

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1329 Session of 2015

INTRODUCED BY ENGLISH, HENNESSEY, SAMUELSON, PICKETT, FREEMAN, V. BROWN, KOTIK, KILLION, KINSEY, READSHAW, TOEPEL, DAVIDSON, SAYLOR, SCHLOSSBERG, MILLARD, RAVENSTAHL, QUIGLEY, COHEN, KORTZ, TALLMAN, MURT, MAHER, MUSTIO, GERGELY, D. COSTA, M. DALEY, MENTZER, HARHART, SIMS AND SCHEMEL, JUNE 12, 2015

AS REPORTED FROM COMMITTEE ON AGING AND OLDER ADULT SERVICES, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 24, 2015

AN ACT

1 Requiring certain hospitals to allow patients an opportunity to
2 designate caregivers in patients' medical records and
3 imposing duties on hospitals.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known as the Caregiver Advise, Record and
8 Enable Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "After-care assistance." Any assistance provided by a lay
14 caregiver to a patient following the patient's discharge from a
15 hospital, ~~which assistance~~ AND THAT is related to the patient's <--
16 condition at the time of discharge, including, but not limited

1 to, assisting with basic activities of daily living,
2 instrumental activities of daily living and any other tasks as
3 determined to be appropriate by the discharging physician or
4 other health care professional licensed pursuant to 28 Pa. Code
5 Ch. 105 (relating to admission and discharge).

6 "Discharge." A patient's exit or release from a hospital to
7 the patient's residence following medical care or treatment
8 rendered to the patient following an inpatient admission.

9 "Entry." A patient's admission into a hospital for the
10 purposes of receiving inpatient medical care.

11 "Hospital." A general acute care hospital as defined and
12 licensed under Title 28 of the Pennsylvania Code (relating to
13 health and safety).

14 "Lay caregiver." An individual with a significant
15 relationship to a patient and who:

16 (1) is designated and accepts the role as a lay
17 caregiver by the patient pursuant to this act; and

18 (2) provides after-care assistance to the patient living
19 in the patient's residence.

20 "Residence." The dwelling that a patient considers to be the
21 patient's home. The term includes the residence of a patient's
22 designated lay caregiver. The term shall not include a
23 rehabilitation facility, hospital, nursing home, personal care
24 home, assisted living facility or group home licensed by the
25 Department of Health.

26 Section 3. Caregiver designation and consent.

27 (a) General rule.--A hospital shall provide each patient or,
28 if applicable, the patient's legal guardian an opportunity to
29 designate at least one lay caregiver following the patient's
30 entry into a hospital and, prior to the patient's discharge to

1 the residence, in a time frame that is consistent with the
2 discharge planning process provided by regulation. The hospital
3 shall promptly document the request in the patient's medical
4 record.

5 (b) Unconscious and incapacitated patients.--In the event
6 that the patient is unconscious or otherwise incapacitated upon
7 entry into a hospital, the hospital shall provide the patient or
8 the patient's legal guardian with an opportunity to designate a
9 lay caregiver as soon as possible following the patient's
10 recovery of consciousness or capacity. The hospital shall
11 promptly document the designation in the patient's medical
12 records.

13 (c) Declining of designation.--In the event that the patient
14 or the patient's legal guardian declines to designate a lay
15 caregiver pursuant to this act, the hospital shall promptly
16 document the decision in the patient's medical record.

17 (d) Designation of lay caregivers.--In the event that the
18 patient or the patient's legal guardian designates an individual
19 as lay caregiver under this act:

20 (1) The hospital shall promptly request the written
21 consent of the patient or the patient's legal guardian to
22 release medical information to the patient's designated lay
23 caregiver following the hospital's established procedures for
24 releasing personal health information and in compliance with
25 all Federal and State laws, including the Health Insurance
26 Portability and Accountability Act of 1996 (Public Law 104-
27 191, 110 Stat. 1936) and related regulations.

28 (2) If the patient or the patient's legal guardian
29 declines to consent to release medical information to the
30 patient's designated lay caregiver, the hospital is not

1 required to provide notice to the lay caregiver or provide
2 information contained in the patient's discharge plan.

3 (3) The hospital shall record the patient's designation
4 of lay caregiver, the relationship of the designated lay
5 caregiver to the patient and the name, telephone number and
6 address of the patient's designated lay caregiver in the
7 patient's medical record.

8 (e) Change of lay caregiver.--A patient or the patient's
9 legal guardian may elect to change the patient's lay caregiver
10 at any time, and the hospital shall record the change in the
11 patient's medical record before the patient's discharge.

12 (f) Construction.--This section shall not be construed to
13 require a patient or patient's legal guardian to designate an
14 individual as a lay caregiver.

15 (g) After-care assistance.--A designation of a lay caregiver
16 by a patient or a patient's legal guardian does not obligate the
17 designated individual to perform any after-care assistance for
18 the patient.

19 (h) Minor children.--In the event that the patient is a
20 minor child and the parents of the patient are divorced, the
21 ~~custodial parent~~ PARENT WITH LEGAL CUSTODY OF THE PATIENT shall <--
22 have the authority to designate a lay caregiver. If the parents
23 have ~~joint~~ SHARED LEGAL custody of the patient, they shall <--
24 jointly designate the lay caregiver.

25 Section 4. Notice requirements.

26 (a) Duty to hospital.--A hospital shall notify a patient's
27 designated lay caregiver of any discharge order for the patient,
28 the patient's actual discharge or the patient's transfer to
29 another facility as soon as possible.

30 (b) Documentation.--The hospital shall promptly document the

1 attempt in the patient's medical record.

2 Section 5. Hospital discharge plan.

3 (a) Duty to issue.--

4 (1) As soon as possible prior to a patient's discharge
5 from a hospital to the residence, the hospital shall consult
6 with the designated lay caregiver and issue a discharge plan
7 that describes the patient's after-care assistance needs, if
8 any, at the residence.

9 (2) The consultation and issuance of a discharge plan
10 shall occur on a schedule that takes into consideration the
11 severity of the patient's condition, the setting in which
12 care is to be delivered and the urgency of the need for lay
13 caregiver services.

14 (3) In the event the hospital is unable to contact the
15 designated lay caregiver, the lack of contact shall not
16 interfere with, delay or otherwise affect the medical care
17 provided to the patient or an appropriate discharge of the
18 patient.

19 (4) At a minimum, the discharge plan shall include:

20 (i) The name and contact information of the lay
21 caregiver designated under this act.

22 (ii) A description of all after-care assistance
23 tasks necessary to maintain the patient's ability to
24 reside at home.

25 (iii) Contact information for any health care,
26 community resources, long-term care services and supports
27 necessary to successfully carry out the patient's
28 discharge plan and contact information for a hospital
29 employee who can respond to questions about the discharge
30 plan after the instruction provided pursuant to

1 subsection (b).

2 (b) Instructions for lay caregivers.--

3 (1) The hospital issuing the discharge plan shall
4 provide lay caregivers with instructions in all after-care
5 tasks described in the discharge plan. Training and
6 instructions for lay caregivers may be conducted in person or
7 through video technology at the discretion of the lay
8 caregiver. Any training or instructions provided to a lay
9 caregiver shall be provided in nontechnical language, to the
10 extent possible.

11 (2) At minimum, such instruction shall include:

12 (i) A live or recorded demonstration of the tasks
13 performed by an individual designated by the hospital,
14 who is authorized to perform the after-care task, and is
15 able to perform the demonstration in a culturally
16 competent manner and in accordance with the hospital's
17 requirements to provide language access services under
18 Federal and State law.

19 (ii) An opportunity for the lay caregiver and
20 patient to ask questions about the after-care assistance
21 task.

22 (iii) Answers to the lay caregiver's questions
23 provided in a culturally competent manner and in
24 accordance with the hospital's requirements to provide
25 language access services under Federal and State law.

26 Section 6. Advanced directives.

27 (a) General rule.--A patient may designate a lay caregiver
28 in an advanced directive.

29 (b) Construction.--Nothing in this act shall be construed to
30 interfere with the rights of an agent ~~operation~~ OPERATING under <--

1 a valid advanced directive pursuant to the provisions under 20
2 Pa.C.S. Ch. 54 (relating to health care).

3 Section 7. Private rights of action.

4 (a) General rule.--A hospital, a hospital employee or any
5 consultants or contractors with whom a hospital has a
6 contractual relationship shall not be held liable, in any way,
7 for the services rendered or not rendered by the lay caregiver
8 to the patient at the residence.

9 (b) Construction.--Nothing in this act shall be construed:

10 (1) To create a private right of action against a
11 hospital, a hospital employee or any consultants or
12 contractors with whom a hospital has a contractual
13 relationship.

14 (2) To obviate the obligation of an insurance company,
15 PROFESSIONAL health service ~~organization~~ CORPORATION, <--
16 hospital ~~service~~ PLAN corporation, GENERAL medical service <--
17 corporation, health maintenance organization or any other
18 entity issuing health benefit plans to provide coverage under
19 a health benefits plan.

20 (c) Reimbursements.--

21 (1) No lay caregiver may be reimbursed by a government
22 or commercial payer for after-care assistance that is
23 provided pursuant to this act.

24 (2) Nothing in this act shall be construed to impact,
25 impede or otherwise disrupt or reduce the reimbursement
26 obligations of an insurance company, PROFESSIONAL health <--
27 service corporation, hospital ~~service~~ PLAN corporation, <--
28 GENERAL medical service corporation, health maintenance <--
29 organization or any other entity issuing a health benefits
30 plan, including any government waiver program already

1 providing reimbursement to a lay caregiver pursuant to this
2 act.

3 Section 8. Delay of discharge.

4 Nothing in this act shall be construed to delay the discharge
5 of a patient or the transfer of a patient from a hospital to
6 another facility.

7 Section 9. Joint State Government Commission study.

8 (a) Duty to conduct.--No later than three years after the
9 effective date of this section, the Joint State Government
10 Commission shall conduct a study regarding the impact of this
11 act on certain patient outcomes, including, but not limited to,
12 hospital readmissions.

13 (b) Input to be solicited.--In conducting the study, the
14 Joint State Government Commission shall solicit input from all
15 key stakeholders, including, but not limited to, patients, lay
16 caregivers, physicians, nurses and hospitals.

17 (c) Deadline to submit findings.--The Joint State Government
18 Commission shall submit its findings to the General Assembly no
19 later than five years after the effective date of this section.

20 Section 10. Effective date.

21 This act shall take ~~effective~~ EFFECT in 12 months.

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