

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1329 Session of
2015

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A. HARRIS, SCHREIBER AND BULLOCK, JUNE 12, 2015

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, MARCH 15, 2016

AN ACT

1 Requiring certain hospitals to allow patients an opportunity to
2 designate caregivers in patients' medical records and
3 imposing duties on hospitals.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known as the Caregiver Advise, Record and
8 Enable Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "After-care assistance." Any assistance provided by a lay
14 caregiver to a patient following the patient's discharge from a
15 hospital and that is related to the patient's condition at the

1 time of discharge, including, but not limited to, assisting with
2 basic activities of daily living, instrumental activities of
3 daily living and any other tasks as determined to be appropriate
4 by the discharging physician or other health care professional
5 licensed pursuant to 28 Pa. Code Ch. 105 (relating to admission
6 and discharge).

7 "Discharge." A patient's exit or release from a hospital to
8 the patient's residence following medical care or treatment
9 rendered to the patient following an inpatient admission.

10 "Entry." A patient's admission into a hospital for the
11 purposes of receiving inpatient medical care.

12 "Hospital." A general acute care hospital as defined and
13 licensed under Title 28 of the Pennsylvania Code (relating to
14 health and safety).

15 "Lay caregiver." An individual with a significant
16 relationship to a patient and who:

17 (1) is designated and accepts the role as a lay
18 caregiver by the patient pursuant to this act; and

19 (2) provides after-care assistance to the patient living
20 in the patient's residence.

21 "Residence." The dwelling that a patient considers to be the
22 patient's home. The term includes the residence of a patient's
23 designated lay caregiver. The term shall not include a
24 rehabilitation facility, hospital, nursing home, personal care
25 home, assisted living facility or group home licensed by the
26 Department of Health.

27 Section 3. Caregiver designation and consent.

28 (a) General rule.--A hospital shall provide each patient or,
29 if applicable, the patient's legal guardian an opportunity to
30 designate at least one lay caregiver following the patient's

1 entry into a hospital and, prior to the patient's discharge to <--
2 the residence, ~~in a time frame that is consistent with the~~ <--
3 ~~discharge planning process provided by regulation.~~ The hospital
4 shall promptly document the request in the patient's medical
5 record.

6 (b) Unconscious and incapacitated patients.--In the event
7 that the patient is unconscious or otherwise incapacitated upon
8 entry into a hospital, the hospital shall provide the patient or
9 the patient's legal guardian with an opportunity to designate a
10 lay caregiver as soon as possible following the patient's
11 recovery of consciousness or capacity. The hospital shall
12 promptly document the designation in the patient's medical
13 records.

14 (c) Declining of designation.--~~In the event that~~ IF the <--
15 patient or the patient's legal guardian declines to designate a
16 lay caregiver pursuant to this act, the hospital shall promptly
17 document the decision in the patient's medical record.

18 (d) Designation of lay caregivers.--~~In the event that~~ IF the <--
19 patient or the patient's legal guardian designates an individual
20 as lay caregiver under this act:

21 (1) The hospital shall promptly request the written
22 consent of the patient or the patient's legal guardian to
23 release medical information to the patient's designated lay
24 caregiver following the hospital's established procedures for
25 releasing personal health information and in compliance with
26 all Federal and State laws, including the Health Insurance
27 Portability and Accountability Act of 1996 (Public Law 104-
28 191, 110 Stat. 1936) ~~and related regulations.~~ <--

29 (2) If the patient or the patient's legal guardian
30 declines to consent to release medical information to the

1 patient's designated lay caregiver, the hospital is not
2 required to provide notice to the lay caregiver or provide
3 MEDICAL information contained in the patient's discharge <--
4 plan.

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

10 (e) Change of lay caregiver.--A patient or the patient's
11 legal guardian may elect to change the patient's lay caregiver
12 at any time, and the hospital shall record the change in the
13 patient's medical record ~~before~~ PRIOR TO the patient's <--
14 discharge.

15 (f) Construction.--This section shall not be construed to
16 require a patient or patient's legal guardian to designate an <--
17 ~~individual as~~ a lay caregiver.

18 (g) After-care assistance.--A designation of a lay caregiver
19 by a patient or a patient's legal guardian does not obligate the
20 designated individual to perform any after-care assistance for
21 the patient.

22 (h) Minor children.--In the event that the patient is a
23 minor child and the parents of the patient are divorced, the
24 parent with legal custody of the patient shall have the
25 authority to designate a lay caregiver. If the parents have
26 shared legal custody of the patient, they shall jointly
27 designate the lay caregiver.

28 Section 4. Notice requirements.

29 (a) Duty to hospital.--A hospital shall notify a patient's
30 designated lay caregiver of any discharge order for the patient,

1 the patient's actual discharge or the patient's transfer to
2 another facility as soon as possible.

3 (b) Documentation.--The hospital shall promptly document the
4 ~~attempt~~ NOTIFICATION in the patient's medical record. <--

5 Section 5. Hospital discharge plan.

6 (a) Duty to issue.--

7 (1) As soon as possible prior to a patient's discharge
8 from a hospital to the residence, the hospital shall consult
9 with the designated lay caregiver and issue a discharge plan
10 that describes the patient's after-care assistance needs, ~~if~~ <--
11 ~~any,~~ at the residence.

12 (2) The consultation and issuance of a discharge plan
13 shall occur on a schedule that takes into consideration the
14 severity of the patient's condition, the setting in which
15 care is to be delivered and the urgency of the need for lay
16 caregiver services.

17 (3) ~~In the event~~ IF the hospital is unable to contact <--
18 the designated lay caregiver, the lack of contact shall not
19 interfere with, delay or otherwise affect the medical care
20 provided to the patient or an appropriate discharge of the
21 patient.

22 (4) At a minimum, the discharge plan shall include:

23 (i) The name and contact information of the lay
24 caregiver designated under this act.

25 (ii) A description of all after-care assistance
26 tasks necessary to maintain the patient's ability to
27 reside at home.

28 (iii) Contact information for any health care,
29 community resources, long-term care services and ~~supports~~ <--
30 SUPPORT SERVICES necessary to successfully carry out the <--

1 patient's discharge plan and contact information for a
2 hospital employee who can respond to questions about the
3 discharge plan after the instruction provided pursuant to
4 subsection (b).

5 (b) Instructions for lay caregivers.--

6 (1) The hospital issuing the discharge plan shall
7 provide lay caregivers with instructions in all after-care
8 tasks described in the discharge plan. Training and
9 instructions for lay caregivers may be conducted in person or
10 through video technology at the discretion of the lay
11 caregiver. Any training or instructions provided to a lay
12 caregiver shall be provided in nontechnical language, to the
13 extent possible.

14 (2) At minimum, such instruction shall include:

15 (i) A live or recorded demonstration of the tasks
16 performed by an individual designated by the hospital, ~~---~~ <--
17 who is authorized to perform the ~~after-care task,~~ TASK <--
18 and is able to perform the demonstration in a culturally
19 competent manner and in accordance with the hospital's
20 requirements to provide language access services under
21 Federal and State law.

22 (ii) An opportunity for the lay caregiver and
23 patient to ask questions about the after-care assistance
24 task.

25 (iii) Answers to the lay caregiver's questions
26 provided in a culturally competent manner and in
27 accordance with the hospital's requirements to provide
28 language access services under Federal and State law.

29 Section 6. Advanced directives.

30 (a) General rule.--A patient may designate a lay caregiver

1 in an advanced directive.

2 (b) Construction.--Nothing in this act shall be construed to
3 interfere with the rights of an agent operating under a valid
4 advanced directive pursuant to the provisions under 20 Pa.C.S.
5 Ch. 54 (relating to health care).

6 Section 7. Private rights of action.

7 (a) General rule.--A hospital, a hospital employee or any
8 consultants or contractors with whom a hospital has a
9 contractual relationship shall not be held liable, in any way,
10 for the services rendered or not rendered by the lay caregiver
11 to the patient at the residence.

12 (b) Construction.--Nothing in this act shall be construed+ <--

13 ~~(1) To~~ TO create a private right of action against a <--
14 hospital, a hospital employee or any consultants or
15 contractors with whom a hospital has a contractual
16 relationship- OR REQUIRE ANY COMMERCIAL HEALTH INSURANCE <--
17 POLICY OR GOVERNMENT PROGRAM TO PROVIDE REIMBURSEMENT FOR
18 AFTER-CARE ASSISTANCE PROVIDED BY A LAY CAREGIVER.

19 ~~(2) To obviate the obligation of an insurance company,~~ <--
20 ~~professional health service corporation, hospital plan-~~
21 ~~corporation, general medical service corporation, health-~~
22 ~~maintenance organization or any other entity issuing health-~~
23 ~~benefit plans to provide coverage under a health benefits-~~
24 ~~plan.~~

25 ~~(c) Reimbursements.~~

26 ~~(1) No lay caregiver may be reimbursed by a government-~~
27 ~~or commercial payer for after care assistance that is-~~
28 ~~provided pursuant to this act.~~

29 ~~(2) Nothing in this act shall be construed to impact,~~
30 ~~impede or otherwise disrupt or reduce the reimbursement~~

1 ~~obligations of an insurance company, professional health~~
2 ~~service corporation, hospital plan corporation, general~~
3 ~~medical service corporation, health maintenance organization~~
4 ~~or any other entity issuing a health benefits plan, including~~
5 ~~any government waiver program already providing reimbursement~~
6 ~~to a lay caregiver pursuant to this act.~~

7 Section 8. Delay of discharge.

8 Nothing in this act shall be construed to delay the discharge
9 of a patient or the transfer of a patient from a hospital to
10 another facility.

11 Section 9. ~~Joint State Government Commission~~ LEGISLATIVE BUDGET <--
12 AND FINANCE COMMITTEE study.

13 (a) Duty to conduct.--No later than three years after the
14 effective date of this section, the ~~Joint State Government~~ <--
15 ~~Commission~~ LEGISLATIVE BUDGET AND FINANCE COMMITTEE shall <--
16 conduct a study regarding the impact of this act on certain
17 patient outcomes, including, but not limited to, hospital
18 readmissions.

19 (b) Input to be solicited.--In conducting the study, the
20 ~~Joint State Government Commission~~ LEGISLATIVE BUDGET AND FINANCE <--
21 COMMITTEE shall solicit input from ~~all key stakeholders,~~ <--
22 ~~including, but not limited to,~~ patients, lay caregivers,
23 physicians, nurses ~~and hospitals,~~ OTHER HEALTH CARE <--
24 PROFESSIONALS, HOSPITALS AND OTHER HEALTH CARE FACILITIES.

25 (c) Deadline to submit findings.--The ~~Joint State Government~~ <--
26 ~~Commission~~ LEGISLATIVE BUDGET AND FINANCE COMMITTEE shall submit <--
27 its findings to the General Assembly no later than five years
28 after the effective date of this section.

29 Section 10. Effective date.

30 This act shall take effect in 12 months.