S T A T E O F N E W Y O R K

676--B

Cal. No. 55

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sens. HANNON, SKELOS, SERINO, ADDABBO, AMEDORE, AVELLA, CARLUCCI, CROCI, DeFRANCISCO, FLANAGAN, FUNKE, GALLIVAN, GRIFFO, KENNEDY, KRUEGER, LANZA, LARKIN, LATIMER, LAVALLE, MARCHIONE, MARTINS, MONTGOMERY, MURPHY, NOZZOLIO, O'MARA, PANEPINTO, PARKER, RITCHIE, ROBACH, SEWARD, SQUADRON, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

ARTICLE 29-CCCC

CARE ACT (CAREGIVER ADVISE, RECORD AND ENABLE ACT)

SECTION 2994-HH. SHORT TITLE.
2994-II. DEFINITIONS.
2994-JJ. CAREGIVER; OPPORTUNITY TO IDENTIFY.
2994-KK. NOTICE TO IDENTIFIED CAREGIVER.
2994-LL. INSTRUCTION TO IDENTIFIED CAREGIVER.
2994-MM. EFFECT ON OTHER RIGHTS.

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

S 2994-II. DEFINITIONS. WHEN USED IN THIS ARTICLE, THE FOLLOWING WORDS OR PHRASES SHALL HAVE THE FOLLOWING MEANINGS:

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

LBD03921-08-5

1. "HOSPITAL" SHALL MEAN ANY "GENERAL HOSPITAL" AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER.

2. "AFTER-CARE" SHALL MEAN ANY ASSISTANCE PROVIDED BY A CAREGIVER TO A PATIENT UNDER THIS ARTICLE AFTER THE PATIENT'S DISCHARGE FROM A HOSPITAL THAT IS RELATED TO THE PATIENT'S CONDITION AT THE TIME OF DISCHARGE. SUCH ASSISTANCE SHALL INCLUDE, BUT IS NOT LIMITED TO, ASSISTING WITH BASIC ACTIVITIES OF DAILY LIVING (ADLS), INSTRUMENTAL ACTIVITIES OF DAILY LIVING (IADLS), AND OTHER TASKS AS DETERMINED TO BE APPROPRIATE BY THE DISCHARGING PHYSICIAN.

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

4. "DISCHARGE" SHALL MEAN A PATIENT'S EXIT OR RELEASE FROM A HOSPITAL TO THE PATIENT'S RESIDENCE FOLLOWING AN INPATIENT ADMISSION.

5. "ENTRY" SHALL MEAN A PATIENT'S ADMISSION INTO A HOSPITAL FOR THE PURPOSES OF RECEIVING INPATIENT CARE.

6. "PATIENT" SHALL MEAN A PATIENT EIGHTEEN YEARS OF AGE OR OLDER.

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

S 2994-JJ. CAREGIVER; OPPORTUNITY TO IDENTIFY. 1. A HOSPITAL SHALL PROVIDE EACH PATIENT OR, IF APPLICABLE, THE PATIENT'S LEGAL GUARDIAN WITH AT LEAST ONE OPPORTUNITY TO IDENTIFY AT LEAST ONE CAREGIVER UNDER THIS ARTICLE FOLLOWING THE PATIENT'S ENTRY INTO A HOSPITAL AND PRIOR TO THE PATIENT'S DISCHARGE OR TRANSFER TO ANOTHER FACILITY. THE HOSPITAL SHALL INFORM THE PATIENT THAT THE PURPOSE OF PROVIDING THE CAREGIVER'S IDENTITY IS TO INCLUDE THAT CAREGIVER IN DISCHARGE PLANNING AND SHARING OF POST-DISCHARGE CARE INFORMATION OR INSTRUCTION.

(A) IN THE EVENT THAT THE PATIENT IS UNCONSCIOUS OR OTHERWISE INCAPACITATED UPON HIS OR HER ENTRY INTO A HOSPITAL, THE HOSPITAL SHALL PROVIDE SUCH PATIENT OR HIS/HER LEGAL GUARDIAN WITH AN OPPORTUNITY TO IDENTIFY A CAREGIVER FOLLOWING THE PATIENT'S RECOVERY OF HIS OR HER CONSCIOUSNESS OR CAPACITY.

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

(C) THE HOSPITAL SHALL RECORD THE PATIENT'S IDENTIFICATION OF A CAREGIVER IF GIVEN BY THE PATIENT OR LEGAL GUARDIAN, THE RELATIONSHIP OF THE IDENTIFIED CAREGIVER TO THE PATIENT, AND THE NAME, TELEPHONE NUMBER, AND ADDRESS OF THE PATIENT'S IDENTIFIED CAREGIVER IN THE PATIENT'S MEDICAL RECORD.

(D) A PATIENT MAY ELECT TO CHANGE HIS OR HER IDENTIFIED CAREGIVER AT ANY TIME, AND THE HOSPITAL MUST RECORD THIS CHANGE IN THE PATIENT'S MEDICAL RECORD.

(E) (I) 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 PROCEDURE 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 AS AMENDED, AND RELATED REGULATIONS.

(II) IF THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN DECLINES TO CONSENT TO RELEASE MEDICAL INFORMATION TO THE PATIENT'S DESIGNATED CAREGIVER, THE HOSPITAL SHALL NOT BE REQUIRED TO PROVIDE NOTICE TO THE CAREGIVER UNDER SECTION TWENTY-NINE HUNDRED NINETY-FOUR-KK OF THIS ARTICLE OR PROVIDE INFORMATION CONTAINED IN THE PATIENT'S DISCHARGE PLAN UNDER SECTION TWENTY-NINE HUNDRED NINETY-FOUR-LL OF THIS ARTICLE.

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

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

S 2994-KK. NOTICE TO IDENTIFIED CAREGIVER. A HOSPITAL SHALL NOTIFY THE PATIENT'S IDENTIFIED CAREGIVER OF THE PATIENT'S DISCHARGE OR TRANSFER TO ANOTHER HOSPITAL OR FACILITY LICENSED BY THE DEPARTMENT OR THE OFFICE OF 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. 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.

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. 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 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 RECOMMENDED BY THE DISCHARGING PHYSICIAN, TAKING INTO ACCOUNT THE CAPABILITIES AND LIMITATIONS OF THE CAREGIVER; AND

(C) CONTACT INFORMATION FOR 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 OR RECORDED 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. 1. 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.

2. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO CREATE A NEW PRIVATE RIGHT OF ACTION NOT OTHERWISE EXISTING IN LAW AGAINST A HOSPITAL OR ANY OF ITS DIRECTORS, TRUSTEES, OFFICERS, EMPLOYEES OR AGENTS, OR ANY CONTRACTORS WITH WHOM A HOSPITAL HAS A CONTRACTUAL RELATIONSHIP.

3. A HOSPITAL, ANY OF ITS DIRECTORS, TRUSTEES, OFFICERS, EMPLOYEES OR AGENTS, OR ANY CONTRACTORS WITH WHOM A HOSPITAL HAS A CONTRACTUAL RELATIONSHIP SHALL NOT BE HELD LIABLE, PROVIDED IT HAS COMPLIED WITH THIS ARTICLE AND ACTED REASONABLY AND IN GOOD FAITH, FOR THE SERVICES RENDERED OR NOT RENDERED BY THE CAREGIVER TO THE PATIENT AT THE PATIENT'S RESIDENCE.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.