation etc.
- In other words, if a unit is restricted to two visitors every hour the patient gets to pick their visitors not the hospital
- Suggest develop culturally competent training programs

**Patient Visitation Rights**
- Mentioned the JAMA article published in 2004 on Restricting Visitation Hours in ICU: A Time to Change.
  - Restricting hours is neither caring, compassionate or caring
  - Gives history of regulating visitor hours
  - Discusses the health and safety benefits of open visitation
  - 1 http://jama.ama-assn.org/cgi/content/full/292/6/736
JAMA Restricted Visiting Hours in ICU

- Too many hospitals have restricted ICU visiting hours
- Despite patient rights and ability for patients to make their own decisions
- Who is visiting whom?
- Discusses IHI challenge to open up ICUs
- Recent experiences show three initial concerns did not materialize (would cause patient stress, interfere with care, and exhaust family and friends)
  - http://jama.ama-assn.org/cgi/content/full/292/6/736

Visitation Rights

- IHI challenged a number of hospitals working on improvement to open their ICUs by having unrestricted visiting hours (as discussed)
- Several hospitals instituted this and came forth to share what they had learned from open hours
- Literature shows presence of family and friends can reduced physiologic stress lowering BP, heart rate and intracranial pressure
- Patients should be allowed to determine visiting hours

Visitation Rights JAMA article

- Articles discusses the pros and cons
- Does a review of the literature
- Bottom line is evidence shows the problems of open visitation is overstated and is manageable
- Provides support system for patients and families
- Friends and family tends to reassure and soothe the patients
- Notes that this may not be appropriate for every patient
### Visitation Rights JAMA Article

- Found that open visitation ICU hours did not provide a barrier to care
- Did not make it more difficult for nurses and doctors to do their jobs
- Families and friends were a helpful support system
- Helped with patient education
- Gave better feedback then the patient could give
- Okay to stipulate no visitation during procedures or treatments or emergencies (ACEP and ENA position of family presence during codes)

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**Restricted Visiting Hours in ICUs**

*JAMA*

**Commentary**

**Don Berwick's Challenge: Eliminate Restrictions on Visiting Hours in the Intensive Care Unit**

*JAMA*

**Don Berwick, MD, MPP* 

President and CEO, Institute for Healthcare Improvement

Boston, Massachusetts, USA

* I cannot resist a rather bold suggestion regarding “visiting hours” in ICUs. For the last 30 years, I have heard physicians, nurses, and patient advocates argue that the current system is both patient-centered and reasonable. But I am not so sure that these beliefs are any longer tenable. In fact, I believe that the current system is actually patient-unfriendly. The current system of “visiting hours” in ICUs is a relic of a bygone era. It is time to challenge the logic of the current system and to consider a new approach to the issue of visiting hours in ICUs. I believe that we can do better than the current system, and I am confident that we can win the support of our colleagues and patients.

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www.ihi.org/IHI/Topics/CriticalCare/IntensiveCare/ImprovementStories/DonBerwickChallengeEliminateRestrictionsonVisitingHoursintheIntensiveCareUnit.htm
We’ve Done That for More Than a Decade

CMS Visitation Sept 7, 2011
Visitation 1000 CAH Manual
- Must have P&P and process on visitation
  - Including any reasonable restrictions or limitations
- Discusses 2004 JAMA article encouraging open visitation in the ICU
- Includes inpatients and outpatients
  - Discusses role of support person for both
  - Patient may want support person present during pre-op preparation or post-op recovery
- Tag 1000 comes before Tag 295 in the CAH manual

Reasonable Restrictions 1000 CAH
- Infection control issues
- Can interfere with the care of other patients
- Court order restricting contact
- Disruptive or threatening behavior
- Room mate needs rest or privacy
- Substance abuse treatment plan
- Patient undergoing care interventions
- Restriction for children under certain age

Visitation 1000 CAH
- Need to train staff on the P&P
- Need to determine role staff will play in controlling visitor access
- Surveyor will verify you have a P&P
- Will review policy to determine if restrictions
- Is there documentation staff is trained?
- Will make sure staff are aware of P&P on visitation and can describe the policy for the surveyor
Visitation 1001 CAH

- Must inform each patient or their support person, when appropriate, of their visitation rights
- Must include notifying patient of any restrictions
- Patient gets to decide who their visitors are
- Can not discriminate against same sex domestic partners, friend, family member etc.
- The patient gets to decide

Resources

- A challenge accepted: open visiting in the ICU at Geisinger, www.ihi.org
Breaking Down Barriers

- Document states that lesbian, bisexual, gay, and transgender (same sex) families face discrimination when attempting to access healthcare system
- Includes visitation access and medical decision making during emergencies and end of life care
- Human Rights Campaign Foundation administers the Healthcare Equity Index of healthcare policies and procedures and identifies best practices and policies with equal treatment
Recommendations

- First establish a definition of permitted visitors
- Then enumerate restrictions on visitor access such as restriction to sensitive areas such as behavioral health unit or OB (infant security issues)
- Health concern restrictions such as preventing ill visitors
- Definition of family is critical and must be broad and encompass concept of family
- Provides a sample definition of family and recommendation for what should be in the P&P
Definition of Family

 Family means any person who plays a significant role in an individual’s life.
 This may include a person not legally related to the individual.
 Members of family include spouses, domestic partners, and both different-sex and same-sex significant others.
 Family includes a minor patient’s parents, regardless of the gender of either parent. Solely for purposes of visitation policy, the concept of parenthood is to be liberally construed without limitation as encompassing legal parents, foster parents, same-sex parent, step-parents, those serving in loco parentis, and other persons operating in caretaker roles.
 36 Kaiser Permanente hospitals implemented them in June 2010

Sample Visitation Authorization

Hospital Visitation Laws

[Map of the U.S. with states highlighted in different colors to indicate hospital visitation laws]
American Hospital Associations

http://www.putitinwriting.org/putitinwriting_app/index.jsp

Visitation Expanded in the ED

The Joint Commission

Pediatric Safety in the Emergency Department
Identifying Risks and Preparing to Care for Child and Family

The Joint Commission

One Size Does Not Fit All: Meeting the Health Care Needs of Diverse Populations
Self-Assessment Tool – Accommodating the Needs of Specific Populations
Joint Commission Patient-Centered Communication Standards

Introduction

- Patient-Centered Communication standards were approved in December 2009
- Surveyors will evaluate compliance with the standards on January 1, 2011
- However, findings will not affect the accreditation decision
- Information will be used during this pilot phase to prepare the field for implementation questions and concerns
  - Compliance in the accreditation decision will be no earlier than January 2012 except visitation is July 1, 2011

The Joint Commission

New & Revised Standards & EPs for Patient-Centered Communication
Accreditation Program: Hospital

The Joint Commission indicates the new edition revised standards & EPs for patient-centered communication.

www.jointcommission.org/patient
safety/hc/
August 2011 Perspective

Patient Visitation Rights

Changed Needs to Match Updated Conditions of Participation

Effective July 1, 2011

Hospital written P&P address procedures regarding visitation rights, including any clinically necessary or reasonable restrictions or limitations

Hospital informs the patient or support person of their visitation rights

Visitation rights include the right to receive the visitors designated by the patient

This includes but is not limited to the following:

• Spouse
• Domestic partner which includes a same sex partner
• Family member
• friend

This also includes the right to withdraw or deny such consent at any time
Study Finds Few Hospitals in Compliance

- Study published February 14, 2011 finds few hospitals in compliance with the TJC standards on patient centered communication
- Lack of compliance with language access requirements for limited English proficiency (LEP)
- Communication breakdowns are responsible for 3,000 unexpected death every year
- Standards to improve patient provider communication and ensure patient safety
  "The New Joint Commission Standards for Patient-Centered Care," report can be found at http://www.languageline.com/jointcommission2011report

Topics Covered in the White Paper

- Language challenges that impact healthcare
- Why language services are critical
- The unfortunate truth: most hospitals are not compliant
- The origins of medical interpreting
- Patient/provider understanding and acceptance
- Joint Commission mandates for training and certification
Topics Covered in the White Paper

- The standards that apply to language access services
- The consequences of non-compliance
- Developing a system-wide language services program
- The Joint Commission is serious
- Hospitals CAN prepare themselves
TJC R3 Report

TJC Patient-Centered Communication

- Joint Commission has standards in the following four chapters with two in the Patient Rights chapter:
  - Human Resources
    - HR.01.02.01
  - Provision of Care
    - PC.02.01.21
  - Patient Rights
    - RI.01.01.01 and RI.01.01.03
  - Record of Care
    - RC.02.01.01

RI.01.01.01

- Standard: Hospital respects, promotes, and protects patient rights

- EP28 The hospital allows a family member or friend to be with patient during the course of stay for emotional support:
  - As long as does not infringe on the other patients’ rights
  - Does not have to be the patient surrogate or legal decision maker
  - CMS has changes to the hospital CoP regarding visitation rights
  - Patients should be able to define who they want to visit
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Thank you for attending!!

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