

SENATE BILL No. 352

May 21, 2015, Introduced by Senator O'BRIEN and referred to the Committee on Health Policy.

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 any assistance provided by a
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 and that does not require a licensed professional,
8 including, but not limited to, assisting with basic activities of
9 daily living, instrumental activities of daily living, and other

1 tasks as determined to be appropriate by the discharging health
2 care professional.

3 (b) "Attending physician" means that term as defined in
4 section 20102 of the public health code, 1978 PA 368, MCL
5 333.20102.

6 (c) "Caregiver" or "designated caregiver" means an individual
7 18 years of age or older designated as a caregiver by a patient
8 under this act who provides after-care assistance to a patient in
9 the patient's residence. Caregiver or designated caregiver
10 includes, but is not limited to, a relative, spouse, partner,
11 friend, or neighbor who has a significant relationship with the
12 patient.

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

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

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

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

23 (h) "Residence" means the dwelling that the patient considers
24 to be his or her home. Residence does not include a rehabilitation
25 facility, hospital, nursing home, assisted living facility, or
26 group home.

27 Sec. 5. (1) A hospital shall provide each patient or, if

1 applicable, the patient's legal guardian with an opportunity to
2 designate at least 1 caregiver following the patient's entry into a
3 hospital, and before the patient's discharge to the patient's
4 residence, in a time frame that is consistent with the discharge
5 planning process provided by rules promulgated under this act. The
6 hospital shall promptly document the request in the patient's
7 medical record.

8 (2) If the patient is unconscious or otherwise incapacitated
9 upon entry into the hospital, the hospital shall provide the
10 patient or the patient's legal guardian with an opportunity to
11 designate a caregiver within a given time frame, at the discretion
12 of the attending physician, following the patient's recovery of
13 consciousness or capacity. The hospital shall promptly document the
14 attempt in the patient's medical record.

15 (3) If the patient or the patient's legal guardian declines to
16 designate a caregiver under this act, the hospital shall promptly
17 document that decline in the patient's medical record.

18 (4) If the patient or the patient's legal guardian designates
19 an individual as a caregiver under this act, the hospital shall do
20 all of the following:

21 (a) Promptly request the written consent of the patient or the
22 patient's legal guardian to release medical information to the
23 patient's designated caregiver following the hospital's established
24 procedures for releasing personal health information and in
25 compliance with state and federal law, including the health
26 insurance portability and accountability act of 1996, Public Law
27 104-191. If the patient or the patient's legal guardian declines to

1 consent to release medical information to the patient's designated
2 caregiver, the hospital is not required to provide notice to the
3 caregiver under section 7 or provide information contained in the
4 patient's discharge plan under section 9.

5 (b) The hospital shall record the patient's designation of
6 caregiver, the relationship of the designated caregiver to the
7 patient, and the name, telephone number, and address of the
8 patient's designated caregiver in the patient's medical record.

9 (5) A patient or the patient's legal guardian may elect to
10 change the patient's designated caregiver in the event that the
11 designated caregiver becomes incapacitated, and the hospital must
12 record the change in the patient's medical record before the
13 patient's discharge.

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

16 (7) A designation of a caregiver by a patient or a patient's
17 legal guardian does not obligate the designated individual to
18 perform any after-care assistance for the patient.

19 (8) If the patient is a minor child and the parents of the
20 patient are divorced, the custodial parent has the authority to
21 designate a caregiver. If the parents have joint custody of the
22 patient, the parents shall jointly designate the caregiver.

23 Sec. 7. A hospital shall notify the patient's designated
24 caregiver of the patient's discharge or transfer to another
25 facility as soon as possible and, in any event, upon issuance of a
26 discharge order by the patient's attending physician. If the
27 hospital is unable to contact the designated caregiver, the lack of

1 contact shall not interfere with, delay, or otherwise affect the
2 medical care provided to the patient, or an appropriate discharge
3 of the patient. The hospital shall promptly document the attempt in
4 the patient's medical record.

5 Sec. 9. (1) As soon as possible before a patient's discharge
6 from a hospital to the patient's residence, the hospital shall
7 consult with the designated caregiver and issue a discharge plan
8 that describes a patient's after-care assistance needs, if any, at
9 the patient's residence. The consultation and issuance of a
10 discharge plan shall occur on a schedule that takes into
11 consideration the severity of the patient's condition, the setting
12 in which care is to be delivered, and the urgency of the need for
13 caregiver services. If the hospital is unable to contact the
14 designated caregiver, the lack of contact shall not interfere with,
15 delay, or otherwise affect the medical care provided to the
16 patient, or an appropriate discharge of the patient. The hospital
17 shall promptly document the attempt in the patient's medical
18 record. At a minimum, the discharge plan shall include all of the
19 following:

20 (a) The name and contact information of the caregiver
21 designated under this act.

22 (b) A description of all after-care assistance tasks necessary
23 to maintain the patient's ability to reside at home.

24 (c) Contact information for any health care, community
25 resources, and long-term services and supports necessary to
26 successfully carry out the patient's discharge plan, and contact
27 information for a hospital employee who can respond to questions

1 about the discharge plan after the instruction provided according
2 to subsection (2).

3 (2) The hospital issuing the discharge plan must provide
4 caregivers with instructions in all after-care assistance tasks
5 described in the discharge plan. Training and instructions for
6 caregivers may be conducted in person or through video technology,
7 at the discretion of the caregiver. Any training or instructions
8 provided to a caregiver shall be provided in nontechnical language,
9 to the extent possible. At a minimum, this instruction shall
10 include all of the following:

11 (a) A live or recorded demonstration of the tasks performed by
12 an individual designated by the hospital, who is authorized to
13 perform the after-care assistance task, and who is able to perform
14 the demonstration in a culturally competent manner and in
15 accordance with the hospital's requirements to provide language
16 access services under state and federal law.

17 (b) An opportunity for the caregiver to ask questions about
18 the after-care assistance tasks.

19 (c) Answers to the caregiver's questions provided in a
20 culturally competent manner and in accordance with the hospital's
21 requirements to provide language access services under state and
22 federal law.

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

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

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

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

6 (2) A hospital, a hospital employee, or a consultant or
7 contractor with whom a hospital has a contractual relationship
8 shall not be held liable, in any way, for the services rendered or
9 not rendered by the caregiver to the patient at the patient's
10 residence.

11 (3) This act does not obviate the obligation of an insurance
12 company, health service corporation, hospital service corporation,
13 medical service corporation, health maintenance organization, or
14 any other entity issuing health benefits plans to provide coverage
15 required under a health benefits plan.

16 (4) A caregiver shall not be reimbursed by any government or
17 commercial payer for after-care assistance that is provided under
18 this act.

19 (5) This act does not impact, impede, or otherwise disrupt or
20 reduce the reimbursement obligations of an insurance company,
21 health service corporation, hospital service corporation, medical
22 service corporation, health maintenance organization, or any other
23 entity issuing health benefits plans.

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

26 Sec. 17. The department of health and human services shall
27 promulgate rules to implement this act according to the

1 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
2 24.328.

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