



MEMORANDUM

TO: Representative Rob Summerfield
FROM: Tamara Dodge, senior legislative attorney
Jessie Gibbons, legislative analyst
DATE: August 11, 2020
SUBJECT: Patient's bill of rights

Per your request, this memorandum addresses several questions you asked regarding the rights of patients at Wisconsin hospitals.

Analysis of the “Know Your Rights” document

Many of the statements in the “Know Your Rights” document you provided are subjective, and therefore we cannot confirm whether all aspects of the document are accurate. However, two pieces of information in the document regarding state and federal law require clarification. Under federal law, certain rights of patients—including the right to participate in the development and implementation of his or her plan of care—are guaranteed at hospitals participating in Medicare.¹ This includes most Wisconsin hospitals. The federal requirements do not apply to nonparticipating hospitals, but they may voluntarily adopt their own policies regarding patient rights.

Additionally, the rights outlined in the “Wisconsin Client Rights” section of the document apply only to patients receiving services for mental illness, developmental disabilities, alcoholism, or drug dependency.² Wisconsin law does not explicitly define the rights of other patients as Minnesota law does in a Patient's Bill of Rights. However, Wisconsin law does require the communication of informed consent. Under Wis. Stat. § [448.30](#), a physician must inform a patient about “the availability of reasonable alternate medical modes of treatment and about the benefits and risks of these treatments.” Performing an act constituting the practice of medicine without informed consent is considered a direct patient care violation under Wis. Admin. Code MED § [10.03 \(2\)](#).

¹ 42 C.F.R. § [482.13](#).

² Wis. Stat. § [51.61 \(1\)](#).

Additionally, some general rights are provided to patients in Wisconsin through common law and case law. Generally, patients have a right to refuse unwanted medical care according to the U.S. Supreme Court.³ This right, as the court notes, is accompanied by the right to informed consent, as an individual needs to know about a treatment before exercising the right to refuse it.⁴ Similarly, the Wisconsin Supreme Court has recognized the general right to informed consent in order for the individual to determine what happens to his or her own body in relation to medical care.⁵ Notably, there are some exceptions to this right to refuse medical care, such as the procedures in the Wisconsin statutes for involuntary administration of psychotropic medication and for involuntary commitment. Another exception to the right to refuse medical care may be certain treatments for communicable diseases, as Wisconsin law provides the DHS and local health officers a procedure to order isolation or quarantine or certain other treatment of individuals who fail to comply with recommendations regarding control of communicable diseases.⁶

Can a hospital deny a patient entry or care if they refuse to wear a mask or take a COVID-19 test?

Under [Emergency Order #1](#) issued by Governor Evers on July 30, an individual is required to wear a face covering indoors or in an enclosed space other than at a private residence. An individual may be exempt from the requirement if the individual is a child under the age of two, has trouble breathing, is unconscious or incapacitated, or has a medical condition, intellectual or developmental disability, or other condition that prevents the individual from wearing a face covering.⁷

No guidance on mask or testing requirements for patients at hospitals has been issued by the Wisconsin Department of Health Services, the Wisconsin Medical Examining Board, or the Wisconsin Hospital Association. However, guidance from the Centers for Disease Control and Prevention (CDC) states that “patients and visitors should, ideally, wear their own cloth face covering (if tolerated) upon arrival to and throughout their stay in the facility.”⁸ It recommends that facilities provide face coverings to patients who do not have one upon entry.⁹ The CDC does not recommend denying entry or care to a patient who is able to wear a mask but refuses.

Guidance from the Centers for Medicare & Medicaid Services (CMS) also recommends screening for symptoms upon entry to the facility and that hospitalized patients and those imminently undergoing a procedure—including patients in labor and delivery areas—be tested for COVID-19 when possible 24 hours prior to the procedure or admission.¹⁰ When testing is not

³ *Washington v. Glucksberg*, 521 U.S. 702, 724 (citing *Cruzan v. Dir. Mo. Dept. of Health*, 497 U.S. 261).

⁴ *Id.*

⁵ *Hannemann v. Boyson*, 2005 WI 94, 36, ¶ 43.

⁶ Wis. Admin. Code § [DHS 145.06](#).

⁷ Emergency Order [No. 1](#).

⁸ “[Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 \(COVID-19\) Pandemic.](#)” Centers for Disease Control and Prevention (CDC), updated July 15, 2020, <https://cdc.gov>.

⁹ *Id.*

¹⁰ Centers for Medicare and Medicaid Services (CMS), [CMS Recommendations: Re-opening Facilities to Provide Non-Emergent Non-COVID-19 Healthcare](#) (Washington, DC: CMS, updated June 8, 2020) 3, <https://cms.gov>.

available, CMS recommends that patients self-isolate for 14 days in advance of the procedure or admission.¹¹ CMS does not recommend denying care to a patient who refuses to be tested.

CDC has also issued guidance specifically for inpatient obstetric health care settings. It recommends that pregnant women with suspected COVID-19 or those who develop symptoms of infection during admission be prioritized for testing.¹² The guidance states that testing of asymptomatic pregnant women is at the discretion of the health care provider and facility.¹³ Like CMS, CDC does not recommend denying care to a patient who refuses to be tested.

Guidance from CMS and CDC is not mandatory and each hospital may implement and enforce its own policy regarding mask and testing requirements. As a private business, a private hospital may refuse entry or care to an individual who refuses to wear a mask or take a COVID-19 test. However, under federal law, a hospital may not refuse entry or care to an individual with an emergency medical condition if the hospital has an emergency department.¹⁴ Under this law, an individual with an emergency medical condition—including a patient in labor—must be examined and treated to stabilize the medical condition or be transferred to another medical facility.¹⁵ Presumably, this prohibition on refusing care would extend to an individual during an emergency situation in an emergency department even if he or she is not wearing a mask.

Can a hospital separate a mother and infant if they do not comply with testing?

No state or federal laws or rules require a hospital to separate a mother and infant if they do not comply with COVID-19 testing requirements. As with mask and testing requirements, each hospital may implement and enforce its own policy regarding the separation of a mother and infant.

Hospitals may choose to follow guidance on this topic from the CDC. The CDC recommends testing for all infants born to mothers with suspected or confirmed COVID-19 at approximately 24 hours of age, regardless of whether the infant has symptoms of infection.¹⁶ In areas with limited testing capacity, testing should be prioritized for infants with symptoms of infection.¹⁷ When testing is not available, an infant born to a mother with a suspected or confirmed infection should be considered as having a suspected infection.¹⁸

The recommendations state that mothers with suspected or confirmed infections and their infants should be isolated from other healthy mothers and infants and cared for as needed.¹⁹ The CDC

¹¹ *Id.*

¹² “[Considerations for Inpatient Obstetric Healthcare Settings.](https://cdc.gov)” Centers for Disease Control and Prevention, updated May 20, 2020, <https://cdc.gov>.

¹³ *Id.*

¹⁴ 42 U.S.C. § [1395dd](#).

¹⁵ *Id.*

¹⁶ CDC, [Evaluation and Management Considerations for Neonates at Risk for COVID-19](#) (Washington, DC: CDC, updated August 3, 2020), <https://cdc.gov>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

does not recommend that mothers and infants should be separated from one another. In fact, it states that the risk of an infant acquiring COVID-19 from the mother is low, and that there is no difference in the risk of infection to the infant whether the infant is cared for in the mother’s room or a separate room.²⁰ However, the CDC recommends that all caregivers—including the mother—wear a mask and practice infection control measures while caring for an infant.²¹

The CDC states that mothers with suspected or confirmed infections may feel uncomfortable caring for their infant in their room and may choose to separate. It states: “Ideally, each mother and her healthcare providers should discuss whether she would like the neonate to be cared for in her room or a separate location. ... Healthcare providers should respect maternal autonomy in the medical decision-making process.”²²

The CDC suggests that separation may be necessary for mothers who are too ill to care for their infants or for infants who are at high risk for severe illness, such as preterm infants or infants with underlying medical conditions.²³ The CDC does not suggest separation for a mother and infant if they do not comply with a hospital’s testing requirements. However, it is not mandatory for a hospital to follow the CDC’s guidance, and each hospital may implement and enforce its own policies.

Does Wisconsin’s Patient’s Bill of Rights protect a patient’s right to have two support persons present for their labor and birth?

As noted on page one, Wisconsin law does not include a Patient’s Bill of Rights as Minnesota law does, and no other state law guarantees an individual’s right to have two support persons present during labor and birth. Wisconsin law also does not explicitly regulate doulas as it does other health care providers such as midwives. Therefore, a patient’s right to have a doula present at a labor or birth is not guaranteed by law in Wisconsin.

Patients at Wisconsin hospitals participating in Medicare do have certain rights required by federal law, as noted on page one.²⁴ However, these rights do not include a guarantee of two support persons. The law requires a hospital to “have written policies and procedures regarding the visitation rights of patients, including those setting forth any clinically necessary or reasonable restriction or limitation that the hospital may need to place on such rights.”²⁵ This law allows each participating hospital to establish its own visitation policies—which may or may not ensure a patient’s right to the presence of two support persons—and to adjust them when necessary. UW Health, for example, is one Wisconsin health system, including a hospital, that encourages the presence of doulas and other support persons during childbirth.²⁶

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ 42 C.F.R. § 482.13.

²⁵ *Id.*

²⁶ “[Doulas and Support During Childbirth](https://uwhealth.org),” UW Health, accessed August 10, 2020, <https://uwhealth.org>.

I hope this information is helpful. If you have any questions or would like additional information, we can be reached at tamara.dodge@legis.wisconsin.gov or jessie.gibbons@legis.wisconsin.gov.