KRIEG DEVAULT

Insights

COVID-19, Faith, and 'Technical Assistance' from OCR

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Patients treating at hospitals during the ongoing public health emergency face a number of challenges with respect to access to on-site and virtual support from family and friends. Compounding the stress, some hospitals have denied patients in-person access to members of their respective clergy in a variety of circumstances. The Office of Civil Rights ("OCR") of HHS has intervened to assist providers in achieving a balance between public safety and a patient's access to clergy.

OCR recently provided "technical assistance" (again) to hospitals on modifications to their visitation policies following two religious discrimination complaints with the effect of ensuring such access to patients during the pandemic:

- In the first complaint, a Maryland hospital denied a Covid positive patient's request to permit a Catholic priest access to the hospital to baptize her newborn child after the hospital separated her from her child (and all visitors) immediately after giving birth.

- In the second complaint, a Virginia hospital denied requests for admission of Catholic priests to administer religious sacraments to two ICU patients in end-of-life situations. One of the patients was COVID-positive while the other patient had not tested positive and was not suspected of being COVID-positive.

Balancing the need for compassionate spiritual support to patients and a hospitals' interest in establishing a safe environment, OCR reached a resolution with both hospitals in accordance with CMS guidelines on allowing adequate and lawful access to chaplains or clergy of the patient's choice. Specifically, OCR's technical assistance on modifications to hospital visitation policies resulted in updated policies that allowed access to clergy or religious leaders so long as the access is accompanied by additional safeguards. Such safeguards approved by OCR include the following elements: (1) the visit does not disrupt patient care; (2) visitors must follow hospital safety policies; (3) visitors must follow proper infection prevention practices, including hand washing and sanitizing along with physical distancing; (4) visitors must wear face masks; (5) visitors must complete infection control training offered by hospitals; and (6) visitors must sign an acknowledgment of the risks associated with visiting a COVID-positive patient.

In extraordinary circumstances when the safeguards listed above are not practical, clergy and religious leaders may still visit a patient but must self-quarantine for 14 days after the visit. Additionally, OCR agreed to an updated hospital visitation policy that allows patients in non-COVID units to receive visitation from religious leaders or clergy of their choice at any reasonable time provided such visit does not result in a disruption of

care.

If you have any questions related to the guidance provided by OCR on patient access to compassionate religious support or would like additional information about this topic, please contact Andrew W. Breck or Robert A. Anderson.

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