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## Maryland and Virginia Hospitals Settle Religious Discrimination Complaints Related to Clergy Visitations During COVID-19 Pandemic

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On October 20, 2020, the Office for Civil Rights (“OCR”) within the U.S. Department of Health and Human Services (“HHS”) [announced](#) the resolution of two (2) sets of religious discrimination complaints to ensure clergy had access to patients for religious purposes during the COVID-19 pandemic. The two (2) hospitals involved are MedStar’s Southern Maryland Hospital Center (“MSMHC”), which is part of the MedStar Health System, and Mary Washington Healthcare (“MWHC”) in Virginia. Each matter is addressed below.

### Resolution With MedStar’s Southern Maryland Hospital Center

In July 2020, OCR’s Conscience and Religious Freedom Division (the “CRF Division”) received a complaint from a mother alleging that after giving birth without any other family member at MSMHC, she was separated from her newborn son because she had tested positive for COVID-19 upon admission. The mother requested that a Catholic priest be allowed to visit her newborn son to perform a baptism and the mother alleged the hospital denied her request due to a visitor exclusion policy adopted in response to the COVID-19 pandemic.

OCR and the Centers for Medicare & Medicaid Services (“CMS”) provided technical assistance to MSMHC and the MedStar Health System based on [CMS’ guidance](#). CMS’ guidance provides that hospital patients must have adequate and lawful access to visitations from religious leaders during the COVID-19 pandemic.

The MedStar Health System updated its [visitation policy for all ten \(10\) of its hospitals](#), including MSMHC. The policy now provides that patients in COVID-19 positive units or sections, as well as non-COVID units, must be able to freely exercise their religion by receiving religious services of their choice at any reasonable time, so long as such visits do not disrupt care. Consistent with CMS guidance, visiting religious leaders must follow hospital safety policies, including COVID-19 infection screening, following infection prevention practices, and wearing a face mask.

### Mary Washington Healthcare

In August 2020, the Diocese of Arlington filed a complaint with the CRF Division alleging that MWHC would not allow a priest to provide the Catholic religious sacraments of Holy Communion and Anointing of the Sick to a COVID-positive patient who was in an end-of-life situation. After MWHC learned of the complaint, the hospital allowed the priest access to the patient.

Shortly after the initial incident at MWHC, the family of a surgery patient in MWHC’s intensive care unit (ICU) – but not in an end-of-life situation – also asked for a priest visit to provide religious sacraments. MWHC would not permit the priest to visit even though the patient was COVID-negative because MWHC had designated the entire ICU as a COVID unit. The Diocese of Arlington filed a subsequent complaint with OCR, which resulted in OCR providing technical assistance to MWHC based on CMS’ guidance.

In consultation with MWHC's infection control specialists, OCR reached a resolution with MWHC to balance a patient's need for religious and spiritual support and the hospital's operational need to protect staff, patients, and visitors from COVID-19 infection. [MWHC adopted a new policy](#) so patients in COVID units have access to religious leaders in compassionate care situations, including at end-of-life. Under the revised policy, religious leaders are permitted in COVID units if the clergy member first completes a scheduled infection control training, dons fit-tested PPE provided by MWHC, and signs an acknowledgement of the risks associated with visiting a COVID-positive patient. In extraordinary circumstances where these measures cannot be taken (such as an urgent end-of-life situation), the clergy member may visit the patient but must self-quarantine for fourteen (14) days afterwards.

These two (2) resolutions are an important reminder that hospital policies and procedures must allow patients to receive religious and spiritual support, including during the current pandemic. Hospitals should review and update their visitation policies and procedures to ensure the hospital is compliant with then-current CMS guidance.

Saul Ewing Arnstein & Lehr attorneys regularly assist hospitals and health care providers in drafting and updating policies and procedures. For more information relating to Saul Ewing Arnstein & Lehr's health care practice, please contact the authors or the Saul Ewing Arnstein & Lehr attorney with whom you are regularly in contact.

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