

E N R O L L E D

H. B. 2100

(BY DELEGATE(S) WILLIAMS, CAMPBELL, ELLINGTON,
HAMILTON, ROWAN AND FLEISCHAUER)

[Passed March 10, 2015;
in effect ninety days from passage.]

AN ACT 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 the lay caregiver designations; requiring certain notices to a lay caregiver; requiring hospital to consult with a lay caregiver to prepare for aftercare and to issue discharge plan; providing for circumstances in which hospital is unable to contact a lay caregiver; providing immunity; and prohibiting use of state or federal funds for payment of a lay caregiver.

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:

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

§16-5X-1. Definitions.

1 For purpose of this article:

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

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

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

12 (4) “Lay caregiver” means any individual eighteen years of
13 age or older designated as a lay caregiver pursuant to the
14 provisions of this article who provides aftercare assistance to a
15 patient in the patient’s residence; and

16 (5) “Residence” means a dwelling considered by a patient to
17 be his or her home, not including a hospital or, a nursing home
18 or group home, as defined by section two, article five-c, chapter
19 sixteen of this code.

§16-5X-2. Caregiver designation.

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

4 (2) If the patient is unconscious or otherwise incapacitated
5 upon admission to the hospital, the hospital shall provide the
6 patient’s legal guardian with an opportunity to designate a lay

7 caregiver following the patient's recovery of consciousness or
8 capacity, so long as the designation or lack of a designation does
9 not interfere with, delay or otherwise affect the medical care
10 provided to the patient.

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

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

23 (5) If the patient or the patient's legal guardian declines to
24 consent to the release of medical information to the patient's
25 designated lay caregiver, the hospital shall promptly document
26 that in the patient's medical record, and the hospital is consid-
27 ered to have complied with the provisions of this article.

28 (6) The hospital shall record the patient's designation of a
29 lay caregiver, the relationship of the lay caregiver to the patient,
30 and the name and contact information of the patient's designated
31 lay caregiver in the patient's medical record.

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

35 (c) Designation of a lay caregiver by a patient or a patient's
36 legal guardian pursuant to the provisions of this article does not

37 obligate any individual to perform any aftercare tasks for the
38 patient.

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

§16-5X-3. Notification.

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

§16-5X-4. Discharge.

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

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

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

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

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

19 (1) Education and instruction of the lay caregiver by a
20 hospital employee or individual with whom the hospital has a
21 contractual relationship authorized to perform the after care task
22 in a manner that is consistent with current accepted practices and
23 is based on an assessment of the lay caregiver's learning needs;

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

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

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

§16-5X-5. Exceptions and immunity.

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

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

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

§16-5X-6. Funding.

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2015.

Governor

