

M E M O R A N D U M

To: Danne Howard, Deputy Director
Alabama Hospital Association

From: Gregg B. Everett and Chris Richard

Subject: Ala. Act 2023-24 – Health Care Facility Visitation Rights

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Federal Visitation Requirements

Hospital Conditions of Participation (“CoPs”) at [42 C.F.R. § 482.13\(h\)](#) require hospitals to have written policies regarding patient visitation rights, including policies which set forth any “clinically necessary or reasonable” restrictions or limitations on visitation rights and the reasons for such restrictions or limitations. Hospitals must inform patients (and support persons) of: (i) their visitation rights and any restriction or limitation on such rights; and (ii) their right, subject to their consent, to receive visitors they designate. notice to each patient of his or her visitation rights.

Ala. Act 2023-24 Visitation Requirements

This law sets the following standards for **health care facility**¹ visitation under Alabama law:

- » A patient may receive visitors of their choosing during visiting hours, subject to facility policies and procedures,
- » Facility policies and procedures must:
 - » Include the following topics:
 - » infection control screening and education for visitors;
 - » screening, personal protective equipment, and infection control protocols for visitors;
 - » permissible length of visits and number of visitors;
 - » designation of an individual responsible for ensuring that staff adhere to policies and procedures;
 - » Allow any visitor who is 18 years of age or younger to be accompanied by an adult during visitation;
 - » Allow in-person visitation in several specified circumstances (*e.g.*, end-of-life situations, pediatric patients, labor & delivery, etc.), unless the patient objects;
 - » Allow consensual physical contact between the patient and a visitor;

¹ A “health care facility” for purposes of this law is defined to include a general acute hospital, long-term care facility, intermediate care facility, assisted living facility, or specialty care assisted living facility.

- » Not be more restrictive than safety-related policies and procedures for the health care facility's staff; and
- » Not require visitors to submit proof of vaccination or immunization.
- » A patient may also appoint an **essential caregiver**, who is entitled to 2 hours of daily visitation in addition to any other visitation rights under health care facility policies. The essential caregiver can be rotated, but there cannot be more than one at any given time. The law also establishes certain individuals who have authority to designate an essential caregiver on behalf of an incapacitated patient. An essential caregiver is not required to provide any necessary care to the patient and is purely a function of being appointed or designated by the patient or other persons with authority under the law.
- » Patients are entitled to clergy visitation in the same manner as an essential caregiver.
- » Visitors may be required to comply with facility visitation policies, and their visitation rights may be suspended for failure to comply.
- » Facilities must provide a copy of their visitation policies to ADPH in conjunction with initial licensure, renewals, change of ownership, and upon request, and the policies must be made available on facility websites in a location easily accessible from the homepage.
- » This bill provides liability protections for facilities for actions taken in compliance with the visitation law requirements, unless the plaintiff can show that a facility failed to follow the requirements of the bill and applicable guidelines, or acted with wanton, willful, reckless, or intentional misconduct.
- » The visitation requirements in this law do not apply to any facility designated for psychiatric care (including a psychiatric hospital) or psychiatric unit within a hospital or other health care facility.

To-Do's; Policy and Procedure Considerations

Hospitals and other health care facilities will need to do the following in order to comply with this law:

- » Develop/update policies and procedures for visitation.
- » Publish visitation policies and procedures in a location easily accessible from the facility's main website within 24 hours of policies and procedures being developed/updated.
- » Provide a copy of visitation policies and procedures to ADPH at licensure renewal, in conjunction with a change of ownership, or upon request.
- » Designate an individual responsible for ensuring that health care facility staff adhere to visitation policies and procedures (this person must be designated in the visitation policies and procedures).

While the law provides patients broad visitation rights, visitation rights are subject to the policies and procedures developed by the health care facility. Health care facilities and their counsel should consider the following topics to be addressed in visitation policies and procedures (in addition to all topics required by law to be addressed):

- » Clinically appropriate or reasonable restrictions on visitation (as required by federal CoPs), *e.g.*:
 - » Visiting hours
 - » Permissible length of visits

- » Number of visitors at any given time
- » Number of visitors per day
- » Circumstances where visitation must be restricted for clinical reasons (*e.g.*, infection control, clinical contraindications, etc.), unless otherwise required by state law
- » Infection control and prevention requirements visitors must adhere to while in the health care facility, generally, or when visiting specific departments or units (which may not be more stringent than such requirements for health care facility staff)
- » Security protocols for visitor check-in, visitor ID badges, restricted areas, etc.
- » Life-safety requirements for maximum building/area occupancy
- » Permissible and appropriate forms of consensual physical contact between patients and visitors (*e.g.*, holding the patient's hand or placing a hand on the patient's arm or shoulder may be appropriate, but intimate physical contact may not)

The information contained in this memorandum is for informational purposes only and should not be construed to be legal advice. Health care facilities are encouraged to consult with their legal counsel in relation to developing visitation policies and procedures as required by Ala. Act 2023-24.