

## **NIH Clinical Center Guidance Implementing the Supreme Court's Decision in *United States v. Windsor***

In *United States v. Windsor* (June 26, 2013), the U.S. Supreme Court struck down Section 3 of the Defense of Marriage Act (DOMA), finding the prohibition on federal recognition of legally authorized same-sex marriages and spouses unconstitutional. In light of this decision, the NIH Clinical Center is announcing today that, effective immediately, we will begin recognizing same-sex spouses/marriages on equal terms with opposite-sex spouses/marriages, regardless of where the couple resides. We will recognize a relationship as a marriage if (1) the state or other jurisdiction, whether foreign or domestic, where the couple was married recognizes the marriage under its laws, or (2) the state or other jurisdiction where the couple currently resides recognizes the relationship as a legally valid marriage. This policy is consistent with the policy of the Department of Health and Human Services to treat same-sex marriages on the same terms as opposite-sex marriages, to the greatest extent reasonably possible.

The Clinical Center considers marital or spousal questions when identifying a patient's next-of-kin. For example:

- The Clinical Center collects name and contact information of a patient's next-of-kin as part of the hospital admissions process, and this information is maintained in the patient's medical record.
- Under M87-4, *Research Involving Adults Who Are or May Be Unable to Consent*, the next-of-kin hierarchy identifies who may serve as a surrogate decision-maker for incapacitated adult patients who have not previously designated a decision-maker. The first level of the hierarchy is "spouse or domestic partner."
- In the Medical Staff Handbook, under *Death of a Patient*, the next-of-kin hierarchy identifies whom the patient's physician must notify of the death and who has legal authority to consent to performance of an autopsy or disposition of the body. The first level of the hierarchy is "surviving spouse."

As of today, the Clinical Center recognizes a patient's same-sex spouse, as described above, as his or her legal next-of-kin in accordance with these policies. Existing patients of the Clinical Center who wish to identify a same-sex spouse as "next-of-kin" may request the necessary changes to their medical records immediately, and all patients processed through our admissions department (whether new or returning) will be offered the opportunity to provide an update for their registration information.