

2015 -- S 0481 SUBSTITUTE A AS AMENDED

=====
LC001540/SUB A/2
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

—————
A N A C T

RELATING TO HEALTH AND SAFETY - CAREGIVER ADVISE, RECORD AND ENABLE
ACT

Introduced By: Senators Goldin, and Satchell

Date Introduced: February 26, 2015

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 17.27

4 CAREGIVER ADVISE, RECORD AND ENABLE ACT

5 **23-17.27-1. Definitions.** – As used in this chapter:

6 (1) "After-care" means any assistance provided by a caregiver to a patient under this
7 chapter after the patient's discharge from a hospital that is related to the patient's condition at the
8 time of discharge. Such assistance may include, but is not limited to, assisting with basic
9 activities of daily living (ADLs), instrumental activities of daily living (IADLs), or other tasks as
10 determined to be appropriate by the discharging physician or other health care professional.

11 (2) "Caregiver" means any individual duly designated as a caregiver by a patient under
12 this chapter who provides after-care assistance to a patient living in his or her residence. A
13 designated caregiver may include, but is not limited to, a relative, partner, friend, or neighbor who
14 has a significant relationship with the patient.

15 (3) "Discharge" means a patient's exit or release from a hospital to the patient's residence
16 following an inpatient admission.

17 (4) "Entry" means a patient's admission into a hospital for the purposes of medical care.

18 (5) "Hospital" means a facility licensed under Rhode Island statute.

1 (6) "Patient" means a patient eighteen (18) years of age or older.

2 (7) "Residence" means a dwelling that the patient considers to be his or her home. A
3 "residence" for the purposes of this chapter shall not include any rehabilitation facility, hospital,
4 nursing home, assisted living facility, or group home licensed by Rhode Island.

5 **23-17.27-2. Caregiver designation.** – (a) Any hospital licensed pursuant to this title
6 shall provide each patient or, if applicable, the patient's legal guardian with an opportunity to
7 designate at least one caregiver under this chapter following the patient's entry into a hospital.

8 (1) In the event that the patient is unconscious or otherwise incapacitated upon his or her
9 entry into a hospital, the hospital shall provide such patient or his/her legal guardian with an
10 opportunity to designate a caregiver within a given timeframe, at the discretion of the attending
11 physician or other health care professional, following the patient's recovery of consciousness of
12 capacity. The hospital shall inform the patient that the purpose of providing a caregiver's identity
13 is to include that caregiver and discharge planning and sharing of post-discharge care information
14 or instruction.

15 (2) In the event that the patient or the patient's legal guardian declines to designate a
16 caregiver under this chapter, the hospital shall promptly document this in the patient's medical
17 record.

18 (3) In the event that the patient or the patient's legal guardian designates an individual as
19 a caregiver under this chapter:

20 (i) The hospital shall record the patient's designation of the caregiver, the relationship of
21 the designated caregiver to the patient, and the name, telephone number, and the address of the
22 patient's designated caregiver in the patient's medical record.

23 (ii) The hospital shall promptly request the written consent of the patient or the patient's
24 legal guardian to release medical information to the patient's designated caregiver following the
25 hospital's established procedures for releasing personal health information and in compliance
26 with all federal and state laws.

27 (A) If the patient or the patient's legal guardian declines to consent to release medical
28 information to the patient's designated caregiver the hospital is not required to provide notice to
29 the caregiver under § 23-17.27-4 or provide information contained in the patient's discharge plan
30 under § 23-17.27-5.

31 (4) A patient or the patient's legal guardian may elect to change the patient's designated
32 caregiver at any time, and the hospital must record this change in the patient's medical record
33 before the patient's discharge.

34 (b) A designation of a caregiver by a patient or patient's legal guardian under this section

1 does not obligate any individual to perform any after-care tasks for any patient.

2 (c) This section shall not be construed to require a patient or a patient's legal guardian to
3 designate any individual as a caregiver as defined by this chapter.

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

7 **23-17.27-3. Notice to Designated Caregiver.** – (a) Any hospital licensed pursuant to this
8 title shall notify the patient's designated caregiver of the patient's discharge or transfer to another
9 facility licensed by the state as soon as possible, in any event, upon issuance of a discharge order
10 by the patient's attending physician or other health care professional. In the event the hospital is
11 unable to contact the designated caregiver, the lack of contact shall not interfere with, delay, or
12 otherwise affect the medical care provided to the patient, or an appropriate discharge of the
13 patient. The hospital shall promptly document the attempt in the patient's medical record.

14 **23-17.27-4. Instruction to Designated Caregiver.** – (a) As soon as possible and prior to
15 a patient's discharge from a hospital, the hospital shall consult with the designated caregiver
16 along with the patient regarding the caregiver's capabilities and limitations and issue a discharge
17 plan that describes a patient's after-care needs at his or her residence.

18 The consultation session will include an assessment of the caregiver's capability to
19 provide after care and any limitations the caregiver foresees in providing after care. Each hospital
20 will have the discretion to determine which hospital staff are best qualified to conduct the
21 caregiver assessment. If, upon assessment, the hospital determines a caregiver may have
22 difficulty supplying the needed care safely, the discharge plan may be adjusted accordingly, and
23 alternate care arrangements may be made in consultation with the caregiver.

24 (b) The consultation and issuance of a discharge plan shall occur on a schedule that takes
25 into consideration the severity of the patient's condition, the setting in which care is to be
26 delivered, and the urgency of the need for caregiver services. In the event the hospital is unable to
27 contact the designated caregiver, the lack of contact shall not interfere with, delay, or otherwise
28 affect the medical care provided to the patient, or an appropriate discharge of the patient. The
29 hospital shall promptly document the attempt in the patient's medical record.

30 (1) At minimum, a discharge plan shall include:

31 (i) The name and contact information of the caregiver designated under this chapter;

32 (ii) A description of all after-care tasks recommended by the patient's physician or other
33 health care professional, taking into account the capabilities and limitations of the caregiver;

34 (iii) Contact information for any health care, community resources, and long-term

1 services and support necessary to successfully carry out the patient's discharge plan.

2 (c) The hospital issuing the discharge plan must offer to provide caregivers with
3 instruction in all after-care tasks described in the discharge plan. Any training or instructions
4 provided to a caregiver shall be provided, to the extent possible, in non-technical language and in
5 the caregiver's native language.

6 (1) At minimum, such instruction shall include:

7 (i) A live or recorded demonstration of the tasks performed by the hospital employee or
8 individual with whom the hospital has a contractual relationship authorized to perform the after-
9 care task;

10 (ii) An opportunity for the caregiver and patient to ask questions about the after-care
11 tasks; and

12 (iii) Answers to the caregiver's and the patient's questions provided in a culturally
13 competent manner and in accordance with the hospital's requirements to provide language access
14 services under state and federal law.

15 (2) Any instruction required under this chapter shall be documented in the patient's
16 medical record, including, at minimum, the date, time, and contents of the instruction.

17 (d) The Rhode Island department of health is authorized to promulgate regulations to
18 implement the provisions of this chapter including, but not limited to, regulations to further define
19 the content and scope of any instruction provided to caregivers under this chapter.

20 (e) Nothing in this chapter shall delay the discharge of a patient, or the transfer of a
21 patient from a hospital to another facility.

22 **23-17.27-5. Non-Interference with Powers of Existing Health Care Directives.** – (a)
23 Nothing in this chapter shall be construed to interfere with the rights of an agent operating under
24 a valid health care directive pursuant to chapter 4.10 of title 23 (health care power of attorney), or
25 § 23-4.11-3.1 (medical orders for life sustaining treatment).

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

27 **23-17.27-6. Caregiver reimbursement.** – (a) A caregiver shall not be reimbursed by any
28 government or commercial payer for after-care assistance that is provided pursuant to this
29 chapter, with the sole exception that this chapter shall not supersede the applicability of wage
30 replacement benefits paid to workers under Rhode Island's temporary disability insurance
31 program, pursuant to § 28-41-35.

32 (b) Nothing in this chapter shall be construed to impact, impede, or otherwise disrupt or
33 reduce the reimbursement obligations of an insurance company, health service corporation,
34 hospital service corporation medical service corporation, health maintenance organization or any

1 other entity issuing health benefits plans.

2 **23-17.27-7. Limitations of Actions.** – (a) Nothing in this chapter shall be construed to
3 create a private right of action against a hospital or any of its directors, trustees, officers,
4 employees or agents or any contractors with whom the hospital has a contractual relationship.

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

8 **23-17.27-8. Severability.** – If any provision of this chapter or the application of any
9 provision to any person or circumstance is held invalid or unconstitutional, the invalidity or
10 unconstitutionality shall not affect other provisions or applications of this chapter which can be
11 given effect without the invalid or unconstitutional provision or application, and to this end the
12 provisions of this chapter are declared to be severable.

13 SECTION 2. This act shall take effect on March 1, 2016.

=====
LC001540/SUB A/2
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY - CAREGIVER ADVISE, RECORD AND ENABLE
ACT

1 This act would create the "Caregiver Advise, Record and Enable Act" to provide support
2 and assistance to individuals with post hospital care, and to provide caregivers with proper
3 training.

4 This act would take effect on March 1, 2016.

=====
LC001540/SUB A/2
=====