



From the desk of our Program Coordinator..... Let's talk!

Big Announcement for October, 2011

The importance of advance directives was again highlighted in guidance from CMS just last month. This all flows from the President's memorandum regarding patients' rights with respect to visitors that was issued November 15, 2010. I am setting out below an update from the McGuireWoods law firm which was highlighted on the National Healthcare Decisions Day website (www.nhdd.org)

This guidance and the increased focus on advance directives policies and procedures in facility inspections should spur YOUR facility to participate in our CRITICAL ConditionsSM program as a way to honor your obligations to patients.

McGUIREWOODS

Legal Updates

9/16/2011

HHS Issues Guidance Expanding Hospital Visitation Rights for Patients

The Department of Health and Human Services (HHS) announced new guidance on September 7 to support enforcement of rules protecting hospital patients' right to choose their own visitors, including same-sex partners, and of rules that affirm patients' rights to execute advance directives. These rules, finalized by the Centers for Medicare & Medicaid Services (CMS) in November 2010, updated the Conditions of Participation (CoPs) and, therefore, apply to all hospitals that participate in Medicare and Medicaid. The guidance also supports enforcement of the right of patients to designate the person of their choice, including a same-sex partner, to make medical decisions on their behalf should they become incapacitated.

Among other things, the new CoPs require hospitals to have written policies and procedures addressing patients' visitation rights and to explain to all patients their right to choose who may visit them during an inpatient stay, as well as their right to withdraw such consent to visitation at any time. The rules expressly prohibit discrimination within a visitation policy on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation or disability.

Existing CoPs also protect the rights of hospital patients to have representatives who can act on their behalf. HHS has updated the guidance for these rules to emphasize that hospitals should

give deference to patients' wishes concerning their representatives, whether expressed in writing, orally or through other evidence, unless prohibited by state law. When a patient is unable to make medical decisions upon hospital admission and there are no written advance directives on file, an individual asserting that he or she is the patient's spouse, domestic partner, parent or other family member should be taken at his or her word without supporting documentation, unless multiple individuals claim to represent the patient or the hospital has reason to question the relationship.

Furthermore, the guidance amends existing CoPs that affirm the rights of patients to formulate advance directives by requiring notice to patients of their right to formulate advance directives. The guidance instructs that for incapacitated individuals and those otherwise unable to communicate, a hospital may provide advance directive information to a patient representative. With this guidance, auditors are directed to ask to see policies and procedures related to the revised CoPs and will review records, as well as interview hospital staff, to ensure the policies are being followed appropriately.

CMS also sent a letter on September 7 to State Survey Agencies (SSAs), which conduct on-site inspections of hospitals on behalf of CMS. The letter highlights the equal visitation and representation rights requirements and directs SSAs to be aware of the guidance when evaluating hospitals' compliance with CoPs.

In order to ensure compliance with this guidance, all providers should consider using National Healthcare Decisions Day, on April 16, to:

- reexamine any existing advance directives policies and/or create new ones;
- document, in a prominent part of the patient's record, whether the patient has an advance directive;
- ensure that their professional and support staff are educated on the topic; and
- ensure that they have up-to-date information and forms available for their patients that are consistent with applicable state law.

National Healthcare Decisions Day , which is a grassroots collaborative effort of a broad array of organizations and providers across the country, also exists to inspire providers themselves to take personal action with respect to advance care planning. Indeed, all providers are potential patients, too.

On or before April 16, all Americans are encouraged to discuss and document their healthcare wishes, regardless of what they may be. Note: this nationwide advance directives educational event was founded and is chaired by

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