

JAN 16 2014

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# A BILL FOR AN ACT

RELATING TO CAREGIVING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that Hawaii's population  
2 of older adults is rapidly increasing, and the State relies  
3 heavily on unpaid caregivers such as family and friends to  
4 provide long-term services and supports. In 2012, Hawaii had  
5 the highest percentage in the nation of residents age eighty-  
6 five and older. This population is projected to grow sixty-five  
7 per cent over the next twenty years and is the population most  
8 likely to need long-term care. The AARP Public Policy Institute  
9 estimates that in 2009, there were 247,000 caregivers in Hawaii,  
10 and that the 162,000,000 hours of unpaid care the caregivers  
11 provided would be valued at \$2,000,000,000.

12           The legislature further finds that the role of caregivers  
13 is expanding. While family caregivers have traditionally  
14 assisted with bathing, dressing, eating, and household tasks  
15 such as shopping and managing finances, it is now common for  
16 family caregivers to perform medical and nursing tasks that  
17 historically were only provided in hospitals and nursing homes  
18 or by home care professionals. The most commonly performed



1 medical and nursing tasks are medication management, help with  
2 assistive mobility devices, preparing food for special diets,  
3 and wound care. The rise of caregivers providing medical or  
4 nursing tasks is attributed to an increased prevalence of  
5 chronic conditions in older adults, economic pressures to reduce  
6 hospital stays, and reduction of formal home care services due  
7 to growth of in-home technology.

8         Despite the critical and expanding role of caregivers  
9 serving Hawaii's aging population, caregivers often find that  
10 they are left out of discussions involving the patient's care  
11 when the patient is in the hospital, and they are expected to  
12 provide post-hospital care including medical and nursing tasks  
13 without any training or support from professionals.  
14 Approximately \$17,000,000,000 in medicare funds is spent each  
15 year on unnecessary hospital readmissions, and recently seventy-  
16 one per cent of Hawaii's hospitals were penalized for excessive  
17 readmissions under the federal hospital readmissions reduction  
18 program.

19         In order to successfully address the challenges of a  
20 surging population of older adults and others who have  
21 significant needs for long-term services and supports, the State  
22 must develop methods to enable caregivers to continue to support



1 their loved ones at home and in the community, and avoid costly  
2 hospital readmissions. Therefore, the intent of this Act is to  
3 enable caregivers to provide competent post-hospital care to  
4 their family and other loved ones, at minimal cost to the  
5 taxpayers.

6 The purpose of this Act is to:

- 7 (1) Allow a patient an opportunity to designate, upon  
8 entry to a hospital, a caregiver in the patient's  
9 medical record;
- 10 (2) Require a hospital to notify and meet with the  
11 designated caregiver to discuss the patient's plan of  
12 care prior to the patient's discharge or transfer to  
13 another facility; and
- 14 (3) Require a hospital to instruct the designated  
15 caregiver in certain after-care tasks upon a patient's  
16 discharge.

17 SECTION 2. The Hawaii Revised Statutes is amended by  
18 adding a new chapter to be appropriately designated and to read  
19 as follows:

20 "CHAPTER

21 HOSPITAL REQUIREMENTS REGARDING CAREGIVERS

22 § -1 Definitions. For the purpose of this chapter:



1 "After-care" means any assistance provided by a caregiver  
2 to a patient after the patient's discharge from a hospital.  
3 Such assistance may include assisting with basic activities of  
4 daily living and instrumental activities of daily living and  
5 carrying out medical or nursing tasks such as managing wound  
6 care, assisting in administering medications, and operating  
7 medical equipment.

8 "Caregiver" means any individual duly designated by a  
9 patient to provide after-care assistance to the patient in the  
10 patient's residence. A designated caregiver may include a  
11 relative, partner, friend, or neighbor who has a significant  
12 relationship with the patient.

13 "Discharge" means a patient's exit or release from a  
14 hospital to the patient's residence following any medical care,  
15 treatment, or observation.

16 "Entry" means a patient's entrance into a hospital for the  
17 purposes of medical care, treatment, or observation. "Entry"  
18 includes but is not limited to formal admittance to a hospital.

19 "Hospital" means a facility licensed under section  
20 321-14.5.

21 "Residence" means a dwelling that the patient considers to  
22 be the patient's home. "Residence" shall not include any



1 rehabilitation facility, hospital, nursing home, assisted living  
2 facility, or group home licensed by the State.

3       **§ -2 Opportunity to designate caregiver.** (a) A  
4 hospital shall provide each patient or, if applicable, the  
5 patient's legal guardian with at least one opportunity to  
6 designate one or more caregivers no later than twenty-four hours  
7 following the patient's entry into a hospital and prior to the  
8 patient's discharge or transfer to another facility; provided  
9 that in the event that the patient is unconscious or otherwise  
10 incapacitated upon entry into a hospital, the hospital shall  
11 provide the patient or the patient's legal guardian with an  
12 opportunity to designate a caregiver within twenty-four hours  
13 following the patient's recovery of consciousness or capacity.

14       (b) If the patient or the patient's legal guardian  
15 declines to designate a caregiver, the hospital shall promptly  
16 document this in the patient's medical record.

17       (c) If the patient or the patient's legal guardian  
18 designates an individual as a caregiver under this chapter, the  
19 hospital shall:

20           (1) Promptly request the written consent of the patient or  
21           the patient's legal guardian to release medical  
22           information to the patient's caregiver following the



1 hospital's established procedures for releasing  
2 personal health information and in compliance with all  
3 federal and state laws. If the patient or the  
4 patient's legal guardian declines to consent to  
5 release medical information to the patient's  
6 caregiver, the hospital is not required to provide  
7 notice to the caregiver under section -3 or  
8 provide information contained in the patient's  
9 discharge plan under section -4; and

10 (2) Record the patient's designation of caregiver, the  
11 relationship of the caregiver to the patient, and the  
12 name, telephone number, and address of the patient's  
13 caregiver in the patient's medical record.

14 (d) A patient may elect to change the patient's designated  
15 caregiver at any time. The hospital shall record this change in  
16 the patient's medical record within twenty-four hours of  
17 notification by the patient.

18 (e) A designation of a caregiver by a patient or a  
19 patient's legal guardian under this section does not obligate  
20 any individual to perform any after-care tasks for the patient.



1 (f) This section shall not be construed to require a  
2 patient or a patient's legal guardian to designate any  
3 individual as a caregiver.

4 **§ -3 Notice to caregiver.** A hospital shall notify the  
5 patient's caregiver of the patient's discharge or transfer to  
6 another licensed facility at least four hours before the  
7 patient's actual discharge or transfer.

8 **§ -4 Instruction to caregiver; discharge plan.** (a) As  
9 soon as possible and not later than twenty-four hours prior to a  
10 patient's discharge from a hospital, the hospital shall consult  
11 with the patient's caregiver regarding the caregiver's  
12 capabilities and limitations and issue a discharge plan that  
13 describes the patient's after-care needs at the patient's  
14 residence. At a minimum, the discharge plan shall include:

15 (1) The name and contact information of the designated  
16 caregiver;

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

21 (3) Contact information for any health care, community  
22 resources, and long-term services and supports



1           necessary to successfully carry out the patient's  
2           discharge plan.

3           (b) The hospital issuing the discharge plan shall provide  
4 the caregiver with instruction in all after-care tasks described  
5 in the discharge plan.

6           (c) At a minimum, the instruction shall include:

7           (1) A live demonstration of the tasks performed by a  
8           hospital employee authorized to perform the after-care  
9           tasks, provided in a culturally competent manner and  
10           in accordance with the hospital's requirements to  
11           provide language access services under state and  
12           federal law;

13           (2) An opportunity for the caregiver to ask questions  
14           about the after-care tasks; and

15           (3) Answers to the caregiver's questions provided in a  
16           culturally competent manner and in accordance with the  
17           hospital's requirements to provide language access  
18           services under state and federal law.

19           (d) Any instruction required under this chapter shall be  
20 documented in the patient's medical record. At a minimum, the  
21 patient's medical record shall reflect the date, time, and  
22 content of the instruction.



1 (e) The department of health may adopt rules pursuant to  
2 chapter 91 to carry out the purpose of this chapter, including  
3 rules to further define the content and scope of any instruction  
4 provided to caregivers under this chapter.

5 **§ -5 Non-interference with existing health care**

6 **directives.** (a) Nothing in this chapter shall be construed to  
7 interfere with the rights of an agent operating under a valid  
8 health care directive under Hawaii law.

9 (b) No health care directive may claim to be in conflict  
10 with this chapter unless it had been in existence prior to the  
11 patient's entry into a hospital."

12 SECTION 3. This Act does not affect rights and duties that  
13 matured, penalties that were incurred, and proceedings that were  
14 begun before its effective date.

15 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Frances Chun Cleveland

*Mr. Chung*

*James Tuck*

*Ronald J. Park*

*Michael R.*

*Clarence K. Kishihara*

*Will Egan*



# S.B. NO. 2264

**Report Title:**

Caregiver; After-care; Caregiver Designation, Notification, and Instruction; Discharge Plan

**Description:**

Requires hospitals to allow patients the opportunity to designate a caregiver. Requires hospitals to include designated caregiver in patient's medical record, notify caregiver prior to patient's transfer or discharge, consult with caregiver about patient's discharge plan, and instruct designated caregivers in after-care tasks.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

