



DEPARTMENT OF DISABILITIES

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**Access to Support for Patients with Disabilities
in Health Care Settings - Frequently Asked Questions (FAQ)
(September 24, 2020)**

On September 24, 2020, a revised joint notice was issued by the Maryland Department of Health and the Maryland Department of Disabilities entitled “Access to Support for Patients with Disabilities in Health Care Settings”. The purpose of the notice was to notify health care facilities to adopt visitation policies that comply with both applicable U.S. Centers for Disease Control and Prevention (CDC) guidance and federal regulations and recognize the needs of individuals with disabilities.

The information outlined in this document is restricted to use during the state of emergency declared by Governor Hogan to manage the COVID-19 pandemic and will expire immediately upon termination of the state of emergency.

Below are FAQs to assist health care facilities in developing visitation policies in compliance with the revised joint notice.

1. What is the definition of “disability”, as used in the notice?

The definition of disability is the Americans with Disabilities Act definition:

42 U.S.C. § 12102

As used in this chapter:

- (1) Disability - The term “disability” means, with respect to an individual—
 - (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (B) a record of such an impairment; or
 - (C) being regarded as having such an impairment (as described in paragraph (3)).
- (2) Major life activities
 - (A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)

(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

2. What is the definition of a support person in a health care facility setting?

A support person may be a family member, personal care assistant, similar disability service provider, or other individual knowledgeable about the management or care of the patient who is authorized to assist the patient in making decisions.

3. What types of patients would a support person be appropriate for in a health care facility setting?

Types of patients that a support person would be appropriate for in a health care facility setting include but are not limited to:

- i. Patients with intellectual or developmental disabilities,
- ii. Patients with physical disabilities or limitations,
- iii. Patients with neurocognitive disorders

4. Who can fill the role of a support person?

- a. A support person may be a family member, personal care assistant, similar disability service provider, or other individual knowledgeable about the management or care of the patient.
- b. A patient may designate up to two support persons during their stay, but only one may be present at any given time.

5. What considerations are there for support persons and COVID-19 symptoms?

- a. Patients with disabilities, regardless of diagnosis or symptoms of COVID-19, are permitted to have access to support persons.
- b. In compliance with the health care facility policy, a support person is assessed for COVID-19 symptoms upon initial entry to the health care facility.
- c. Individuals with COVID-19 symptoms shall not be permitted to serve as a support person

6. What are the considerations for PPE use?

- a. Support persons shall be provided appropriate PPE, including instruction on how to utilize and conserve PPE.
- b. Support persons will conform with PPE procedures.

7. Are support persons restricted to the room of the person with a disability?

No, support persons are permitted to access restrooms, food, and drink while in the health care facility.

8. How does an individual request to be designated as a support person?

- a. All health care providers shall provide a copy of their policies regarding support persons for patients with disabilities.
- b. Health care facilities shall post a copy of “NOTICE - Access to Support for Patients with Disabilities in Health Care Settings (September 24, 2020)” in an area accessible to all patients.
- c. The health care facility support person policy shall contain point of contact information.
- d. Health care facilities shall be capable of processing support person requests during all operational hours.