Senate Bill 661 Patient Bill of Rights

Position: Oppose

Bill Summary
SB 661 would require each administrator of a hospital to provide patients with a patient’s bill of rights; provide certain patients with a translator or an interpreter; conspicuously post copies of the patient’s bill of rights in certain areas of the hospital; provide annual training to certain staff to ensure the staff’s knowledge and understanding of the patient’s bill of rights; alter the rights that must be included in the patient’s bill of rights; and more.

MHA Position
Hospitals are among the most tightly regulated entities in Maryland. When it comes to a hospital’s Patient Bill of Rights, regulation comes nationally from the Centers for Medicare & Medicaid Services through its Medicare Conditions of Participation (COPs), the Joint Commission’s Standards on Patient Rights and Responsibilities, the Emergency Medical Treatment and Active Labor Act, the Health Insurance Portability and Accountability Act (HIPAA), and more. This is in addition to state agencies like the Maryland Health Care Commission and the Office of Health Care Quality. Each has a hand in ensuring that the care provided to patients is inclusive, thorough and accessible.

While we agree with the intent of SB 661, defining these standards in statute would be duplicative and once standards like the Conditions of Participation are updated, as they are routinely, Maryland’s hospitals would be held to two, potentially conflicting standards. Maryland’s existing law recognizes these extensive regulatory requirements by mandating compliance with the Joint Commission guidelines, which align with all federal requirements, rather than spelling specific requirements out in statute. The Joint Commission requires hospitals to inform every patient about their rights as a national standard for hospital accreditation. Unlike most states every Maryland hospital is accredited by the Joint Commission.

Beyond the burden of redundancy, several of the bill’s specific provisions could inadvertently impede the delivery of care. For example, to protect the safety of hospital staff in certain units, first names are used, which would be in conflict with the requirement included in the bill. Requiring hospitals to specify who among families and others is given visitation priority not only falls outside of the purview of hospitals to regulate visitors, it is also contrary to the open visiting policy the majority of Maryland’s hospitals have implemented. Requiring a specific staff member to be assigned as a patient advocate while a patient’s family member or designee is being contacted does not recognize the existing policies around establishing patient guardianship.

While Maryland’s hospitals share the goal of protecting and promoting patients’ rights, the dramatic expansion of Maryland’s existing law runs the risk of undermining this effort by inserting complexity and redundancy.

For these reasons and more, we urge you to give SB 661 an unfavorable report.
Crosswalk of Provisions of SB 661 - Patient Bill of Rights and Existing Standards

1) RECEIVE TREATMENT WITHOUT DISCRIMINATION AS TO RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, DISABILITY, SEXUAL ORIENTATION, GENDER IDENTITY, AGE, OR SOURCE OF PAYMENT

- Joint Commission Standard – RI.01.01.01
- CMS Conditions of Participation – §482.13(h)(3)
- Title VI of the Civil Rights Act, among other laws, forbids discrimination in hospitals. Other applicable laws include the Americans with Disabilities Act

2) RECEIVE CONSIDERATE, RESPECTFUL, AND COMPASSIONATE CARE IN A CLEAN AND SAFE ENVIRONMENT FREE OF UNNECESSARY RESTRAINTS AND FREE FROM ALL FORMS OF ABUSE, NEGLECT, OR MISTREATMENT

- Joint Commission Standard – RI.01.06.03
- CMS Conditions of Participation – §482.13(c)(2), §482.13(c)(3), §482.13(e) & §483.13(b)

3) RECEIVE EMERGENCY CARE FOR ANY MEDICAL CONDITION THAT WILL DETERIORATE FROM FAILURE TO PROVIDE PROMPT TREATMENT

- Addressed by the federal Emergency Medical Treatment & Labor Act (EMTALA), which requires hospitals to provide treatment for an emergency medical condition, including active labor, regardless of an individual's ability to pay

4) BE INFORMED OF THE NAME AND POSITION OF THE DOCTOR WHO WILL BE IN CHARGE OF THE PATIENT’S CARE IN THE HOSPITAL

- Joint Commission Standard – RI.01.04.01
- CMS Conditions of Participation – §482.61(c)(1)(iv)

5) KNOW THE NAMES, POSITIONS, AND FUNCTIONS OF ANY OTHER HOSPITAL STAFF INVOLVED IN THE PATIENT’S CARE

- Joint Commission Standard – RI.01.04.01
- CMS Conditions of Participation – §482.61(c)(1)(iv)

6) RECEIVE COMPLETE AND CURRENT INFORMATION ABOUT THE PATIENT’S DIAGNOSIS, TREATMENT, RISKS, AND PROGNOSIS

- Joint Commission Standard – RI.01.01.03 & RI.01.02.01
- CMS Conditions of Participation – §482.13(b)(2)

7) RECEIVE A PROMPT AND REASONABLE RESPONSE TO QUESTIONS OR REQUESTS

- Not specifically addressed by CMS and Joint Commission, and ‘prompt’ could be difficult to define. Time frames will vary greatly from one patient to the next depending on injury or disease progression, responses to treatment and the turnaround time for diagnostic testing

8) RECEIVE ALL INFORMATION NEEDED TO GIVE INFORMED CONSENT TO ANY PROPOSED PROCEDURE OR TREATMENT, INCLUDING:
THE POSSIBLE RISKS AND BENEFITS OF THE PROPOSED PROCEDURE OR TREATMENT, AND

ALTERNATIVES TO THE PROPOSED PROCEDURE OR TREATMENT

- Joint Commission Standard – RI.01.03.01
- CMS Conditions of Participation – §482.13(b)(2), §482.24(c)(4)(v), §483.10(d)(2) & §482.58(b)(1)

9) MAKE DECISIONS REGARDING THE HEALTH CARE RECOMMENDED BY THE PHYSICIAN OR MEDICAL STAFF

- Joint Commission Standard – RI.01.02.01
- CMS Conditions of Participation – §482.13(b)(1), §482.13(b)(2), §482.13(b)(4), §482.43(b)(1), §483.10(b)(3), §483.10(d)(2), §483.10(d)(3) & §482.58(b)(1)

10) REFUSE TREATMENT, EXAMINATION, OR OBSERVATION BY HOSPITAL STAFF WITHOUT FEAR OF REPRISAL; AND BE INFORMED OF POTENTIAL HEALTH CONSEQUENCES OF REFUSING TREATMENT, EXAMINATION, OR OBSERVATION

- Joint Commission Standard – RI.01.02.01 & RI.01.03.01
- CMS Conditions of Participation – §482.13(b)(2), §482.24(c)(4)(v), §483.10(d)(2) & §482.58(b)(1)

11) PARTICIPATE IN ALL DECISIONS ABOUT THE PATIENT’S DISCHARGE FROM THE HOSPITAL; AND RECEIVE FROM THE HOSPITAL A WRITTEN DISCHARGE PLAN AND WRITTEN DESCRIPTION OF HOW TO APPEAL THE DISCHARGE AND REMAIN UNDER HOSPITAL CARE

- Though not addressed in the patient rights and responsibilities section, discharge planning is extensively regulated by Joint Commission Standards
- CMS Conditions of Participation also extensively discuss discharge planning

12) REFUSE TO TAKE PART IN RESEARCH

IN DECIDING WHETHER OR NOT TO PARTICIPATE IN A RESEARCH STUDY, RECEIVE A FULL EXPLANATION OF THE POTENTIAL RISKS AND BENEFITS OF THE RESEARCH; AND WITHDRAW FROM A RESEARCH STUDY AT ANY TIME WITHOUT IMPACTING THE PATIENT’S ACCESS TO STANDARD CARE

- Joint Commission Standard – RI.01.03.05
- CMS Conditions of Participation – §483.10(b)(4) & §482.58(b)(1)
- Addressed by federal law, which extensively regulates the use of human subjects in research, including the need for an informed consent that details the right to refuse without reprisal

13) COMPLAIN OR FILE A GRIEVANCE ABOUT THE CARE AND SERVICES THE PATIENT IS RECEIVING, WITHOUT FEAR OF REPRISAL, AND RECEIVE A WRITTEN RESPONSE FROM THE HOSPITAL; AND IF THE PATIENT IS NOT SATISFIED WITH THE HOSPITAL’S

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1 Code of Federal Regulations, Title 45, Part 46, Protection of Human Subjects
RESPONSE, COMPLAIN TO THE DEPARTMENT, WHICH WILL ADDRESS THE SPECIFIC COMPLAINT IN WRITING

- Joint Commission Standard – RI.01.07.01
- CMS Conditions of Participation – §482.13(a)(2) & §482.13(a)(2)(i)

14) IF THE PATIENT IS ALONE IN THE HOSPITAL AND DISORIENTED OR OTHERWISE INCAPACITATED, HAVE A PATIENT ADVOCATE ASSIGNED FROM THE HOSPITAL STAFF WHILE A FAMILY MEMBER OR DESIGNEE IS BEING CONTACTED TO ENSURE THE PATIENT’S SAFETY AND CONTINUED CARE BY THE MEDICAL STAFF AT THE HOSPITAL

- Joint Commission Standard – RI.01.02.01
- CMS Conditions of Participation – §482.13(a)(1), §482.13(b)(1), §482.13(b)(2), §482.43(b)(1) & §483.10(d)(3)
- Maryland law also dictates provisions to establish legal guardianship

15) MAINTAIN PRIVACY AND DIGNITY WHILE IN THE HOSPITAL WITH RESPECT TO THE PATIENT’S MEDICAL AND PERSONAL CARE, INCLUDING CASE DISCUSSION, CONSULTATION, EXAMINATION, TREATMENT, AND PERSONAL HYGIENE

- Joint Commission Standard – RI.01.01.01
- CMS Conditions of Participation – §482.13(c)(1), §483.10(e), §483.10(i), §483.10(e)(1), §483.10(e)(2), §483.10(i)(1), §483.10(e)(3)(i), §483.10(e)(3)(ii) & §482.58(b)(1)

16) HAVE HOSPITAL STAFF MAINTAIN CONFIDENTIALITY OF ALL PERSONAL AND MEDICAL INFORMATION AND RECORDS REGARDING THE PATIENT’S CARE; AND APPROVE OR REFUSE THE RELEASE OF RECORDS TO ANYONE OUTSIDE THE HOSPITAL

- Joint Commission Standard – IM.02.01.01
- Patient confidentiality is extensively addressed by federal law, specifically the Health Insurance Portability and Accountability Act (HIPAA). Health insurers and health departments need timely access to medical records and are covered entities under HIPAA. Patient consent is not required to release information to these covered entities, and without that protection, hospitals’ ability to bill, inform health departments to protect public safety and perform other necessary functions could be put in jeopardy

17) REVIEW THE PATIENT’S MEDICAL RECORDS WITHOUT CHARGE

- HIPAA requires that health care providers furnish copies of health records within 30 days and prohibits them from charging fees outside of the costs associated with mailing or copying

18) OBTAIN A COPY OF MEDICAL RECORDS FOR A REASONABLE FEE SET BY THE HOSPITAL; OR IF THE PATIENT CANNOT AFFORD TO PAY A REASONABLE FEE FOR A COPY OF MEDICAL RECORDS, RECEIVE A COPY OF MEDICAL RECORDS WITHOUT CHARGE OR AT A NEGOTIATED FEE

- HIPAA, which requires that health care providers furnish copies of health records within 30 days and prohibits them from charging fees outside of the costs associated with mailing or copying

19) RECEIVE A CLEAR AND UNDERSTANDABLE ITEMIZED BILL AND EXPLANATION OF ALL CHARGES, REGARDLESS OF SOURCE OF PAYMENT
Maryland hospitals are required, under state law, to ensure the availability of staff who are trained to work with a patient, the patient’s family, and the patient’s authorized representative in order to understand:

- The hospital bill
- The patient’s rights and obligations with regard to the hospital bill, including the patient’s rights and obligations with regard to reduced–cost medically necessary care due to a financial hardship
- How to apply for the Maryland Medical Assistance Program and any other programs that may help pay the hospital bill
- How to contact the hospital for additional assistance

20) SPECIFY THOSE FAMILY MEMBERS AND OTHER ADULTS WHO ARE TO BE GIVEN PRIORITY TO VISIT THE PATIENT CONSISTENT WITH THE PATIENT’S ABILITY TO RECEIVE VISITORS

- Joint Commission Standard – RI.01.07.05
- CMS Conditions of Participation – §483.10(j)(1)(vii), §483.10(j)(1)(viii) & §482.58(b)(1)

21) RECEIVE REASONABLE CONTINUITY OF CARE WITH RESPECT TO STAFF ASSIGNMENT

- Clinicians have the autonomy to make staffing assignments based on patient acuity, the skill level of staff on-duty, and other considerations.

22) OBTAIN ACCESS, IF NEEDED, TO A LANGUAGE ASSISTANCE PROGRAM TO ENSURE FULL UNDERSTANDING OF AND ACCESSIBILITY TO THE HOSPITAL’S SERVICES AND REASONABLE ACCOMMODATIONS

- Joint Commission Standard – RI.01.01.03
- CMS Conditions of Participation – §482.13(a)(2)(i), §483.10(b)(3), §483.12(a)(4)(i), §483.12(a)(4)(iii), §482.58(b)(1) & §482.58(b)(2)

23) EXPECT AND RECEIVE APPROPRIATE ASSESSMENT, MANAGEMENT, AND TREATMENT OF PAIN AS AN INTEGRAL COMPONENT OF THE PATIENT’S CARE

- Joint Commission Standard – RI.01.01.01 & PC.01.02.07

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