CHAPTER 44 SB 187 – FINAL VERSION

03/19/2015 0836s 04/09/2015 1422EBA

2015 SESSION

15-0381 01/10

SENATE BILL 187

AN ACT allowing a patient to designate a caregiver upon entry to a medical facility.

SPONSORS: Sen. Stiles, Dist 24; Sen. Reagan, Dist 17; Sen. Carson, Dist 14; Sen. Bradley,

Dist 3; Sen. Feltes, Dist 15; Sen. Fuller Clark, Dist 21; Rep. Sherman, Rock 24;

Rep. McMahon, Rock 7; Rep. Emerson, Ches 11; Rep. Cohen, Hills 30

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill allows a patient or a patient's legally designated health care decision maker to designate a caregiver upon entry to a hospital. Under this bill the hospital shall instruct the caregiver or legally designated health care decision maker relative to the after-care of a patient. The commissioner of the department of health and human services is granted rulemaking authority for the purposes of the bill.

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Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [in brackets and struckthrough.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT allowing a patient to designate a caregiver upon entry to a medical facility.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 44:1 Statement of Intent; Findings.
 - I. The general court hereby finds:
- (a) At any given time, a large number of New Hampshire citizens provide varying degrees of unreimbursed care to adults with limitations in daily activities. Caregivers are often members of the individual's immediate family, but friends and other community members also serve as caregivers. While most caregivers are asked to assist an individual with basic activities of daily living, such as mobility, eating, and dressing, many are expected to perform complex tasks on a daily basis such as administering multiple medications, providing wound care, and operating medical equipment.
- (b) Despite the vast importance of caregivers in the individual's day-to-day care, many caregivers find it difficult to communicate with hospital staff who are knowledgeable about the patient's condition and anticipated care needs following the hospital discharge. The federal Centers for Medicare and Medicaid Services (CMS) estimates that \$17,000,000,000 in Medicare funds is spent each year on unnecessary hospital readmissions. Additionally, hospitals desire to avoid the imposition of new readmission penalties under the federal Patient Protection and Affordable Care Act (ACA).
- (c) To successfully address the challenges of an increasing population of older adults and others living with chronic conditions and who have significant needs for long-term services and supports, the state must support effective methods that enable caregivers to support their loved ones at home and in the community, following a hospital admission.
- II. Therefore, it is the intent of this act to enable caregivers and family and friends to provide competent post-hospital care to their loved ones, at minimal cost to the taxpayers of New Hampshire.
- 44:2 New Subdivision; Caregiver Advise, Record, and Enable (CARE) Act. Amend RSA 151 by inserting after section 41 the following new subdivision:
 - Caregiver Advise, Record, and Enable (CARE) Act
- 27 151:42 Definitions. In this subdivision:
 - I. "After-care" means any assistance provided by a caregiver to a patient under this chapter

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- after the patient's discharge from a hospital. Such assistance includes, but is not limited to, assisting with basic activities of daily living (ADLs), instrumental activities of daily living (IADLs), or carrying out medical/nursing tasks, such as managing wound care, assisting in administering medications, and operating medical equipment.
 - II. "Caregiver" means any individual duly designated as a caregiver by a patient under this chapter who provides after-care assistance to a patient living in his or her residence. A designated caregiver includes, but is not limited to, a relative, partner, friend, or neighbor who has a significant relationship with the patient.
- 9 III. "Discharge" means a patient's exit or release from a hospital to the patient's residence 10 following a hospital stay.
 - IV. "Entry" means a patient's entrance into a hospital for the purposes of medical care.
 - V. "Hospital" means a facility licensed under this chapter.
 - VI. "Legally designated health care decision maker" means a durable power of attorney for health care, a surrogate decision maker, or a guardian with specific authority granted by the probate court.
 - VII. "Residence" means a dwelling that the patient considers to be his or her home. A "residence" shall not include any licensed rehabilitation facility, hospital, nursing home, assisted living facility, or group home.
 - 151:43 Opportunity to Designate a Caregiver.

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- I. A hospital shall provide each patient or, if applicable, the patient's legally designated health care decision maker with at least one opportunity to designate at least one caregiver following the patient's entry into a hospital, prior to the patient's discharge or transfer to another facility, in a timeframe that is consistent with the discharge planning process.
- (a) If the patient is unconscious or otherwise incapacitated upon his or her entry into a hospital, the hospital shall provide such patient or his or her legally designated health care decision maker with an opportunity to designate a caregiver within 24 hours following the patient's recovery of his or her consciousness or capacity.
- (b) If the patient or the patient's legally designated health care decision maker declines to designate a caregiver, the hospital shall promptly document this in the patient's medical record, and the hospital shall be deemed to have complied with the provisions of RSA 151:43.
- (c) If the patient or the patient's legally designated heath care decision maker designates an individual as a caregiver:
- (1) The hospital shall promptly request the written consent of the patient or the patient's legally designated health care decision maker to release medical information to the patient's designated caregiver following the hospital's established procedures for releasing personal health information and in compliance with all federal and state laws. If the patient or the patient's

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legally designated health care decision maker declines to consent to release medical information to

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- 2 the patient's designated caregiver, the hospital shall not be required to provide notice to the 3 caregiver under RSA 151:44 or provide information contained in the patient's discharge plan under 4 RSA 151:45. 5 (2) The hospital shall record the patient's designation of caregiver, the relationship 6 of the designated caregiver to the patient, and the name, telephone number, and address of the 7 patient's designated caregiver in the patient's medical record. 8 (d) A patient may elect to change his or her designated caregiver at any time, and the 9 hospital shall record this change in the patient's medical record. 10 II. A designation of a caregiver by a patient or a patient's legally designated health care 11 decision maker under this section shall not obligate any individual to perform any after-care tasks 12 for any patient. 13 III. This section shall not be construed to require a patient or a patient's legally designated 14 health care decision maker to designate any individual as a caregiver. 15 151:44 Notice to Designated Caregiver. A hospital shall notify the patient's designated 16 caregiver of the patient's discharge or transfer to another hospital or facility as soon as possible, and 17 in any event, upon issuance of a discharge order by the physician or APRN responsible for the 18 patient's transfer to another facility. 19 151:45 Instruction to Designated Caregiver; Rulemaking. 20 I. As soon as possible, the hospital shall consult with the designated caregiver and the 21 patient regarding the caregiver's capabilities and limitations and issue a discharge plan that 22 describes a patient's after-care needs at his or her residence. At minimum, a discharge plan shall 23 include: 24(a) The name and contact information of the caregiver; 25 (b) A description of all after-care tasks necessary to maintain the patient's ability to 26 reside at home, taking into account the capabilities and limitations of the caregiver; and 27 Contact information for any health care, community resources, and long-term 28 services and supports necessary to successfully carry out the patient's discharge plan. 29 II. The hospital issuing the discharge plan shall provide caregivers with instruction in all 30 after-care tasks described in the discharge plan. 31 (a) At minimum, such instruction shall include:
 - (2) An opportunity for the caregiver to ask questions about the after-care tasks.

perform the after-care task, provided in a culturally competent manner and in accordance with the

hospital's requirements to provide language access services under state and federal law.

(1) A live demonstration of the tasks performed by a hospital employee authorized to

(3) Answers to the caregiver's questions provided in a culturally competent manner

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1	and in accordance with the hospital's requirements to provide language access services under state
2	and federal law.
3	(b) Any instruction required under this paragraph shall be documented in the patient's
4	medical record, including, at minimum, the date, time, and contents of the instruction.
5	III. The commissioner of the department of health and human services shall adopt rules
6	pursuant to RSA 541-A, relative to:
7	(a) Procedures to designate and change a caregiver under RSA 151:43.
8	(b) Other matters necessary to effectuate the scope of this subdivision.
9	151:46 Applicability; Limitations; Discharge or Transfer of Patient Unaffected.
10	I. Nothing in this subdivision shall be construed to create a private right of action against a
11	hospital, a hospital employee, or a duly authorized agent of the hospital, or to otherwise supersede or
12	replace existing rights or remedies under any other provision of law.
13	II. Nothing in this subdivision shall be construed to interfere with the rights of an agent
14	operating under a valid advance directive under RSA 137-J.
15	III. Nothing in this subdivision shall delay medical care, or the discharge of a patient, or the
16	transfer of a patient from a hospital to another facility.
17	44:3 Effective Date. This act shall take effect January 1, 2016.
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19	Approved: May 18, 2015
20	Effective Date: January 1, 2016