



DEPARTMENT OF DISABILITIES

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**Access to Support for Patients with Disabilities
in Health Care Settings - Frequently Asked Questions (FAQ)
(November 20, 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.
- d. If the support person regularly visits a facility that has required testing for staff or volunteers under a Secretary's order then they should be tested in accordance with that Order, specifically Section 3.D.i of the Secretary's [Amended Directive and Order](#)

Regarding Nursing Home Matters No. MDH 2020-11-17-02 for as long as that order and section is in effect. A support person does not qualify as a visitor under this order.

- e. Support persons are explicitly excluded from the limitations on hospital visitation per Section 9 of the Secretary's [Amended Directive and Order](#) Regarding Various Healthcare Matter No. MDH 2020-11-17-01.

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.

9. How do healthcare settings comply with the posting requirements of this joint notice?

The notices issued by both the Maryland Department of Disabilities (MDOD) and the Maryland Department of Health (MDH) related to support persons in healthcare should mirror other civil rights laws, which require the following:

- 1. Hospital policies and both notices (*Notice: Access to Support Persons for Patients with Disabilities in Healthcare Settings* and *Notice: Support Persons for Individuals with Disabilities*) are posted on the healthcare provider's website.
- 2. Both notices are posted, in conspicuous locations, at facilities accessible to patients.

3. Copies of policies are provided, upon request, to patients rather than to every patient. *(please see response to question 10 for alternative notification methods).*
4. Both notices include [taglines](#) in the [top 17](#) languages spoken in Maryland and advises the reader that language access is available to them at no cost.
5. Copies of the policies and notices are provided in alternative formats (i.e. large print, braille, etc.) and languages upon request.

In addition, healthcare facilities shall maintain the [Notice of Non-Discrimination and Accessibility Statement with accompanying taglines](#) posting requirements as required under [Section 1557 of the Patient Protection and Affordable Care Act](#).

Further, facilities should ensure that all staff, particularly first-line staff, are aware of these practices and informed on how to implement these practices effectively when interacting with the public.

10. Are health care facilities required to provide a printed hard copy of the required postings to all patients when they visit the health care facility?

Yes, the *NOTICE - Access to Support for Patients with Disabilities in Health Care Settings* (September 24, 2020) specifically states:

“All health care providers shall provide a copy of their policies regarding support persons for those with disabilities to all patients and shall post a copy of this notice in an area accessible to all patients. In addition, health care providers shall post a copy of the attached notice regarding remedies for violation of this notice in an area accessible to patients and shall provide a copy to all patients”

However, this does not mean that health care facilities need to provide a printed hard copy of the required notice to all patients in hand that enter the facility on every visit. Certainly, this is one method of complying with this order. Another method is to place a laminated version of the document on clipboards to be viewed with other vital documentation and request that the patients and/or their representatives sign off that the notice has been reviewed. Another method is to have an electronic version of the document available for a patient’s review during admissions and/or visitation check-in processes. Health care facilities have flexibility on the methods used to “provide” the required notice to patients. If

health care facilities decide to elect any other method than providing a hard copy to all patients on all visits, the facility should develop a method a tracking that the patients have received the notice.

Despite what method is used to provide the required notice to patients, health care facilities must provide a printed hard copy of the notice to all patients and/or their representatives, **upon their request**. Health care facilities must also provide the posting in alternative formats and/or other languages, at no cost to the patients, upon their request.