Dear Chief Executive Officer:

This letter is to inform you about recently enacted legislation, known as the CARE Act (Caregiver Advise, Record and Enable Act), Public Health Law Article 29-CCCC (attached) and effective April 23rd 2016. A general hospital inpatient must be given an opportunity to formally identify a caregiver (such as a relative, partner, friend or neighbor) who would provide after-care assistance. This letter will summarize the hospital’s responsibilities to comply with this new law and reinforce existing regulatory requirements for patient designated family/representative participation in the patient’s discharge plan.

**OPPORTUNITY TO IDENTIFY CAREGIVER**

The New York State Department of Health expects hospitals to develop a policy and procedure to implement the requirements of the CARE Act. The CARE Act requires the hospital to provide each patient or legal guardian with at least one opportunity to identify at least one caregiver prior to the patient’s discharge or transfer to another facility. A caregiver is an individual who provides after-care assistance to a patient who will be discharged home.

Patients are not required to designate caregivers and caregivers are not obligated to perform after-care tasks for patients. The patient must consent to disclose the patient’s health information to the caregiver if the patient wants to designate a caregiver. If the patient does designate a CARE Act caregiver, the hospital must include the name and contact information of the caregiver in the patient’s discharge plan.

**NOTICE TO THE CAREGIVER FOR PATIENTS DISCHARGED**

The hospital must attempt to notify the caregiver of the patient’s transfer to another health care facility. The hospital must attempt to contact the caregiver prior to a patient’s discharge to his or her residence so that the caregiver can provide after-care assistance in accordance with the hospital’s instruction to the caregiver.
INSTRUCTION TO THE CAREGIVER

The hospital as soon as possible prior (and if possible, 24 hours prior) to the patient’s discharge must consult with the identified caregiver along with the patient regarding the patient’s after-care needs at his or her residence. The hospital must offer caregivers instruction in all after-care tasks, taking into account the capabilities and limitations of the caregiver. Instruction to the caregiver is only required for patients being discharged to their homes, not patients being discharged to other health care facilities.

The following written or verbal instruction to the caregiver must be provided:

1. A demonstration of the after-care tasks. The demonstration may be performed live by a member of the hospital’s workforce authorized to perform the after-care task, or it may be a recorded demonstration.

2. After the patient and the caregiver have been given an opportunity to ask questions about the after-care tasks, questions will be answered.

The hospital must document in the medical record that the instructions to the caregiver have been given.

RELATION TO DISCHARGE PLAN UNDER 10 NYCRR § 405.9

The requirements for a comprehensive discharge plan to meet a patient’s post-hospital needs are specified in 10 NYCRR § 405.9(f). The CARE Act does not change these existing requirements. Instruction to the CARE Act caregiver would not negate the need for home health care or other services. All patients must be assessed for the need for health care services as part of their discharge plan. This includes, but is not limited to, home health care, long-term home health care, hospice, day care and respite care or residential health facility care.

Under 10 NYCRR § 405.9(f), a hospital must ensure that each patient has a discharge plan which meets the patient’s post-hospital needs. A patient in need of post-hospital care must be assessed to determine the patient’s post-hospital care needs, and the assessment must include an evaluation of the extent to which the patient’s personal support system can provide for identified care needs if the patient is discharged home. Consistent with these existing requirements, the CARE Act specifically requires that, if a patient is being discharged home and the patient chooses to designate a CARE Act caregiver, the discharge plan under 10 NYCRR § 405.9 must include:

1. The name and contact information of the caregiver.

2. A description of the assistance with after-care tasks that the caregiver is recommended to provide.

3. Contact information for health care, community resources and long-term care supports to help the caregiver provide after-care assistance.
Should you have questions about the CARE Act, please contact the Division of Hospitals and Diagnostic & Treatment Centers at (518) 402-1003 or by email at hospinfo@health.ny.gov.

Sincerely,

Ruth Leslie
Director
Division of Hospitals and Diagnostic & Treatment Centers

Attachment
ARTICLE 29-CCCC

CARE ACT (CAREGIVER ADVISE, RECORD AND ENABLE ACT)

Section 2994-hh. Short title.

2994-ii. Definitions.

2994-jj. Caregiver; opportunity to identify.

2994-kk. Notice to identified caregiver.

2994-ll. Instruction to identified caregiver.

2994-mm. Effect on other rights.

§ 2994-hh. Short title. This article shall be known and may be cited as the "CARE act".

§ 2994-jj. Caregiver; opportunity to identify. 1. A hospital shall provide each patient or, if applicable, the patient's legal guardian with at least one opportunity to identify at least one caregiver under this article following the patient's entry into a hospital and prior to the patient's discharge or transfer to another facility. The hospital shall inform the patient that the purpose of providing the caregiver's identity is to include that caregiver in discharge planning and sharing of post-discharge care information or instruction.

   (a) In the event that the patient is unconscious or otherwise incapacitated upon his or her entry into a hospital, the hospital shall provide such patient or his/her legal guardian with an opportunity to identify a caregiver following the patient's recovery of his or her consciousness or capacity.

   (b) In the event that the patient or the patient's legal guardian declines to identify a caregiver under this article, the hospital shall promptly document this in the patient's medical record.

   (c) The hospital shall record the patient's identification of a caregiver if given by the patient or legal guardian, the relationship of
the identified caregiver to the patient, and the name, telephone number, and address of the patient's identified caregiver in the patient's medical record.

(d) A patient may elect to change his or her identified caregiver at any time, and the hospital must record this change in the patient's medical record.

(e) (i) The hospital shall promptly request the written consent of the patient or the patient's legal guardian to release medical information to the patient's designated caregiver following the hospital's established procedure for releasing personal health information and in compliance with all state and federal laws, including the federal Health Insurance Portability and Accountability Act of 1996 as amended, and related regulations.

(ii) If the patient or the patient's legal guardian declines to consent to release medical information to the patient's designated caregiver, the hospital shall not be required to provide notice to the caregiver under section twenty-nine hundred ninety-four-kk of this article or provide information contained in the patient's discharge plan under section twenty-nine hundred ninety-four-ll of this article.

2. An identification of a caregiver by a patient or a patient's legal guardian under this section does not obligate any individual to perform any after-care tasks for any patient.

3. This section shall not be construed to require a patient or a patient's legal guardian to identify any individual as a caregiver as defined by this article.

§ 2994-kk. Notice to identified caregiver. A hospital shall notify the patient's identified caregiver of the patient's discharge or transfer to another hospital or facility licensed by the department or the office of
mental health as soon as the date and time of discharge or transfer can be anticipated prior to the patient's actual discharge or transfer to such facility. In the event the hospital is unable to contact the designated caregiver, the lack of contact shall not interfere with, delay, or otherwise affect the medical care provided to the patient or an appropriate discharge of the patient. The hospital shall promptly

§ 2994-11. Instruction to identified caregiver. 1. As soon as possible and not later than twenty-four hours prior to a patient's discharge from a hospital, the hospital shall consult with the identified caregiver along with the patient regarding the caregiver's capabilities and limitations and issue a discharge plan that describes a patient's after-care needs at his or her residence. In the event the hospital is unable to contact the designated caregiver, the lack of contact shall not interfere with, delay, or otherwise affect the medical care provided to the patient or an appropriate discharge of the patient. The hospital shall promptly document the attempt in the patient's medical record. At minimum, a discharge plan shall include:

(a) the name and contact information of the caregiver identified under this article;

(b) a description of all after-care tasks recommended by the discharging physician, taking into account the capabilities and limitations of the caregiver; and

(c) contact information for health care, community resources, and long-term services and supports necessary to successfully carry out the patient's discharge plan.

2. The hospital issuing the discharge plan must offer caregivers with instruction in all after-care tasks described in the discharge plan.

(a) At minimum, such instruction shall include:
(i) a live or recorded demonstration of the tasks performed by a hospital employee authorized to perform the after-care task, provided in a culturally competent manner and in accordance with the hospital's requirements to provide language access services under state and federal law;

(ii) an opportunity for the caregiver and patient to ask questions about the after-care tasks; and

(iii) answers to the caregiver's and patient's questions provided in a culturally competent manner and in accordance with the hospital's requirements to provide language access services under state and federal law.

(b) Any instructions required under this article shall be documented in the patient's medical record, including, at minimum, the date, time, and contents of the instruction.

3. The department is authorized to promulgate regulations to implement the provisions of this article, including but not limited to, regulations to further define the content and scope of any instruction provided to caregivers under this article.

§ 2994-mm. Effect on other rights. 1. Nothing in this article shall be construed to interfere with the rights of an agent operating under a valid health care directive created under section twenty-nine hundred eighty-two of this chapter.

2. Nothing in this article shall be construed to create a new private right of action not otherwise existing in law against a hospital or any of its directors, trustees, officers, employees or agents, or any contractors with whom a hospital has a contractual relationship.

3. A hospital, any of its directors, trustees, officers, employees or agents, or any contractors with whom a hospital has a contractual
relationship shall not be held liable, provided it has complied with this article and acted reasonably and in good faith, for the services rendered or not rendered by the caregiver to the patient at the patient's residence.