Support While Seeking Medical Treatment During COVID-19: The Rights of Patients with Disabilities

The COVID-19 pandemic has caused hospitals and other medical providers to greatly restrict visitation with patients and accompaniment of patients by family or friends in an effort to prevent the spread of infection and protect public health. This Fact Sheet will address the rights of patients with disabilities to have a support person or interpreter with them in the hospital or at medical appointments under federal disability civil rights laws.

Do federal disability civil rights laws apply to hospitals/medical providers during the COVID-19 pandemic?

Yes. There are several federal disability civil rights laws that can apply to hospitals/medical providers – Title III of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (RA), and Section 1557 of the Patient Protection and Affordable Care Act (ACA). All of these statutes protect people with disabilities against discrimination by hospitals.

The ADA, RA, and ACA are not suspended during the COVID-19 pandemic. In fact, the United States Department of Health and Human Services’ Office for Civil Rights, which oversees implementation of those statutes by hospitals, issued a statement specifically reminding hospitals that they must “keep in mind their obligations under laws and regulations that prohibit discrimination on the basis of ... disability ... in HHS-funded programs” and that the federal disability rights laws “remain in effect” even during the COVID-19 pandemic. U.S. Dep't of Health and Human Services Office for Civil Rights, Bulletin: Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19) at 1 (Mar. 28, 2020), https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf.
Does it violate the law for a hospital/medical provider to prohibit a patient with disabilities from having a support person or interpreter?

Under certain circumstances, yes. The law recognizes that, for people with disabilities, purely “equal treatment” may not be sufficient to ensure equal access. Accordingly, the law requires that covered entities to take certain affirmative steps to ensure equal access. Those affirmative steps include:

- Making “reasonable modifications” to policies, practices, or procedures when necessary to afford people with disabilities meaningful access to services and facilities and avoid discrimination; and

- Providing “auxiliary aids and services” when necessary to assure “effective communication” with individuals who have disabilities.

It may be necessary for hospitals/medical providers to change their visitation policies for people with disabilities if it is necessary to afford them meaningful access to services and avoid discrimination or if it is necessary to assure effective communication.

Must the hospital/medical providers allow a sign language or other professional interpreter or a qualified reader if necessary for the patient to understand and communicate with medical providers?

Yes. Hospitals/medical providers must provide auxiliary aids and services for people who have vision, hearing, and speech disabilities in order to ensure that patients with disabilities can participate in and understand medical treatment. For individuals with hearing disabilities, auxiliary aids and services include, but are not limited to, qualified sign language interpreters, cued speech interpreters, tactile interpreters, video-remote interpreting, or real-time captioning. For individuals with vison disabilities, auxiliary aids and services include, but are not limited to, a qualified reader or materials in alternative formats. For people with speech disabilities, auxiliary aids and services include, but are not limited to, a qualified speech-to-speech transliterator.

The hospital/medical provider should consult with the patient to determine which aid or service is appropriate and necessary to provide effective communication. In considering what is “effective” communication, it is important to consider the nature, length, and complexity of the communication and the context in which the communication is taking place. For hospitalized patients who normally rely on in-person auxiliary services (such as interpreters), they likely should be provided with those services given the complexity of information that is exchanged in a medical setting.
Must the hospital/medical provider allow a parent, advocate, or other supporter for a patient with a cognitive or mental health disability?

Under certain circumstances, yes. Some individuals with cognitive disabilities (such as intellectual disability, autism, brain injury, or dementia) or mental health disabilities, may have limitations or behaviors that could impact the provision of care in the hospital. Some may have limited verbal communication skills; difficulty understanding questions asked by the health care professionals; or difficulty understanding or complying with treatment. Some may experience heightened stress or anxiety in unfamiliar surroundings, especially when they are in pain and isolated from caregivers or family, which can undermine effective treatment.

The presence of a family member, caregiver, or other person known to the patient may be necessary to serve as a “communicator” or “supporter.” A communicator or supporter can relay important information to the health care professionals; can help explain information to the patient; can identify any necessary accommodations for effective treatment (such as feeding techniques); can demonstrate and implement positive behavioral approaches if needed for a patient who is becoming overwhelmed, stressed, and at risk of exhibiting behavioral issues; and can help the patient to understand and comply with treatment.

Pennsylvania’s Department of Health (“DOH”) has issued guidance to hospitals about visitation policies during the COVID-19 pandemic. The guidance affirms that hospitals’ visitor policies “must adhere to Federal and State law” and specifically states that hospitals “cannot deny access to” caregivers or family members of patients who have intellectual, developmental, or cognitive disabilities and patients with communication barriers or behavioral concerns. Pennsylvania Dep’t of Health, Guidance on Hospitals’ Response to Covid-19 at 2 (Rev.May 23, 2020), https://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/Guidance%20on%20Hospital%20Responses%20to%20COVID%20ID-19.pdf.

In short, if a patient with a cognitive or mental health disability needs a supporter or communicator to assist with communication and health care treatment and/or to provide emotional support, the hospital must allow it as a reasonable modification of its visitation policy and/or as an auxiliary aid or service for effective communication.
Must a hospital allow the patient’s personal care assistant to be present?

Under certain circumstance, yes. Some individuals with disabilities may rely on personal care assistants to help them with their activities of daily living, including, but not limited to, transferring from bed or a wheelchair, personal care, and eating. They may develop close and trusting relationships with their personal care assistants. Having hospital staff perform such intimate services instead of the patient’s personal care assistant (even assuming that hospital staff are available and willing to do so) would not be equivalent and the absence of the patient’s personal care assistant could treatment and recovery. If the presence of a patient’s personal care assistant is necessary for his or her physical or emotional well-being, the hospital must modify its visitor policy to allow it. Pennsylvania DOH’s Guidance specifically affirms that a hospital, through its visitor policies, cannot deny access to attendants. Guidance on Hospitals’ Response to Covid-19 at 2.

Can the hospital/medical provider place restrictions on visitors when the ADA, RA, and ACA allow them?

Yes. During the pandemic – when preventing the spread of infection to staff and patients is vital – a hospital could place reasonable restrictions on visitors. Those restrictions could include limiting the number of visitors at any one time; limiting visitors to those who are able to meet the patient’s need for supports; screening visitors for possible illness and barring them if they display symptoms; and requiring visitors to wear personal protective equipment (which the hospital should supply) at all times they are on the hospital’s premises.
What should I do to help a person with a disability who is denied a supporter or communicator?

If you are told that you are not allowed to visit a person with a disability who needs support or assistance with communication due to COVID-19 restricted visitation policies, you should do the following:

- Explain why a support person, attendant, or communicator is necessary. Hospital personnel may not understand that the patient has a disability and requires assistance to understand or participate in medical treatment or to meet basic needs.

- Ask to see the hospital’s policy or try to find it on the Internet and review it to see if there are any exceptions for people with disabilities and, if so, how you can seek an exception and follow that process.

- If either the hospital’s policy has no exception, if there is no identified process to seek an exception, or if you are told the exception does not apply, contact the chief nursing officer or patients’ rights department and explain that you requesting a reasonable modification and/or an auxiliary aid or service under the ADA, RA, and ACA.

- Be prepared to explain why the patient needs an auxiliary aid or service (such as an interpreter) or a reasonable modification (such as a supporter or personal care assistant).

- Show hospital staff DOH’s Guidance on Hospitals’ Responses to COVID-19 to explain that DOH has instructed hospitals that their visitor policies cannot deny access to attendants, caregivers, or family members of patients with disabilities.

If you are unsuccessful in getting access to the patient through these means, contact DRP’s COVID-19 Hospital Discrimination Hotline at 800-692-7443 x402.

Stay Connected

If you need more information or need help, please contact Disability Rights Pennsylvania (DRP) at 800-692-7443 (voice) or 877-375-7139 (TDD). Our email address is: intake@disabilityrightspa.org. DRP’s live intake line is open Monday-Friday from 9:00 a.m. to 3:00 p.m.

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