

Caregiver Advise, Record and Enable (CARE) Act

December 2013

(Session No.) Legislative Assembly
of (State)

HOUSE BILL NO. ____

Introduced by (Sponsors)

(Committee Assignment)

A BILL for an Act to require a medical hospital as defined in [STATE STATUTE] to allow a patient an opportunity to designate, upon entry to a hospital, a caregiver in the patient's medical record; to require a hospital to notify and meet with the designated caregiver to discuss the patient's plan of care prior to the patient's discharge or transfer to another facility; to require a hospital to instruct the designated caregiver in certain after-care tasks upon a patient's discharge to his or her current residence; and to provide an effective date.

Statement of Legislative Intent

At any given time, an estimated [##] [STATE RESIDENTS] provide varying degrees of unreimbursed care to adults with limitations in daily activities. The total value of the unpaid care provided to individuals in need of long-term services and supports amounts to an estimated \$[##] every year, based on 2009 data. Caregivers are often members of the individual's immediate family, but friends and other community members also serve as caregivers. While most caregivers are asked to assist an individual with basic activities of daily living, such as mobility, eating, and dressing, many are expected to perform complex tasks on a daily basis such as administering multiple medications, providing wound care, and operating medical equipment.

Despite the vast importance of caregivers in the individual's day-to-day care, many caregivers find that they are often left out of discussions involving a patient's care while in the hospital and, upon the patient's discharge, receive little to no instruction on the tasks they are expected to perform. The federal Centers for Medicare & Medicaid Services (CMS) estimates that \$17 billion in Medicare funds is spent each year on unnecessary hospital readmissions. Additionally, hospitals desire to avoid the imposition of new readmission penalties under the federal Patient Protection and Affordable Care Act (ACA).

In order to successfully address the challenges of a surging population of older adults and others who have significant needs for long-term services and supports, the state must develop methods to enable caregivers to continue to support their loved ones at home and in the community, and avoid costly hospital readmissions. Therefore, it is the intent of the [STATE] Legislative Assembly that this Act enables caregivers to provide competent post-hospital care to their family and other loved ones, at minimal cost to the taxpayers of this State.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF [STATE]:

Section 1.

Definitions.

- A. "Hospital" is defined for the purposes of this Act as a facility licensed under [STATE STATUTE].
- B. "After-Care" is defined for the purposes of this Act as any assistance provided by a caregiver to a patient under this Act after the patient's discharge from a hospital. Such assistance may include, but is not limited to, assisting with basic activities of daily living (ADLs), instrumental activities of daily living (IADLs), or carrying out medical/nursing tasks, such as managing wound care, assisting in administering medications, and operating medical equipment.
- C. "Caregiver" is defined for the purposes of this Act as any individual duly designated as a caregiver by a patient under this Act who provides after-care assistance to a patient living in his or her residence. A designated caregiver may include, but is not limited to, a relative, partner, friend, or neighbor who has a significant relationship with the patient.
- D. "Discharge" is defined for the purposes of this Act as a patient's exit or release from a hospital to the patient's residence following any medical care, treatment, or observation.
- E. "Entry" is defined for the purposes of this Act as a patient's entrance into a hospital for the purposes of medical care, treatment, or observation. A patient need not be formally admitted to a hospital for the provisions of this Act to apply.
- F. "Residence" is defined for the purposes of this Act as a dwelling that the patient considers to be his or her home. A "residence" for the purposes of this Act shall not include any rehabilitation facility, hospital, nursing home, assisted living facility, or group home licensed by the [STATE DEPARTMENT OR LICENSING BODY].

Section 2.

Caregiver—Opportunity to Designate.

- A. A hospital shall provide each patient or, if applicable, the patient's legal guardian with at least one opportunity to designate at least one caregiver under this Act no later than twenty-four (24) hours following the patient's entry into a hospital and prior to the patient's discharge or transfer to another facility.
 - a. In the event that the patient is unconscious or otherwise incapacitated upon his or her entry into a hospital, the hospital shall provide such patient or his/her legal guardian with an opportunity to designate a caregiver within twenty-four (24) hours following the patient's recovery of his or her consciousness or capacity.
 - b. In the event that the patient or the patient's legal guardian declines to designate a caregiver under the Act, the hospital shall promptly document this in the patient's medical record.

- c. In the event that the patient or the patient's legal guardian designates an individual as a caregiver under this Act:
 - i. The hospital shall promptly request the written consent of the patient or the patient's legal guardian to release medical information to the patient's designated caregiver following the hospital's established procedures for releasing personal health information and in compliance with all federal and state laws.
 - 1. If the patient or the patient's legal guardian declines to consent to release medical information to the patient's designated caregiver, the hospital is not required to provide notice to the caregiver under Section 3 of this Act or provide information contained in the patient's discharge plan under Section 4 of this Act.
 - ii. The hospital shall record the patient's designation of caregiver, the relationship of the designated caregiver to the patient, and the name, telephone number, and address of the patient's designated caregiver in the patient's medical record.
 - d. A patient may elect to change his or her designated caregiver at any time, and the hospital must record this change in the patient's medical record within twenty-four (24) hours.
- B. A designation of a caregiver by a patient or a patient's legal guardian under this Section does not obligate any individual to perform any after-care tasks for any patient.
- C. This section shall not be construed to require a patient or a patient's legal guardian to designate any individual as a caregiver as defined by this Act.

Section 3.

Notice to Designated Caregiver.

- A. A hospital shall notify the patient's designated caregiver of the patient's discharge or transfer to another hospital or facility licensed by the [STATE DEPARTMENT OR LICENSING BODY] as soon as possible and not later than four (4) hours prior to the patient's actual discharge or transfer to such facility.

Section 4.

Instruction to Designated Caregiver.

- A. As soon as possible and not later than twenty-four (24) hours prior to a patient's discharge from a hospital, the hospital shall consult with the designated caregiver regarding the caregiver's capabilities and limitations and issue a discharge plan that describes a patient's after-care needs at his or her residence.
 - a. At minimum, a discharge plan shall include:

- i. The name and contact information of the caregiver designated under this Act;
 - ii. A description of all after-care tasks necessary to maintain the patient's ability to reside at home, taking into account the capabilities and limitations of the caregiver; and
 - iii. Contact information for any health care, community resources, and long-term services and supports necessary to successfully carry out the patient's discharge plan.
 - B. The hospital issuing the discharge plan must provide caregivers with instruction in all after-care tasks described in the discharge plan.
 - a. At minimum, such instruction shall include:
 - i. A live demonstration of the tasks performed by a hospital employee authorized to perform the after-care task, provided in a culturally competent manner and in accordance with the hospital's requirements to provide language access services under state and federal law;
 - ii. An opportunity for the caregiver to ask questions about the after-care tasks; and
 - iii. Answers to the caregiver's questions provided in a culturally competent manner and in accordance with the hospital's requirements to provide language access services under state and federal law.
 - b. Any instruction required under this Act shall be documented in the patient's medical record, including, at minimum, the date, time, and contents of the instruction.
 - C. The [STATE DEPARTMENT OF HEALTH] is authorized to promulgate regulations to implement the provisions of this Act, including, but not limited to, regulations to further define the content and scope of any instruction provided to caregivers under this Act.

Section 5.

Non-Interference with Powers of Existing Health Care Directives.

- A. Nothing in this Act shall be construed to interfere with the rights of an agent operating under a valid health care directive under [STATE STATUTE].
- B. Any health care directive claimed to be in conflict with this Act must be in existence prior to the patient's entry into a hospital.

Section 6.

Effective Date.

A. This Act shall be effective immediately upon ratification.