Frequently Asked Questions about the Caregiver Advise, Record and Enable Act (CARE Act)

1. If a patient is not capable of designating a lay caregiver and a designated healthcare representative is not available, nothing should delay or otherwise affect care.

2. As noted in the February 16, 2016 IHA Legal Memo, "the opportunity to designate a lay caregiver need only be offered to those admitted inpatients who are adults, or are otherwise able to consent to health care per Indiana's patient consent laws under Indiana Code 16-36-1." Generally, this means a person 18 years of age or older, but it does include certain minors under rather limited circumstances (such as those who are legally emancipated). It would not apply to newborns.

3. Hospitals have asked if they can incorporate questions or information required under the CARE Act into other intake processes. For example, forms for general consent for treatment or medical information release forms. **There is no mandate for a separate form or process under the CARE Act.** We encourage you, however, to have any changes in such forms reviewed by your legal counsel to ensure compliance with existing and new requirements.

4. If a patient designates a lay caregiver who is also their designated healthcare representative, it would be advisable to record the information regarding the lay caregiver in the patient's medical record. Even if this is duplicate information, a healthcare representative and lay caregiver are distinct roles, and the requirement to document the designation/refusal to designate a lay caregiver stands regardless of whether there is an appointed healthcare representative or any other legally recognized representative (POAs and guardians).

5. If a patient has a professional home health aide, this person cannot be a lay caregiver. A home health aide or any other health professional who provides care to the patient within a nursing facility or any other licensed health care facility cannot be named as the lay caregiver. Please keep in mind that a patient can decline to name a lay caregiver—it is not required.

6. The "at home care plan" required under the CARE Act may be the same as a discharge plan under Medicare's Conditions of Participation discharge planning requirements. If a "discharge plan" has been developed for the patient under the Medicare Conditions of Participation's discharge planning requirements, then the hospital need not develop an "at home care plan" for the purposes of the CARE Act. The hospital's duty to develop the "at home care plan" is satisfied by the preparation of a patient's "discharge plan".

7. Upon future readmissions, patients should still be provided subsequent opportunities to designate a lay caregiver. The CARE Act does not allow for a hospital to default to the lay caregiver in the medical record from a previous admission.

8. Hospitals should also take note that CMS recently proposed revising its existing discharge planning requirements – find more information here. These regulations have not yet been finalized, but you can view the American Hospital Association's helpful summary of the proposed revisions here.