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**SUBSTITUTE SENATE BILL 6327**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senate Health Care (originally sponsored by Senators Bailey, Keiser, Nelson, Conway, Mullet, and Dammeier)

AN ACT Relating to hospital discharge planning with lay caregivers; amending RCW 70.41.320; reenacting and amending RCW 70.41.020; and adding new sections to chapter 70.41 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 70.41.020 and 2015 c 23 s 5 are each reenacted and amended to read as follows:

Unless the context clearly indicates otherwise, the following terms, whenever used in this chapter, shall be deemed to have the following meanings:

(1) "Aftercare" means the assistance provided by a lay caregiver to a patient under this chapter after the patient's discharge from a hospital. The assistance may include, but is not limited to, assistance with activities of daily living, wound care, medication assistance, and the operation of medical equipment. "Aftercare" includes assistance only for conditions that were present at the time of the patient's discharge from the hospital. "Aftercare" does not include:

(a) Assistance related to conditions for which the patient did not receive medical care, treatment, or observation in the hospital; or

(b) Tasks the performance of which requires licensure as a health care provider.

(2) "Department" means the Washington state department of health.

((~~(2)~~)) (3) "Discharge" means a patient's release from a hospital following the patient's admission to the hospital.

(4) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine.

((~~(3)~~)) (5) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

((~~(4)~~)) (6) "Emergency contraception" means any health care treatment approved by the food and drug administration that prevents pregnancy, including but not limited to administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

((~~(5)~~)) (7) "Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include psychiatric hospitals, which come within the scope of chapter 71.12 RCW; nor any other hospital, or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, intellectual disability, convulsive disorders, or other abnormal mental condition. Furthermore, nothing in this chapter or the rules adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denominations.

((~~(6)~~)) (8) "Lay caregiver" means any individual designated as such by a patient under this chapter who provides aftercare assistance to a patient in the patient's residence. "Lay caregiver" does not include a long-term care worker as defined in RCW 74.39A.009.

(9) "Originating site" means the physical location of a patient receiving health care services through telemedicine.

((~~(7)~~)) (10) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

((~~(8)~~)) (11) "Secretary" means the secretary of health.

((~~(9)~~)) (12) "Sexual assault" has the same meaning as in RCW 70.125.030.

((~~(10)~~)) (13) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. "Telemedicine" does not include the use of audio-only telephone, facsimile, or email.

((~~(11)~~)) (14) "Victim of sexual assault" means a person who alleges or is alleged to have been sexually assaulted and who presents as a patient.

NEW SECTION. **Sec.**  A new section is added to chapter 70.41 RCW to read as follows:

(1) In addition to the requirements in RCW 70.41.320, hospital discharge policies must ensure that the discharge plan is appropriate for the patient's physical condition, emotional and social needs, and, if a lay caregiver is designated takes into consideration, to the extent possible, the lay caregiver's abilities as disclosed to the hospital.

(2) As part of a patient's individualized treatment plan, discharge criteria must include, but not be limited to, the following components:

(a) The details of the discharge plan;

(b) Hospital staff assessment of the patient's ability for self-care after discharge;

(c) An opportunity for the patient to designate a lay caregiver;

(d) Documentation of any designated lay caregiver's contact information;

(e) A description of aftercare tasks necessary to promote the patient's ability to stay at home;

(f) An opportunity for the patient and, if designated, the patient's lay caregiver to participate in the discharge planning;

(g) Instruction or training provided to the patient and, if designated, the patient's lay caregiver, prior to discharge, to perform aftercare tasks. Instruction or training may include education and counseling about the patient's medications, including dosing and proper use of medication delivery devices when applicable; and

(h) Notification to a lay caregiver, if designated, of the patient's discharge or transfer.

(3) In the event that a hospital is unable to contact a designated lay caregiver, the lack of contact may not interfere with, delay, or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient.

NEW SECTION. **Sec.**  A new section is added to chapter 70.41 RCW to read as follows:

Section 2 of this act does not require a hospital to adopt discharge policies or criteria that:

(1) Delay a patient's discharge or transfer to another facility or to home; or

(2) Require the disclosure of protected health information to a lay caregiver without obtaining a patient's consent as required by state and federal laws governing health information privacy and security, including chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and related regulations.

NEW SECTION. **Sec.**  A new section is added to chapter 70.41 RCW to read as follows:

Nothing in section 2 of this act may be construed to:

(1) Interfere with the rights or duties of an agent operating under a valid health care directive under RCW 70.122.030;

(2) Interfere with designations made by a patient pursuant to a physician order for life-sustaining treatment under RCW 43.70.480;

(3) Interfere with the rights or duties of an authorized surrogate decision maker under RCW 7.70.065;

(4) Establish a new requirement to reimburse or otherwise pay for services performed by the lay caregiver for aftercare;

(5) Create a private right of action against a hospital or any of its directors, trustees, officers, employees, or agents, or any contractors with whom the hospital has a contractual relationship;

(6) Hold liable, in any way, a hospital, hospital employee, or any consultants or contractors with whom the hospital has a contractual relationship for the services rendered or not rendered by the lay caregiver to the patient at the patient's residence;

(7) Obligate a designated lay caregiver to perform any aftercare tasks for any patient;

(8) Require a patient to designate any individual as a lay caregiver as defined in RCW 70.41.020;

(9) Obviate the obligation of a health carrier as defined in RCW 48.43.005 or any other entity issuing health benefit plans to provide coverage required under a health benefit plan; and

(10) Impact, impede, or otherwise disrupt or reduce the reimbursement obligations of a health carrier or any other entity issuing health benefit plans.

**Sec.**  RCW 70.41.320 and 1998 c 245 s 127 are each amended to read as follows:

(1) Hospitals and acute care facilities shall:

(a) Work cooperatively with the department of social and health services, area agencies on aging, and local long-term care information and assistance organizations in the planning and implementation of patient discharges to long-term care services.

(b) Establish and maintain a system for discharge planning and designate a person responsible for system management and implementation.

(c) Establish written policies and procedures to:

(i) Identify patients needing further nursing, therapy, or supportive care following discharge from the hospital;

(ii) Subject to section 2 of this act, develop a documented discharge plan for each identified patient, including relevant patient history, specific care requirements, and date such follow-up care is to be initiated;

(iii) Coordinate with patient, family, caregiver, lay caregiver as provided in section 2 of this act, and appropriate members of the health care team;

(iv) Provide any patient, regardless of income status, written information and verbal consultation regarding the array of long-term care options available in the community, including the relative cost, eligibility criteria, location, and contact persons;

(v) Promote an informed choice of long-term care services on the part of patients, family members, and legal representatives; and

(vi) Coordinate with the department and specialized case management agencies, including area agencies on aging and other appropriate long-term care providers, as necessary, to ensure timely transition to appropriate home, community residential, or nursing facility care.

(d) Work in cooperation with the department which is responsible for ensuring that patients eligible for medicaid long-term care receive prompt assessment and appropriate service authorization.

(2) In partnership with selected hospitals, the department of social and health services shall develop and implement pilot projects in up to three areas of the state with the goal of providing information about appropriate in-home and community services to individuals and their families early during the individual's hospital stay.

The department shall not delay hospital discharges but shall assist and support the activities of hospital discharge planners. The department also shall coordinate with home health and hospice agencies whenever appropriate. The role of the department is to assist the hospital and to assist patients and their families in making informed choices by providing information regarding home and community options.

In conducting the pilot projects, the department shall:

(a) Assess and offer information regarding appropriate in-home and community services to individuals who are medicaid clients or applicants; and

(b) Offer assessment and information regarding appropriate in-home and community services to individuals who are reasonably expected to become medicaid recipients within one hundred eighty days of admission to a nursing facility.

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