

1 **ENROLLED**

2 **H. B. 2100**

3
4 (By Delegates Williams, Campbell, Ellington, Hamilton, Rowan and Fleischauer)

5 [Passed March 10, 2015; in effect ninety days from passage.]
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10 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
11 designated §16-5X-1, §16-5X-2, §16-5X-3, §16-5X-4, §16-5X-5 and §16-5X-6, all relating
12 to permitting hospital patients to designate a lay caregiver; providing definitions; requiring
13 patient consent; requiring certain notation in medical records; permitting modifications to
14 the lay caregiver designations; requiring certain notices to a lay caregiver; requiring hospital
15 to consult with a lay caregiver to prepare for aftercare and to issue discharge plan; providing
16 for circumstances in which hospital is unable to contact a lay caregiver; providing immunity;
17 and prohibiting use of state or federal funds for payment of a lay caregiver.

18 *Be it enacted by the Legislature of West Virginia:*

19 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
20 article, designated §16-5X-1, §16-5X-2, §16-5X-3, §16-5X-4, §16-5X-5 and §16-5X-6 all to read
21 as follows:

22 **ARTICLE 5X. CAREGIVER ADVISE, RECORD AND ENABLE ACT.**

1 **§16-5X-1. Definitions.**

2 For purpose of this article:

3 (1) "Aftercare" means any assistance provided by a designated lay caregiver to an individual
4 under this article after the patient's discharge from a hospital. Assistance may include tasks that are
5 limited to the patient's condition at the time of discharge that do not require a licensed professional;

6 (2) "Discharge" means a patient's exit or release from a hospital to the patient's residence
7 following an inpatient stay;

8 (3) "Hospital" means a facility licensed pursuant to article five-b, chapter sixteen of this code
9 and any acute care facility operated by state government;

10 (4) "Lay caregiver" means any individual eighteen years of age or older designated as a lay
11 caregiver pursuant to the provisions of this article who provides aftercare assistance to a patient in
12 the patient's residence; and

13 (5) "Residence" means a dwelling considered by a patient to be his or her home, not including
14 a hospital or, a nursing home or group home, as defined by section two, article five-c, chapter sixteen
15 of this code.

16 **§16-5X-2. Caregiver designation.**

17 (a) (1) A hospital shall provide a patient or the patient's legal guardian with an opportunity
18 to designate one lay caregiver following the patient's admission into a hospital.

19 (2) If the patient is unconscious or otherwise incapacitated upon admission to the hospital,
20 the hospital shall provide the patient's legal guardian with an opportunity to designate a lay caregiver
21 following the patient's recovery of consciousness or capacity, so long as the designation or lack of
22 a designation does not interfere with, delay or otherwise affect the medical care provided to the

1 patient.

2 (3) If the patient or the patient's legal guardian declines to designate a lay caregiver under this
3 article, the hospital shall promptly document that in the patient's medical record, and the hospital is
4 considered to have complied with the provisions of this article.

5 (4) If the patient or the patient's legal guardian designates an individual as a lay caregiver
6 under this article, the hospital shall promptly request the written consent of the patient or the patient's
7 legal guardian to release medical information to the patient's designated lay caregiver pursuant to the
8 hospital's established procedures for releasing personal health information and in compliance with
9 applicable state and federal law.

10 (5) If the patient or the patient's legal guardian declines to consent to the release of medical
11 information to the patient's designated lay caregiver, the hospital shall promptly document that in
12 the patient's medical record, and the hospital is considered to have complied with the provisions of
13 this article.

14 (6) The hospital shall record the patient's designation of a lay caregiver, the relationship of
15 the lay caregiver to the patient, and the name and contact information of the patient's designated lay
16 caregiver in the patient's medical record.

17 (b) A patient may elect to change his or her designated lay caregiver in the event that the
18 originally designated lay caregiver becomes unavailable, unwilling or unable to care for the patient.

19 (c) Designation of a lay caregiver by a patient or a patient's legal guardian pursuant to the
20 provisions of this article does not obligate any individual to perform any aftercare tasks for the
21 patient.

22 (d) This article does not require a patient or a patient's legal guardian to designate any

1 individual as a lay caregiver as defined by this article.

2 **§16-5X-3. Notification.**

3 If a patient has designated a lay caregiver, a hospital shall notify the patient's designated lay
4 caregiver of the patient's discharge to the patient's residence as soon as possible. If the hospital is
5 unable to contact the designated lay caregiver, the lack of contact may not interfere with, delay or
6 otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient.
7 The hospital shall promptly document that in the patient's medical record, and the hospital is
8 considered to have complied with the provisions of this section.

9 **§16-5X-4. Discharge.**

10 (a) As soon as possible and, in any event, upon issuance of a discharge order by the patient's
11 attending physician, the hospital shall consult with the designated lay caregiver along with the patient
12 regarding the lay caregiver's capabilities and limitations and issue a discharge plan that describes a
13 patient's after-care needs at his or her residence. At minimum, a discharge plan shall include:

14 (1) The name and contact information of the lay caregiver designated under this article;

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

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

19 (b) The hospital issuing the discharge plan shall provide the lay caregiver with instruction
20 in all after-care tasks described in the discharge plan. At minimum, the instruction shall include:

21 (1) Education and instruction of the lay caregiver by a hospital employee or individual with
22 whom the hospital has a contractual relationship authorized to perform the after care task in a

1 manner that is consistent with current accepted practices and is based on an assessment of the lay
2 caregiver's learning needs;

3 (2) An opportunity for the lay caregiver and patient to ask questions about the after-care
4 tasks; and

5 (3) Answers to the lay caregiver's and patient's questions provided in a competent manner
6 and in accordance with the hospital's requirements to provide language access services under state
7 and federal law.

8 (c) Any instruction required under this article shall be documented in the patient's medical
9 record, including, at minimum, the date, time, and contents of the instruction.

10 **§16-5X-5. Exceptions and immunity.**

11 (a) This article may not be construed to interfere with the rights of a person legally authorized
12 to make health care decisions as provided in article thirty, chapter sixteen of this code.

13 (b) Nothing in this act shall be construed to create a private right of action against a hospital,
14 hospital employee, a duly authorized agent of the hospital or any consultants or contractors with
15 whom the hospital has a contractual relationship.

16 (c) A hospital, a hospital employee or any consultants or contractors with whom a hospital
17 has a contractual relationship shall not be held liable in any way for services rendered or not rendered
18 by the lay caregiver.

19 **§16-5X-6. Funding.**

20 State or federal dollars may not be used for payment to any lay caregiver as defined in this
21 article after discharge from a hospital. No state or federal program funding shall be impacted by this
22 article.