

## Healthcare Law Alert – CARE Act Signed Into Law

Governor Cuomo recently signed the CARE Act into Law. CARE stands for Caregiver, Advise, Record, Enable.

The CARE Act requires general hospitals to provide patients with an opportunity to identify a caregiver prior to discharge. A “general hospital” is defined in Article 28 of the Public Health Law as a hospital engaged in providing medical or medical and surgical services primarily to inpatients by or under the supervision of a physician on a 24-hour basis with provisions for admission or treatment of persons in need of emergency care and with an organized medical staff and nursing service.

Hospitals subject to the CARE Act must provide each patient, or if applicable the patient’s legal guardian, with an opportunity to identify a caregiver prior to discharge. “Caregiver” includes but is not limited to a relative, partner, friend or neighbor who has a significant relationship with the patient.

The hospital must inform the patient that the purpose of providing the caregiver’s identity is to include the caregiver in discharge planning and sharing of post-discharge information or instruction. Hospitals must record the patient’s identification of a caregiver, the caregiver’s relationship to the patient and the caregiver’s contact information in the medical record. If the patient declines to identify a caregiver, the hospital must record that in the medical record. Patients may elect to change an identified caregiver at any time.

The hospital must request the patient’s written consent to release medical information to the patient’s designated caregiver in compliance with all state and federal confidentiality rules, including the Health Insurance Portability and Accountability Act (HIPAA) and the regulations promulgated thereunder.

The hospital must notify the caregiver of the patient’s discharge or transfer as soon as it can be anticipated prior to the actual discharge or transfer. Prior to providing such notification to the caregiver, the hospital must ask the patient to verify his/her choice of caregiver, and provide the patient with an opportunity to change the identified caregiver.

Additionally, at least 24 hours prior to the patient’s discharge, the hospital must consult with the caregiver and the patient regarding the caregiver’s capabilities and limitations, and must issue a discharge plan that describes the patient’s after-care needs at his/her residence. The hospital must include specific items in the discharge plan, such as individualized instructions regarding the patient’s care and contact information for follow-up resources. The hospital must also offer caregivers instruction in all after-care tasks described in the discharge plan, and such instructions must meet certain minimum requirements contained in the CARE Act. The instructions provided by the hospital must be documented in the patient’s medical record.

A hospital’s inability to contact the caregiver with respect to either the required notice or the required discharge plan and instructions will not prevent or delay the medical care or discharge of the patient. The hospital must document contact attempts in the patient’s medical record.

If a patient declines to consent to the release of medical information to his/her caregiver, the CARE Act states that the hospital is not required to provide the notice or discharge plan to the caregiver. To remain in compliance with state and federal confidentiality rules, the hospital must not provide the notice or discharge plan to the caregiver without patient consent.

The CARE Act will take effect in late April 2016.

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