

Department of Legislative Services

Maryland General Assembly

2016 Session

FISCAL AND POLICY NOTE

Third Reader - Revised

House Bill 1277

(Delegate Cullison, *et al.*)

Health and Government Operations

Finance

Hospitals - Designation of Lay Caregivers

This bill requires a hospital to provide a patient (or the patient’s legal guardian), before discharge from inpatient care in a hospital, with an opportunity to designate a “lay caregiver” to provide “aftercare” to the patient in the patient’s home.

If a patient designates a lay caregiver, as soon as practicable, a hospital must notify the lay caregiver of the discharge or transfer of the patient to another hospital or facility, attempt to consult with the lay caregiver to prepare the lay caregiver for aftercare, and issue a discharge plan that describes the aftercare needs of the patient.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Aftercare” means any assistance provided by a lay caregiver to a patient after discharge of the patient from inpatient care in a hospital. “Aftercare” includes tasks that are limited to the patient’s conditions at the time of discharge that do not require a licensed professional. “Lay caregiver” means an adult designated as a lay caregiver by a patient (or the patient’s legal guardian) who performs aftercare for the patient at the residence of the patient.

If a patient (or legal guardian) designates a lay caregiver, the hospital must record in the patient's medical record specified information about the lay caregiver and request the written consent of the patient (or legal guardian) to release medical information to the lay caregiver. If a patient (or legal guardian) declines to consent to the release of medical information to the lay caregiver, the hospital is not required to provide the lay caregiver notice of the patient's discharge or transfer, consult with the lay caregiver, or provide information contained in the discharge plan. Designation of a lay caregiver by a patient (or legal guardian) does not obligate an individual to perform any aftercare for the patient.

A hospital must also document in the patient's medical record if a patient (or legal guardian) declines to designate a lay caregiver. A patient (or legal guardian) may change the designation of a lay caregiver in the event the lay caregiver becomes incapacitated. The bill may not be construed to require a patient (or legal guardian) to designate a lay caregiver.

As soon as practicable before discharge of a patient, the hospital must attempt to consult with the lay caregiver to prepare the lay caregiver for aftercare and issue a discharge plan that describes the aftercare needs of the patient. The inability of a hospital to consult with a lay caregiver may not interfere with, delay, or otherwise affect the medical care provided to the patient or the patient's discharge. The bill permits a hospital's discharge process to incorporate established evidence-based practices.

The bill may not be construed to affect the rights of an agent to make health care decisions under the Health Care Decisions Act (advance directives) or create a private right of action against a hospital, hospital employee, or a duly authorized agent of a hospital, or otherwise supersede or replace existing rights or remedies under any other State or federal law. No federal or State funds may be used for payment of a lay caregiver. No federal or State program funding may be impacted by the bill.

Current Law: A hospital may discharge a patient (1) entirely; (2) to another level of care, treatment, or services; (3) to different health care professionals; or (4) to settings for continued services. A hospital's process for transfer or discharge must be based on the patient's assessed needs. To facilitate discharge or transfer, the hospital must (1) assess a patient's needs; (2) plan for discharge or transfer; (3) facilitate the discharge or transfer process; (4) give the patient or person responsible for providing continuing care to the patient written discharge instructions in a form the patient can understand; and (5) help to ensure that continuity of care, treatment, and services is maintained. If a hospital fails to comply with these requirements, the Secretary of Health and Mental Hygiene may impose a civil money penalty of up to \$10,000. A hospital may appeal a civil money penalty.

Under federal regulations for Medicare participation, a hospital must identify high-risk patients who need discharge planning at least 48 hours prior to discharge. A hospital must

assess a patient's capacity for self-care (or to be cared for by others) in the setting from which the patient was admitted to the hospital. If the patient is not able to provide some or all of the required self-care, the assessment must address whether the patient has family or friends who are able to provide the required care or who could be trained by the hospital sufficiently to provide the required care. The patient (or the patient's representative) must be actively engaged in the development of a discharge plan. Medicare guidelines note that providing information on post-discharge options, what to expect after discharge, and, as applicable, instruction and training in how to provide care are essential. The hospital is required to provide in-hospital education/training to the patient for self-care or to the patient's family or other support persons who will be providing care in the patient's home. The education and training must be tailored to the patient's identified needs.

Additional Information: Similar legislation, Senate Bill 572/House Bill 1006 of 2015, would have required a hospital to provide a patient (or the patient's legal guardian) with certain opportunities to designate a caregiver to provide assistance to the patient and perform "aftercare tasks" following the patient's discharge. Hospitals would have been required to provide the caregiver with specified notice about the patient's discharge or transfer, consult with the caregiver about the caregiver's capabilities and limitations, and issue a specified discharge plan describing the aftercare tasks needed by the patient, including a live demonstration of the aftercare tasks. Senate Bill 572 received an unfavorable report from the Senate Finance Committee. House Bill 1006 was withdrawn after a hearing in the House Health and Government Operations Committee.

Additional Information

Prior Introductions: None.

Cross File: SB 336 (Senator Kelley, *et al.*) - Finance.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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