Coffee Talk
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Parameters and Pitfalls of Patient Discharge and Alternate Level of Care

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Agenda

1. Legal framework
2. Common pitfalls
3. Tools

Public Hospitals Act (PHA) – Reg 965

- *Public Hospitals Act* and Regulation 965 thereunder establish the legal requirements for admission and discharge to a public hospital in Ontario
- Admission:
  - No person shall be admitted to a hospital as a patient except on the order or under the authority of a physician, registered nurse in the extended class (RN(EC)), midwife or dentist who is a member of the hospital's professional staff (s. 11(1))
  - No physician, RN(EC), dentist or midwife shall order the admission of a person to a hospital unless, in their opinion, it is clinically necessary that the person be admitted (s. 11(2))
  - Authority to admit is subject to the granting of admitting privileges by the Board of the hospital

Regulation 965 - Discharge

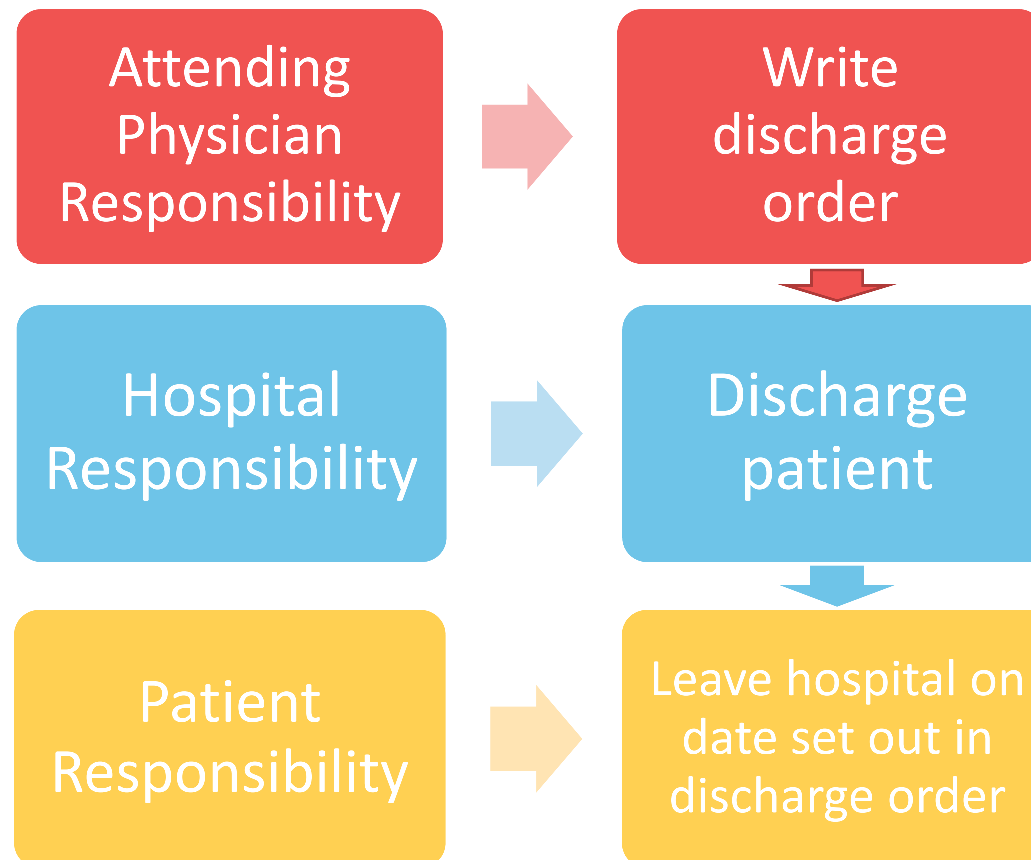
16. (1) If a patient is no longer in need of treatment in the hospital, one of the following persons **shall make an order** that the patient be discharged and communicate the order to the patient:

1. The attending physician, registered nurse in the extended class or midwife or, if the attending dentist is an oral and maxillofacial surgeon, the attending dentist.
2. A member of the medical, extended class nursing, dental or midwifery staff designated by a person referred to in paragraph 1.

(2) Where an order has been made with respect to the discharge of a patient, **the hospital shall discharge the patient** and **the patient shall leave the hospital** on the date set out in the discharge order.

(3) Despite subsection (2), the administrator **may** grant permission for a patient to remain in the hospital for a period of up to twenty-four hours after the date set out in the discharge order.

Discharge (as described by PHA)



Discharge – The Reality

- Discharge subject to a complex legal and regulatory framework that includes:
  - *Canada Health Act*, *Commitment to the Future of Medicare Act* and *Health Insurance Act*
  - *Health Care Consent Act*
  - *Long-Term Care Homes Act*
  - *Retirement Homes Act*
  - *Local Health System Integration Act*
  - Ministry policies and directives
  - Direction from LHIN

. . . The Reality

In addition to PHA, discharge from hospital is contingent on:

- Common law responsibility to discharge to a safe discharge environment
- Consent, where discharge is to certain environments (i.e. long-term care, retirement home)
- Resource availability and constraints, including alternative settings (transitional, LTC, hospice, supportive housing, etc.), bed availability, home and community support services

Alternate Level of Care (ALC)

- Increasing number of patients in hospital who are "ALC"

- "When a patient is occupying a bed in a hospital and does not require the intensity of resources/services provided in this care setting (Acute, Complex Continuing Care, Mental Health or Rehabilitation), the patient **must** be designated ALC at that time by the physician or her/his delegate. The ALC wait period starts at the time of designation and ends at the time of discharge/transfer to a discharge destination (or when the patient's needs or condition changes and the designation of ALC no longer applies)"

  - Provincial ALC Definition

. . . ALC

- Ministry definition – intended to ensure accurate and timely data on patient waiting in hospital for ALC as part of provincial Wait Times Strategy
- Sometimes confused with "Complex Continuing Care" or "Chronic Care" (CCC) designation under the *Health Insurance Act*
  - → CCC triggers requirement for hospital to charge and patient to pay a **co-payment** where, in the opinion of the attending physician, the patient requires chronic care and is more or less permanently resident in a hospital or other institution (HIA - Regulation 552, s. 10)

Rights and Obligations - Patients

- The right to a hospital bed as long as he or she requires hospital treatment
- In considering discharge options, the right to choose a bed in a preferred facility
- Hospitals cannot require or force patients to comply with discharge planning nor can hospitals require an individual to accept any LTC placement

Rights and Obligations - Hospitals

Systems obligations to:

- Ensure every patient receives the care and services that meet his or her needs
- Ensure that each hospital bed is used for the benefit of the community
- Develop plans for appropriate and timely discharge of patients
- Establish policies and systems to ensure the appropriate use of resources

Rights and Obligations – Hospitals

Patient-Specific:

- Timely discharge of patients who are no longer in need of treatment in the hospital
- Need to be able to enforce discharge order in compliance with legislative requirements
- Authority to charge patients for services rendered where patient is uninsured

Common Issues

- Discharge issues are fact-specific and often complex
- Generally will fall in one (or more) of 3 categories:
  1. Refusal to engage in discharge planning process
  2. Lack of safe discharge environment
  3. Refusal to leave hospital in accordance with discharge order

Response

- Hospital response to discharge issue **must** be compliant with applicable legal and regulatory requirements
- Increasing level of scrutiny
- May be subject to challenge – patients/ family may engage patient advocate, legal counsel or complain to oversight/regulatory authority

Pitfalls – Discharge Planning & Communication

- Need to ensure that you are dealing with the correct person(s)
  - Capable patient
  - Authorized substitute decision-maker where patient is incapable - who is SDM may depend on decision (e.g. health care, shelter vs. financial)
- Where Power of Attorney or Guardianship is in place – confirm documentation
- Practical – begin discharge planning early (at or before admission)

Pitfalls – Discharge Order

- Triggers hospital's legal authority to effect discharge – must be in place for hospital to act
- Physician/RN(EC)/Midwife/Dentist = "gatekeeper"
  - Discharge is a clinical decision – where criteria for discharge met – **required** to write discharge order and communicate it to patient
  - Also responsible to determine parameters for patient discharge incl. safe discharge environment
  - Multidisciplinary team may provide input/support

Pitfalls - Consent

- No requirement for patient/SDM consent to "discharge"
- *Health Care Consent Act* – requires consent to treatment (regardless of setting), admission to care facility (i.e. LTC), personal assistance services (in LTC)
- *Long-Term Care Homes Act* and *Retirement Homes Act* – requirements for consent to admission

Pitfalls – Discharge Destination

- Discharge to "home" does not require consent
- "Home" = where patient lived prior to admission - incl. LTC, retirement home or other facility
- LTC/retirement home cannot simply refuse to take back – this would constitute discharge from facility and be subject to own legal requirements

. . . Discharge Destination

- Where discharge to “home” is not appropriate – explore all appropriate discharge options
- Where LTC is appropriate option – cannot legally force patient/SDM to choose any particular home but can encourage to maximize choices
- Cannot prohibit application to LTC from hospital – but can discharge patient to community to wait where appropriate discharge environment (“Home First”)

Pitfalls – Charging for Services

- Distinction between CCC co-payment and daily uninsured rate (per diem)
- Hospital **obligated** to charge co-payment where patient designated CCC in accordance with HIA
- Where discharge order has been written and patient discharged but refuses to leave – patient becomes **uninsured** pursuant to the HIA and thus subject to per diem for bed
- Includes when patient declines available LTC bed from among facility choices

Tools

- Clear, public-facing policies or processes
  - Consider addressing admission and discharge together
- Should address:
  - Criteria for admission/discharge
  - Discharge planning and process – including roles and responsibilities
  - Discharge destination
  - Enforcement of discharge obligations
  - Dispute resolution (resources and processes)
- Need to align with other related policies and procedures (e.g. ALC)

. . . Tools

Internal processes and flow charts

- Set out roles/responsibilities of various key individuals
- Steps to be followed
  - e.g. ALC → LTC Processes / LTC Consult Process, Non-Compliance with Discharge Planning Process
- Mechanisms for identifying issues and resolving disputes

. . . Tools

- Processes for communication with patients
  - **Must** be consistent with legal and regulatory responsibilities
- "Templates" can be helpful for initial, up-front communications
- Where patient-specific, tread carefully
  - Increased legal risk – seek legal counsel

. . . Tools

Useful tools:

- Letters:
  - Discharge planning conference notification
  - Discharge expectations
  - Co-payment notification
  - Non-compliance with discharge policies
- Information sheets:
  - Discharge obligations
  - Transfer to LTC facilities
- Patient specific correspondence where issues arise - needs to be specific to the patient and circumstances

Risk Management Strategies

- Balance between patients' rights and systems management of hospitals
- Introduction of education programs for patients and families
- Implementation of patient flow policies

Questions?

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