



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 352 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Margaret E. O'Brien
Committee: Health Policy

Date Completed: 3-7-16

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. It has been 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 would create 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 was 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 would not obligate the designated individual to provide after-care assistance to a 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.**

The bill would take effect 90 days after it was enacted.

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

"After-care assistance" would mean 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. Such assistance would include 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" would mean the dwelling that the patient considers to be his or her home. The term would not include a rehabilitation facility, hospital, or nursing home.)

If a patient were unconscious or otherwise incapacitated upon entry into a hospital, the hospital would have to 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, following the patient's recovery of consciousness or capacity.

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

If a patient, a legal guardian, or a patient advocate designated an individual as a caregiver, a hospital would have to 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 could elect to change the designated caregiver at any time. The hospital would have to record the change in the patient's medical record before the patient's discharge.

If a patient were a minor child whose parents were divorced, the custodial parent would have the authority to designate a caregiver. If the parents had joint custody, the parents would have to designate the caregiver jointly.

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

Consultation; Discharge Plan; Instruction

A hospital would have to notify a designated caregiver of a patient's discharge or transfer to another facility as soon as practicable and, in any event, upon issuance of a discharge order by the patient's attending physician. As soon as practicable before a patient's discharge from a hospital to the patient's residence, the hospital would have to 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 described those needs, if any, at the patient's residence. The discharge plan could 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 would have to 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 would have to 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 consulted with the caregiver determined, in the exercise of their professional judgment, that a live or recorded demonstration was necessary in order to prepare the caregiver appropriately, the hospital could give him or her such a demonstration, as well as contact information for a hospital employee who could respond to questions about the discharge plan after the instruction was provided. If the hospital were unable to contact the caregiver, the lack of contact could not interfere with, delay, or otherwise affect the medical care provided to, or an appropriate discharge of, the patient.

The required instruction would have to be documented in the patient's medical record, including, at a minimum, the date, time, and contents of the instruction.

Scope of the Act

The proposed Act would not interfere with the rights of an agent operating under a valid advance directive. A patient could designate a caregiver in an advance directive.

Also, the Act would not create a private right of action against a hospital, a hospital employee, or a consultant or contractor with whom a hospital had a contractual relationship. None of these entities or individuals could 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 would 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 would not affect, 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.

The Act would not delay the discharge of a patient or the transfer of a patient from a hospital to another facility.

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. 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. 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.

Response: The bill's requirement that a designated caregiver be uncompensated could be problematic for certain patients who receive care through Michigan's Medicaid Home Help Program. Under the Program, elderly and disabled people who need assistance with daily activities may select relatives and friends to be their caregivers, rather than receive services directly from the State. Medicaid pays these caregivers for providing the care (although generally at a lower rate than the national average hourly rate for home care). The definition of "caregiver" should not preclude these compensated friends or family members from being designated to receive the discharge plan and after-care preparation under the bill.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

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

Fiscal Analyst: Elynn Ackerman

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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.