HB 1006

Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 1006 (Delegate Cullison, *et al.*)
Health and Government Operations

Hospitals - Designation of Caregivers

This bill requires 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 "after-care tasks" following the patient's discharge.

If a patient designates a caregiver, the hospital must 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 after-care tasks needed by the patient, including a live demonstration of the after-care tasks.

The Department of Health and Mental Hygiene is authorized to adopt regulations to implement the bill.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: "After-care task" means assistance provided by a caregiver to a patient after the patient is discharged from a hospital, including assisting with basic and instrumental activities of daily living and carrying out medical or nursing tasks such as

management of wound care, assistance in administering medications, and operating medical equipment.

A hospital must provide a patient (or the patient's legal guardian) with at least one opportunity to designate a caregiver within 24 hours after entrance into the hospital (or within 24 hours of regaining consciousness or capacity, if necessary) and again before discharge or transfer to another facility.

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

A hospital must also document in the patient's medical record if a patient (or legal guardian) declines to designate a caregiver. A patient may change the designation of a caregiver at any time. Within 24 hours after a change in the designation of a caregiver, the hospital must record the change in the patient's medical record. The bill may not be construed to require a patient (or legal guardian) to designate a caregiver.

If a patient has designated a caregiver, the hospital must notify the caregiver of the discharge or transfer of the patient to another hospital or facility as soon as possible, but no later than four hours before the patient is discharged or transferred.

As soon as possible, but no later than 24 hours before the discharge of a patient, the hospital must consult with the caregiver and the patient regarding the capabilities and limitations of the caregiver and issue a discharge plan that describes the after-care tasks needed by the patient. A discharge plan must include specified information.

A hospital issuing a discharge plan must provide, in a culturally competent and language accessible manner, the caregiver and the patient with instructions for all after-care tasks described in the discharge plan, an opportunity for the caregiver and the patient to ask questions about the after-care tasks, and answers to any questions asked by the caregiver or the patient about the after-care tasks. The discharge plan and instructions must be documented in the patient's medical record.

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 is 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.

Background: In a 2012 national survey conducted by AARP, 46% of family caregivers reported performing medical/nursing tasks for care recipients with multiple chronic physical and cognitive conditions. These tasks included managing multiple medications, providing wound care, preparing food for special diets, using monitors, and operating specialized medical equipment. These tasks were in addition to assisting with activities of daily living and instrumental activities of daily living. Most caregivers said that they received little or no training to perform these medical/nursing tasks.

The bill is an initiative of AARP, which developed the Caregiver Advise, Record, Enable (CARE) Act to support family caregivers when their loved ones go into the hospital and help them learn what they must do to safely provide care when a loved one is discharged home. Two states (New Jersey and Oklahoma) have enacted the CARE Act, while Hawaii established a task force to explore the CARE Act. Legislation is under consideration in several other states, including West Virginia.

Additional Information

Prior Introductions: None.

Cross File: SB 572 (Senator Kelley) - Finance.

Information Source(s): AARP, Maryland Hospital Association, Department of Health and Mental Hygiene, Department of Legislative Services

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