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BILL ANALYSIS

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Senate Bill 352 (Substitute S-2)
Sponsor: Senator Margaret E. O'Brien
Committee: Health Policy

Date Completed: 10-15-15

CONTENT

The bill would create the "Designated Caregiver Act" to do the following:

- **Require a hospital to give each patient the opportunity to designate a caregiver to provide after-care assistance upon the patient's discharge from the hospital to his or her residence.**
- **Require a hospital, before a patient was discharged, to consult with a designated caregiver, issue a discharge plan describing the patient's after-care assistance needs, and give the caregiver instruction in all of the tasks described in the plan.**
- **Provide that a caregiver designation would not obligate the designated individual to provide after-care assistance to a patient.**
- **Require the Department of Health and Human Services to promulgate rules to implement the proposed Act.**

Specifically, a hospital would have to give each patient or, if applicable, the patient's legal guardian or patient advocate, an opportunity to designate at least one caregiver following the patient's entry into a hospital and before discharge to his or her residence, in a time frame that was consistent with the discharge planning process provided by rules promulgated under the proposed Act. The hospital promptly would have to document the request in the patient's medical record.

("Caregiver" or "designated caregiver" would mean an individual at least 18 years old who provides after-care assistance to a patient in the patient's residence. The term would include a relative, spouse, partner, friend, or neighbor who has a significant relationship with the patient.

"After-care assistance" would mean any assistance provided by a caregiver to a patient following the patient's discharge from a hospital that is related to the patient's condition at the time of discharge. Such assistance would include assisting with basic and instrumental activities of daily living and other tasks determined to be appropriate by the discharging health care professional.

"Residence" would mean the dwelling that the patient considers to be his or her home. The term would not include a rehabilitation facility, hospital, or nursing home.)

If a patient were unconscious or otherwise incapacitated upon entry into a hospital, the hospital would have to give the patient or her or her legal guardian or patient advocate an opportunity to designate a caregiver within a given time frame, at the discretion of the attending physician, following the patient's recovery of consciousness or capacity. The hospital promptly would have to document the attempt in the patient's medical record.

If a patient or his or her legal guardian or patient advocate declined to designate a caregiver, the hospital promptly would have to document the decline in the patient's medical record.

If a patient, a legal guardian, or a patient advocate designated an individual as a caregiver, a hospital would have to record in the patient's medical record the designation of caregiver, the relationship of the caregiver to the patient, and the name, telephone number, and address of the caregiver.

A patient or his or her legal guardian or patient advocate could elect to change the designated caregiver at any time. The hospital would have to record the change in the patient's medical record before the patient's discharge.

If a patient were a minor child whose parents were divorced, the custodial parent would have the authority to designate a caregiver. If the parents had joint custody, the parents would have to designate the caregiver jointly.

A hospital would have to notify a designated caregiver of a patient's discharge or transfer to another facility as soon as possible and, in any event, upon issuance of a discharge order by the patient's attending physician. As soon as possible before a patient's discharge from a hospital to the patient's residence, the hospital would have to consult with the designated caregiver and issue a discharge plan that described a patient's after-care assistance needs, if any, at the patient's residence. The consultation and plan issuance would have to occur on a schedule that took into consideration the severity of the patient's condition, the setting in which care was to be delivered, and the urgency of the need for caregiver services. In either case, if the hospital were unable to contact the caregiver, the lack of contact could not interfere with, delay, or otherwise affect the medical care provided to, or an appropriate discharge of, the patient. The hospital promptly would have to document the attempt in the patient's medical record.

At a minimum, a discharge plan would have to include the following:

-- The name and contact information of the designated caregiver.
-- A description of all after-care assistance tasks necessary to maintain the patient's ability to reside at home.
-- Contact information for any health care, community resources, and long-term services and supports necessary to successfully carry out the patient's discharge plan, as well as contact information for a hospital employee who could respond to questions about the plan after instruction was provided as required.

The hospital issuing the discharge plan would have to give caregivers instructions in all after-care assistance tasks described in the plan. Training and instructions could be conducted in person or through video technology, at the caregiver's discretion. Any training or instructions would have to be provided in nontechnical language, to the extent possible. At a minimum, the instruction would have to include all of the following:

-- A live or recorded demonstration of the tasks performed by an individual designated by the hospital, who was authorized to perform the after-care assistance task, and who was able to perform the demonstration in a culturally competent manner and in accordance with the hospital's requirements to provide language access services under State and Federal law.
-- An opportunity for the caregiver to ask questions about the after-care assistance tasks.
-- Answers to the caregiver's questions provided in a culturally competent manner and in accordance with the hospital's requirements to provide language access services under State and Federal law.

The required instruction would have to be documented in the patient's medical record, including, at a minimum, the date, time, and contents of the instruction.

The proposed Act would not require a patient, legal guardian, or patient advocate to designate an individual as a caregiver. A designation of a caregiver would not obligate the designated individual to perform any after-care assistance for the patient.

The Act would not interfere with the rights of an agent operating under a valid advance directive. A patient could designate a caregiver in an advance directive.

Also, the Act would not create a private right of action against a hospital, a hospital employee, or a consultant or contractor with whom a hospital had a contractual relationship. None of these entities or individuals could be held liable, in any way, for the services rendered or not rendered by a caregiver to a patient at the patient's residence.

The Act would not obviate the obligation of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans to provide coverage required under a health benefits plan. The Act also would not affect, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans.

A caregiver could not be reimbursed by any government or commercial payer for after-care assistance provided under the proposed Act.

The Act would not delay the discharge of a patient or the transfer of a patient from a hospital to another facility.

The bill would take effect 90 days after it was enacted.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have a minor, but likely negative fiscal impact on the Department of Health and Human Services (DHHS), and no fiscal impact on local units of government. Under the bill, the DHHS would be required to promulgate rules to implement the Designated Caregiver Act. The cost to promulgate rules would depend largely on their complexity, and those costs would be borne by existing DHHS resources.

Fiscal Analyst: Ellyn Ackerman