OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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Sub. H.B. 470

131st General Assembly
(As Passed by the General Assembly)

Reps. Schuring, Bishoff, Brown, T. Johnson, Anielski, Antonio, Arndt, Baker, Barnes, Boyd, Craig, Curtin, Derickson, Dovilla, Grossman, Hambley, Lepore-Hagan, McClain, M. O'Brien, Patterson, Ramos, Rezabek, Rogers, Scherer, Sears, Slesnick, Sweeney, Young

Sens. Cafaro, Brown, Tavares, Eklund, Faber, Hackett, Jones, Lehner, Manning, Oelslager, Seitz

Effective date: March 21, 2017

ACT SUMMARY

Hospital after-care and discharge planning

- Requires hospitals to give a patient or the patient's guardian the option of designating a lay caregiver for the patient (a person who provides after-care in the patient's residence after discharge).
- Specifies a hospital's duties once a lay caregiver designation has been made.
- Specifies how a lay caregiver designation may be revoked.

Memory care units

- Requires the Director of Aging and the Director of Health to jointly develop recommendations regarding the establishment of standards and procedures for the operation of memory care units, as well as quality-of-care metrics for the units.

Criminal penalty – assisting suicide

- Generally prohibits a person from knowingly causing another to commit or attempt to commit suicide by either providing the physical means to do so or participating in a physical act by which the person commits or attempts to commit suicide.

Palliative care

- Permits a licensed nursing home to add 20 or fewer long-term care beds without obtaining a certificate of need if all of the beds being added are to be used solely for palliative care and the nursing home does not participate in Medicare or Medicaid.

CONTENT AND OPERATION

Lay caregiver designation for hospital inpatients

Offer to patient or patient's guardian

The act requires a hospital to offer a patient who is at least 55 years old, or the patient's guardian, an opportunity to designate a lay caregiver for the patient. If the patient is not unconscious or otherwise incapacitated at the time of admission, the offer must be made after admission and before discharge. If the patient is unconscious or otherwise incapacitated at the time of admission, the offer must be made after the patient regains consciousness or capacity and before discharge.[1]

The act defines a "lay caregiver" as an adult designated in accordance with the act to provide after-care to a patient. "After-care" means assistance provided by a lay caregiver to a patient in the patient's residence after the patient's discharge from a hospital and includes only the caregiving needs of the patient at the time of discharge. A patient's residence may be either the patient's home or the dwelling of a relative or other individual who has agreed to temporarily house the patient following discharge and who has communicated this fact to hospital staff. It excludes hospitals and other institutional settings.[2]

Hospital duties if lay caregiver designated

If a patient or guardian designates a lay caregiver, a hospital must do all of the following:[3]

--To the extent the information is available, record in the patient's medical record the lay caregiver's name, address, telephone number, email address, and relationship to the patient;

[1] R.C. 3727.71.

[2] R.C. 3727.70(B), (F), and (H).

[3] R.C. 3727.72(A) and 3727.74.

--Request from the patient or guardian consent to disclose the patient's medical information to the lay caregiver in accordance with hospital policy and state and federal law; and

--If the hospital intends to discharge or transfer the patient, notify the patient's lay caregiver of that intent as soon as practicable (unless the patient or guardian has not consented to disclose the patient's medical information to the lay caregiver).

If a patient or guardian declines to make a lay caregiver designation, the hospital must note that decision in the patient's medical record. The act provides that under those circumstances, the hospital will have no other obligation regarding a lay caregiver designation.[4]

Revocation

A patient or guardian may revoke a lay caregiver designation at any time before the patient's discharge by communicating that intent to hospital staff. After revocation, a new lay caregiver designation may be completed in accordance with the act.[5]

Significance of the existence or absence of a lay caregiver designation

The act specifies that (1) its provisions do not require a patient or guardian to make a lay caregiver designation, (2) the existence of a lay caregiver designation does not obligate any individual to perform after-care, and (3) the existence or absence of a lay caregiver designation does not affect the provision of health care to the patient.[6]

Discharge plan

Content; timing

The act requires a hospital that intends to discharge a patient to create a discharge plan and review that plan with the patient or the patient's guardian. The plan must be created in accordance with state and federal law and hospital policy. The review must be done as soon as practicable and be conducted in accordance with the act (see "**Review**," below).[7]

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[4] R.C. 3727.72(B).

[5] R.C. 3727.73.

[6] R.C. 3727.77.

[7] R.C. 3727.75(A).

The act authorizes a discharge plan to include (1) a description of the tasks that are necessary to facilitate the patient's transition from the hospital to the patient's residence and (2) contact information for the health care providers or providers of community or long-term care services that the hospital and the patient or guardian believe are necessary for successful implementation of the discharge plan.[8] If a lay caregiver designation is made and the discharging health care professional has determined that the lay caregiver is to have a role in the discharge plan, the act permits the plan to include:[9]

--The lay caregiver's name, address, telephone number, email address, and relationship to the patient, if available;

--A description of all after-care tasks to be performed by the lay caregiver, taking into account the lay caregiver's capability to perform the tasks; and

--Any other information the hospital believes is necessary for successful implementation of the discharge plan.

The act defines a "discharging health care professional" as a health care professional who is authorized under continuing law not modified by the act to admit a patient to a hospital and has assumed responsibility for directing the creation of the patient's discharge plan.[10]

Review

A hospital that has created a discharge plan must review it with the patient or the patient's guardian. If a lay caregiver has been designated for the patient, the discharging health care professional has determined that the lay caregiver's participation in the review would be appropriate, and the lay caregiver is available within a reasonable time, the hospital must arrange for the lay caregiver to participate in the review.[11] The review must be conducted in a manner that is culturally sensitive to each individual who participates. In accordance with state and federal law and if appropriate, the hospital must arrange for an interpreter to be present during the instruction.[12]

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[8] R.C. 3727.75(B)(1).

[9] R.C. 3727.75(B)(2).

[10] R.C. 3727.70(D).

[11] R.C. 3727.75(A).

[12] R.C. 3727.76(A).

A review of a discharge plan must include the following components:[13]

--If the discharging health care professional determines it appropriate, a live demonstration of each task described in the plan;

--An opportunity for each participant to ask questions and receive responses; and

--Any other component the hospital believes is necessary to ensure that each participant receives adequate instruction on the tasks described in the plan.

The hospital must document information concerning the instruction in the patient's medical record. The information must include the date and time the instruction was provided and a description of its content. The act also specifies that it is the General Assembly's intent that execution of the components described above not unreasonably delay a patient's discharge.[14]

Discharging health care professional immunity

The act specifies that a discharging health care professional is immune from criminal prosecution, civil liability, and professional disciplinary action for an event or occurrence that allegedly arises out of the professional's determination that a patient's lay caregiver should or should not participate in the discharge plan review.[15]

Rulemaking

The act authorizes the Department of Health to adopt rules as necessary to implement the act's provisions. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).[16]

Statutory intent

The act specifies that it is the General Assembly's intent that the act's provisions not be construed to do any of the following:[17]

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[13] R.C. 3727.76(B).

[14] R.C. 3727.76(B)(2) and (C).

[15] R.C. 3727.75(C).

[16] R.C. 3727.79.

[17] R.C. 3727.78.

--Interfere with the authority of a patient's attorney-in-fact under a durable attorney for health care or a patient's proxy under a declaration for mental health treatment;

--Create a right of action against a hospital or an employee, agent, or contractor of the hospital;

--Create a liability for a hospital or an employee, agent, or contractor;

--Limit, impair, or supersede any right or remedy that a person has under any other statute, rule, regulation, or Ohio common law; or

--Alter the obligations of an insurer under a health insurance policy, contract, or plan.

Memory care units

The act requires the Director of Aging and the Director of Health to jointly develop recommendations regarding the establishment of standards and procedures for the operation of memory care units in Ohio, as well as quality-of-care metrics to be used in measuring their performance. The directors must submit the recommendations to the General Assembly not later than six months after the act's effective date.[18]

Assisting suicide prohibited

The act generally prohibits a person from knowingly causing another to commit or attempt to commit suicide by either providing the physical means by which the person commits or attempts to commit suicide or participating in a physical act by which the person commits or attempts to commit suicide. Whoever violates this prohibition is guilty of assisting suicide, a third degree felony.[19] The penalty for assisting suicide includes a prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months.[20]

Palliative care

Exemption from certificate of need

The act permits a licensed nursing home to add 20 or fewer long-term care beds without obtaining a certificate of need from the Department of Health if all of the beds being added are solely for palliative care and the nursing home does not participate in

[18] Section 3.

[19] R.C. 3795.04.

[20] R.C. 2929.14(A)(3)(a).

Medicare or Medicaid. A nursing home that reaches 20 added long-term care beds may not add more long-term care beds under this provision. A certificate of need must be obtained before the added beds may continue to be used if the nursing home is sold or certification to participate in Medicare or Medicaid is granted for the nursing home or the part of the nursing home that includes the added beds.[21]

Licensure

The act includes a provision requiring every person or public agency that proposes to operate a palliative care facility to be licensed by the Department of Health.[22] This is a drafting error. An amendment adopted by the Senate Rules and Reference Committee (AM4217) removed this and other provisions regarding the licensure of palliative care facilities; however, in preparing the committee report to reflect that amendment, LSC staff inadvertently failed to remove the text of R.C. 3712.042, and it remains in the act.

HISTORY

ACTION	DATE
Introduced	02-17-16
Reported, H. Health & Aging	05-18-16
Passed House (92-5)	05-25-16
Reported, S. Health & Human Services	11-30-16
Reported, S. Rules & Reference	12-08-16
Passed Senate (31-0)	12-08-16
House concurred in Senate amendments (93-0)	12-08-16

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[21] R.C. 3702.512 (primary), 3702.511, and 3702.53.

[22] R.C. 3712.042.