

FACT SHEET

The Fundamental Right of Hospital Patients to Have Access to Chaplains During COVID-19

Last Updated: November 16, 2020

The Centers For Medicare & Medicaid Services, Department Of Health And Human Services sets forth Conditions of Participation which must be followed by all hospitals that receive Medicare and/or Medicaid funds [hereafter referred to as “covered hospitals]. A primary Condition of Participation is that a covered hospital respect and ensure patient’s rights, including the right to visitation. These rights are found in 42 CFR § 482.13. The relevant section states:

(h) *Standard: Patient visitation rights.* A hospital must have written policies and procedures regarding the visitation rights of patients, including those setting forth any clinically necessary or reasonable restriction or limitation that the hospital may need to place on such rights and the reasons for the clinical restriction or limitation. A hospital must meet the following requirements:

- (1) Inform each patient (or support person, where appropriate) of his or her visitation rights, including any clinical restriction or limitation on such rights, when he or she is informed of his or her other rights under this section.
- (2) Inform each patient (or support person, where appropriate) of the right, subject to his or her consent, to receive the visitors whom he or she designates, including, but not limited to, a spouse, a domestic partner (including a same-sex domestic partner), another family member, or a friend, and his or her right to withdraw or deny such consent at any time.
- (3) Not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.
- (4) Ensure that all visitors enjoy full and equal visitation privileges consistent with patient preferences.¹

In response to numerous reports of covered hospitals not providing access to visitation for patients, and several well-publicized cases of hospitals denying any access to chaplains for patients, the Centers For Medicare & Medicaid Services, Department Of Health And Human Services provided updated guidance for COVID-19 on March 20, 2020. This guidance includes the following:

¹https://www.govregs.com/regulations/expand/title42_chapterIV_part482_subpartB_section482.13#title42_chapterIV_part482_subpartB_section482.13

“Facilities must ensure patients have adequate and lawful access to chaplains or clergy in conformance with the Religious Freedom Restoration Act and Religious Land Use and Institutionalized Persons Act.”²

On October 20, 2020, the Office of Civil Rights at the Department of Health and Human Services confirmed the duty of covered hospitals to provide access to chaplains in a press release that highlighted the “resolution of two religious discrimination complaints ensuring clergy access to patients for religious purposes during the COVID-19 pandemic.”³

The duty of covered hospitals to ensure the fundamental right of a patient to have access to a chaplain remains very much in effect during COVID-19.

² <https://www.cms.gov/files/document/qso-20-13-hospitals-cahs-revised.pdf>, pg. 8

³ <https://www.hhs.gov/about/news/2020/10/20/ocr-resolves-religious-discrimination-complaints-after-maryland-and-virginia-hospitals-ensure.html>