



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 15-13-ALL

DATE: December 12, 2014

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Clarification of Terms Implicating the Spousal Relationship in Regulations and Guidance for Medicare- and Medicaid-certified Providers and Suppliers.

Memorandum Summary

- **Clarification of “Spouse” & Related Terms:** The Centers for Medicare and Medicaid Services (CMS) is clarifying that the terms “spouse”, “marriage,” “relative,” and “family,” as well as other terms that implicitly or explicitly implicate the spousal relationship, such as (but not limited to) “representative,” “support person,” “surrogate,” and “next-of-kin,” include all marriages lawful where entered into, including lawful same-sex marriages, regardless of the certified provider’s or supplier’s location or the jurisdiction in which the spouse lives.
- **Advance Copy: Interpretive Guidance for Appendices A, AA, M, W, PP, and Y:** Attached is an advance copy of revisions to the State Operations Manual (SOM), Appendices A, AA, M, PP, W, and Y, incorporating this clarification.

Section 3 of the Defense of Marriage Act (DOMA), enacted in 1996 (codified at 1 U.S.C. §7), defined “marriage” and “spouse” as follows: “The word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.” However, in June 2013, the United States Supreme Court ruled that Section 3 of DOMA is unconstitutional, because it violates equal protection (*United States v. Windsor*, 570 U.S. 12, 133 S. Ct. 2675 (2013) (“*Windsor*”). After the Supreme Court’s opinion in *Windsor*, section 3 of DOMA is no longer a barrier to the Federal government recognizing same-sex marriages when administering Federal statutes and programs.

CMS is clarifying in our guidance for provider and supplier types subject to certification the following terms: “spouse,” “marriage,” “family,” and “relative” consistently with the *Windsor* decision. Specifically:

- “spouse” means an individual who is married to another individual as a result of marriage lawful where it was entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the provider or supplier providing health care services to the individual is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages.
- “marriage” means a marriage lawful where it was entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the provider or supplier providing health care services to the individual is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages;
- “family” includes, but is not limited to, an individual’s “spouse” (see above); and
- “relative,” when used as a noun, includes, but is not limited to, an individual’s “spouse” (see above)

Further, we are clarifying that, except where CMS regulations explicitly require an interpretation in accordance with State law, wherever the text of a regulation or associated guidance uses the above terms or includes a reference to a patient’s or resident’s “representative,” “surrogate,” “support person,” “next-of-kin,” or similar term in such a manner as would normally implicitly or explicitly include a spouse, the terms are to be interpreted consistent with the guidance above.

CMS intends to propose a rule which would ensure that certain requirements are consistent with *United States v. Windsor*, 570 U.S. 12, 133 S. Ct. 2675 (2013). Specifically, the proposed rule would revise certain definitions and patient’s rights provisions that currently defer to State law, in order to ensure that same-sex spouses in legally-valid marriages are recognized and afforded equal rights in Medicare and Medicaid participating facilities.

We are revising the interpretive guidance found in Appendices: A (Hospitals), AA (Psychiatric Hospitals), M (Hospice), PP (Long Term Care Facilities), W (Critical Access Hospitals), and Y (Organ Procurement Organizations) to incorporate these clarifications. An advance copy of the SOM revisions is attached for your information.

If we identify guidance for other types of providers and suppliers that makes use of some or all of the clarified terms in regulatory text or interpretive guidelines, we will issue additional SOM revisions.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers, and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/

Thomas E. Hamilton

Attachment

cc: Survey and Certification Regional Office Management

CMS Manual System

Pub. 100-07 State Operations Provider Certification

Department of Health &
Human Services (DHHS)
Centers for Medicare &
Medicaid Services (CMS)

Transmittal

Date:

SUBJECT: State Operations Manual Appendices for All Types of Providers and Suppliers Subject to Certification

I. SUMMARY OF CHANGES: Clarification is provided in the SOM Appendices for all providers and suppliers subject to certification as to the meaning of the terms “marriage,” “spouse,” and other terms that implicate the spousal relationship wherever used in the appendices.

NEW/REVISED MATERIAL - EFFECTIVE DATE*: Upon Issuance
IMPLEMENTATION DATE: Upon Issuance

The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual not updated.)
(R = REVISED, N = NEW, D = DELETED) – (Only One Per Row.)

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	Appendix A/Survey Protocol, Regulations & Interpretive Guidelines for Hospitals/ Regulations & Interpretive Guidelines
R	Appendix AA/Psychiatric Hospitals – Interpretive Guidelines and Survey Procedures
R	Appendix M Guidance to Surveyors: Hospice
R	Appendix PP/ Guidance to Surveyors for Long Term Care Facilities
R	Appendix W/ Survey Protocol, Regulations and Interpretive Guidelines for Critical Access Hospitals (CAHs) and Swing-Beds in CAHs/Regulations & Interpretive Guidelines for CAHs
R	Appendix Y/ Organ Procurement Organizations (OPO) Interpretive Guidance

III. FUNDING: No additional funding will be provided by CMS; contractor activities are to be carried out within their FY 20xx operating budgets.

IV. ATTACHMENTS:

	Business Requirements
X	Manual Instruction
	Confidential Requirements
	One-Time Notification
	Recurring Update Notification

State Operations Manual

Appendix A - Survey Protocol, Regulations and Interpretive Guidelines for Hospitals

(Rev.)

Regulations and Interpretive Guidelines

(Rev.)

NOTE: in the regulations or guidance which follow, in every instance where the following terms appear:

- *“spouse” means an individual who is married to another individual as a result of marriage lawful where it was entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the hospital is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages.*
- *“marriage” means a marriage lawful where entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the hospital is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages;*
- *“family” includes, but is not limited to, an individual’s “spouse” (see above); and*
- *“relative,” when used as a noun, includes, but is not limited to, an individual’s “spouse” (see above).*

Furthermore, except where CMS regulations explicitly require an interpretation in accordance with State law, wherever the text of a regulation or associated guidance uses the above terms or includes a reference to a patient’s “representative,” “surrogate,” “support person,” “next-of-kin,” or similar term in such a manner as would normally implicitly or explicitly include a spouse, the terms are to be interpreted consistent with the guidance above.

A hospital is expected to recognize all lawful marriages and spouses for purposes of compliance with the Conditions of Participation, regardless of any laws to the contrary of the state or locality or other jurisdiction where the hospital is located or where the spouse lives.

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Appendix AA - Psychiatric Hospitals – Interpretive Guidelines and Survey Procedures

(Rev.)

Part II - Interpretive Guidelines - Psychiatric Hospitals

(Rev.)

NOTE: in the regulations or guidance which follow, in every instance where the following terms appear:

- *“spouse” means an individual who is married to another individual as a result of marriage lawful where entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the psychiatric hospital is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages.*
- *“marriage” means a marriage lawful where entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the psychiatric hospital is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages;*
- *“family” includes, but is not limited to, an individual’s “spouse” (see above); and*
- *“relative,” when used as a noun, includes, but is not limited to, an individual’s “spouse” (see above).*

Furthermore, except where CMS regulations explicitly require an interpretation in accordance with State law, wherever the text of a regulation or associated guidance uses the above terms or includes a reference to a patient’s “representative,” “surrogate,” “support person,” “next-of-kin,” or similar term in such a manner as would normally implicitly or explicitly include a spouse, the terms are to be interpreted consistent with the guidance above.

A psychiatric hospital is expected to recognize all lawful marriages and spouses for purposes of compliance with the Conditions of Participation, regardless of any laws to the contrary of the state or locality or other jurisdiction where the psychiatric hospital is located or where the spouse lives.

State Operations Manual

Appendix M - Guidance to Surveyors: Hospice -

(Rev.)

Part II – Interpretive Guidelines

(Rev.)

NOTE: in the regulations or guidance which follow, in every instance where the following terms appear:

- *“spouse” means an individual who is married to another individual as a result of a marriage lawful where entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the hospice is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages.*
- *“marriage” means a marriage lawful where entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the hospice is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages;*
- *“family” includes, but is not limited to, an individual’s “spouse” (see above); and*
- *“relative,” when used as a noun, includes, but is not limited to, an individual’s “spouse” (see above).*

Furthermore, except where CMS regulations explicitly require an interpretation in accordance with State law, wherever the text of a regulation or associated guidance uses the above terms or includes a reference to a patient’s “representative,” “surrogate,” “support person,” “next-of-kin,” or similar term in such a manner as would normally implicitly or explicitly include a spouse, the terms are to be interpreted consistent with the guidance above.

A hospice is expected to recognize all lawful marriages and spouses for purposes of compliance with the Conditions of Participation, regardless of any laws to the contrary of the state or locality or other jurisdiction where the hospice is located or where the spouse lives.

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Appendix PP - Guidance to Surveyors for Long Term Care Facilities

(Rev.)

NOTE: in the regulations or guidance which follow, in every instance where the following terms appear:

- “spouse” means an individual who is married to another individual as a result of marriage lawful where it was entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the nursing facility (SNF/NF) is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages.*
- “marriage” means a marriage lawful where it was entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the nursing facility is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages;*
- “family” includes, but is not limited to, an individual’s “spouse” (see above); and*
- “relative,” when used as a noun, includes, but is not limited to, an individual’s “spouse” (see above).*

Furthermore, except where CMS regulations explicitly require an interpretation in accordance with State law, wherever the text of a regulation or associated guidance uses the above terms or includes a reference to a patient’s “representative,” “surrogate,” “support person,” “next-of-kin,” or similar term in such a manner as would normally implicitly or explicitly include a spouse, the terms are to be interpreted consistent with the guidance above.

A nursing facility is expected to recognize all lawful marriages and spouses for purposes of compliance with the Conditions of Participation, regardless of any laws to the contrary of the state or locality or other jurisdiction where the nursing facility is located or where the spouse lives.

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Appendix W - Survey Protocol, Regulations and Interpretive Guidelines for Critical Access Hospitals (CAHs) and Swing-Beds in CAHs

(Rev.)

Regulations and Interpretive Guidelines for CAHs

(Rev.)

NOTE: in the regulations or guidance which follow, in every instance where the following terms appear:

- *“spouse” means an individual who is married to another individual as a result of marriage lawful where it was entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the hospital is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages.*
- *“marriage” means a marriage lawful where it was entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the hospital is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages;*
- *“family” includes, but is not limited to, an individual’s “spouse” (see above); and*
- *“relative,” when used as a noun, includes, but is not limited to, an individual’s “spouse” (see above).*

Furthermore, except where CMS regulations explicitly require an interpretation in accordance with State law, wherever the text of a regulation or associated guidance uses the above terms or includes a reference to a patient’s “representative,” “surrogate,” “support person,” “next-of-kin,” or similar term in such a manner as would normally implicitly or explicitly include a spouse, the terms are to be interpreted consistent with the guidance above.

A CAH is expected to recognize all state-sanctioned marriages and spouses for purposes of compliance with the Conditions of Participation, regardless of any laws to the contrary of the state or locality where the CAH is located.

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Appendix Y - Organ Procurement Organization (OPO) Interpretive Guidance

(Rev.)

NOTE: in the regulations or guidance which follow, in every instance where the following terms appear:

- *“spouse” means an individual who is married to another individual as a result of marriage lawful where it was entered into, including a lawful same-sex marriage, regardless of whether the jurisdiction where the OPO is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages.*
- *“marriage” means a lawful marriage, including a lawful same-sex marriage, regardless of whether the jurisdiction where the OPO is located, or in which the spouse lives, permits such marriages to occur or recognizes such marriages;*
- *“family” includes, but is not limited to, an individual’s “spouse” (see above); and*
- *“relative,” when used as a noun, includes, but is not limited to, an individual’s “spouse” (see above).*

Furthermore, except where CMS regulations explicitly require an interpretation in accordance with State law, wherever the text of a regulation or associated guidance uses the above terms or includes a reference to a patient’s “representative,” “surrogate,” “support person,” “next-of-kin,” or similar term in such a manner as would normally implicitly or explicitly include a spouse, the terms are to be interpreted consistent with the guidance above.

An OPO is expected to recognize all lawful marriages and spouses for purposes of compliance with the Conditions of Participation, regardless of any laws to the contrary of the state or locality or other jurisdiction where the OPO is located or where the spouse lives.
