

7676

I N S E N A T E

May 28, 2014

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to identification of caregivers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The public health law is amended by adding a new article
2 29-CCCC to read as follows:

3 ARTICLE 29-CCCC

4 CARE ACT (CAREGIVER ADVISE, RECORD AND ENABLE ACT)

5 SECTION 2994-HH. SHORT TITLE.

6 2994-II. DEFINITIONS.

7 2994-JJ. CAREGIVER, OPPORTUNITY TO IDENTIFY.

8 2994-KK. NOTICE TO IDENTIFIED CAREGIVER.

9 2994-LL. INSTRUCTION TO IDENTIFIED CAREGIVER.

10 2994-MM. EFFECT ON OTHER RIGHTS.

11 S 2994-HH. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED
12 AS THE "CARE ACT".

13 S 2994-II. DEFINITIONS. WHEN USED IN THIS ARTICLE, THE FOLLOWING
14 WORDS OR PHRASES SHALL HAVE THE FOLLOWING MEANINGS: 1. "HOSPITAL" SHALL
15 MEAN ANY "HOSPITAL" AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF
16 THIS CHAPTER.

17 2. "AFTER-CARE" SHALL MEAN ANY ASSISTANCE PROVIDED BY A CAREGIVER TO A
18 PATIENT UNDER THIS ARTICLE AFTER THE PATIENT'S DISCHARGE FROM A HOSPI-
19 TAL. SUCH ASSISTANCE SHALL INCLUDE, BUT IS NOT LIMITED TO, ASSISTING
20 WITH BASIC ACTIVITIES OF DAILY LIVING (ADLS), INSTRUMENTAL ACTIVITIES OF
21 DAILY LIVING (IADLS) OR CARRYING OUT MEDICAL/NURSING TASKS, SUCH AS
22 MANAGING WOUND CARE, ASSISTING IN ADMINISTERING MEDICATIONS, AND OPERAT-
23 ING MEDICAL EQUIPMENT.

24 3. "CAREGIVER" SHALL MEAN ANY INDIVIDUAL DULY IDENTIFIED AS A CAREGIV-
25 ER BY A PATIENT UNDER THIS ARTICLE WHO PROVIDES AFTER-CARE ASSISTANCE TO
26 A PATIENT LIVING IN HIS OR HER RESIDENCE. AN IDENTIFIED CAREGIVER SHALL
27 INCLUDE, BUT IS NOT LIMITED TO, A RELATIVE, PARTNER, FRIEND, OR NEIGHBOR
28 WHO HAS A SIGNIFICANT RELATIONSHIP WITH THE PATIENT.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 4. "DISCHARGE" SHALL MEAN A PATIENT'S EXIT OR RELEASE FROM A HOSPITAL
2 TO THE PATIENT'S RESIDENCE FOLLOWING ANY MEDICAL CARE, TREATMENT, OR
3 OBSERVATION.

4 5. "ENTRY" SHALL MEAN A PATIENT'S ENTRANCE INTO A HOSPITAL FOR THE
5 PURPOSES OF MEDICAL CARE, TREATMENT, OR OBSERVATION. A PATIENT NEED NOT
6 BE FORMALLY ADMITTED TO A HOSPITAL FOR THE PROVISIONS OF THIS ARTICLE TO
7 APPLY.

8 6. "RESIDENCE" SHALL MEAN A DWELLING THAT THE PATIENT CONSIDERS TO BE
9 HIS OR HER HOME. A "RESIDENCE" FOR THE PURPOSES OF THIS ARTICLE SHALL
10 NOT INCLUDE ANY REHABILITATION FACILITY, HOSPITAL, NURSING HOME,
11 ASSISTED LIVING FACILITY, GROUP HOME OR OTHER RESIDENTIAL HEALTH CARE
12 FACILITY AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER
13 OR ANY INPATIENT FACILITY REGULATED BY THE OFFICE OF MENTAL HEALTH.

14 S 2994-JJ. CAREGIVER, OPPORTUNITY TO IDENTIFY. 1. A HOSPITAL SHALL
15 PROVIDE EACH PATIENT OR, IF APPLICABLE, THE PATIENT'S LEGAL GUARDIAN
16 WITH AT LEAST ONE OPPORTUNITY TO IDENTIFY AT LEAST ONE CAREGIVER UNDER
17 THIS ARTICLE NO LATER THAN TWENTY-FOUR HOURS FOLLOWING THE PATIENT'S
18 ENTRY INTO A HOSPITAL AND PRIOR TO THE PATIENT'S ENTRY INTO A HOSPITAL
19 AND PRIOR TO THE PATIENT'S DISCHARGE OR TRANSFER TO ANOTHER FACILITY.

20 (A) IN THE EVENT THAT THE PATIENT IS UNCONSCIOUS OR OTHERWISE INCAPAC-
21 ITATED UPON HIS OR HER ENTRY INTO A HOSPITAL, THE HOSPITAL SHALL PROVIDE
22 SUCH PATIENT OR HIS/HER LEGAL GUARDIAN WITH AN OPPORTUNITY TO IDENTIFY A
23 CAREGIVER WITHIN TWENTY-FOUR HOURS FOLLOWING THE PATIENT'S RECOVERY OF
24 HIS OR HER CONSCIOUSNESS OR CAPACITY.

25 (B) IN THE EVENT THAT THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN
26 DECLINES TO IDENTIFY A CAREGIVER UNDER THIS ARTICLE, THE HOSPITAL SHALL
27 PROMPTLY DOCUMENT THIS IN THE PATIENT'S MEDICAL RECORD.

28 (C) IN THE EVENT THAT THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN
29 IDENTIFIES AN INDIVIDUAL AS A CAREGIVER UNDER THIS ARTICLE:

30 (I) THE HOSPITAL SHALL PROMPTLY REQUEST THE WRITTEN CONSENT OF THE
31 PATIENT OR THE PATIENT'S LEGAL GUARDIAN TO RELEASE MEDICAL INFORMATION
32 TO THE PATIENT'S IDENTIFIED CAREGIVER FOLLOWING THE HOSPITAL'S ESTAB-
33 LISHED PROCEDURES FOR RELEASING PERSONAL HEALTH INFORMATION AND IN
34 COMPLIANCE WITH ALL FEDERAL AND STATE LAWS.

35 (II) IF THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN DECLINES TO
36 CONSENT TO RELEASE MEDICAL INFORMATION TO THE PATIENT'S IDENTIFIED CARE-
37 GIVER, THE HOSPITAL IS NOT REQUIRED TO PROVIDE NOTICE TO THE CAREGIVER
38 UNDER SECTION TWENTY-NINE HUNDRED NINETY-FOUR-KK OF THIS ARTICLE OR
39 PROVIDED INFORMATION CONTAINED IN THE PATIENT'S DISCHARGE PLAN UNDER
40 SECTION TWENTY-NINE HUNDRED NINETY-FOUR-LL OF THIS ARTICLE.

41 (III) THE HOSPITAL SHALL RECORD THE PATIENT'S IDENTIFICATION OF CARE-
42 GIVER, THE RELATIONSHIP OF THE IDENTIFIED CAREGIVER TO THE PATIENT, AND
43 THE NAME, TELEPHONE NUMBER, AND ADDRESS OF THE PATIENT'S IDENTIFIED
44 CAREGIVER IN THE PATIENT'S MEDICAL RECORD.

45 (D) A PATIENT MAY ELECT TO CHANGE HIS OR HER IDENTIFIED CAREGIVER AT
46 ANY TIME, AND THE HOSPITAL MUST RECORD THIS CHANGE IN THE PATIENT'S
47 MEDICAL RECORD WITHIN TWENTY-FOUR HOURS.

48 (E) PRIOR TO NOTIFYING THE PATIENT'S CAREGIVER OF THE PATIENT'S
49 DISCHARGE OR TRANSFER TO ANOTHER HOSPITAL OR FACILITY AS REQUIRED UNDER
50 SECTION TWENTY-NINE HUNDRED NINETY-FOUR-KK OF THIS ARTICLE, THE HOSPITAL
51 SHALL ASK THE PATIENT TO VERIFY THE PATIENT'S CAREGIVER CHOICE AND
52 PROVIDE THE PATIENT THE OPPORTUNITY TO CHANGE HIS OR HER IDENTIFIED
53 CAREGIVER.

54 2. AN IDENTIFICATION OF A CAREGIVER BY A PATIENT OR A PATIENT'S LEGAL
55 GUARDIAN UNDER THIS SECTION DOES NOT OBLIGATE ANY INDIVIDUAL TO PERFORM
56 ANY AFTER-CARE TASKS FOR ANY PATIENT.

1 3. THIS SECTION SHALL NOT BE CONSTRUED TO REQUIRE A PATIENT OR A
2 PATIENT'S LEGAL GUARDIAN TO IDENTIFY ANY INDIVIDUAL AS A CAREGIVER AS
3 DEFINED BY THIS ARTICLE.

4 S 2994-KK. NOTICE TO IDENTIFIED CAREGIVER. A HOSPITAL SHALL NOTIFY THE
5 PATIENT'S IDENTIFIED CAREGIVER OF THE PATIENT'S DISCHARGE OR TRANSFER TO
6 ANOTHER HOSPITAL OR FACILITY LICENSED BY THE DEPARTMENT OR THE OFFICE OF
7 MENTAL HEALTH AS SOON AS THE DATE AND TIME OF DISCHARGE OR TRANSFER CAN
8 BE ANTICIPATED PRIOR TO THE PATIENT'S ACTUAL DISCHARGE OR TRANSFER TO
9 SUCH FACILITY.

10 S 2994-LL. INSTRUCTION TO IDENTIFIED CAREGIVER. 1. AS SOON AS POSSI-
11 BLE AND NOT LATER THAN TWENTY-FOUR HOURS PRIOR TO A PATIENT'S DISCHARGE
12 FROM A HOSPITAL, THE HOSPITAL SHALL CONSULT WITH THE IDENTIFIED CAREGIV-
13 ER ALONG WITH THE PATIENT REGARDING THE CAREGIVER'S CAPABILITIES AND
14 LIMITATIONS AND ISSUE A DISCHARGE PLAN THAT DESCRIBES A PATIENT'S
15 AFTER-CARE NEEDS AT HIS OR HER RESIDENCE. AT MINIMUM, A DISCHARGE PLAN
16 SHALL INCLUDE:

17 (A) THE NAME AND CONTACT INFORMATION OF THE CAREGIVER IDENTIFIED UNDER
18 THIS ARTICLE;

19 (B) A DESCRIPTION OF ALL AFTER-CARE TASKS NECESSARY TO MAINTAIN THE
20 PATIENT'S ABILITY TO RESIDE AT HOME, TAKING INTO ACCOUNT THE CAPABILI-
21 TIES AND LIMITATIONS OF THE CAREGIVER; AND

22 (C) CONTACT INFORMATION FOR ANY HEALTH CARE, COMMUNITY RESOURCES, AND
23 LONG-TERM SERVICES AND SUPPORTS NECESSARY TO SUCCESSFULLY CARRY OUT THE
24 PATIENT'S DISCHARGE PLAN.

25 2. THE HOSPITAL ISSUING THE DISCHARGE PLAN MUST PROVIDE CAREGIVERS
26 WITH INSTRUCTION IN ALL AFTER-CARE TASKS DESCRIBED IN THE DISCHARGE
27 PLAN.

28 (A) AT MINIMUM, SUCH INSTRUCTION SHALL INCLUDE:

29 (I) A LIVE DEMONSTRATION OF THE TASKS PERFORMED BY A HOSPITAL EMPLOYEE
30 AUTHORIZED TO PERFORM THE AFTER-CARE TASK, PROVIDED IN A CULTURALLY
31 COMPETENT MANNER AND IN ACCORDANCE WITH THE HOSPITAL'S REQUIREMENTS TO
32 PROVIDE LANGUAGE ACCESS SERVICES UNDER STATE AND FEDERAL LAW;

33 (II) AN OPPORTUNITY FOR THE CAREGIVER AND PATIENT TO ASK QUESTIONS
34 ABOUT THE AFTER-CARE TASKS; AND

35 (III) ANSWERS TO THE CAREGIVER'S AND PATIENT'S QUESTIONS PROVIDED IN A
36 CULTURALLY COMPETENT MANNER AND IN ACCORDANCE WITH THE HOSPITAL'S
37 REQUIREMENTS TO PROVIDE LANGUAGE ACCESS SERVICES UNDER STATE AND FEDERAL
38 LAW.

39 (B) ANY INSTRUCTIONS REQUIRED UNDER THIS ARTICLE SHALL BE DOCUMENTED
40 IN THE PATIENT'S MEDICAL RECORD, INCLUDING, AT MINIMUM, THE DATE, TIME,
41 AND CONTENTS OF THE INSTRUCTION.

42 3. THE DEPARTMENT IS AUTHORIZED TO PROMULGATE REGULATIONS TO IMPLEMENT
43 THE PROVISIONS OF THIS ARTICLE, INCLUDING BUT NOT LIMITED TO, REGU-
44 LATIONS TO FURTHER DEFINE THE CONTENT AND SCOPE OF ANY INSTRUCTION
45 PROVIDED TO CAREGIVERS UNDER THIS ARTICLE.

46 S 2994-MM. EFFECT ON OTHER RIGHTS. NOTHING IN THIS ARTICLE SHALL BE
47 CONSTRUED TO INTERFERE WITH THE RIGHTS OF AN AGENT OPERATING UNDER A
48 VALID HEALTH CARE DIRECTIVE CREATED UNDER SECTION TWENTY-NINE HUNDRED
49 EIGHTY-TWO OF THIS CHAPTER.

50 S 2. This act shall take effect immediately.