



Michael D. Maves, MD, MBA, Executive Vice President, CEO

August 20, 2010

Donald Berwick, MD
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: Medicare and Medicaid Programs; Changes to the hospital and critical access hospital conditions of participation to ensure visitation rights to all patients

Dear Dr. Berwick:

The American Medical Association (AMA) is pleased to provide comments on the proposed rule for implementing Medicare and Medicaid program changes to the hospital and critical access hospital conditions of participation (CoP) to ensure the visitation rights of all patients. The AMA supports the incorporation of the proposed visitation rights requirement for hospitals as a new standard within the patients rights CoP at 42 C.F.R. §482.13. Moreover, the AMA supports the application of these same requirements to Critical Access Hospitals (CAHs) by revising the CoPs and adding a new standard on patient visitation rights at 42 C.F.R. §485.635(f).

The AMA supports the right of patients to choose who can be at their bedside during a sudden medical emergency or a prolonged hospital stay. There have been situations when gay, lesbian, bisexual, and transgender (GLBT) partners have been kept from the bedside of their partners or from acting as legal surrogates simply because they may not fit into the traditional concept of family. The dependent children of GLBT couples may also be prevented from seeing a parent in the hospital, depending on whether a child is legally related to the hospitalized parent or the same-sex partner of the patient.

The AMA agrees that all patients (or their designated representatives) should be informed of their rights and that all patients should be guaranteed full participation in designating who may and who may not visit them. Moreover, this requirement should be broad in scope and should only require written documentation in rare circumstances. If the patient has the capacity to speak or communicate for him/herself, no documentation should be required unless the patient is

Donald Berwick, MD

August 20, 2010

Page 2

legally incompetent. In circumstances where the patient cannot communicate and impending or immediate death is likely, a partner should not be required to leave the bedside to obtain the proper documentation. However, in situations where the patient is unable to communicate and decisions related to providing or withdrawing medical care are necessary, then documentation should be required, unless the patient designated the representative verbally before being unable to communicate.

We are concerned that in some circumstances in which documentation is not being required “where patient representation automatically follows from a legal relationship recognized under state law (for example, a marriage, civil union, a domestic partnership, or parent-child relationship),” there could be some difficulties in interpreting legal recognition. This is due to the fact that a civil union, domestic partnership, or parent-child relationship that is legally recognized in one state may not be legally recognized in another state. To compound this problem, there is a question of whether one state will recognize a health care proxy that was completed in another state. To varying extents, this may also be applicable to health care powers of attorney. These issues are moot if the patient is able to communicate, but additional guidance seems necessary in instances where the patient is unable to verbally designate a representative. To address these issues, language could be promulgated that permits the use of health care proxies or powers of attorney that are legally recognized in one state to also be recognized by hospitals and CAHs in other states as they pertain to hospital visitation and the designation of a representative.

The AMA supports requirements in hospice and nursing home CoPs that explicitly prohibit the denial of visitation privileges based on race, color, national origin, religion, sex, sexual orientation, gender identity, or disability. Moreover, the same visitation and representative designation rules for hospitals and CAHs should apply to hospices and nursing homes. Making the rules explicit helps ensure their enforcement since the consequences for non-enforcement will also be explicit. The rules should also define how health care proxies and powers of attorney can be used to ensure that fragmented state laws are not barriers to implementation.

We appreciate the opportunity to provide our comments on the proposed rule to ensure visitation rights for all patients.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Maves". The signature is written in a cursive, flowing style.

Michael D. Maves, MD, MBA