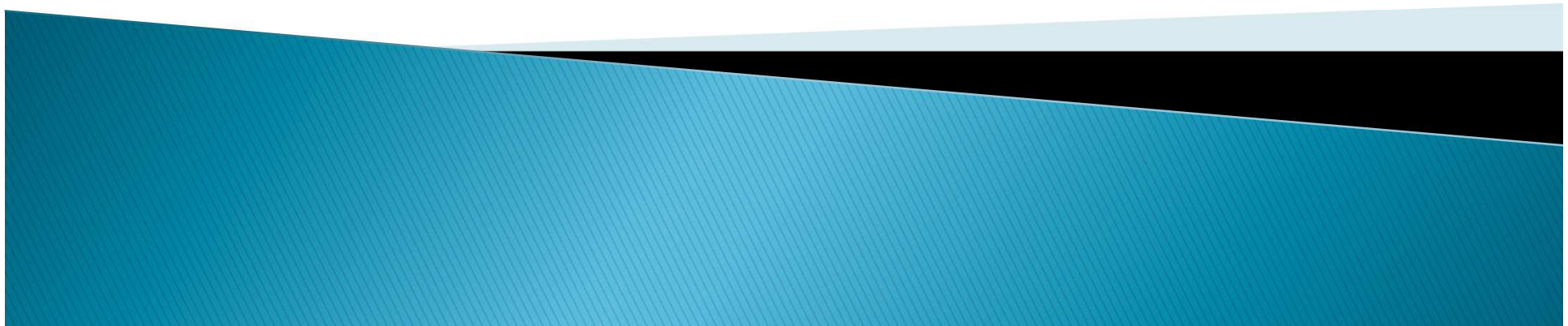


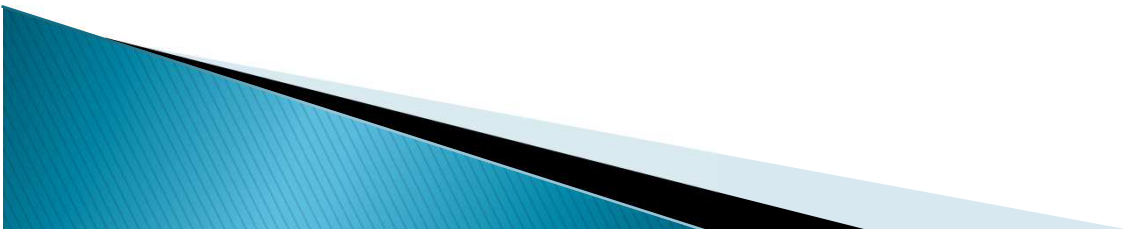
# Caregiver Advise, Record, Enable (CARE) Acts Overview

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# Scope of this Presentation

- ▶ Pursuant to invitation from the Legislative Family Caregivers Working Group, and in accordance with paragraph (3) of the third “BE IT FURTHER RESOLVED” clause of S.C.R. 107, S.D. 1, H.D. 1, Regular Session of 2015, the Legislative Reference Bureau has been tasked with providing an overview of S.B. 296, Regular Session of 2015, and laws enacted by other state legislatures with elements of the Caregiver Advise, Record, Enable (CARE) Act proposal.



# Scope of this Presentation

- ▶ Consequently, this presentation provides:
  - An update on the status of CARE Act legislation in Hawaii (S.B. 296 and H.B. 490) and
  - A comparison of Hawaii's S.B. 296 to the contents of the CARE Acts that have been enacted in other states over the past two years.

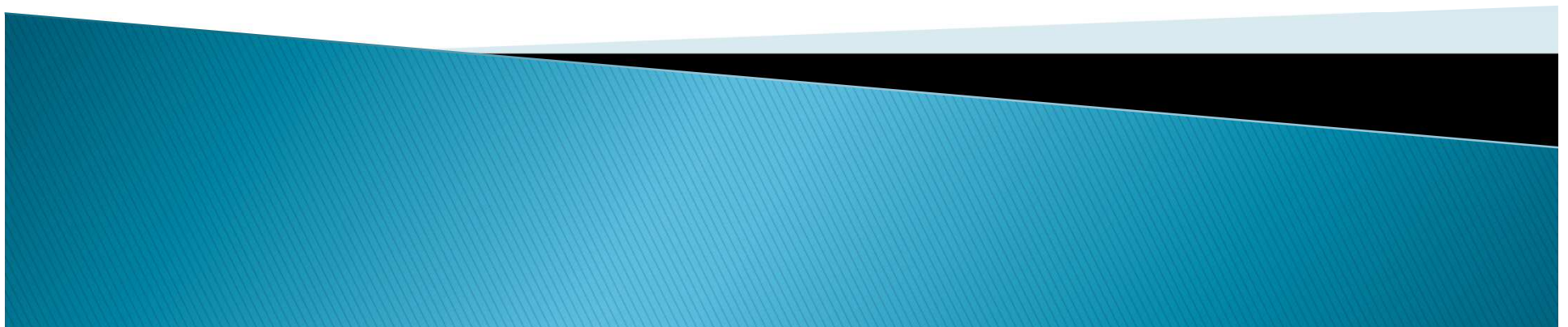


# Overview

- ▶ S.C.R. 107, S.D. 1, HD. 1 (2015)
- ▶ Hawaii: Current Status of CARE Act Legislation
- ▶ States with CARE Acts
- ▶ Major Similarities and Differences of the State Care Acts to the contents of Senate Bill 296, section 2 (2015)
  - Definitions (§ -1)
  - Opportunity to Designate Caregiver (§ -2)
  - Notice to Caregiver (§ -3)
  - Instructions to Caregiver and Discharge Plan (§ -4)
  - Non-Interference with Health Care Directives (§ -5)
  - Limitation of Liability (§ -6)
  - Discharge or Transfer of Patient (§ -7)

Note: §§ -1 to -7 correspond to those of S.B. 296, section 2

S.C.R. 107,  
S.D. 1, HD. 1 (2015)



# S.C.R. 107, S.D. 1, HD. 1 (2015)

- ▶ This presentation covers paragraphs (1), (3), (4), (5), and (6) of the following portion of S.C.R. 107, S.D. 1, H.D. 1, Regular Session of 2015, which are applicable to S.B. 296:

“BE IT RESOLVED . . . that a Legislative Family Caregivers Working Group be convened to examine and assess issues contained in S.B. No. 296, Regular Session of 2015, including but not limited to:

- (1) The role of family caregivers; [The role is defined in **Definitions (§ -1).**]
- (2) The state of the current practice of designating family caregivers; [No existing Hawaii statute requires this. **We'll defer to the expertise of the hospitals regarding this.**]

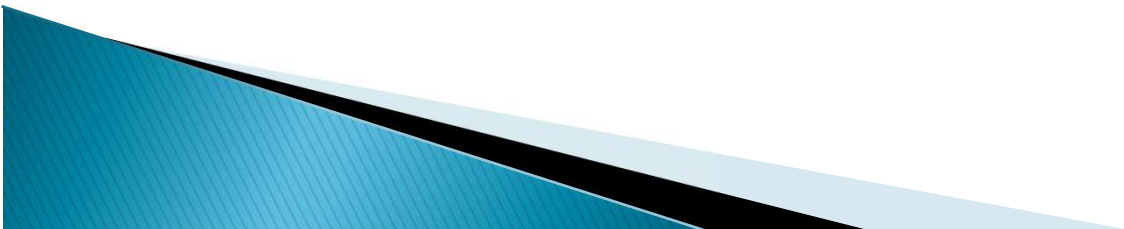
# S.C.R. 107, S.D. 1, HD. 1 (2015) con't.

- (3) Notification of family caregivers when a hospital discharges a patient or transfers a patient to another licensed facility; [Addressed in the Notice to Caregiver (§ -3).]
- (4) Family caregivers' involvement in discharge planning and instruction; [Addressed in Instructions to Caregiver and Discharge Plan (§ -4).]
- (5) The role of hospitals and hospital staff in the instruction of family caregivers; [Addressed in Instructions to Caregiver and Discharge Plan (§ -4).]



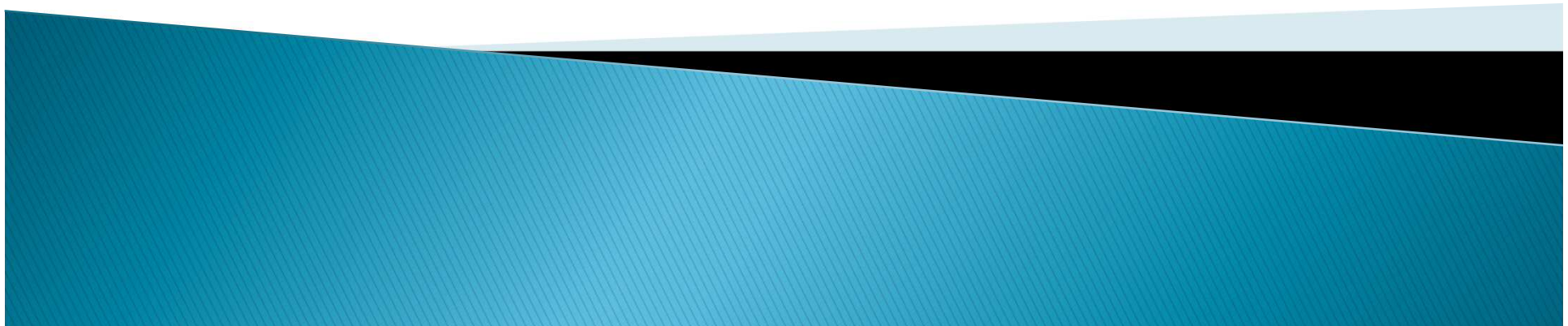
# S.C.R. 107, S.D. 1, HD. 1 (2015) con't.

- (6) The role of insurance plans in paying for the instruction of family caregivers by hospitals and hospital staff; and **[Addressed in Limitation of Liability (§ -6).]**
- (7) Legislative and regulatory recommendations on how best to involve family caregivers in the patient-discharge process and prepare family caregivers for post-discharge tasks; and **[To be determined by the working group.]**





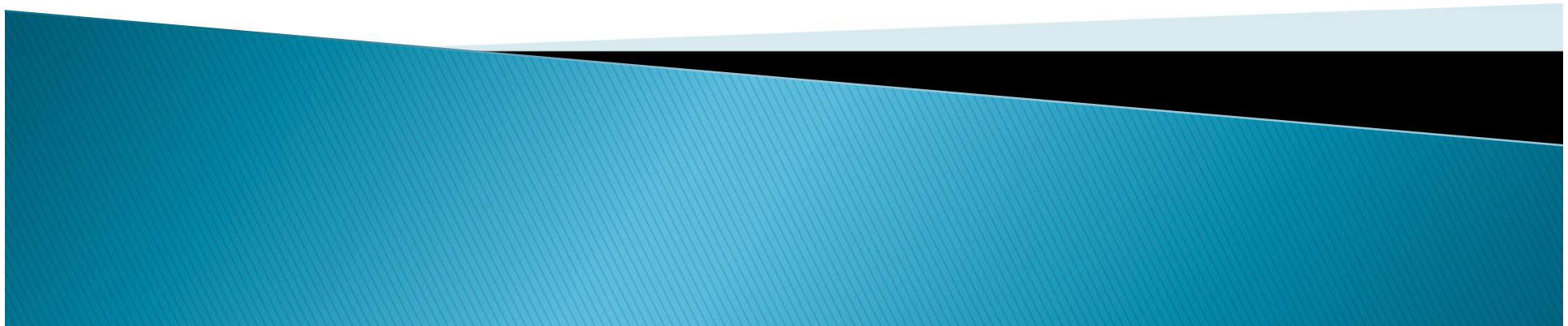
# Hawaii: Current Status of CARE Act Legislation



# Hawaii: Current Status of CARE Act Legislation

- ▶ Senate Bill 296 & House Bill 490 (2015), Relating to Caregiving.
  - The contents of S.B. 296 & H.B. 490 are the same.
  - S.B. 296 received a HSH/HTH, JDL (Human Services and Housing/Health, Judiciary and Labor) referral.
    - The HSH/HTH committees heard the bill, but only the HSH committee recommended passage with amendments.
    - The HTH committee deferred action on the bill.
    - A copy of S.B. 296, along with the status and testimony, is available at: <http://goo.gl/R8Z9xQ>
  - H.B. 490 initially received a HLT, JUD (Health, Judiciary) referral. It was re-referred to HLT, JUD, FIN (Health, Judiciary, Finance).
    - The bill was not scheduled for a hearing.
    - A copy of H.B. 490, along with the status, is available at: <http://goo.gl/xbJkYP>
  - Both measures will carry over from the 2015 Regular Session to the 2016 Regular Session and may be acted upon in the upcoming regular session.

# States with Caregiver Advise, Record, Enable (CARE) Acts



# States with CARE Acts

- ▶ Eighteen states have enacted or passed a version of the CARE Act (year of enactment):

Arkansas (2015)

California (2015)\*

Colorado (2015)

Connecticut (2015)

Illinois (2015)

Indiana (2015)

Maine (2015)

Mississippi (2015)

Nevada (2015)

New Hampshire (2015)

New Jersey (2014)

New Mexico (2015)

New York (2015)\*

Oklahoma (2014)

Oregon (2015)

Rhode Island (2015)

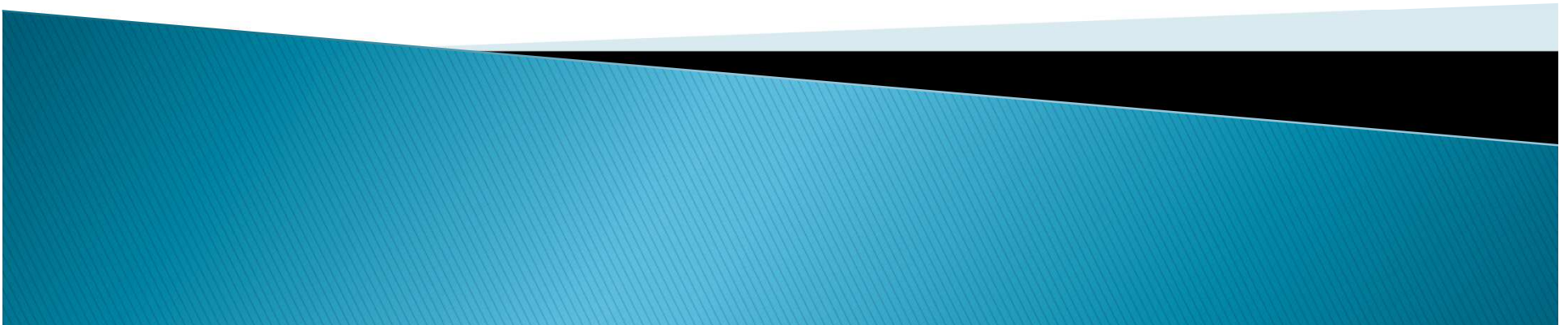
Virginia (2015)

West Virginia (2015)

\* Passed Legislature and is awaiting action of or transmittal to the Governor for signature or veto. For ease of summarization, this presentation will consider that the New York and California CARE Acts have been enacted.

# Definitions

S.B. 296, section 2, § -1



# Definitions – Similar Provisions

- ▶ S.B. 296 and sixteen states similarly define “After-care”:

"After-care" means any assistance provided by a caregiver to a patient following the patient's discharge from a hospital that is related to the patient's condition at the time of discharge, including but not limited to assisting with basic activities of daily living, instrumental activities of daily living, and other tasks as determined to be appropriate by the discharging physician or other health care professional licensed pursuant to chapter \_\_\_\_\_.

S.B. 296, section 2, § -1. (AR, CO, CT, IL, IN, ME, MS, NV, NH, NJ, NM, NY, OK, OR, RI, WV)

# Definitions – Similar Provisions

- ▶ S.B. 296 and most states similarly define:

- “Caregiver” (16 states)

““Caregiver” means any individual duly designated by a patient to provide after-care to the patient in the patient's residence. The term includes but is not limited to a relative, spouse, partner, friend, or neighbor who has a significant relationship with the patient.”

S.B. 296, section 2, § -1. (AR, CA, CO, CT, IL, IN, MS, NV, NH, NJ, NM, NY, OK, OR, RI, WV)

- “Discharge” (13 states)

““Discharge” means a patient's exit or release from a hospital to the patient's residence following any medical care or treatment rendered to the patient following an inpatient admission.”

S.B. 296, section 2, § -1. (AR, IL, IN, ME, MS, NH, NJ, NM, NY, OK, OR, RI, WV)

# Definitions – Similar Provisions

- ▶ S.B. 296 and most states similarly define:

- “Hospital” (12 states)

- ““Hospital” means a facility licensed under section \_\_\_\_.”

- S.B. 296, section 2, § -1. (AR, CO, CT, IL, MS, NH, NJ, NM, NY, OK, RI, WV)

- “Residence” (14 states)

- ““Residence” means a dwelling that the patient considers to be the patient's home and shall not include any rehabilitation facility, hospital, nursing home, assisted living facility, or group home licensed by the State.”

- S.B. 296, section 2, § -1. (AR, CO, CT, IL, IN, ME, MS, NH, NJ, NM, NY, OK, RI, WV)



# Definitions – Similar Provisions

- ▶ S.B. 296 and a few states similarly define:

- “Entry” (4 states)

““Entry” means a patient's entrance into a hospital for the purposes of receiving in-patient medical care.”

S.B. 296, section 2, § -1. (NH, NJ, NY, RI)

- “Legally authorized representative” (5 states)

““Legally authorized representative” means legal guardians, health care agents, and surrogates (designated or selected by a consensus of interested persons).”

S.B. 296, section 2, § -1. (AR, IL, IN, NV, NH)

# Definitions – Different Provisions (Only in S.B. 296)

- ▶ Only S.B. 296 defines “contact information”

““Contact information” means legal name, phone number, email address, mailing address, and home address, where available.”

S.B. 296, section 2, § -1.

- ▶ While “contact information” is not defined by any state’s CARE Act, this requirement is usually contained elsewhere. For example, Colorado requires that:

“The hospital shall record . . . the name, telephone number, and address of the caregiver in the patient’s medical record.”

Section 25-1-128(3)(b), Colorado Revised Statutes.

# Definitions – Different Provisions (Not in S.B. 296)

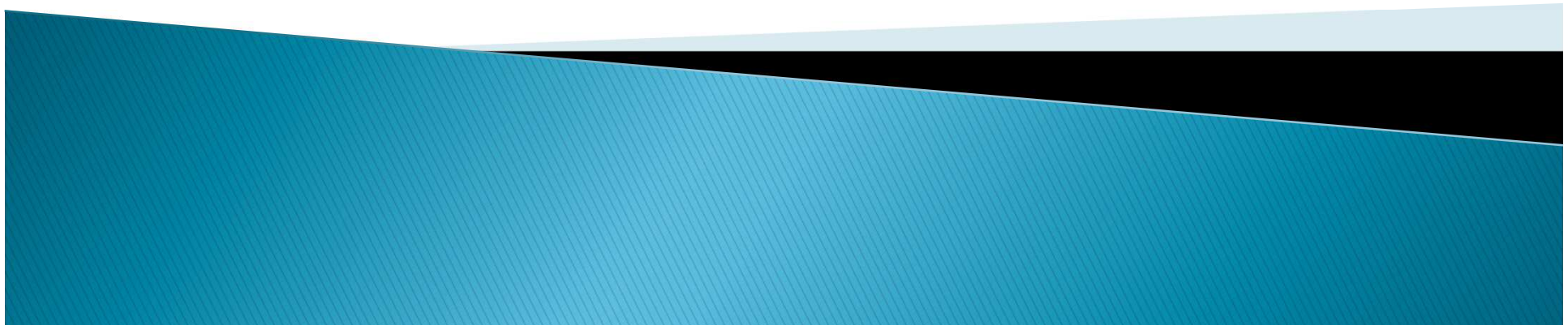
- Four states, but not S.B. 296, define “patient”

““Patient” means an individual who has been admitted to a hospital for inpatient care and who is eighteen (18) years of age or older”

Section 20–77–2602(7), Arkansas Code. (AR, IL, NY, RI)

# Opportunity to Designate Caregiver

S.B. 296, section 2, § -2



# Opportunity to Designate Caregiver – Similar Provisions

- ▶ S.B. 296 and all eighteen states require a hospital to allow for the designation of a caregiver

“§ -2 Opportunity to designate caregiver. (a) A hospital shall provide each patient or, if applicable, the patient's legally authorized representative, with an opportunity to designate one or more caregivers following the patient's entry into a hospital and prior to the patient's discharge to the patient's residence or transfer to another facility, in a timeframe that is consistent with the discharge planning process;”

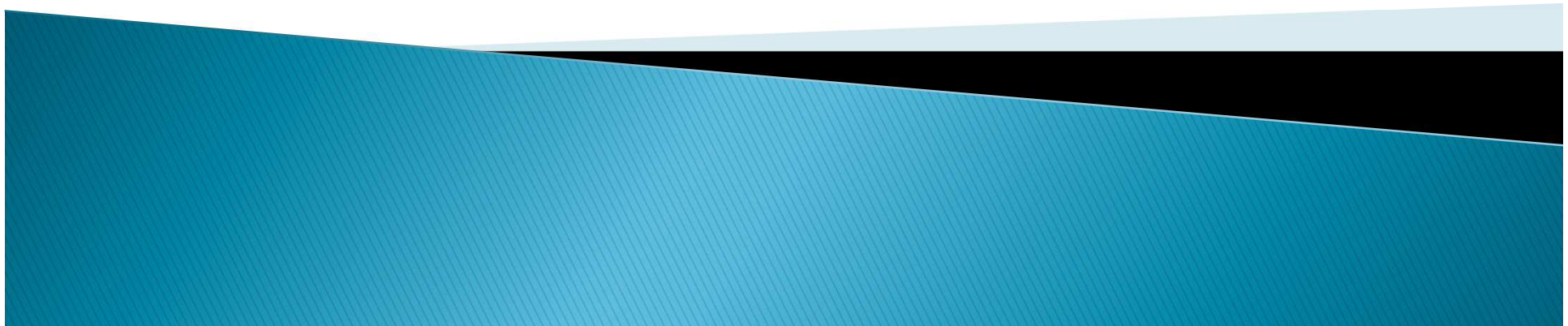
S.B. 296, section 2, § -2. (AR, CA, CO, CT, IL, IN, ME, MS, NV, NH, NJ, NM, NY, OK, OR, RI, VA, WV)

# Opportunity to Designate Caregiver – Similar Provisions

- ▶ In addition to requiring a hospital to allow for the designation of a caregiver, S.B. 296 and most states also require hospitals to:
  - Document if a patient declines to designate a caregiver (15 states) S.B. 296, section 2, § -2(b). (AR, CO, IL, IN, ME, MS, NV, NH, NJ, NM, NY, OK, RI, VA, WV)
  - Request the patient's consent to release medical information to the caregiver (12 states) S.B. 296, section 2, § -2(c)(1). (AR, CO, IN, ME, MS, NV, NH, NJ, NY, OK, RI, WV)
  - Record caregiver's relationship to the patient (14 states) S.B. 296, section 2, § -2(c)(2). (AR, CO, CT, IN, ME, MS, NV, NH, NJ, NY, OK, RI, VA, WV)
  - Allow a patient to change caregiver (12 states) S.B. 296, section 2, § -2(d). (AR, IL, ME, MS, NH, NJ, NM, NY, OK, RI, VA, WV)

# Notice to Caregiver

S.B. 296, section 2, § -3



# Notice to Caregiver – Similar Provisions

- ▶ S.B. 296 and twelve states require a hospital to notify the caregiver of a patient’s discharge or transfer

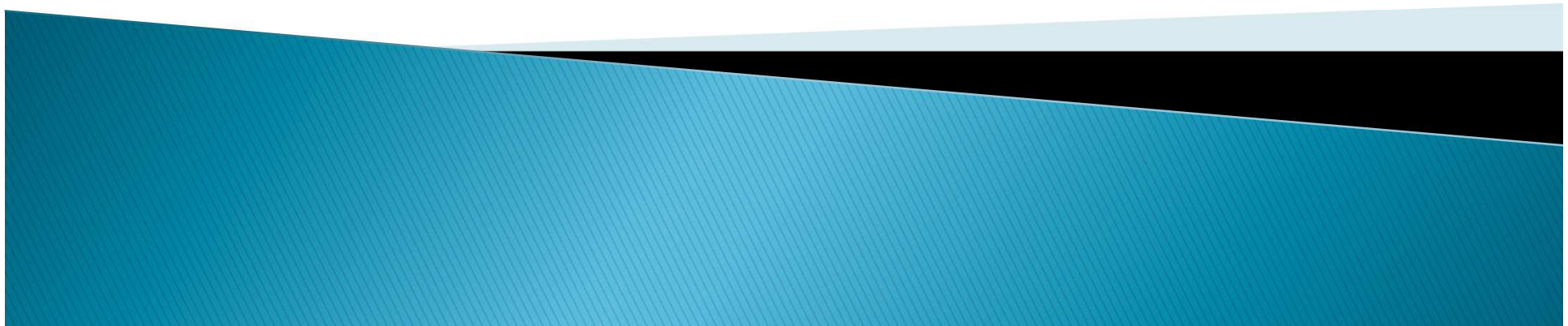
“A hospital shall notify the patient's caregiver of the patient's discharge or transfer to another licensed facility as soon as possible and[,] at the latest, upon issuance of a discharge order by the patient's attending physician.”

S.B. 296, section 2, § -3. (AR, CA, ME, MS, NV, NH, NJ, NY, OK, OR, RI, WV)



# Instructions to Caregiver and Discharge Plan

S.B. 296, section 2, § -4.



# Instructions to Caregiver and Discharge Plan – Similar Provisions

- ▶ S.B. 296 and sixteen states require a hospital to:
  - Consult with a caregiver as soon as possible
  - Issue a discharge plan to the caregiver S.B. 296, section 2, § – 4(a). (AR, CO, CT, IL, IN, ME, NV, NH, NJ, NM, NY, OK, OR, RI, VA, WV)

# Instructions to Caregiver and Discharge Plan – Similar Provisions

- ▶ S.B. 296 and nine states require the discharge plan to include:
  - A description of all after-care necessary to maintain the patient's ability to reside at home, taking into account the capabilities and limitations of the caregiver
  - Contact information for resources and services to support the discharge plan
  - Hospital contact information for questions regarding the discharge plan S.B. 296, section 2, § -4(a). (CO, IL, NV, NH, NJ, NY, RI, VA, WV)

# Instructions to Caregiver and Discharge Plan – Similar Provisions

- ▶ S.B. 296 and thirteen states require a hospital to provide training or instructions for the after-care described in the discharge plan S.B. 296, section 2, § -4(a). (AR, CO, CT, IL, IN, ME, NV, NH, NJ, NY, RI, VA, WV)
- ▶ For these training and instructions:
  - S.B. 296 and thirteen states require a hospital to allow the caregiver to ask questions S.B. 296, section 2, § -4(b)(2). (AR, CO, CT, IL, IN, ME, NV, NH, NJ, NY, RI, VA, WV)
  - S.B. 296 and ten states require a live or recorded demonstration S.B. 296, section 2, § -4(b)(1). (CO, CT, IL, IN, NV, NH, NJ, NY, RI, VA)
  - S.B. 296 and seven states require the use of non-technical language S.B. 296, section 2, § -4(b). (CT, IL, ME, NV, NH, NJ, RI)

## Instructions to Caregiver and Discharge Plan – Different Provisions (Only in S.B. 296)

- ▶ Only S.B. 296 specifically requires a written summary and description of the discharge training and instructions mentioned in the previous slide. It states:

“Instruction shall include but not be limited to the following:

...

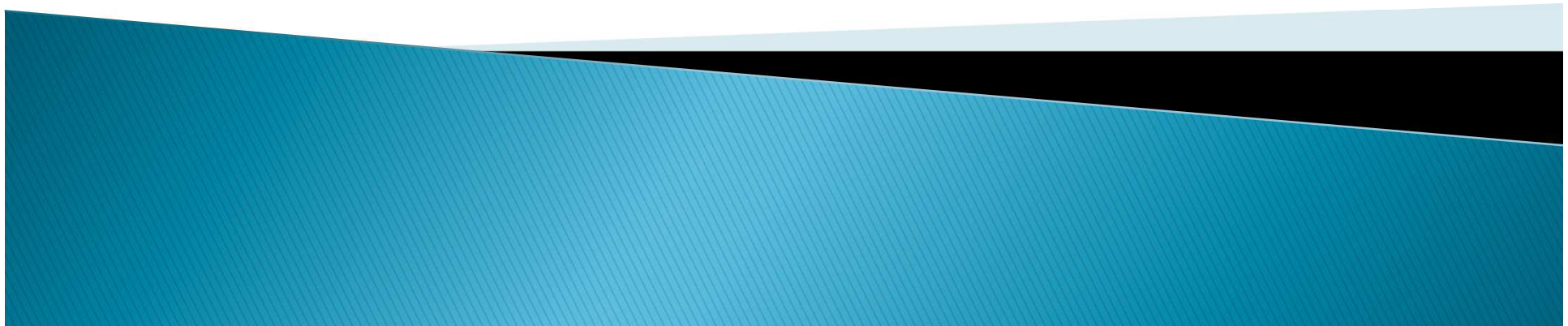
- (3) A written summary and description of the instructions provided.”

S.B. 296, section 2, § 4(b)(3).

- ▶ No other state’s CARE Act requires this

# Non-Interference with Health Care Directives

S.B. 296, section 2, § -5



# Non-Interference with Health Care Directives – Similar Provisions

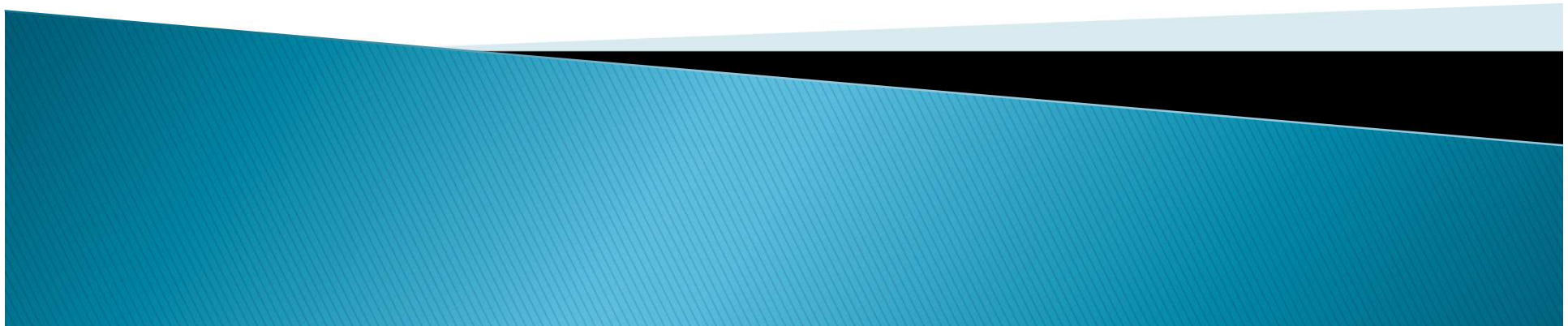
- ▶ S.B. 296 and eleven states require that their CARE Act not interfere with an existing health care directive

“§ -5 Non-interference with existing health care directives. Nothing in this chapter shall be construed to interfere with the rights of an agent operating under a valid health care directive under section \_\_\_\_\_.”

S.B. 296, section 2, § -5. (CT, IL, ME, MS, NH, NJ, NY, OK, RI, VA, WV)

# Limitation of Liability

S.B. 296, section 2, § -6





# Limitation of Liability

- ▶ As previously noted, S.C.R. 107, S.D. 1, H.D. 1, requests the working group to:

“[E]xamine and assess . . . (6) The role of insurance plans in paying for the instruction of family caregivers by hospitals and hospital staff;”

S.C.R. 107, S.D. 1, H.D. 1, page 2, lines 38–40

- ▶ S.B. 296 and other states’ CARE Acts do not address whether insurance plans shall or shall not pay for caregiver instruction

# Limitation of Liability – Different Provisions (Not in S.B. 296)

- ▶ The general issue of insurance coverage is addressed by other states
- ▶ Four states specify that their CARE Act does not change third party–payer obligations

“(a) This subchapter shall not:

. . .

(3) Remove the obligation of a third–party payer to cover a healthcare item or service that the third–party payer is obligated to provide to a patient under the terms of a valid agreement, insurance policy, plan, or certification of coverage or health maintenance organization contract.”

Section 20–77–2607, Arkansas Code. (AR, CT, NJ, NM)

# Limitation of Liability – Different Provisions (Not in S.B. 296)

- ▶ Three states specify that their CARE Act shall not disrupt reimbursement obligations

“Nothing in this act shall be construed to impact, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans.”

Section 26:2H-5.30 7.d(2), New Jersey Revised Statutes. (CT, NJ, RI)

- ▶ Seven states prohibit reimbursing a caregiver

“A caregiver shall not be reimbursed by any government or commercial payer for after-care assistance that is provided pursuant to this act.”

Section 26:2H-5.30 7.d(1), New Jersey Revised Statutes. (CT, IN, MS, NJ, OK, RI, WV)

# Limitation of Liability – Similar Provisions

- ▶ S.B. 296 and fourteen states specify that their CARE Act shall not create a private cause of action

“Nothing in this chapter shall be construed to give rise to a private cause of action against a hospital, hospital employee, or a consultant or contractor that has a contractual relationship with a hospital.”

S.B. 296, section 2, § –6(a). (AR, CO, CT, IL, IN, MS, NH, NM, NJ, NY, OK, RI, VA, WV)

- ▶ S.B. 296 and eleven states preclude liability for the services rendered or not rendered by a caregiver

“A hospital, hospital employee, or a consultant or contractor that has a contractual relationship with a hospital shall not be held liable for the services rendered or not rendered by the caregiver to the patient at the patient's residence.”

S.B. 296, section 2, § –6(b). (AR, CT, IL, IN, NV, NJ, NM, NY, RI, VA, WV)

# Limitation of Liability – Different Provisions (Not in S.B. 296)

- ▶ The Colorado CARE Act contains the following limitation of liability language:

“(6) Nothing in this section:

. . .

- (c) Creates additional civil or regulatory liability for a hospital or hospital employee;
- (d) Supersedes or replaces existing rights or remedies under any other law; or
- (e) Affects a license issued to a hospital pursuant to section \_\_\_\_\_.”

Section 25-1-128(6), Colorado Revised Statutes.

# Limitation of Liability – Different Provisions (Not in S.B. 296)

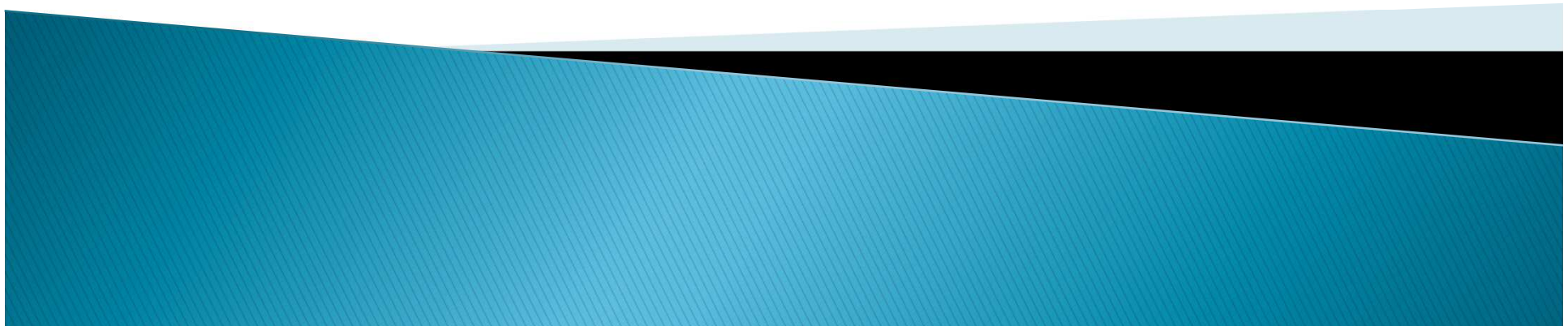
- ▶ The Illinois CARE Act makes an exception for willful or wanton misconduct regarding limitation of liability

“A hospital, a hospital affiliate, a hospital employee, or a consultant or contractor with whom a hospital has a contractual relationship shall not be held liable, except for willful or wanton misconduct, for services rendered or not rendered by the caregiver to the patient.”

Illinois, Public Act 099–0222, Section 30 (emphasis added).

# Discharge or Transfer of Patient

S.B. 296, section 2, § -7



# Discharge or Transfer of Patient – Similar Provisions

- ▶ S.B. 296 and nine states specify that their CARE Act not delay the discharge or transfer of a patient

“§ –7 Discharge; transfer of patient. Nothing in this chapter shall delay the discharge of a patient or the transfer of a patient from a hospital to another facility.”

S.B. 296, section 2, § –7. (CT, IL, IN, NV, NH, NJ, NM, OR, RI)