

MODEL COVID-19 FACILITY ACCOMMODATION AND VISITATION POLICY

Rev. 6/30/20

For hospitals, ambulatory surgery centers, outpatient treatment centers, outpatient renal dialysis facilities, ambulances and skilled nursing facilities.

Developed by the Disability Law Center (www.dlc-ma.org) and Center for Public Representation (www.centerforpublicrep.org) based upon state policies in NY, NJ, IL, OR, MD, CT, the policy statement of the American Academy of Developmental Medicine and Dentistry (AADMD), and directives from the United States Health and Human Services Office of Civil Rights (OCR).

Purpose

For many with disabilities, having a family member or support person with them while receiving medical care is critical to ensuring effective communication between the patient and treating medical personnel, and to helping the patient with orientation, emotional self-regulation, medical decision-making, and personal care. Communication is essential to the delivery of appropriate medical care. The patient must have a way to explain and alert medical personnel to their changing symptoms and daily care needs, and doctors and other medical professionals must ensure the patient understands and agrees with the proposed treatment plan. No-visitor policies pose serious barriers to individuals with disabilities who require in-person supports to access and participate in medical care.

The Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act each protect patients with disabilities and entitle them to reasonable modifications and accommodations to ensure equal access to treatment. As the U.S. Department of Health and Human Services, Office for Civil Rights has stated, these laws remain in effect during the COVID-19 crisis. Therefore, states and medical facilities must take steps to ensure people with disabilities are able to access and benefit from medical treatment, including by providing effective communication, meaningful access to information, and reasonable modifications to policies and protocols.

Reasonable Accommodations for Patients with Disabilities

Persons with disabilities should be permitted reasonable accommodations that provide meaningful access to information and equal opportunity to benefit from treatment. For example, these modifications might include interpreter services, or use of assistive technology. Effective communication is critical to a patient's autonomy and ability to

participate in their care. Otherwise, medical providers risk substituting misplaced assumptions and biases about the person with a disability for verifiable information and medical history. In addition, effective communication leads to better transparency in process and protocols, which helps to ensure informed consent, so that the medical provider and person with a disability understand each other and agree on the course of treatment.

For some individuals with disabilities, an **essential supporter** may be needed to provide support or facilitate effective communication. Essential supporters are not visitors. They shall have access to patients with disabilities as a reasonable accommodation under applicable civil rights laws, and shall include the following:

- Interpreters;
- Parents or guardians of patients under the age of 18 years;
- A designated support person: An adult who provides support for a patient with a disability necessary for patient care, communication, emotional or physical assistance, or ensuring the health, well-being or safety of the patient with a disability or facility staff. Such disabilities may include but shall not be limited to altered mental status, intellectual, developmental or cognitive disability, autism, dementia, communication barriers or emotional or behavioral disabilities. The designated support person may include, but shall not be limited to, a guardian or other legally authorized decision-maker, family member, caregiver, personal care assistant or another disability service provider knowledgeable about the patient's care. Health care settings, including skilled nursing and long-term care facilities, outpatient treatment centers, hospital emergency rooms, in-patient and intensive care units are required to allow a designated support person to be with the disabled patient if necessary to accommodate their disability. For patients with prolonged stays, the patient or family/caregiver may designate multiple support persons; but only one designated support person may be present at a time.

Essential supporters should be provided reasonable access to areas of the facility in which treatment is delivered to the individual with a disability. Essential supporters should also be afforded access to food to bathroom facilities.

Without reasonable modifications to visitor policies and essential supporters, patients with disabilities can experience serious, adverse outcomes, including:

- being deprived of their right to make and communicate informed consent;
- being subjected to the unnecessary use of physical and chemical restraints;
- receiving inadequate medical treatment; and
- experiencing substantial and lasting emotional harm.

When patients are denied access to a support person, or other reasonable accommodation, they also are at substantial risk of having poorer health outcomes than patients without disabilities.

Policies and Procedures Regarding Essential Supporters

Health and safety restrictions must be explained to the patient's essential supporters in plain terms, upon arrival or, ideally, prior to arriving at the facility. Staff should ensure that the patient's essential supporters fully understand these restrictions. Facility-wide policies and procedures regarding essential supporters, and any separate visitor policy, should be public posted within the facility and available on its website.

The disabled patient's essential supporters must be asymptomatic for COVID-19 and must not have recent direct exposure to someone confirmed to have the virus. Essential supporters entering or reentering the facility must be screened for symptoms of COVID-19 (e.g., fever, cough, or shortness of breath). Medical staff may conduct a temperature check prior to entering the clinical area, and every twelve hours thereafter, and screen for potential exposures to individuals testing positive for COVID-19. If the essential supporter's direct contact is as a result of providing support for the infected patient who is now hospitalized, the facility can require further precautions be taken to limit transmission, including additional Personal Protective Equipment (PPE) requirements and restrictions on the person's movement within the facility.

PPE should be given to and worn by an essential supporter. Facility staff may restrict the presence of such persons if, in the facility's judgment, a shortage of PPE requires the use of these resources be limited to staff and medical personnel. In that event, supporters will be afforded the option to provide their own PPE before any decision is made to restrict access.

Disability Accommodation Specialist

Each health care facility must have at least one designated point person or ombudsperson trained to assist patients in communicating requested accommodations. This role also should include the receipt and resolution of complaints regarding the denial or implementation of such accommodations, and the provision of staff training on disability and the reasonable accommodation process. The name and contact information for this individual must be posted as part of the facility's policies on reasonable accommodations and visitor access.