

No. 2016-20

## AN ACT

HB 1329

Requiring certain hospitals to allow patients an opportunity to designate caregivers in patients' medical records and imposing duties on hospitals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Caregiver Advise, Record and Enable Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"After-care assistance." Any assistance provided by a lay caregiver to a patient following the patient's discharge from a hospital and that is related to the patient's condition at the time of discharge, including, but not limited to, assisting with basic activities of daily living, instrumental activities of daily living and any other tasks as determined to be appropriate by the discharging physician or other health care professional licensed pursuant to 28 Pa. Code Ch. 105 (relating to admission and discharge).

"Discharge." A patient's exit or release from a hospital to the patient's residence following medical care or treatment rendered to the patient following an inpatient admission.

"Entry." A patient's admission into a hospital for the purposes of receiving inpatient medical care.

"Hospital." A general acute care hospital as defined and licensed under Title 28 of the Pennsylvania Code (relating to health and safety).

"Lay caregiver." An individual with a significant relationship to a patient and who:

(1) is designated and accepts the role as a lay caregiver by the patient pursuant to this act; and

(2) provides after-care assistance to the patient living in the patient's residence.

"Residence." The dwelling that a patient considers to be the patient's home. The term includes the residence of a patient's designated lay caregiver. The term shall not include a rehabilitation facility, hospital, nursing home, personal care home, assisted living facility or group home licensed by the Department of Health.

Section 3. Caregiver designation and consent.

(a) General rule.—A hospital shall provide each patient or, if applicable, the patient's legal guardian an opportunity to designate at least one lay caregiver following the patient's entry into a hospital and prior to the patient's discharge to the residence. The hospital shall promptly document the request in the patient's medical record.

(b) Unconscious and incapacitated patients.—In the event that the patient is unconscious or otherwise incapacitated upon entry into a hospital, the hospital shall provide the patient or the patient's legal guardian with an opportunity to designate a lay caregiver as soon as possible following the patient's recovery of consciousness or capacity. The hospital shall promptly document the designation in the patient's medical records.

(c) Declining of designation.—If the patient or the patient's legal guardian declines to designate a lay caregiver pursuant to this act, the hospital shall promptly document the decision in the patient's medical record.

(d) Designation of lay caregivers.—If the patient or the patient's legal guardian designates an individual as lay caregiver under this act:

(1) 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 lay caregiver following the hospital's established procedures for releasing personal health information and in compliance with all Federal and State laws, including the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936).

(2) If the patient or the patient's legal guardian declines to consent to release medical information to the patient's designated lay caregiver, the hospital is not required to provide notice to the lay caregiver or provide medical information contained in the patient's discharge plan.

(3) The hospital shall record the patient's designation of a lay caregiver, the relationship of the designated lay caregiver to the patient and the name, telephone number and address of the patient's designated lay caregiver in the patient's medical record.

(e) Change of lay caregiver.—A patient or the patient's legal guardian may elect to change the patient's lay caregiver at any time, and the hospital shall record the change in the patient's medical record prior to the patient's discharge.

(f) Construction.—This section shall not be construed to require a patient or patient's legal guardian to designate a lay caregiver.

(g) After-care assistance.—A designation of a lay caregiver by a patient or a patient's legal guardian does not obligate the designated individual to perform any after-care assistance for the patient.

(h) Minor children.—In the event that the patient is a minor child and the parents of the patient are divorced, the parent with legal custody of the patient shall have the authority to designate a lay caregiver. If the parents have shared legal custody of the patient, they shall jointly designate the lay caregiver.

#### Section 4. Notice requirements.

(a) Duty to hospital.—A hospital shall notify a patient's designated lay caregiver of any discharge order for the patient, the patient's actual discharge or the patient's transfer to another facility as soon as possible.

(b) Documentation.—The hospital shall promptly document the notification in the patient's medical record.

#### Section 5. Hospital discharge plan.

(a) Duty to issue.—

(1) As soon as possible prior to a patient's discharge from a hospital to the residence, the hospital shall consult with the designated lay caregiver and issue a discharge plan that describes the patient's after-care assistance needs at the residence.

(2) The consultation and issuance of a discharge plan shall occur on a schedule that takes into consideration the severity of the patient's condition, the setting in which care is to be delivered and the urgency of the need for lay caregiver services.

(3) If the hospital is unable to contact the designated lay caregiver, the lack of contact shall not interfere with, delay or otherwise affect the medical care provided to the patient or an appropriate discharge of the patient.

(4) At a minimum, the discharge plan shall include:

(i) The name and contact information of the lay caregiver designated under this act.

(ii) A description of all after-care assistance tasks necessary to maintain the patient's ability to reside at home.

(iii) Contact information for any health care, community resources, long-term care services and support services necessary to successfully carry out the patient's discharge plan and contact information for a hospital employee who can respond to questions about the discharge plan after the instruction provided pursuant to subsection (b).

(b) Instructions for lay caregivers.—

(1) The hospital issuing the discharge plan shall provide lay caregivers with instructions in all after-care tasks described in the discharge plan. Training and instructions for lay caregivers may be conducted in person or through video technology at the discretion of the lay caregiver. Any training or instructions provided to a lay caregiver shall be provided in nontechnical language, to the extent possible.

(2) At minimum, such instruction shall include:

(i) A live or recorded demonstration of the tasks performed by an individual designated by the hospital who is authorized to perform the task and is able to perform the demonstration in a culturally competent manner and in accordance with the hospital's requirements to provide language access services under Federal and State law.

(ii) An opportunity for the lay caregiver and patient to ask questions about the after-care assistance task.

(iii) Answers to the lay caregiver's questions provided in a culturally competent manner and in accordance with the hospital's requirements to provide language access services under Federal and State law.

Section 6. Advanced directives.

(a) General rule.—A patient may designate a lay caregiver in an advanced directive.

(b) Construction.—Nothing in this act shall be construed to interfere with the rights of an agent operating under a valid advanced directive pursuant to the provisions under 20 Pa.C.S. Ch. 54 (relating to health care).

Section 7. Private rights of action.

(a) General rule.—A hospital, a hospital employee or any consultants or contractors with whom a hospital has a contractual relationship shall not be held liable, in any way, for the services rendered or not rendered by the lay caregiver to the patient at the residence.

(b) Construction.—Nothing in this act shall be construed to create a private right of action against a hospital, a hospital employee or any consultants or contractors with whom a hospital has a contractual relationship or require any commercial health insurance policy or government program to provide reimbursement for after-care assistance provided by a lay caregiver.

Section 8. Delay of discharge.

Nothing in this act shall be construed to delay the discharge of a patient or the transfer of a patient from a hospital to another facility.

Section 9. Legislative Budget and Finance Committee study.

(a) Duty to conduct.—No later than three years after the effective date of this section, the Legislative Budget and Finance Committee shall conduct a study regarding the impact of this act on certain patient outcomes, including, but not limited to, hospital readmissions.

(b) Input to be solicited.—In conducting the study, the Legislative Budget and Finance Committee shall solicit input from patients, lay caregivers, physicians, nurses, other health care professionals, hospitals and other health care facilities.

(c) Deadline to submit findings.—The Legislative Budget and Finance Committee shall submit its findings to the General Assembly no later than five years after the effective date of this section.

Section 10. Effective date.

This act shall take effect in 12 months.

APPROVED—The 20th day of April, A.D. 2016

TOM WOLF