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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 lay caregivers, such as family and friends, to  
4 provide long-term services and support. In 2012, Hawaii had the  
5 highest percentage in the nation of residents age eighty-five  
6 and older. This population is projected to grow sixty-five per  
7 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 lay caregivers in  
10 Hawaii, and that the 162,000,000 hours of unpaid care the lay  
11 caregivers provided would be valued at \$2,000,000,000.

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



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

8 Under federal law, hospitals are required to have a patient  
9 discharge planning process with written policies and procedures.  
10 Federal law states that the discharge planning process may  
11 include preparing lay caregivers to care for soon-to-be  
12 discharged patients.

13 The legislature also recognizes hospitals' concerns about  
14 potential liability. Hospitals have expressed their trepidation  
15 about the potential for increasing their exposure to civil  
16 liability if hospitals are required to provide patients' lay  
17 caregivers with training prior to discharge. The legislature  
18 understands this legitimate concern and further stresses its  
19 intent to avoid the creation of additional causes of action  
20 against hospitals that are voluntarily training lay caregivers  
21 to provide care for their loved ones. Thus, this Act includes a  
22 provision that clearly states that nothing in this Act shall be



1 construed to give rise to a cause of action against a hospital  
2 or hospital employee.

3 The purpose of this Act is to:

4 (1) Allow a patient an opportunity to designate, upon  
5 entry to a hospital, a lay caregiver in the patient's  
6 medical record;

7 (2) Support hospitals that notify and meet with the  
8 designated lay caregiver to discuss the patient's plan  
9 of care prior to the patient's discharge or transfer  
10 to another facility; and

11 (3) Affirm that nothing in this Act shall be construed to  
12 give rise to a cause of action against hospitals and  
13 their employees that voluntarily train lay caregivers.

14 SECTION 2. The Hawaii Revised Statutes is amended by  
15 adding a new chapter to be appropriately designated and to read  
16 as follows:

17 "CHAPTER

18 HOSPITAL REQUIREMENTS REGARDING LAY CAREGIVERS

19 § -1 Definitions. For the purpose of this chapter:

20 "After-care" means any assistance provided by a lay  
21 caregiver to a patient after the patient's discharge from a  
22 hospital. Such assistance may include assisting with basic

1 activities of daily living and instrumental activities of daily  
2 living and carrying out medical or nursing tasks such as  
3 managing wound care, assisting in administering medications, and  
4 operating medical equipment.

5 "Discharge" means a patient's exit or release from a  
6 hospital to the patient's residence following any medical care,  
7 treatment, or observation.

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

11 "Hospital" means a facility licensed under section  
12 321-14.5.

13 "Lay caregiver" means any individual who is duly designated  
14 by a patient to provide after-care to the patient in the  
15 patient's residence, but does not receive compensation for  
16 providing the after-care. A designated lay caregiver may  
17 include a relative, partner, friend, or neighbor who has a  
18 significant relationship with the patient.

19 "Residence" means a dwelling that the patient considers to  
20 be the patient's home. "Residence" shall not include any  
21 rehabilitation facility, hospital, nursing home, assisted living  
22 facility, or group home licensed by the State.



1       §   -2 Opportunity to designate a lay caregiver. (a) A  
2 hospital may provide each patient or, if applicable, the  
3 patient's legal guardian with at least one opportunity to  
4 designate one or more lay caregivers no later than twenty-four  
5 hours following the patient's entry into a hospital and prior to  
6 the patient's discharge or transfer to another facility;  
7 provided that in the event that the patient is unconscious or  
8 otherwise incapacitated upon entry into a hospital, the hospital  
9 may provide the patient or the patient's legal guardian with an  
10 opportunity to designate a lay caregiver within twenty-four  
11 hours following the patient's recovery of consciousness or  
12 capacity.

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

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

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 lay caregiver following

1 the 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 lay  
6 caregiver, the hospital is not required to provide  
7 notice to the lay 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 a lay caregiver,  
11 the relationship of the lay caregiver to the patient,  
12 and the name, telephone number, and address of the  
13 patient's lay caregiver in the patient's medical  
14 record.

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

19 (e) A designation of a lay caregiver by a patient or a  
20 patient's legal guardian under this section obligates the  
21 individual to perform after-care 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 lay caregiver.

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

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

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

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

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



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

3 (b) The department of health may adopt rules pursuant to  
4 chapter 91 to carry out the purpose of 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 § -6 Immunity. Nothing in this chapter shall be  
13 construed to give rise to a cause of action against a hospital  
14 or hospital employee."

15 SECTION 3. There is appropriated out of the general  
16 revenues of the State of Hawaii the sum of \$ or so  
17 much thereof as may be necessary for fiscal year 2014-2015 for  
18 the Hawaii health systems corporation to implement lay  
19 caregiving as provided in this Act in its facilities.

20 The sum appropriated shall be expended by the Hawaii health  
21 systems corporation for the purposes of this Act.



1 SECTION 4. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 5. This Act shall take effect on July 1, 2150.



**Report Title:**

Lay Caregiver; After-care; Discharge Plan

**Description:**

Allows patients the opportunity to designate a lay caregiver upon entry to a hospital. Establishes hospital requirements regarding lay caregivers, including designation of a lay caregiver, notification to a lay caregiver, and a discharge plan for patients. Provides immunity to hospitals and their employees regarding lay caregiving. Appropriates funds for the Hawaii Health Systems Corporation to implement lay caregiving in its facilities. Effective July 1, 2150. (SB2264 HD1)

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

