

**2015 DRAFTING REQUEST**

**Bill**

Received: 8/22/2014 Received By: swalkenh  
Wanted: As time permits Same as LRB:  
For: Tim Carpenter (608) 266-8535 By/Representing: G. Stuart Ewy  
May Contact: Drafter: swalkenh  
Subject: Health - miscellaneous Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Sen.Carpenter@legis.wisconsin.gov  
Carbon copy (CC) to: Sarah.WalkenhorstBarber@legis.wisconsin.gov  
tamara.dodge@legis.wisconsin.gov

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**Pre Topic:**

No specific pre topic given

---

**Topic:**

Requiring hospitals to consult with a caregiver

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	swalkenh 11/20/2014	csicilia 12/9/2014		_____			
/P1	swalkenh 12/17/2014		rschluet 12/9/2014	_____	sbasford 12/9/2014		
/1		csicilia 12/18/2014	rschluet 12/18/2014	_____	sbasford 12/18/2014	mbarman 1/21/2015	

FE Sent For:

Not  
Needed

<END>

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/P1	swalkenh		rschluet 12/9/2014	_____	sbasford 12/9/2014		

FE Sent For:

*1 gjs 12/18/14*  
*1 gjs 12/18/14*  
*[Signature]*  
*12/18/14*

<END>

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FE Sent For:

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/? swalkenh

/plgjs 12/9/14 /plgjs 12/9/14  


FE Sent For:

<END>

## Dodge, Tamara

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**From:** LRB.Legal  
**Sent:** Friday, August 22, 2014 3:49 PM  
**To:** Dodge, Tamara  
**Subject:** RE: drafting request - caregiver support

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Thank you....

-----Original Message-----

**From:** Dodge, Tamara  
**Sent:** Friday, August 22, 2014 3:48 PM  
**To:** LRB.Legal  
**Subject:** RE: drafting request - caregiver support

Yes, this sounds like health so I'll handle it. Thanks.

---

**From:** LRB.Legal  
**Sent:** Friday, August 22, 2014 11:10 AM  
**To:** Dodge, Tamara  
**Subject:** FW: drafting request - caregiver support

Hello Tami, Would this be your area? If so, could you please take care of this drafting request?

Thanks much....

Lori

---

**From:** Ewy, Stuart  
**Sent:** Friday, August 22, 2014 10:49 AM  
**To:** LRB.Legal  
**Cc:** Sen.Carpenter  
**Subject:** drafting request - caregiver support

LRB Legal

Hello,

Can you please draft a bill for the upcoming legislative session similar to Oklahoma's Senate Bill 1536, enacted this year?

For reference, here is a copy:

[http://webserver1.lsb.state.ok.us/cf\\_pdf/2013-14%20ENR/SB/SB1536%20ENR.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2013-14%20ENR/SB/SB1536%20ENR.PDF)

Here are the central elements of the bill which will require a hospital to:

- Record the name of the family caregiver when a loved one is admitted into a hospital;
- Notify the family caregiver if the loved one is to be discharged to another facility or back home; and,
- Consult and prepare the family caregiver on the medical tasks – such as medication management, injections, wound care, and transfers – that he/she may perform at home.



If you have any questions or comments, please let me know.

Thanks very much!

Regards,  
G. Stuart Ewy  
Office of Senator Tim Carpenter  
State Capitol 109 S  
608.266.8535

# An Act

ENROLLED SENATE  
BILL NO. 1536

By: Crain, Shortey, Allen and  
Johnson (Constance) of the  
Senate

and

Wright, Pittman, Shelton,  
Hulbert, DeWitt, Echols,  
Scott and Blackwell of the  
House

An Act relating to designated caregivers; providing definitions; permitting hospital patients to designate certain caregivers; requiring patient consent; requiring certain notation in medical records; permitting modifications to caregiver designations; prohibiting certain construction; requiring certain notices to caregivers; requiring hospital to consult with caregiver to prepare for aftercare and to issue discharge plan; providing for circumstances in which hospital is unable to contact caregiver; prohibiting certain construction; prohibiting use of state or federal funds for payment of caregivers; prohibiting impact on state or federal funds; providing for codification; and providing an effective date.

SUBJECT: Designated caregivers

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3112 of Title 63, unless there is created a duplication in numbering, reads as follows:

For the purposes of Sections 2 through 6 of this act:

1. "Aftercare" means any assistance provided by a designated lay caregiver to an individual under this act after the patient's discharge from a hospital. Such assistance may include tasks that are limited to the patient's condition at the time of discharge that do not require a licensed professional;

2. "Discharge" means a patient's exit or release from a hospital to the patient's residence following any inpatient stay;

3. "Hospital" means a facility licensed pursuant to the provisions of Section 1-701 et seq. of Title 63 of the Oklahoma Statutes;

4. "Lay caregiver" means any individual eighteen (18) years of age or older, including next of kin, duly designated as a lay caregiver pursuant to the provisions of this act who provides aftercare assistance to a patient in the patient's residence; and

5. "Residence" means a dwelling considered by a patient to be his or her home, not including any hospital as defined by Section 1-701 et seq. of Title 63 of the Oklahoma Statutes, nursing home or group home as defined by the Long-Term Care Reform and Accountability Act of 2001, or assisted living facility as defined by the Continuum of Care and Assisted Living Act.

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SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3113 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Hospitals shall provide each patient or the patient's legal guardian with an opportunity to designate one lay caregiver following the patient's admission into a hospital and prior to the patient's discharge to the patient's residence:

1. In the event the patient is unconscious or otherwise incapacitated upon admission to the hospital, the hospital shall provide the patient's legal guardian with an opportunity to designate a lay caregiver following the patient's recovery of consciousness or capacity, so long as the designation or lack of a designation does not interfere with, delay or otherwise affect the medical care provided to the patient.

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

3. In the event that the patient or the patient's legal guardian designates an individual as a lay caregiver under this act, the hospital shall promptly request the written consent of the patient or the patient's legal guardian to release medical information to the patient's designated lay caregiver pursuant to the hospital's established procedures for releasing personal health information and in compliance with applicable state and federal law.

4. If the patient or the patient's legal guardian declines to consent to the release of medical information to the patient's designated lay caregiver, the hospital is not required to provide notice to the lay caregiver pursuant to the provisions of Section 3 of this act.

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

B. A patient may elect to change his or her designated lay caregiver in the event that the lay caregiver becomes incapacitated.

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

D. This section shall not be construed so as to require a patient or a patient's legal guardian to designate any individual as a lay caregiver as defined by this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3114 of Title 63, unless there is created a duplication in numbering, reads as follows:

If a patient has designated a lay caregiver, a hospital shall notify the patient's designated lay caregiver of the patient's discharge to the patient's residence or transfer to another licensed facility as soon as practicable. In the event the hospital is unable to contact the designated lay caregiver, the lack of contact shall not interfere with, delay or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115 of Title 63, unless there is created a duplication in numbering, reads as follows:

As soon as practicable, the hospital shall attempt to consult with the designated lay caregiver to prepare him or her for aftercare and issue a discharge plan describing a patient's aftercare needs. In the event the hospital is unable to contact the designated lay caregiver, the lack of contact shall not interfere with, delay or otherwise affect an appropriate discharge of the patient.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3116 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this act shall be construed to interfere with the rights of a person legally authorized to make health care decisions as defined in paragraph 4 of Section 3090.2 of Title 63 of the Oklahoma Statutes.

B. Nothing in this act shall be construed to create a private right of action against a hospital, hospital employee, a duly authorized agent of the hospital, or otherwise supersede or replace existing rights or remedies under any other general or special law.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3117 of Title 63, unless there is created a duplication in numbering, reads as follows:

No state or federal dollars shall be used for payment to any lay caregiver as defined in this act after discharge from a hospital. No state or federal program funding shall be impacted by this act.

SECTION 7. This act shall become effective November 1, 2014.

Passed the Senate the 5th day of May, 2014.

\_\_\_\_\_  
Presiding Officer of the Senate

Passed the House of Representatives the 24th day of April, 2014.

\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_



IN - 11/20/14  
State of Wisconsin  
2015 - 2016 LEGISLATURE



LRB-0219/2  
SWB:.....

due  
WED 12/10

Wed. 12/10  
~~Monday~~  
~~12/15~~

1P1  
jjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV  
Members  
new creates  
x-refs

Gen Cat

1 AN ACT ...; relating to: designating a lay caregiver during a hospital admission.

**Analysis by the Legislative Reference Bureau**

This bill requires hospitals to provide a patient with an opportunity to designate a lay caregiver who will receive instruction regarding patient aftercare prior to the patient's discharge. If the patient is a minor, a parent or legal guardian may designate a lay caregiver on the patient's behalf. If the patient is incapacitated at the time of admission, a person authorized by the patient may make a designation for the patient. Hospitals must promptly record the name and contact information of a lay caregiver, if designated, after a patient is admitted into a hospital. If a patient other than a minor is incapacitated at admission, but later regains capacity, the hospital must notify the patient of the option to designate a lay caregiver or change any designation made by a person authorized by the patient. Patients are not required to designate a lay caregiver under this bill and, further, the designation of a lay caregiver does not obligate any individual to provide aftercare for the patient.

Under this bill, if a patient designates a lay caregiver, the hospital is required to attempt to notify the designated lay caregiver of the patient's discharge to another facility or to a residence. The hospital must also attempt to consult with the lay caregiver to prepare the lay caregiver on aftercare assistance tasks that he or she may perform in caring for the patient, including, if applicable, wound care, injections, medication management, and patient transfers (for example, transferring a patient in and out of bed or from a house to a car). The hospital must also issue a discharge plan. However, if the patient or person authorized by the patient declines to provide either informed consent or approval of the release of a portion of the patient's health care record, the hospital is relieved of its notification and consultation obligations.

him  
or her  
for A

movement

Further, under this bill, if the hospital is unsuccessful in attempting to contact the lay caregiver, the lack of contact may not interfere with, delay, or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient.

Under current law, patient medical records are kept confidential except in certain limited circumstances, including if a patient or person authorized by the patient gives informed consent to disclosure. Absent informed consent, a health care provider may release a portion, but not a copy, of a patient health care record, to certain individuals under certain limited circumstances. A health care provider may also release a portion of a patient health care record to anyone if a patient or person authorized by the patient agrees to the disclosure. Even without agreement, a health care provider may, in certain circumstances such as patient incapacitation, release to anyone the limited amount of information necessary to identify, locate, or provide notification of the patient's location, condition, or death. Beyond that, current law allows a health care provider to provide more information only to certain listed individuals. Specifically, a health care provider may provide to the patient's immediate family, another relative, a close personal friend of the patient, or an individual identified by the patient, that portion of information from the health care record directly relevant to that person's involvement in the patient's care. This bill adds designated lay caregivers to the list of individuals permitted access to information directly relevant to that person's involvement in the patient's care. Finally, this bill creates a limited exception to allow a hospital to provide a designated lay caregiver a copy of any written discharge plan issued.

health  
\*

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

\*\*\*\*NOTE: Per your request, I have created a draft based on the bill passed in Oklahoma. In light of existing Wisconsin law and LRB drafting practices, the language and structure of this draft does differ somewhat from the Oklahoma law. Accordingly, I have created this as a preliminary draft for your consideration. Please review the draft carefully to determine whether it is consistent with your intent or if you would like changes.

X

1           **SECTION 1.** 146.82 (4) (b) 2. a. of the statutes is amended to read:  
2           146.82 (4) (b) 2. a. A member of the patient's immediate family, another relative  
3 of the patient, a close personal friend of the patient, a ~~designated lay caregiver~~, or an  
4 individual identified by the patient, that portion that is directly relevant to the  
5 involvement by the member, relative, friend, or individual in the patient's care.

STET

→ designated under s. 146.827

X

6           **SECTION 2.** 146.82 (4) (c) of the statutes is created to read:



1 146.82 (4) (c) Notwithstanding subs. (1) and (4) (b) (intro.), a health care  
 2 provider may provide a lay caregiver who is designated under s. 146.827 and who is  
 3 otherwise permitted access to a portion of a patient health care record under this  
 4 subsection, with a copy of any written discharge plan issued under s. 146.827 (4) (a)  
 5 3.

6 **SECTION 3.** 146.827 of the statutes is created to read:

7 **146.827 Designated caregivers.** (1) DEFINITIONS. In this section: (a)  
 8 "Aftercare assistance" means any assistance provided by a lay caregiver to a patient  
 9 under this section after the patient's discharge and related to the patient's condition  
 10 at the time of discharge, including, if applicable, wound care, injections, medication  
 11 management, and patient ~~transfers~~ <sup>movement</sup>.

12 (b) "Discharge" means a patient's exit or release from a hospital following any  
 13 inpatient ~~stay~~ <sup>admission</sup>.

14 (c) "Hospital" has the meaning given in s. 50.33 (2).

15 (d) "Incapacitated" has the meaning given in s. 50.94 (1) (b).

16 (e) "Lay caregiver" means any individual designated as a lay caregiver under  
 17 this section to provide aftercare assistance to a patient.

18 (2) LAY CAREGIVER DESIGNATION. (a) A hospital shall provide a patient, or a  
 19 parent or legal guardian if the patient is a minor, or a person authorized by the  
 20 patient if the patient is incapacitated, with an opportunity to designate a lay  
 21 caregiver as soon as practicable after the patient's admission into the hospital and  
 22 before the patient's discharge. An individual making a designation under this  
 23 section may designate any person, including a family member, that is 18 years of age  
 24 or older.

SECTION 3

1 (b) If a patient who is not a minor <sup>is</sup> <sup>was</sup> incapacitated upon admission to the  
 2 hospital, no lay caregiver was designated upon admission, and the patient is no  
 3 longer incapacitated, the hospital shall inform the patient of the option to designate  
 4 a lay caregiver under this section.

5 (c) If a patient <sup>is</sup> <sup>was</sup> incapacitated upon admission to the hospital and a person  
 6 authorized by the patient <sup>has</sup> designated a lay caregiver under par. (a) and if the  
 7 patient is no longer incapacitated, the hospital shall notify the patient of the existing  
 8 lay caregiver designation and inform the patient of the option under par. (g) to  
 9 change the designation at any time.

10 (d) If a patient, parent, legal guardian, or person authorized by the patient  
 11 designates a lay caregiver under this section, the hospital shall promptly record the  
 12 designation of <sup>the</sup> a lay caregiver, the relationship of the lay caregiver to the patient, and  
 13 the name, telephone number, and address of the lay caregiver in the patient's medical  
 14 record.

15 (e) If a patient, parent, legal guardian, or person authorized by the patient,  
 16 declines to designate a lay caregiver under this section, the hospital shall promptly  
 17 document that information in the patient's medical record and the hospital is  
 18 considered to comply with the requirements of this section.

19 (f) Nothing in this section requires a patient, parent, legal guardian, or person  
 20 authorized by the patient to designate a lay caregiver. The designation or lack of  
 21 designation under this section may not interfere with, delay, or otherwise affect the  
 22 medical care provided to the patient.

23 (g) A patient, or, if applicable, a parent, legal guardian, or person authorized  
 24 by the patient, may elect to designate a lay caregiver, withdraw a designation, or  
 25 change the designated lay caregiver at any time. The hospital shall promptly record

no B

1 in the patient's medical record any designation modification, and, if an individual  
2 designates a new lay caregiver under this section, the information required under  
3 par. (d). ✓

4 (h) Designation of a lay caregiver pursuant to the provisions of this section does  
5 not obligate any individual to perform aftercare assistance for the patient.

6 **(3) RELEASE OF MEDICAL INFORMATION.** (a) If a patient, parent, legal guardian,  
7 or person authorized by the patient designates an individual as a lay caregiver under  
8 this section, the hospital shall promptly request the informed consent of the patient  
9 or of a person authorized by the patient to release patient health care records under  
10 s. 146.82 (1). ✓

11 (b) Notwithstanding par. (a), the hospital may, to the extent allowed under s.  
12 146.82 (4) (b) and (c), release a portion of a patient's medical records to complete the  
13 requirements of sub. (4), unless a patient or person authorized by a patient expressly  
14 refuses to grant informed consent. ✓

15 (c) If a patient or person authorized by the patient declines to provide informed  
16 consent under s. 146.82 (1) and declines to release <sup>of</sup> a portion of the patient's medical  
17 record under s. 146.82 (4) (b) 1. to allow necessary communication with a designated  
18 lay caregiver, the hospital is not required to complete the notification, consultation,  
19 and discharge plan requirements under sub. (4).

20 **(4) NOTIFICATION, AFTERCARE CONSULTATION, AND DISCHARGE PLAN.** (a) Subject to  
21 sub. (3), if a patient, parent, legal guardian, or person authorized by a patient  
22 designates a lay caregiver, the hospital shall, as soon as practicable, do all of the  
23 following:

24 1. Attempt to notify the patient's designated lay caregiver of the patient's  
25 discharge ~~to a residence~~ or transfer to another ~~licensed~~ facility.

1           2. Attempt to consult with the designated lay caregiver to prepare him or her  
2 for aftercare assistance.

3           3. Issue a discharge plan describing a patient's aftercare assistance needs with  
4 respect to the patient's condition at the time of discharge.

5           (b) In the event the hospital is unable to contact the designated lay caregiver,  
6 the lack of contact shall not interfere with, delay, or otherwise affect the medical care  
7 provided to the patient, or an appropriate discharge of the patient.

8           ~~(5)~~<sup>2</sup>(6) NO INTERFERENCE WITH OTHER LAW. Nothing in this section shall be construed  
9 to interfere with the rights of a person legally authorized to make health care  
10 decisions on behalf of a patient under this chapter or chs. 154 and 155. ✓ ✓

11           ~~(6)~~<sup>2</sup>(7) NO PRIVATE RIGHT OF ACTION. Nothing in this section shall be construed to  
12 create a private right of action against a hospital, a hospital employee, or any  
13 authorized agent of the hospital, or to otherwise supercede or replace existing rights  
14 or remedies. ✓

15           **SECTION 4. Effective date.**

16           (1) This act takes effect on the first day of the 6th month beginning after  
17 publication.

18           \*\*\*\*NOTE: Would you like a delayed effective date to allow hospitals time to prepare  
for implementation? Based on the almost six-month delay provided in the Oklahoma  
law, I included a six-month delayed effective date for purposes of this initial draft. ✓

(END)

**Walkenhorst Barber, Sarah**

---

**From:** LRB.Legal  
**Sent:** Friday, December 12, 2014 2:21 PM  
**To:** Walkenhorst Barber, Sarah  
**Subject:** FW: Draft review: LRB -0219/P1 Topic: Requiring hospitals to consult with a caregiver

**Follow Up Flag:** Follow up  
**Due By:** Monday, December 15, 2014 4:00 PM  
**Flag Status:** Flagged

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**From:** Ewy, Stuart  
**Sent:** Friday, December 12, 2014 2:13 PM  
**To:** LRB.Legal  
**Subject:** RE: Draft review: LRB -0219/P1 Topic: Requiring hospitals to consult with a caregiver

The draft looks good. A 6 month delayed effective date sounds fine.

Thanks,

Regards,

G. Stuart Ewy  
Office of Senator Tim Carpenter  
State Capitol 109 S  
608.266.8535

---

**From:** LRB.Legal  
**Sent:** Tuesday, December 09, 2014 2:21 PM  
**To:** Sen.Carpenter  
**Subject:** Draft review: LRB -0219/P1 Topic: Requiring hospitals to consult with a caregiver

**Following is the PDF version of draft LRB -0219/P1.**



State of Wisconsin  
2015 - 2016 LEGISLATURE



LRB-0219/P1  
SWB:cjs:rs

Redraft IN 12/17/15  
Due Monday 12/22/14

stays

RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SA ✓

GerCat

1 AN ACT *to amend* 146.82 (4) (b) 2. a.; and *to create* 146.82 (4) (c) and 146.827  
2 of the statutes; **relating to:** designating a lay caregiver during a hospital  
3 admission.

***Analysis by the Legislative Reference Bureau***

This bill requires hospitals to provide a patient with an opportunity to designate a lay caregiver who will receive instruction regarding patient aftercare prior to the patient's discharge. If the patient is a minor, a parent or legal guardian may designate a lay caregiver on the patient's behalf. If the patient is incapacitated at the time of admission, a person authorized by the patient may make a designation for the patient. Hospitals must promptly record the name and contact information of a lay caregiver, if designated, after a patient is admitted into a hospital. If a patient other than a minor is incapacitated at admission, but later regains capacity, the hospital must notify the patient of the option to designate a lay caregiver or change any designation made by a person authorized by the patient. Patients are not required to designate a lay caregiver under this bill and, further, the designation of a lay caregiver does not obligate any individual to provide aftercare for the patient.

Under this bill, if a patient designates a lay caregiver, the hospital is required to attempt to notify the designated lay caregiver of the patient's discharge to another facility or to a residence. The hospital must also attempt to consult with the lay caregiver to prepare him or her for aftercare assistance tasks that he or she may perform in caring for the patient, including, if applicable, wound care, injections, medication management, and patient movement (for example, transferring a patient in and out of bed or from a house to a car). The hospital must also issue a discharge

plan. However, if the patient or person authorized by the patient declines to provide either informed consent or approval of the release of a portion of the patient's health care record, the hospital is relieved of its notification and consultation obligations. Further, under this bill, if the hospital is unsuccessful in attempting to contact the lay caregiver, the lack of contact may not interfere with, delay, or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient.

Under current law, patient medical records are kept confidential except in certain limited circumstances, including if a patient or person authorized by the patient gives informed consent to disclosure. Absent informed consent, a health care provider may release a portion, but not a copy, of a patient health care record, to certain individuals under certain limited circumstances. A health care provider may also release a portion of a patient health care record to anyone if a patient or person authorized by the patient agrees to the disclosure. Even without agreement, a health care provider may, in certain circumstances such as patient incapacitation, release to anyone the limited amount of information necessary to identify, locate, or provide notification of the patient's location, condition, or death. Beyond that, current law allows a health care provider to provide more information only to certain listed individuals. Specifically, a health care provider may provide to the patient's immediate family, another relative, a close personal friend of the patient, or an individual identified by the patient, that portion of information from the health care record directly relevant to that person's involvement in the patient's care. This bill adds designated lay caregivers to the list of individuals permitted access to information directly relevant to that person's involvement in the patient's care. Finally, this bill creates a limited exception to allow a hospital to provide a designated lay caregiver a copy of any written discharge plan issued.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

\*\*\*\*NOTE: Per your request, I have created a draft based on the bill passed in Oklahoma. In light of existing Wisconsin law and LRB drafting practices, the language and structure of this draft does differ somewhat from the Oklahoma law. Accordingly, I have created this as a preliminary draft for your consideration. Please review the draft carefully to determine whether it is consistent with your intent or if you would like changes.

- 1           **SECTION 1.** 146.82 (4) (b) 2. a. of the statutes is amended to read:
- 2           146.82 (4) (b) 2. a. A member of the patient's immediate family, another relative
- 3 of the patient, a close personal friend of the patient, a lay caregiver designated under
- 4 s. 146.827, or an individual identified by the patient, that portion that is directly
- 5 relevant to the involvement by the member, relative, friend, or individual in the
- 6 patient's care.

1           **SECTION 2.** 146.82 (4) (c) of the statutes is created to read:

2           146.82 (4) (c) Notwithstanding subs. (1) and (4) (b) (intro.), a health care  
3 provider may provide a lay caregiver who is designated under s. 146.827 and who is  
4 otherwise permitted access to a portion of a patient health care record under this  
5 subsection, with a copy of any written discharge plan issued under s. 146.827 (4) (a)  
6 3.

7           **SECTION 3.** 146.827 of the statutes is created to read:

8           **146.827 Designated caregivers. (1) DEFINITIONS.** In this section:

9           (a) “Aftercare assistance” means any assistance provided by a lay caregiver to  
10 a patient under this section after the patient’s discharge and related to the patient’s  
11 condition at the time of discharge, including, if applicable, wound care, injections,  
12 medication management, and patient movement.

13           (b) “Discharge” means a patient’s exit or release from a hospital following any  
14 inpatient admission.

15           (c) “Hospital” has the meaning given in s. 50.33 (2).

16           (d) “Incapacitated” has the meaning given in s. 50.94 (1) (b).

17           (e) “Lay caregiver” means any individual designated as a lay caregiver under  
18 this section to provide aftercare assistance to a patient.

19           **(2) LAY CAREGIVER DESIGNATION.** (a) A hospital shall provide a patient, or a  
20 parent or legal guardian if the patient is a minor, or a person authorized by the  
21 patient if the patient is incapacitated, with an opportunity to designate a lay  
22 caregiver as soon as practicable after the patient’s admission into the hospital and  
23 before the patient’s discharge. An individual making a designation under this  
24 section may designate any person, including a family member, that is 18 years of age  
25 or older.



1 (b) If a patient who is not a minor was incapacitated upon admission to the  
2 hospital, no lay caregiver was designated upon admission, and the patient is no  
3 longer incapacitated, the hospital shall inform the patient of the option to designate  
4 a lay caregiver under this section.

5 (c) If a patient was incapacitated upon admission to the hospital and a person  
6 authorized by the patient designated a lay caregiver under par. (a) and if the patient  
7 is no longer incapacitated, the hospital shall notify the patient of the existing lay  
8 caregiver designation and inform the patient of the option under par. (g) to change  
9 the designation at any time.

10 (d) If a patient, parent, legal guardian, or person authorized by the patient  
11 designates a lay caregiver under this section, the hospital shall promptly record the  
12 designation of the lay caregiver, the relationship of the lay caregiver to the patient,  
13 and the name, telephone number, and address of the lay caregiver in the patient's  
14 medical record.

15 (e) If a patient, parent, legal guardian, or person authorized by the patient,  
16 declines to designate a lay caregiver under this section, the hospital shall promptly  
17 document that information in the patient's medical record.

18 (f) Nothing in this section requires a patient, parent, legal guardian, or person  
19 authorized by the patient to designate a lay caregiver. The designation or lack of  
20 designation under this section may not interfere with, delay, or otherwise affect the  
21 medical care provided to the patient.

22 (g) A patient, or, if applicable, a parent, legal guardian, or person authorized  
23 by the patient, may elect to designate a lay caregiver, withdraw a designation, or  
24 change the designated lay caregiver at any time. The hospital shall promptly record  
25 in the patient's medical record any designation modification, and, if an individual

1 designates a new lay caregiver under this section, the information required under  
2 par. (d).

3 (h) Designation of a lay caregiver pursuant to the provisions of this section does  
4 not obligate any individual to perform aftercare assistance for the patient.

5 (3) RELEASE OF MEDICAL INFORMATION. (a) If a patient, parent, legal guardian,  
6 or person authorized by the patient designates an individual as a lay caregiver under  
7 this section, the hospital shall promptly request the informed consent of the patient  
8 or of a person authorized by the patient to release patient health care records under  
9 s. 146.82 (1).

10 (b) Notwithstanding par. (a), the hospital may, to the extent allowed under s.  
11 146.82 (4) (b) and (c), release a portion of a patient's medical records to complete the  
12 requirements of sub. (4), unless a patient or person authorized by a patient expressly  
13 refuses to grant informed consent.

14 (c) If a patient or person authorized by the patient declines to provide informed  
15 consent under s. 146.82 (1) and declines to release a portion of the patient's medical  
16 record under s. 146.82 (4) (b) 1. to allow necessary communication with a designated  
17 lay caregiver, the hospital is not required to complete the notification, consultation,  
18 and discharge plan requirements under sub. (4).

19 (4) NOTIFICATION, AFTERCARE CONSULTATION, AND DISCHARGE PLAN. (a) Subject to  
20 sub. (3), if a patient, parent, legal guardian, or person authorized by a patient  
21 designates a lay caregiver, the hospital shall, as soon as practicable, do all of the  
22 following:

23 1. Attempt to notify the patient's designated lay caregiver of the patient's  
24 discharge or transfer to another facility.

1           2. Attempt to consult with the designated lay caregiver to prepare him or her  
2 for aftercare assistance.


3           3. Issue a discharge plan describing a patient's aftercare assistance needs with  
4 respect to the patient's condition at the time of discharge.

5           (b) In the event the hospital is unable to contact the designated lay caregiver,  
6 the lack of contact shall not interfere with, delay, or otherwise affect the medical care  
7 provided to the patient, or an appropriate discharge of the patient.

8           (5) NO INTERFERENCE WITH OTHER LAW. Nothing in this section shall be construed  
9 to interfere with the rights of a person legally authorized to make health care  
10 decisions on behalf of a patient under this chapter or chs. 154 and 155.

11           (6) NO PRIVATE RIGHT OF ACTION. Nothing in this section shall be construed to  
12 create a private right of action against a hospital, a hospital employee, or any  
13 authorized agent of the hospital, or to otherwise supercede or replace existing rights  
14 or remedies.

15           **SECTION 4. Effective date.**

16           (1) This act takes effect on the first day of the <sup>7th</sup>~~6th~~ month beginning after  
17 publication. 

\*\*\*\*NOTE: Would you like a delayed effective date to allow hospitals time to prepare  
for implementation? Based on the almost six-month delay provided in the Oklahoma  
law, I included a six-month delayed effective date for purposes of this initial draft.

**Barman, Mike**

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**From:** Ewy, Stuart  
**Sent:** Wednesday, January 21, 2015 10:47 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -0219/1 Topic: Requiring hospitals to consult with a caregiver

Please Jacket LRB -0219/1 for the SENATE.