



## Patient Access to Support Persons while in the Hospital FACT SHEET

### **Oregon Administrative Rules:**

[333-501-0055](#), [333-505-0030](#), [333-505-0033](#) and [333-505-0050](#)

On January 24, 2021, the Oregon Health Authority, Public Health Division amended hospital licensing administrative rules due to passage of SB 1606 (2020 Special 1, Oregon Laws, Chapter 20). In response to the COVID-19 pandemic, many Oregon hospitals revised their entry policies in order to protect the health of patients, providers, and staff. The new law has several requirements, including a requirement that hospitals must allow certain patients to have a support person with them at the hospital and to inform those patients of that right. The rules make these protections permanent for patients both during and after the pandemic.

This document is a summary of the recently adopted rule requirements and answers some frequently asked questions regarding the administrative rules. Hospitals should review the rules in full and [2020 Special Session 1, Oregon Laws, Chapter 20](#) for all applicable requirements.

### **Summary of Requirements for Licensed Hospitals:**

- Adopt and implement a policy concerning a patient's right to accept or refuse medical or surgical treatment and the right to formulate an advance directive or appoint a health care representative. The policy must comply with [ORS 127.646 through 127.654](#).
- Adopt and implement policies regarding support persons for eligible patients. Eligible patients are those who need assistance to effectively communicate, make health care decisions, understand health care information, or engage in activities of daily living due to a disability and are:
  - admitted to the hospital or
  - in an emergency department.
- Inform eligible patients, both orally and in writing, of their right to designate support persons. The information must be provided in alternative formats if requested by the patient or the patient's legal representative.
- Allow one designated support person to be present at all times with eligible patients, if necessary, to facilitate the patient's care.

- Unless a patient requests otherwise, ensure that a designated support person, or a patient's legal representative, is physically present for any discussion when the eligible patient is likely to be asked to elect hospice care, sign an advance directive or sign an order that allows the withholding or withdrawing of life-sustaining procedures or artificially administered nutrition or hydration.
- Document designated support persons and relevant contact information in the medical record.
- Post a summary of the hospital's policy relating to patients' right to support persons at entry points to the hospital that are clearly visible to the public and include:
  - Instructions on how to obtain the full policy. The full policy must include contact information for a person, position or department at the hospital where the policy may be requested in an alternate format; and
  - That the hospital may not condition treatment on a patient having a POLST, an advance directive, a form appointing a health care representative, or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition.
- Post the hospital's policy relating to patients' right to support persons on its website.
- Conduct a support care conference if the hospital has denied an eligible patient's request for a support person's physical presence and the conference is requested.

### **Whom are hospitals required to inform of the right to a support person?**

The notice requirements apply to patients admitted to a hospital or seeking medical evaluation and care in an emergency department who need assistance to effectively communicate with hospital staff, make health care decisions, understand health care information, or engage in activities of daily living due to a disability. This fact sheet refers to these individuals as “eligible patients.”

If an individual is receiving care at a hospital outpatient clinic or satellite office but the individual is not admitted to receive that care, the individual is not an “eligible patient” and provisions of the rules regarding support persons do not apply. However, it is important to note that accommodations may still apply under the Americans with Disabilities Act. These rules do not supersede or excuse compliance with other state or federal requirements and hospitals should review those as well.

### **How will hospitals determine which patients must be informed of the right to designate support persons?**

Hospitals must ensure that all eligible patients are informed of the right to designate support person. Hospitals may elect different methods to ensure all eligible patients are notified or may choose to notify any and all individuals admitted to the hospital or seeking care in the emergency room to fulfill this obligation. If an eligible patient, or a patient's legal representative does not designate a support person(s) and a hospital determines that a patient has a communication barrier or other disability, the hospital shall take reasonable steps to further communicate the patient's right to support persons to the patient, patient's family or patient's legal representative.

### **When are hospitals required to allow the patient to designate support persons?**

The hospital must allow an eligible patient to designate at least three support persons and allow at least one support person to be present with the patient, at all times in the emergency department and from the time of admission until the patient is discharged including in operating rooms, procedure rooms, or other areas where generally only patients and hospital staff are allowed if necessary to facilitate the patient's care, including but not limited to, because the patient:

- Has a cognitive or mental health disability that affects the patient's ability to make medical decisions or understand medical advice;
- Needs assistance with activities of daily living and the hospital staff are unable to provide or are less effective at providing the assistance;
- Is deaf, hard of hearing or has other communication barriers and requires assistance to ensure effective communication with hospital staff; or
- Has behavioral health needs that the support person can address more effectively than the hospital staff.

### **Is a support person allowed to make health care decisions for a patient?**

A support person's role is to help physically assist or emotionally assist the patient to ensure effective communication between the hospital staff and the patient. A support person cannot make health care decisions for the patient based on their status as a support person unless the support person is otherwise lawfully authorized to make health care decisions.

### **Who must be present for discussions about end-of-life decision making?**

An eligible patient shall decide who may be present for these discussions. If a patient with a disability has designated a support person and/or legal representative, the hospital must ensure their presence for discussions about electing hospice care, signing an advance directive, or an order allowing the withholding or withdrawing of life-sustaining procedures unless the patient requests that the support person not be there.

### **When should a hospital notify an eligible patient of the right to have a support person present for end-of-life decision making?**

Hospital staff should give reasonable notification when such discussions are routine practice or may be imminent. If a patient cannot communicate his or her needs, Oregon Health Authority recommends that the hospital default to having the support person present to satisfy the requirement.

### **What is a support care conference?**

A support care conference is a meeting in person, by telephone, or electronic media, that includes a representative from the patient's hospital care team, the patient, the patient's legal representative (if applicable), and the patient's designated support person(s). The support care conference must include discussion of denial and any parameters for

permitting a support person to be physically present with the eligible patient including but not limited to any limitations, restrictions, or additional precautions that may be implemented for the safety of the patient, support person, and hospital staff.

### **What happens at a support care conference?**

The purpose of the support care conference is for health care providers, eligible patients and support persons to discuss why excluding a support person may be necessary for the safety of staff, the patient or the support person or if any conditions can be reasonably imposed to allow for the support person presence. Following a support care conference, the hospital will document in the treatment plan the decision and any reasons for limitation, restriction, additional precautions or prohibition.

### **How will patients and support persons know about options for a support care conference?**

The hospital must notify the eligible patient and the support person orally and in writing about the opportunity to request a support care conference at any time the hospital denies a support person's physical presence.

### **When is a support care conference required?**

A support care conference is required when an eligible patient requests the conference because the hospital has denied that patient's request to allow a support person to be physically present with the patient. The support care conference should be conducted as soon as possible but not later than 24 hours after admission or prior to a procedure or operation.

### **What, if any, limits are there are on support persons?**

Hospitals may impose conditions on support persons to ensure the safety of patients, support persons and staff. Conditions must be reasonably related to the safety interests. OHA has interpreted 2020 Special Session 1, Oregon Laws, Chapter 20 to allow hospitals to adopt generally applicable conditions for different hospital units for infection control purposes and to reflect unique safety aspects related to the patient population of the unit and the treatment modalities generally used in that unit. Conditions may also be set for specific patients to reflect individual safety and treatment needs. A hospital may refuse to allow a designated support person to be present if that support person refuses or fails to comply with the conditions set by the hospital, in that situation the hospital could permit a different designated support person to be present.

### **May a hospital allow support persons to be "present" remotely?**

The administrative rules require that hospitals allow at least one support person designated by the eligible patient to be physically present. There is nothing that prevents a hospital from allowing a support person to be virtually present if it is acceptable to the patient. In addition, the hospital may facilitate virtual presence of support persons when requested. These rules do not supersede or excuse compliance with other state or federal requirements. A hospital should not delay providing care before a support person arrives if immediate treatment is necessary to save a patient's life.

**How will hospitals provide notice of the right to designate a support person?**

The public posting, as well as the oral and written notice to eligible patients should be readily available in accessible versions such as large print, audio, braille, alternative languages, etc.

**Oregon Health Authority – Contact Information:**

**Public Health Division, Health Care Regulation & Quality Improvement**

Please contact the Oregon Health Authority, Public Health Division for information about hospital compliance requirements at [mailbox.hclc@state.or.us](mailto:mailbox.hclc@state.or.us) or 971-673-0540.