

CHAPTER 68

AN ACT concerning designated caregivers and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.26:2H-5.24 Findings, declarations relative to designated caregivers.

1. The Legislature finds and declares that:

a. According to the American Association of Retired Professional's Public Policy Institute, at any given time, an estimated 1.75 million people in New Jersey provide varying degrees of unreimbursed care to adults with limitations in daily activities. The total value of the unpaid care to individuals in need of long-term services and supports amounts to an estimated \$13 billion per year.

b. Caregivers are often members of the individual's immediate family, but friends and other community members also serve as caregivers. Although 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.

c. Despite the vast importance of caregivers in the individual's day-to-day care, and despite the fact that 78 percent of caregivers report managing multiple medications, administering injections, and performing other health maintenance tasks, research has shown that many caregivers feel that they do not have the necessary skill set to perform the caregiving tasks they are asked to perform when a loved one is discharged from the hospital.

d. The federal Centers for Medicare & Medicaid Services (CMS) estimates that \$17 billion 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," Pub.L.111-148, as amended by the "Health Care and Education Reconciliation Act of 2010," Pub.L.111-152 (ACA).

e. In order to successfully address the challenges of a surging population of older adults and others who have significant needs for long-term services and supports, the State must develop methods to enable caregivers to continue to support their loved ones at home and in the community, and avoid costly hospital readmissions.

f. The New Jersey Hospital Association and hospitals in its Hospital Engagement Network have utilized transitional caregiver models to reduce readmissions by over 13 percent from January 2012 to December 2013, leading to 5,492 fewer patients being readmitted during that time, at a cost savings of over \$52 million.

g. Therefore, it is the intent of the Legislature that this act enables caregivers to provide competent post-hospital care to their family and other loved ones, at minimal cost to the taxpayers of this State.

C.26:2H-5.25 Definitions relative to designated caregivers.

2. As used in this act:

"After-care assistance" means any assistance provided by a caregiver to a patient following the patient's discharge from a hospital that is related to the patient's condition at the time of discharge, including, but not limited to: assisting with basic activities of daily living; instrumental activities of daily living; and other tasks as determined to be appropriate by the discharging physician or other health care professional licensed pursuant to Title 45 or Title 52 of the Revised Statutes.

“Caregiver” means any individual designated as a caregiver by a patient pursuant to this act who provides after-care assistance to a patient in the patient’s residence. The term includes, but is not limited to, a relative, spouse, partner, friend, or neighbor who has a significant relationship with the patient.

“Discharge” means a patient’s exit or release from a hospital to the patient’s residence following any medical care or treatment rendered to the patient following an inpatient admission.

“Entry” means a patient’s admission into a hospital for the purposes of receiving inpatient medical care.

“Hospital” means a general acute care hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.).

“Residence” means the dwelling that the patient considers to be the patient’s home. The term shall not include any rehabilitation facility, hospital, nursing home, assisted living facility, or group home licensed by the Department of Health.

C.26:2H-5.26 Designation of caregiver.

3. a. A hospital shall provide each patient or, if applicable, the patient’s legal guardian, with an opportunity to designate at least one caregiver following the patient’s entry into a hospital, and prior to the patient’s discharge to the patient’s residence, in a timeframe that is consistent with the discharge planning process provided by regulation. The hospital shall promptly document the request in the patient’s medical record.

b. In the event that the patient is unconscious or otherwise incapacitated upon entry into the hospital, the hospital shall provide the patient or the patient’s legal guardian with an opportunity to designate a caregiver within a given timeframe, at the discretion of the attending physician, following the patient’s recovery of consciousness or capacity. The hospital shall promptly document the attempt in the patient’s medical record.

c. In the event that the patient or legal guardian declines to designate a caregiver pursuant to this act, the hospital shall promptly document this declination in the patient’s medical record.

d. In the event that the patient or the patient’s legal guardian designates an individual as a caregiver under this act:

(1) The hospital shall promptly request the written consent of the patient or the patient’s legal guardian 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 State and federal laws, including the federal "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191, and related regulations.

(a) If the patient or the patient’s legal guardian declines to consent to release medical information to the patient’s designated caregiver, the hospital is not required to provide notice to the caregiver under section 4 of P.L.2014, c.68 (C.26:2H-5.27) or provide information contained in the patient’s discharge plan under section 5 of P.L.2014, c.68 (C.26:2H-5.28).

(2) The hospital shall record the patient’s designation of caregiver, the relationship of the designated caregiver to the patient, and the name, telephone number, and address of the patient’s designated caregiver in the patient’s medical record.

e. A patient or the patient’s legal guardian may elect to change the patient’s designated caregiver at any time, and the hospital must record this change in the patient’s medical record before the patient’s discharge.

f. This section shall not be construed to require a patient or a patient's legal guardian to designate any individual as a caregiver.

g. A designation of a caregiver by a patient or a patient's legal guardian does not obligate the designated individual to perform any after-care assistance for the patient.

h. In the event that the patient is a minor child, and the parents of the patient are divorced, the custodial parent shall have the authority to designate a caregiver. If the parents have joint custody of the patient, they shall jointly designate the caregiver.

C.26:2H-5.27 Notification to designated caregiver of discharge, transfer.

4. A hospital shall notify the patient's designated caregiver of the patient's discharge or transfer to another facility as soon as possible and, in any event, upon issuance of a discharge order by the patient's attending physician. In the event the hospital is unable to contact the designated caregiver, the lack of contact shall not interfere with, delay, or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient. The hospital shall promptly document the attempt in the patient's medical record.

C.26:2H-5.28 Hospital to consult with designated caregiver.

5. a. As soon as possible prior to a patient's discharge from a hospital to the patient's residence, the hospital shall consult with the designated caregiver and issue a discharge plan that describes a patient's after-care assistance needs, if any, at the patient's residence. The consultation and issuance of a discharge plan shall occur on a schedule that takes into consideration the severity of the patient's condition, the setting in which care is to be delivered, and the urgency of the need for caregiver services. In the event the hospital is unable to contact the designated caregiver, the lack of contact shall not interfere with, delay, or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient. The hospital shall promptly document the attempt in the patient's medical record. At a minimum, the discharge plan shall include:

(1) The name and contact information of the caregiver designated under this act;

(2) A description of all after-care assistance tasks necessary to maintain the patient's ability to reside at home; and

(3) Contact information for any health care, community resources, and long-term services and supports necessary to successfully carry out the patient's discharge plan, and contact information for a hospital employee who can respond to questions about the discharge plan after the instruction provided pursuant to subsection b. of this section.

b. The hospital issuing the discharge plan must provide caregivers with instructions in all after-care assistance tasks described in the discharge plan. Training and instructions for caregivers may be conducted in person or through video technology, at the discretion of the caregiver. Any training or instructions provided to a caregiver shall be provided in non-technical language, to the extent possible. At a minimum, this instruction shall include:

(1) A live or recorded demonstration of the tasks performed by an individual designated by the hospital, who is authorized to perform the after-care assistance task, and is able to perform the demonstration in a culturally-competent manner and in accordance with the hospital's requirements to provide language access services under State and federal law;

(2) An opportunity for the caregiver to ask questions about the after-care assistance tasks; and

(3) Answers to the caregiver's questions provided in a culturally-competent manner and in accordance with the hospital's requirements to provide language access services under State and federal law.

c. Any instruction required under this act shall be documented in the patient's medical record, including, at a minimum, the date, time, and contents of the instruction.

C.26:2H-5.29 Construction of act relative to advanced care directive.

6. a. Nothing in this act shall be construed to interfere with the rights of an agent operating under a valid advance directive pursuant to the provisions of the "New Jersey Advance Directives for Health Care Act," P.L.1991, c.201 (C.26:2H-53 et al.), the "New Jersey Advance Directives for Mental Health Care Act," P.L.2005, c.233 (C.26:2H-102 et al.), or the "Physician Orders for Life-Sustaining Treatment Act," P.L.2011, c.145 (C.26:2H-129 et al.).

b. A patient may designate a caregiver in an advance directive.

C.26:2H-5.30 Construction of act relative to private right of action against hospital.

7. a. Nothing in this act shall be construed to create a private right of action against a hospital, a hospital employee, or any consultants or contractors with whom a hospital has a contractual relationship.

b. A hospital, a hospital employee, or any consultants or contractors with whom a hospital has a contractual relationship shall not be held liable, in any way, for the services rendered or not rendered by the caregiver to the patient at the patient's residence.

c. Nothing in this act shall be construed to obviate the obligation of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans to provide coverage required under a health benefits plan.

d. (1) A caregiver shall not be reimbursed by any government or commercial payer for after-care assistance that is provided pursuant to this act.

(2) Nothing in this act shall be construed to impact, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans.

C.26:2H-5.31 Discharge, transfer of patient unaffected.

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

C.26:2H-5.32 Rules, regulations.

9. The Department of Health, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of this act including, but not limited to, regulations to further define the content and scope of any instructions provided to caregivers.

10. This act shall take effect on the 180th day following the date of enactment.

Approved November 13, 2014.