



NATIONAL CENTER FOR LESBIAN RIGHTS

Frequently Asked Questions About the New Federal Hospital Visitation Rules

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On April 15, 2010, President Barack Obama issued a memo directing the Department of Health and Human Services (HHS) to adopt new regulations that would require nearly all hospitals to grant equal visitation rights to all families, not just those based on marriage or biological ties. In the memo, President Obama specifically talked about same-sex couples as an example of families that have been unfairly kept apart when one partner is hospitalized.

On November 19, 2010, HHS released its [new rule](#). The final rule provides significant new protections for LGBT patients and their visitors. The rule prohibits any hospital that receives federal money from restricting or denying visitation based on sexual orientation or gender identity. It guarantees that all visitors must have equal visitation privileges, regardless of whether the visitors are legally or biologically related to the patient. This new rule means that hospital staff may not rely on a so-called “conscience clause” or their personal anti-gay beliefs to deny visitation rights to some patients and their visitors.

What does the new rule say and what does it mean?

The rule requires hospitals to allow patients to decide who can visit them regardless of whether there is a biological or legal relationship. It states that no hospital receiving federal funds may limit or deny visitation privileges based on a number of factors including sexual orientation and gender identity.

Will visitors who are legally or biologically related to a patient have more visitation privileges than those visitors who do not have a biological or legally recognized relationship with the patient?

No. According to the new regulations, all visitors must receive equal visitation privileges regardless of whether they have a legal or biological relationship with the patient, as long as the patient wants to see the visitor (or, if the patient is unconscious, the visitor must get equal visitation privileges if the patient *would* want to see the visitor).

Can hospital staff refuse to respect the visitation rights of a patient because of their personal beliefs?

No. Hospital staff may not invoke their personal religious beliefs (so-called “conscience clauses”) in order to deny equal visitation rights to same-sex or unmarried partners.

What about patients who are unconscious and therefore cannot choose their own visitors?

If a patient is physically unable to designate visitors for him or herself, the patient’s “support person” will have the authority to make decisions about visitors on the patient’s behalf.

What is a support person and how are they chosen?

A support person is an individual chosen by the patient who will have authority to make visitation decisions on a patient’s behalf. The patient may choose anyone to be their support person, including a partner or close friend, regardless of whether they have a legally recognized or biological relationship.

If a patient is unconscious, how will the support person be chosen?

In most situations, all a patient’s support person must do is state that he or she is the patient’s support person, and hospital staff will be required to respect that. No proof will be required.

The only time hospital staff will be allowed to require proof of a support person’s status is when there is a conflict between two or more people all claiming to be the rightful support person, and the patient is unconscious. That proof would have to show that the patient would trust this person to make visitation decisions on their behalf. It does not need to be proof of a biological or legally recognized relationship. Proof that they share a home or finances, or written documentation of a committed relationship (even if it is not a legally recognized advance directive) all may be sufficient forms of proof of a support person’s status. In these situations, hospital staff will have to resolve the conflict between the individuals claiming to be the appropriate support person.

Is this new rule better than the draft rule that HHS originally proposed in May 2010?

Yes. The final rule provides stronger and clearer protections for LGBT families than the proposed rule. For instance, NCLR submitted comments to HHS in response to the proposed rule, asking them to clarify that the person who can

make decisions about visitation when the patient is incapacitated – called the “support person” in the new rule – does not have to be legally or biologically related to the patient, and does not have to be the patient’s legal representative. The final, revised rule makes that clear.

When do the new regulations go into effect?

The new regulations go into effect January 18, 2011.

Does any of this affect a patient’s right to designate a person to make medical decisions on their behalf?

No. The issue of patient representation and decision-making is primarily an issue of state law, and HHS has declined to provide any guidance on this issue.

In order to protect yourself and your loved ones, we recommend that you complete a health care directive or durable power of attorney for health care. This form lets you say who you want to make decisions for you if you can’t. Even if you are married or in a registered domestic partnership or civil union, your relationship might not be respected without this form. Also, with this form you can choose someone other than your spouse or partner to make medical decisions for you, if you wish.

For more information on how to designate someone to make medical decisions on your behalf, please refer to NCLR’s publication [Lifelines](#).

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For additional information about your legal rights and how to protect your family, contact NCLR’s helpline anytime at www.NCLRights.org/GetHelp or at 415-392-6257 or toll-free at 1-800-528-6257.