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| Subject: Rights / Exercise of Rights | Effective Date:  Revised Date:  Revised Date:  Revised Date: |
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POLICY:

Each patient in the program has the right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside of the unit.

In the case of a patient adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the patient devolve to and are exercised by the patient representative appointed under State law to act on the patient's behalf. The court-appointed patient representative exercises the patient's rights to the extent judged necessary by a court of competent jurisdiction, in accordance with State law.

* In the case of a patient representative whose decision-making authority is limited by State law or court appointment, the patient retains the right to make those decisions outside the representative’s authority.
* The patient’s wishes and preferences must be considered in the exercise of rights by the representative.
* To the extent practicable, the patient must be provided with opportunities to participate in the care planning process.

Care Management will offer options regarding discharge planning and act as patient advocates regardless of who is representing the patient.

For more information, see “Patient Orientation P&P” as well as the "Patient Orientation Packet” which contains the “Rights & Responsibilities”.

DEFINITIONS:

“**Court of competent jurisdiction**” means any court with the authority to hear and determine a case or suit with the matter in question.

“**Patient representative**” for purposes of this subpart, may mean any of the following:

# An individual chosen by the patient to act on behalf of the patient in order to support the patient in decision-making; access medical, social, or other personal information of the patient; manage financial matters; or receive notifications.

# A person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the patient in order to support the patient in decision-making; access medical, social, or other personal information of the patient; manage financial matters; or receive notifications; or

# Legal representative, as used in section 712 of the Older Americans Act; or

# The court-appointed guardian or conservator of a patient.

# Nothing in this rule is intended to expand the scope of authority of any patient representative beyond that authority specifically authorized by the patient, State or Federal law, or a court of competent jurisdiction.

GUIDELINES:

# Each patient has the right to exercise his/her rights as a patient of the unit, and as a citizen and/or patient of the United States.

# Each patient has the right to be free of interference, coercion, discrimination, or reprisal from the unit in exercising his/her rights.

# If a patient is judged to be incompetent under the laws of the State, the rights of the patient are exercised by the person appointed under State law to act on the patient's behalf.

# If a patient is judged to be incompetent but a State appointed legal representative has not been appointed, the rights of the patient will be exercised by a responsible person (i.e.: an interested family member or significant other).

PROCEDURE:

# The level of competency will be assessed on admission and whether the patient can represent himself or not.

# If the patient has been formally declared incompetent by a court, the representative is whomever the court appoints (for example, a guardian or conservator). The hospital and program staff must confer with the appointed patient representative.

# If a representative has already been assigned, the care manager will ensure that such representative is involved as needed.

# If there is no representative and it has been determined that one should be assigned, the process to do so based on need will be initiated by the care manager or designee.

# The hospital must obtain documentation that the patient’s representative has been delegated the necessary authority to exercise the patient’s rights and must verify that a court-appointed representative has the necessary authority for the decision-making at issue as determined by the court.

## For example, a court-appointed representative might have the power to make financial decisions, but not health care decisions.

## Additionally, the facility must make reasonable efforts to ensure that it has access to documentation of any change related to the delegation of rights, including a patient’s revocation of delegated rights, to ensure that the patient’s preferences, are being upheld.

# Whether a patient has or has not been judged incompetent by a court of law, if it is determined that the patient understands the risks, benefits, and alternatives to proposed health care and expresses a preference, then the patient’s wishes should be considered to the degree practicable, including patient input into the care planning process.

# The involvement of a representative does not relieve facility staff of their duty to protect and promote the patient’s interests.

## For example, a representative does not have the right to insist that a treatment be performed that is not medically appropriate or reject a treatment that may be subject to State law.

# If a patient’s representative is a same-sex spouse, he or she must be treated the same as an opposite-sex spouse with regard to exercising the patient’s rights. In Obergefell v. Hodges, 576 U.S.\_\_\_ (2015), the Supreme Court of the United States also ruled that all States must recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

# A competent patient may wish to delegate decision-making to specific persons, or the patient and family may have agreed among themselves on a decision-making process. To the degree permitted by State law, the hospital staff must respect the delegated patient representative’s decisions regarding the patient’s wishes and preferences so long as the patient representative is acting within the scope of authority contemplated by the agreement authorizing the person to act as the patient’s representative.

# As a part of the orientation process, patients, or their family members, significant and/or concerned others will be informed both orally and in writing of their rights by the Care Management or designee.

# The patient/significant other(s) will be informed on the process to report their concerns regarding their rights or dissatisfaction with services.

# As appropriate, Patient Rights will be explained to the patients, their family members, and/or significant others in their primary language, or language most frequently used.

# A copy of the Patient's Rights will be given to the patient, their family member, significant, and/or concerned others as part of the orientation packet.