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Idaho's New Essential Caregiver Visitation Law

Health Law Update

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Idaho implemented a new law that gives people receiving in-person healthcare services the right to be visited by essential caregivers of their choosing under certain conditions. I.C. § 39-9802. The law, which became effective July 1, 2023, requires healthcare and assisted living facilities to allow patients to have in-person visitation from an essential caregiver even if other visitors are being excluded by the facility. I.C. § 39-9803. The new law supplements requirements that hospitals, long-term care facilities, and certain other institutional providers already have under licensure regulations or Medicare conditions of participation.

The law defines “essential caregiver” as “a person or persons designated by a patient or resident to visit the patient or resident in person at a facility.” I.C. § 39-9801(2). Healthcare facilities have certain obligations under the new law beyond just allowing patients to have in-person visitation from an essential caregiver. Facilities must (1) when practicable, notify potential patients or residents of their right to designate essential caregivers prior to admission to the facility; (2) provide patients or residents an opportunity to designate their essential caregivers; and (3) within certain limits, accommodate patient requests to have essential caregivers visit.

Essential caregivers must follow safety and other protocols imposed by the facility when visiting a patient, and facilities are permitted to place reasonable restrictions as to where and when the essential caregiver may visit, as well as the number of essential caregivers who may visit at the same time. I.C. § 39-9803(1). These restrictions must be necessary to prevent the disruption of assistance or healthcare services to the patient or resident and not interfere with the patient's or resident's general right to visitation by essential caregivers. I.C. § 39-9803(1)(a), (b).

Interestingly, the law does not identify any specific penalty associated with non-compliance. Presumably, patients or persons who are excluded may cite the statute to convince providers to comply or perhaps report the provider to state licensing agencies. It is doubtful, however, that the statute would create any private cause of action.

In summary, healthcare providers should ensure they are meeting their obligations under the new law, and make sure they discuss designating essential caregivers with patients when processing admissions. Healthcare facilities should also make sure to place reasonable restrictions on essential caregiver visitation to ensure healthcare operations are not disturbed.

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