SPONSOR: Sen. Hall-Long & Rep. Bentz & Rep. Longhurst
Sens. Bonini, Poore; Reps. Baumbach, Heffernan, Jaques, D. Short

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 52

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO LAY CAREGIVERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 10303, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 10303. Powers and duties.

(a) In furtherance of the purposes of this subchapter, the DHIN shall have the following powers and duties:

(18) ~~The DHIN shall make~~ Make annual reports to the Governor and members of the General Assembly setting forth in detail its operations and transactions, which shall include annual audits of the books and accounts of the DHIN made by a firm of independent certified public accountants mutually agreed to by the Auditor of Accounts and the Director of the Office of Management and Budget; ~~and~~

(19) Develop and maintain a process to enable a hospital to record in the patient's electronic health record contained in the DHIN the patient's designation of a lay caregiver and the lay caregiver's contact information, as required by § 3002J(b) of this title, and if the hospital attempted to or did interface with the lay caregiver, as required by § 3004J(b) of this title; and

Section 2. Amend Part II, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 30J. LAY CAREGIVER DESIGNATION, NOTICE, AND TRAINING ACT.

§ 3001J. Definitions.

As used in this chapter:

(1) "Aftercare" means assistance provided by a lay caregiver to a patient in a residence after the patient's discharge from a hospital that does not require the lay caregiver to be a health care provider.

(2) "Discharge" means a patient's exit or release from a hospital following an inpatient stay.

(3) "Health-care provider" means as defined in § 2501 of this title.

(4) "Hospital" means as defined in § 1001 of this title.

(5) "Interface" means training the lay caregiver in aftercare tasks contained in the discharge plan in a manner that is consistent with current accepted practices, based on an assessment of the lay caregiver's learning needs, and provided through one of the following methods as chosen by the lay caregiver: telehealth, as defined in § 3370 of Title 18, telemedicine, as defined in § 3370 of Title 18, or in-person.

(6) "Lay caregiver" means an individual who is 18 years of age or older, who is designated by a patient or a patient's agent under this chapter, and who provides aftercare to a patient in a residence.

(7) "Patient's agent" means a person authorized by other law to make decisions for a patient.

(8) "Residence" means a dwelling considered by a patient to be the patient's home. "Residence" does not include any rehabilitation facility, hospital, nursing home, assisted living facility, or group home licensed under this title.

§ 3002J. Designation of a lay caregiver.

(a) A hospital shall provide a patient or a patient's agent at least one opportunity to designate at least one lay caregiver under this chapter following the patient's admission into a hospital and before the patient's discharge to a residence.

(b) A hospital shall record in the patient's electronic health record contained in the Delaware Health Information Network the patient's designation of a lay caregiver and the lay caregiver's contact information.

(c) A hospital shall allow a patient or a patient's agent to change the individual designated as a lay caregiver by the patient or the patient's agent in the event that the individual designated as a lay caregiver becomes unavailable, unwilling, or unable to provide aftercare for the patient.

(d) The designation of an individual as a lay caregiver by a patient or a patient's agent under this chapter does not obligate the individual to accept the role of lay caregiver for the patient.

(e) This chapter may not be construed to require a patient to designate a lay caregiver.

(f) If a patient or a patient's agent declines to designate a lay caregiver under this section, a hospital shall promptly document the refusal to designate a lay caregiver in the patient's medical record.

(g) A hospital may not allow the ability of a patient or a patient's agent to appoint a lay caregiver or the refusal or failure to appoint a lay caregiver by a patient or a patient's agent to interfere with, delay, or otherwise affect the services provided to the patient by the hospital.

§ 3003J. Notice to a lay caregiver.

If a patient or a patient's agent has designated a lay caregiver under this chapter, a hospital shall notify the lay caregiver of the patient's discharge to a residence as soon as possible. If a hospital is unable to contact a designated lay

caregiver, the inability to contact the lay caregiver may not interfere with, delay, or otherwise affect an appropriate discharge or transfer of the patient.

§ 3004J. Training of a lay caregiver.

(a) As soon as practical, a hospital shall attempt to interface with the lay caregiver to prepare the lay caregiver to provide aftercare.

(b) The hospital shall record in the patient's electronic health record contained in the Delaware Health Information Network that it attempted to or did interface with the lay caregiver.

(c) If the hospital interfaces with the lay caregiver, the hospital shall provide an opportunity for the lay caregiver to ask questions and receive answers about the aftercare described to the lay caregiver.

(d) A hospital shall, with the consent of the patient or the patient's agent, provide the lay caregiver with a discharge plan for the patient that describes the patient's aftercare needs.

(e)(1) A discharge plan may include all of the following:

a. Culturally competent training on how to provide aftercare.

b. Medication management guidelines.

c. Aftercare guidelines.

d. Identification of the aftercare tasks that a discharging health care provider specifies.

(2) A discharge plan must do all of the following:

a. Reflect the active engagement of a patient, a patient's agent, or lay caregiver in the discharge planning process and incorporate the goals and preferences of a patient or a patient's agent as much as possible.

b. Educate the lay caregiver in a manner that is consistent with current accepted practices and based on an assessment of the lay caregiver's learning needs.

§ 3005J. Limitations.

Nothing in this chapter shall be construed to do any of the following:

(1) Interfere with the rights of a patient's agent operating under a valid advance health-care directive under Chapter 25 of this title.

(2) Interfere with a valid Delaware Medical Orders for Scope of Treatment (DMOST) under Chapter 25A of this title.

(3) Create a private right of action against a hospital, a hospital employee, an individual with whom a hospital has a contractual relationship, or an authorized agent of a hospital.

(4) 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 under the terms of a valid agreement, insurance policy, plan, certificate of coverage, or managed care organization contract.

(5) Otherwise supersede or replace existing rights or remedies under any other law.

(6) Hold a hospital, hospital employee, an individual with whom a hospital has a contractual relationship, or an authorized agent of the hospital liable for any act or omission of a lay caregiver.

§ 3005J. Regulatory authority.

The Department of Health and Social Services may promulgate regulations to implement this chapter.

Section 3. Section 2 of this Act takes effect on January 1, 2017.

SYNOPSIS

An estimated 123,000 Delawareans provide varying degrees of unreimbursed care to adults with limitations in daily activities. Based on 2013 data, the total value of the unpaid care provided to Delawareans in need of long-term services and supports amounts to an estimated $1.58 billion every year. These "lay caregivers" are often members of the individual's immediate family, but friends and other community members also serve as lay caregivers. While most lay caregivers are asked to assist an individual with basic activities of daily living, such as mobility, eating, and dressing, many are expected to perform complex medical tasks, such as administering medications, providing wound care, and operating medical equipment.

Section 1 of this Act requires the Delaware Health Information Network ("DHIN") to develop and maintain a process to enable a hospital to record in the patient's electronic health record contained in the DHIN the patient's designation of a lay caregiver and the lay caregiver's contact information, as required by § 3002J(b) of Title 16, and if the hospital attempted to or did interface with the lay caregiver, as required by § 3004J(b) of Title 16.

Section 2 of this Act requires that a hospital provide a patient or the patient's agent an opportunity to designate a lay caregiver prior to the patient's discharge. If a lay caregiver is designated, the hospital is required to document the designation in the patient's medical record, notify the lay caregiver, and to interface with the lay caregiver related to the patient's discharge plan.

Section 3 of this Act delays the effective date of Section 2 of this Act until January 1, 2017.

Author: Senator Hall-Long