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Designated Support Person Implementation	OLC-3002-G	1 of 7
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1.0 Purpose

This document was created to address the means and methods by which licensed entities may implement the designated support person requirement, so that licensed entities can continue to serve their patients with disabilities while maintaining a safe and healthy environment during the COVID-19 public health emergency.

2.0 Scope

This document applies to licensed entities in the Commonwealth of Virginia for the duration of the COVID-19 public health emergency. This document supplements any agency-wide policy on assistance for persons with disabilities from VDH’s licensure programs. To the extent there is a conflict between an agency-wide policy and this policy, the agency-wide policy supersedes.

3.0 Definitions

Admission: For the purposes of general hospitals and hospice facility, this means accepting a person for bed occupancy and care that is anticipated to span at least two midnights. For the purposes of outpatient surgical hospitals, this means accepting a person for care irrespective of anticipated length of care.

COVID-19: The coronavirus disease 2019 caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Communicable disease: For the purposes of this guidance document, a communicable disease is:

- a. Chickenpox (Varicella virus);
- b. Cholera (*Vibrio cholerae* O1 or O139);
- c. COVID-19;
- d. Diphtheria (*Corynebacterium diphtheriae*);
- e. Granuloma inguinale (*Calymmatobacterium granulomatis*);
- f. Haemophilus influenzae infection;
- g. Influenza;
- h. Leprosy (Hansen's disease) (*Mycobacterium leprae*);
- i. Measles (Rubeola);
- j. Meningococcal disease (*Neisseria meningitidis*);
- k. Mumps;
- l. Pertussis (*Bordetella pertussis*);
- m. Rubella;
- n. Smallpox (*Variola virus*);
- o. Streptococcal disease, Group A;
- p. Streptococcus pneumoniae infection; or
- q. Tuberculosis, infection or active disease (*Mycobacterium tuberculosis* complex).

Designated support person (DSP): A person who is eighteen years of age or older; knowledgeable about the needs of a person with a disability; and designated, orally or in writing, by the person with a disability, the person's guardian or the person's representative managing or coordinating their care, to provide to the person with a disability support and assistance necessary as a result of the person's disability at any time during which health care services are provided to the person with a disability. Support may include physical assistance, emotional support, assistance with communication, decision-making, or other support necessary to afford meaningful access to information and an equal opportunity to benefit from the treatment, at any time during which health care services are provided

Licensed entity: A general hospital, outpatient surgical hospital, or hospice facility licensed to operate in the Commonwealth of Virginia.

Necessary as a result of the person's disability: Support and assistance that is ongoing and necessary for the care of the person with a disability and that requires the DSP be present. This includes physical assistance, emotional support, assistance with communication, decision-making, or other support necessary to afford meaningful access to information and an equal opportunity to benefit from the treatment, at any time during which health care services are provided.

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Observation: For the purposes of general hospitals, this means accepting a person for care that is anticipated to span less than two midnights.

Person with a disability: A person who, prior to admission to or observation at the licensed entity, has a physical, mental, emotional, or sensory impairment that substantially limits one or more major life activities and a record of such impairment or is regarded by a licensed health care professional to have such impairment. Person with a disability may include, but is not limited to, altered mental status; physical, intellectual or cognitive disability; and communication barriers or behavioral concerns.

Public health emergency: An order by the State Board of Health or the State Health Commissioner that declares a communicable disease of public health threat, as defined by Code of Virginia § [44-146.16](#), exists in Virginia.

State Board of Health: A 15-member policy board appointed by the Governor and charged with promulgating public health policies and regulations.

State Health Commissioner: A gubernatorial appointee who is the executive officer of the State Board of Health.

Virginia Department of Health (VDH): An executive branch agency in the Commonwealth of Virginia that assists the State Board of Health and State Health Commissioner with administering and providing a comprehensive program of preventive, curative, restorative and environmental health services; educating the citizenry in health and environmental matters; developing and implementing health resource plans; collecting and preserving vital records and health statistics; assisting in research; and abating hazards and nuisances to the health and to the environment, both emergency and otherwise.

4.0 Authorities

[Item 300\(F\)](#) of Chapter 56 (2020 Acts of Assembly, Special Session I)

5.0 Policy

If the Governor has declared a public health emergency related to COVID-19, every licensed entity shall allow a person with a disability who requires assistance as a result of such disability to be accompanied by a DSP at any time during which health care services are provided. If health care services are provided in an inpatient setting, and the duration of health care services in such inpatient setting is anticipated to last more than 24 hours, the person with a disability may designate more than one DSP. However, licensed entities are not required to allow more than one DSP to be present with a person with a disability at any time. Any change to who is serving as the DSP must be communicated to the licensed entity as soon as the need for the change becomes known, and any new DSP is subject to all reasonable health and safety requirements imposed by the licensed entity. A DSP may, but is not required to, be a family member or friend of the person with a disability. A DSP may also be an employee or contractor of the licensed entity.

Nothing in this guidance document shall be interpreted as altering a licensed entity’s obligations to provide patients with effective communication support or other required services, regardless of the presence of a DSP

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or other reasonable accommodation, consistent with applicable federal or state law or regulations. Persons with disabilities have a right to reasonable accommodations in hospital settings under federal law.

5.1 What Constitutes a Person with a Disability

A person with a disability is a person who, prior to admission to or observation at the licensed entity, has a physical, mental, emotional, or sensory impairment that substantially limits one or more major life activity. In determining whether a patient is a person with a disability, the licensed entity has the option to request that the person produce documentation identifying their disability and the specific support or assistance that a DSP would be providing. The person shall be given a reasonable amount of time, not less than one day, to produce such documentation. If the licensed entity requests documentation and a patient cannot produce such documentation, a licensed health care professional at the licensed entity may use a generally accepted objective assessment tool to determine if the patient is a person with a disability. Until an acceptable assessment has been conducted, or the allowable documentation is provided, patients should be allowed access to their DSP. The licensed entity should specify in its policies and procedures which generally accepted objective assessment tool that its licensed health care professionals will use in making these determinations.

5.1.1 Admission Planning

The patient, patient’s guardian, or patient’s representative managing or coordinating the patient’s care should communicate directly with the licensed entity in advance of the admission or as soon as possible thereafter regarding the patient’s anticipated need for assistance with their disability and to provide appropriate contact information. The licensed entity should specify in its policies and procedures how the patient, patient’s guardian, or patient’s representative can notify the licensed entity in advance.

Procedures that the DSP must follow when entering onto the premises of licensed entity (e.g., reasonable requirements to protect health and safety such as screenings and personal protective equipment (PPE), check-in procedures, etc.) should be explained to the patient, patient’s guardian, or patient’s representative managing or coordinating the patient’s care at the time of admission planning. The licensed entity should ask the patient, patient’s guardian, or patient’s representative managing or coordinating the patient’s care to identify the patient’s DSP(s) during the admission planning. The patient should be given the opportunity to make informed decisions as to whom they wish to identify as a DSP.

5.1.2 Observation Planning

The patient, patient’s guardian, or patient’s representative managing or coordinating the patient’s care should identify the person serving as DSP during observation. The DSP and the patient, patient’s guardian, or patient’s representative managing or coordinating the patient’s care should discuss with the licensed entity regarding the patient’s anticipated need for assistance and to provide appropriate contact information. The patient should be given the opportunity to make informed decisions as to whom they wish to identify as a support person. Procedures that the DSP must follow when entering the premises of licensed entity (e.g.,

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reasonable requirements to protect health and safety such as screenings and PPE, check-in procedures, etc.) should be explained to the patient, patient’s guardian, or patient’s representative managing or coordinating the patient’s care at initial intake if the patient is presenting for non-elective, urgent, or emergent care.

5.2 Reasonable Health and Safety Requirements

A DSP is not subject to any visitation restrictions adopted by licensed entities, including visiting hours. However, a DSP may be required to comply with all reasonable requirements of the licensed entity adopted to protect the health and safety of patients and staff. The licensed entity may condition DSP’s entry into and presence on the premises on compliance with any reasonable requirements to protect health and safety and infection control practices established by the licensed entity. A licensed entity may also require a DSP to provide contact information to assist in contact tracing efforts.

If a licensed entity refuses entry to, or the continued presence of, a DSP for refusing to comply with reasonable health and safety requirements and infection control practices, a licensed entity must (i) allow for an alternative DSP to be assigned by the patient, patient’s guardian, or patient’s representative, or (ii) assign appropriate staff who can provide the support and assistance necessary as a result of the person’s disability. Alternatively, the licensed entity may propose other reasonable accommodations that will allow the DSP to comply with the licensed entity’s reasonable health and safety requirements and infection control practices that the licensed entity determines will not adversely impact the health of the person with a disability, DSP, staff, and other patients and persons in the premises.

5.2.1 Screening for Communicable Diseases

For any communicable disease, a DSP must be asymptomatic or, if previously confirmed positive, the DSP should demonstrate their compliance with current U.S. Centers for Disease Control and Prevention (CDC) guidelines for the specific communicable disease for which they tested positive. Any DSP reasonably suspected or confirmed to have been exposed to, or testing positive for, any communicable disease may be denied entry to or continued presence on the premises if the licensed entity determines that the contagion risk posed by the DSP cannot be reasonably mitigated. If the DSP is not an employee of the licensed entity, the licensed entity should screen the DSP for communicable diseases, based on the licensed entity’s infectious disease guidelines, in accordance with current guidelines from the CDC and may require temperature checks. The licensed entity may re-screen any DSP who leaves the premises and later attempts to re-enter.

A licensed entity may refuse entry to a DSP who either fails the communicable disease screening, is exhibiting symptoms associated with a communicable disease, or refuses to participate in the communicable disease screening; a DSP’s refusal to be tested for a communicable disease is not grounds to refuse entry onto the premises.

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5.2.2 Infection Control Practices

A licensed entity may require a DSP to follow all infection control practices established by the licensed entity, which may include, but are not limited to, utilizing a face mask or other facial covering while on the premises, wearing required PPE in areas specified by the licensed entity, and following hand washing and sanitizing procedures. A licensed entity may require a DSP to provide their own face mask or other facial covering that meets CDC guidelines for non-healthcare professionals. If the DSP does not have an acceptable face mask, the licensed entity must provide one. The licensed entity should not require a DSP to provide or supply any other PPE and should not charge the DSP or patient for the cost of providing or supplying PPE to the DSP.

A licensed entity may restrict a DSP's access and movement on the premises, provided that such restrictions are uniformly applied to all DSPs and are specified in the licensed entity's policies and procedures. Examples of restricted areas include operating rooms and COVID-19 care units.

5.2.3 COVID-19 Positive or Presumptively Positive Patients

If the patient is a person with a disability who is COVID-19 positive or is presumptively positive for COVID-19, the licensed entity may encourage reasonable alternatives to providing support and assistance, in order to protect health and safety. If the nature of the person's disability requires physical assistance, a licensed entity should offer to provide an alternative to the DSP, as necessary, to provide support and assistance with the patient's disability, subject to the licensed entity's infection prevention policies and procedures. The licensed entity should discuss the alternative options with the patient, the patient's guardian, or patient's representative. The licensed entity should keep the patient, the patient's guardian, or patient's representative informed of what assistance is provided.

If the nature of the person's disability does not require physical assistance, a licensed entity can facilitate virtual support and assistance of the DSP or provide limited access for the DSP in-person. If in-person access is necessary, the licensed entity may require the DSP or an alternative DSP appointed by the patient, the patient's guardian, or patient's representative to receive specialized training in donning and doffing of PPE and the licensed entity's infection control practices.

5.3 Administrative Responsibilities

Licensed entities must establish policies and procedures to address DSPs. The licensed entity has to publish these policies and procedures on its website and provide a written copy to patients when health care services are provided and to any patient upon request. It is recommended that when possible, that a licensed entity provide a copy of its DSP policies and procedures upon scheduling of health care services. It is recommended that licensed entities' policies and procedures address:

- a. Process for designating a DSP, changing a DSP designation, and how the designation will be documented;

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- b. Allowable documentation to demonstrate that a patient has a disability;
- c. In the absence of allowable documentation, which generally accepted objective assessment tool the licensed entity will use to determine if the patient is a person with a disability; and
- d. What reasonable health and safety requirements with which a DSP must comply.

6.0 Forms and Templates

None.

7.0 References

None.

8.0 History

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