

Access to Support for Patients with Disabilities and Pediatric Patients in Hospital Settings

2/7/2022

Updates to this document since March 2021 include new information on access to support and on the Minnesota Patients' Bill of Rights. This guidance is intended to encourage all Minnesota hospitals to develop policies allowing access to support for patients with disabilities and pediatric patients. This document is not intended to provide legal advice to hospitals about their legal obligations or the laws that apply to their setting, which may differ for each hospital. Hospitals are strongly encouraged to consult with legal counsel if they have questions regarding their legal obligations.

Many hospitals currently restrict in-person visitation as an important and necessary COVID-19 mitigation strategy. However, families and advocates have contacted the Minnesota Department of Health to express concern about the ability of patients with disabilities and pediatric patients to access support people, parents, or legal guardians while hospitalized.

Hospitals should recognize that a support person is not a "visitor." Many patients depend on in-person support due to disability, age, or other conditions. For these patients, a support person is essential to ensuring the patient has full and equal access to health care services, including effective communication between a patient and caregivers. A support person may be required to address things such as 1) medical decision-making and care planning; 2) needs that are not visually apparent to someone who does not know the patient, such as discomfort, hunger, thirst, pain; 3) changes in symptoms; 4) needs related to trauma; 5) emotional self-regulation and anxiety management, which may be necessary to avoid the use of physical and chemical restraints and other negative outcomes.

It is also important to emphasize that Minnesota hospitals may have an existing legal obligation to offer reasonable accommodations that allow patients with disabilities access to necessary support. The Americans with Disabilities Act, Section 504 of the Rehabilitation Act; the Minnesota Human Rights Act; and Section 1557 of the Affordable Care Act are among the laws that prohibit discrimination on the basis of disability. Similarly, many pediatric patients depend on in-person support to assist with personal and emotional care, medical planning, and

decision-making. The right to pediatric support may also be protected by federal or state laws, such as the Minnesota Patients' Bill of Rights.

Recognizing the importance of support for many patients, the Minnesota Department of Health strongly encourages all hospitals to develop policies allowing exceptions and reasonable accommodations to restrictions that interfere with access to necessary support people, parents, or legal guardians. Hospitals should continue to ensure that support people, parents, and legal guardians follow all hospital policies that do not interfere with access to support, including screening for COVID-19 symptoms upon arrival at the hospital and periodically during their stay; requirements for those who develop COVID-19 symptoms or test positive; personal protective equipment (PPE) requirements; and other infection control measures.

Hospital support policies should be made available to the public and, upon request, to any interested person. Such policies should include, at a minimum:

- Provisions that allow patients who require support (e.g., pediatric patients or patients with a disability) to designate at least one support person who can accompany, visit, and remain with the patient for the duration of their stay. The choice of support person should be left to the patient, and may include a support professional, family member, parent, legal guardian, or any other person the patient chooses. The policy should also allow a person with legal authority to make decisions on the patients' behalf to designate a support person, when necessary.
- Avoid provisions restricting the hours a support person is allowed to be present, provided the support person follows other applicable hospital policy. Hospitals should also adopt reasonable rules to allow the support person to leave and return to the hospital. A patient should be allowed to select one or more alternate support persons if the designated support person cannot remain in the hospital for the duration of the stay.
- Provisions for requesting and providing reasonable accommodations to other hospital policies (i.e., beyond visitation) for support persons and patients, consistent with applicable law and hospital procedures. For example, provisions should address those who are unable to wear a mask due to their age or disability (e.g., medical condition or sensory issues), and ensure that effective communication is available to people who are deaf, hard of hearing, or for whom a mask would otherwise be a barrier to communication. For more information, refer to [Recommendations for Mask Wearing: Reasonable Accommodations \(www.health.state.mn.us/diseases/coronavirus/facecover.html#accom\)](http://www.health.state.mn.us/diseases/coronavirus/facecover.html#accom).
- Alternative support options—such as remote support—when in-person support will pose a direct threat to the facility. Facility policies should not prevent in-person support until reasonable measures to address the risk have been exhausted. Strategies to address COVID-19 risks short of preventing in-person support may include verification of vaccination, pre-entrance screening and testing, and other infection mitigation strategies like PPE and social distancing.

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- Note: even when a support person does not pose a risk, all facilities are encouraged to offer remote options for a support person that is unable to provide in-person support.
- Provisions regarding communication with families, support people, and/or support professionals of patients who do not have a support person at the bedside. The policy should also require staff to explain communication policies to patients and their support people, preferably before the patient arrives at the hospital.
- Provisions that address and explain rights to file an internal grievance with the hospital when a patient or support person believes the hospital has failed to provide a reasonable accommodation required by existing law or hospital policy. The policy also should include information on how a person can file a complaint of disability discrimination with the Office of Civil Rights and the Minnesota Department of Human Rights:
 - **U.S. Department of Health and Human Services – Office of Civil Rights**
[Complaint Portal \(ocrportal.hhs.gov/ocr/cp/complaint_frontpage.jsf\)](https://ocrportal.hhs.gov/ocr/cp/complaint_frontpage.jsf)
800-368-1019 or 800-537-7697
 - **Minnesota Department of Human Rights**
[Report Discrimination \(mn.gov/mdhr/intake/consultationinquiryform/\)](https://mn.gov/mdhr/intake/consultationinquiryform/)
651-539-1100 or 1-833-454-0148 (discrimination help line)



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