

676

2015-2016 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2015

---

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:

15     1. "HOSPITAL" SHALL MEAN ANY "HOSPITAL" AS DEFINED IN SECTION TWENTY-  
16     EIGHT HUNDRED ONE OF 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.

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

LBD03921-02-5

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

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

9 5. "ENTRY" SHALL MEAN A PATIENT'S ADMISSION INTO A HOSPITAL FOR THE  
10 PURPOSES OF MEDICAL CARE.

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

17 S 2994-JJ. CAREGIVER; OPPORTUNITY TO IDENTIFY. 1. A HOSPITAL SHALL  
18 PROVIDE EACH PATIENT OR, IF APPLICABLE, THE PATIENT'S LEGAL GUARDIAN  
19 WITH AT LEAST ONE OPPORTUNITY TO IDENTIFY AT LEAST ONE CAREGIVER UNDER  
20 THIS ARTICLE NO LATER THAN TWENTY-FOUR HOURS FOLLOWING THE PATIENT'S  
21 ENTRY INTO A HOSPITAL AND PRIOR TO THE PATIENT'S ENTRY INTO A HOSPITAL  
22 AND PRIOR TO THE PATIENT'S DISCHARGE OR TRANSFER TO ANOTHER FACILITY.  
23 THE HOSPITAL SHALL INFORM THE PATIENT THAT THE PURPOSE OF PROVIDING THE  
24 CAREGIVER'S IDENTITY IS TO INCLUDE THAT CAREGIVER IN DISCHARGE PLANNING  
25 AND SHARING OF POST-DISCHARGE CARE INFORMATION OR INSTRUCTION.

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

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

34 (C) THE HOSPITAL SHALL RECORD THE PATIENT'S IDENTIFICATION OF A CARE-  
35 GIVER, THE RELATIONSHIP OF THE IDENTIFIED CAREGIVER TO THE PATIENT, AND  
36 THE NAME, TELEPHONE NUMBER, AND ADDRESS OF THE PATIENT'S IDENTIFIED  
37 CAREGIVER IN THE PATIENT'S MEDICAL RECORD.

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

41 (E) PRIOR TO NOTIFYING THE PATIENT'S CAREGIVER OF THE PATIENT'S  
42 DISCHARGE OR TRANSFER TO ANOTHER HOSPITAL OR FACILITY AS REQUIRED UNDER  
43 SECTION TWENTY-NINE HUNDRED NINETY-FOUR-KK OF THIS ARTICLE, THE HOSPITAL  
44 SHALL ASK THE PATIENT TO VERIFY THE PATIENT'S CAREGIVER CHOICE AND  
45 PROVIDE THE PATIENT THE OPPORTUNITY TO CHANGE HIS OR HER IDENTIFIED  
46 CAREGIVER.

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

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

53 S 2994-KK. NOTICE TO IDENTIFIED CAREGIVER. A HOSPITAL SHALL NOTIFY THE  
54 PATIENT'S IDENTIFIED CAREGIVER OF THE PATIENT'S DISCHARGE OR TRANSFER TO  
55 ANOTHER HOSPITAL OR FACILITY LICENSED BY THE DEPARTMENT OR THE OFFICE OF  
56 MENTAL HEALTH AS SOON AS THE DATE AND TIME OF DISCHARGE OR TRANSFER CAN

BE ANTICIPATED PRIOR TO THE PATIENT'S ACTUAL DISCHARGE OR TRANSFER TO SUCH FACILITY.

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

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

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

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

2. THE HOSPITAL ISSUING THE DISCHARGE PLAN MUST OFFER CAREGIVERS WITH INSTRUCTION IN ALL AFTER-CARE TASKS DESCRIBED IN THE DISCHARGE PLAN.

(A) AT MINIMUM, SUCH INSTRUCTION SHALL INCLUDE:

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

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

(III) ANSWERS TO THE CAREGIVER'S AND PATIENT'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.

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

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

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

S 2. This act shall take effect immediately.