



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 352 (as enacted)  
Sponsor: Senator Margaret E. O'Brien  
Senate Committee: Health Policy  
House Committee: Health Policy

**PUBLIC ACT 85 of 2016**

Date Completed: 1-30-17

**RATIONALE**

According to AARP Michigan, more than 2.0 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. Therefore, it was suggested that each hospital patient should be given the opportunity to designate a lay caregiver to provide any in-home assistance the patient will need after discharge, and that the hospital should be required to issue a discharge plan and consult with a designated caregiver to provide training, instruction, and information regarding services and supports for the patient.

**CONTENT**

**The bill enacted the "Designated Caregiver Act" to do the following:**

- **Require a hospital to give each patient the opportunity to designate a lay caregiver to provide after-care assistance upon the patient's discharge from the hospital to his or her residence.**
- **Require a hospital, before a patient is discharged, to consult with a designated caregiver to prepare the caregiver for the patient's after-care assistance needs, and issue a discharge plan describing those needs.**
- **Provide that a caregiver designation does not obligate the designated individual to provide after-care assistance to a patient.**
- **Provide that a hospital, hospital employee, or hospital consultant or contractor may not be held liable for the services rendered or not rendered by the caregiver to the patient at the patient's residence.**

The bill took effect on July 12, 2016.

Caregiver Designation

As soon as practicable following a patient's admission to a hospital as an inpatient and before the patient's discharge to his or her residence, the hospital must give each patient or, if applicable, the patient's legal guardian or patient advocate, an opportunity to designate a lay caregiver.

("Caregiver", "designated caregiver", or "lay caregiver" mean an individual at least 18 years old who provides after-care assistance voluntarily to a patient in the patient's residence. The term includes a relative, spouse, partner, friend, or neighbor who has a significant relationship with the patient.

"After-care assistance" 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.

This assistance includes assisting with basic and instrumental activities of daily living and medical or nursing tasks, such as managing wound care, administering medications, or operating medical equipment.

"Residence" means the dwelling that the patient considers to be his or her home. The term does not include a rehabilitation facility, hospital, or nursing home.)

If a patient is unconscious or otherwise incapacitated upon entry into a hospital, the hospital must give the patient or her or her legal guardian or patient advocate an opportunity to designate a caregiver within a given time frame, at the discretion of the attending physician, after the patient recovers consciousness or capacity.

If a patient or his or her legal guardian or patient advocate decline to designate a caregiver, the hospital must document the decline in the patient's medical record. The hospital will be considered compliant with the Act's requirements upon the required documentation.

If a patient, a legal guardian, or a patient advocate designates an individual as a caregiver, a hospital must record in the patient's medical record the designation of caregiver, the relationship of the caregiver to the patient, and the name, telephone number, and other appropriate contact information of the caregiver.

A patient or his or her legal guardian or patient advocate may elect to change the designated caregiver at any time. The hospital must record the change in the patient's medical record before the patient's discharge.

If a patient is a minor child whose parents are divorced, the custodial parent will have the authority to designate a caregiver. If the parents have joint custody, the parents must designate the caregiver jointly.

The Act does not require a patient, legal guardian, or patient advocate to designate an individual as a caregiver. A designation of a caregiver does not obligate the designated individual to perform any after-care assistance for the patient.

#### Consultation; Discharge Plan; Instruction

A hospital must notify a designated caregiver of a patient's discharge or transfer to another facility as soon as practicable and, in any event, when the patient's attending physician issues a discharge order. As soon as practicable before a patient is discharged from a hospital to his or her residence, the hospital must attempt to consult with the designated caregiver to prepare him or her for the patient's after-care assistance needs and issue a discharge plan that describes those needs, if any, at the patient's residence. The discharge plan may include contact information for health care, community resources, and long-term services and supports necessary to carry out the plan successfully. To the extent possible, training or instructions given to a designated caregiver must be provided in nontechnical language, in a culturally competent manner, and in accordance with the hospital's requirements to provide language access services under State and Federal law.

As part of the consultation, the hospital must attempt to give the caregiver the opportunity to ask questions and receive answers about the patient's after-care assistance needs. If the hospital personnel who consult with the caregiver determine, in the exercise of their professional judgment, that a live or recorded demonstration is necessary in order to prepare the caregiver appropriately, the hospital may give him or her such a demonstration, as well as contact information for a hospital employee who can respond to questions about the discharge plan after the instruction is provided. If the hospital is unable to contact the caregiver, the lack of contact may not interfere with, delay, or otherwise affect the medical care provided to, or an appropriate discharge of, the patient.

The required instruction, including at least the date, time, and contents of the instruction, must be documented in the patient's medical record.

## Scope of the Act

The Act states that it does not interfere with the rights of an agent operating under a valid advance directive. A patient may designate a caregiver in an advance directive.

Also, the Act does not create a private right of action against a hospital, a hospital employee, or a consultant or contractor with whom a hospital has a contractual relationship. None of these entities or individuals may be held liable, in any way, for the services rendered or not rendered by a caregiver to a patient at the patient's residence.

The Act does not obviate the obligation of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans to provide coverage required under a health benefits plan. The Act also does not affect, 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 or any form of worker's compensation insurance, or a health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity responsible to pay any of a patient's medical expenses or issuing health benefits plans.

The Act also states that it does not delay the discharge of a patient or the transfer of a patient from a hospital to another facility.

MCL 333.26281-333.26295

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

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 \$16.0 billion annually. After-care 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 the well-being of a discharged patient. 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 needed for patients to return to their homes. The steps outlined in the bill will help ensure that lay caregivers are well-equipped to provide this increasingly crucial form of care, which will help contain costs and lead to better health outcomes.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Elynn Ackerman

SASVA1516\352ea

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.