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To: Governmental Relations Executives
Chief Nursing Officers
Directors of Regulation and Accreditation
Directors of Compliance
Directors of Quality
Directors of Infection Control

The Missouri Hospital Association continues to follow and update members on important regulatory issues related to COVID-19. Hospitals had to quickly mobilize an emergency preparedness approach at the beginning of the pandemic and remain flexible to continuously changing requirements without delay. The same expectation for expediency and expertise exists by regulators and the public, as much of society pivots to a post-COVID-19 mentality. The continued impact of staffing shortages, increased numbers of individuals needing medical and mental health care, and implementation of vaccine mandates largely are invisible to those we serve, as well as those who regulate our performance.

SURVEY

The Missouri Department of Health and Senior Services notified hospitals they will not request an extension of the Centers for Medicare & Medicaid Services' survey waiver for hospitals. ICU capacity is a gating factor in the CMS criteria for granting such waivers. The threshold for suspending survey is less than 20% capacity in ICU beds across the state. Missouri is at that threshold with COVID-19 hospitalizations declining. Hospitals can expect to see a full return to CMS survey activity by the department beginning Saturday, February 19.

STATE LICENSURE VARIANCE

DHSS discussed the process for continuation of the six authorized variances that were allowed when the state of emergency ended on December 31, 2021. DHSS granted most variances for a period of 90 days, which means most requests will expire Friday, April 1. Hospitals wishing to continue any of the six variances must request a continuation if needed. DHSS plans to send a communication about the expiration; however, MHA is notifying members as quickly as possible. DHSS mentioned those requests would need to be submitted by Tuesday, March 15, following the normal variance request process outlined in 19 CSR 30-20.015.18. Again, additional information should be forthcoming from the department.

VACCINE MANDATE

MHA asked for clarification from DHSS as to how hospitals could handle tracking and confirmation of vaccination status for students, contractors and others. CMS guidance defines staff as including all persons providing any care, treatment or other services for the hospital and/or its patients. DHSS received the below response from CMS.

"Hospitals can approach it from a couple of different perspectives, including (but not limited to):
If the hospital process requires that the contractor be responsible for verifying that their employees are vaccinated, have an exemption, or are on a vaccine delay, then the contractor would need to provide verification documentation to the hospital. This option puts the onus on the contractor because they are essentially providing a single source document to the hospital that states all of their employees meet the hospital requirements certainly less work for the hospital.

If the hospital process requires that each contracted employee provide evidence of vaccination or exemption to the hospital, then the hospital would be responsible for the actual verification process and tracking. That would include updating the tracking mechanism for new employees, or in the case of a vaccine delay, when the employee reaches the end of the delay period. This would allow for contracted employees to be verified and tracked within the same mechanism as for its own staff, but it is more work for the hospital."

While the above guidance seems straightforward, deeming organizations like The Joint Commission are communicating a very different message. MHA reached out to the American Hospital Association and TJC voicing concern with messages from the deeming agency that attestations and delegating contractual responsibility for ensuring vaccination are not allowed according to CMS. TJC stated as recently as February 16 that they still are waiting further clarification from CMS. At this point, hospitals need to ensure they have a policy in place and follow it until further guidance is available. In the meantime, hospitals should be prepared to provide attestations and obtain additional documentation from contractors as requested.

The most comprehensive information on mitigating the spread of illness was in the Occupational Safety and Health Administration Healthcare Emergency Temporary Standard plan template. While the ETS is suspended, it still provides guidance on optional tactics a hospital could choose to implement to mitigate spread. Also, the Centers for Disease Control and Prevention guidance for infection control related to COVID-19 in hospitals is a standard of care resource. MHA distributed on February 2 a comprehensive email on implementation of the vaccine mandate in previous weeks.

VISITATION

Visitation is one of the most contentious topics at present inside the Missouri State Capitol. Legislators have received constituent complaints on limitations or prohibitions on visiting loved ones in hospitals and other facilities, and have filed several bills that would impose broad visitation requirements on health care providers. MHA has been working with key legislators to inform, provide alternative draft language and engage other stakeholders in the conversations. However, the idea that hospitals are trying to keep visitors out to intentionally harm patients, to selectively provide care and treatment, to make things easier for staff, is pervasive. We have

heard complaints from legislators who personally have experienced, or who have constituents who have experienced, the following.

- the inability to accompany a physically challenged family member to the ED after 6 p.m.
- policies allowing only a single visitor per day (i.e., not one visitor at a time)
- visitation hours in writing being different than that on the hospital website
- designated visitors being denied the ability to return later in the day after leaving

These types of examples are fueling the intent to legislate hospital visitation policies. It is likely that elected officials are not hearing of all the extraordinary actions taken by hospital staff to ensure comfort was provided to both the patient and the family. MHA is preparing talking points for hospitals to share the hospital perspective with their elected representatives.

MHA also has informed legislators that hospitals already are subject to visitation requirements through the requirements established in the CMS Conditions of Participation for hospitals and critical access hospitals. In addition, there are other federal laws, such as the Religious Freedom Restoration Act and Religious Land Use and Institutionalized Persons Act, which guarantees access to clergy.

- CoP 42 CFR §482.13(h) is the standard addressing hospital visitation stating:

  "Hospitals are required to develop and implement written policies and procedures that address the patient's right to have visitors. If the hospital's policy establishes restrictions or limitations on visitation, such restrictions/limitations must be clinically necessary or reasonable. Furthermore, the hospital's policy must include the reasons for any restrictions/limitations. The right of a patient to have visitors may be limited or restricted when visitation would interfere with the care of the patient and/or the care of other patients. The regulation permits hospitals some flexibility, so that health care professionals may exercise their best clinical judgment when determining when visitation is, and is not, appropriate. Best clinical judgment takes into account all aspects of patient health and safety, including the benefits of visitation on a patient's care as well as potential negative impacts that visitors may have on other patients in the hospital."

In addition, CMS recently released QSO 21-08-NLTC, which states CMS no longer is providing visitation guidance related to the ongoing pandemic. This leaves hospitals to evaluate visitation policies to ensure visitation practices are the least restrictive as possible in accordance with the established CoP (above) while maintaining infection control principles consistent with national standards, mainly the CCDC.

The bill moving most quickly through the process, HCS House Bill 2116, is a combination of the following bills: House Bill 2116, House Bill 2097, House Bill 1690 and House Bill 2221. As of this communication, HCS House Bill 2116 has not been printed into one bill. MHA is very concerned that the compromises to date are still too restrictive, and a common sense, balanced approach has not been achieved. MHA will continue to evaluate and implement strategies to try to lessen

the impact of visitation restrictions; however, it is expected that legislation will pass, which will limit how hospitals can restrict visitation, the numbers of visitors, and the location of visitors within the hospital and physician offices.

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