

Via Email & U.S. Mail

January 13, 2021

Roger Severino
Director, Office for Civil Rights
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington D.C. 20201

Re: Memorial Hermann Hospital System's "No Visitor" Policy and Practice Constitute Illegal Disability Discrimination

Dear Mr. Severino,

Disability Rights Texas (DRTX), along with the eight undersigned state and national advocacy organizations, submits this Complaint against Memorial Hermann Hospital Systems (MHHS) due to MHHS's restrictive "no visitor" policy and practice that denies patients with disabilities the right to have a needed support person with them in the hospital. MHHS operates 17 hospitals in the Houston and southeast Texas area.

DRTX is the organization designated pursuant to the federal Protection and Advocacy Acts by the State of Texas as the Protection and Advocacy system for residents of this State with physical, mental, and developmental disabilities. DRTX is charged under these laws with investigating incidents of abuse and neglect committed against persons with disabilities, advocating for such individuals to ensure protection of their rights, and pursuing legal remedies in furtherance of these rights.

MHHS's "No Visitor" Policy and Practice

MHHS's current visitation policy¹ for its hospitals states that:

- The 'No visitor' policy at all Memorial Hermann facilities to limit potential exposure (with limited exceptions) will remain in place.

While MHHS's public facing "no visitor" policy suggests that "limited exceptions" are available, it fails to expressly list or identify the exceptions or explain how to request an exception. As set forth in detail below, these failures caused MHHS to deprive a recent patient with disabilities of

¹ Policy available at <https://www.memorialhermann.org/services/conditions/coronavirus>, and attached as Ex. A.

her right to a needed support person while she was at an MHHS hospital, despite her family's repeated requests.

MHHS's unlawfully vague and restrictive policy and practice, which allow MHHS to discriminate against persons with disabilities, is unfortunately in keeping with the problematic Texas Health and Human Services Commission's (HHSC's) revised emergency rule concerning visitor access during the COVID-19 pandemic. A Complaint against HHSC is currently pending at your office (case no. 06-21-4-4357-cp-cr). In sum, HHSC's adoption on September 25, 2020, of an emergency rule (Title 25 Texas Administrative Code, Chap. 133 Hospital Licensing, § 133.51)² mandates that hospitals "shall limit visitors allowed in the facility to the extent the hospital determines such limitation is necessary to prevent or control a COVID-19-related health and safety risk." This emergency rule replaced a prior emergency rule (also § 133.51) adopted on April 3, 2020,³ that allowed providers of "essential services," which included a single designated caregiver acting on the patient's behalf, entry to a hospital. By removing the regulatory provision guaranteeing support persons a right of entry to the hospital when essential to support a patient with a disability, the new emergency rule gave hospitals⁴ such as those operated by MHHS the authority to discriminate against persons with disabilities in violation of federal laws.

MHHS's vague and restrictive "no visitor" policy and practice denies individuals with disabilities equal access to medical treatment by:

- Denying individuals effective communication;
- Depriving individuals of their right to make informed decisions and provide informed consent;
- Subjecting individuals to the unnecessary use of physical and chemical restraints;
- Denying individuals adequate and necessary medical treatment and care; and,
- Subjecting individuals to substantial and lasting emotional harm.

As you know, many people with disabilities, including older adults, are at a higher risk of contracting COVID-19 and experiencing life-threatening complications from the virus, while many need hospitalization for other reasons. It is therefore critical that such persons, regardless of their COVID-19 status, have access to support persons who can help to effectively communicate with medical personnel and have access to necessary care while in the hospital.

To illustrate the immediacy and impact of COVID-19 in Texas, as of January 6, 2021, Texas reported 127,175 new cases of COVID-19 within the last 7 days.⁵ Further, as of January 6, 2021,

² September 25, 2020 emergency rule attached as Ex. B.

³ April 3, 2020 emergency rule attached as Ex. C.

⁴ MHHS is not the only hospital that has adopted unlawfully restrictive visitation policies. Since HHSC's revised rule went into effect on September 25, 2020, Disability Rights Texas has had six cases concerning other hospitals in Texas. Unlike MHHS, those hospitals swiftly revised their policies to conform to federal law in response to our demand letters.

⁵ Centers for Disease Control and Prevention, CDC COVID Data Tracker, Data Table for Cases in last 7 Days by State/Territory, found at https://covid.cdc.gov/covid-data-tracker/#cases_casesinlast7days (last accessed on January 7, 2021).

Texas had 1,457 COVID-19 deaths in the last 7 days, the second highest in the country.⁶ Of the 29,310 total COVID-19 deaths in Texas, 21,239 have been people over the age of 65.⁷

As the Protection & Advocacy system for Texas,⁸ Disability Rights Texas is authorized to pursue legal, administrative, and other appropriate remedies to ensure the protection of, and advocacy for, the rights of individuals with disabilities. 42 U.S.C. § 15043(a)(2)(A). This action is brought under the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act (ACA). We urge you to immediately investigate and take swift action to resolve these allegations of disability discrimination.

Statement of Facts for G.G., a Former Patient of a MHHS Hospital

In late December 2020, G.G., an 83 year-old woman, was hospitalized at a MHHS hospital in Houston, Texas. G.G. is a person with disability, as she has a cognitive impairment resulting from Alzheimer's and Dementia, and is also both visually and mobility impaired. G.G. required a support person who was knowledgeable about the management of her care to be present with her to support her disability-related needs (i.e., to assist with communication and provide physical and emotional support). G.G.'s family members tried repeatedly and in vain to tell MHHS staff that G.G. needed and was legally entitled to a support person, but was informed by the unit manager and the director of the unit that G.G. did not meet the criteria to need an essential care giver because the hospital "knows how to care for Alzheimer patients."

On December 29, 2020, Disability Rights Texas sent a demand letter⁹ to MHHS requesting that it allow a family member entry to the hospital to be G.G.'s designated support person, and to swiftly revise its "no visitor" policy to expressly inform the public that patients with disabilities who need assistance due to the specifics of their disabilities may have designated support persons with them. In response to the demand letter, MHHS did allow the family to provide overnight support for two consecutive evenings, but refused to amend its "no visitor" policy. MHHS instead claimed that the statement "limited exceptions" provided sufficient information to ensure patients are knowledgeable about their rights to request an accommodation for a person with a disability. MHHS also revealed that there were no guidelines or criteria for staff when granting permission for entry of a support person, but instead MHHS staff would make individualized determinations as to whether a support person was necessary for a patient to benefit from hospitalization. Of course, MHHS's policy that merely states that there are unnamed "limited exceptions" to its "no visitor" policy is obviously insufficient, and as is MHHS's standardless and arbitrary process for staff to grant an exception.

⁶ Centers for Disease Control and Prevention, CDC COVID Data Tracker, Data Table for Deaths in last 7 Days by State/Territory, found at https://covid.cdc.gov/covid-data-tracker/#cases_deaths_in_last_7_days (last accessed on January 7, 2021).

⁷ Texas COVID 19 Dashboard (updated 1/8/2021):

<https://txdshs.maps.arcgis.com/apps/opsdashboard/index.html#/ed483ecd702b4298ab01e8b9cafc8b83>

⁸ See Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15041, *et seq.*; the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801, *et seq.*; and the Protection and Advocacy for Individual Rights Act, 29 U.S.C. § 794e.

⁹ Redacted December 29, 2020 demand letter to MHHS, attached as Ex. D.

Accordingly, to protect the rights of patients with disabilities (including Alzheimer’s Dementia), the undersigned had no choice but file this Complaint.

Legal Standards

The Americans with Disabilities Act,¹⁰ Section 504 of the Rehabilitation Act,¹¹ and Section 1557 of the Affordable Care Act¹² protect patients with disabilities and entitle them to reasonable modifications and accommodations to ensure equal access to treatment.

Title II of the ADA prohibits public entities (such as state and local governments) from excluding people with disabilities from their programs, services, or activities, denying them the benefits of those services, programs, or activities, or otherwise subjecting them to discrimination. 42 U.S.C. §§ 12131-12134. Unlawful discrimination under Title II includes, inter alia: using eligibility criteria that screen out or tend to screen out individuals with disabilities, failing to make reasonable modifications to policies and practices necessary to avoid discrimination, and perpetuating or aiding discrimination by others. 28 C.F.R. §§ 35.130(b)(1)-(3), 35.130(b)(7)-(8).

Moreover, the United States Department of Justice has explicitly instructed that Title II of the ADA applies to emergency preparedness efforts of state and local governments, writing:

One of the primary responsibilities of state and local governments is to protect residents and visitors from harm, including assistance in preparing for, responding to, and recovering from emergencies and disasters. State and local governments must comply with Title II of the ADA in the emergency and disaster-related programs, services, and activities they provide.¹³

Section 504 of the Rehabilitation Act similarly bans disability discrimination by recipients of federal financial assistance, which includes most hospitals and health care providers. 29 U.S.C. § 794(a). The breadth of Section 504’s prohibition on disability discrimination is co-extensive with that of the ADA including failing to make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination. *See, Southeastern Community College v. Davis*, 442 U.S. 397 (1979); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273-76 (2d Cir. 2003).

Section 1557 of the ACA provides that no health program or activity that receives federal funds may exclude from participation, deny the benefits of their programs, services or activities, or otherwise discriminate against a person protected under Section 504 of the Rehabilitation Act, 42

¹⁰ 42 U.S.C. §§ 12131-12134, 12181-12189; 28 C.F.R. §§ 35. 130, 35.160, 36.302 and 36.303.

¹¹ 29 U.S.C. § 794; 45 C.F.R. §§ 84.4 and 84.52; 28 C.F.R. § 41.51.

¹² 42 U.S.C. § 18116; 45 C.F.R. §§ 92.101(a) and 92.101(b)(2)(i); 45 C.F.R. § 92.205.

¹³ DOJ, Emergency Management Under Title II of the Americans with Disabilities Act at 1 (July 26, 2007), available at <https://www.ada.gov/pcatoolkit/chap7emergencymgmt.htm>. *See also*, Department of Health and Human Services (HHS) Office for Civil Rights, Bulletin: Civil Rights, HIPAA, and the Coronavirus Disease (COVID-19), 1-3 (Mar. 28, 2020) (available at: https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf?fbclid=IwAR351WokrC2uQLIPxDR0eiAizAQ8Q-XwhBt_0asYiXi91XW4rnAKW8kxcog) (hereinafter “OCR Bulletin”).

U.S.C. § 18116; 45 C.F.R. §§ 92.101(a) and 92.101(b)(2)(i). This includes an obligation to make reasonable modifications in policies, practices, and procedures necessary to avoid discrimination. 45 C.F.R. § 92.205.

The Office for Civil Rights' March 28, 2020 Bulletin specifically discusses the obligations of entities covered under federal disability laws to ensure equal access to medical treatment and "effectively address[] the needs of at-risk populations."¹⁴ This includes providing effective communication, meaningful access to information, and making reasonable modifications to address the needs of individuals with disabilities.¹⁵

As you know, on June 9, 2020, the Office for Civil Rights resolved a complaint after the State of Connecticut and a private hospital modified their policies to safeguard the rights of persons with disabilities to have reasonable access to support persons in hospital settings during the COVID-19 pandemic. As part of the resolution, Connecticut issued an executive order requiring that hospital patients "with disabilities that may include, but not be limited to, altered mental status, physical, intellectual or cognitive disability, communication barriers or behavioral concerns, who need assistance due to the specifics of their disability, may have one designated support person with them to support their disability related needs."¹⁶ The order continued that such designated support persons "may be a family member, personal care assistant, similar disability service provider, or other individual knowledgeable about the management of their care, to physically or emotionally assist them or to ensure effective communication during their stay in such Facility, provided proper precautions are taken to contain the spread of infection."¹⁷

MHHS's vague and restrictive "no visitor" policy and practice are wholly at odds with the non-discrimination standards cited above. Instead of ensuring that all individuals with disabilities are afforded reasonable accommodations when hospitalized, MHHS's policy and practice act to deny individuals equal access to the benefit of its hospitals services. Unless MHHS's policy is promptly revised, MHHS can continue to discriminate against persons with disabilities by denying them effective communication; depriving them of their right to make informed decisions and provide informed consent; subjecting them to the unnecessary use of physical and chemical restraints; denying them adequate and necessary medical treatment and care; and, subjecting them to substantial and lasting emotional harm.

It is critical that all reasonable steps be taken to ensure support persons such as guardians, family members, and health care agents are afforded an equal opportunity to communicate with the disabled individual and their treating clinicians. Communication supports may include accommodations such as access to interpreters and specialized assistive technology, including telephonic or video technology; they may also include the presence of a family member, personal care assistant, or trained disability service provider if that is what the patient with a disability requires. Support persons not only assist with communication but can also provide critically important physical and emotional support necessary for the patient to receive equal access to the medical treatment the hospital provides to others without disabilities.

¹⁴ OCR Bulletin at 2.

¹⁵ *Id.*

¹⁶ Connecticut's June 9, 2020 Order, and OCR's resolution, attached as Ex. E.

¹⁷ *Id.*

Requested Relief

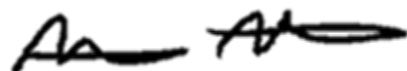
- MHHS’s policy must make clear that disability support persons are allowed for patients with any kind of disability who need them, including patients with physical, communication, mental and behavioral health, cognitive, traumatic brain injuries, and developmental disabilities. MHHS’s policy must make clear that need for a disability support person is based on the patient’s functional limitations, not a particular disability diagnosis, or MHHS’s belief about what is best for the person with a disability.
- MHHS’s policy must make clear that patients with disabilities regardless of age, who require in-person supports to communicate or otherwise access the programs and services of MHHS—regardless of their COVID-19 status or suspected status – are entitled to access those supports with appropriate safety mitigation measures.
- MHHS’s policy should acknowledge that the support person is different from a “visitor,” because access to a support person is a reasonable accommodation under federal law that is meant to ensure equal access to medical care.
- MHHS’s policy should clarify that designated support persons may be a family member, personal care assistant, similar disability service provider, interpreter, or other individual knowledgeable about the management of their care, to physically or emotionally assist them or to ensure effective communication during their stay in the facility, provided proper precautions are taken to contain the spread of infection.
- MHHS’s policy should allow access for an asymptomatic support person who has previously had direct contact with a COVID-19 patient, as long as the support person takes additional appropriate precautions to contain the spread of the virus.
- MHHS’s policy should allow patients to designate more than one support person, even if the facility determines for safety reasons to allow only one to be present at a time.
- MHHS’s policy should clarify that support persons should be allowed to reasonably leave and re-enter the facility as long as safety mitigation measures are undertaken.
- MHHS’s policy should clarify that support persons should be permitted to safely eat, drink, and use the restroom while present in the hospital, as long as safety mitigation measures are undertaken.
- MHHS’s policy should direct facilities to provide appropriate Personal Protective Equipment (PPE) to be worn by designated support persons as instructed by the facility for the duration of the visit. If the facility does not have PPE for the support person, PPE supplied by the support person that the facility finds adequate may be used.

- MHHS’s revised policy should be posted to its main website and require facilities to clearly advertise and post notice of the policy at patient entry points in every facility, on each facility’s website, and be provided to the patient at the time services are scheduled or initiated.
- MHHS’s policy should be available in different languages and formats to ensure access to individuals who do not speak English and those individuals with vision disabilities.
- MHHS’s policy must remind facilities of their continuing legal obligation to ensure effective communication regardless of the presence of a support person, which may require the use of qualified interpreters or assistive technology.
- MHHS’s policy should include a primary and back-up contact person to which questions or violations of the policy may be addressed.
- MHHS should provide training to all necessary administrators and staff to ensure proficiency on the requirements under federal law, including Title III of the ADA, the Rehabilitation Act, and the ACA for individuals with disabilities. MHHS facilities should revise its policies and issue guidance and training to clarify that patients with disabilities may designate one support person to accompany, visit, and stay with them in the hospital to support their disability-related communication, decision making, and other disability needs regardless of their disability diagnosis. Similarly, MHHS facilities should revise its policies and issue guidance and training to clarify that any requests for a patient support person is not a request for a visitor and should be treated as a request for a reasonable accommodation of disability.

Therefore, Disability Rights Texas, along with the undersigned state and national advocacy organizations, request that the Office for Civil Rights immediately investigate and issue findings that MHHS’s current “no visitor” policy and practice unlawfully discriminate against persons with disabilities. We further request that OCR advise MHHS that it must rescind and replace its current policy for hospital visitation to unambiguously allow patient support providers within hospital settings during this public health emergency, even if the patient has COVID-19. People with disabilities face significantly heightened risks during this pandemic and it is essential that their rights to equal hospital services are enforced.

We greatly appreciate your prompt consideration of this urgent matter. You can contact us at the numbers or emails below concerning any questions about this Complaint. We look forward to your response.

Sincerely,



Beth Mitchell
Peter Hofer
Terry Anstee
Disability Rights Texas

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Together With:

ADAPT of Texas, based in Austin, Texas, is a grassroots, statewide nonprofit disability rights organization that has groups throughout the state. ADAPT of Texas advocates for the rights of people with disabilities to live in the Community and have access to the same services, amenities, and programs as everyone else. ADAPT believes people with disabilities to be of equal value to any other person, to have the same right to live as anyone else, to have the same right to treatment as anyone else, and that the value of the lives of people with disabilities is not tied to their abilities or impairments.

The Arc of Texas promotes, protects, and advocates for the human rights and self-determination of Texans with intellectual and developmental disabilities (“IDD”). As a statewide membership organization, The Arc of Texas works alongside and for Texans with IDD and their families to identify barriers to and solutions for inclusive education, competitive integrated employment, quality community-based services and supports, and access to civil rights and justice. The Arc of Texas supports its members in various ways, from informing state-level policies to training members to advocate for themselves at state agencies and the Texas Capitol. In addition to direct policy and advocacy work, The Arc of Texas organizes and facilitates numerous programs that train, educate, and connect diverse stakeholders. In its more than 65 years of existence, The Arc of Texas continuously proves that Texans with IDD are valuable members of their communities and can make decisions for themselves, particularly when proper supports and services are available. Unfortunately, The Arc of Texas must also work tirelessly to dispel harmful myths against Texans with IDD, including that they do not have a high quality of life. Denying individuals with disabilities their right to have a support person if needed is unacceptable, and The Arc of Texas joins others to demand that MHHS’s discriminatory no visitor policy and practice be rescinded and replaced to protect persons with disabilities during the COVID-19 pandemic and all future emergencies.

The Coalition for Texans with Disabilities (CTD) is a statewide, non-profit, cross-disability advocacy organization founded in 1978 and directed by people with disabilities. In its policy work, CTD consistently advocates for access to health care in an environment that rejects discrimination based on disability.

Protect Texas Fragile Kids (PTFK) is a nonprofit organization founded and run by parents of medically fragile Texas children. PTFK’s stated mission is to give a voice to Texas’ most fragile citizens; to inform, educate, and support families of children with disabilities; to fight for what is right for children with special medical needs and disabilities; to champion public policy which supports and protects the well-being of children with disabilities and complex medical needs; to

monitor existing and proposed legislation impacting children with disabilities; and to empower families with children who have disabilities and complex medical needs to connect with elected officials to promote understanding of this life. PTFK is particularly concerned that MHHS's no visitor policy and practice deny parents and caregivers entry to a MHHS hospital to be with their children or young adults with disabilities.

The National Down Syndrome Society (NDSS) is the leading human rights organization for all individuals with Down syndrome. Many individuals with Down syndrome are at a higher risk for contracting COVID-19 because they have underlying medical conditions and/or live in group homes, long-term care facilities or other congregate settings. As a community, people with Down syndrome already face discrimination in access to health care, and we need to be vigilant in protecting their civil rights and ensuring equal access to necessary accommodations.

The Center for Public Representation (CPR) is a national, nonprofit legal advocacy organization that has been assisting people with disabilities for more forty years. CPR uses legal strategies, systemic reform initiatives, and policy advocacy to enforce civil rights, expand opportunities for inclusion and full community participation, and empower people with disabilities to exercise choice in all aspects of their lives. CPR has litigated systemic cases on behalf of people with disabilities in more than twenty states and has authored amici briefs to the United States Supreme Court and many courts of appeals. CPR is both a national and statewide legal backup center that provides assistance and support to the federally-funded protection and advocacy agencies in each state and to attorneys who represent people with disabilities in Massachusetts.

The Arc of the United States is the nation's largest community-based organization of and for people with intellectual and developmental disabilities ("I/DD"), with over 600 chapters nationwide. The Arc promotes and protects the human and civil rights of people with I/DD and actively supports their full inclusion and participation in the community throughout their lifetimes. The Arc has a vital interest in ensuring that all individuals with I/DD receive appropriate protections and supports to which they are entitled by law.

Justice in Aging's principal mission is to protect the rights of low-income older adults. Through advocacy, litigation, and the education and counseling of legal aid attorneys and other local advocates, we seek to ensure the health and economic security of older adults with limited income and resources. Since 1972, Justice in Aging (formerly the National Senior Citizens Law Center) has worked to promote the independence and well-being of low-income older adults, especially women, members of the LGBTQ community, people of color, people with disabilities and people with limited English proficiency. We work to ensure access to public benefit programs that allow low-income older adults to live with dignity and independence. Much of our work involves advocacy for health services and programs, including Medicare and Medicaid. We are concerned about restrictions on access to the essential support of caregivers in hospital settings for older adults with disabilities.

EXHIBIT A

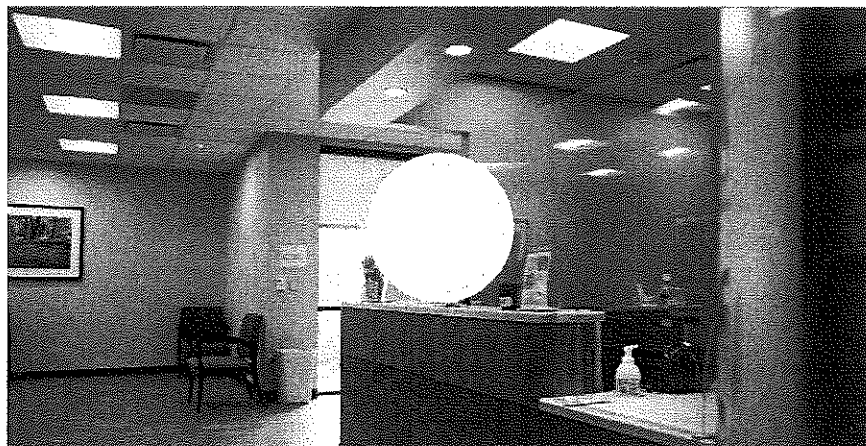
If you have been tested for COVID-19 at Memorial Hermann, you can view your results in your Everyday Well account.

[Read More](#)

Información En Español

Lo que usted debe saber acerca del COVID-19 para protegerse y proteger a los demás.

[Más Información](#)



2:45

New Realities, Unwavering Care

Your health and safety are always our main priority. As healthcare processes change and our community begins to adapt to a new normal, we want to let you know about the additional safeguards we are taking at Memorial Hermann to make your visit to one of our facilities as safe as possible.

In addition, we have implemented Safe Wait™, a new measure that enforces social distancing in our waiting areas. Safe Wait™ also includes staggering scheduled appointments and, when necessary, asking our patients to wait in their vehicles for their appointments.

Learn About Our Protective Measures

We have implemented a number of protective measures for the health and safety of our patients, workforce and community:

- All employees, clinicians and patients will be screened upon entering any Memorial Hermann facility and provided a surgical mask after clearing the screening process.
- Employees and clinicians caring for patients will be provided the recommended personal protective equipment (PPE).
- Infection prevention control best practices, including the thorough cleaning and sterilization efforts in between each and every patient visit as well as proper hand hygiene, will continue.
- The 'No visitor' policy at all Memorial Hermann facilities to limit potential exposure (with limited exceptions) will remain in place.
- As an additional safeguard, patients will be tested for COVID-19 prior to surgeries.

In addition, we want to help make waiting for your appointment as safe as possible. We have implemented Safe Wait™, a new measure that enforces social distancing in our waiting areas. Safe Wait™ also includes staggering scheduled appointments and, when necessary, asking our patients to wait in their vehicles for their appointments. For more information about your appointment, please call your practice location.

During this time, one thing has become increasingly clear—health and wellness are gifts worth prioritizing. Memorial Hermann stands ready to be your partner in that pursuit.

**MEMORIAL
HERMANN**

EXHIBIT B

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.51

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 25 Texas Administrative Code, Chapter 133 Hospital Licensing, new §133.51, concerning Visitor Screening and Access During the COVID-19 Pandemic. This emergency rule will provide guidance to hospitals regarding limiting and screening visitors in order to reduce the risk of COVID-19 transmission.

As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule, Visitor Screening and Access During the COVID-19 Pandemic.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require hospitals to adopt, implement, and enforce written policies and procedures to screen each person entering the hospital and to restrict visitor access as determined necessary by the hospital to limit the spread of COVID-19. The emergency rule also specifies that a hospital may not prohibit government personnel performing their official duty from entering the hospital, unless they fail to meet the hospital's screening criteria.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §241.026. Texas Government Code §2001.034 authorizes the adoption of an emergency rule without prior notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §241.026 authorizes the Executive Commissioner of HHSC to adopt rules governing the development, establishment, and enforcement of standards for the construction, maintenance, and operation of licensed hospitals.

This new rule implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§133.51. Visitor Screening and Access During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and

flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to §418.014 of the Texas Government Code.

(b) In order to protect the health and safety of patients, hospital staff, and the public, a hospital shall limit visitors allowed in the facility to the extent the hospital determines such limitation is necessary to prevent or control a COVID-19-related health and safety risk.

(c) In order to protect the health and safety of patients, hospital staff, and the public, a hospital shall adopt, implement, and enforce written policies and procedures to screen each person entering the hospital, using criteria based on state, local, and federal guidance in the event of a public health disaster, and prohibit entry of any person who does not meet the screening criteria.

(d) A hospital shall implement and enforce written policies and procedures in accordance with this section regarding:

(1) the visitation rights of patients;

(2) any clinically necessary or reasonable restriction or limitation on such rights; and

(3) the reasons for the clinical restriction or limitation.

(e) A hospital may not prohibit government personnel performing their official duty, from entering the hospital, unless the individual fails to meet the hospital's screening criteria.

(f) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority that is more restrictive than this section or any minimum standard relating to a hospital, the hospital must comply with the executive order or other direction.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202004012

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: September 25, 2020

Expiration date: January 22, 2021

For further information, please call: (512) 834-4591

EXHIBIT C

TITLE 25. HEALTH SERVICES**PART 1. DEPARTMENT OF STATE HEALTH SERVICES****CHAPTER 133. HOSPITAL LICENSING****SUBCHAPTER C. OPERATIONAL REQUIREMENTS****25 TAC §133.51**

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 25, Texas Administrative Code, Chapter 133 Hospital Licensing, new §133.51, concerning an emergency rule in response to COVID-19, in order to reduce the risk of transmission of COVID-19. As authorized by Government Code, §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Hospital Response to COVID-19.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to restrict entry into a hospital and require screening of certain persons authorized to enter a hospital.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code, §2001.034 and §531.0055, and Health and Safety Code, §241.026. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code, §531.0055, authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code, §241.026, authorizes the Executive Commissioner of HHSC to adopt rules governing the development, establishment, and enforcement of standards for the construction, maintenance, and operation of licensed hospitals.

§133.51. Emergency Rule for Hospital Response to COVID-19.

(a) Based on state law and federal guidance, HHSC deems COVID-19 a health and safety risk to hospital patients, staff, and the public and requires a hospital to take the following measures. The screening required by this section does not apply to emergency services personnel entering the hospital in an emergency situation.

(b) A hospital must implement and enforce written policies and procedures in accordance with this section regarding the visitation rights of patients and setting forth any clinically necessary or reasonable restriction or limitation on such rights and the reasons for the clinical restriction or limitation.

(c) A hospital must implement and enforce written policies and procedures regarding the entry of its workforce to protect the health and safety of patients, employees and staff, and the public.

(d) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, hospice workers, other contract healthcare providers, persons providing a survivor of sexual assault with services required by Health and Safety Code Chapter 323, and a single designated caregiver acting on the patient's behalf.

(2) Persons with legal authority to enter include, but are not limited to, government personnel performing their official duties and an attorney or other legally authorized representative of a patient.

(3) Persons providing critical assistance include providers of essential services, persons with legal authority to enter, a clergy member authorized by the hospital, one parent of a minor who is a patient, and family members and friends of a patient at the end of life or presenting at the emergency department, subject to the hospital's policies and procedures.

(e) A hospital must prohibit visitors, except as provided by subsection (f) of this section.

(f) A hospital may allow entry of persons providing critical assistance, unless the person meets one or more of the following screening criteria:

(1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) Contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness; or

(3) International travel within the last 14 days to countries with ongoing community transmission. For updated information on affected countries visit: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html>.

(g) A hospital must not prohibit government personnel performing their official duty from entering the hospital, unless the individual meets the above screening criteria.

(h) If this emergency rule is more restrictive than any minimum standard relating to a hospital, this emergency rule will prevail so long as this emergency rule is in effect.

(i) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to a hospital, the hospital must comply with the executive order or other direction.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2020.

TRD-202001351

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: April 3, 2020

Expiration date: July 31, 2020

For further information, please call: (512) 834-4591

EXHIBIT D

Sent by email only: crcoordinator@memorialhermann.org

December 29, 2020

Ellie Onda
Manager, Policies, Procedures Guidelines and Forms
Memorial Hermann Health System
929 Gessner, Suite 2576
Houston, Texas 77024

Re: Memorial Hermann-Texas Medical Center's Restrictive Visitation Policy Violates Federal Disability Law Urgent Demand on Behalf of Patient [REDACTED]

Dear Ms. Onda,

Peter Hofer and I are attorneys with Disability Rights Texas, the federal-mandated protection and advocacy agency for individuals with disabilities in Texas, and we represent [REDACTED], a current patient at your Memorial Hermann-Texas Medical Center hospital. Due to your unlawfully restrictive visitation policy,¹ which discriminates against patients with disabilities by failing to provide an exception allowing entry for support persons needed by such patients, Ms. [REDACTED] has been denied her rights under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Chapter 121 of the Texas Human Resources Code, and Section 1557 of the Affordable Care Act.

Memorial Hermann is neglecting Ms. [REDACTED] and violating her legal rights by denying her family members, despite their requests, access to Memorial Hermann-Texas Medical Center to act as her designated support person. According to our information, Ms. [REDACTED] is a person with a disability, as she has a cognitive impairment resulting from Alzheimer's and dementia, has difficulty seeing due to severe glaucoma, and is mobility impaired. Due to Memorial Hermann's restrictive visitor policy, however, Memorial Hermann is preventing Ms. [REDACTED] from designating her family members to be her support person. It is our understanding that Ms. [REDACTED] requires a family member who is knowledgeable about the management of her care to be present with her to support her disability-related needs (in this case, to assist with communication and provide emotional support). Ms. [REDACTED] family members have tried in vain to tell Memorial Hermann staff that Ms. [REDACTED] needed and was legally entitled to a support person, but was informed by the unit manager and the director of the unit that Ms. [REDACTED] did not meet the criteria to need an essential care giver because Memorial Hermann-Texas Medical Center knows how to care for Alzheimer patients.

As you may know, on June 9, 2020, the Health and Human Service's Office for Civil Rights ("OCR") found, in a similar case, that a restrictive visitor policy violated federal disability law. In that case, OCR made an early case resolution against Hartford Hospital for denying visitation to a family-designated support person for an individual who needed help with communication and comprehension during her hospital care. The case was resolved when the Hartford Hospital granted the family members, who were knowledgeable about the needs of the person with a disability, access to the hospital to serve as a

¹ <https://www.memorialhermann.org/services/conditions/coronavirus>

designated support person. OCR stated the resolution ensures the rights of persons with disabilities to “have reasonable access to support persons in hospital settings that is consistent with disability rights laws” See <https://www.hhs.gov/about/news/2020/06/09/ocr-resolves-complaints-after-state-connecticut-private-hospital-safeguard-rights-persons.html>. We have little doubt that OCR would similarly find BSA’s actions and its visitation policy in violation of federal law.

Disability Rights is requesting that Memorial Hermann follow Hartford Hospital’s example and allow Ms. [REDACTED]’s family members immediate access to the hospital as her support person.² Due to the urgency of this situation, we also ask that Memorial Hermann promptly revise its visitation policy in accordance with state and federal disability law to ensure that BSA does not discriminate against persons with disabilities in the future. While Memorial Hermann’s public-facing website states there are exceptions to its “no visitor” policy, no exceptions are listed, and no method for acquiring an exception is explained.

To guarantee that individuals with disabilities like [REDACTED] who need communication or behavioral supports in hospital situations retain their rights to reasonable accommodations under federal and state law during this pandemic, we urge Memorial Hermann to revise its visitation policy to include language similar to the following:

Patients with disabilities who need assistance due to the specifics of their disability may have designated support persons with them. This could include specific needs due to altered mental status, intellectual or cognitive disability, communication barriers or behavioral concerns. If a patient with a disability requires an accommodation that involves the presence of a family member, personal care assistant or similar disability service provider, knowledgeable about the management of their care, to assist them physically or emotionally during their hospitalization, this will be allowed with proper precautions taken to contain the spread of infection.

While we do not believe it is Memorial Hermann’s intent to discriminate against Ms. [REDACTED] or its other patients with disabilities, Memorial Hermann must quickly revise its visitation policy to protect the legal rights of patients such as Ms. [REDACTED]. Although we would prefer that Memorial Hermann swiftly investigate and address this situation itself, if we do not receive a response from you by the close of business tomorrow, December 30, we intend to amend the formal complaint we filed with HHS’s Office for Civil Rights to include this case, as well as make a complaint with the Texas HHSC. We are hopeful we can reach a quick and amicable remedy to these issues. You can reach us by email or at the numbers below.

Sincerely,



Beth Mitchell
Attorney
512-407-2715



Peter Hofer
Attorney
512-497-2745

² Of course, access to the hospital for support persons can be subject to reasonable screening precautions.

EXHIBIT E

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

Deidre S. Gifford, MD, MPH
Acting Commissioner



Ned Lamont
Governor
Susan Bysiewicz
Lt. Governor

ORDER

Whereas, on March 10, 2020, Governor Ned Lamont (the Governor), in response to the global pandemic of 2019 Coronavirus disease (COVID-19), declared a public health and civil preparedness emergency throughout the State of Connecticut pursuant to Sections 19a-131a and 28-9 of the Connecticut General Statutes, to remain in effect through September 9, 2020, unless sooner terminated by the Governor; and

Whereas, the Governor's Executive Order No. 7K, dated March 23, 2020, authorized the Commissioner of Public Health (the Commissioner) to temporarily waive, modify or suspend any regulatory requirements adopted by the Commissioner or any Boards or Commissions under Chapters 368a, 368d, 368v, 369 to 381a, inclusive, 382a, 383 to 388, inclusive, 398 to 399, inclusive, 400a, 400c and 474 of the Connecticut General Statutes as the Commissioner deems necessary to reduce the spread of COVID-19 and to protect the public health; and

Whereas, due to the COVID-19 pandemic, many health care facilities have restricted access to their premises and their patients to prevent the further spread of the disease; and

Whereas, such restrictions prevent family members, personal care assistants or similar disability service providers from accompanying a patient with disabilities through his or her stay at the facility, causing such patient with disabilities to experience barriers to obtaining the care they require as well as inconvenience and distress.

Now, Therefore, in an effort to reduce the spread of COVID-19 and to protect the public health, and, in accord with the authority set forth above, for the duration of the public health and civil preparedness emergency, unless sooner modified or terminated by me or unless the Governor sooner repeals or modifies Executive Order No. 7K or the declared public health and civil preparedness emergency, I hereby order that, effective June 15, 2020:

Sections 19-13-D3 (Short-term hospitals, general and special), 19-13-D4a (Short-term hospitals, Children's General), 19-13-D45 to 19-13-D53 (Outpatient Clinics), 19-13-D55a (Outpatient dialysis unit) and 19-13-D56 (Outpatient surgical facility) (Facility or Facilities) of the Regulations of Connecticut State Agencies are hereby modified by adding the following provisions to each such section:

(a) Patients in such Facility with disabilities that may include, but not be limited to, altered mental status, physical, intellectual or cognitive disability, communication barriers or behavioral concerns, who need assistance due to the specifics of their disability, may have one designated support person with them to support their disability related needs.



Phone: (860) 509-7101 • Fax: (860) 509-7777
Telecommunications Relay Service 7-1-1
410 Capitol Avenue, P.O. Box 340308
Hartford, Connecticut 06134-0308
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Affirmative Action/Equal Opportunity Employer



(b) Such designated support person may be a family member, personal care assistant, similar disability service provider, or other individual knowledgeable about the management of their care, to physically or emotionally assist them or to ensure effective communication during their stay in such Facility, provided proper precautions are taken to contain the spread of infection.

(c) When the period of time any such patient with disabilities will remain in such Facility will be longer than one day, such patient or his or her family or caregiver may designate two support people, provided only one support person may be present at a time. This restriction must be explained to the patient and support person in plain terms, upon arrival or, ideally, prior to arriving at the Facility. Facility staff should ensure that the patient or his or her family or caregiver fully understands this restriction, allowing the patient to decide who he or she wishes to identify as his or her support person. Notice of the Facility's support person policy including the requirements contained herein shall be posted at patient entry points in the Facility, on the Facility's website and be provided to the patient at the time services are scheduled or initiated.

(d) Any such support person must be asymptomatic for, or not have previously been confirmed positive for, COVID-19. Facility staff must screen any support person for symptoms of COVID-19 (e.g., fever, cough, shortness of breath, or potential exposure to individuals testing positive for COVID-19) and conduct a temperature check prior to entering the clinical area and every twelve hours thereafter. Any support person suspected of having been exposed to COVID-19¹, may be denied access where attendant risks of such access cannot be reasonably mitigated.


(e) The Facility shall provide appropriate Personal Protective Equipment (PPE) to be worn by the designated support person as instructed by the Facility for the duration of the visit. If the Facility does not have PPE for the support person, PPE supplied by the support person that the Facility finds adequate may be used. The Facility shall determine and inform the patient and the designated support person of any policy governing the designated support person attendance including the entrance and exit policy of the Facility. Any such support person who leaves the Facility shall be screened as provided in subsection (d) above upon his or her re-entry.

(f) The support person shall comply with all reasonable requirements imposed by the Facility to minimize the potential spread of infection.

(g) Notwithstanding the foregoing, every effort shall be made to support the patient with disabilities employing virtual communication options whenever possible.

Nothing in this order should be interpreted as altering facility obligations to provide patients with effective communication supports or other required services, regardless of the presence of a designated support person or other reasonable accommodation, consistent with applicable federal or state law and regulations.

Ordered this 9th day of June 2020.



Deidre S. Gifford, MD, MPH
Acting Commissioner

¹ The determination of potential exposure shall be based upon CDC Guidance, as updated, on Community Related Exposure. See <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>.

HHS.gov

U.S. Department of Health & Human Services

FOR IMMEDIATE RELEASE

June 9, 2020

Contact: HHS Press Office

202-690-6343

media@hhs.gov

OCR Resolves Complaints after State of Connecticut and Private Hospital Safeguard the Rights of Persons with Disabilities to Have Reasonable Access to Support Persons in Hospital Settings During COVID-19

Today, the Office for Civil Rights (OCR) at the U.S Department of Health and Human Services (HHS) announces that it has reached an Early Case Resolution (ECR) with the State of Connecticut after the state issued an executive order regarding non-visitation policies for short-term hospitals, outpatient clinics, and outpatient surgical facilities to ensure that people with disabilities are not denied reasonable access to needed support persons. OCR also reached an ECR with Hartford Hospital after it agreed to grant a 73-year old woman with aphasia access to support persons to help with her communication and comprehension in her treatment.

In May 2020, OCR received complaints from Disability Rights Connecticut, CommunicationFIRST, the Arc of Connecticut, Independence Northwest: Center for Independent Living of Northwest CT, Center for Public Representation, and The Arc of the USA alleging that Connecticut guidance regarding hospital visitation for people with disabilities violates the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act and Section 1557 of the Affordable Care Act, which are enforced by OCR.

The complainants alleged that Connecticut guidance concerning hospital "no visitor" policies during the COVID-19 pandemic allowed only narrow exceptions for support persons for individuals with disabilities receiving certain services from the state Department of Developmental Services (DDS), leaving large groups of persons with disabilities unable to avail themselves of the exception. The complainants alleged that without support persons, specific patients with disabilities in Connecticut facilities were being denied equal access to medical treatment, effective communication, the ability to make informed decisions and provide consent, and that they were being unnecessarily subjected to physical and pharmacological restraints.

Complainants also alleged that Hartford Hospital, a 937-bed facility in the state, unlawfully failed to provide a reasonable modification to the hospital's no-visitor policy to a 73-year old patient with aphasia and severe short-term memory loss, who is mostly non-verbal, and was denied in-person access to support persons able to help with her communication and comprehension during care. The patient did not fall under the exception to no-visitor policies under Connecticut's guidance because she did not receive services from the state DDS.