WEST VIRGINIA CODE CHAPTER 16 ARTICLE 5X

WV Legislature

§16-5X-1. Definitions.

For purpose of this article:

(1) "Aftercare" means any assistance provided by a designated lay caregiver to an individual under this article after the patient's discharge from a hospital. Assistance may include tasks that are limited to the patient's condition at the time of discharge that do not require a licensed professional;

(2) "Discharge" means a patient's exit or release from a hospital to the patient's residence following an inpatient stay;

(3) "Hospital" means a facility licensed pursuant to article five-b, chapter sixteen of this code and any acute care facility operated by state government;

(4) "Lay caregiver" means any individual eighteen years of age or older designated as a lay caregiver pursuant to the provisions of this article who provides aftercare assistance to a patient in the patient's residence; and

(5) "Residence" means a dwelling considered by a patient to be his or her home, not including a hospital or, a nursing home or group home, as defined by section two, article five-c, chapter sixteen of this code.

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§16-5X-2. Caregiver designation.

(a) (1) A hospital shall provide a patient or the patient's legal guardian with an opportunity to designate one lay caregiver following the patient's admission into a hospital.

(2) If the patient is unconscious or otherwise incapacitated upon admission to the hospital, the hospital shall provide the patient's legal guardian with an opportunity to designate a lay caregiver following the patient's recovery of consciousness or capacity, so long as the designation or lack of a designation does not interfere with, delay or otherwise affect the medical care provided to the patient.

(3) If the patient or the patient's legal guardian declines to designate a lay caregiver under this article, the hospital shall promptly document that in the patient's medical record, and the hospital is considered to have complied with the provisions of this article.

(4) If the patient or the patient's legal guardian designates an individual as a lay caregiver under this article, 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 pursuant to the hospital's established procedures for releasing personal health information and in compliance with applicable state and federal law.

(5) If the patient or the patient's legal guardian declines to consent to the release of medical information to the patient's designated lay caregiver, the hospital shall promptly document that in the patient's medical record, and the hospital is considered to have complied with the provisions of this article.

(6) The hospital shall record the patient's designation of a lay caregiver, the relationship of the lay caregiver to the patient, and the name and contact information of the patient's designated lay caregiver in the patient's medical record.

(b) A patient may elect to change his or her designated lay caregiver in the event that the originally designated lay caregiver becomes unavailable, unwilling or unable to care for the patient.

(c) Designation of a lay caregiver by a patient or a patient's legal guardian pursuant to the provisions of this article does not obligate any individual to perform any aftercare tasks for the patient.

(d) This article does not require a patient or a patient's legal guardian to designate any individual as a lay caregiver as defined by this article.

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§16-5X-3. Notification.

If a patient has designated a lay caregiver, a hospital shall notify the patient's designated lay caregiver of the patient's discharge to the patient's residence as soon as possible. If the hospital is unable to contact the designated lay caregiver, the lack of contact may not interfere with, delay or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient. The hospital shall promptly document that in the patient's medical record, and the hospital is considered to have complied with the provisions of this section.

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§16-5X-4. Discharge.

(a) As soon as possible and, in any event, upon issuance of a discharge order by the patient's attending physician, the hospital shall consult with the designated lay caregiver along with the patient regarding the lay caregiver's capabilities and limitations and issue a discharge plan that describes a patient's after-care needs at his or her residence. At minimum, a discharge plan shall include:

(1) The name and contact information of the lay caregiver designated under this article;

(2) 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 lay caregiver; and

(3) 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 shall provide the lay caregiver with instruction in all after-care tasks described in the discharge plan. At minimum, the instruction shall include:

(1) Education and instruction of the lay caregiver by a hospital employee or individual with whom the hospital has a contractual relationship authorized to perform the after care task in a manner that is consistent with current accepted practices and is based on an assessment of the lay caregiver's learning needs;

(2) An opportunity for the lay caregiver and patient to ask questions about the after-care tasks; and

(3) Answers to the lay caregiver's and patient's questions provided in a competent manner and in accordance with the hospital's requirements to provide language access services under state and federal law.

(c) Any instruction required under this article shall be documented in the patient's medical record, including, at minimum, the date, time, and contents of the instruction.

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§16-5X-5. Exceptions and immunity.

(a) This article may not be construed to interfere with the rights of a person legally authorized to make health care decisions as provided in article thirty, chapter sixteen of this code.

(b) Nothing in this act shall be construed to create a private right of action against a hospital, hospital employee, a duly authorized agent of the hospital or any consultants or contractors with whom the hospital has a contractual relationship.

(c) 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 services rendered or not rendered by the lay caregiver.

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§16-5X-6. Funding.

State or federal dollars may not be used for payment to any lay caregiver as defined in this article after discharge from a hospital. No state or federal program funding shall be impacted by this article.

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