



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

November 10, 2016

Dear Colleague:

The purpose of this letter is to inform you of recently-adopted changes to the perinatal services regulations that go into effect on January 16, 2017. The revised regulations were updated to be consistent with evidence-based practices recommended in the Ten Steps to Successful Breastfeeding and the International Code of Marketing Breast-milk Substitutes, and the breastfeeding policy recommendations of major professional health care organizations and government entities. These changes will advance the goals of Healthy People 2020 and the New York State (NYS) Prevention Agenda to increase exclusive breastfeeding through infants' first six months, and to reduce health disparities.

Section 405.21 of Title 10 of the New York Codes, Rules and Regulations (NYCRR) has been amended to conform with the recommended standards of care. This section applies to all general hospitals with maternity and newborn services, as well as hospital-affiliated clinics and practices providing pregnancy-related care for women who are pregnant at any stage, parturient or within six weeks from delivery, and for infants 28 days of age or less or, regardless of age, who are less than 2,500 grams (5 ½ pounds).

The major changes include:


- Requiring breastfeeding policies and procedures be developed, updated, implemented and disseminated annually to staff providing maternity and newborn care.
- Educating women undecided as to the feeding method for their infants, on the advantages of breastfeeding and possible impacts of not breastfeeding.
- Placing the newborn skin-to-skin with the mother immediately after birth.
- Discontinuing routine use of pacifiers or artificial nipples to healthy, full-term breastfeeding infants. If requested, educating the mother on the possible impacts of pacifiers to the success of breastfeeding, discussing alternative methods for soothing infants, and documenting such education.
- Restricting the marketing of breast milk substitutes through the provision of samples or gift packs that include breast milk substitutes, bottles, nipples, or pacifiers, or coupons, or use of educational materials which refer to proprietary product(s) or bear the product logo(s).
- Informing the mother of community services, including the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and making referrals to such community services as appropriate.

The press release and the posting of the regulations in the NYS Register became publicly available on October 19, 2016. As noted above, the regulation changes are effective January 16, 2017. See the attachment for specific details.

In support of these regulatory changes, the NYS Model Hospital Breastfeeding Policy and Implementation Guide were revised, and the 2016 edition has been posted on the New York State Department of Health's website at:
<http://www.health.ny.gov/community/pregnancy/breastfeeding/providers/>.

If you have any questions, please e-mail: promotebreastfeeding@health.ny.gov.

Sincerely,

A handwritten signature in black ink that reads "Howard Zucker M.D." in a cursive style.

Howard A. Zucker, M.D., J.D.
Commissioner of Health

Attachment

Perinatal Service Regulations
Effective January 16, 2017

Pursuant to the authority vested in the Commissioner of Health by section 2505-A of the Public Health Law, section 405.21 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective 90 days after publication of Notice of Adoption in the New York State Register, to read as follows:

Subdivision (f) (3) Section 405.21 is amended to read as follows:

(f) (3) Education and orientation of the mother who is planning to raise the baby.

(i) The hospital shall provide instruction and assistance to each maternity patient who has chosen to breastfeed and shall provide information on the advantages [and disadvantages] of breastfeeding and possible impacts of not breastfeeding to women who are undecided as to the feeding method for their infants. At a minimum:

(a) the hospital shall designate at least one person who is thoroughly trained in breastfeeding physiology and management to be responsible for ensuring the implementation of an effective breastfeeding program. At all times, there should be available at least one staff member qualified to assist and encourage mothers with breastfeeding;

(b) written policies and procedures shall be developed, updated, implemented, and disseminated annually to staff providing maternity or newborn care to assist and encourage the mother to breastfeed which shall include, but not be limited to:

(1) prohibition of the application of standing orders for anti-lactation drugs;

(2) placement of the newborn skin-to-skin for breastfeeding immediately following delivery, unless contraindicated;

(3) restriction of the newborn's supplemental feedings to those indicated by the medical condition of the newborn or of the mother;

(4) provision for the newborn to be fed on demand;

(5) pacifiers or artificial nipples may be supplied by the hospital to breastfeeding infants to decrease pain during procedures, for specific medical reasons, or upon the specific request of the mother. Before providing a pacifier or artificial nipple that has been requested by the mother, the hospital shall educate the mother on the possible impacts to the success of breastfeeding and discuss alternative methods for soothing her infant, and document such education;

[provision for distribution of discharge packs of infant formula only upon a specific order by the attending practitioner or at the request of the mother;]

(6) prohibition of the distribution of marketing materials, samples or gift packs that include breast milk substitutes, bottles, nipples, pacifiers, or coupons for any such items to pregnant women, mothers or their families;

(7) prohibition of the use of educational materials that refer to proprietary product(s) or bear product logo(s), unless specific to the mother's or infant's needs or condition; and

(8) prohibition of the distribution of any materials that contain messages that promote or advertise infant food or drinks other than breast milk.

(c) the hospital shall provide an education program as soon after admission as possible which shall include but not be limited to:

(1) the importance of scheduling follow-up care with a pediatric care provider within the timeframe following discharge as directed by the discharging pediatric care provider;

(2) the nutritional and physiological aspects of human milk;

(3) the normal process for establishing lactation, including care of the breasts, common problems associated with breastfeeding and frequency of feeding;

(4) the potential impact of early use of pacifiers on the establishment of breastfeeding;

[(4)] (5) dietary requirements for breastfeeding;

[(5)] (6) diseases and medication or other substances which may have an effect on breastfeeding;

[(6)] (7) sanitary procedures to follow in collecting and storing human milk;

[(7)] (8) sources for advice and information available to the mother following discharge; and

(d) for mothers who have chosen formula feeding or for whom breastfeeding is medically contraindicated, hospitals shall provide individual training in formula preparation and feeding techniques.

Subdivision (f) (5) of Section 405.21 is amended to read as follows:

(f) (5) Discharge planning. The discharge of mother and newborn shall be performed in accordance with section 405.9 of this Part. In addition, prior to discharge, the hospital shall determine that:

(i) sources of nutrition for the infant and mother will be available and sufficient and if this is not confirmed, the attending practitioner and an appropriate social services agency shall be notified;

(ii) follow-up medical arrangements [for mother and infant], consistent with current perinatal guidelines and recommendations, have been made for mother and newborn;

(iii) the mother has been informed of community services, including the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and shall make referrals to such community services as appropriate.

[(iii)] (iv) the mother has been instructed regarding normal postpartum events, care of breasts and perineum, care of the urinary bladder, amounts of activity allowed, diet, exercise, emotional response, family planning, resumption of coitus and signs of common complications;

[(iv)] (v) the mother has been advised on what to do if any complication or emergency arises;

[(v)] (vi) the newborn has had a documented and complete physical examination and verification of a passage of stool and urine;

[(vi)] (vii) the means of identification of mother and newborn are matched. If the newborn is discharged in the care of someone other than the mother, the hospital shall ensure that the person or persons are entitled to the custody of the newborn; and

[(vii)] (viii) the newborn is stable; sucking and swallowing abilities are normal. Routine medical evaluation of the neonate's status at two to three days of age shall have been conducted or arranged[as well as newborn]. Newborn screening shall be conducted at time of discharge, provided discharge is greater than 24 hours after the birth, or between the third and fifth day of life, whichever occurs first, in accordance with Part 69 of this Title.