

CORRECTED
SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 68

As Amended by Senate Committee on Public
Health and Welfare

Brief*

SB 68, as amended, would create the Kansas Lay Caregiver Act (Act). The bill would include the following definitions:

- “Aftercare” to mean assistance that is provided by a caregiver to an eligible patient after discharge of the patient from the hospital, is related to the condition of the patient at the time of discharge, and does not require professional licensure in order to perform the assistance;
- “Caregiver” to mean an individual who is 16 years of age or older, has a significant relationship with the patient, provides aftercare to an individual, and is identified by the patient or the patient’s legal guardian as a person who is involved with the healthcare of the patient;
- “Discharge” to mean the release of a patient from hospital care to the residence or temporary residence of the patient following an inpatient admission;
- “Legal guardian” to mean an individual who is appointed by a court to make decisions regarding the healthcare of a patient; and

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “Residence” to mean the dwelling the patient considers to be the home of the patient, but does not include any rehabilitative facility, hospital, nursing home, assisted living facility, group home, or other healthcare facility licensed by the Kansas Department of Health and Environment (KDHE).

A hospital would be required to provide each patient, or the patient’s legal guardian, with an opportunity to designate a caregiver following the patient’s admission into the hospital and prior to the discharge of the patient. Prior to discharge, a patient would be allowed to elect to change the designated caregiver; however, a patient would not be required to designate a caregiver. The bill would not require an individual designated as a caregiver by a patient to accept the role of caregiver.

A hospital would be deemed to have complied in full with the Act if the patient or the patient’s legal guardian:

- Declines to designate a caregiver when given the opportunity; or
- Objects to the disclosure of medical information to the caregiver regarding the patient.

If a patient has designated a caregiver, the hospital would be required to notify the designated caregiver concerning the discharge or transfer of the patient to another licensed facility as soon as practicable prior to discharge or transfer. In the event the hospital is unable to contact the designated caregiver, such lack of contact would not interfere with the medical care or appropriate discharge provided to the patient. As soon as practicable prior to the discharge of the patient, the hospital would be required to attempt to consult with the designated caregiver to prepare the caregiver to provide aftercare for the patient. The hospital would be required to provide the patient and the caregiver an opportunity to ask questions during the consultation.

At or before discharge, the hospital would be required to:

- Provide the caregiver with any discharge instructions for the patient; and
- Educate the caregiver concerning the aftercare of the patient in a manner consistent with current accepted practices, based on learning needs of the caregiver, and that allows the caregiver the opportunity to ask questions about aftercare.

In the event the hospital is unable to contact the designated caregiver, such lack of contact would not interfere with, delay, or otherwise affect an appropriate discharge of the patient.

The bill would not:

- Confer upon a caregiver any authority to make healthcare decisions on behalf of the patient;
- Create a private right of action against a hospital, hospital employee, or duly authorized agent of the hospital for any acts or omissions, including by a caregiver;
- Remove the obligation of a third-party payer to cover a healthcare item or service that the third-party payer is obligated to provide to a patient under the terms of a valid agreement; or
- Provide grounds for any adverse licensure action or other disciplinary action against any hospital by KDHE, against any licensee of the State Board of Healing Arts, or against any licensee of the Board of Nursing.

Implementation of the Act would begin July 1, 2018.

Background

The bill was introduced by the Senate Committee on Public Health and Welfare. In the Senate Committee hearing, proponent testimony was provided by Senator Petersen and representatives of the AARP, Alzheimer's Association of Central and Western Kansas, Community Initiatives and Wellness at Brewster Place, and Kansas Advocates for Better Care. Proponents stated the bill would ensure proper aftercare instructions would be provided to a caregiver. Written-only proponent testimony was provided by the Kansas Health Care Association and Kansas Center for Assisted Living.

Opponent testimony was provided by representatives of Rice Community Healthcare, Holton Community Hospital, and Kansas Hospital Association. Opponents stated hospitals are currently providing the services set forth in the Act; therefore, a law is not needed. Written-only opponent testimony was provided by Sheridan County Health Complex. No other testimony was provided.

The Senate Committee amended the bill to delay implementation of the Act to January 1, 2018, and to clarify failure to comply with the Act would not allow adverse licensure action or other disciplinary action to be taken against hospitals or various licensed health care professionals.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, enactment of the bill would have no fiscal effect on the Kansas Insurance Department. KDHE was unable to estimate any fiscal effect resulting from the enactment of the bill. Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.