Indiana Hospital Association

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February 16, 2016

To: Chief Executive Officers

From: Hannah K. Brown
Hall, Render, Killian, Heath & Lyman, P.C.
IHA Counsel

Re: **New Law Adds Requirements to Patient Admission and Discharge Procedures**

Executive Summary

Effective January 1, 2016, House Enrolled Act ("HEA") 1265, otherwise known as the Caregiver Advise, Record, and Enable Act, or CARE Act, will add new requirements to patient admission and discharge procedures for hospitals licensed under Indiana Code 16-21.

The CARE Act requires applicable hospitals to offer admitted inpatients the opportunity to identify an individual who will provide care to the patient in the patient's home following an inpatient stay. This designated individual, known as the "lay caregiver," is an individual who has a significant relationship with the patient, but may or may not be the same person as the patient's health care representative, health care power of attorney, or legal guardian. The hospital must collect certain information regarding the lay caregiver designation and document the information in the patient's medical record.

The CARE Act requires the hospital to issue an "at home care plan" to the patient that serves to provide the patient and the lay caregiver with an understanding of the patient's home care needs. This requirement to issue an "at home care plan" may be satisfied by a patient's discharge plan, if developed by the hospital, under the Medicare Conditions of Participation's discharge planning requirements.

Additionally, the hospital is required to attempt to provide a consultation with a designated lay caregiver regarding the patient's home care needs prior to the patient's discharge or transfer, and, under certain circumstances, may also need to attempt to provide other notifications and additional education to the lay caregiver prior to the patient's discharge or transfer from the hospital.

The purpose of this memorandum is to provide information regarding the various statutory components of the CARE Act. Your hospital should prepare for any staff education needed on the CARE Act's requirements and consider any modifications to the hospital's electronic medical record ("EMR") or electronic health record ("EHR") programming that will be necessary to ensure compliance with the law's requirements.

Discussion

I. Hospitals must offer inpatients the opportunity to designate a lay caregiver.

Beginning January 1, 2016, acute care hospitals, long-term acute care hospitals, and freestanding rehabilitation hospitals[1] are required to offer every admitted inpatient the opportunity to identify an individual who will provide certain assistance to the patient in the patient's home following an inpatient stay. The opportunity to designate a lay caregiver need only be offered to those patients who are able to consent to their own health care[2] and are admitted as inpatients, and does not apply to patients who are under observation status or receiving outpatient treatment.

The "lay caregiver" is someone with whom the patient has a significant relationship but is not a home health aide or any other health professional who provides care to the patient within a nursing facility or any other licensed health care facility. The CARE Act does not establish any obligation to reimburse, or otherwise provide payment to, a lay caregiver for health care services or tasks provided in the patient's home.

A patient's health care representative[3,4] may also designate a lay caregiver on behalf of the patient, but it is important to note that the lay caregiver is a distinct role from that of the health care representative or the legal guardian of a patient. In fact, the lay caregiver may or may not be the same person(s) who serves as the patient's health care representative or legal guardian.

The hospital must offer the patient, or patient's health care representative, the opportunity to designate a lay caregiver as soon as practicable following the patient's admission to the hospital as an inpatient and prior to either the patient’s discharge to home or transfer to another facility. Neither the patient nor the patient's health care representative is obligated to designate a lay caregiver and may decline to do so.

II. Hospitals must record certain information in the patient's medical record.

If the patient, or patient's health care representative, opts to designate a lay caregiver, the hospital must then request written consent authorizing the release of medical information to the lay caregiver and, if such consent is provided, the hospital must enter the lay caregiver's name, address, telephone number, and relationship to the patient within the patient's medical record.

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[1] The CARE Act's requirements apply only to hospitals licensed under Indiana Code 16-21, but do not apply to freestanding psychiatric hospitals under Ind. Code 12-25.

[2] Per Indiana's medical consent laws under Ind. Code 16-36-1-3, generally only individuals who are over 18 years of age and certain emancipated minors may consent to their own health care.

[3] Health care representative, for the purposes of the CARE Act, means: (1) a health care representative appointed under Ind. Code 16-36-1-7, (2) a health care power of attorney appointed under Ind. Code 30-5-5-16, or, (3) if no such health care representative or health care power of attorney has been appointed, another individual authorized to consent to health care on behalf of the patient under Ind. Code 16-36-1-5.

[4] If no health care representative (as defined in the note above) has been appointed, the patient's legal guardian may also appoint a "lay caregiver" on behalf of the patient.

The patient must be given the opportunity to advise the hospital of the lay caregiver's preferred means of contact, which, if provided, should also be entered into the patient's medical record.

In the event that the patient, or patient's health care representative, declines either to designate a lay caregiver or declines to provide the written consent, the hospital must also document the patient's refusals within the medical record, at which point the hospital has no further obligations to meet under the CARE Act.

In preparation for the documentation requirements of the CARE Act, it is recommended that hospitals make any necessary modifications to its EMR/EHR programming that will enable staff to meet the requirements to document a patient's designation or refusal to designate a lay caregiver, the consent of the patient or patient's health care representative to release medical information to the lay caregiver, and all contact information for a lay caregiver, if designated, that must be collected.

Special note: The CARE Act's requirements may not interfere with, delay, or otherwise affect the medical care that a hospital provides. If a patient is not capable of designating, or declining to designate a lay caregiver, and the patient's health care representative is not available, hospital personnel should not delay patient care in order to facilitate the lay caregiver designation process.

III. Hospitals must develop an "at home care plan" for patients who designate a lay caregiver.

Provided that a lay caregiver has been designated and a written consent to release medical information to the lay caregiver has been provided, the hospital is required to develop and issue an "at home care plan" that provides the patient and the lay caregiver with an understanding of the patient's need for assistance with certain health care tasks in the home. However, if a "discharge plan" has been developed for the patient under the Medicare Conditions of Participation's discharge planning requirements, then the hospital need not develop an "at home care plan" for the purposes of the CARE Act. The hospital's duty to develop the "at home care plan" is satisfied by the preparation of a patient's "discharge plan".

Otherwise, where no "discharge plan" has been developed, the "at home care plan" may be <u>any plan</u> that serves to describe the assistance that the patient may need in his or her home from the lay caregiver following the patient's discharge from the hospital (e.g., assistance with basic or instrumental activities of daily living and other basic nursing or medical tasks). The "at home care plan" must include the contact information for hospital personnel or the patient's physician and must be developed by a licensed health care professional, or supervised designee, and be based on an evaluation of the patient's need for assistance, taking into consideration the patient's functional status, cognitive ability, and capacity for self care.

IV. Hospital must engage in certain communications with the lay caregiver.

Attempted consultation. In addition to issuing the "at home care plan", hospital personnel must <u>attempt</u> to consult with the lay caregiver as soon as practicable before the patient's discharge from the hospital. The purpose of the consultation is to prepare the lay caregiver for the patient's need for assistance as outlined in the "at home care plan". During the

consultation, the lay caregiver must be provided with an opportunity to ask questions and receive answers about the patient's "at home care plan".

Additional preparation of the lay caregiver. Hospital personnel are not required to provide the lay caregiver with any formal training in specific medical or nursing tasks or to assess the lay caregiver's competency to perform such tasks. However, the hospital may provide live or recorded demonstrations if, through consulting with the lay caregiver, hospital personnel determine that such demonstrations are necessary in order to appropriately prepare the lay caregiver for the patient's home care.

Attempted notifications. If hospital personnel determine that the patient lacks the physical or mental capacity to provide an accurate or timely notification to his or her lay caregiver of the patient's discharge from the hospital or transfer to another facility, the hospital must attempt to provide such discharge notification to the lay caregiver within a reasonable time prior to the pending discharge or transfer. The hospital must use the lay caregiver's preferred method of contact to provide the notification, so long as the method is permitted to be used by the hospital and the contact information is readily available for use by hospital personnel when attempting to contact the lay caregiver.

Special note: The inability of hospital personnel to make contact with the lay caregiver in order to attempt to consult with the lay caregiver, or to attempt to provide notice of discharge or transfer, may not interfere with, delay, or affect an otherwise appropriate discharge or transfer or affect the medical care of the patient.

Next Steps

The CARE Act's new patient admission and discharge planning requirements for Indiana hospitals became effective January 1, 2016. Your hospital should educate relevant staff on the requirements and consider any adjustments to current procedures that must be made. IHA has been made aware that, even prior to the law's effective date, some social services organizations began advertising the CARE Act's requirements and distributing wallet-sized cards informing individuals of their right to designate a lay caregiver. As a result, hospitals may encounter patients requesting to name a lay caregiver.

Additionally, hospitals are encouraged to review and consider any necessary modifications to EMR/EHR programming that will help to ensure compliance with the CARE Act by prompting hospital personnel to ask whether a patient wishes to designate a lay caregiver and enabling the required information to be entered into the patient's medical record.

A copy of the CARE Act (HEA 1265-2015) may be found at the following link: http://iga.in.gov/static-documents/d/9/7/5/d975ad40/HB1265.04.ENRH.pdf.

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Should you have any questions or wish to discuss specific compliance concerns, please do not hesitate to contact your local counsel, Hannah K. Brown, or Timothy W. Kennedy at Hall Render, Killian, Heath & Lyman, P.C. at 317/633-4884.

Routing Suggestions: Chief Medical Officer; Social Workers; Chief Nursing Officer; Discharge Planning Managers

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