

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 352

A bill to allow for designation of a caregiver; to prescribe the duties of a designated caregiver; to enable a hospital to assist in designating a caregiver; and to prescribe the duties of state departments and agencies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "designated caregiver act".

3 Sec. 3. As used in this act:

4 (a) "After-care assistance" means assistance provided by a lay
5 caregiver to a patient following the patient's discharge from a
6 hospital that is related to the patient's condition at the time of
7 discharge. After-care assistance includes, but is not limited to, 1
8 or more of the following:

Senate Bill No. 352 as amended March 24, 2016

1 (i) Assisting with basic activities of daily living.

2 (ii) Assisting with instrumental activities of daily living.

3 (iii) Assisting with medical or nursing tasks, including
4 managing wound care, assisting in administering medications, or
5 operating medical equipment.

6 (b) "Attending physician" means that term as defined in
7 section 20102 of the public health code, 1978 PA 368, MCL
8 333.20102.

9 (c) "Caregiver", "designated caregiver", or "lay caregiver"
10 means an individual 18 years of age or older designated as a
11 caregiver by a patient under this act who [voluntarily

12] provides after-care assistance to a patient in the
13 patient's residence. Caregiver, designated caregiver, or lay
14 caregiver includes, but is not limited to, a relative, spouse,
15 partner, friend, or neighbor who has a significant relationship
16 with the patient.

17 (d) "Discharge" means a patient's exit or release from a
18 hospital to the patient's residence following any medical care or
19 treatment rendered to the patient following an inpatient admission.

20 (e) "Entry" means a patient's admission into a hospital for
21 the purposes of receiving inpatient medical care.

22 (f) "Health care professional" means an individual licensed or
23 otherwise authorized to practice medicine under article 15 of the
24 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

25 (g) "Hospital" means that term as defined in section 20106 of
26 the public health code, 1978 PA 368, MCL 333.20106.

27 (h) "Patient advocate" means that term as described and used

1 in section 5506 of the estates and protected individuals code, 1998
2 PA 386, MCL 700.5506.

3 (i) "Residence" means the dwelling that the patient considers
4 to be his or her home. Residence does not include a rehabilitation
5 facility, hospital, or nursing home.

6 Sec. 5. (1) As soon as practicable following a patient's
7 admission to a hospital as an inpatient and before the patient's
8 discharge from the hospital to the patient's residence, the
9 hospital shall provide each patient or, if applicable, the
10 patient's legal guardian or patient advocate with an opportunity to
11 designate a lay caregiver.

12 (2) If the patient is unconscious or otherwise incapacitated
13 upon entry into the hospital, the hospital shall provide the
14 patient, the patient's legal guardian, or the patient advocate with
15 an opportunity to designate a lay caregiver within a given time
16 frame, at the discretion of the attending physician, following the
17 patient's recovery of consciousness or capacity.

18 (3) If the patient, the patient's legal guardian, or the
19 patient advocate declines to designate a caregiver under this act,
20 the hospital shall document that decline in the patient's medical
21 record. Upon the documentation in the patient's medical record
22 described in this subsection, the hospital has complied with the
23 requirements of this act.

24 (4) If the patient, the patient's legal guardian, or the
25 patient advocate designates an individual as a caregiver under this
26 act, the hospital shall record the patient's designation of
27 caregiver, the relationship of the designated caregiver to the

1 patient, and the name, telephone number, and other appropriate
2 contact information of the patient's designated caregiver in the
3 patient's medical record.

4 (5) A patient, the patient's legal guardian, or the patient
5 advocate may elect to change the patient's designated caregiver at
6 any time, and the hospital must record the change in the patient's
7 medical record before the patient's discharge.

8 (6) This does not require a patient or a patient's legal
9 guardian to designate an individual as a caregiver.

10 (7) A designation of a caregiver by a patient, a patient's
11 legal guardian, or a patient advocate does not obligate the
12 designated individual to perform any after-care assistance for the
13 patient.

14 (8) If the patient is a minor child and the parents of the
15 patient are divorced, the custodial parent has the authority to
16 designate a caregiver. If the parents have joint custody of the
17 patient, the parents shall jointly designate the caregiver.

18 Sec. 7. A hospital shall notify the patient's designated
19 caregiver of the patient's discharge or transfer to another
20 facility as soon as practicable and, in any event, upon issuance of
21 a discharge order by the patient's attending physician. If the
22 hospital is unable to contact the designated caregiver, the lack of
23 contact shall not interfere with, delay, or otherwise affect the
24 medical care provided to the patient, or an appropriate discharge
25 of the patient. The hospital shall promptly document the attempt in
26 the patient's medical record.

27 Sec. 9. (1) As soon as practicable before the patient's

1 discharge from a hospital to the patient's residence, the hospital
2 shall attempt to consult with the designated caregiver to prepare
3 the designated caregiver for the patient's after-care assistance
4 needs and issue a discharge plan that describes the patient's
5 after-care assistance needs, if any, at the patient's residence.
6 The discharge plan may include contact information for health care,
7 community resources, and long-term services and supports necessary
8 to successfully carry out the discharge plan. To the extent
9 possible, training or instructions provided to a designated
10 caregiver shall be provided in nontechnical language, in a
11 culturally competent manner, and in accordance with the hospital's
12 requirements to provide language access services under state and
13 federal law.

14 (2) As part of the consultation under subsection (1), the
15 hospital shall attempt to provide the designated caregiver the
16 opportunity to ask questions and receive answers about the after-
17 care assistance needs of the patient. If the hospital personnel who
18 consult with the designated caregiver determine, in the exercise of
19 their professional judgment, that a live or recorded demonstration
20 is necessary in order to appropriately prepare the designated
21 caregiver for the patient's after-care needs, the hospital may
22 provide to a designated caregiver a live or recorded demonstration
23 of the aftercare described in the patient's discharge plan and
24 contact information for a hospital employee who can respond to
25 questions about the discharge plan after the instruction provided.
26 If the hospital is unable to contact the designated caregiver, the
27 lack of contact shall not interfere with, delay, or otherwise

1 affect the medical care provided to the patient, or an appropriate
2 discharge of the patient.

3 (3) Instruction required under this act shall be documented in
4 the patient's medical record, including, at a minimum, the date,
5 time, and contents of the instruction.

6 Sec. 11. (1) This act does not interfere with the rights of an
7 agent operating under a valid advance directive.

8 (2) A patient may designate a caregiver in an advance
9 directive.

10 Sec. 13. (1) This act does not create a private right of
11 action against a hospital, a hospital employee, or a consultant or
12 contractor with whom a hospital has a contractual relationship.

13 (2) A hospital, a hospital employee, or a consultant or
14 contractor with whom a hospital has a contractual relationship
15 shall not be held liable, in any way, for the services rendered or
16 not rendered by the caregiver to the patient at the patient's
17 residence.

18 (3) This act does not obviate the obligation of an insurance
19 company, health service corporation, hospital service corporation,
20 medical service corporation, health maintenance organization, or
21 any other entity issuing health benefits plans to provide coverage
22 required under a health benefits plan.

23 (4) This act does not impact, impede, or otherwise disrupt or
24 reduce the reimbursement obligations of an insurance company,
25 including an insurance company providing any form of no-fault
26 automobile personal protection insurance as required under chapter
27 31 of the insurance code of 1956, 1956 PA 218, MCL 500.3101 to

1 500.3119, an insurance company providing any form of worker's
2 compensation benefits under the worker's disability compensation
3 act of 1969, 1969 PA 317, MCL 418.101 to 418.941, a health service
4 corporation, hospital service corporation, medical service
5 corporation, health maintenance organization, or any other entity
6 responsible to pay any of a patient's medical expenses or issuing
7 other health benefits plans to provide coverage under those health
8 benefits plans.

9 Sec. 15. This act does not delay the discharge of a patient or
10 the transfer of a patient from a hospital to another facility.

11 Enacting section 1. This act takes effect 90 days after the
12 date it is enacted into law.