

2016 Regular Session

SENATE BILL NO. 121

BY SENATORS COLOMB AND BARROW AND REPRESENTATIVES HORTON,
JAMES, JEFFERSON, MORENO, REYNOLDS AND SMITH

HEALTH CARE. Creates the Louisiana Family Caregiver Act. (gov sig)

1 AN ACT

2 To enact Subpart C of Part II of Chapter 11 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 40:2115.31 through 2115.37, relative to hospital discharge
4 planning; to provide for designation of a family caregiver; to provide for notice and
5 instruction; to provide for exceptions and immunity; to provide for an effective date;
6 and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Subpart C of Part II of Chapter 11 of the Louisiana Revised Statutes of
9 1950, comprised of R.S. 40:2115.31 through 2115.37, is hereby enacted to read as follows:

10 **SUBPART C. LOUISIANA FAMILY CAREGIVER ACT**

11 **§2115.31. Definitions**

12 **As used in this Subpart the following definitions shall apply:**

13 **(1) "Hospital" means a facility licensed pursuant to Subpart A of this**
14 **Part.**

15 **(2) "After-care" means any assistance provided by a caregiver to a**
16 **patient under this Subpart after the patient's discharge from a hospital. Such**
17 **assistance may include, but is not limited to assisting with basic activities of**

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

4 (3) "Caregiver" means any individual duly designated as a caregiver by
5 a patient under this Subpart who provides after-care assistance to a patient
6 living in his residence. A designated caregiver may include, but is not limited
7 to a relative, partner, friend, or neighbor who has a significant relationship with
8 the patient.

9 (4) "Discharge" means a patient's exit or release from a hospital to the
10 patient's residence following an inpatient admission.

11 (5) "Department" means the Louisiana Department of Health and
12 Hospitals.

13 (6) "Entry" means a patient's admission into a hospital for the purposes
14 of medical care.

15 (7) "Residence" means a dwelling that the patient considers to be his
16 home. A "residence" for the purposes of this Subpart shall not include any
17 rehabilitation facility, hospital, nursing home, assisted living facility, or group
18 home licensed in Louisiana.

19 §2115.32. Opportunity to designate caregiver

20 A. A hospital shall provide each patient or, if applicable, the patient's
21 legal guardian with at least one opportunity to designate at least one caregiver
22 no later than twenty-four hours following the patient's entry into a hospital and
23 prior to the patient's discharge or transfer to another facility.

24 (1) In the event that the patient is unconscious or otherwise incapacitated
25 upon his entry into a hospital, the hospital shall provide such patient or his or
26 her legal guardian with an opportunity to designate a caregiver within
27 twenty-four hours following the patient's recovery of his or her consciousness
28 or capacity.

29 (2) In the event that the patient or the patient's legal guardian declines

1 to designate a caregiver, the hospital shall promptly document this in the
2 patient's medical record, and the hospital is considered to have compiled with
3 the provisions of this Subpart.

4 (3) In the event that the patient or the patient's legal guardian designates
5 an individual as a caregiver under this Subpart:

6 (a) The hospital shall promptly request the written consent of the patient
7 or the patient's legal guardian to release medical information to the patient's
8 designated caregiver following the hospital's established procedures for
9 releasing personal health information and in compliance with all federal and
10 state laws.

11 (b) If the patient or the patient's legal guardian declines to consent to
12 release medical information to the patient's designated caregiver, the hospital
13 shall promptly document this in the patient's medical record, and the hospital
14 is considered to have compiled with the provisions of this Subpart.

15 (c) The hospital shall record the patient's designation of caregiver, the
16 relationship of the designated caregiver to the patient, and the name, telephone
17 number, and address of the patient's designated caregiver in the patient's
18 medical record.

19 (d) A patient may elect to change his designated caregiver at any time,
20 and the hospital must record this change in the patient's medical record within
21 twenty-four hours.

22 B. A designation of a caregiver by a patient or a patient's legal guardian
23 does not obligate any individual to perform any after-care tasks for any patient.

24 C. This Section shall not be construed to require a patient or a patient's
25 legal guardian to designate any individual as a caregiver.

26 §2115.33. Notice to designated caregiver

27 If a patient has designated a caregiver, a hospital shall notify the
28 patient's designated caregiver of the patient's discharge to the patient's
29 residence as soon as possible prior to the patient's discharge. If the hospital is

1 unable to contact the designated lay caregiver, the lack of contact may not
2 interfere with, delay or otherwise affect the medical care provided to the
3 patient, or an appropriate discharge of the patient. The hospital shall promptly
4 document that in the patient's medical record, and the hospital is considered to
5 have complied with the provisions of this Subpart.

6 §2115.34. Instruction to designated caregiver

7 A. (1) As soon as possible and not later than twenty-four hours prior to
8 a patient's discharge from a hospital, the hospital shall consult with the
9 designated caregiver, along with the patient, regarding the caregiver's
10 capabilities and limitations and issue a discharge plan that describes a patient's
11 after-care needs at his residence.

12 (2) At minimum, a discharge plan shall include all of the following:

13 (a) The name and contact information of the designated caregiver.

14 (b) A description of all after-care tasks necessary to maintain the
15 patient's ability to reside at home, taking into account the capabilities and
16 limitations of the caregiver.

17 (c) Contact information for any health care, community resources, and
18 long-term services and supports necessary to successfully carry out the patient's
19 discharge plan.

20 B. The hospital issuing the discharge plan must provide caregivers with
21 instruction in all after-care tasks described in the discharge plan.

22 (1) At minimum, such instruction shall include all of the following:

23 (a) A live demonstration of the tasks performed by a hospital employee
24 or individual with whom the hospital has a contractual relationship authorized
25 to perform the after-care task, provided in a culturally competent manner and
26 in accordance with the hospital's requirements to provide language access
27 services under state and federal law.

28 (b) An opportunity for the caregiver and patient to ask questions about
29 the after-care tasks.

1 (c) Answers to the caregiver's and patient's questions provided in a
2 culturally competent manner and in accordance with the hospital's
3 requirements to provide language access services under state and federal law.

4 (2) Any instruction required under this Subpart shall be documented in
5 the patient's medical record, including, at minimum, the date, time, and
6 contents of the instruction.

7 §2115.35. Rules and regulations

8 The department is hereby authorized and directed to promulgate and
9 publish rules and regulations, in accordance with the Administrative Procedure
10 Act, to implement the provisions of this Subpart. Such rules shall include but
11 not be limited to regulations to further define the content and scope of any
12 instruction provided to caregivers under this Subpart.

13 §2115.36. Noninterference with powers of existing healthcare directives

14 Nothing in this Subpart shall be construed to interfere with the rights of
15 an individual or agent who has obtained a health care directive under R.S.
16 40:1155.1.

17 §2115.37. Exceptions and immunity

18 A. This Subpart may not be construed to interfere with the rights of a
19 person legally authorized to make health care decisions as provided for under
20 any other provision of law.

21 B. Nothing in this Subpart shall be construed to create a private right of
22 action against a hospital, hospital employee, a duly authorized agent of the
23 hospital or any consultants or contractors with whom the hospital has a
24 contractual relationship.

25 C. A hospital, a hospital employee or any consultants or contractors with
26 whom a hospital has a contractual relationship shall not be held liable in any
27 way for services rendered or not rendered by the caregiver.

28 Section 2. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature

