

**Senate Bill No. 244**

(By Senators Carmichael, Miller, Nohe and Plymale)

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[Introduced January 16, 2015; referred to the Committee on Health and Human Resources; and

then to the Committee on the Judiciary.]

**Interim  
Bill**

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5X-1, §16-5X-2, §16-5X-3, §16-5X-4, §16-5X-5 and §16-5X-6, all relating to permitting hospital patients to designate a lay caregiver; providing definitions; requiring patient consent; requiring certain notation in medical records; permitting modifications to lay caregiver designations; prohibiting certain construction; requiring certain notices to lay caregiver; requiring hospital to consult with lay caregiver to prepare for aftercare and to issue discharge plan; providing for circumstances in which hospital is unable to contact lay caregiver; prohibiting certain construction; prohibiting use of state or federal funds for payment of lay caregiver; and prohibiting impact on state or federal funds.

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

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

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

2 **§16-5X-1. Definitions.**

3 For purpose of this article:

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

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

9 (3) "Hospital" means a facility licensed pursuant to article five-b, chapter sixteen of this code;

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 is not required to provide notice  
12 to the lay caregiver pursuant to the provisions of section three of this article.

13 (6) The hospital shall record the patient's designation of a lay caregiver, the relationship of  
14 the lay caregiver to the patient, and the name, telephone number and physical address of the patient's  
15 designated lay caregiver in the patient's medical record.

16 (b) A patient may elect to change his or her designated lay caregiver if the lay caregiver  
17 becomes incapacitated.

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

21 (d) This article does not require a patient or a patient's legal guardian to designate any  
22 individual as a lay caregiver as defined by this article.

1 **§16-5X-3. Notification.**

2 If a patient has designated a lay caregiver, a hospital shall notify the patient's designated lay  
3 caregiver of the patient's discharge to the patient's residence as soon as practicable. If the hospital  
4 is unable to contact the designated lay caregiver, the lack of contact may not interfere with, delay or  
5 otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient.

6 **§16-5X-4. Discharge.**

7 (a) As soon as possible and not later than twenty-four hours prior to a patient's discharge from  
8 a hospital, the hospital shall consult with the designated lay caregiver along with the patient  
9 regarding the lay caregiver's capabilities and limitations and issue a discharge plan that describes a  
10 patient's after-care needs at his or her residence. At minimum, a discharge plan shall include:

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

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

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

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

18 (1) A live demonstration of the tasks performed by a hospital employee or individual with  
19 whom the hospital has a contractual relationship authorized to perform the after-care task, provided  
20 in a competent manner and in accordance with the hospital's requirements to provide language access  
21 services under state and federal law;

22 (2) An opportunity for the lay caregiver and patient to ask questions about the after-care

1 tasks; and

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

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

7 **§16-5X-5. Exceptions and immunity.**

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

10 (b) This article does not create a private right of action against a hospital, hospital employee,  
11 a duly authorized agent of the hospital or otherwise supersede or replace existing rights or remedies  
12 under any other general or special law.

13 **§16-5X-6. Funding.**

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

NOTE: The purpose of this bill is to permit hospital patients to designate a lay caregiver to provide aftercare assistance in the patient's residence.

This article is new; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the 2015 Regular Session of the Legislature by the Select Committee on PEIA, Seniors and Long Term Care.