

DESIGNATED CAREGIVER ACT

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Senate Bill 352 (H-1) as reported from House committee
Sponsor: Sen. Margaret E. O'Brien
House Committee: Health Policy
Senate Committee: Health Policy
Complete to 3-15-16

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The bill would create a "Designated Caregiver Act" to give a patient the opportunity to designate a caregiver, who would have a right to patient information and who may care for the patient after discharge from a hospital.

FISCAL IMPACT: As passed by the Senate, the bill has no significant fiscal implications for state or local governments. Publicly funded hospitals may have minor costs to satisfy the requirements of the bill.

THE APPARENT PROBLEM:

According to AARP Michigan, more than two million Michigan residents act as in-home caregivers for an aging relative or friend. The care they provide typically includes help with household tasks and personal care, such as bathing and dressing, as well as managing finances. Additionally, caregivers might perform tasks directly related to health care, such as managing medication, cleaning wounds, and handling feeding tubes, especially after a person has been discharged from a hospital. Many caregivers, however, are not health care professionals and may feel ill-prepared to provide the care someone needs in order to remain in his or her home.

This bill would allow each hospital patient to have the opportunity to designate a lay caregiver to provide any in-home assistance the patient will need after discharge, and require the hospital to issue a discharge plan and consult with a designated caregiver to provide training, instruction, and information regarding services and support for the patient.

THE CONTENT OF THE BILL:

The Designated Caregiver Act created by this bill would allow a patient to designate a caregiver. The caregiver's responsibilities, should he or she choose to accept them, would include providing care for the patient and keeping informed on discharge and medication needs. The act would also do all of the following:

- Require a hospital to give a patient the opportunity to designate a caregiver for after-discharge care, and require the hospital to document the name and contact information of the caregiver, or if the patient declines to designate a caregiver.

- Require a hospital to attempt to notify the caregiver of the patient's transfer or impending discharge, to attempt to consult with the caregiver on after-discharge care, and to issue a discharge plan describing the patient's needs.
- Require a hospital to give the caregiver the opportunity to ask questions and receive answers about the patient's after-discharge needs.
- Provide that appointment as a caregiver does not obligate the designated individual to perform any after-care assistance for the patient.
- Provide that a hospital, hospital employee, or hospital consultant or contractor could not be held liable for the services rendered or not rendered by the caregiver to the patient at the patient's residence.
- Provide that this act would not impact the patient's insurance company's obligations of care, coverage, or reimbursement.

Caregiver, designated caregiver, or lay caregiver would mean an individual at least 18 years old designated as a caregiver by this act who provides after-care assistance to a patient in the patient's residence, voluntarily and without compensation. The term would include a relative, spouse, partner, friend, or neighbor who has a significant relationship with the patient.

After-care assistance would mean assistance provided by a lay caregiver to a patient following the patient's hospital discharge that is related to the patient's condition at the time of discharge. It may include assisting with basic or instrumental activities of daily living or medical or nursing tasks.

The bill would take effect 90 days after enactment.

HOUSE COMMITTEE ACTION:

The House Health Policy committee adopted an H-1 substitute that seeks to clarify that the legislation does not impact workers compensation or auto no-fault law.

Specifically, the new language states that the act does not impact, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, *including an insurance company providing any form of no-fault automobile personal protection insurance as required under Chapter 31 of the Insurance Code of 1956...[or] an insurance company providing any form of worker's compensation benefits under the Worker's Disability Compensation Act of 1969.*

ARGUMENTS:

For:

Discharge plans for patients are already required by Medicare, Medicaid, and the Joint Commission of Hospitals, but these bills would require that designated caretakers be informed about the discharge plan, and included when the patient receives instructions.

As Michigan's population ages, family and friends play an increasingly important role in providing health care. According to an AARP poll, approximately 80% of adults who are

at least 50 years old have acted as caregivers to a loved one, or expect to do so in the future. The assistance provided by lay caregivers enables people to avoid long-term care settings and to continue living in their homes, where they often enjoy more independence and a higher quality of life.

Additionally, health care is much less expensive when provided in the home. Reportedly, the value of this unpaid care is estimated at about \$16 billion annually. Aftercare provided in the home is the first line of defense against readmission to the hospital or transfer to a nursing home. Nonprofessionals, however, may lack confidence in their ability to perform the tasks necessary to their loved ones' well-being. Thus, it is critical that patients have the opportunity to designate a caregiver in advance, and that caregivers, whether relatives or not, are sufficiently armed with the knowledge and training for patients to return to their homes.

Proponents argue that the steps outlined in the bill would ensure that lay caregivers were well-equipped to provide this increasingly crucial form of care, which would help contain costs and lead to better health outcomes.

Against:

Opponents expressed concern that this bill, which seeks to promote and support home-care, could actually inflict significant harm to the family care providers of auto accident victims by inadvertently stripping them of their right to be paid for their services under the Michigan No-Fault law.

According to opponents, the bill's definition of a caretaker as someone who provides care "voluntarily and without compensation" would allow auto insurance companies to deny payment for family-provided attendant care. Insurers could argue that no charges are incurred because the family members provided the care without the expectation of being compensated.

Currently under Michigan No-Fault law, an injured person is entitled to receive reimbursement for (1) allowable expenses *incurred*; (2) necessitated by the injury sustained in the motor vehicle accident; (3) for the injured person's care, recovery, or rehabilitation. Critics say insurance companies have tried to avoid paying for family-provided care previously, with the courts finding that "[b]ecause the no-fault act does not create different standards depending on who provides the services, this requirement [to pay for care] applies equally to services that a family member provides and services that an unrelated caregiver provides."¹ The new caregiver definition could provide insurance companies with a compelling new argument that expenses are not "incurred" since the caretaker is providing care "voluntarily and without compensation[.]" and therefore the injured person has no expectation of payment or reimbursement.

These opponents indicated that they would have supported this bill without the "voluntary and without compensation" provision in the caregiver definition.

¹ *Douglas v Allstate*, 492 Mich 241 (2012)

Response:

As discussed above, the bill states that the act would not "impact, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company[.]" It goes on to state that no-fault and workers compensation, specifically, would not be affected.

Against:

Opponents also indicated concern that hospitals and hospital workers are exempted from any liability for services rendered or not rendered by a caregiver at that patient's residence. They envisioned a scenario where a caregiver acts on wrong or incomplete instructions from the hospital, resulting in ill effects for the patient, and the hospital is not held liable. The committee rejected an amendment which would have distinguished between outcomes caused by a caregiver's mistake (where the hospital and its workers would not be held liable) and one caused by bad instructions by the hospital (where the hospital and its workers would be held liable).

POSITIONS:

- A representative of the American Association of Retired Persons (AARP) testified in support of this bill. (2-9-16)
- Representatives of Henry Ford Health System testified in support of this bill. (2-9-16)
- A representative of the Area Agency on Aging 1-B testified in support of this bill. (2-9-16)
- A representative of the Michigan Directors of Services to the Aging (MDSA) testified in support of this bill. (2-9-16)
- The Michigan Department of Health and Human Services supports this bill. (2-9-16)
- Trinity Health supports this bill. (2-9-16)
- Sparrow Health System supports this bill. (2-9-16)
- The Michigan Association of Health Plans supports this bill. (2-9-16)
- The State Employee Retirees Association supports this bill. (2-9-16)
- AstraZeneca supports this bill. (2-9-16)
- The Michigan State Employee Retirees Association supports this bill. (3-8-16)

- A representative of the Coalition to Protect Auto No-Fault (CPAN) testified in opposition of this bill as written. (2-9-16)
- The Michigan Association for Justice (the association of trial lawyers) opposes this bill. (3-8-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.