



2019 SENATE BILL 516

October 18, 2019 - Introduced by Senators TESTIN, WIRCH, CARPENTER, SCHACHTNER and L. TAYLOR, cosponsored by Representatives SKOWRONSKI, KULP, SORTWELL and THIESFELDT. Referred to Committee on Government Operations, Technology and Consumer Protection.

1 **AN ACT** *to amend* 146.82 (4) (b) 2. a.; and *to create* 50.379 and 146.82 (4) (c) of
2 the statutes; **relating to:** requiring hospitals to allow designation of a
3 caregiver.

Analysis by the Legislative Reference Bureau

This bill requires hospitals to provide a patient or, if applicable, a patient's legal guardian with an opportunity to designate a caregiver who will receive, before the patient is discharged from the hospital, instruction regarding assistance with the patient's care after discharge.

Under the bill, a hospital must, no later than 24 hours following a patient's admission to a hospital and before the patient is discharged or transferred, provide at least one opportunity for a patient or, if applicable, a patient's legal guardian to designate at least one caregiver. If a patient is unconscious or otherwise incapacitated when admitted, the hospital shall provide an opportunity for caregiver designation within 24 hours after the patient regains consciousness or capacity. If a patient or legal guardian designates a caregiver, a hospital must promptly record the name and contact information of the caregiver. If a patient or legal guardian declines to designate a caregiver, the hospital must also promptly document that information. Patients are not required to designate a caregiver under this bill and, further, the designation of a caregiver does not obligate any individual to provide aftercare for the patient. A patient may elect to change the designated caregiver at any time, and the hospital must record the change within 24 hours.

The bill requires that if a patient designates a caregiver, the hospital must promptly request written consent to release medical information to the patient's

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caregiver. If the patient or the patient's legal guardian declines to provide consent, the hospital is relieved of its notification and consultation obligations.

Under current law, patient medical records are kept confidential except in certain limited circumstances, including if a patient or a person authorized by the patient gives consent to the disclosure. Even without agreement, a health care provider may, in certain circumstances such as patient incapacitation, release a 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 individual's involvement in the patient's care. This bill adds designated caregivers to the list of individuals permitted access to information directly relevant to that individual's involvement in the patient's care.

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

1 **SECTION 1.** 50.379 of the statutes is created to read:

2 **50.379 Designated caregivers. (1) DEFINITIONS.** In this section:

3 (a) "Aftercare assistance" means any assistance provided by a caregiver to a
4 patient under this section after the patient's discharge and related to the patient's
5 condition at the time of discharge, including assisting with basic activities of daily
6 living or instrumental activities of daily living, or carrying out medical or nursing
7 tasks, such as managing wound care, assisting in administering medications, or
8 operating medical equipment.

9 (b) "Caregiver" means any individual, including a relative, partner, friend,
10 neighbor, or other person who has a significant relationship with a patient, who is
11 designated as a caregiver under this section to provide aftercare assistance to that
12 patient.

13 (c) "Discharge" means a patient's exit or release from a hospital to the patient's
14 residence following an inpatient admission.

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1 (d) "Hospital" has the meaning given in s. 50.33 (2).

2 (e) "Incapacitated" has the meaning given in s. 50.94 (1) (b).

3 (f) "Residence" means a dwelling that the patient considers to be his or her
4 home. "Residence" does not include any rehabilitation facility, hospital, nursing
5 home, assisted living facility, or group home licensed by the department.

6 **(2) CAREGIVER DESIGNATION.** (a) A hospital shall provide a patient or, if
7 applicable, a patient's legal guardian at least one opportunity to designate at least
8 one caregiver no later than 24 hours following the patient's admission to a hospital
9 and before the patient's discharge or transfer to another hospital or facility licensed
10 by the department.

11 (b) If a patient is unconscious or otherwise incapacitated upon admission to the
12 hospital, the hospital shall provide the patient or, if applicable, the patient's legal
13 guardian with an opportunity to designate a caregiver within 24 hours following the
14 patient's recovery of his or her consciousness or capacity.

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

18 (d) If a patient or the patient's legal guardian designates a caregiver under this
19 section, the hospital shall promptly record the designation of the caregiver, the
20 relationship of the caregiver to the patient, and the name, telephone number, and
21 address of the caregiver in the patient's medical record.

22 (e) Nothing in this section requires a patient or a patient's legal guardian to
23 designate a caregiver.

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1 (f) A patient may elect to change a designated caregiver at any time. The
2 hospital shall, within 24 hours, record in the patient's medical record any
3 designation change and any new information required under par. (d).

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

6 **(3) RELEASE OF MEDICAL INFORMATION.** (a) If a patient or a patient's legal
7 guardian designates an individual as a caregiver under this section, the hospital
8 shall promptly request the written consent of the patient or the patient's legal
9 guardian to release medical information to the patient's designated caregiver
10 following the hospital's established procedures for releasing personal health
11 information and in accordance with applicable federal and state law.

12 (b) If a patient or the patient's legal guardian declines to consent to the release
13 of medical information to the patient's designated caregiver, the hospital is not
14 required to provide notice to the caregiver or provide information contained in the
15 patient's discharge plan as required under subs. (4) and (5).

16 **(4) NOTIFICATION AND INSTRUCTION TO DESIGNATED CAREGIVER.** Subject to sub. (3),
17 if a patient or a patient's legal guardian designates a caregiver under this section,
18 a hospital shall do all of the following:

19 (a) Notify the patient's designated caregiver of the patient's discharge or
20 transfer to another hospital or facility licensed by the department as soon as possible,
21 which may be after the patient's physician issues a discharge order, but not less than
22 4 hours before the patient's actual discharge or transfer to the other hospital or
23 facility.

24 (b) No less than 24 hours before a patient's discharge from a hospital, consult
25 with the designated caregiver along with the patient regarding the caregiver's

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1 capabilities and limitations and issue a written discharge plan that describes a
2 patient's aftercare assistance needs at the patient's residence.

3 (5) DISCHARGE PLAN. (a) For purposes of this section, a hospital shall include
4 in a discharge plan at least all of the following:

5 1. The name and contact information of the caregiver designated under this
6 section.

7 2. A description of all aftercare assistance tasks necessary to maintain the
8 patient's ability to reside at home, taking into account the capabilities of the
9 caregiver.

10 3. Contact information for any health care, community resources, and
11 long-term services and supports necessary to successfully carry out the patient's
12 discharge plan.

13 (b) A hospital issuing a discharge plan under this section shall provide
14 caregivers with instruction in all aftercare assistance tasks described in the
15 discharge plan, and must include at least all of the following:

16 1. A live demonstration of the tasks performed by a hospital employee or
17 individual with whom the hospital has a contractual relationship authorized to
18 perform the aftercare assistance task, provided in a culturally competent manner
19 and in accordance with the hospital's requirements to provide language access
20 services under state and federal law.

21 2. An opportunity for the caregiver and patient to ask questions about the
22 aftercare assistance tasks.

23 3. Answers to the caregiver's and patient's questions provided in a culturally
24 competent manner and in accordance with the hospital's requirements to provide
25 language access services under state and federal law.

