



OHA Opposes SB 1536 – Caregiver Designation

March 2014

SB 1536 (*Crain/Wright*) requires hospitals to provide each patient or patient's legal guardian with an opportunity to designate at least one caregiver no later than 24 hours following the patient's entry into a hospital, and prior to the patient's discharge or transfer. The bill requires that a hospital consult with the designated caregiver "regarding the caregiver's capabilities and limitations" and "issue a discharge plan to the caregiver accordingly and provide the caregiver with an opportunity to receive instruction in all after-care tasks."

Concerns of the Oklahoma Hospital Association about SB 1536

- **Hospitals have multiple processes already in place to plan for the discharge of a patient.** This is a complex process that includes many different medical and health professionals. The nature of this important function is very comprehensive, making this legislation unnecessary.
- The requirements of this legislation assume the discharge planning for a patient is a static process and that **"one size fits all."** The discharge plan is continually developed as the condition of the patient progresses or digresses. It often involves much more than a phone call at the end of the admission. This legislation is irrelevant and unnecessary considering the diverse situations of patients.
- Hospitals are **already required** federally by Medicare, locally by the Oklahoma State Department of Health and by accrediting organizations, to have processes in place to ensure patients and their representatives understand their discharge instructions and medical orders and have a smooth transition to the next level of care.
 - The federal regulations, called *Medicare Conditions of Participation – discharge regulations* assure the rights of the patient to privacy and to participate in their health care planning.
 - These regulations continually stress the need to include the patient's representative as necessary in the patient's care planning.¹
 - Medicare governs all patient care in most circumstances, including patients with private insurance, other government insurance, self-pay and the uninsured.
- The Medicare Conditions of Participation are very clear that **a hospital shall not delay the patient's discharge.** The requirements in this bill create the risk of a discharge delay and subsequent penalties on the hospital.
- **SB 1536 creates additional legal liability for the hospital** by creating a situation where the clinical staff must determine if the caregiver is qualified to administer the aftercare required after discharge. There are no parameters for the clinical staff to make such a determination of a lay person and would leave the hospitals and their staff open to litigation about whether a patient was released to a caregiver who was not qualified to administer the aftercare.

¹ Medicare Conditions of Participation (COPs) at 45 C. F. R. 482.43 and Oklahoma State Health Department "Revision to State Operations Manual (SOM), Hospital Appendix A – Interpretive Guidelines for 42 CFR 482.43, Discharge Planning per CMS" (May 2013).