

**2015 -- S 0481 SUBSTITUTE A**

=====  
LC001540/SUB A  
=====

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2015**

—————  
A N A C T

RELATING TO HEALTH AND SAFETY - CAREGIVER ADVISE, RECORD AND ENABLE  
ACT

Introduced By: Senators Goldin, and Satchell

Date Introduced: February 26, 2015

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby  
2 amended by adding thereto the following chapter:

3 CHAPTER 17.27

4 CAREGIVER ADVISE, RECORD AND ENABLE ACT

5 **23-17.27-1. Legislative findings and purpose.** – An estimated 148,000 Rhode Islanders  
6 provide varying degrees of unreimbursed care to adults with limitations in daily activities.  
7 According to the AARP Public Policy Institute, the total value of the unpaid care provided to  
8 individuals in need of long-term services and supports amounts to an estimated \$1.9 billion every  
9 year, based on 2009 data. Caregivers are often members of the individual's immediate family, but  
10 friends and other community members also serve as caregivers. While most caregivers are asked  
11 to assist an individual with basic activities of daily living, such as mobility, eating, and dressing,  
12 many are expected to perform complex tasks on a daily basis such as administering multiple  
13 medications, providing wound care, and operating medical equipment.

14 Despite the vast importance of caregivers in the individual's day-to-day care, and despite  
15 the fact that according to AARP's 2012 "Home Alone" report, seventy-eight percent (78%)  
16 percent of caregivers report managing multiple medications, administering injections, and  
17 performing other health maintenance tasks, the "Home Alone" research has shown that many  
18 caregivers find that they are often left out of discussions involving a patient's care while in the

1 hospital and, upon the patient's discharge, receive little to no instruction on the tasks they are  
2 expected to perform. The federal Centers for Medicare & Medicaid Services (CMS) estimates  
3 that \$17 billion in Medicare funds or spent each year on unnecessary hospital readmissions.  
4 Additionally, hospitals desire to avoid the imposition of new readmission penalties under the  
5 federal Patient Protection and Affordable Care Act (ACA).

6 In order to successfully address the challenges of a surging population of older adults and  
7 others living with chronic conditions and who have significant needs for long-term services and  
8 supports, the purpose of the state must be to develop methods to enable caregivers to continue to  
9 support their loved ones at home and in the community, and avoid costly hospital readmissions.  
10 Therefore, it is the intent that this chapter enables caregivers to provide competent post-hospital  
11 care to their family and other loved ones, at minimal cost to the taxpayers of this state.

12 **23-17.27-2. Definitions.** – As used in this chapter:

13 (1) "After-care" means any assistance provided by a caregiver to a patient under this  
14 chapter after the patient's discharge from a hospital that is related to the patient's condition at the  
15 time of discharge. Such assistance may include, but is not limited to, assisting with basic  
16 activities of daily living (ADLs), instrumental activities of daily living (IADLs), or other tasks as  
17 determined to be appropriate by the discharging physician or other health care professional.

18 (2) "Caregiver" means any individual duly designated as a caregiver by a patient under  
19 this chapter who provides after-care assistance to a patient living in his or her residence. A  
20 designated caregiver may include, but is not limited to, a relative, partner, friend, or neighbor who  
21 has a significant relationship with the patient.

22 (3) "Discharge" means a patient's exit or release from a hospital to the patient's residence  
23 following an inpatient admission.

24 (4) "Entry" means a patient's admission into a hospital for the purposes of medical care.

25 (5) "Hospital" means a facility licensed under Rhode Island statute.

26 (6) "Residence" means a dwelling that the patient considers to be his or her home. A  
27 "residence" for the purposes of this chapter shall not include any rehabilitation facility, hospital,  
28 nursing home, assisted living facility, or group home licensed by Rhode Island.

29 **23-17.27-3. Caregiver designation.** – (a) Any hospital licensed pursuant to this title  
30 shall provide each patient or, if applicable, the patient's legal guardian with an opportunity to  
31 designate at least one caregiver under this chapter following the patient's entry into a hospital and  
32 prior to the patient's discharge.

33 (1) In the event that the patient is unconscious or otherwise incapacitated upon his or her  
34 entry into a hospital, the hospital shall provide such patient or his/her legal guardian with an

1 opportunity to designate a caregiver within a given timeframe, at the discretion of the attending  
2 physician, following the patient's recovery of consciousness of capacity. The hospital shall  
3 promptly document the attempt in the patient's medical record.

4 (2) In the event that the patient or the patient's legal guardian declines to designate a  
5 caregiver under this chapter, the hospital shall promptly document this in the patient's medical  
6 record.

7 (3) In the event that the patient or the patient's legal guardian designates an individual as  
8 a caregiver under this chapter:

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

13 (A) If the patient or the patient's legal guardian declines to consent to release medical  
14 information to the patient's designated caregiver the hospital is not required to provide notice to  
15 the caregiver under § 23-17.27-4 or provide information contained in the patient's discharge plan  
16 under § 23-17.27-5.

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

20 (4) A patient or the patient's legal guardian may elect to change the patient's designated  
21 caregiver at any time, and the hospital must record this change in the patient's medical record  
22 before the patient's discharge.

23 (b) A designation of a caregiver by a patient or patient's legal guardian under this section  
24 does not obligate any individual to perform any after-care tasks for any patient.

25 (c) This section shall not be construed to require a patient or a patient's legal guardian to  
26 designate any individual as a caregiver as defined by this chapter.

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

30 **23-17.27-4. Notice to Designated Caregiver.** – (a) Any hospital licensed pursuant to this  
31 title shall notify the patient's designated caregiver of the patient's discharge or transfer to another  
32 facility licensed by the state as soon as possible, in any event, upon issuance of a discharge order  
33 by the patient's attending physician. In the event the hospital is unable to contact the designated  
34 caregiver, the lack of contact shall not interfere with, delay, or otherwise affect the medical care

1 provided to the patient, or an appropriate discharge of the patient. The hospital shall promptly  
2 document the attempt in the patient's medical record.

3 **23-17.27-5. Instruction to Designated Caregiver.** – (a) As soon as possible and prior to  
4 a patient's discharge from a hospital, the hospital shall consult with the designated caregiver  
5 along with the patient regarding the caregiver's capabilities and limitations and issue a discharge  
6 plan that describes a patient's after-care needs at his or her residence.

7 The consultation and issuance of a discharge plan shall occur on a schedule that takes  
8 into consideration the severity of the patient's condition, the setting in which care is to be  
9 delivered, and the urgency of the need for caregiver services. In the event the hospital is unable to  
10 contact the designated caregiver, the lack of contact shall not interfere with, delay, or otherwise  
11 affect the medical care provided to the patient, or an appropriate discharge of the patient. The  
12 hospital shall promptly document the attempt in the patient's medical record.

13 (1) At minimum, a discharge plan shall include:

14 (i) The name and contact information of the caregiver designated under this chapter;

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

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

19 (b) The hospital issuing the discharge plan must provide caregivers with instruction in all  
20 after-care tasks described in the discharge plan. Any training or instructions provided to a  
21 caregiver shall be provided, to the extent possible, in non-technical language and in the  
22 caregiver's native language.

23 (1) At minimum, such instruction shall include:

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

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

30 (iii) Answers to the caregiver's and the patient's questions provided in a culturally  
31 competent manner and in accordance with the hospital's requirements to provide language access  
32 services under state and federal law.

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

1           (c) The Rhode Island department of health is authorized to promulgate regulations to  
2 implement the provisions of this chapter including, but not limited to, regulations to further define  
3 the content and scope of any instruction provided to caregivers under this chapter.

4           **23-17.27-6. Non-Interference with Powers of Existing Health Care Directives.** –  
5 Nothing in this chapter shall be construed to interfere with the rights of an agent operating under  
6 a valid health care directive pursuant to chapter 4.10 of title 23 (Health Care Power of Attorney).

7           **23-17.27-7. Caregiver reimbursement.** – A caregiver shall not be reimbursed by any  
8 government or commercial payer for after-care assistance that is provided pursuant to this  
9 chapter, with the sole exception that this chapter shall not supersede the applicability of wage  
10 replacement benefits paid to workers under Rhode Island’s Temporary Disability Insurance  
11 program, pursuant to § 28-41-35.

12           **23-17.27-8. Limitations of Actions.** – Nothing in this chapter shall be construed to create  
13 a private right of action against a hospital, a hospital employee, or an individual, with whom a  
14 hospital has a contractual relationship, or to otherwise supersede or replace existing rights or  
15 remedies under any other provision of law.

16           **23-17.27-9. Severability.** – If any provision of this chapter or the application of any  
17 provision to any person or circumstances is held invalid or unconstitutional, the invalidity or  
18 unconstitutionality shall not affect other provisions or applications of this chapter which can be  
19 given effect without the invalid or unconstitutional provision or application, and to this end the  
20 provisions of this chapter are declared to be severable.

21           SECTION 2. This act shall take effect upon passage.

=====  
LC001540/SUB A  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO HEALTH AND SAFETY - CAREGIVER ADVISE, RECORD AND ENABLE  
ACT

\*\*\*

1           This act would create the "Caregiver Advise, Record and Enable Act" to provide support  
2           and assistance to individuals with post hospital care, and to provide caregivers with proper  
3           training.

4           This act would take effect upon passage.

=====  
LC001540/SUB A  
=====