

# A

## Massachusetts CARE Act

### Caregiver Advise, Record, Enable (CARE)

# W



Anuj K. Goel

Vice President, Legal & Regulatory Affairs

August 25, 2017



# Overview

## Importance of the CARE Act

- 55% of family caregivers report being overwhelmed by the amount of care their family member needs.
- In 2014, 60% of family caregivers had full- or part-time jobs.
- In 2010, there were 7.2 potential family caregivers for every person age 80 and older. By 2030, that ratio will fall sharply to 4 to 1, and is projected to drop further to 3 to 1 in 2050.

# Overview

The **CARE ACT**, An act authorizing the disclosure of medical information to certain designated caregivers. To that end, the Massachusetts law features three important provisions:

1

The hospital provides a patient with an opportunity to **designate a caregiver**;

2

The **caregiver is notified** when the patient is to be discharged to another facility or back home; and

3

The hospital **provides an explanation and demonstration** of the basic medical tasks that the patient should follow at home.

# Components of The Care ACT



# Components of The Care ACT

- Application of the Law
- Choosing a Caregiver
- Authorizing Release of PHI
- Documenting information in patient's medical Record
- Notification post discharge or transfer order
- Discussion with patient considerations
- Demonstration, Resources, & Follow up

# Components of Care ACT: Application

- Hospitals:
  - The law applies to acute care hospitals inpatient services
  - MHA would request that other facilities (post-acute hospitals and others) should also adopt similar standards to ensure consistency especially if the patient is transferred to or from an acute care facility
- Patient:
  - Law applies to patients age 18 or over. For those under the age of 18, current laws (Chapter 201F of the Mass General Laws) already apply.
  - Impacts patients who are formally admitted as an inpatient status, not outpatient
- Aftercare:
  - Basic medical tasks known at the time of discharge that the patient should be doing at home (e.g., medication use, using equipment, changing dressings, etc.)
  - Tasks are those that are not within the scope of a licensed healthcare provider

# Components of Care ACT: Choosing a Caregiver



- Hospital must develop process to allow patient to designate a Caregiver in a timeframe consistent with and prior to the formal discharge or transfer from acute care hospital.
- If a patient is unconscious or incapacitated, they must be provided the opportunity to designate upon recovery of consciousness or competency
- Court appointed guardian, if known during time services are being provided, may designate or change a Caregiver
- Ultimate decision is with the patient if they are competent as determined by the treating healthcare provider
- Caregiver is not required to perform or can decline the designation



# Components of Care ACT

## Documentation and Release of Information

- If a Caregiver is so designated, the hospital should:
  - Document Caregiver contact information in the patient's medical record (e.g., HIM or other patient demographic records)
  - Following hospital routine policy/process, obtain patient consent to:
    - Notify Caregiver about the patient's discharge or transfer;
    - Obtain authorization to release personal health information and/or discharge plan to caregiver
  - The patient (or guardian) can choose not to provide consent for the notification or release of all or certain types of information
- Hospital staff **must document** the caregiver designation, their contact information, and the information they have been authorized to receive.



# Components of The Care ACT: Notification and Discussion

## Notification

- When an order for discharge or transfer has been issued, the hospital should notify the designated caregiver as soon as practicable.
- The hospital will provide a copy of the patient's discharge plan (if authorized by the patient) and set up a discussion in a manner mutually agreed to by the caregiver and hospital.
- Process for notification and discussion should not delay overall discharge or transfer of patients

## Discussion

- The discussions must take into consideration;
  - patient's condition,
  - setting in which care is to be delivered, and
  - the urgency of need for caregiver services and impact on transfers.



# Components of Care ACT: Aftercare Demonstration

Aftercare information must include the following three components:

General demonstration of known aftercare tasks

- Patients and Caregivers get the opportunity to ask questions
- Demonstration can include verbal information, physical demonstration, or review of materials (medication, supplies, equipment) as necessary

Community resources and long-term care support

- If the treating healthcare provider believes the patient needs certain services following discharge, provide information on known and available resources (e.g., community support groups, social services, and other health care services providers)

Hospital contact information for patient follow-up

- Hospital contact information for the patient or caregiver should they have questions post-discharge on the aftercare tasks

# Components of Care ACT

## General Considerations/Reminders

- A patient or their guardian is not obligated or required to designate a Caregiver
- A Caregiver is not obligated to perform aftercare tasks
- Hospitals are not required to determine the ability of the caregiver to understand or perform aftercare tasks
- While the hospital should not delay discharge or transfer of a patient for clinical reasons, the hospital should not also delay if they are not reasonably able to;
  - Contact the caregiver;
  - Provide notice to the caregiver; or
  - Provide information to caregiver in a timeframe that unreasonably delays discharge
- The law does not change or interfere with the rights of a Guardian or healthcare proxy to make decisions, including choosing or changing a Caregiver
- The law specifically limits any legal or regulatory actions against a hospital or its staff who is following the provisions of the law

# Operational Considerations



# Operational Considerations

## Choosing a Caregiver

Policies and procedures need to be in place to ensure that;

A process is in place to document upon admission if the patient is offered and designates a caregiver

A patient who is incapacitated or unconscious is provided the opportunity to designate a caregiver once they regain consciousness or competency

The caregiver is listed for the patient or within information provided to the patient so they are aware and can make a determination to designate or change a caregiver

Patients have the ability to make changes to the caregiver they chose, or want to choose one when they previously declined

Staff know who to pass information to if a patient informs them of the need or desire to make changes to the designated caregiver

# Operational Considerations

## Authorizing Release of PHI

Hospitals should consider how consent will be obtained in regards to what, if any, information can be released to a caregiver.

- Verbal consent that is documented in the patient's medical record;
- Written consent that is documented in the patient's medical record; or
- Request for authorization incorporated into current paperwork patients are already required to read and sign

Hospitals have flexibility to capture information as a separate consent, as part of existing forms, or documented in medical record based on current hospital practices.

# Operational Considerations

## Documenting information in patient's medical Record

Consideration needs to be made in regards to how caregiver designation, notification of Caregiver of pending discharge/transfer, and discussion upon discharge is documented and stored in a patient's medical record

- Are there data fields or other EHR system updates that need to be made or updated to accommodate this information?
- Is the information easy accessible for appropriate hospital staff ?
- Is it clear what information the patient has authorized the caregiver to receive?
- Is there a place to document that discharge information and demonstration was provided to the caregiver?



# Operational Considerations

## Notification, Discussion, Discharge/transfer

The hospital should document the discussion with a patient or caregiver as part of its medical record or in a separate document to record proper steps were taken.

### Information on Discussion with Caregiver

- Present at time of discharge
- On the phone
- Unable to contact
- Unable to be present
- Patient declined to have caregiver

### Information medical care

- Check off box that information on basic medical care known and applicable at the time of discharge was presented and to whom

### Information Reviewed with Caregiver

- In person or on phone
- Specific discharge instructions and information provided

# Additional Resources



# Additional Resources

Law is effective either:

- November 8, 2017; or
- When DPH issues guidance that sets forth compliance deadlines

DPH will be issuing guidance that will include clarifications on:

- Caregiver designation process and
- Documenting information provided to caregivers and related releases

# Contact

For additional questions please contact the following individuals at MHA:

- Anuj Goel – (781) 262-6034 or [agoel@mhalink.org](mailto:agoel@mhalink.org)
- Janice Peters – (781) 262-6023 or [jpeters@mhalink.org](mailto:jpeters@mhalink.org)