

JAN 22 2016

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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, including family and friends, to  
4 provide long-term care and support. In 2012, Hawaii had the  
5 highest percentage of residents over the age of eighty-five in  
6 the United States and this population, most likely to need long-  
7 term care, is projected to grow sixty-five per cent over the  
8 next twenty years. The AARP Public Policy Institute estimated  
9 that in 2013, there were 154,000 caregivers in Hawaii who  
10 provided approximately 144,000,000 hours of unpaid care in the  
11 State, at a value of \$2,100,000,000.

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 including shopping and managing finances, it is now common for  
16 family caregivers to perform complex medical and nursing tasks  
17 that historically were only provided in hospitals and nursing



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

8       The legislature additionally finds that despite the  
9 critical and expanding role of caregivers serving Hawaii's aging  
10 population, caregivers are often left out of hospital  
11 discussions involving the patient's care and are expected to  
12 provide post-hospital care, including medical and nursing tasks,  
13 without any training or support from professionals.

14       According to the Hawaii Health Information Corporation, in  
15 2013, there were approximately five thousand five hundred  
16 preventable hospital readmissions within thirty days of  
17 discharge. These readmissions are associated with approximately  
18 \$239,000,000 in costs, and recently, fifty-six per cent of  
19 Hawaii's hospitals were penalized for excessive readmissions  
20 under the federal hospital readmissions reduction program.





1 "After-care" means any assistance provided by a caregiver  
2 to a patient following the patient's discharge from a hospital  
3 that is related to the patient's condition at the time of  
4 discharge, including but not limited to assisting with basic  
5 activities of daily living, instrumental activities of daily  
6 living, and other tasks as determined to be appropriate by the  
7 discharging physician or other health care professional licensed  
8 pursuant to chapter 453.

9 "Caregiver" means any individual duly designated by a  
10 patient to provide after-care to the patient in the patient's  
11 residence. The term includes but is not limited to a relative,  
12 spouse, partner, friend, or neighbor who has a significant  
13 relationship with the patient.

14 "Contact information" means legal name, phone number,  
15 electronic mailing address, mailing address, and home address,  
16 where available.

17 "Discharge" means a patient's exit or release from a  
18 hospital to the patient's residence following any medical care  
19 or treatment rendered to the patient following an inpatient  
20 admission.



1 "Entry" means a patient's entrance into a hospital for the  
2 purposes of receiving in-patient medical care.

3 "Hospital" means a facility licensed under section 321-  
4 14.5.

5 "Legally authorized representative" means legal guardians,  
6 health care agents, and surrogates designated or selected by a  
7 consensus of interested persons.

8 "Residence" means a dwelling that the patient considers to  
9 be the patient's home and shall not include any rehabilitation  
10 facility, hospital, nursing home, assisted living facility, or  
11 group home licensed by the State.

12 § -2 Opportunity to designate caregiver. (a) A  
13 hospital shall provide each patient or, if applicable, the  
14 patient's legally authorized representative, with an opportunity  
15 to designate one or more caregivers following the patient's  
16 entry into a hospital and prior to the patient's discharge to  
17 the patient's residence or transfer to another facility, in a  
18 timeframe that is consistent with the discharge planning  
19 process; provided that if the patient is unconscious or  
20 otherwise incapacitated upon entry into a hospital, the hospital  
21 shall provide the patient or patient's legally authorized



1 representative with an opportunity to designate a caregiver  
2 within a given timeframe, at the discretion of the attending  
3 physician, following the patient's recovery of consciousness or  
4 capacity.

5 (b) If the patient or patient's legally authorized  
6 representative declines to designate a caregiver pursuant to  
7 subsection (a), the hospital shall promptly document this in the  
8 patient's medical record.

9 (c) If the patient or the patient's legally authorized  
10 representative designates an individual as a caregiver under  
11 this chapter, the hospital shall:

12 (1) Promptly request the written consent of the patient or  
13 the patient's legally authorized representative to  
14 release medical information to the patient's caregiver  
15 following the hospital's established procedures for  
16 releasing personal health information and in  
17 compliance with all federal and state laws and  
18 regulations. If the patient or the patient's legally  
19 authorized representative declines to consent to  
20 release medical information to the patient's  
21 caregiver, the hospital is not required to provide



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1 notice to the caregiver under section -3 or  
2 include the caregiver in discharge planning or provide  
3 instruction in aftercare pursuant to the hospital  
4 discharge policies under section -4; and  
5 (2) Record the patient's designation of caregiver, the  
6 relationship of the caregiver to the patient, and the  
7 contact information of the patient's caregiver in the  
8 patient's medical record.  
9 (d) A patient may elect to change the patient's designated  
10 caregiver at any time. The hospital shall record this change in  
11 the patient's medical record, along with the contact information  
12 for the newly designated caregiver, before the patient's  
13 discharge to the patient's residence or transfer to another  
14 facility.  
15 (e) A designation of caregiver by a patient or a patient's  
16 legally authorized representative under this section does not  
17 require the caregiver to perform any after-care for the patient.  
18 (f) This section shall not be construed to require a  
19 patient or a patient's legally authorized representative to  
20 designate an individual as a caregiver.



1           §   -3 Notice to caregiver. A hospital shall notify the  
2 patient's caregiver of the patient's discharge or transfer to  
3 another licensed facility as soon as possible and at the latest,  
4 upon issuance of a discharge order by the patient's attending  
5 physician. If the hospital is unable to contact the designated  
6 caregiver, the lack of contact shall not interfere with, delay,  
7 or affect the medical care provided to the patient, or discharge  
8 of the patient. The hospital shall promptly document the  
9 attempt to contact the designated caregiver in the patient's  
10 medical record.

11           §   -4 Hospital discharge policies. (a) Hospitals shall  
12 adopt, maintain, and enforce written discharge policies for all  
13 hospital inpatients that include the following components:

- 14           (1) An opportunity for the patient and any caregiver  
15               designated pursuant to section       -2 to participate  
16               in the discharge planning;
- 17           (2) An opportunity for the patient and any caregiver  
18               designated pursuant to section       -2 to receive  
19               instruction, prior to discharge, to prepare the  
20               caregiver to perform required medical and nursing  
21               aftercare following discharge;





1 (3) An opportunity for the patient and any caregiver  
2 designated pursuant to section -2 to ask questions  
3 to the hospital staff and receive answers, prior to  
4 discharge, regarding the patient's discharge plan and  
5 after-care;

6 (4) With respect to paragraphs (1) to (3), procedures  
7 which require that the opportunities given the patient  
8 and the designated caregiver shall be offered  
9 personally and expressly by the responsible hospital  
10 staff and that the acceptance or declining of the  
11 opportunities be personally expressed by the caregiver  
12 or, if the caregiver cannot be contacted, by the  
13 patient; and

14 (5) Requirements for documenting in the patient's medical  
15 record the details of the discharge plan and a  
16 description of the instructions provided.

17 (b) The discharge policies may incorporate established  
18 evidence-based practices, including but not limited to:

19 (1) Standards for accreditation adopted by the Joint  
20 Commission or other nationally recognized hospital  
21 accreditation organization; and



1           (2) The Conditions of Participation for hospitals adopted  
2                    by the Centers for Medicare and Medicaid Services.

3           (c) The discharge policies must ensure that the discharge  
4 planning is appropriate to the condition of the patient and  
5 shall be interpreted in a manner and as necessary to meet the  
6 needs and acuity of the patient and the abilities of the  
7 caregiver.

8           (d) The department of health may adopt rules pursuant to  
9 chapter 91 to carry out the purpose of this chapter, including  
10 rules to further define the content and scope of any instruction  
11 provided to caregivers under the hospital discharge policies.

12           § -5 Non-interference with existing health care  
13 directives. Nothing in this chapter shall be construed to  
14 interfere with the rights of an agent operating under a valid  
15 health care directive under section 327G-3.

16           § -6 Limitation of liability. (a) Nothing in this  
17 chapter shall be construed to give rise to a private cause of  
18 action against a hospital, hospital employee, or a consultant or  
19 contractor that has a contractual relationship with a hospital.

20           (b) A hospital, hospital employee, or a consultant or  
21 contractor that has a contractual relationship with a hospital



1 shall not be held liable for the services rendered or not  
2 rendered by the caregiver to the patient at the patient's  
3 residence.

4 § -7 Discharge; transfer of patient. Nothing in this  
5 chapter shall delay the discharge of a patient or the transfer  
6 of a patient from a hospital to another facility."

7 SECTION 3. If any provision of this Act, or the  
8 application thereof to any person or circumstance, is held  
9 invalid, the invalidity does not affect other provisions or  
10 applications of the Act that can be given effect without the  
11 invalid provision or application, and to this end the provisions  
12 of this Act are severable.

13 SECTION 4. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16 SECTION 5. This Act shall take effect on July 1, 2017.

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INTRODUCED BY:

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# S.B. NO. 2208

**Report Title:**

Kupuna Caucus; Human Services; Hospitals; Caregivers; Training

**Description:**

Requires hospitals to provide patients the opportunity to designate a caregiver upon entry to a hospital. Establishes hospital requirements regarding caregivers, including designation of a caregiver, notification to a caregiver, and a discharge plan for patients. Provides hospitals, hospital employees, and consultants or contractors that have a contractual relationship with a hospital with immunity regarding caregiving.

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

