

---

---

## 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 caregivers, including family and friends, to  
4 provide long-term care and support. In 2012, Hawaii had the  
5 highest percentage of residents over the age of eighty-five in  
6 the United States and this population, most likely to need long-  
7 term care, is projected to grow 65 per cent over the next twenty  
8 years. The AARP Public Policy Institute estimated that in 2009,  
9 there were 247,000 caregivers in Hawaii who provided  
10 approximately 162,000,000 hours of unpaid care in the State, at  
11 a value of \$2,000,000,000.

12           The legislature further finds that the role of caregivers  
13 is expanding. While family caregivers have traditionally  
14 assisted with bathing, dressing, eating, and household tasks,  
15 including shopping and managing finances, it is now common for  
16 family caregivers to perform complex medical and nursing tasks  
17 that historically were only provided in hospitals and nursing



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

8 The legislature additionally finds that despite the  
9 critical and expanding role of caregivers serving Hawaii's aging  
10 population, caregivers are often left out of hospital  
11 discussions involving the patient's care and are expected to  
12 provide post-hospital care, including medical and nursing tasks,  
13 without any training or support from professionals.

14 According to the Hawaii Health Information Corporation, in  
15 2013, there were approximately five thousand five-hundred  
16 hospital readmissions, each lasting thirty days. These  
17 readmissions are associated with approximately \$239,000,000 in  
18 costs, and recently, 56 per cent of Hawaii's hospitals were  
19 penalized for excessive readmissions under the federal hospital  
20 readmissions reduction program.



1 To successfully address the challenges of a surging  
2 population of older adults and others who have significant needs  
3 for long-term care and support, including avoiding costly  
4 hospital readmissions, the State must develop methods to help  
5 caregivers support their loved ones at home and in the  
6 community. Ensuring that caregivers receive basic, uniform  
7 training and assistance from a facility where a family member is  
8 treated, regardless of the location of the facility, will  
9 support family caregivers.

10 The purpose of this Act is to enable caregivers to provide  
11 competent, post-hospital care to family members and other loved  
12 ones, at a minimal cost to the taxpayers, to complement  
13 initiatives that are being pursued by county agencies,  
14 hospitals, and insurance companies in efforts to reduce  
15 readmission rates and better train family caregivers.

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

19 "CHAPTER

20 HOSPITAL REQUIREMENTS REGARDING LAY CAREGIVERS

21 § -1 Definitions. For the purpose of this chapter:



1 "After-care" means any assistance provided by a caregiver  
2 to a patient following the patient's discharge from a hospital  
3 that is related to the patient's condition at the time of  
4 discharge, including but not limited to assisting with basic  
5 activities of daily living, instrumental activities of daily  
6 living, and other tasks as determined to be appropriate by the  
7 discharging physician or other health care professional licensed  
8 pursuant to chapter 453.

9 "Caregiver" means any individual duly designated by a  
10 patient to provide after-care to the patient in the patient's  
11 residence. The term includes but is not limited to a relative,  
12 spouse, partner, friend, or neighbor who has a significant  
13 relationship with the patient.

14 "Contact information" means legal name, phone number, email  
15 address, mailing address, and home address, where available.

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

20 "Entry" means a patient's entrance into a hospital for the  
21 purposes of receiving in-patient medical care.



1 "Hospital" means a facility licensed under section  
2 321-14.5.

3 "Legally authorized representative" means legal guardians,  
4 health care agents, and surrogates (designated or selected by a  
5 consensus of interested persons).

6 "Residence" means a dwelling that the patient considers to  
7 be the patient's home and shall not include any rehabilitation  
8 facility, hospital, nursing home, assisted living facility, or  
9 group home licensed by the State.

10 § -2 Opportunity to designate caregiver. (a) A  
11 hospital shall provide each patient or, if applicable, the  
12 patient's legally authorized representative, with an opportunity  
13 to designate one or more caregivers following the patient's  
14 entry into a hospital and prior to the patient's discharge to  
15 the patient's residence or transfer to another facility, in a  
16 timeframe that is consistent with the discharge planning  
17 process; provided that in the event that the patient is  
18 unconscious or otherwise incapacitated upon entry into a  
19 hospital, the hospital shall provide the patient or patient's  
20 legally authorized representative with an opportunity to  
21 designate a caregiver within a given timeframe, at the



1 discretion of the attending physician, following the patient's  
2 recovery of consciousness or capacity.

3 (b) If the patient or patient's legally authorized  
4 representative declines to designate a caregiver pursuant to  
5 subsection (a), the hospital shall promptly document this in the  
6 patient's medical record.

7 (c) If the patient or the patient's legally authorized  
8 representative designates an individual as a caregiver under  
9 this chapter, the hospital shall:

10 (1) Promptly request the written consent of the patient or  
11 the patient's legally authorized representative to  
12 release medical information to the patient's caregiver  
13 following the hospital's established procedures for  
14 releasing personal health information and in  
15 compliance with all federal and state laws and  
16 regulations. If the patient or the patient's legally  
17 authorized representative declines to consent to  
18 release medical information to the patient's  
19 caregiver, the hospital is not required to provide  
20 notice to the caregiver under section -3 or provide



1 information contained in the patient's discharge plan  
2 under section -4; and

3 (2) Record the patient's designation of caregiver, the  
4 relationship of the caregiver to the patient, and the  
5 contact information of the patient's caregiver in the  
6 patient's medical record.

7 (d) A patient may elect to change the patient's designated  
8 caregiver at any time. The hospital shall record this change in  
9 the patient's medical record, along with the contact information  
10 for the newly designated caregiver, before the patient's  
11 discharge to the patient's residence or transfer to another  
12 facility.

13 (e) A designation of caregiver by a patient or a patient's  
14 legally authorized representative under this section does not  
15 require the caregiver to perform any after-care for the patient.

16 (f) This section shall not be construed to require a  
17 patient or a patient's legally authorized representative to  
18 designate an individual as a caregiver.

19 § -3 Notice to caregiver. A hospital shall notify the  
20 patient's caregiver of the patient's discharge or transfer to  
21 another licensed facility as soon as possible and at the latest,



1 upon issuance of a discharge order by the patient's attending  
2 physician. If the hospital is unable to contact the designated  
3 caregiver, the lack of contact shall not interfere with, delay,  
4 or affect the medical care provided to the patient, or discharge  
5 of the patient. The hospital shall promptly document the  
6 attempt to contact the designated caregiver in the patient's  
7 medical record.

8       § -4 Instruction to caregiver; discharge plan. (a) As  
9 soon as possible and prior to a patient's discharge from a  
10 hospital, the hospital shall consult with the patient's  
11 caregiver regarding the caregiver's capabilities and limitations  
12 and issue a discharge plan to the caregiver that describes the  
13 patient's after-care needs, if any, at the patient's residence.  
14 The consultation and issuance of a discharge plan shall occur on  
15 a schedule that takes into consideration the severity of the  
16 patient's condition, the setting in which care is to be  
17 delivered, and the urgency of the need for caregiver services.  
18 In the event the hospital is unable to contact the caregiver,  
19 the lack of contact shall not interfere with, delay, or affect  
20 the medical care provided to the patient or the discharge or  
21 transfer of the patient. The hospital shall promptly document





1 the attempt to contact the caregiver in the patient's medical  
2 record. The discharge plan shall include but not be limited to  
3 the following:

4 (1) The name and contact information of the designated  
5 caregiver;

6 (2) A description of all after-care necessary to maintain  
7 the patient's ability to reside at home, taking into  
8 account the capabilities and limitations of the  
9 caregiver;

10 (3) Contact information for any health care community  
11 resources, and long-term services and supports  
12 necessary to successfully carry out the patient's  
13 discharge plan; and contact information for a hospital  
14 employee who can respond to questions regarding the  
15 discharge plan following the instruction provided  
16 pursuant to this section.

17 (b) The hospital issuing the discharge plan shall provide  
18 the caregiver with instruction in all after-care described in  
19 the discharge plan. Training and instructions for caregivers  
20 may be conducted in person or through video technology, at the  
21 discretion of the caregiver. Any training or instructions



1 provided to a caregiver shall be provided in non-technical  
2 language, to the extent possible. Instruction shall include but  
3 not be limited to the following:

- 4 (1) A live or recorded demonstration of the tasks,  
5 performed by an individual designated by the hospital  
6 who is authorized to perform the after-care task,  
7 provided in a culturally competent manner and in  
8 accordance with the hospital's requirements to provide  
9 language access services under state and federal law;
- 10 (2) An opportunity for the caregiver to ask questions  
11 regarding caregiver instructions and receive answers  
12 in a culturally competent manner, in accordance with  
13 the hospital's requirements to provide language access  
14 services under state and federal law; and
- 15 (3) A written summary and description of the instructions  
16 provided.
- 17 (c) Any caregiver instruction required under this chapter  
18 shall be documented in the patient's medical record. At a  
19 minimum, the patient's medical record shall reflect the date,  
20 time, and content of the instruction.



1 (d) 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 caregivers under this chapter.

5 § -5 Non-interference with existing health care  
6 directives. 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 section 327G-3.

9 § -6 Limitation of liability. (a) Nothing in this  
10 chapter shall be construed to give rise to a private cause of  
11 action against a hospital, hospital employee, or a consultant or  
12 contractor that has a contractual relationship with a hospital.

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

18 § -7 Discharge; transfer of patient. Nothing in this  
19 chapter shall delay the discharge of a patient or the transfer  
20 of a patient from a hospital to another facility."



1 SECTION 3. If any provision of this Act, or the  
 2 application thereof to any person or circumstance, is held  
 3 invalid, the invalidity does not affect other provisions or  
 4 applications of the Act that can be given effect without the  
 5 invalid provision or application, and to this end the provisions  
 6 of this Act are severable.

7 SECTION 4. This Act does not affect rights and duties that  
 8 matured, penalties that were incurred, and proceedings that were  
 9 begun before its effective date.

10 SECTION 5. This Act shall take effect on July 1, 2016.

11

INTRODUCED BY: Gregory Robinson  
Tom Barr  
Richard Thicker  
Mark Hahn  
John M. ...  
Richard ...  
... E. ...

[Signature]  
[Signature]  
 JAN 23 2015

# H.B. NO. 490

**Report Title:**

Kupuna Caucus; Human Services; Hospitals; Caregivers; Training

**Description:**

Requires hospitals to provide patients the opportunity to designate a caregiver upon entry to a hospital. Establishes hospital requirements regarding caregivers, including designation of a caregiver, notification to a caregiver, and a discharge plan for patients. Provides hospitals, hospital employees, and consultants or contractors that have a contractual relationship with a hospital with immunity regarding caregiving. Effective 7/1/16.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

