

## **BILL ANALYSIS**

C.S.H.B. 2425  
By: Price  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that it would be beneficial for the caregiver of a patient discharged from a hospital to be given post-hospital care instructions in providing aftercare to the patient. C.S.H.B. 2425 seeks to address this issue by establishing requirements for a hospital to provide a patient the opportunity to designate a caregiver, notify the caregiver of the patient's discharge or transfer, and provide the caregiver information to assist the caregiver in providing any necessary aftercare.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 2425 amends the Health and Safety Code to require a hospital to provide a patient, the patient's legal guardian, or the patient's surrogate decision-maker, on admission to the hospital or before the patient is discharged or transferred to another facility, the opportunity to designate a caregiver who is at least 18 years of age, has a significant relationship with the patient, and will provide aftercare to the patient. The bill requires a hospital to document in the patient's medical record the name, telephone number, and address of the patient's designated caregiver and the relationship of a designated caregiver to the patient and to request written authorization from the patient, the patient's legal guardian, or the patient's surrogate decision-maker to disclose health care information to the patient's designated caregiver. The bill requires the hospital to promptly record in the patient's medical record that the patient, the patient's legal guardian, or the patient's surrogate decision-maker did not wish to designate a caregiver if such a person declines to designate a caregiver. The bill authorizes a patient, a patient's legal guardian, or a patient's surrogate decision-maker to change the patient's designated caregiver at any time and requires the hospital to document the change in the patient's medical record. The bill establishes that the designation of a person as the patient's caregiver does not obligate the person to serve as the patient's designated caregiver or to provide aftercare to the patient.

C.S.H.B. 2425 requires a hospital, as soon as possible before a patient's discharge or transfer to another facility but not later than the time the patient's attending physician issues a discharge order, to notify the designated caregiver of the patient's discharge or transfer. The bill prohibits the inability of the hospital to contact the designated caregiver from interfering with, delaying, or otherwise affecting any medical care provided to the patient or the discharge of the patient. The bill requires a hospital that is unable to contact the designated caregiver to promptly record in the

patient's medical record that the hospital attempted to contact the designated caregiver. The bill requires a hospital, before a patient's discharge from the hospital, to provide to the patient and designated caregiver a written discharge plan that describes the patient's aftercare needs and prescribes the required contents of the discharge plan. The bill excepts from these notice and discharge plan provisions a hospital to which a patient, a patient's legal guardian, or a patient's surrogate decision-maker declines to give authorization to disclose health care information to the designated caregiver. The bill requires a hospital, before a patient's discharge from the hospital to any setting in which health care services are not regularly provided to others, to provide the designated caregiver instruction and training as necessary for the caregiver to perform aftercare tasks.

C.S.H.B. 2425 requires the executive commissioner of the Health and Human Services Commission to adopt rules necessary to implement the bill's provisions. The bill prohibits its provisions from being construed to interfere with the rights of an agent operating under a valid advance directive in accordance with the Advance Directives Act or to alter, amend, revoke, or supersede any existing right or remedy granted under any other provision of law. The bill's provisions expressly do not create a private right of action against a hospital, a hospital employee, or a person in a contractual relationship with a hospital or against a designated caregiver. The bill prohibits a hospital, a hospital employee, or a person in a contractual relationship with a hospital from being held liable in any way for services rendered or not rendered by a patient's designated caregiver to the patient and prohibits a designated caregiver from being reimbursed by a government or commercial payer for aftercare assistance provided under the bill's provisions. The bill establishes that nothing in the bill's provisions may be construed to alter the obligation of specified entities issuing health benefit plans to provide coverage required under a health benefit plan; to affect, impede, or otherwise disrupt or reduce the reimbursement obligations of an entity issuing health benefit plans; or to affect the time at which a patient may be discharged or transferred from a hospital to another facility.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2425 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Subtitle F, Title 4, Health and Safety Code, is amended by adding Chapter 317 to read as follows:

#### CHAPTER 317. DESIGNATION OF CAREGIVER FOR RECEIPT OF AFTERCARE INSTRUCTION

Sec. 317.001. DEFINITIONS.

Sec. 317.002. DESIGNATION OF CAREGIVER. (a) On admission to a hospital or at the time the patient is discharged or transferred to another facility, the hospital shall provide the patient, the patient's legal guardian, or the patient's

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle F, Title 4, Health and Safety Code, is amended by adding Chapter 317 to read as follows:

#### CHAPTER 317. DESIGNATION OF CAREGIVER FOR RECEIPT OF AFTERCARE INSTRUCTION

Sec. 317.001. DEFINITIONS.

Sec. 317.002. DESIGNATION OF CAREGIVER. (a) On admission to a hospital or before the patient is discharged or transferred to another facility, the hospital shall provide the patient, the patient's legal guardian, or the patient's surrogate decision-

surrogate decision-maker the opportunity to designate a caregiver.

(b) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker designates a caregiver, a hospital shall:

(1) document in the patient's medical record:

(A) the name, telephone number, and address of the patient's designated caregiver; and

(B) the relationship of the designated caregiver to the patient; and

(2) request written authorization from the patient, the patient's legal guardian, or the patient's surrogate decision-maker to disclose health care information to the patient's designated caregiver.

(c) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker declines to designate a caregiver, the hospital shall promptly record in the patient's medical record that the patient, the patient's legal guardian, or the patient's surrogate decision-maker did not wish to designate a caregiver.

(d) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker declines to give authorization to a hospital to disclose health care information to the designated caregiver, a hospital is not required to comply with Sections 317.003 and 317.004.

(e) A patient, a patient's legal guardian, or a patient's surrogate decision-maker may change the patient's designated caregiver at any time, and the hospital must document the change in the patient's medical record.

(f) The designation of a person as the patient's caregiver does not obligate the person to serve as the patient's designated caregiver or to provide aftercare to the patient.

Sec. 317.003. NOTICE TO DESIGNATED CAREGIVER.

Sec. 317.004. DISCHARGE PLAN. (a) Except as provided by Section 317.002(d), as soon as possible, but not later than 24 hours before a patient's discharge from a hospital, the hospital shall consult with the designated caregiver and the patient regarding the designated caregiver's capabilities and limitations and issue a discharge plan that describes the patient's aftercare needs.

(b) A discharge plan must include:

maker the opportunity to designate a caregiver.

(b) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker designates a caregiver, a hospital shall:

(1) document in the patient's medical record:

(A) the name, telephone number, and address of the patient's designated caregiver; and

(B) the relationship of the designated caregiver to the patient; and

(2) request written authorization from the patient, the patient's legal guardian, or the patient's surrogate decision-maker to disclose health care information to the patient's designated caregiver.

(c) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker declines to designate a caregiver, the hospital shall promptly record in the patient's medical record that the patient, the patient's legal guardian, or the patient's surrogate decision-maker did not wish to designate a caregiver.

(d) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker declines to give authorization to a hospital to disclose health care information to the designated caregiver, a hospital is not required to comply with Sections 317.003 and 317.004.

(e) A patient, a patient's legal guardian, or a patient's surrogate decision-maker may change the patient's designated caregiver at any time, and the hospital must document the change in the patient's medical record.

(f) The designation of a person as the patient's caregiver does not obligate the person to serve as the patient's designated caregiver or to provide aftercare to the patient.

Sec. 317.003. NOTICE TO DESIGNATED CAREGIVER.

Sec. 317.004. DISCHARGE PLAN. (a) Except as provided by Section 317.002(d), before a patient's discharge from a hospital, the hospital shall provide to the patient and designated caregiver a written discharge plan that describes the patient's aftercare needs.

(b) A discharge plan must include:

- (1) the name and contact information of the designated caregiver;
- (2) a description of the aftercare tasks included in the discharge plan, taking into account the capabilities and limitations of the caregiver; and
- (3) the contact information for any health care services, community resources, and long-term services and supports necessary to implement the patient's discharge plan.

Sec. 317.005. INSTRUCTION IN AFTERCARE TASKS. (a) The hospital shall provide the designated caregiver instruction in the aftercare tasks described in the discharge plan under Section 317.004 in a manner that is culturally competent and in accordance with applicable requirements to provide language access services. The instruction may be provided in person or by video or other technology-based method. If a hospital offers instruction using a method other than in-person instruction, the designated caregiver may choose the method by which the designated caregiver receives the instruction.

(b) Training and instruction provided to a designated caregiver under Subsection (a) must:

- (1) to the extent practicable, be provided using clear, nontechnical language; and
- (2) include:
  - (A) a demonstration of each aftercare task that is performed by a hospital employee or a person in a contractual relationship with the hospital who is authorized by the hospital to perform the task; and
  - (B) an opportunity for the designated caregiver and patient to ask questions and receive answers regarding the aftercare tasks.
- (c) The hospital shall document in the patient's medical record the instruction given under Subsection (a), including the date and time the instruction was given to the patient and designated caregiver.

Sec. 317.006. RULES.

Sec. 317.007. RIGHTS AND REMEDIES. (a) This chapter may not be construed to:

- (1) interfere with the rights of an agent operating under a valid advance directive in accordance with Chapter 166; or

- (1) the name and contact information of the designated caregiver and the designated caregiver's relationship to the patient;
- (2) a description of the aftercare tasks that the patient requires written in a manner that is culturally competent; and
- (3) the contact information for any health care resources necessary to meet the patient's aftercare needs.

Sec. 317.005. INSTRUCTION IN AFTERCARE TASKS. Before a patient's discharge from the hospital to any setting in which health care services are not regularly provided to others, the hospital shall provide the designated caregiver instruction and training as necessary for the caregiver to perform aftercare tasks.

Sec. 317.006. RULES.

Sec. 317.007. RIGHTS AND REMEDIES. (a) This chapter may not be construed to:

- (1) interfere with the rights of an agent operating under a valid advance directive in accordance with Chapter 166; or

(2) alter, amend, or revoke any existing right or remedy granted under any other provision of law.

(b) This chapter does not create a private right of action against a hospital, a hospital employee, or a person in a contractual relationship with a hospital.

(c) A hospital, a hospital employee, or a person in a contractual relationship with a hospital may not be held liable in any way for services rendered or not rendered by a patient's designated caregiver to the patient.

(d) A designated caregiver may not be reimbursed by a government or commercial payer for aftercare assistance provided under this chapter.

(e) Nothing in this chapter may be construed:

(1) to alter the obligation of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or other entity issuing health benefit plans to provide coverage required under a health benefit plan;

(2) to affect, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or other entity issuing health benefit plans; or

(3) to affect the time at which a patient may be discharged or transferred from a hospital to another facility.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

(2) alter, amend, revoke, or supersede any existing right or remedy granted under any other provision of law.

(b) This chapter does not create a private right of action against:

(1) a hospital, a hospital employee, or a person in a contractual relationship with a hospital; or

(2) a designated caregiver.

(c) A hospital, a hospital employee, or a person in a contractual relationship with a hospital may not be held liable in any way for services rendered or not rendered by a patient's designated caregiver to the patient.

(d) A designated caregiver may not be reimbursed by a government or commercial payer for aftercare assistance provided under this chapter.

(e) Nothing in this chapter may be construed:

(1) to alter the obligation of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or other entity issuing health benefit plans to provide coverage required under a health benefit plan;

(2) to affect, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or other entity issuing health benefit plans; or

(3) to affect the time at which a patient may be discharged or transferred from a hospital to another facility.

SECTION 2. Same as introduced version.