

SENATE BILL No. 265

By Committee on Ways and Means

2-24

1 AN ACT concerning hospitals; relating to designated lay caregivers;
2 duties; policies and procedures.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Sections 1 through 7, and amendments thereto, shall be
6 known and may be cited as the designated lay caregivers act.

7 (b) For the purposes of sections 1 through 7, and amendments thereto,
8 of this act:

9 (1) "Aftercare" means any assistance provided by a designated lay
10 caregiver to an individual under this act after the patient's discharge from a
11 hospital. Such assistance may include tasks that are limited to the patient's
12 condition at the time of discharge that do not require a licensed
13 professional, such as, but not limited to, basic activities of daily living and
14 other tasks determined to be appropriate by the discharging physician or
15 other licensed healthcare provider;

16 (2) "board" means a hospital board which is vested with the
17 management and control of a hospital;

18 (3) "discharge" means a patient's exit or release from a hospital to the
19 patient's residence following any inpatient stay;

20 (4) "hospital" means a licensed facility as defined in K.S.A. 65-425,
21 and amendments thereto;

22 (5) "lay caregiver" means any individual 18 years of age or older,
23 including, but not limited to, next of kin, a partner, friend or neighbor who
24 has a significant relationship with the patient, duly designated as a lay
25 caregiver pursuant to the provisions of this act who provides aftercare
26 assistance to a patient in the patient's residence; and

27 (6) "residence" means a dwelling considered by a patient to be such
28 patient's home, not including any rehabilitation facility, hospital, nursing
29 home, assisted living facility, adult care home or group home.

30 Sec. 2. (a) Hospitals shall provide each patient or the patient's legal
31 guardian with an opportunity to designate one lay caregiver following the
32 patient's admission into a hospital and prior to the patient's discharge to the
33 patient's residence.

34 (1) In the event the patient is unconscious or otherwise incapacitated
35 upon admission to the hospital, the hospital shall provide the patient's legal
36 guardian with an opportunity to designate a lay caregiver following the

1 patient's recovery of consciousness or capacity, so long as the designation
2 or lack of a designation does not interfere with, delay or otherwise affect
3 the medical care provided to the patient.

4 (2) In the event the patient or the patient's legal guardian declines to
5 designate a lay caregiver under this act, the hospital shall promptly
6 document such in the patient's medical record, and the hospital shall be
7 deemed to comply with the provisions of this act.

8 (3) In the event that the patient or the patient's legal guardian
9 designates an individual as a lay caregiver under this act, the hospital shall
10 promptly request the written consent of the patient or the patient's legal
11 guardian to release medical information to the patient's designated lay
12 caregiver pursuant to the hospital's established procedures for releasing
13 personal health information and in compliance with applicable state and
14 federal laws, including the federal health insurance portability and
15 accountability act of 1996, Pub. L. 104-191, and related regulations.

16 (4) If the patient or the patient's legal guardian declines to consent to
17 the release of medical information to the patient's designated lay caregiver,
18 the hospital is not required to provide notice to the lay caregiver pursuant
19 to the provisions of section 3, and amendments thereto.

20 (5) The hospital shall record the patient's designation of a lay
21 caregiver, the relationship of the lay caregiver to the patient, and the name,
22 telephone number and physical address of the patient's designated lay
23 caregiver in the patient's medical record.

24 (b) A patient or the patient's legal guardian may elect to change such
25 patient's designated lay caregiver in the event that the lay caregiver
26 becomes incapacitated, refuses to be a lay caregiver or such patient or such
27 patient's legal guardian changes such person's mind regarding the
28 designated lay caregiver. The hospital must record this change in the
29 patient's medical record before the patient's discharge.

30 (c) Designation of a lay caregiver by a patient or a patient's legal
31 guardian pursuant to the provisions of this act does not obligate any
32 individual to perform any aftercare tasks for the patient.

33 (d) In the event that the patient is a minor child, and the parents of the
34 patient are divorced, the custodial parent shall have the authority to
35 designate a lay caregiver. If the parents have joint custody of the patient,
36 they shall jointly designate the lay caregiver.

37 (e) This section shall not be construed so as to require a patient or a
38 patient's legal guardian to designate any individual as a lay caregiver as
39 defined by this act.

40 Sec. 3. If a patient has designated a lay caregiver, a hospital, as soon
41 as possible, shall notify the patient's designated lay caregiver of the
42 patient's discharge to the patient's residence or transfer to another licensed
43 facility to prepare such lay caregiver for aftercare and issue a discharge

1 plan describing a patient's aftercare needs. In the event the hospital is
2 unable to contact the designated lay caregiver, the lack of contact shall not
3 interfere with, delay or otherwise affect the medical care provided to the
4 patient, or an appropriate discharge of the patient. The hospital shall
5 promptly document the attempt in the patient's medical record.

6 Sec. 4. (a) At a minimum, the discharge plan shall include:

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

9 (2) a description of all aftercare assistance tasks necessary to maintain
10 the patient's ability to reside at home; and

11 (3) contact information for any health care, community resources and
12 long-term services and supports necessary to successfully carry out the
13 patient's discharge plan, and contact information for a hospital employee
14 who can respond to questions about the discharge plan after the instruction
15 provided pursuant to subsection (b).

16 (b) The hospital issuing the discharge plan must provide lay
17 caregivers with instructions in all aftercare assistance tasks described in
18 the discharge plan. Training and instructions for lay caregivers may be
19 conducted in person or through video technology, at the discretion of the
20 lay caregiver. Any training or instructions provided to a lay caregiver shall
21 be provided in nontechnical language, to the extent possible. At a
22 minimum, this instruction shall include:

23 (1) A live or recorded demonstration of the tasks performed by an
24 individual designated by the hospital who is authorized to perform the
25 aftercare assistance task and is able to perform the demonstration in a
26 culturally competent manner and in accordance with the hospital's
27 requirements to provide language access services under state and federal
28 law;

29 (2) an opportunity for the lay caregiver to ask questions about the
30 aftercare assistance tasks; and

31 (3) answers to the lay caregiver's questions provided in a culturally
32 competent manner and in accordance with the hospital's requirements to
33 provide language access services under state and federal law.

34 (c) Any instruction required under this act shall be documented in the
35 patient's medical record, including, at a minimum, the date, time and
36 contents of the instruction.

37 Sec. 5. (a) Nothing in this act shall be construed to interfere with the
38 rights of a person legally authorized to make health care decisions for the
39 patient.

40 (b) Nothing in this act shall be construed to create a private right of
41 action against a hospital, hospital employee, a duly authorized agent of the
42 hospital, any consultants or contractors with whom a hospital has a
43 contractual relationship or otherwise supersede or replace existing rights or

1 remedies under any other general or special law.

2 (c) A hospital, a hospital employee, or any consultants or contractors
3 with whom a hospital has a contractual relationship shall not be held liable
4 in any way for the services rendered or not rendered by the lay caregiver to
5 the patient at the patient's residence.

6 (d) Nothing in this act shall be construed to obviate the obligation of
7 an insurance company, health service corporation, hospital service
8 corporation, medical service corporation, health maintenance organization
9 or any other entity issuing health benefits plans to provide coverage
10 required under a health benefits plan.

11 (e) (1) A lay caregiver shall not be reimbursed by any government or
12 commercial payer for aftercare assistance that is provided pursuant to this
13 act.

14 (2) Nothing in this act shall be construed to impact, impede or
15 otherwise disrupt or reduce the reimbursement obligations of an insurance
16 company, health service corporation, hospital service corporation, medical
17 service corporation, health maintenance organization or any other entity
18 issuing health benefits plans.

19 Sec. 6. No state or federal dollars shall be used for payment to any
20 lay caregiver for aftercare as defined in this act after a patient has been
21 discharged from a hospital. No state or federal program funding shall be
22 impacted by this act.

23 Sec. 7. The board of each hospital shall adopt policies and procedures
24 to implement sections 1 through 6, and amendments thereto.

25 Sec. 8. This act shall take effect and be in force from and after its
26 publication in the statute book.