

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE PROGRAM

Hospital Licensing Standards

Proposed Amendment: N.J.A.C. 8:43G-1.2

Proposed New Rules: N.J.A.C. 8:43G-11A

Authorized By: Cathleen D. Bennett, Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., particularly 26:2H-5 and 5.32.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-105.

Submit written comments by August 18, 2017, electronically to

www.nj.gov/health/legal/ecomments.shtml or by regular mail to:

Joy L. Lindo, Director

Office of Legal and Regulatory Compliance

Office of the Commissioner

New Jersey Department of Health

PO Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

Summary

On November 13, 2014, Governor Christie approved P.L. 2014, c. 68 (Act), which directs the Commissioner of the Department of Health (Department) to promulgate rules that define the content and scope of instructions hospitals must offer non-paid caregivers who agree to perform necessary after-care tasks for hospital patients upon return to their place of residence post-discharge. The Department is proposing to amend existing N.J.A.C. 8:43G-1.2 and to add new N.J.A.C. 8:43G-11A to implement the Act.

Through a standard set of provisions directed at identifying, supporting, and training caregivers of hospitalized patients, the Act aims to improve the quality of patient care, reduce hospital readmissions, and lower overall healthcare costs. Under the Act, general acute care hospitals are required to ask patients who have been deemed by the hospital's discharge planning team able to return to their residence after discharge if they would like to designate a caregiver to provide after-care tasks on their behalf. If the patient opts to designate a caregiver, before the patient is discharged, the hospital must offer "after-care assistance" training to the designated caregiver that is either live or recorded at the election of the caregiver. Caregivers would also be able to ask hospital staff questions about the discharge plan and their training.

With this training, caregivers who take responsibility to keep the patient independent and in the community likely will be more prepared to properly dress wounds, assist with basic activities of daily living, give injections, and operate intricate medical equipment in order to prevent unexpected hospital readmission. Given the

appropriate preparation and resources, those assisting with care in the community will have the support and skills to aid a discharged patient in his or her time of need.

The Department met with stakeholders, including the New Jersey Hospital Association, the New Jersey Council of Teaching Hospitals, and the American Association of Retired Persons (AARP) to undertake a comprehensive analysis of caregiver services currently provided in New Jersey. The proposed amendments and new rules reflect the results of the comprehensive analysis. The Department expects that the proposed amendments and new rules would aid and support designated caregivers in managing a patient's care in a patient's residence, which should reduce hospital readmissions.

Following is a summary of the proposed amendments and new rules.

The proposed amendments to N.J.A.C. 8:43G-1.2 would include new definitions for "discharge plan," which means a patient's written post-hospital care plan developed by a hospital's discharge planning team and "discharge planning team," which means a person employed by a hospital as a part of the discharge planning staff as set forth at N.J.A.C. 8:43G-11.4.

Proposed new N.J.A.C. 8:43G-11A would implement the requirements of the Act.

Proposed new N.J.A.C. 8:43G-11A.1 would establish the scope of the chapter, which applies to general acute care hospitals that discharge patients to their residences.

Proposed new N.J.A.C. 8:43G-11A.2 would establish the purpose of this subchapter, which is to implement the Act by requiring all general acute care hospitals, where applicable, to offer patients the opportunity to designate a caregiver and to

provide training to the caregiver who is to perform after-care assistance tasks after a patient is discharged.

Proposed new N.J.A.C. 8:43G-11A.3 would establish definitions of terms proposed in this subchapter. The following terms in subsection (a) refer to the definitions at N.J.S.A. 26:2H-5.25: “after-care assistance,” “caregiver,” “discharge,” “entry,” “hospital,” and “residence.” Other defined terms contained in subsection (b) would establish meanings for words only as they are used in Subchapter 11A for “Act,” “legally authorized decision maker,” and “patient.”

Proposed new N.J.A.C. 8:43G-11A.4(a) would require a hospital’s discharge planning team to offer a patient, or the patient’s legally authorized decision maker, the opportunity to designate a caregiver to perform after-care assistance tasks. Proposed new subsection (b) would require a hospital’s discharge planning team to document a caregiver’s contact information in a patient’s medical record. Proposed new N.J.A.C. 8:43G-11A.4(c) would address how a hospital would approach the matter of caregiver designation with a patient who is unconscious or incapacitated upon entry to the hospital and without a legally authorized decision maker, who regains consciousness or capacity prior to discharge from the hospital. Proposed new subsection (d) would provide options whereby a patient or the patient’s legally authorized decision maker may decline to make, or may change or revoke, a caregiver designation at any time prior to discharge. Proposed new N.J.A.C. 8:43G-11A.4(e) would provide the standards for designating a caregiver for a minor patient. Proposed new subsection (f) would require a hospital to inform a designated caregiver that the caregiver is not required to perform after-care assistance tasks if the caregiver declines the designation.

Proposed new N.J.A.C. 8:43G-11A.5 would require that, before disclosing any discharge planning information to a designated caregiver, a hospital must provide notice of the disclosure to, and obtain written consent from, the patient or the patient's legally authorized decision maker.

Proposed new N.J.A.C. 8:43G-11A.6(a) would require a hospital's discharge planning team to discuss a patient's discharge plan with a designated caregiver at a convenient time for the caregiver. Proposed new subsection (b) would require the discharge planning team to consult with a designated caregiver at a time that takes into consideration the severity of the patient's condition, the setting in which care is to be delivered, and the urgency of the patient's need for after-care assistance. Proposed new subsection (c) would require the hospital discharge planning team to provide the caregiver with copies of written instructions for the after-care tasks for which training was provided and contact information for hospital staff who are available by telephone to respond to questions on a 24-hour a day basis.

Proposed new N.J.A.C. 8:43G-11A.7(a) would require a hospital to offer a designated caregiver training in the after-care assistance tasks articulated in the patient's discharge plan. Proposed new subsection (b) would require a hospital to ensure that a caregiver is given a choice of receiving in-person or video training, and opportunities to ask questions during and after the training. Proposed new N.J.A.C. 8:43G-11A.7(c) would require hospital staff members conducting the training to answer any questions regarding the after-care assistance training in non-technical language, in a culturally competent manner, and consistent with the language access services required under N.J.A.C. 8:43G-5.5(c). Proposed new subsection (d) would address the

information the discharge planning team is required to include in a patient's written discharge plan, including: the name and contact information for the designated caregiver, date and time of after-care assistance training, a description of the after-care assistance training provided to the caregiver, and written instructions for the after-care assistance tasks the caregiver is to perform for the patient after discharge.

Proposed new N.J.A.C. 8:43G-11A.8(a) would require that a hospital inform a designated caregiver of the patient's pending discharge or transfer to another facility. Proposed new subsection (b) would require the discharge planning team to document all attempts to contact the designated caregiver. Proposed new N.J.A.C. 8:43G-11A.8(c) would provide that the inability of a discharge planning team to contact a designated caregiver would not delay the discharge or transfer of the patient.

As the Department has provided a 60-day comment period on this notice of proposal, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement as set forth at N.J.A.C. 1:30-3.1 and 3.2.

Social Impact

The intent of the Act is to give hospital patients the right to designate a caregiver prior to discharge, and to provide a designated caregiver the opportunity to receive after-care assistance training, so that the designated caregiver can support a patient discharged to the patient's residence. When a patient designates a caregiver, a hospital's discharge planning team would provide the designated caregiver with a copy of the patient's discharge plan and specific training and information on performing the after-care assistance tasks provided for in the discharge plan, which would enable the patient to remain in the community and avoid future re-hospitalizations.

The proposed amendments and new rules would have a positive social impact on patients and designated caregivers. The Department anticipates that the proposed amendments and new rules would contribute to patients receiving competent care at home following hospitalization, which likely would result in positive outcomes for people, hospitals, and insurers, as reflected in expected reduced hospital readmissions and improved quality of life.

The Department believes the proposed amendments and new rules likely would affect the 70 general acute care hospitals in New Jersey. The Department expects a positive reaction to the amendments and new rules from stakeholders and licensees because the assistance and support for caregivers should help to reduce hospital readmissions.

Economic Impact

The Department expects the proposed amendments and new rules would have a minimal economic impact on the public because they would not impose any additional direct costs on the State budget. The proposed amendments and new rules would not have an economic impact on patients. The proposed amendments and new rules would have a minimal economic impact on general acute care hospitals. Hospitals would incur staffing, administrative, training, and recordkeeping costs in support of designated caregivers, which requirements are described in the Summary above.

Although the Department is not able to estimate the cost of these requirements for hospitals, the Department believes that reductions in readmission should reduce overall hospital costs. The Centers for Medicare & Medicaid Services, the Federal agency that administers the Medicare program within the U.S. Department of Health

and Human Services, has estimated that \$17 billion in Medicare funds is spent each year on unnecessary hospital readmissions. Robert Wood Johnson Foundation, “The Revolving Door: A Report on U.S. Hospital Readmissions,” February 2013, available at <http://www.rwjf.org/content/dam/farm/reports/reports/2013/rwjf404178>.

The Department anticipates that training unpaid caregivers to perform after-care assistance likely would prevent patients from being rehospitalized. Clearly, allowing people to return to their homes after discharge would offer an impressive alternative to moving into a long-term care facility for needed after-care services. This likely would be considered by many to be a significant improvement to one’s quality of life.

Moreover, the Department believes that education combined with supportive community resources would be a way for hospitals to avoid increased readmission rates and prevent the potential imposition of Federal monetary penalties, pursuant to the Patient Protection and Affordable Care Act, commonly known as the Affordable Care Act (Pub. L. 111-148, approved March 23, 2010) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152, approved March 30, 2010).

The proposed amendments and new rules would require the Department to incur additional costs to conduct compliance surveys, respond to complaints, and develop and maintain appropriate licensure rules governing the designation and training of caregivers. The incurrence of penalties would depend on the nature of the offense.

Federal Standards Statement

The Department is not proposing the amendments and new rules under the authority of, or to implement, comply with, or participate in, any program established under Federal law or a State law that incorporates or refers to any Federal law,

standard, or requirement. The Department is proposing this rulemaking under the authority of N.J.S.A. 26:2H-5.32. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that the proposed amendments and new rules would result in an increase or decrease in the number of jobs available in the State.

Agriculture Industry Impact

The proposed amendments and new rules would not have an impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments and new rules would impose requirements that are applicable only to general acute care hospitals that the Department licenses, which are not small businesses within the meaning of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Housing Affordability Impact Analysis

The proposed amendments and new rules would have an insignificant impact on the affordability of housing in New Jersey, and there is an extreme unlikelihood that the proposed amendments and new rules would evoke a change in the average costs associated with housing because the rules only afford hospital patients the right to designate a caregiver prior to discharge, and to provide a designated caregiver the opportunity to receive after-care assistance training, so that the designated caregiver can support a patient discharged to the patient's residence.

Smart Growth Development Impact Analysis

The proposed amendments and new rules would have an insignificant impact on smart growth, and there is an extreme unlikelihood that the proposed amendments and new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments and new rules only afford hospital patients the right to designate a caregiver prior to discharge, and to provide a designated caregiver the opportunity to receive after-care assistance training, so that the designated caregiver can support a patient discharged to the patient's residence.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

8:43G-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“Discharge plan” means a patient-specific post-hospital written care plan developed by a hospital’s discharge planning team that identifies the after-care assistance the patient requires, and includes the services and resources necessary for the patient’s transition from the hospital.

“Discharge planning team” means the people employed by a hospital as part of its discharge planning staff as set forth at N.J.A.C. 8:43G-11.4.

...

SUBCHAPTER 11A. DESIGNATED CAREGIVERS

8:43G-11A.1 Scope

The rules in this subchapter apply to general acute care hospitals in accordance with N.J.S.A. 26:2H-5.24 through 5.32.

8:43G-11A.2 Purpose

The rules in this subchapter implement N.J.S.A. 26:2H-5.24 through 5.32, by requiring hospitals to offer patients who are able to return to their place of residence after discharge an opportunity to designate caregivers to perform after-care assistance tasks and to train these designated caregivers to competently perform post-hospital care as set forth in the patients' discharge plans.

8:43G-11A.3 Definitions

(a) The following words and terms are defined at N.J.S.A. 26:2H-5.25 and are used in this subchapter as defined therein:

“After-care assistance”;

“Caregiver”;

“Discharge”;

“Entry”;

“Hospital”; and

“Residence.”

(b) The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

“Act” shall mean N.J.S.A. 26:2H-5.24 through 5.32.

“Legally authorized decision maker” means a person with the legal right to act as an agent of a person who becomes unable to make decisions on his or her own behalf regarding medical treatment, as either:

- 1. Having been appointed a guardian by a court of competent jurisdiction;**
- 2. Having a power of attorney to make medical treatment decisions for that patient;**
- 3. Having been designated a person’s health care proxy; or**
- 4. Operating under a valid advance directive pursuant to the “New Jersey Advance Directives for Health Care Act,” N.J.S.A. 26:2H-53 et seq., or the “New Jersey Advance Directives for Mental Health Care Act,” N.J.S.A. 26:2H-102 et seq.**

“Patient” means a person admitted to a general acute care hospital who is determined by the discharge planning team to be able to return to his or her residence upon discharge and who requires certain after-care tasks and support services as set forth in that person’s discharge plan.

8:43G-11A.4 Designation of caregiver

(a) Following entry into a hospital and prior to discharge, a hospital’s discharge planning team shall offer every patient, or the patient’s legally authorized decision maker, an opportunity to designate a caregiver for after-care assistance

tasks, in accordance with the patient's discharge plan and in a timeframe consistent with the discharge planning process set forth in this subchapter.

1. A patient may designate a caregiver in an advance directive pursuant to the "New Jersey Advance Directives for Health Care Act," N.J.S.A. 26:2H-53 et seq., or the "New Jersey Advance Directives for Mental Health Care Act," N.J.S.A. 26:2H-102 et seq.

(b) The hospital's discharge planning team shall promptly document the following in a patient's medical record:

1. Every attempt to elicit the designation of a caregiver;
2. Contact information for the designated caregiver, as follows:
 - i. Name;
 - ii. Address;
 - iii. Telephone number; and
 - iv. Relationship to the patient.

(c) In the event that the patient is unconscious or otherwise incapacitated upon entry into the hospital and does not have a legally authorized decision maker, following the patient's recovery of consciousness or capacity, and if it is in the best interests of the patient, as determined at the discretion of the patient's admitting physician, the hospital's discharge planning team shall provide the patient the opportunity to designate a caregiver within a given timeframe.

(d) A patient or the patient's legally authorized decision maker has the right to:

1. Decline the designation of a caregiver; or

2. Change or revoke the designated caregiver at any time prior to discharge.

(e) For a patient who is a minor child, the following applies:

1. Where the patient has been assigned one custodial parent, the custodial parent has the right to designate the caregiver; and

2. Where the patient's parents have joint custody, the parents shall mutually designate the caregiver.

(f) The discharge planning team shall advise the patient and the designated caregiver that the designated caregiver is not obligated to perform any after-care assistance for the patient if the caregiver declines the designation.

8:43G-11A.5 Release of information

The discharge planning team shall disclose to the designated caregiver, the patient's discharge plan only after providing notice of, and obtaining written consent for, the intended disclosure from the patient or the patient's legally authorized decision maker.

8:43G-11A.6 Consultation with the designated caregiver

(a) The discharge planning team shall schedule after-care assistance training at a time convenient for the designated caregiver in accordance with N.J.A.C. 8:43G-11A.7.

(b) The discharge planning team shall meet with the designated caregiver at a time that takes into consideration:

1. The severity of patient's condition;
2. The setting in which care is to be delivered; and
3. The patient's need for after-care assistance.

(c) The hospital discharge planning team shall provide the caregiver with:

1. Copies of written instructions for the after-care tasks for which training was provided; and
2. Contact information for hospital staff who are available by telephone to respond to questions on a 24-hour a day basis.

8:43G-11A.7 After-care assistance training

(a) A hospital shall ensure that after-care assistance training offered to the designated caregiver includes instructions on performing each after-care assistance task set forth in the patient's discharge plan.

(b) A hospital shall ensure that the designated caregiver has opportunities to:

1. Choose whether this training is conducted in-person or through video technology; and
2. Ask hospital staff questions during and after the training.

(c) Hospital staff conducting the training shall answer a caregiver's questions in:

1. Non-technical language;
2. A culturally competent manner; and
3. Conformance with the language access services required at N.J.A.C.

8:43G-5.5(c).

(d) The discharge planning team shall record promptly the following information in a patient's written discharge plan:

- 1. Name and contact information of the designated caregiver;**
- 2. Date and time the after-care assistance training took place;**
- 3. A description of the after-care assistance training that was provided to**

the caregiver; and

- 4. A description of, and instructions for, all after-care assistance tasks to support the patient's ability to live in the patient's residence.**

8:43G-11A.8 Discharge

(a) The discharge planning team shall notify the designated caregiver in advance of the patient's discharge or transfer to another facility.

(b) The discharge planning team shall document promptly in the patient's medical record all attempts to contact the designated caregiver.

- 1. If required, the discharge planning team shall make multiple attempts to contact the designated caregiver.**

(c) The inability of the discharge planning team to contact a designated caregiver shall not delay a patient's discharge or transfer.