

AN ACT

RELATING TO HEALTH CARE; PROVIDING FOR THE DESIGNATION AND TRAINING OF LAY CAREGIVERS TO PROVIDE CARE TO PATIENTS AFTER DISCHARGE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** LAY CAREGIVER--AFTERCARE--DESIGNATION.--

A. A hospital shall provide each patient or the patient's legal guardian with an opportunity to designate one lay caregiver following the patient's admission into a hospital and before the patient's discharge to the patient's residence.

B. As soon as practicable, a hospital shall attempt to consult with a designated lay caregiver to prepare the lay caregiver to provide aftercare. The hospital shall provide the lay caregiver with a discharge plan for the patient that describes the patient's aftercare needs. This discharge plan:

(1) may include, but is not limited to:

- (a) culturally competent training on how to provide care and tasks;
- (b) medication management guidelines;
- (c) aftercare guidelines; and
- (d) an identification of tasks that the discharging health care provider specifies;

(2) shall reflect the active engagement of a patient or lay caregiver in the discharge planning process and incorporate a patient's goals and preferences as much as possible; and

(3) shall educate a lay caregiver in a manner that is consistent with current accepted practices and is based on an assessment of the lay caregiver's learning needs.

C. A hospital shall allow a patient to change the patient's designation of a lay caregiver in the event that the originally designated lay caregiver becomes unavailable, unwilling or unable to care for the patient.

D. Designation of an individual as a lay caregiver pursuant to this section does not obligate that individual to accept the role of lay caregiver for the patient.

E. The provisions of this section shall not be construed to require a patient to designate a lay caregiver.

F. In the event that a patient or a patient's legal guardian declines to designate a lay caregiver pursuant to this section, a hospital shall promptly document this refusal to designate a lay caregiver in the patient's medical record.

G. A hospital shall not allow the process of appointing or refusal or failure to appoint a lay caregiver for a patient to interfere with, delay or otherwise affect the

services that the hospital provides to a patient.

H. In the event that a hospital is unable to contact a designated lay caregiver, this lack of contact shall not interfere with or otherwise affect an appropriate discharge of the patient.

I. The provisions of this section shall not be construed to:

(1) create a private right of action against a hospital, hospital employee, contractor having a contractual relationship with a hospital or duly authorized agent of a hospital; or

(2) remove the obligation of a third-party payer to cover any health care item or service that the third-party payer is obligated to provide to a patient pursuant to the terms of a valid agreement, insurance policy, plan or certificate of coverage or health maintenance organization contract.

J. A hospital, hospital employee, contractor having a contractual relationship with a hospital or duly authorized agent of a hospital shall not be held liable in any way for an act or omission of a lay caregiver.

K. As used in this section:

(1) "aftercare" means assistance provided in a private home by a designated lay caregiver to a patient after the patient's discharge from a hospital. "Aftercare"

includes exclusively those tasks related to a patient's condition at the time of discharge that do not require the lay caregiver performing the tasks to be a licensed, certified or otherwise authorized health care provider;

(2) "discharge" means a patient's exit or release from a hospital to that patient's residence following an inpatient stay;

(3) "hospital" means a health facility licensed as a general acute hospital by the department of health;

(4) "lay caregiver" means an individual who is eighteen years of age or older, who has been designated as a lay caregiver pursuant to this section and who provides aftercare to a patient in the patient's residence; and

(5) "residence" means a dwelling considered by a patient to be the patient's home, not including a hospital, nursing home or group home or assisted living facility.

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