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I N  S E N A T E

May 28, 2014

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to identification of caregivers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public health law is amended by adding a new article 29-CCCC to read as follows:

ARTICLE 29-CCCC

CARE ACT (CAREGIVER ADVISE, RECORD AND ENABLE ACT)

SECTION 2994-HH. SHORT TITLE.
2994-II. DEFINITIONS.
2994-JJ. CAREGIVER, OPPORTUNITY TO IDENTIFY.
2994-KK. NOTICE TO IDENTIFIED CAREGIVER.
2994-LL. INSTRUCTION TO IDENTIFIED CAREGIVER.
2994-MM. EFFECT ON OTHER RIGHTS.

S 2994-HH. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "CARE ACT".

S 2994-II. DEFINITIONS. WHEN USED IN THIS ARTICLE, THE FOLLOWING WORDS OR PHRASES SHALL HAVE THE FOLLOWING MEANINGS: 1. "HOSPITAL" SHALL MEAN ANY "HOSPITAL" AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER.

2. "AFTER-CARE" SHALL MEAN ANY ASSISTANCE PROVIDED BY A CAREGIVER TO A PATIENT UNDER THIS ARTICLE AFTER THE PATIENT'S DISCHARGE FROM A HOSPITAL. SUCH ASSISTANCE SHALL INCLUDE, BUT IS NOT LIMITED TO, ASSISTING WITH BASIC ACTIVITIES OF DAILY LIVING (ADLS), INSTRUMENTAL ACTIVITIES OF DAILY LIVING (IADLS) OR CARRYING OUT MEDICAL/NURSING TASKS, SUCH AS MANAGING WOUND CARE, ASSISTING IN ADMINISTERING MEDICATIONS, AND OPERATING MEDICAL EQUIPMENT.

3. "CAREGIVER" SHALL MEAN ANY INDIVIDUAL DULY IDENTIFIED AS A CAREGIVER BY A PATIENT UNDER THIS ARTICLE WHO PROVIDES AFTER-CARE ASSISTANCE TO A PATIENT LIVING IN HIS OR HER RESIDENCE. AN IDENTIFIED CAREGIVER SHALL INCLUDE, BUT IS NOT LIMITED TO, A RELATIVE, PARTNER, FRIEND, OR NEIGHBOR WHO HAS A SIGNIFICANT RELATIONSHIP WITH THE PATIENT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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4. "DISCHARGE" SHALL MEAN A PATIENT'S EXIT OR RELEASE FROM A HOSPITAL TO THE PATIENT'S RESIDENCE FOLLOWING ANY MEDICAL CARE, TREATMENT, OR OBSERVATION.

5. "ENTRY" SHALL MEAN A PATIENT'S ENTRANCE INTO A HOSPITAL FOR THE PURPOSES OF MEDICAL CARE, TREATMENT, OR OBSERVATION. A PATIENT NEED NOT BE FORMALLY ADMITTED TO A HOSPITAL FOR THE PROVISIONS OF THIS ARTICLE TO APPLY.

6. "RESIDENCE" SHALL MEAN A DWELLING THAT THE PATIENT CONSIDERS TO BE HIS OR HER HOME. A "RESIDENCE" FOR THE PURPOSES OF THIS ARTICLE SHALL NOT INCLUDE ANY REHABILITATION FACILITY, HOSPITAL, NURSING HOME, ASSISTED LIVING FACILITY, GROUP HOME OR OTHER RESIDENTIAL HEALTH CARE FACILITY AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER OR ANY INPATIENT FACILITY REGULATED BY THE OFFICE OF MENTAL HEALTH.

S 2994-JJ. CAREGIVER, OPPORTUNITY TO IDENTIFY. 1. A HOSPITAL SHALL PROVIDE EACH PATIENT OR, IF APPLICABLE, THE PATIENT'S LEGAL GUARDIAN WITH AT LEAST ONE OPPORTUNITY TO IDENTIFY AT LEAST ONE CAREGIVER UNDER THIS ARTICLE NO LATER THAN TWENTY-FOUR HOURS FOLLOWING THE PATIENT'S ENTRY INTO A HOSPITAL AND PRIOR TO THE PATIENT'S ENTRY INTO A HOSPITAL AND PRIOR TO THE PATIENT'S DISCHARGE OR TRANSFER TO ANOTHER FACILITY.

(A) IN THE EVENT THAT THE PATIENT IS UNCONSCIOUS OR OTHERWISE INCAPACITATED UPON HIS OR HER ENTRY INTO A HOSPITAL, THE HOSPITAL SHALL PROVIDE SUCH PATIENT OR HIS/HER LEGAL GUARDIAN WITH AN OPPORTUNITY TO IDENTIFY A CAREGIVER WITHIN TWENTY-FOUR HOURS FOLLOWING THE PATIENT'S RECOVERY OF HIS OR HER CONSCIOUSNESS OR CAPACITY.

(B) IN THE EVENT THAT THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN DECLINES TO IDENTIFY A CAREGIVER UNDER THIS ARTICLE, THE HOSPITAL SHALL PROMPTLY DOCUMENT THIS IN THE PATIENT'S MEDICAL RECORD.

(C) IN THE EVENT THAT THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN IDENTIFIES AN INDIVIDUAL AS A CAREGIVER UNDER THIS ARTICLE:

(I) THE HOSPITAL SHALL PROMPTLY REQUEST THE WRITTEN CONSENT OF THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN TO RELEASE MEDICAL INFORMATION TO THE PATIENT'S IDENTIFIED CAREGIVER FOLLOWING THE HOSPITAL'S ESTABLISHED PROCEDURES FOR RELEASING PERSONAL HEALTH INFORMATION AND IN COMPLIANCE WITH ALL FEDERAL AND STATE LAWS.

(II) IF THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN DECLINES TO CONSENT TO RELEASE MEDICAL INFORMATION TO THE PATIENT'S IDENTIFIED CAREGIVER, THE HOSPITAL IS NOT REQUIRED TO PROVIDE NOTICE TO THE CAREGIVER UNDER SECTION TWENTY-NINE HUNDRED NINETY-FOUR-KK OF THIS ARTICLE OR PROVIDED INFORMATION CONTAINED IN THE PATIENT'S DISCHARGE PLAN UNDER SECTION TWENTY-NINE HUNDRED NINETY-FOUR-LL OF THIS ARTICLE.

(III) THE HOSPITAL SHALL RECORD THE PATIENT'S IDENTIFICATION OF CAREGIVER, THE RELATIONSHIP OF THE IDENTIFIED CAREGIVER TO THE PATIENT, AND THE NAME, TELEPHONE NUMBER, AND ADDRESS OF THE PATIENT'S IDENTIFIED CAREGIVER IN THE PATIENT'S MEDICAL RECORD.

(D) A PATIENT MAY ELECT TO CHANGE HIS OR HER IDENTIFIED CAREGIVER AT ANY TIME, AND THE HOSPITAL MUST RECORD THIS CHANGE IN THE PATIENT'S MEDICAL RECORD WITHIN TWENTY-FOUR HOURS.

(E) PRIOR TO NOTIFYING THE PATIENT'S CAREGIVER OF THE PATIENT'S DISCHARGE OR TRANSFER TO ANOTHER HOSPITAL OR FACILITY AS REQUIRED UNDER SECTION TWENTY-NINE HUNDRED NINETY-FOUR-KK OF THIS ARTICLE, THE HOSPITAL SHALL ASK THE PATIENT TO VERIFY THE PATIENT'S CAREGIVER CHOICE AND PROVIDE THE PATIENT THE OPPORTUNITY TO CHANGE HIS OR HER IDENTIFIED CAREGIVER.

2. AN IDENTIFICATION OF A CAREGIVER BY A PATIENT OR A PATIENT'S LEGAL GUARDIAN UNDER THIS SECTION DOES NOT OBLIGATE ANY INDIVIDUAL TO PERFORM ANY AFTER-CARE TASKS FOR ANY PATIENT.

3. THIS SECTION SHALL NOT BE CONSTRUED TO REQUIRE A PATIENT OR A PATIENT'S LEGAL GUARDIAN TO IDENTIFY ANY INDIVIDUAL AS A CAREGIVER AS DEFINED BY THIS ARTICLE.

S 2994-KK. NOTICE TO IDENTIFIED CAREGIVER. A HOSPITAL SHALL NOTIFY THE PATIENT'S IDENTIFIED CAREGIVER OF THE PATIENT'S DISCHARGE OR TRANSFER TO ANOTHER HOSPITAL OR FACILITY LICENSED BY THE DEPARTMENT OR THE OFFICE OF MENTAL HEALTH AS SOON AS THE DATE AND TIME OF DISCHARGE OR TRANSFER CAN BE ANTICIPATED PRIOR TO THE PATIENT'S ACTUAL DISCHARGE OR TRANSFER TO SUCH FACILITY.

S 2994-LL. INSTRUCTION TO IDENTIFIED CAREGIVER. 1. AS SOON AS POSSIBLE AND NOT LATER THAN TWENTY-FOUR HOURS PRIOR TO A PATIENT'S DISCHARGE FROM A HOSPITAL, THE HOSPITAL SHALL CONSULT WITH THE IDENTIFIED CAREGIVER ALONG WITH THE PATIENT REGARDING THE CAREGIVER'S CAPABILITIES AND LIMITATIONS AND ISSUE A DISCHARGE PLAN THAT DESCRIBES A PATIENT'S AFTER-CARE NEEDS AT HIS OR HER RESIDENCE. AT MINIMUM, A DISCHARGE PLAN SHALL INCLUDE:

(A) THE NAME AND CONTACT INFORMATION OF THE CAREGIVER IDENTIFIED UNDER THIS ARTICLE;

(B) A DESCRIPTION OF ALL AFTER-CARE TASKS NECESSARY TO MAINTAIN THE PATIENT'S ABILITY TO RESIDE AT HOME, TAKING INTO ACCOUNT THE CAPABILITIES AND LIMITATIONS OF THE CAREGIVER; AND

(C) CONTACT INFORMATION FOR ANY HEALTH CARE, COMMUNITY RESOURCES, AND LONG-TERM SERVICES AND SUPPORTS NECESSARY TO SUCCESSFULLY CARRY OUT THE PATIENT'S DISCHARGE PLAN.

2. THE HOSPITAL ISSUING THE DISCHARGE PLAN MUST PROVIDE CAREGIVERS WITH INSTRUCTION IN ALL AFTER-CARE TASKS DESCRIBED IN THE DISCHARGE PLAN.

(A) AT MINIMUM, SUCH INSTRUCTION SHALL INCLUDE:

(I) A LIVE DEMONSTRATION OF THE TASKS PERFORMED BY A HOSPITAL EMPLOYEE AUTHORIZED TO PERFORM THE AFTER-CARE TASK, PROVIDED IN A CULTURALLY COMPETENT MANNER AND IN ACCORDANCE WITH THE HOSPITAL'S REQUIREMENTS TO PROVIDE LANGUAGE ACCESS SERVICES UNDER STATE AND FEDERAL LAW;

(II) AN OPPORTUNITY FOR THE CAREGIVER AND PATIENT TO ASK QUESTIONS ABOUT THE AFTER-CARE TASKS; AND

(III) ANSWERS TO THE CAREGIVER'S AND PATIENT'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.

(B) ANY INSTRUCTIONS REQUIRED UNDER THIS ARTICLE SHALL BE DOCUMENTED IN THE PATIENT'S MEDICAL RECORD, INCLUDING, AT MINIMUM, THE DATE, TIME, AND CONTENTS OF THE INSTRUCTION.

3. THE DEPARTMENT IS AUTHORIZED TO PROMULGATE REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE, INCLUDING BUT NOT LIMITED TO, REGULATIONS TO FURTHER DEFINE THE CONTENT AND SCOPE OF ANY INSTRUCTION PROVIDED TO CAREGIVERS UNDER THIS ARTICLE.

S 2994-MM. EFFECT ON OTHER RIGHTS. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO INTERFERE WITH THE RIGHTS OF AN AGENT OPERATING UNDER A VALID HEALTH CARE DIRECTIVE CREATED UNDER SECTION TWENTY-NINE HUNDRED EIGHTY-TWO OF THIS CHAPTER.

S 2. This act shall take effect immediately.