

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

42 CFR Part 416, 418, 482, 483, and 485

[CMS-3302-P]

RIN 0938-AS29

### Medicare and Medicaid Program; Revisions to Certain Patient's Rights Conditions of Participation and Conditions for Coverage

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the applicable conditions of participation (CoPs) for providers, conditions for coverage (CfCs) for suppliers, and requirements for long-term care facilities, to ensure that certain requirements are consistent with the Supreme Court decision in *United States v. Windsor*, 570 U.S.12, 133 S.Ct. 2675 (2013), and HHS policy. Specifically, we propose to revise certain definitions and patient's rights provisions, in order to ensure that same-sex spouses in legally-valid marriages are recognized and afforded equal rights in Medicare and Medicaid participating facilities.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on February 10, 2015.

**ADDRESSES:** In commenting, please refer to file code CMS-3302-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3302-P, P.O. Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3302-P, Mail

Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments only to the following addresses prior to the close of the comment period:

- a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

- b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Ronisha Davis, (410) 786-6882.

#### **SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard,

Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

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#### **I. Background**

##### *A. United States v. Windsor Decision*

In *United States v. Windsor*, 570 U.S. 12, 133 S. Ct. 2675 (2013), the Supreme Court held that section 3 of the Defense of Marriage Act (DOMA) is unconstitutional because it violates the Fifth Amendment (*See Windsor*, 133 S. Ct. 2675, 2695). Section 3 of DOMA, provided that in determining the meaning of any Act of the Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' meant only a legal union between one man and one woman as husband and wife, and the word 'spouse' could refer only to a person of the opposite sex who was a husband or a wife (1 U.S.C. 7).

The Supreme Court concluded that this section, by prohibiting Federal recognition of same-sex marriages that were lawfully entered into or recognized under state law, "undermines both the public and private significance of state-sanctioned same-sex marriages" and found that "no legitimate purpose" overcomes section 3's "purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect" (*Windsor*, 133 S. Ct. at 2694-95). Following the Supreme Court's opinion in *Windsor*, the Federal government is permitted to recognize the validity of same-sex marriages when administering Federal statutes and programs. And HHS has adopted a policy of treating same-sex marriages on the same terms as opposite-sex marriages to the greatest extent reasonably possible.

This proposed rule would revise certain conditions of participation (CoPs) for providers, conditions for coverage (CfCs) for suppliers, and requirements for long-term care facilities to ensure that the requirements at issue are consistent with the *Windsor* decision and HHS policy to treat same-sex marriages on the same terms as opposite-sex marriages to the greatest extent reasonably possible. As discussed in detail below, we propose to revise certain definitions and patient's rights provisions to ensure that legally married same-sex spouses are recognized and afforded equal rights in Medicare and Medicaid participating facilities. For all Medicare and Medicaid provider and supplier types, we have conducted a review of the Code of Federal Regulations (CFR) for instances in which our regulations draw on state law for purposes of defining "representative", "spouse", and similar terms in which reference to a spousal relationship is explicit or implied. We have identified 9 provisions that we believe should be revised in light of the *Windsor* decision and HHS policy. Currently, these provisions could be interpreted to support the denial of Federal rights and privileges to a same-sex spouse if the state of residence does not recognize same-sex marriages. If we do not make these revisions, our regulations would not afford equal treatment in Medicare and Medicaid participating facilities to same-sex spouses whose marriages were lawfully celebrated in jurisdictions that recognize same-sex marriage. In light of the *Windsor* decision and HHS policy, we believe that it is appropriate to revise these CoPs, CfCs, and requirements to ensure that these valid same-sex marriages are treated on the same terms as opposite-sex marriages in these Federal programs. The applicable provisions are located in the CoPs and CfCs for Ambulatory Surgical Centers (ASCs), Hospices, Hospitals, Long-Term Care (LTC) facilities, and Community and Mental Health Centers (CMHCs). We note that we did not find any regulations that we believe require amendment to achieve our policy goals for equal treatment within the CoPs and CfCs for the other provider and supplier types; therefore they are not included in this regulation. However, we want to emphasize that the *Windsor* decision and HHS policy affect all provider and supplier types. In addition, on December 12, 2014, CMS issued guidance to state survey agencies regarding the impact of the Supreme Court's decision in *United States v. Windsor* on how references to terms

such as "spouse", "marriage", "family", and "representative" should be interpreted in our regulations and the associated guidance concerning current CoPs, CfCs, and requirements except where the applicable regulation specifically requires application or interpretation in accordance with state law. With respect to those regulations that did not explicitly bar such an interpretation, we have taken the approach in our guidance that such terms include a same-sex spouse, regardless of where the couple resides or the jurisdiction in which the provider or supplier providing health care services to the individual is located, if the same-sex marriage was lawful where entered into and, if the marriage was celebrated in a foreign jurisdiction, it would be recognized in at least one state.

We also note that on September 27, 2013 and May 30, 2014, we issued *Windsor*-related guidance regarding Medicaid eligibility determinations (SHO #13-006, available at <http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SHO-13-006.pdf> and SHO #14-005, available at <http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-14-005.pdf>) on the implications of the *Windsor* decision for state flexibility regarding the recognition of same-sex marriages in determining eligibility for Medicaid and the Children's Health Insurance Program (CHIP). We note that Medicaid eligibility and CoP/CfC policies addressed in this proposed rule are administered by different statutes and are administered by state Medicaid agencies and CMS, respectively.

This proposed rule addresses certain regulations governing Medicare and Medicaid participating providers and suppliers where current regulations look to state law in a matter that implicates (or may implicate) a marital relationship. Our goal is to provide equal treatment to spouses, regardless of their sex, whenever the marriage was valid in the jurisdiction in which it was entered into, without regard to whether the marriage is also recognized in the state of residence or the jurisdiction in which the health care provider or supplier is located, and where the Medicare program explicitly or impliedly provides for specific treatment of spouses.

#### B. Statutory and Regulatory Authority

Various sections of the Social Security Act (the Act) define the various terms that the Medicare program employs with respect to each provider and supplier type and list the requirements that each provider and supplier must

meet to be eligible for Medicare and Medicaid participation. Each statutory provision also specifies that the Secretary of Health and Human Services (the Secretary) may establish other requirements as the Secretary finds necessary in the interest of the health and safety of patients, although the exact wording of such authority may differ slightly among different provider and supplier types.

Given the desire to expedite the proposed changes and the common rationale for each proposed change, we believe the most prudent course of action is to publish these proposed revisions concerning the different providers and suppliers at issue in a single proposed rule. The following are the statutory authorities for the regulatory revisions we are proposing:

- Ambulatory Surgical Centers (ASCs)—section 1832(a)(2)(F)(i) of the Act.
- Hospices—section 1861(dd)(2)(G) of the Act.
- Hospitals—section 1861(e)(9) of the Act.
- Long-Term Care (LTC) Facilities: Skilled Nursing Facilities (SNFs)—section 1819(d)(4)(B) of the Act, Nursing Facilities (NFs)—section 1919(d)(4)(B) of the Act.
- Community Mental Health Centers (CMHCs)—section 1861(ff)(3)(B)(iv) of the Act, section 1913(c)(1) of the Public Health Service Act (42 U.S.C. 201 *et seq.*).

## II. Provisions of the Proposed Regulations

Consistent with the U.S. Supreme Court's holding in *United States v. Windsor* and HHS policy, for purposes of the CoPs and CfCs at issue, we are proposing to recognize marriages between individuals of the same sex who were lawfully married under the law of the state, territory, or foreign jurisdiction where the marriage was entered into ("celebration rule") (assuming at least one state would recognize the marriage), regardless of where the couple resides or the jurisdiction in which the provider or supplier providing health care services to the individual is located, regardless of any state law to the contrary. We are proposing revisions to provisions throughout the CoPs and CfCs that draw on state-law definitions of "representative", "spouse," or similar terms that can implicate a spousal relationship. These revisions would promote equality and ensure the recognition of the validity of same-sex marriages when administering the patient rights and services at issue.

Below, we describe each of the proposed revisions.

*A. Ambulatory Surgical Centers Condition for Coverage—Patient Rights (§ 416.50)*

Section 416.50 sets forth the requirements that an ASC must follow when informing a patient or a patient's representative or surrogate of the patient's rights. Current regulations at § 416.50(e)(3) look to state law to determine a patient's legal representative or surrogate in situations where a state court has not adjudged a patient incompetent. We propose to add language at paragraph (e)(3) that would establish the requirement that the same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

*B. Hospice Care (42 CFR Part 418)*

1. Definitions (§ 418.3)

Section 418.3 sets forth the definition of "representative" when used throughout Part 418 as related to hospice care. Currently, the definition provides that a representative is an individual who has the authority under state law (whether by statute or pursuant to an appointment by the courts of the state) to authorize or terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill patient who is mentally or physically incapacitated; in addition, the term may include a guardian under the regulatory definition. We propose to revise the definition of "representative" to provide that a same-sex spouse in a marriage that was valid in the jurisdiction in which it was celebrated must be treated as a "spouse" wherever state law authorizes a "spouse" to be a representative, but a court has not appointed a specific representative. We intend for the hospice to use a celebration rule in recognizing the same-sex spouse of a patient, regardless of whether the law in the jurisdiction where the patient or spouse resides or where the hospice is located recognizes the same-sex spouse.

2. Condition of Participation: Patient's Rights (§ 418.52(b)(3))

Section 418.52 sets forth the requirements for a hospice to inform a patient of his or her rights. Current regulations at § 418.52(b)(3) require a hospice to allow a patient's legal representative to exercise the patient's rights to the extent allowed by state law, if the patient has not been adjudged

incompetent by a state court. Regulations at § 418.52(b)(3) refer to a representative "designated by the patient in accordance with state law." We propose to add at paragraph (b)(3), language that establishes the requirement that the same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

*C. Conditions of Participation for Hospitals (Part 482)*

1. Condition of Participation: Patient's Rights (482.13)

Regulations at § 482.13 set forth the requirements that a hospital must meet to protect and promote each patient's rights. Sections 482.13(a)(1) and § 482.13(b)(2), respectively, require a hospital to "inform each patient, or, when appropriate, the patient's representative (as allowed under state law), of the patient's rights, in advance of furnishing or discontinuing care," and afford the patient "the right to make informed decisions regarding his or her care." We propose to add at § 482.13(a)(1) and § 482.13(b)(2) the requirement that the same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage is valid in the jurisdiction in which it was celebrated.

2. Condition of Participation: Laboratory Services (§ 482.27)

Regulations at § 482.27 require that a hospital must maintain, or have available, adequate laboratory services to meet the needs of its patients. Regulations at § 482.27(b) require hospitals to screen blood and blood products for potentially infectious diseases (specifically, the HIV virus and Hepatitis C virus) and to notify donors and patients as necessary. Section 482.27(b)(10) addresses notification both when the patient has been adjudged incompetent by a state court and when the patient is competent. In the case of a patient who is adjudged incompetent by a state court, the physician or hospital must notify a "legal representative designated in accordance with state law." When the patient is competent, but state law permits a legal representative or relative to receive the information on the patient's behalf, the physician or hospital must notify the patient or patient's legal representative or relative. We propose to add at § 482.27(b)(10) the requirement that the same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage is valid in the

jurisdiction in which it was celebrated. This requirement would apply when state law designates or identifies a "spouse" as a legal representative in case of either competency or incompetency.

*D. Requirements for States and Long-Term Care (LTC) Facilities (42 CFR Part 483)*

1. Resident Rights (§ 483.10)

Regulations at § 483.10 give residents the right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside a facility. The regulations also require LTC facilities to protect and promote the rights of each resident. Under § 483.10(a)(4), when a resident has not been adjudged incompetent, any "legal surrogate designated in accordance with state law" may exercise such rights to the extent provided by state law. We propose to add language to § 483.10(a)(4) that would establish a requirement that, the same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

2. Preadmission Screening and Resident Review (PASRR) Evaluation Criteria (§ 483.128)

Regulations at § 483.128 set forth the criteria for a PASRR (currently abbreviated as PASARR in the regulations) evaluation. Section 483.128(c) specifies who must participate in the evaluation process, and paragraph (c)(2) requires that the individual's legal representative must participate, if one has been designated under state law. At § 483.128(c)(2), we propose to clarify that a same-sex spouse would be recognized and treated the same as an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

In addition, regulations at § 483.128(k) require that for both categorical and individualized determinations, findings of the evaluation must be interpreted and explained to the individual and, where applicable, a legal representative designated under state law. We propose a similar revision here to provide that, a same-sex spouse would be recognized and treated the same as an opposite-sex spouse if the same-sex marriage was valid in the jurisdiction in which it was celebrated.

*E. Conditions of Participation: Community Mental Health Centers (CMHCs) (Part 485, Subpart J)*

1. Definitions (§ 485.902)

Regulations at § 485.902 set forth the definition of “representative” when used throughout Part 485, subpart J as related to care in CMHCs. We propose to revise the definition of “representative” to provide that the same-sex spouse of a client must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

2. Condition of Participation: Client Rights (485.910(b)(3))

Regulations at § 485.910 require CMHCs to inform a client of his or her rights and protect and promote the exercise of these client rights. Section 485.910(b)(3) requires that, in the case of a client who has not been adjudged incompetent by the State court, “any legal representative designated by the client in accordance with state law” may exercise the client’s rights to the extent allowed under state law. We propose to add to this provision the requirement that the same-sex spouse of a client must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was lawful in the jurisdiction in which it was celebrated.

**III. Collection of Information Requirements**

This document does not impose any new information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements, as defined under the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 35). However, it does make reference to existing information collection requirements; specifically, this document references disclosure requirements contained in § 482.13(a)(1) and § 482.27(b)(10). These requirements are already accounted for in the ICR associated with OMB control number 0938–0328. We are in the process of reinstating the ICR under 0938–0328 and will complete that process under notice and comment periods separate from those associated with this notice of proposed rulemaking.

**IV. Response to Comments**

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed

with a subsequent document, we will respond to the comments in the preamble to that document.

**V. Regulatory Impact Statement**

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than \$7.0 million to \$35.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because

we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

**List of Subjects**

*42 CFR Part 416*

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

*42 CFR Part 418*

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

*42 CFR Part 482*

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

*42 CFR Part 483*

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

*42 CFR Part 485*

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

**PART 416—AMBULATORY SURGICAL SERVICES**

■ 1. The authority citation for Part 416 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. In § 416.50 paragraph (e)(3) is revised to read as follows:

**§ 416.50 Condition for coverage: Patient's rights.**

\* \* \* \* \*

(e) \* \* \*

(3) If a State court has not adjudged a patient incompetent, any legal representative or surrogate designated by the patient may exercise the patient's rights to the extent allowed by state law regarding the scope of legal representation. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

\* \* \* \* \*

**PART 418—HOSPICE CARE**

■ 3. The authority citation for Part 418 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 4. Section 418.3 is amended by revising the definition of "representative" to read as follows:

**§ 418.3 Definitions.**

\* \* \* \* \*

*Representative* means an individual who has the authority under State law (whether by statute or pursuant to an appointment by the courts of the State) to authorize or terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill patient who is mentally or physically incapacitated. This may include a legal guardian. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated. If a state court has appointed a representative, that person is the representative for these purposes.

\* \* \* \* \*

■ 5. In § 418.52, paragraph (b)(3) is revised to read as follows:

**§ 418.52 Condition of participation: Patient's rights.**

\* \* \* \* \*

(b) \* \* \*

(3) If a state court has not adjudged a patient incompetent, any legal representative designated by the patient

in accordance with state law may exercise the patient's rights to the extent allowed by state law. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

\* \* \* \* \*

**PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS**

■ 6. The authority citation for part 482 continues to read as follows:

**Authority:** Secs. 1102, 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr), unless otherwise noted.

■ 7. In 482.13, revise paragraph (a)(1) and (b)(2) to read as follows:

**§ 482.13 Condition of participation: Patient's rights.**

\* \* \* \* \*

(a) \* \* \*

(1) A hospital must inform each patient, or when appropriate, the patient's representative (as allowed under State law), of the patient's rights, in advance of furnishing or discontinuing patient care whenever possible. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

\* \* \* \* \*

(b) \* \* \*

(2) The patient or his or her representative (as allowed under State law) has the right to make informed decisions regarding his or her care. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated. The patient's rights include being informed of his or her health status, being involved in care planning and treatment, and being able to request or refuse treatment. This right must not be construed as a mechanism to demand the provision of treatment or services deemed medically unnecessary or inappropriate.

\* \* \* \* \*

■ 8. In 482.27, paragraph (b)(10) is revised to read as follows:

**§ 482.27 Condition of participation: Laboratory services.**

\* \* \* \* \*

(b) \* \* \*

(10) *Notification to legal representative or relative.* If the patient has been adjudged incompetent by a State court, the physician or hospital must notify a legal representative designated in accordance with State

law. If the patient is competent, but State law permits a legal representative or relative to receive the information on the patient's behalf, the physician or hospital must notify the patient or his or her legal representative or relative. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated. For possible HIV infectious transfusion beneficiaries that are deceased, the physician or hospital must inform the deceased patient's legal representative or relative. If the patient is a minor, the parents or legal guardian must be notified.

\* \* \* \* \*

**PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES**

■ 9. The authority citation for part 483 continues to read as follows:

**Authority:** Secs. 1102, 1128I and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a-7j, and 1395hh).

■ 10. In § 483.10, paragraph (a)(4) is revised to read as follows:

**§ 483.10 Resident's rights.**

\* \* \* \* \*

(a) \* \* \*

(4) In the case of a resident who has not been adjudged incompetent by the state court, any legal-surrogate designated in accordance with state law may exercise the resident's rights to the extent provided by state law. The same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

\* \* \* \* \*

■ 11. In § 483.128, paragraphs (c)(2) and (k) are revised to read as follows:

**§ 483.128 PASARR evaluation criteria.**

\* \* \* \* \*

(c) \* \* \*

(2) The individual's legal representative, if one has been designated under state law. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated; and

\* \* \* \* \*

(k) *Interpretation of findings to individual.* For both categorical and individualized determinations, findings of the evaluation must be interpreted and explained to the individual and, where applicable, to a legal representative designated under state law. The same-sex spouse of a resident

must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

\* \* \* \* \*

**PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS**

■ 12. The authority citation for part 485 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

■ 13. Section 485.902 is amended by revising the definition of “representative” to read as follows:

**§ 485.902 Definitions.**

\* \* \* \* \*

*Representative* means an individual who has the authority under State law to authorize or terminate medical care on behalf of a client who is mentally or physically incapacitated. This includes a legal guardian. The same-sex spouse of a client must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

\* \* \* \* \*

■ 14. In § 485.910, paragraph (b)(3) is revised to read as follows:

**§ 485.910 Condition of participation: Client rights.**

\* \* \* \* \*

(b) \* \* \*

(3) If the State court has not adjudged a client incompetent, any legal representative designated by the client

is accordance with State law may exercise the client’s rights to the extent allowed under State law. The same-sex spouse of a client must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

\* \* \* \* \*

Dated: June 12, 2014.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: June 18, 2014.

**Sylvia M. Burwell,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2014–28268 Filed 12–11–14; 8:45 am]

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