

Introduced by

Senators Poolman, Dever, Hogan

Representatives Beadle, Dobervich, Meier

1 A BILL for an Act to create and enact chapter 23-49 of the North Dakota Century Code, relating
2 to hospital discharge policies.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 23-49 of the North Dakota Century Code is created and enacted as
5 follows:

6 **23-49-01. Definitions.**

7 As used in this chapter:

- 8 1. "Aftercare assistance" means assistance provided by a lay caregiver to a patient
9 following discharge of the patient which is a task directly related to the patient's
10 condition at the time of discharge, does not require a licensed professional, and is
11 determined to be appropriate by the patient's discharging physician or other licensed
12 health care professional.
- 13 2. "Discharge" means the exit or release of a patient from inpatient care in a hospital to
14 the residence of the patient.
- 15 3. "Lay caregiver" means an individual at least eighteen years old who a patient, or the
16 patient's legal representative, designates as a lay caregiver, and who following the
17 discharge of the patient is willing and able to perform aftercare assistance for the
18 patient at the patient's residence.
- 19 4. "Patient" means an individual who is or was receiving inpatient medical care in a
20 hospital.
- 21 5. "Residence" means the dwelling a patient considers to be the patient's home. The
22 term does not include a hospital or rehabilitation facility.

1 **23-49-02. Aftercare assistance policies - Designation of lay caregiver.**

2 1. A hospital shall adopt and maintain evidence-based discharge policies and
3 procedures.

4 a. At a minimum, the hospital's discharge policies and procedures must provide for
5 an assessment of the patient's ability for self-care after discharge and, as part of
6 the assessment, must provide a patient, or if applicable, the patient's legal
7 representative, an opportunity to designate one lay caregiver before discharge of
8 the patient.

9 b. A hospital's evidence-based discharge policies and procedures may be based on
10 standards such as:

11 (1) The standards for accreditation adopted by the joint commission on the
12 accreditation of health care organizations, or any other nationally
13 recognized hospital accreditation organization; and

14 (2) The conditions of participation for hospitals adopted by the centers for
15 Medicare and Medicaid services.

16 2. A hospital may not give a legal representative who is an agent under a durable power
17 of attorney for health care the opportunity to designate a lay caregiver in lieu of the
18 patient's designation of a lay caregiver, unless, in the judgment of the attending
19 physician, the patient is unable to make that health care decision. To the extent
20 consistent with the powers and duties granted a guardian, a hospital shall give a legal
21 representative who is a guardian the opportunity to designate a lay caregiver in lieu of
22 the patient's designation of a lay caregiver.

23 3. If a patient, or the patient's legal representative, declines to designate a lay caregiver,
24 the hospital shall document the declination in the patient's medical record and the
25 hospital is deemed to be in compliance with this section.

26 4. If a patient or the patient's legal representative designates a lay caregiver, the hospital
27 shall:

28 a. Record in the patient's medical record the designation of the lay caregiver in
29 accordance with the hospital's policies and procedures. The information recorded
30 may include information such as the relationship of the lay caregiver to the
31 patient and the name, telephone number, and address of the lay caregiver.

1 b. Request written consent from the patient, or the patient's legal representative, to
2 release medical information to the lay caregiver in accordance with the hospital's
3 established procedures for releasing a patient's personal health information and
4 in compliance with all applicable state and federal laws. If a patient, or the
5 patient's legal representative, declines to consent to the release of medical
6 information to the lay caregiver, the hospital is neither required to provide notice
7 to the lay caregiver under section 23-49-03 nor to consult with or provide
8 information contained in the patient's discharge plan to the lay caregiver under
9 section 23-49-04.

10 5. If a lay caregiver becomes incapacitated, the patient, or the patient's legal
11 representative, may change the designation of lay caregiver.

12 **23-49-03. Notification of transfer or discharge.**

13 If a lay caregiver is designated under this chapter, in accordance with the hospital's
14 established policies and procedures, as soon as practicable, the hospital shall attempt to notify
15 the lay caregiver of the discharge of the patient or of the transfer of the patient to another
16 hospital or facility.

17 **23-49-04. Aftercare assistance instructions.**

18 1. If a lay caregiver is designated, as soon as practicable before discharge of a patient,
19 the hospital shall attempt to:

20 a. Consult with the patient's lay caregiver to prepare the lay caregiver for the
21 aftercare assistance the lay caregiver may provide;

22 b. Issue a discharge plan that describes the aftercare assistance needs of the
23 patient;

24 c. Offer to provide the lay caregiver with instructions for the aftercare assistance
25 tasks described in the discharge plan; and

26 d. Provide an opportunity for the lay caregiver to ask questions regarding the
27 aftercare assistance tasks.

28 2. The inability of a hospital to consult with a patient's lay caregiver may neither interfere
29 with, delay, or otherwise affect the medical care provided to the patient nor affect the
30 patient's discharge.

1 **23-49-05. Limitations.**

2 1. This chapter neither creates a private right of action against a hospital, a hospital
3 employee, or any consultant or contractor with whom a hospital has a contractual
4 relationship, nor limits or otherwise supersedes or replaces existing rights or remedies
5 under any other provision of law.

6 2. This chapter may not be construed to delay the appropriate discharge or transfer of a
7 patient, including the hospital's inability to contact the designated caregiver at the time
8 of discharge or transfer. The lack of contact may not interfere with, delay, or otherwise
9 affect the discharge or transfer of the patient or the medical care provided to the
10 patient.

11 3. This chapter may not be construed to:

12 a. Interfere with or supersede a health care provider's instructions regarding a
13 Medicare-certified home health agency or any other postacute care provider.

14 b. Grant decisionmaking authority to a lay caregiver to determine the type of
15 provider or the provider of the patient's posthospital care as specified in the
16 patient's discharge plan.

17 c. Interfere with the authority or responsibilities of an agent operating under a valid
18 durable power of attorney for health care pursuant to or of the powers and duties
19 granted to a guardian.

20 d. Require a patient or the patient's legal representative to designate a lay
21 caregiver.

22 e. Obligate an individual who has been designated a lay caregiver to perform any
23 aftercare assistance for the patient.