



ISSUE ALERTS

CARE ACT REQUIRES POLICY REVIEW AND ACTION FROM KANSAS HOSPITALS EFFECTIVE JULY 1

FOULSTON SIEFKIN HEALTH CARE ISSUE ALERT

June 27, 2018

By: Charles R. Hay and Lisa M. Bryers (Brown)

On July 1, 2018, the Kansas Lay Caregiver Act (or CARE Act) goes into effect. The Act recognizes the importance of caregivers to a patient's recovery after discharge from a hospital, and 35 states have already passed versions of the CARE Act through a national push from the AARP. Although many hospitals already allow for the designation of caregivers pursuant to existing standards and regulations, including Medicare Conditions of Participation, among others, **Kansas hospitals need to be aware of the requirements the Act imposes and should take this opportunity to review existing policies for compliance with applicable laws.**

Under the Act, **hospitals must give each patient or the patient's legal guardian the opportunity to designate a caregiver** following a patient's admission to the hospital for inpatient care. For the purpose of the Act, the phrase hospital includes general hospitals, special hospitals, and critical access hospitals, but the Act is silent as to the definition of an inpatient. Although not explicitly stated by the Act, it is unlikely that minor patients are encompassed by the Act's requirements due to their lack of capacity to direct their health care decisions except in very limited circumstances.

A caregiver must be over the age of 16 and have a significant relationship with the patient including, but not limited to, next of kin, partner, friend, or neighbor. This caregiver will provide aftercare to the patient after discharge and should be identified by the patient as involved with the health care of the patient. This identification and designation of the caregiver, as directed by the Act, is similar to the permissive disclosures of personal health information to individuals involved in a patient's health care found in the Health Insurance Portability and Accountability Act ("HIPAA") regulations at 45 C.F.R. § 164.510(b). A patient is not obligated to designate a caregiver, and the caregiver is not obligated to accept the designation. The patient may change the designated caregiver at any time before discharge.

FOULSTON

ATTORNEYS AT LAW

The patient's designation of a caregiver triggers certain obligations by the hospital. The hospital must notify the designated caregiver as soon as practicable before the patient is discharged or transferred to another licensed facility. The hospital must also consult with the caregiver prior to discharge to prepare the designated caregiver for the patient's plan of treatment upon discharge. This consultation should occur as soon as possible prior to discharge. The hospital must provide instructions for and education on the patient's aftercare to the designated caregiver and give the caregiver an opportunity to ask questions. The Act is generally silent as to specifics on how these instructions must occur, but it does provide that the education should be consistent with current accepted practice and based on the learning needs of the caregiver. The hospital's inability to contact the designated caregiver should not interfere with the medical care of the patient and should not delay a medically appropriate discharge or transfer. The designation of a caregiver under the Act does not give that individual the authority to make health care decisions on behalf of the patient.

Importantly, there will be no private right of action against the hospital or an employee or agent of the hospital for actions by the designated caregiver after discharge. The Act also does not provide grounds for any adverse licensure action or other disciplinary action against any hospital by the Kansas Department of Health and Environment, against any licensee of the State Board of Healing Arts, or against any licensee of the Board of Nursing.

The quickly approaching effective date of this Act is a reminder for all hospitals to review their caregiver policies to ensure compliance with the new Kansas law and existing regulations and standards. The full text of the Act can be found at http://www.kslegislature.org/li/b2017_18/asures/documents/sb68_enrolled.pdf.

For More Information

Foulston Siefkin's health care lawyers maintain a high level of expertise regarding federal and state regulations affecting the health care industry. The firm devotes significant resources to ensure our attorneys remain up-to-date on daily developments. At the same time, the relationship of our health care law practice group with Foulston Siefkin's other practice groups, including the taxation, general business, labor and employment, and commercial litigation groups, enhances our ability to consider all of the legal ramifications of any situation or strategy. For additional information on this topic, contact **Dick Hay** at dhay@foulston.com or 785.354.9413, or **Lisa Brown** at lbrown@foulston.com or 785.354.9414. For other questions, contact Foulston's health care team leader, **Brooke Bennett Aziere**, at baziere@foulston.com or 316.291.9768. For more information on the firm, please visit our website at www.foulston.com.

Established in 1919, Foulston Siefkin is the largest law firm in Kansas. With offices in Wichita, Kansas City, and Topeka, Foulston Siefkin provides a full range of legal services to clients in the areas of administrative & regulatory, agribusiness, antitrust & trade regulation, appellate law, banking & financial services, construction, creditors' rights & bankruptcy, e-commerce, education & public entity, elder law, emerging small business, employee benefits & ERISA, employment & labor, energy, environmental, estate planning & probate, family business enterprise, franchise, general business, government investigations & white-collar defense, health care, immigration, insurance defense litigation, insurance regulatory, intellectual property, litigation & disputes, mediation/dispute resolution, mergers & acquisitions, Native American law, OSHA, public policy and government relations, product liability, professional malpractice, real estate, securities, supply-chain management, tax-exempt organizations, taxation, and water rights.

This document has been prepared by Foulston Siefkin for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.

FOULSTON

ATTORNEYS AT LAW

PRACTICE AREAS

- Healthcare