

# H. B. 2100

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

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[Introduced January 20, 2015; referred to the  
Committee on Health and Human Resources; and then to the  
Committee on the Judiciary.]

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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 the lay caregiver designations; prohibiting certain construction; 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; prohibiting certain construction; prohibiting use of state or federal funds for payment of a lay caregiver; 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:

**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;

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

15       (5) “Residence” means a dwelling considered by a patient to  
16 be his or her home, not including a hospital or, a nursing home  
17 or group home, as defined by section two, article five-c, chapter  
18 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 is not required to provide  
26 notice to the lay caregiver pursuant to the provisions of section  
27 three 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, telephone number and physical address of the  
31 patient’s designated lay caregiver in the patient’s medical record.

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

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

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

**§16-5X-4. Discharge.**

1        (a) As soon as possible and not later than twenty-four hours  
2 prior to a patient's discharge from a hospital, the hospital shall

3 consult with the designated lay caregiver along with the patient  
4 regarding the lay caregiver's capabilities and limitations and  
5 issue a discharge plan that describes a patient's after-care needs  
6 at his or her residence. At minimum, a discharge plan shall  
7 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) A live demonstration of the tasks performed by a hospital  
20 employee or individual with whom the hospital has a contractual  
21 relationship authorized to perform the after-care task, provided  
22 in a competent manner and in accordance with the hospital's

23 requirements to provide language access services under state and  
24 federal law;

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

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

31 (c) Any instruction required under this article shall be  
32 documented in the patient's medical record, including, at  
33 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) This article does not create a private right of action  
6 against a hospital, hospital employee, a duly authorized agent of  
7 the hospital or otherwise supersede or replace existing rights or  
8 remedies under any other general or special law.

**§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 is impacted by this
- 4        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, it has been completely underscored.

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.