

JAN 23 2015

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.



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

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

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

§ -2 Opportunity to designate caregiver. (a) A hospital shall provide each patient or, if applicable, the patient's legally authorized representative, with an opportunity to designate one or more caregivers following the patient's entry into a hospital and prior to the patient's discharge to the patient's residence or transfer to another facility, in a timeframe that is consistent with the discharge planning process; provided that in the event that the patient is unconscious or otherwise incapacitated upon entry into a hospital, the hospital shall provide the patient or patient's legally authorized representative with an opportunity to 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.



(d) The department of health may adopt rules pursuant to chapter 91 to carry out the purpose of this chapter, including rules to further define the content and scope of any instruction provided to caregivers under this chapter.

§ -5 Non-interference with existing health care directives. Nothing in this chapter shall be construed to interfere with the rights of an agent operating under a valid health care directive under section 327G-3.

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

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

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



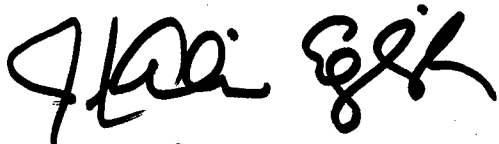

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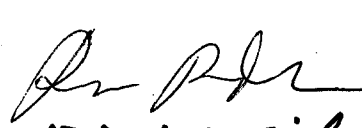
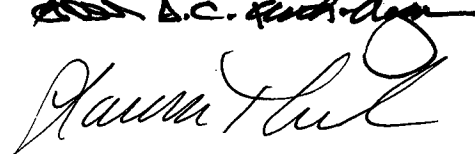
1 SECTION 3. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions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



S.B. NO. 296

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.

