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Circular Letter: DHCQ 18-2-677

TO: Chief Executive Officers, Massachusetts Hospitals

FROM: Sherman Lohnes, Director, Division of Health Care Facility Licensure & Certification

DATE: February 28, 2018 

RE: Implementation of Chapter 332 of the Acts of 2016, Discharge Planning

In an effort to support caregivers and those they care for, Governor Charlie Baker signed into law chapter 332 of the acts of 2016, an act authorizing the disclosure of medical information to certain designated caregivers, which authorizes all acute care hospital patients¹ 18 years of age or older receiving inpatient services to designate a caregiver and requires hospitals to discuss with the patient and caregiver the patient's known aftercare² needs and provide a demonstration of the aftercare tasks.

The purpose of this letter is to share with you our guidance about compliance with the new law (M.G.L. c. 111, § 236) after consultation with the Massachusetts Health and Hospital Association (MHA) and AARP Massachusetts. The effective date of this law was November 8, 2017. The full text of the law can be reviewed at:

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section236>.

We recommend that hospitals implement policies and procedures that document compliance with the law. Specifically, before discharging a patient to home or to a setting where there is no licensed health professional, hospitals should incorporate into discharge planning a discussion about aftercare that includes:

- 1) Asking patients to provide the name and contact information for a caregiver responsible for providing care after discharge, and seek the patient's approval to share his or her health information³ and discharge plan with the caregiver;
- 2) Notifying the designated caregiver as soon as practicable upon issuance of a discharge or transfer order; and

¹ "Patient" is an individual 18 years of age or older, and may be a mentally competent patient, designated and an agent acting under an activated health care proxy, or court-ordered guardian.

² "Aftercare" refers to tasks limited to the patient's condition at the time of discharge that will not be provided by a licensed medical provider if the patient is discharged to home. These tasks may include administering oral medications and operating medical equipment.

³ "Health Information" should be limited to reason for admission to hospital, primary discharge diagnosis, and relevant comorbidities.

- 3) Providing the designated caregiver with a copy of the patient's relevant health information and discharge plan, and discuss the patient's aftercare needs with the caregiver taking into consideration the severity of the patient's condition; setting for aftercare; and urgency of the need for caregiver services. The discussion of aftercare should include:
 - a. A general demonstration of the known aftercare tasks with an opportunity for the patient and caregiver to ask questions and receive answers prior to discharge;
 - b. Information about available community resources and long-term care support services near the patient's residence that may be used to support the patient's discharge plan; and
 - c. Hospital contact person's name, phone number, and other contact information to address follow-up questions.

Each patient has a right to:

- 1) Refuse the request to designate a caregiver and provide the caregiver's contact information;
- 2) Refuse disclosure of health and discharge information to the designated caregiver; and
- 3) Change the designated caregiver until the patient is discharged.

Documentation should be incorporated into the discharge instructions and include any permissions and refusals by the patient, hospital contact person and information, community resource information provided by the hospital, and inability to contact caregiver if relevant. The lack of such documentation will be interpreted as the absence of a conversation about aftercare prior to hospital discharge and non-compliance with the law.

This guidance is intended to improve continuity of care when patients are discharged to home, where family and friends often provide aftercare. No part of the law or our guidance shall interfere with or delay the discharge, transfer, or medical care provided to a patient if the hospital is not able to contact or provide notice or information to a designated caregiver prior to the discharge, transfer, or receipt of medical care.

As you know, accurate and complete information transfer is critical when handing off the care of a patient to another. Thank you for your help to ensure that patients are well-positioned to receive the care they need after discharge from a hospital. Should you have any questions as you implement your policies and procedures to comply with this guidance, please contact DPH.BHCSQ@massmail.state.ma.us.