

## 2015 HOUSE BILL NO. 1279 - CARE ACT OVERVIEW

### OVERVIEW

As introduced, 2015 House Bill No. 1279 would have directed hospitals to comply with a statutory protocol to allow patients to designate a caregiver and at discharge to give that caregiver an opportunity to be informed of the patient's discharge plan. This bill was modeled on the AARP Caregiver Advise, Record, Enable (CARE) Act. A copy of House Bill No. 1279 is attached as [Appendix A](#) and a copy of the AARP CARE Act is attached as [Appendix B](#).

As approved, House Bill No. 1279 was houghoused and provided for a Legislative Management study of family caregiver supports and services. This study was assigned to the interim Human Services Committee. At the request of the Human Services Committee, this memorandum provides an overview of House Bill No. 1279, as introduced, and a comparison to similar legislation passed in Nevada, Oregon, and Utah.

### HOUSE BILL NO. 1279 - INTRODUCED

As introduced, House Bill No. 1279 would have created North Dakota Century Code Chapter 23-48, a four-section chapter regarding a hospital patient's designation of a caregiver to assist with aftercare.

#### Section 23-48-01 - Definitions

This section would have established definitions for the following terms:

1. Aftercare;
2. Caregiver;
3. Entry;
4. Hospital;
5. Release; and
6. Residence.

#### Section 23-48-02 - Designation of Caregiver

This section would have directed a hospital to provide a patient or that patient's legal guardian with an opportunity to designate a caregiver. The hospital would have to provide this opportunity within 24 hours of admission and again at release or transfer of that patient. Throughout this bill the patient's guardian is referenced.

This section would have provided if the patient is incapacitated at admission, the 24 hours does not begin until the patient regains capacity. If the patient declines to designate a caregiver, the hospital would have been required to document this in the patient's medical records.

If the patient designates a caregiver, the hospital would have been directed to record this information in the patient's medical records and to request the patient provide written consent to allow the hospital to release medical information to the patient's designated caregiver. If the patient declines to provide this consent, the hospital would have been relieved of further duties to notify the caregiver of discharge and transfer information.

This section would have made it clear a patient is not required to designate a caregiver and the patient retains the ability to change a caregiver designation at any time and the hospital would have had 24 hours following this change to update the patient's medical records. Additionally, this section would have clarified that the act of being designated a caregiver does not obligate that person to perform any aftercare tasks for the patient.

#### 23-48-03 - Caregiver Notice and Instructions - Rules

This section would have established the hospital's duties if a patient designates a caregiver. At the point of release of a patient or transfer to another hospital or facility, the hospital would have been required to notify the designated caregiver at least 4 hours before such discharge or transfer.

In the case of a transfer, this section would have directed the transferring hospital to include the name and contact information of the designated caregiver in the patient's discharge plans provided to the receiving hospital or facility.

This section would have provided that before release of a patient from a hospital, the hospital would have been required to consult with the caregiver and patient regarding the caregiver's capabilities and limitations.

Additionally, this section would have required the hospital's discharge plan to describe a patient's aftercare needs at the patient's residence.

This section specified the discharge plan would have had to include the name and contact information of the caregiver; a description of all aftercare tasks necessary to maintain the patient's ability to live at the patient's residence, taking into account the capabilities and limitations of the caregiver; and contact information for any health care, community resources, and long-term services and supports necessary to successfully carry out the patient's discharge plan.

Additionally, this section would have required the hospital's discharge plan to include a demonstration of the aftercare tasks opportunity for the caregiver and patient to have questions answered about aftercare tasks and would have directed the hospital to include the instructions in the patient's medical records.

Finally, this section would have authorized the State Health Council to adopt rules to implement this new chapter.

**23-48-04 - Limitations**

This section would have clarified that Chapter 23-48 may not be construed to interfere with the rights of an agent under the law relating to health care directives; would have directed hospitals to document cases for which unique circumstances require the hospital to vary from complying with the provisions of Chapter 23-48; and would have provided Chapter 23-48 does not create a private right of action against a hospital, hospital employee, or an individual with whom a hospital has a contractual relationship and does not supersede or replace existing rights or remedies under any other provision of law.

**OTHER STATES**

AARP reports the CARE Act is the law in 18 states, including Nevada, Oregon, and Utah. The following is a summary of the how these states enacted the CARE Act.

**Nevada**

In 2015, Nevada enacted Senate Bill No. 177, which is modeled on the AARP CARE Act. A copy of this bill is attached as [Appendix C](#). This bill was introduced February 19, 2015; passed, as amended, by the Senate, April 13, 2015 - 21 yeas, 0 nays; passed by the Assembly, April 30, 2015 - 42 yeas, 0 nays; and approved by the Governor, May 6, 2015.

**Oregon**

In 2015, Oregon enacted House Bill No. 3378, which is modeled on the AARP CARE Act. A copy of this bill is attached as [Appendix D](#). This bill was introduced February 27, 2015; passed, as amended, by the House, April 30, 2015 - 56 yeas, 0 nays; passed by the Senate, May 27, 2015 - 29 yeas, 0 nays; and signed by the Governor, June 4, 2015.

**Utah**

On December 15, 2015, the Utah Department of Health rule implementing an administrative version of the AARP CARE Act was published. A copy of Utah Administrative Code Section R432-100-12, as amended, is attached as [Appendix E](#).

**Comparison**

| AARP CARE Act Provision   | North Dakota HB 1279  | Nevada SB 177   | Oregon HB 3378  | Utah by Rule  |
|---|---|---|---|---|
| <b>Definitions</b>  |   |   |   |   |
| <ul style="list-style-type: none"> <li>• Aftercare</li> <li>• Caregiver</li> <li>• Discharge</li> <li>• Entry</li> <li>• Hospital</li> <li>• Residence</li> </ul> | <ul style="list-style-type: none"> <li>• Aftercare</li> <li>• Caregiver</li> <li>• Entry</li> <li>• Hospital</li> <li>• Release</li> <li>• Residence</li> </ul> | <ul style="list-style-type: none"> <li>• Aftercare</li> <li>• Caregiver</li> <li>• Representative of the patient</li> </ul> | <ul style="list-style-type: none"> <li>• Aftercare</li> <li>• Discharge</li> <li>• Lay caregiver</li> </ul> | <ul style="list-style-type: none"> <li>• Caregiver</li> </ul> |

| AARP CARE Act Provision   | North Dakota HB 1279  | Nevada SB 177  | Oregon HB 3378  | Utah by Rule   |
|---|---|--|---|--|
| <b>Opportunity to designate caregiver</b>   |   |  |   |  |
| <p>Opportunity to designate caregiver within 24 hours of entry and before discharge or transfer</p> <p>Incapacity at entry</p> <p>In event patient declines to designate or designated caregiver declines to accept designation</p> <p>Written authorization</p> <p>Patient right to change designation</p> <p>Hospital record of designation and change of designation</p> <p>No duty if designated caregiver</p> <p>No duty of patient to designate caregiver</p> | <p>Opportunity to designate caregiver within 24 hours of entry and before discharge or transfer</p> <p>Incapacity at entry</p> <p>In event patient declines to designate or designated caregiver declines to accept designation</p> <p>Written authorization</p> <p>Patient right to change designation</p> <p>Hospital record of designation and change of designation</p> <p>No duty if designated caregiver</p> <p>No duty of patient to designate caregiver</p> | <p>Who is authorized to make designation</p> <p>Opportunity at admission to designate caregiver</p> <p>Incapacity at entry</p> <p>Written authorization</p> <p>Patient right to change designation if caregiver unable or unwilling</p> <p>Hospital record of designation and change of designation</p> <p>No duty if designated caregiver</p> | <p>Hospital adopt and maintain written discharge policies, which must include:</p> <ul style="list-style-type: none"> <li>• Hospital assessment of patient's ability for self-care after discharge</li> <li>• Patient opportunity to designate lay caregiver</li> </ul> | <p>Opportunity to designate caregiver</p> <p>Written authorization</p> <p>Hospital record of designation and change of designation</p> |
| <b>Notice to designated caregiver</b>   |   |  |   |  |
| <p>Hospital duty to notify caregiver at least 4 hours before patient discharge or transfer</p>  | <p>Hospital duty to notify caregiver at least 4 hours before patient discharge or transfer</p> <p>Hospital duty in case of transfer to inform receiving facility</p>  | <p>Hospital duty to notify caregiver before discharge</p>  | <p>Hospital adopt and maintain written discharge policies, which must include:</p> <ul style="list-style-type: none"> <li>• Notification of lay caregiver of discharge or transfer</li> </ul>   | <p>Hospital duty to notify caregiver before discharge or transfer</p>  |
| <b>Instruction to caregiver</b>   |   |  |   |  |
| <p>Hospital issuance of discharge plan at least 24 hours before discharge</p> <p>Hospital consultation with caregiver regarding capabilities and limitations at least 24 hours before discharge</p>   | <p>Hospital issuance of discharge plan</p> <p>Hospital consultation with caregiver regarding capabilities and limitations</p>   | <p>Hospital issuance of discharge plan</p>   |   | <p>Hospital issuance of discharge plan</p>   |

| AARP CARE Act Provision   | North Dakota HB 1279  | Nevada SB 177   | Oregon HB 3378  | Utah by Rule  |
|---|---|---|---|---|
| <p>Discharge plan must include:</p> <ul style="list-style-type: none"> <li>• Caregiver contact information;</li> <li>• Description of aftercare tasks; and</li> <li>• Contact information for third-party supports</li> </ul> | <p>Discharge plan must include:</p> <ul style="list-style-type: none"> <li>• Caregiver contact information;</li> <li>• Description of aftercare tasks; and</li> <li>• Contact information for third-party supports</li> </ul> | <p>Discharge plan must include:</p> <ul style="list-style-type: none"> <li>• Caregiver contact information;</li> <li>• Description of aftercare tasks, including any requirements to maintain the ability of patient to reside at home;</li> <li>• Contact information for third-party supports; and</li> <li>• Contact information for hospital employee available before discharge to answer questions concerning discharge plan</li> </ul> | <p>Discharge policies must specify requirements for documenting identity of lay caregiver and the details of the discharge plan</p> <p>Discharge policies may incorporate evidence-based practices</p> <p>Discharge policies must ensure discharge planning is appropriate to the condition of the patient and to meet the needs and acuity of the patient and the abilities of the lay caregiver</p> | <p>Discharge plan must include:</p> <ul style="list-style-type: none"> <li>• Caregiver contact information;</li> <li>• Description of continuing care tasks; and</li> <li>• Contact information for third-party supports</li> </ul>   |
| <p>Hospital instructions to caregivers must include:</p> <ul style="list-style-type: none"> <li>• Live demonstration; and</li> <li>• Opportunity for caregiver to ask questions</li> </ul>                                    | <p>Hospital instructions to caregivers must include:</p> <ul style="list-style-type: none"> <li>• Live demonstration; and</li> <li>• Opportunity for caregiver to have questions answered</li> </ul>                          | <p>Hospital consultation with caregiver regarding aftercare, which must include:</p> <ul style="list-style-type: none"> <li>• Demonstration of aftercare; and</li> <li>• Opportunity for caregiver to ask questions</li> </ul>  | <p>Hospital adopt and maintain written discharge policies, which must include:</p> <ul style="list-style-type: none"> <li>• Patient and lay caregiver opportunity to participate in discharge planning; and</li> <li>• Patient and lay caregiver provided instruction or training before discharge</li> </ul>   | <p>Hospital records document attempted contact with caregiver</p> <p>Opportunity for instructions in continuing care tasks in discharge plan, including:</p> <ul style="list-style-type: none"> <li>• Demonstration of continuing care tasks;</li> <li>• Opportunity for patient and caregiver to ask questions and have questions answered; and</li> <li>• Education and counseling regarding medications</li> </ul> |
| <p>Hospital record to include instructions</p>  | <p>Hospital record to include instructions</p>  | <p>Hospital record to include hospital actions and instructions</p> <p>If hospital unable to reach caregiver to provide required information, hospital directed to discharge or transfer as planned</p>   |   | <p>Hospital records to include instructions</p>   |
| <p>Rules</p>  | <p>Rulemaking authority of State Health Council</p>   |   |   |   |

| AARP CARE Act Provision   | North Dakota HB 1279  | Nevada SB 177  | Oregon HB 3378  | Utah by Rule  |
|---|---|--|---|---|
| <b>Noninterference with powers of existing health care directives</b>             |   |  |   |   |
| No interference with health care directive<br><br>Timing of health care directive | No interference with health care directives<br><br>Hospital duty to document if unique circumstance prevents compliance<br><br>No private right of action created and law does not supersede or replace existing rights or remedies | Hospital acting in compliance with law not liable for any aftercare provided improperly or not provided by the caregiver | Hospital not required to adopt discharge policies that would delay discharge or transfer or that would require disclosure of protected health information without obtaining patient's consent | Hospital's inability to contact caregiver may not interfere with, delay, or otherwise affect medical care, discharge, or transfer |

ATTACH:5