

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Hospitals must train at-home caregivers," The Record, 11-14-14

"Hospitals must instruct caregivers under new law," The Star-Ledger, 11-14-14

LAW/RWH

§§1-9 -
C.26:2H-5.24 to
26:2H-5.32 &
Notes to
C.26:2H-53,
C.26:2H-103 &
C.26:2H-129
§10 - Note

P.L.2014, CHAPTER 68, *approved November 13, 2014*
Assembly, No. 2955 (*Second Reprint*)

1 AN ACT concerning designated caregivers and supplementing Title
2 26 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. The Legislature finds and declares that:

8 a. ²**[At]** According to the American Association of Retired
9 Professional's Public Policy Institute, at² any given time, an
10 estimated 1.75 million people in New Jersey provide varying
11 degrees of unreimbursed care to adults with limitations in daily
12 activities. The total value of the unpaid care to individuals in need
13 of long-term services and supports amounts to an estimated \$13
14 billion per year.

15 b. Caregivers are often members of the individual's immediate
16 family, but friends and other community members also serve as
17 caregivers. Although most caregivers are asked to assist an
18 individual with basic activities of daily living, such as mobility,
19 eating, and dressing, many are expected to perform complex tasks
20 on a daily basis, such as administering multiple medications,
21 providing wound care, and operating medical equipment.

22 c. Despite the vast importance of caregivers in the individual's
23 day-to-day care, ²and despite the fact that 78 percent of caregivers
24 report managing multiple medications, administering injections, and
25 performing other health maintenance tasks, research has shown
26 that² many caregivers ²**[find]** feel² that they ²**[are often left out of**
27 discussions involving a patient's care while in the hospital and,
28 upon the patient's discharge, receive little to no instruction on the²
29 do not have the necessary skill set to perform the caregiving² tasks
30 they are ²**[expected]** asked² to perform ²when a loved one is
31 discharged from the hospital².

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHE committee amendments adopted May 8, 2014.

²Senate SHH committee amendments adopted September 15, 2014.

1 d. The federal Centers for Medicare ¹**[and]** ¹& Medicaid
2 Services (CMS) estimates that \$17 billion in Medicare funds is
3 spent each year on unnecessary hospital readmissions.
4 Additionally, hospitals desire to avoid the imposition of new
5 readmission penalties under the federal ¹“Patient Protection and
6 Affordable Care Act,^{1”} Pub.L.111-148, ¹**[and]** as amended by¹ the
7 ¹“Health Care and Education Reconciliation Act of 2010,^{1”}
8 Pub.L.111-152 (ACA).

9 e. In order to successfully address the challenges of a surging
10 population of older adults and others who have significant needs for
11 long-term services and supports, the State must develop methods to
12 enable caregivers to continue to support their loved ones at home
13 and in the community, and avoid costly hospital readmissions.

14 f. ²The New Jersey Hospital Association and hospitals in its
15 Hospital Engagement Network have utilized transitional caregiver
16 models to reduce readmissions by over 13 percent from January
17 2012 to December 2013, leading to 5,492 fewer patients being
18 readmitted during that time, at a cost savings of over \$52 million.

19 g.² Therefore, it is the intent of the Legislature that this act
20 enables caregivers to provide competent post-hospital care to their
21 family and other loved ones, at minimal cost to the taxpayers of this
22 State.

23

24 2. As used in this act:

25 “After-care assistance” means any assistance provided by a
26 caregiver to a patient following the patient’s discharge from a
27 hospital ²that is related to the patient’s condition at the time of
28 discharge², including, but not limited to: assisting with basic
29 activities of daily living; instrumental activities of daily living; and
30 ¹**[**carrying out medical or nursing tasks, such as managing wound
31 care, assisting with administering medications, and operating
32 medical equipment**]** other tasks as determined to be appropriate by
33 the discharging physician or other health care professional licensed
34 pursuant to Title 45 or Title 52 of the Revised Statutes¹.

35 “Caregiver” means any individual designated as a caregiver by a
36 patient pursuant to this act who provides after-care assistance to a
37 patient in the patient’s residence. The term includes, but is not
38 limited to, a relative, ¹spouse,¹ partner, friend, or neighbor who has
39 a significant relationship with the patient.

40 “Discharge” means a patient’s exit or release from a hospital to
41 the patient’s residence following any medical care ²**[,** or²
42 treatment ²**[,** or observation**]** rendered to the patient following an
43 inpatient admission².

44 “Entry” means a patient’s ²**[**entrance**]** admission² into a hospital
45 for the purposes of receiving ²inpatient² medical care ²**[,** treatment,

1 or observation. A patient need not be formally admitted to a
2 hospital for the provisions of this act to apply².

3 “Hospital” means a ¹general acute care¹ hospital licensed
4 pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.).

5 “Residence” means the dwelling that the patient considers to be
6 the patient’s home. The term shall not include any rehabilitation
7 facility, hospital, nursing home, assisted living facility, or group
8 home licensed by the Department of Health.

9
10 3. a. A hospital shall provide each patient or, if applicable, the
11 patient’s legal guardian, with ²[at least ¹[one opportunity] two
12 opportunities¹] an opportunity² to designate at least one caregiver
13 ²[pursuant to this act no later than 24 hours]² following the
14 patient’s entry into ²[the] a² hospital ^{2,2} and prior to the patient’s
15 discharge ²[or transfer to another facility. ¹In the event that the
16 patient or legal guardian declines to designate a caregiver at the first
17 opportunity provided, a second opportunity to designate a caregiver
18 shall be provided at a time, prior to the anticipated time of
19 discharge or transfer to another facility, that is sufficient to
20 effectuate the provisions of section 5 of this act.¹] to the patient’s
21 residence, in a timeframe that is consistent with the discharge
22 planning process provided by regulation. The hospital shall
23 promptly document the request in the patient’s medical record.²

24 b. In the event that the patient is unconscious or otherwise
25 incapacitated upon entry into the hospital, the hospital shall provide
26 the patient or the patient’s legal guardian with an opportunity to
27 designate a caregiver within ¹[24 hours] a given timeframe, at the
28 discretion of the attending physician,¹ following the patient’s
29 recovery of consciousness or capacity. ²The hospital shall promptly
30 document the attempt in the patient’s medical record.²

31 c. In the event that the patient or legal guardian declines to
32 designate a caregiver pursuant to this act, the hospital shall
33 promptly document this declination in the patient’s medical record.

34 d. In the event that the patient or the patient’s legal guardian
35 designates an individual as a caregiver under this act:

36 (1) The hospital shall promptly request the written consent of
37 the patient or the patient’s legal guardian to release medical
38 information to the patient’s designated caregiver following the
39 hospital’s established procedures for releasing personal health
40 information and in compliance with all State and federal laws^{1,2},
41 including the federal "Health Insurance Portability and
42 Accountability Act of 1996," Pub.L.104-191, and related
43 regulations¹.

44 (a) If the patient or the patient’s legal guardian declines to
45 consent to release medical information to the patient’s designated
46 caregiver, the hospital is not required to provide notice to the
47 caregiver under section 4 of P.L. , c. (C.) (pending

1 before the Legislature as this bill) or provide information contained
2 in the patient's discharge plan under section 5 of P.L. ,
3 c. (C.) (pending before the Legislature as this bill).

4 (2) The hospital shall record the patient's designation of
5 caregiver, the relationship of the designated caregiver to the patient,
6 and the name, telephone number, and address of the patient's
7 designated caregiver in the patient's medical record.

8 e. A patient ¹or the patient's legal guardian¹ may elect to
9 change the patient's designated caregiver at any time, and the
10 hospital must record this change in the patient's medical record
11 ²within 24 hours before the patient's discharge².

12 f. ²A designation of a caregiver by a patient or a patient's
13 legal guardian does not obligate the designated individual to
14 perform any after-care assistance for the patient.

15 g.]² This section shall not be construed to require a patient or a
16 patient's legal guardian to designate any individual as a caregiver.

17 ²g. A designation of a caregiver by a patient or a patient's legal
18 guardian does not obligate the designated individual to perform any
19 after-care assistance for the patient.²

20 ¹h. In the event that the patient is a minor child, and the parents
21 of the patient are divorced, the custodial parent shall have the
22 authority to designate a caregiver. If the parents have joint custody
23 of the patient, they shall jointly designate the caregiver.¹

24
25 4. A hospital shall notify the patient's designated caregiver of
26 the patient's discharge or transfer to another facility as soon as
27 possible and ²not later than four hours prior to the patient's actual
28 discharge or transfer , in any event, upon issuance of a discharge
29 order by the patient's attending physician. In the event the hospital
30 is unable to contact the designated caregiver, the lack of contact
31 shall not interfere with, delay, or otherwise affect the medical care
32 provided to the patient, or an appropriate discharge of the patient.
33 The hospital shall promptly document the attempt in the patient's
34 medical record².

35
36 5. a. As soon as possible ¹and not later than 24 hours¹ prior
37 to a patient's discharge from a hospital ²to the patient's residence²,
38 the hospital shall consult with the designated caregiver ¹regarding
39 the caregiver's capabilities and limitations¹ and issue a discharge
40 plan that describes a patient's after-care assistance needs ², if any,²
41 at the patient's residence. ¹The consultation and issuance of a
42 discharge plan shall occur on a schedule that takes into
43 consideration the severity of the patient's condition ², the setting in
44 which care is to be delivered,² and the urgency of the need for
45 caregiver services. ²The hospital shall provide the consultation
46 and discharge plan not later than 24 hours prior to the patient's

1 discharge from the hospital, except that a hospital may provide the
2 consultation and discharge plan less than 24 hours prior to a
3 patient's discharge, but not later than four hours prior to discharge,
4 for a patient whose condition requires less intensive after-care
5 assistance, as determined by the attending physician.¹】 In the event
6 the hospital is unable to contact the designated caregiver, the lack
7 of contact shall not interfere with, delay, or otherwise affect the
8 medical care provided to the patient, or an appropriate discharge of
9 the patient. The hospital shall promptly document the attempt in
10 the patient's medical record.² At a minimum, the ²discharge² plan
11 shall include:

12 (1) The name and contact information of the caregiver
13 designated under this act;

14 (2) A description of all after-care assistance tasks necessary to
15 maintain the patient's ability to reside at home ¹【, taking into
16 account the capabilities and limitations of the caregiver】¹; and

17 (3) Contact information for any health care, community
18 resources, and long-term services and supports necessary to
19 successfully carry out the patient's discharge plan ¹, and contact
20 information for a hospital employee who can respond to questions
21 about the discharge plan after the instruction provided pursuant to
22 subsection b. of this section¹.

23 b. The hospital issuing the discharge plan must provide
24 caregivers with instructions in all after-care assistance tasks
25 described in the discharge plan. ¹Training and instructions for
26 caregivers may be conducted in person or through video
27 technology, at the discretion of the caregiver. Any training or
28 instructions provided to a caregiver shall be provided in non-
29 technical language, to the extent possible.¹ At a minimum, this
30 instruction shall include:

31 (1) A live ¹or recorded¹ demonstration of the tasks performed
32 by ²【a】 an individual designated by the² hospital ²【employee】 ,
33 who is² authorized to perform the after-care assistance task,
34 ²【provided】 and is able to perform the demonstration² in a
35 culturally-competent manner and in accordance with the hospital's
36 requirements to provide language access services under State and
37 federal law;

38 (2) An opportunity for the caregiver to ask questions about the
39 after-care assistance tasks; and

40 (3) Answers to the caregiver's questions provided in a
41 culturally-competent manner and in accordance with the hospital's
42 requirements to provide language access services under State and
43 federal law.

44 c. Any instruction required under this act shall be documented
45 in the patient's medical record, including, at a minimum, the date,
46 time, and contents of the instruction.

1 6. a. Nothing in this act shall be construed to interfere with the
2 rights of an agent operating under a valid advance directive
3 pursuant to the provisions of the “New Jersey Advance Directives
4 for Health Care Act,” P.L.1991, c.201 (C.26:2H-53 et al.), ¹the
5 “New Jersey Advance Directives for Mental Health Care Act,”
6 P.L.2005, c.233 (C.26:2H-102 et al.),¹ or the “Physician Orders for
7 Life-Sustaining Treatment Act,” P.L.2011, c.145 (C.26:2H-129 et
8 al.).

9 b. ¹~~Any~~ advance directive claimed to be in conflict with this
10 act must be in existence prior to the patient’s entry into the hospital.

11 c. ¹A patient may designate a caregiver in an advance directive.
12

13 7. ¹a.¹ Nothing in this act shall be construed to create a private
14 right of action against a hospital ¹~~or~~ ¹a hospital employee, ¹or
15 any consultants or contractors with whom a hospital has a
16 contractual relationship ²~~or~~ ¹or to otherwise supersede or replace
17 existing rights or remedies under any other provision of law ².

18 ¹b. ²A hospital, a hospital employee, or any consultants or
19 contractors with whom a hospital has a contractual relationship
20 shall not be held liable, in any way, for the services rendered or not
21 rendered by the caregiver to the patient at the patient’s residence.

22 c. ²Nothing in this act shall be construed to obviate the
23 obligation of an insurance company, health service corporation,
24 hospital service corporation, medical service corporation, health
25 maintenance organization, or any other entity issuing health
26 benefits plans to provide coverage required under a health benefits
27 plan.¹

28 ²d. (1) A caregiver shall not be reimbursed by any government
29 or commercial payer for after-care assistance that is provided
30 pursuant to this act.

31 (2) Nothing in this act shall be construed to impact, impede, or
32 otherwise disrupt or reduce the reimbursement obligations of an
33 insurance company, health service corporation, hospital service
34 corporation, medical service corporation, health maintenance
35 organization, or any other entity issuing health benefits plans.²
36

37 ¹8. Nothing in this act shall delay the discharge of a patient, or
38 the transfer of a patient from a hospital to another facility.¹
39

40 ¹~~8.~~ ¹9. ¹The Department of Health, pursuant to the
41 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
42 seq.), shall adopt rules and regulations to effectuate the purposes of
43 this act including, but not limited to, regulations to further define
44 the content and scope of any instructions provided to caregivers.

1 ¹**[9.] 10.**¹ This act shall take effect ²**[immediately]** on the 180th
2 day following the date of enactment².

3

4

5

6 Establishes certain requirements for hospitals regarding patient-
7 designated caregivers.

ASSEMBLY, No. 2955

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MARCH 24, 2014

Sponsored by:

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Assemblyman BOB ANDRZEJCZAK

District 1 (Atlantic, Cape May and Cumberland)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblyman VINCENT MAZZEO

District 2 (Atlantic)

Assemblywoman NANCY F. MUNOZ

District 21 (Morris, Somerset and Union)

Co-Sponsored by:

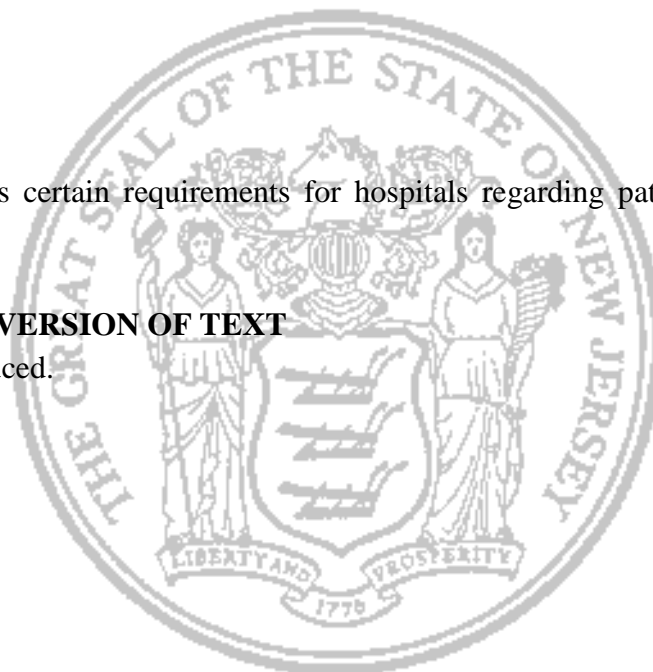
Assemblywoman Vainieri Huttie, Assemblymen Giblin, Johnson, DeAngelo, Diegnan, Singleton, Assemblywomen Mosquera, Pinkin and Assemblyman Wilson

SYNOPSIS

Establishes certain requirements for hospitals regarding patient-designated caregivers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/9/2014)

1 AN ACT concerning designated caregivers and supplementing Title
2 26 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. The Legislature finds and declares that:

8 a. At any given time, an estimated 1.75 million people in New
9 Jersey provide varying degrees of unreimbursed care to adults with
10 limitations in daily activities. The total value of the unpaid care to
11 individuals in need of long-term services and supports amounts to
12 an estimated \$13 billion per year.

13 b. Caregivers are often members of the individual's immediate
14 family, but friends and other community members also serve as
15 caregivers. Although most caregivers are asked to assist an
16 individual with basic activities of daily living, such as mobility,
17 eating, and dressing, many are expected to perform complex tasks
18 on a daily basis, such as administering multiple medications,
19 providing wound care, and operating medical equipment.

20 c. Despite the vast importance of caregivers in the individual's
21 day-to-day care, many caregivers find that they are often left out of
22 discussions involving a patient's care while in the hospital and,
23 upon the patient's discharge, receive little to no instruction on the
24 tasks they are expected to perform.

25 d. The federal Centers for Medicare and Medicaid Services
26 (CMS) estimates that \$17 billion in Medicare funds is spent each
27 year on unnecessary hospital readmissions. Additionally, hospitals
28 desire to avoid the imposition of new readmission penalties under
29 the federal Patient Protection and Affordable Care Act, Pub.L.111-
30 148, and the Health Care and Education Reconciliation Act of 2010,
31 Pub.L.111-152 (ACA).

32 e. In order to successfully address the challenges of a surging
33 population of older adults and others who have significant needs for
34 long-term services and supports, the State must develop methods to
35 enable caregivers to continue to support their loved ones at home
36 and in the community, and avoid costly hospital readmissions.

37 f. Therefore, it is the intent of the Legislature that this act
38 enables caregivers to provide competent post-hospital care to their
39 family and other loved ones, at minimal cost to the taxpayers of this
40 State.

41

42 2. As used in this act:

43 "After-care assistance" means any assistance provided by a
44 caregiver to a patient following the patient's discharge from a
45 hospital, including, but not limited to: assisting with basic activities
46 of daily living; instrumental activities of daily living; and carrying
47 out medical or nursing tasks, such as managing wound care,

1 assisting with administering medications, and operating medical
2 equipment.

3 “Caregiver” means any individual designated as a caregiver by a
4 patient pursuant to this act who provides after-care assistance to a
5 patient in the patient’s residence. The term includes, but is not
6 limited to, a relative, partner, friend, or neighbor who has a
7 significant relationship with the patient.

8 “Discharge” means a patient’s exit or release from a hospital to
9 the patient’s residence following any medical care, treatment, or
10 observation.

11 “Entry” means a patient’s entrance into a hospital for the
12 purposes of receiving medical care, treatment, or observation. A
13 patient need not be formally admitted to a hospital for the
14 provisions of this act to apply.

15 “Hospital” means a hospital licensed pursuant to P.L.1971, c.136
16 (C.26:2H-1 et seq.).

17 “Residence” means the dwelling that the patient considers to be
18 the patient’s home. The term shall not include any rehabilitation
19 facility, hospital, nursing home, assisted living facility, or group
20 home licensed by the Department of Health.

21

22 3. a. A hospital shall provide each patient or, if applicable, the
23 patient’s legal guardian, with at least one opportunity to designate
24 at least one caregiver pursuant to this act no later than 24 hours
25 following the patient’s entry into the hospital and prior to the
26 patient’s discharge or transfer to another facility.

27 b. In the event that the patient is unconscious or otherwise
28 incapacitated upon entry into the hospital, the hospital shall provide
29 the patient or the patient’s legal guardian with an opportunity to
30 designate a caregiver within 24 hours following the patient’s
31 recovery of consciousness or capacity.

32 c. In the event that the patient or legal guardian declines to
33 designate a caregiver pursuant to this act, the hospital shall
34 promptly document this declination in the patient’s medical record.

35 d. In the event that the patient or the patient’s legal guardian
36 designates an individual as a caregiver under this act:

37 (1) The hospital shall promptly request the written consent of
38 the patient or the patient’s legal guardian to release medical
39 information to the patient’s designated caregiver following the
40 hospital’s established procedures for releasing personal health
41 information and in compliance with all State and federal laws.

42 (a) If the patient or the patient’s legal guardian declines to
43 consent to release medical information to the patient’s designated
44 caregiver, the hospital is not required to provide notice to the
45 caregiver under section 4 of P.L. , c. (C.) (pending
46 before the Legislature as this bill) or provide information contained
47 in the patient’s discharge plan under section 5 of P.L. ,
48 c. (C.) (pending before the Legislature as this bill).

1 (2) The hospital shall record the patient's designation of
2 caregiver, the relationship of the designated caregiver to the patient,
3 and the name, telephone number, and address of the patient's
4 designated caregiver in the patient's medical record.

5 e. A patient may elect to change the patient's designated
6 caregiver at any time, and the hospital must record this change in
7 the patient's medical record within 24 hours.

8 f. A designation of a caregiver by a patient or a patient's legal
9 guardian does not obligate the designated individual to perform any
10 after-care assistance for the patient.

11 g. This section shall not be construed to require a patient or a
12 patient's legal guardian to designate any individual as a caregiver.

13

14 4. A hospital shall notify the patient's designated caregiver of
15 the patient's discharge or transfer to another facility as soon as
16 possible and not later than four hours prior to the patient's actual
17 discharge or transfer.

18

19 5. a. As soon as possible and not later than 24 hours prior to a
20 patient's discharge from a hospital, the hospital shall consult with
21 the designated caregiver regarding the caregiver's capabilities and
22 limitations and issue a discharge plan that describes a patient's
23 after-care assistance needs at the patient's residence. At a
24 minimum, the plan shall include:

25 (1) The name and contact information of the caregiver
26 designated under this act;

27 (2) A description of all after-care assistance tasks necessary to
28 maintain the patient's ability to reside at home, taking into account
29 the capabilities and limitations of the caregiver; and

30 (3) Contact information for any health care, community
31 resources, and long-term services and supports necessary to
32 successfully carry out the patient's discharge plan.

33 b. The hospital issuing the discharge plan must provide
34 caregivers with instructions in all after-care assistance tasks
35 described in the discharge plan. At a minimum, this instruction
36 shall include:

37 (1) A live demonstration of the tasks performed by a hospital
38 employee authorized to perform the after-care assistance task,
39 provided in a culturally-competent manner and in accordance with
40 the hospital's requirements to provide language access services
41 under State and federal law;

42 (2) An opportunity for the caregiver to ask questions about the
43 after-care assistance tasks; and

44 (3) Answers to the caregiver's questions provided in a
45 culturally-competent manner and in accordance with the hospital's
46 requirements to provide language access services under State and
47 federal law.

1 c. Any instruction required under this act shall be documented
2 in the patient's medical record, including, at a minimum, the date,
3 time, and contents of the instruction.

4
5 6. a. Nothing in this act shall be construed to interfere with the
6 rights of an agent operating under a valid advance directive
7 pursuant to the provisions of the "New Jersey Advance Directives
8 for Health Care Act," P.L.1991, c.201 (C.26:2H-53 et al.), or the
9 "Physician Orders for Life-Sustaining Treatment Act," P.L.2011,
10 c.145 (C.26:2H-129 et al.).

11 b. Any advance directive claimed to be in conflict with this act
12 must be in existence prior to the patient's entry into the hospital.

13 c. A patient may designate a caregiver in an advance directive.

14
15 7. Nothing in this act shall be construed to create a private right
16 of action against a hospital or a hospital employee, or to otherwise
17 supersede or replace existing rights or remedies under any other
18 provision of law.

19
20 8. The Department of Health, pursuant to the "Administrative
21 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt
22 rules and regulations to effectuate the purposes of this act including,
23 but not limited to, regulations to further define the content and
24 scope of any instructions provided to caregivers.

25
26 9. This act shall take effect immediately.

27
28
29 STATEMENT

30
31 This bill would require hospitals to provide patients and their
32 legal guardians with the opportunity to designate a caregiver within
33 24 hours following the patient's entry into the hospital. A caregiver
34 is someone, such as a relative, partner, friend, or neighbor, who
35 provides after-care assistance to a patient in the patient's residence.
36 The types of after-care assistance provided may include assisting
37 with basic activities of daily living, assisting with instrumental
38 activities of daily living, and carrying out medical or nursing tasks,
39 such as managing wound care, assisting with administering
40 medications, and operating medical equipment.

41 The hospital would be required to note in the patient's medical
42 record the details of any designation made, including the
43 caregiver's name, address, telephone number, and relationship to
44 the patient, and would also be required to request written consent
45 from the patient to release medical information to the caregiver. If
46 a patient declines to give written consent, the hospital is not
47 required to provide the caregiver with after-care assistance
48 instructions or notify the caregiver of the patient's discharge or

1 transfer to another facility. A patient would be permitted to change
2 designated caregivers at any time. Being designated as a caregiver
3 does not obligate the person to provide any after-care assistance to
4 the patient. In the event that a patient is unconscious or otherwise
5 incapacitated upon entry into the hospital, the hospital would be
6 required to provide the patient with an opportunity to designate a
7 caregiver within 24 hours following recovery of consciousness or
8 capacity.

9 A hospital would be required to notify the caregiver of the
10 patient's discharge or transfer to another facility as soon as possible
11 and not later than four hours prior to the patient's actual discharge
12 or transfer. At least 24 hours prior to a patient's discharge from a
13 hospital, the hospital would be required to consult with the
14 designated caregiver regarding the caregiver's capabilities and
15 limitations and issue a discharge plan that describes a patient's
16 after-care assistance needs that includes a description of all after-
17 care assistance tasks necessary to maintain the patient's ability to
18 reside at home, and contact information for any health care,
19 community resources, and long-term services and supports
20 necessary to successfully carry out the patient's discharge plan.
21 The hospital would also be required to provide the caregiver with
22 instructions in all after-care assistance tasks described in the
23 discharge plan, including a live demonstration of the tasks
24 performed by an authorized hospital employee, an opportunity for
25 the caregiver to ask questions about the tasks, and answers to those
26 questions.

27 The hospital would be required to document any information
28 concerning the designation of a caregiver in the patient's medical
29 file, including any after-care assistance instructions provided to the
30 caregiver, any change made by the patient in the caregiver
31 designation, a patient's refusal to give written consent to the release
32 of medical information, and the patient's decision not to designate a
33 caregiver.

34 Nothing in the bill would be construed to interfere with the rights
35 of an agent operating under a valid advance directive pursuant to
36 the provisions of the "New Jersey Advance Directives for Health
37 Care Act," P.L.1991, c.201 (C.26:2H-53 et al.), or the "Physician
38 Orders for Life-Sustaining Treatment Act," P.L.2011, c.145
39 (C.26:2H-129 et al.). Any advance directive claimed to be in
40 conflict with this bill would be required to be in existence prior to
41 the patient's entry into the hospital. Additionally, a patient would
42 be permitted to designate a caregiver in an advance directive.

43 Nothing in the bill would be construed to create a private right of
44 action against a hospital or a hospital employee, or to otherwise
45 supersede or replace existing rights or remedies under any other
46 provision of law.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2955

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 8, 2014

The Assembly Health and Senior Services Committee reports favorably and with committee amendments Assembly Bill No. 2955.

As amended, this bill would require general acute care hospitals to provide patients and their legal guardians with opportunities to designate a caregiver within 24 hours following the patient's entry into the hospital. A caregiver is someone, such as a relative, spouse, partner, friend, or neighbor, who provides after-care assistance to a patient in the patient's residence. The types of after-care assistance provided may include assisting with basic activities of daily living, assisting with instrumental activities of daily living, and other tasks as determined to be appropriate by the discharging physician or another licensed health care professional.

The hospital would be required to note in the patient's medical record the details of any designation made, including the caregiver's name, address, telephone number, and relationship to the patient, and would also be required to request written consent from the patient to release medical information to the caregiver. If a patient declines to give written consent, the hospital is not required to provide the caregiver with after-care assistance instructions or notify the caregiver of the patient's discharge or transfer to another facility. A patient would be permitted to change designated caregivers at any time. Being designated as a caregiver does not obligate the person to provide any after-care assistance to the patient. In the event that a patient is unconscious or otherwise incapacitated upon entry into the hospital, the hospital would be required to provide the patient with an opportunity to designate a caregiver within a given timeframe at the discretion of the attending physician, following recovery of consciousness or capacity.

A hospital would be required to notify the caregiver of the patient's discharge or transfer to another facility as soon as possible and not later than four hours prior to the patient's actual discharge or transfer. Not later than 24 hours prior to a patient's discharge from a hospital, or not later than four hours prior to discharge in less severe cases, as determined by the attending physician, the hospital would be required to consult with the designated caregiver and issue a discharge

plan that describes a patient's after-care assistance needs. The plan is to include a description of all after-care assistance tasks necessary to maintain the patient's ability to reside at home, and contact information for any health care, community resources, and long-term services and supports necessary to successfully carry out the patient's discharge plan. The hospital would also be required to provide the caregiver with instructions in all after-care assistance tasks described in the discharge plan, including a live or recorded demonstration of the tasks performed by an authorized hospital employee, an opportunity for the caregiver to ask questions about the tasks, answers to those questions, and contact information for a hospital employee who can respond to questions after discharge.

The hospital would be required to document any information concerning the designation of a caregiver in the patient's medical file, including: the name, relationship to the patient, and contact information of the designated caregiver; any after-care assistance instructions provided to the caregiver; any change made by the patient in the caregiver designation; and the patient's decision not to designate a caregiver.

The bill stipulates that nothing in the bill shall be construed to interfere with the rights of an agent operating under a valid advance directive pursuant to the provisions of the "New Jersey Advance Directives for Health Care Act," P.L.1991, c.201 (C.26:2H-53 et al.), the "New Jersey Advance Directives for Mental Health Care Act," P.L.2005, c.233 (C.26:2H-102 et al.), or the "Physician Orders for Life-Sustaining Treatment Act," P.L.2011, c.145 (C.26:2H-129 et al.). Additionally, a patient would be permitted to designate a caregiver in an advance directive.

The bill also stipulates that nothing in the bill shall be construed to: create a private right of action against a hospital, a hospital employee, or any consultants or contractors with whom a hospital has a contractual relationship, or to otherwise supersede or replace existing rights or remedies under any other provision of law; to obviate the obligation of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans to provide coverage required under a health benefits plan; or to delay the discharge of a patient, or the transfer of a patient from a hospital to another facility.

COMMITTEE AMENDMENTS

The committee made technical amendments to section 1 of the bill.

The committee amended section 2 of the bill to remove medical or nursing tasks from the definition of "after-care assistance," and to include tasks determined to be appropriate by the discharging physician or other health care professional; to add "spouse" to the

definition of “caregiver,” and to change the definition of “hospital” to mean a general acute care hospital.

The committee amended section 3 of the bill to provide that a patient be afforded two opportunities to designate at least one caregiver pursuant to this act no later than 24 hours following the patient’s entry into the hospital and prior to the patient’s discharge or transfer to another facility. The amendments provide that in the event that the patient or legal guardian declines to designate a caregiver at the first opportunity provided, a second opportunity to designate a caregiver shall be provided at a time, prior to the anticipated time of discharge or transfer to another facility, that is sufficient to provide any necessary instruction to the caregiver.

The committee also amended section 3 of the bill to provide that, in the event that the patient is unconscious or otherwise incapacitated upon entry into the hospital, the hospital shall provide the patient or the patient’s legal guardian with an opportunity to designate a caregiver within a given timeframe at the discretion of the attending physician, following the patient’s recovery of consciousness or capacity.

The committee further amended section 3 of the bill to: clarify that the release of medical information to the patient’s designated caregiver will comply with the federal "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191, and related regulations; clarify that the patient’s legal guardian may elect to change the patient’s designated caregiver at any time; and provide that in the event that the patient is a minor child, and the parents of the patient are divorced, the custodial parent shall have the authority to designate a caregiver. If the parents have joint custody of the patient, they shall jointly designate the caregiver.

The committee amended section 5 of the bill to provide that the consultation and issuance of a discharge plan shall occur on a schedule that takes into consideration the severity of the patient’s condition and the urgency of the need for caregiver services. The hospital shall provide the consultation and discharge plan not later than 24 hours prior to the patient’s discharge from the hospital, except that a hospital may provide the consultation and discharge plan less than 24 hours prior to a patient’s discharge, but not later than four hours prior to discharge, for a patient whose condition requires less intensive after-care assistance, as determined by the attending physician.

The committee also amended section 5 of the bill to provide that training and instructions for caregivers to carry out the discharge plan may be conducted in person or through video technology, at the discretion of the caregiver. Further, the committee amendments add a requirement that such training or instructions be provided in non-technical language to the extent possible. The amendments also require a hospital to provide contact information for a hospital employee who can respond to questions about the discharge plan.

The committee amended section 6 of the bill to provide that nothing in the bill shall be construed to interfere with the rights of an agent operating under a valid advance directive pursuant to the provisions of the "New Jersey Advance Directives for Mental Health Care Act," P.L.2005, c.233 (C.26:2H-102 et al.).

The committee amended section 7 of the bill to provide that nothing in the bill shall be construed to create a private right of action against any consultants or contractors with whom a hospital has a contractual relationship, and that nothing in the bill shall be construed to obviate the obligation of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans to provide coverage required under a health benefits plan.

Finally, the committee added a new section 8 to the bill that provides that nothing in the bill shall delay the discharge of a patient, or the transfer of a patient from a hospital to another facility.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

[First Reprint]
ASSEMBLY, No. 2955

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 15, 2014

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with amendments Assembly Bill No. 2955 (1R).

As amended by the committee, this bill would require general acute care hospitals to provide patients and their legal guardians with opportunities to designate a caregiver following the patient's entry into the hospital. A caregiver is someone, such as a relative, spouse, partner, friend, or neighbor, who provides after-care assistance to a patient in the patient's residence. The types of after-care assistance provided may include assisting with basic activities of daily living, assisting with instrumental activities of daily living, and other tasks as determined to be appropriate by the discharging physician or another licensed health care professional.

The hospital would be required to request written consent from the patient to release medical information to the caregiver. If a patient declines to give written consent, the hospital is not required to provide the caregiver with after-care assistance instructions or notify the caregiver of the patient's discharge or transfer to another facility. A patient would be permitted to change designated caregivers at any time. Being designated as a caregiver does not obligate the person to provide any after-care assistance to the patient. In the event that a patient is unconscious or otherwise incapacitated upon entry into the hospital, the hospital would be required to provide the patient with an opportunity to designate a caregiver within a given timeframe, at the discretion of the attending physician, following recovery of consciousness or capacity.

Except as otherwise provided by the bill (and reiterated in the statement, above) a hospital would be required to notify the caregiver of the patient's discharge or transfer to another facility as soon as possible, and, in any event, upon issuance of a discharge order by the patient's attending physician. As soon as possible, prior to a patient's discharge from a hospital, the hospital would be required to consult

with the designated caregiver and issue a discharge plan that describes a patient's after-care assistance needs, if any. The consultation would occur on a schedule that takes into consideration the severity of the patient's condition, the setting in which care is to be delivered, and the urgency for caregiver services. If the hospital is unable to contact the caregiver, the lack of contact may not interfere with, delay, or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient.

The discharge plan is to include the name and contact information of the designated caregiver, a description of all after-care assistance tasks necessary to maintain the patient's ability to reside at home, and contact information for: (1) any health care, community resources, and long-term services and supports necessary to successfully carry out the patient's discharge plan; and (2) a hospital employee who can respond to questions. The hospital would also be required to provide the caregiver with instructions, either in person or through video technology, at the discretion of the caregiver, in all after-care assistance tasks described in the discharge plan. At a minimum, such instruction would be required to include a live or recorded demonstration of the necessary assistance tasks, which is performed by an authorized hospital employee, and an opportunity for the caregiver to ask questions about the assistance tasks and receive answers to those questions.

The hospital would be required to document any information concerning the designation of a caregiver in the patient's medical record, including: the caregiver's name, relationship to the patient, and contact information; any after-care assistance instructions provided to the caregiver; any change made by the patient in the caregiver designation; the patient's decision not to designate a caregiver, if applicable; or the hospital's inability to contact the caregiver, if applicable.

The bill stipulates that nothing therein may be construed to interfere with the rights of an agent operating under a valid advance directive pursuant to the provisions of the "New Jersey Advance Directives for Health Care Act," P.L.1991, c.201 (C.26:2H-53 et al.), the "New Jersey Advance Directives for Mental Health Care Act," P.L.2005, c.233 (C.26:2H-102 et al.), or the "Physician Orders for Life-Sustaining Treatment Act," P.L.2011, c.145 (C.26:2H-129 et al.). Additionally, a patient would be permitted to designate a caregiver in an advance directive.

In addition, the bill provides that nothing therein may be construed to:

- (1) create a private right of action against a hospital, a hospital employee, or any consultant or contractor with whom a hospital has a contractual relationship;

- (2) obviate the obligation of an insurance company, health service corporation, hospital service corporation, medical service corporation,

health maintenance organization, or any other entity issuing health benefits plans to provide coverage required under a health benefits plan; or to delay the discharge of a patient, or the transfer of a patient from a hospital to another facility;

(3) impact, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans.

The bill also provides that a caregiver will not be eligible for reimbursement by any government or commercial payer for after-care assistance provided pursuant to the bill's provisions; and that a hospital, hospital employee, or any consultant or contractor with whom the hospital has a contractual relationship may not be held liable, in any way, for the services rendered or not rendered by a caregiver to a patient at the patient's residence.

The committee amended the bill to:

- insert, in section 1 of the bill, reference to: (a) the American Association of Retired Professional's Public Policy Institute, (b) statistics related to a caregivers' usual tasks, (c) the fact that research shows that many caregivers feel they lack the skill set to perform caregiving tasks, and (d) the success that has been achieved by the New Jersey Hospital Association and hospitals in its Hospital Engagement Network in reducing readmissions through the use of transitional caregiver models;
- revise the definition of "after-care assistance" to specify that such care must be related to the patient's condition at the time of hospital discharge, and to replace the specific references to more minor caregiver tasks with a general reference to "other tasks" determined to be appropriate by the discharging physician or other health care professional;
- clarify the language used to define the terms "caregiver," "discharge," "entry," and "hospital;"
- eliminate the provisions of section 3 requiring a hospital to provide a patient with two opportunities to designate a caregiver within 24 hours following the patient's entry into the hospital and prior to discharge or transfer, and instead provide that a hospital must provide "an opportunity" for a patient to designate a caregiver prior to the patient's discharge to the patient's residence, within a timeframe that is consistent with the discharge planning process provided by regulation;
- reorder certain subsections for clarity;
- eliminate the provision requiring a hospital to notify a designated caregiver of the patient's discharge or transfer not later than four hours prior to that discharge or transfer, and instead require the hospital to provide such notification, at the

latest, upon issuance of a discharge order by the patient's attending physician;

- specify that any inability of the hospital to contact a designated caregiver shall not interfere with, delay, or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient;
- require a hospital to note, in the patient's medical record, any hospital request or attempt to obtain a patient's caregiver designation; and the hospital's inability to contact the caregiver, if applicable;
- eliminate the provision requiring a hospital to record any change in caregiver designation in the patient's medical record within 24 hours, and instead authorize such recordation to take place at any time before the patient's discharge;
- clarify that the hospital is required to consult with the designated caregiver and issue a discharge plan only if the patient will be discharged to the patient's residence, and require such consultation and issuance to occur on a schedule that takes into consideration the setting in which care is to be delivered, in addition to the other factors already included in the bill (as opposed to taking place within a definitive timeframe – i.e., not later than 24 hours before the patient's discharge or not later than four hours prior, for patients requiring less intensive after-care assistance);
- authorize the training and instruction of caregivers to take place through a live or recorded demonstration, which is performed by an individual designated by the hospital who is authorized to perform the after-care assistance task and is able to perform the demonstration in a culturally-competent manner;
- specify that a hospital, hospital employee, or any consultants or contractors with whom a hospital has a contractual relationship will not be liable, in any way, for the services rendered or not rendered by the caregiver to the patient at the patient's residence;
- specify that a caregiver shall not be reimbursed by any government or commercial payer for after-care assistance provided pursuant to the bill's provisions;
- specify that the bill shall not be construed to impact, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans; and
- provide that the bill will take effect on the 180th day following the date of enactment (rather than taking effect immediately).

As reported, this bill is identical to Senate Bill No. 2127 (Vitale/Singer/Greenstein) (SCA), which the committee also reported favorably on this date.

SENATE, No. 2127

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JUNE 2, 2014

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

**Senators Thompson, Holzapfel, Turner, Weinberg, Whelan, Bateman,
Gordon, Cunningham and Beck**

SYNOPSIS

Establishes certain requirements for hospitals regarding patient-designated caregivers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/19/2014)

1 AN ACT concerning designated caregivers and supplementing Title
2 26 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. The Legislature finds and declares that:

8 a. At any given time, an estimated 1.75 million people in New
9 Jersey provide varying degrees of unreimbursed care to adults with
10 limitations in daily activities. The total value of the unpaid care to
11 individuals in need of long-term services and supports amounts to
12 an estimated \$13 billion per year.

13 b. Caregivers are often members of the individual's immediate
14 family, but friends and other community members also serve as
15 caregivers. Although most caregivers are asked to assist an
16 individual with basic activities of daily living, such as mobility,
17 eating, and dressing, many are expected to perform complex tasks
18 on a daily basis, such as administering multiple medications,
19 providing wound care, and operating medical equipment.

20 c. Despite the vast importance of caregivers in the individual's
21 day-to-day care, many caregivers find that they are often left out of
22 discussions involving a patient's care while in the hospital and,
23 upon the patient's discharge, receive little to no instruction on the
24 tasks they are expected to perform.

25 d. The federal Centers for Medicare and Medicaid Services
26 (CMS) estimates that \$17 billion in Medicare funds is spent each
27 year on unnecessary hospital readmissions. Additionally, hospitals
28 desire to avoid the imposition of new readmission penalties under
29 the federal Patient Protection and Affordable Care Act, Pub.L.111-
30 148, and the Health Care and Education Reconciliation Act of 2010,
31 Pub.L.111-152 (ACA).

32 e. In order to successfully address the challenges of a surging
33 population of older adults and others who have significant needs for
34 long-term services and supports, the State must develop methods to
35 enable caregivers to continue to support their loved ones at home
36 and in the community, and avoid costly hospital readmissions.

37 f. Therefore, it is the intent of the Legislature that this act
38 enables caregivers to provide competent post-hospital care to their
39 family and other loved ones, at minimal cost to the taxpayers of this
40 State.

41

42 2. As used in this act:

43 "After-care assistance" means any assistance provided by a
44 caregiver to a patient following the patient's discharge from a
45 hospital, including, but not limited to: assisting with basic activities
46 of daily living; instrumental activities of daily living; and carrying
47 out medical or nursing tasks, such as managing wound care,

1 assisting with administering medications, and operating medical
2 equipment.

3 “Caregiver” means any individual designated as a caregiver by a
4 patient pursuant to this act who provides after-care assistance to a
5 patient in the patient’s residence. The term includes, but is not
6 limited to, a relative, partner, friend, or neighbor who has a
7 significant relationship with the patient.

8 “Discharge” means a patient’s exit or release from a hospital to
9 the patient’s residence following any medical care, treatment, or
10 observation.

11 “Entry” means a patient’s entrance into a hospital for the
12 purposes of receiving medical care, treatment, or observation. A
13 patient need not be formally admitted to a hospital for the
14 provisions of this act to apply.

15 “Hospital” means a hospital licensed pursuant to P.L.1971, c.136
16 (C.26:2H-1 et seq.).

17 “Residence” means the dwelling that the patient considers to be
18 the patient’s home. The term shall not include any rehabilitation
19 facility, hospital, nursing home, assisted living facility, or group
20 home licensed by the Department of Health.

21

22 3. a. A hospital shall provide each patient or, if applicable, the
23 patient’s legal guardian, with at least one opportunity to designate
24 at least one caregiver pursuant to this act no later than 24 hours
25 following the patient’s entry into the hospital and prior to the
26 patient’s discharge or transfer to another facility.

27 b. In the event that the patient is unconscious or otherwise
28 incapacitated upon entry into the hospital, the hospital shall provide
29 the patient or the patient’s legal guardian with an opportunity to
30 designate a caregiver within 24 hours following the patient’s
31 recovery of consciousness or capacity.

32 c. In the event that the patient or legal guardian declines to
33 designate a caregiver pursuant to this act, the hospital shall
34 promptly document this declination in the patient’s medical record.

35 d. In the event that the patient or the patient’s legal guardian
36 designates an individual as a caregiver under this act:

37 (1) The hospital shall promptly request the written consent of
38 the patient or the patient’s legal guardian to release medical
39 information to the patient’s designated caregiver following the
40 hospital’s established procedures for releasing personal health
41 information and in compliance with all State and federal laws.

42 (a) If the patient or the patient’s legal guardian declines to
43 consent to release medical information to the patient’s designated
44 caregiver, the hospital is not required to provide notice to the
45 caregiver under section 4 of P.L. , c. (C.) (pending
46 before the Legislature as this bill) or provide information contained
47 in the patient’s discharge plan under section 5 of P.L. , c. (C.)
48 (pending before the Legislature as this bill).

1 (2) The hospital shall record the patient's designation of
2 caregiver, the relationship of the designated caregiver to the patient,
3 and the name, telephone number, and address of the patient's
4 designated caregiver in the patient's medical record.

5 e. A patient may elect to change the patient's designated
6 caregiver at any time, and the hospital must record this change in
7 the patient's medical record within 24 hours.

8 f. A designation of a caregiver by a patient or a patient's legal
9 guardian does not obligate the designated individual to perform any
10 after-care assistance for the patient.

11 g. This section shall not be construed to require a patient or a
12 patient's legal guardian to designate any individual as a caregiver.

13
14 4. A hospital shall notify the patient's designated caregiver of
15 the patient's discharge or transfer to another facility as soon as
16 possible and not later than four hours prior to the patient's actual
17 discharge or transfer.

18
19 5. a. As soon as possible and not later than 24 hours prior to a
20 patient's discharge from a hospital, the hospital shall consult with
21 the designated caregiver regarding the caregiver's capabilities and
22 limitations and issue a discharge plan that describes a patient's
23 after-care assistance needs at the patient's residence. At a
24 minimum, the plan shall include:

25 (1) The name and contact information of the caregiver
26 designated under this act;

27 (2) A description of all after-care assistance tasks necessary to
28 maintain the patient's ability to reside at home, taking into account
29 the capabilities and limitations of the caregiver; and

30 (3) Contact information for any health care, community
31 resources, and long-term services and supports necessary to
32 successfully carry out the patient's discharge plan.

33 b. The hospital issuing the discharge plan must provide
34 caregivers with instructions in all after-care assistance tasks
35 described in the discharge plan. At a minimum, this instruction
36 shall include:

37 (1) A live demonstration of the tasks performed by a hospital
38 employee authorized to perform the after-care assistance task,
39 provided in a culturally-competent manner and in accordance with
40 the hospital's requirements to provide language access services
41 under State and federal law;

42 (2) An opportunity for the caregiver to ask questions about the
43 after-care assistance tasks; and

44 (3) Answers to the caregiver's questions provided in a
45 culturally-competent manner and in accordance with the hospital's
46 requirements to provide language access services under State and
47 federal law.

1 c. Any instruction required under this act shall be documented
2 in the patient's medical record, including, at a minimum, the date,
3 time, and contents of the instruction.

4
5 6. a. Nothing in this act shall be construed to interfere with the
6 rights of an agent operating under a valid advance directive
7 pursuant to the provisions of the "New Jersey Advance Directives
8 for Health Care Act," P.L.1991, c.201 (C.26:2H-53 et al.), or the
9 "Physician Orders for Life-Sustaining Treatment Act," P.L.2011,
10 c.145 (C.26:2H-129 et al.).

11 b. Any advance directive claimed to be in conflict with this act
12 must be in existence prior to the patient's entry into the hospital.

13 c. A patient may designate a caregiver in an advance directive.

14
15 7. Nothing in this act shall be construed to create a private right
16 of action against a hospital or a hospital employee, or to otherwise
17 supersede or replace existing rights or remedies under any other
18 provision of law.

19
20 8. The Department of Health, pursuant to the "Administrative
21 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt
22 rules and regulations to effectuate the purposes of this act including,
23 but not limited to, regulations to further define the content and
24 scope of any instructions provided to caregivers.

25
26 9. This act shall take effect immediately.

27
28
29 STATEMENT

30
31 This bill would require hospitals to provide patients and their
32 legal guardians with the opportunity to designate a caregiver within
33 24 hours following the patient's entry into the hospital. A caregiver
34 is someone, such as a relative, partner, friend, or neighbor, who
35 provides after-care assistance to a patient in the patient's residence.
36 The types of after-care assistance provided may include assisting
37 with basic activities of daily living, assisting with instrumental
38 activities of daily living, and carrying out medical or nursing tasks,
39 such as managing wound care, assisting with administering
40 medications, and operating medical equipment.

41 The hospital would be required to note in the patient's medical
42 record the details of any designation made, including the
43 caregiver's name, address, telephone number, and relationship to
44 the patient, and would also be required to request written consent
45 from the patient to release medical information to the caregiver. If
46 a patient declines to give written consent, the hospital is not
47 required to provide the caregiver with after-care assistance
48 instructions or notify the caregiver of the patient's discharge or

1 transfer to another facility. A patient would be permitted to change
2 designated caregivers at any time. Being designated as a caregiver
3 does not obligate the person to provide any after-care assistance to
4 the patient. In the event that a patient is unconscious or otherwise
5 incapacitated upon entry into the hospital, the hospital would be
6 required to provide the patient with an opportunity to designate a
7 caregiver within 24 hours following recovery of consciousness or
8 capacity.

9 A hospital would be required to notify the caregiver of the
10 patient's discharge or transfer to another facility as soon as possible
11 and not later than four hours prior to the patient's actual discharge
12 or transfer. At least 24 hours prior to a patient's discharge from a
13 hospital, the hospital would be required to consult with the
14 designated caregiver regarding the caregiver's capabilities and
15 limitations and issue a discharge plan that describes a patient's
16 after-care assistance needs that includes a description of all after-
17 care assistance tasks necessary to maintain the patient's ability to
18 reside at home, and contact information for any health care,
19 community resources, and long-term services and supports
20 necessary to successfully carry out the patient's discharge plan.
21 The hospital would also be required to provide the caregiver with
22 instructions in all after-care assistance tasks described in the
23 discharge plan, including a live demonstration of the tasks
24 performed by an authorized hospital employee, an opportunity for
25 the caregiver to ask questions about the tasks, and answers to those
26 questions.

27 The hospital would be required to document any information
28 concerning the designation of a caregiver in the patient's medical
29 file, including any after-care assistance instructions provided to the
30 caregiver, any change made by the patient in the caregiver
31 designation, a patient's refusal to give written consent to the release
32 of medical information, and the patient's decision not to designate a
33 caregiver.

34 Nothing in the bill would be construed to interfere with the rights
35 of an agent operating under a valid advance directive pursuant to
36 the provisions of the "New Jersey Advance Directives for Health
37 Care Act," P.L.1991, c.201 (C.26:2H-53 et al.), or the "Physician
38 Orders for Life-Sustaining Treatment Act," P.L.2011, c.145
39 (C.26:2H-129 et al.). Any advance directive claimed to be in
40 conflict with this bill would be required to be in existence prior to
41 the patient's entry into the hospital. Additionally, a patient would
42 be permitted to designate a caregiver in an advance directive.

43 Nothing in the bill would be construed to create a private right of
44 action against a hospital or a hospital employee, or to otherwise
45 supersede or replace existing rights or remedies under any other
46 provision of law.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO
SENATE, No. 2127

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 15, 2014

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with amendments Senate Bill No. 2127.

This bill would require hospitals to provide patients and their legal guardians with the opportunity to designate a caregiver within 24 hours following the patient's entry into the hospital. A caregiver is someone, such as a relative, partner, friend, or neighbor, who provides after-care assistance to a patient in the patient's residence. The types of after-care assistance provided may include assisting with basic activities of daily living, assisting with instrumental activities of daily living, and carrying out medical or nursing tasks, such as managing wound care, assisting with administering medications, and operating medical equipment.

The hospital would be required to note in the patient's medical record the details of any designation made, including the caregiver's name, address, telephone number, and relationship to the patient, and would also be required to request written consent from the patient to release medical information to the caregiver. If a patient declines to give written consent, the hospital is not required to provide the caregiver with after-care assistance instructions or notify the caregiver of the patient's discharge or transfer to another facility. A patient would be permitted to change designated caregivers at any time. Being designated as a caregiver does not obligate the person to provide any after-care assistance to the patient. In the event that a patient is unconscious or otherwise incapacitated upon entry into the hospital, the hospital would be required to provide the patient with an opportunity to designate a caregiver within 24 hours following recovery of consciousness or capacity.

A hospital would be required to notify the caregiver of the patient's discharge or transfer to another facility as soon as possible and not later than four hours prior to the patient's actual discharge or transfer. At least 24 hours prior to a patient's discharge from a hospital, the hospital would be required to consult with the designated

caregiver regarding the caregiver's capabilities and limitations and issue a discharge plan that describes a patient's after-care assistance needs that includes a description of all after-care assistance tasks necessary to maintain the patient's ability to reside at home, and contact information for any health care, community resources, and long-term services and supports necessary to successfully carry out the patient's discharge plan. The hospital would also be required to provide the caregiver with instructions in all after-care assistance tasks described in the discharge plan, including a live demonstration of the tasks performed by an authorized hospital employee, an opportunity for the caregiver to ask questions about the tasks, and answers to those questions.

The hospital would be required to document any information concerning the designation of a caregiver in the patient's medical file, including any after-care assistance instructions provided to the caregiver, any change made by the patient in the caregiver designation, a patient's refusal to give written consent to the release of medical information, and the patient's decision not to designate a caregiver.

Nothing in the bill would be construed to interfere with the rights of an agent operating under a valid advance directive pursuant to the provisions of the "New Jersey Advance Directives for Health Care Act," P.L.1991, c.201 (C.26:2H-53 et al.), or the "Physician Orders for Life-Sustaining Treatment Act," P.L.2011, c.145 (C.26:2H-129 et al.). Additionally, a patient would be permitted to designate a caregiver in an advance directive.

In addition, the bill provides that nothing therein may be construed to:

(1) create a private right of action against a hospital, a hospital employee, or any consultant or contractor with whom a hospital has a contractual relationship;

(2) obviate the obligation of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans to provide coverage required under a health benefits plan; or to delay the discharge of a patient, or the transfer of a patient from a hospital to another facility;

(3) impact, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans.

The bill also provides that a caregiver will not be eligible for reimbursement by any government or commercial payer for after-care assistance provided pursuant to the bill's provisions; and that a hospital, hospital employee, or any consultant or contractor with whom the hospital has a contractual relationship may not be held

liable, in any way, for the services rendered or not rendered by a caregiver to a patient at the patient's residence.

The committee amended the bill to:

- insert, in section 1 of the bill, reference to: (a) the American Association of Retired Professional's Public Policy Institute, (b) statistics related to a caregivers' usual tasks, (c) the fact that research shows that many caregivers feel they lack the skill set to perform caregiving tasks, and (d) the success that has been achieved by the New Jersey Hospital Association and hospitals in its Hospital Engagement Network in reducing readmissions through the use of transitional caregiver models;
- revise the definition of "after-care assistance" to specify that such care must be related to the patient's condition at the time of hospital discharge, and to replace the specific references to more minor caregiver tasks with a general reference to "other tasks" determined to be appropriate by the discharging physician or other health care professional;
- clarify the language used to define the terms "caregiver," "discharge," "entry," and "hospital;"
- eliminate the provisions of section 3 requiring a hospital to provide a patient with two opportunities to designate a caregiver within 24 hours following the patient's entry into the hospital and prior to discharge or transfer, and instead provide that a hospital must provide "an opportunity" for a patient to designate a caregiver prior to the patient's discharge to the patient's residence, within a timeframe that is consistent with the discharge planning process provided by regulation;
- eliminate the provisions of section 3 requiring a hospital to provide an unconscious patient with the opportunity to designate a caregiver within 24 hours following the patient's recovery of consciousness, and instead require the opportunity to be provided within a given timeframe, at the discretion of the attending physician;
- reorder certain subsections for clarity;
- clarify that the release of medical information to a caregiver must be done in accordance with the federal "Health Insurance Portability and Accountability Act of 1996" (HIPAA);
- eliminate the provision requiring a hospital to notify a designated caregiver of the patient's discharge or transfer not later than four hours prior to that discharge or transfer, and instead require the hospital to provide such notification, at the latest, upon issuance of a discharge order by the patient's attending physician;
- specify that any inability of the hospital to contact a designated caregiver shall not interfere with, delay, or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient;

- require a hospital to note, in the patient's medical record, any hospital request or attempt to obtain a patient's caregiver designation; and the hospital's inability to contact the caregiver, if applicable;
- authorize a patient's legal guardian to change the patient's designated caregiver;
- clarify that, when a patient is a minor child, and the parents of the patient are divorced, the custodial parent will be authorized to designate a caregiver, and if the parents have joint custody of the patient, they will be required to jointly designate the caregiver;
- eliminate the provision requiring a hospital to record any change in caregiver designation in the patient's medical record within 24 hours, and instead authorize such recordation to take place at any time before the patient's discharge;
- clarify that the hospital is required to consult with the designated caregiver and issue a discharge plan only if the patient will be discharged to the patient's residence, and require such consultation and issuance to occur on a schedule that takes into consideration the severity of the patient's condition, the setting in which care is to be delivered, and the urgency of the need for caregiver services (as opposed to taking place within a definitive timeframe – i.e., not later than 24 hours before the patient's discharge);
- authorize the training and instruction of caregivers to take place through a live or recorded demonstration, which is performed by an individual designated by the hospital who is authorized to perform the after-care assistance task and is able to perform the demonstration in a culturally-competent manner;
- require training and instruction to be provided to a caregiver in non-technical language, to the extent possible;
- require the hospital to provide the caregiver with contact information for a hospital employee who can respond to questions about the discharge plan
- incorporate specific reference to the "New Jersey Advance Directives for Mental Health Care Act;"
- specify that nothing in the act shall be construed to create a private right of action against any consultants or contractors with whom a hospital has a contractual relationship;
- specify that a hospital, hospital employee, or any consultants or contractors with whom a hospital has a contractual relationship will not be liable, in any way, for the services rendered or not rendered by the caregiver to the patient at the patient's residence;

- specify that a caregiver shall not be reimbursed by any government or commercial payer for after-care assistance provided pursuant to the bill's provisions;
- specify that the bill shall not be construed to impact, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or any other entity issuing health benefits plans;
- provide that the bill will take effect on the 180th day following the date of enactment (rather than taking effect immediately); and
- make technical changes.

As reported, this bill is identical to Assembly Bill No. 2955(1R) (SCA) (Prieto/Lagana/Andrzejczak/Benson/Mazzeo/Munoz), which the committee also reported favorably on this date.