

CHAPTER 44
SB 187 – FINAL VERSION

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2015 SESSION

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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.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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1 after the patient’s discharge from a hospital. Such assistance includes, but is not limited to,
2 assisting with basic activities of daily living (ADLs), instrumental activities of daily living (IADLs),
3 or carrying out medical/nursing tasks, such as managing wound care, assisting in administering
4 medications, and operating medical equipment.

5 II. “Caregiver” means any individual duly designated as a caregiver by a patient under this
6 chapter who provides after-care assistance to a patient living in his or her residence. A designated
7 caregiver includes, but is not limited to, a relative, partner, friend, or neighbor who has a significant
8 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.

11 IV. “Entry” means a patient’s entrance into a hospital for the purposes of medical care.

12 V. “Hospital” means a facility licensed under this chapter.

13 VI. “Legally designated health care decision maker” means a durable power of attorney for
14 health care, a surrogate decision maker, or a guardian with specific authority granted by the probate
15 court.

16 VII. “Residence” means a dwelling that the patient considers to be his or her home. A
17 “residence” shall not include any licensed rehabilitation facility, hospital, nursing home, assisted
18 living facility, or group home.

19 151:43 Opportunity to Designate a Caregiver.

20 I. A hospital shall provide each patient or, if applicable, the patient’s legally designated
21 health care decision maker with at least one opportunity to designate at least one caregiver following
22 the patient’s entry into a hospital, prior to the patient’s discharge or transfer to another facility, in a
23 timeframe that is consistent with the discharge planning process.

24 (a) If the patient is unconscious or otherwise incapacitated upon his or her entry into a
25 hospital, the hospital shall provide such patient or his or her legally designated health care decision
26 maker with an opportunity to designate a caregiver within 24 hours following the patient’s recovery
27 of his or her consciousness or capacity.

28 (b) If the patient or the patient’s legally designated health care decision maker declines
29 to designate a caregiver, the hospital shall promptly document this in the patient’s medical record,
30 and the hospital shall be deemed to have complied with the provisions of RSA 151:43.

31 (c) If the patient or the patient’s legally designated health care decision maker designates
32 an individual as a caregiver:

33 (1) The hospital shall promptly request the written consent of the patient or the
34 patient’s legally designated health care decision maker to release medical information to the
35 patient’s designated caregiver following the hospital’s established procedures for releasing personal
36 health information and in compliance with all federal and state laws. If the patient or the patient’s

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1 legally designated health care decision maker declines to consent to release medical information to
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 (c) 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:

32 (1) A live demonstration of the tasks performed by a hospital employee authorized to
33 perform the after-care task, provided in a culturally competent manner and in accordance with the
34 hospital's requirements to provide language access services under state and federal law.

35 (2) An opportunity for the caregiver to ask questions about the after-care tasks.

36 (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