



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-0219/1
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2015 SENATE BILL 19

February 3, 2015 - Introduced by Senators CARPENTER, LASSA, WIRCH, L. TAYLOR, HARRIS DODD and HANSEN, cosponsored by Representatives BERCEAU, SINICKI, MILROY, ZAMARRIPA, SUBECK, BILLINGS, SARGENT, KAHL, BOWEN and MEYERS. Referred to Committee on Health and Human Services.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to amend* 146.82 (4) (b) 2. a.; and *to create* 146.82 (4) (c) and 146.827
2 of the statutes; **relating to:** designating a lay caregiver during a hospital
3 admission.

Analysis by the Legislative Reference Bureau

This bill requires hospitals to provide a patient with an opportunity to designate a lay caregiver who will receive instruction regarding patient aftercare prior to the patient's discharge. If the patient is a minor, a parent or legal guardian may designate a lay caregiver on the patient's behalf. If the patient is incapacitated at the time of admission, a person authorized by the patient may make a designation for the patient. Hospitals must promptly record the name and contact information of a lay caregiver, if designated, after a patient is admitted into a hospital. If a patient other than a minor is incapacitated at admission, but later regains capacity, the hospital must notify the patient of the option to designate a lay caregiver or change any designation made by a person authorized by the patient. Patients are not required to designate a lay caregiver under this bill and, further, the designation of a lay caregiver does not obligate any individual to provide aftercare for the patient.

Under this bill, if a patient designates a lay caregiver, the hospital is required to attempt to notify the designated lay caregiver of the patient's discharge to another facility or to a residence. The hospital must also attempt to consult with the lay caregiver to prepare him or her for aftercare assistance tasks that he or she may perform in caring for the patient, including, if applicable, wound care, injections, medication management, and patient movement (for example, transferring a patient

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in and out of bed or from a house to a car). The hospital must also issue a discharge plan. However, if the patient or person authorized by the patient declines to provide either informed consent or approval of the release of a portion of the patient's health care record, the hospital is relieved of its notification and consultation obligations. Further, under this bill, if the hospital is unsuccessful in attempting to contact the lay caregiver, the lack of contact may not interfere with, delay, or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient.

Under current law, patient medical records are kept confidential except in certain limited circumstances, including if a patient or person authorized by the patient gives informed consent to disclosure. Absent informed consent, a health care provider may release a portion, but not a copy, of a patient health care record, to certain individuals under certain limited circumstances. A health care provider may also release a portion of a patient health care record to anyone if a patient or person authorized by the patient agrees to the disclosure. Even without agreement, a health care provider may, in certain circumstances such as patient incapacitation, release to anyone the limited amount of information necessary to identify, locate, or provide notification of the patient's location, condition, or death. Beyond that, current law allows a health care provider to provide more information only to certain listed individuals. Specifically, a health care provider may provide to the patient's immediate family, another relative, a close personal friend of the patient, or an individual identified by the patient, that portion of information from the health care record directly relevant to that person's involvement in the patient's care. This bill adds designated lay caregivers to the list of individuals permitted access to information directly relevant to that person's involvement in the patient's care. Finally, this bill creates a limited exception to allow a hospital to provide a designated lay caregiver a copy of any written discharge plan issued.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.82 (4) (b) 2. a. of the statutes is amended to read:

2 146.82 (4) (b) 2. a. A member of the patient's immediate family, another relative
3 of the patient, a close personal friend of the patient, a lay caregiver designated under
4 s. 146.827, or an individual identified by the patient, that portion that is directly
5 relevant to the involvement by the member, relative, friend, or individual in the
6 patient's care.

7 **SECTION 2.** 146.82 (4) (c) of the statutes is created to read:

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1 146.82 (4) (c) Notwithstanding subs. (1) and (4) (b) (intro.), a health care
2 provider may provide a lay caregiver who is designated under s. 146.827 and who is
3 otherwise permitted access to a portion of a patient health care record under this
4 subsection, with a copy of any written discharge plan issued under s. 146.827 (4) (a)
5 3.

6 **SECTION 3.** 146.827 of the statutes is created to read:

7 **146.827 Designated caregivers. (1) DEFINITIONS.** In this section:

8 (a) “Aftercare assistance” means any assistance provided by a lay caregiver to
9 a patient under this section after the patient’s discharge and related to the patient’s
10 condition at the time of discharge, including, if applicable, wound care, injections,
11 medication management, and patient movement.

12 (b) “Discharge” means a patient’s exit or release from a hospital following any
13 inpatient admission.

14 (c) “Hospital” has the meaning given in s. 50.33 (2).

15 (d) “Incapacitated” has the meaning given in s. 50.94 (1) (b).

16 (e) “Lay caregiver” means any individual designated as a lay caregiver under
17 this section to provide aftercare assistance to a patient.

18 **(2) LAY CAREGIVER DESIGNATION.** (a) A hospital shall provide a patient, or a
19 parent or legal guardian if the patient is a minor, or a person authorized by the
20 patient if the patient is incapacitated, with an opportunity to designate a lay
21 caregiver as soon as practicable after the patient’s admission into the hospital and
22 before the patient’s discharge. An individual making a designation under this
23 section may designate any person, including a family member, that is 18 years of age
24 or older.

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1 (b) If a patient who is not a minor was incapacitated upon admission to the
2 hospital, no lay caregiver was designated upon admission, and the patient is no
3 longer incapacitated, the hospital shall inform the patient of the option to designate
4 a lay caregiver under this section.

5 (c) If a patient was incapacitated upon admission to the hospital and a person
6 authorized by the patient designated a lay caregiver under par. (a) and if the patient
7 is no longer incapacitated, the hospital shall notify the patient of the existing lay
8 caregiver designation and inform the patient of the option under par. (g) to change
9 the designation at any time.

10 (d) If a patient, parent, legal guardian, or person authorized by the patient
11 designates a lay caregiver under this section, the hospital shall promptly record the
12 designation of the lay caregiver, the relationship of the lay caregiver to the patient,
13 and the name, telephone number, and address of the lay caregiver in the patient's
14 medical record.

15 (e) If a patient, parent, legal guardian, or person authorized by the patient,
16 declines to designate a lay caregiver under this section, the hospital shall promptly
17 document that information in the patient's medical record.

18 (f) Nothing in this section requires a patient, parent, legal guardian, or person
19 authorized by the patient to designate a lay caregiver. The designation or lack of
20 designation under this section may not interfere with, delay, or otherwise affect the
21 medical care provided to the patient.

22 (g) A patient, or, if applicable, a parent, legal guardian, or person authorized
23 by the patient, may elect to designate a lay caregiver, withdraw a designation, or
24 change the designated lay caregiver at any time. The hospital shall promptly record
25 in the patient's medical record any designation modification, and, if an individual

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1 designates a new lay caregiver under this section, the information required under
2 par. (d).

3 (h) Designation of a lay caregiver pursuant to the provisions of this section does
4 not obligate any individual to perform aftercare assistance for the patient.

5 **(3) RELEASE OF MEDICAL INFORMATION.** (a) If a patient, parent, legal guardian,
6 or person authorized by the patient designates an individual as a lay caregiver under
7 this section, the hospital shall promptly request the informed consent of the patient
8 or of a person authorized by the patient to release patient health care records under
9 s. 146.82 (1).

10 (b) Notwithstanding par. (a), the hospital may, to the extent allowed under s.
11 146.82 (4) (b) and (c), release a portion of a patient's medical records to complete the
12 requirements of sub. (4), unless a patient or person authorized by a patient expressly
13 refuses to grant informed consent.

14 (c) If a patient or person authorized by the patient declines to provide informed
15 consent under s. 146.82 (1) and declines to release a portion of the patient's medical
16 record under s. 146.82 (4) (b) 1. to allow necessary communication with a designated
17 lay caregiver, the hospital is not required to complete the notification, consultation,
18 and discharge plan requirements under sub. (4).

19 **(4) NOTIFICATION, AFTERCARE CONSULTATION, AND DISCHARGE PLAN.** (a) Subject to
20 sub. (3), if a patient, parent, legal guardian, or person authorized by a patient
21 designates a lay caregiver, the hospital shall, as soon as practicable, do all of the
22 following:

23 1. Attempt to notify the patient's designated lay caregiver of the patient's
24 discharge or transfer to another facility.

