
A BILL FOR AN ACT

RELATING TO CAREGIVING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawaii's population
2 of older adults is rapidly increasing, and the State relies
3 heavily on unpaid lay caregivers, such as family and friends, to
4 provide long-term services and support. In 2012, Hawaii had the
5 highest percentage in the nation of residents age eighty-five
6 and older. This population is projected to grow sixty-five per
7 cent over the next twenty years and is the population most
8 likely to need long-term care. The AARP Public Policy Institute
9 estimates that in 2009, there were 247,000 lay caregivers in
10 Hawaii, and that the 162,000,000 hours of unpaid care the lay
11 caregivers provided would be valued at \$2,000,000,000.

12 The legislature further finds that the role of lay
13 caregivers is expanding. While lay caregivers have
14 traditionally assisted with bathing, dressing, eating, and
15 household tasks such as shopping and managing finances, it is
16 now common for lay caregivers to perform medical and nursing
17 tasks that historically were only provided in hospitals and
18 nursing homes or by home care professionals. The most commonly



1 performed medical and nursing tasks are medication management,
2 help with assistive mobility devices, preparing food for special
3 diets, and wound care. The rise of lay caregivers providing
4 medical or nursing tasks is attributed to an increased
5 prevalence of chronic conditions in older adults, economic
6 pressures to reduce hospital stays, and reduction of formal home
7 care services due to the growth of in-home technology.

8 The legislature also recognizes that hospitals are in a
9 unique position to train lay caregivers. Under federal law,
10 hospitals are required to have a patient discharge planning
11 process with written policies and procedures. Federal law
12 states that the discharge planning process may include preparing
13 lay caregivers to care for soon-to-be discharged patients.
14 Currently, some hospitals voluntarily provide lay caregivers
15 with training as a part of their discharge planning process.
16 The legislature commends these hospitals for voluntarily
17 providing lay caregivers with training.

18 The legislature also recognizes hospitals' concerns about
19 potential liability. Hospitals have expressed their trepidation
20 about the potential for increasing their exposure to civil
21 liability if hospitals are required to provide patients' lay
22 caregivers with training prior to discharge. The legislature



1 understands this legitimate concern and further stresses its
2 concerted intent to avoid the creation of additional causes of
3 action against hospitals that are voluntarily training lay
4 caregivers to provide care for their loved ones. Thus, this Act
5 includes a provision that clearly states that nothing in this
6 Act shall be construed to give rise to a cause of action against
7 a hospital or hospital employee.

8 The legislature finds that voluntary training of lay
9 caregivers by hospitals has the potential to help patients and
10 lay caregivers. By voluntarily training lay caregivers,
11 hospitals may lower their readmission rates and overall costs.
12 Lay caregivers may benefit from the voluntary training because
13 they will have the opportunity to become better equipped to
14 provide care to their loved ones. This Act will encourage the
15 voluntary delivery of training to lay caregivers to enable lay
16 caregivers to provide competent post-hospital care to their
17 families and other loved ones, at minimal cost to the taxpayers,
18 without exposing hospitals that train lay caregivers to greater
19 liability.

20 The purpose of this Act is to:



- 1 (1) Allow a patient an opportunity to designate, upon
2 entry to a hospital, a lay caregiver in the patient's
3 medical record;
- 4 (2) Support hospitals that notify and meet with the
5 designated lay caregiver to discuss the patient's plan
6 of care prior to the patient's discharge or transfer
7 to another facility;
- 8 (3) Support hospitals that provide voluntary training of
9 designated lay caregivers in certain after-care tasks
10 upon a patient's discharge; and
- 11 (4) Affirm that nothing in this Act shall be construed to
12 give rise to a cause of action against hospitals and
13 their employees that voluntarily train lay caregivers.

14 SECTION 2. The Hawaii Revised Statutes is amended by
15 adding a new chapter to be appropriately designated and to read
16 as follows:

17 **"CHAPTER**

18 **HOSPITAL REQUIREMENTS REGARDING LAY CAREGIVERS**

19 § -1 **Definitions.** For the purpose of this chapter:
20 "After-care" means any assistance provided by a lay
21 caregiver to a patient after the patient's discharge from a
22 hospital. Such assistance may include assisting with basic



1 activities of daily living and instrumental activities of daily
2 living and carrying out medical or nursing tasks such as
3 managing wound care, assisting in administering medications, and
4 operating medical equipment.

5 "Discharge" means a patient's exit or release from a
6 hospital to the patient's residence following any medical care,
7 treatment, or observation.

8 "Entry" means a patient's entrance into a hospital for the
9 purposes of medical care, treatment, or observation. "Entry"
10 includes but is not limited to formal admittance to a hospital.

11 "Hospital" means a facility licensed under section
12 321-14.5.

13 "Lay caregiver" means any individual duly designated by a
14 patient to provide after-care to the patient in the patient's
15 residence. A designated lay caregiver may include a relative,
16 partner, friend, or neighbor who has a significant relationship
17 with the patient.

18 "Residence" means a dwelling that the patient considers to
19 be the patient's home. "Residence" shall not include any
20 rehabilitation facility, hospital, nursing home, assisted living
21 facility, or group home licensed by the State.



1 § -2 Opportunity to designate lay caregiver. (a) A
2 hospital may provide each patient or, if applicable, the
3 patient's legal guardian with at least one opportunity to
4 designate one or more lay caregivers no later than twenty-four
5 hours following the patient's entry into a hospital and prior to
6 the patient's discharge or transfer to another facility;
7 provided that in the event that the patient is unconscious or
8 otherwise incapacitated upon entry into a hospital, the hospital
9 may provide the patient or the patient's legal guardian with an
10 opportunity to designate a lay caregiver within twenty-four
11 hours following the patient's recovery of consciousness or
12 capacity.

13 (b) If the patient or the patient's legal guardian
14 declines to designate a lay caregiver pursuant to subsection
15 (a), the hospital may promptly document this in the patient's
16 medical record.

17 (c) If the patient or the patient's legal guardian
18 designates an individual as a lay caregiver under this chapter,
19 the hospital may:

20 (1) Promptly request the written consent of the patient or
21 the patient's legal guardian to release medical
22 information to the patient's lay caregiver following



1 the hospital's established procedures for releasing
2 personal health information and in compliance with all
3 federal and state laws. If the patient or the
4 patient's legal guardian declines to consent to
5 release medical information to the patient's lay
6 caregiver, the hospital is not required to provide
7 notice to the lay caregiver under section -3 or
8 provide information contained in the patient's
9 discharge plan under section -4; and

10 (2) Record the patient's designation of a lay caregiver,
11 the relationship of the lay caregiver to the patient,
12 and the name, telephone number, and address of the
13 patient's lay caregiver in the patient's medical
14 record.

15 (d) A patient may elect to change the patient's designated
16 lay caregiver at any time. The hospital may record this change
17 in the patient's medical record within twenty-four hours of
18 notification by the patient.

19 (e) A designation of a lay caregiver by a patient or a
20 patient's legal guardian under this section does not obligate
21 any individual to perform any after-care for the patient.



1 (f) This section shall not be construed to require a
2 patient or a patient's legal guardian to designate any
3 individual as a lay caregiver.

4 § -3 **Notice to a lay caregiver.** A hospital shall notify
5 the patient's lay caregiver of the patient's discharge or
6 transfer to another licensed facility at least hours
7 before the patient's actual discharge or transfer.

8 § -4 **Instruction to lay caregiver; discharge plan.** (a)
9 As soon as possible and not later than twenty-four hours prior
10 to a patient's discharge from a hospital, the hospital may
11 consult with the patient's lay caregiver regarding the lay
12 caregiver's capabilities and limitations and issue a discharge
13 plan that describes the patient's after-care at the patient's
14 residence. At a minimum, the discharge plan may include:

- 15 (1) The name and contact information of the designated lay
16 caregiver;
- 17 (2) A description of all after-care necessary to maintain
18 the patient's ability to reside at home, taking into
19 account the capabilities and limitations of the lay
20 caregiver; and
- 21 (3) Contact information for any health care, community
22 resources, and long-term services and support



1 necessary to successfully carry out the patient's
2 discharge plan.

3 (b) The hospital issuing the discharge plan may provide
4 the lay caregiver with instruction in all after-care described
5 in the discharge plan.

6 (c) The instruction may include:

7 (1) A live demonstration of the tasks performed by a
8 hospital employee authorized to perform the after-care
9 provided in a culturally competent manner and in
10 accordance with the hospital's requirements to provide
11 language access services under state and federal law;

12 (2) An opportunity for the lay caregiver to ask questions
13 about the after-care; and

14 (3) Answers to the lay caregiver's questions provided in a
15 culturally competent manner and in accordance with the
16 hospital's requirements to provide language access
17 services under state and federal law.

18 (d) Any instruction provided under this chapter may be
19 documented in the patient's medical record. If documented, at a
20 minimum, the patient's medical record shall reflect the date,
21 time, and content of the instruction.



1 (e) The department of health may adopt rules pursuant to
2 chapter 91 to carry out the purpose of this chapter, including
3 rules to further define the content and scope of any instruction
4 provided to lay caregivers under this chapter.

5 § -5 **Non-interference with existing health care**
6 **directives.** (a) Nothing in this chapter shall be construed to
7 interfere with the rights of an agent operating under a valid
8 health care directive under Hawaii law.

9 (b) No health care directive may claim to be in conflict
10 with this chapter unless it had been in existence prior to the
11 patient's entry into a hospital.

12 § -6 **Immunity.** Nothing in this chapter shall be
13 construed to give rise to a cause of action against a hospital
14 or hospital employee."

15 SECTION 3. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Lay Caregiver; After-care; Lay Caregiver Designation,
Notification, and Instruction; Discharge Plan

Description:

Permits hospitals to allow patients the opportunity to designate a lay caregiver. Allows hospitals to include the designated lay caregiver in the patient's medical record, notify the lay caregiver prior to the patient's transfer or discharge, consult with the lay caregiver about the patient's discharge plan, and instruct the designated lay caregivers in after-care. Provides immunity to hospitals and their employees that allow patients the opportunity to designate a lay caregiver or provide voluntary after-care training. Effective 7/1/2050. (SD2)

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