

HOUSE No. 3911

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, December 21, 2015.

The committee on Public Health to whom were referred the petition (accompanied by bill, Senate, No. 1153) of Linda Dorcena Forry, Harriette L. Chandler, Kathleen O'Connor Ives, Thomas M. McGee and other members of the General Court for legislation relative to CARE, and the petition (accompanied by bill, House, No. 2081) of Chris Walsh and others relative to the designation of caregivers by certain patients, reports recommending that the accompanying bill (House, No. 3911) ought to pass.

For the committee,

KATE HOGAN.

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act establishing the caregiver advise, record, and enable (CARE) act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 111 of the General Laws, as appearing in the 2014 Official Edition,
2 is hereby amended by adding the following new section:-

3 Section 235 (a) For the purposes of this section, the following terms shall have the
4 following meanings:

5 “After-care”, assistance provided by a caregiver to a patient after the patient’s discharge
6 to their residence from a hospital. Such assistance includes tasks that are limited to the patient’s
7 condition at the time of discharge that will not be performed by a licensed healthcare provider,
8 including basic medical tasks such as assistance with oral medications and operating medical
9 equipment.

10 “Caregiver”, any individual 18 years of age or older who is duly designated as a caregiver
11 by a patient under this section and is willing and physically able to provide after-care assistance
12 to a patient in the patient’s residence.

13 “Discharge”, a patient’s exit or release from a hospital to the patient’s residence
14 following an inpatient admission.

15 “Entry”, a patient’s inpatient admission into a hospital for the purposes of receiving
16 inpatient medical care.

17 “Hospital”, the teaching hospital of the University of Massachusetts Medical School, and
18 any hospital licensed under section 51 of chapter 111 and which contains a majority of medical-
19 surgical, pediatric, obstetric and maternity beds, as defined by the department of public health.

20 “Patient”, an individual who is 18 years of age or older, admitted to a hospital as an
21 inpatient.

22 “Residence”, a dwelling that the patient considers to be his or her home at the time of
23 discharge. A “residence” for the purposes of this section shall not include any facility including
24 another hospital, any long-term care facility such as nursing home, skilled nursing facility,
25 hospice, and assisted living facility, group home, or other facility that is providing post-acute
26 level of care.

27 (b) A hospital shall provide each patient, who is competent and capable as determined by
28 the treating healthcare provider or, if there is a court-appointed guardian of the patient, the
29 guardian, with an opportunity to designate a caregiver prior to the patient’s discharge or transfer
30 in a timeframe that is consistent with the discharge or transfer planning process within the
31 hospital.

32 Said designation, along with the contact information for the caregiver, shall be
33 documented in the patient’s medical record. The designated caregiver shall be provided with

34 access to the patient's health information and discharge plan, when applicable; provided, that the
35 patient or court-appointed guardian for the patient, has authorized such release in compliance
36 with federal HIPAA and state privacy laws and regulations and following the hospital's
37 established procedures for obtaining such authorization.

38 If the patient is unconscious or incapacitated upon entry into the hospital, and does not
39 have a court-appointed guardian, the hospital shall provide the patient, upon recovery of
40 consciousness and capacity, with the opportunity to designate a caregiver. The designated
41 caregiver may be changed by a court-appointed guardian, if any, or the patient at any time,
42 provided that the patient is competent and capable as determined by the treating healthcare
43 provider and that such information is provided to the appropriate hospital personnel prior to the
44 patient's discharge or transfer.

45 A patient, or their court-appointed guardian, shall not be required to designate a caregiver
46 and nothing in this section shall require a person so designated to perform any after-care tasks for
47 any patient.

48 (c) A hospital shall notify the patient's designated caregiver of the patient's discharge or
49 transfer as soon as practicable upon issuance of a discharge or transfer order by the patient's
50 treating healthcare provider. The hospital shall further provide the designated caregiver with a
51 copy of the patient's discharge plan and discuss the patient's after-care assistance needs;
52 provided however, that the notification and release of information per this subsection shall not
53 occur if an authorization for such notification and release has not been provided to the hospital;
54 and provided further, that the hospital shall not provide this notification or release of information
55 if otherwise directed by the patient or court-appointed guardian for the patient.

56 The discussion with the caregiver shall occur in a manner agreed to by the caregiver and
57 the hospital, provided that such discussion shall take into consideration: the severity of the
58 patient's condition; the setting in which after-care is to be delivered; and the urgency of the need
59 for caregiver services.

60 The discussion of after-care assistance shall include: a general demonstration of the
61 known after-care tasks with an opportunity for the caregiver and patient to ask questions and
62 receive answers about the after-care tasks prior to discharge; information about available
63 community resources and long-term care support services near the patient's residence that may
64 be used to support the discharge plan, as appropriate, and the hospital contact information to
65 address follow up questions about after-care tasks following the patient's discharge from that
66 hospital.

67 (d) Nothing in this section shall be construed to interfere with the rights of an agent
68 operating under a valid health care proxy or a court-appointed guardian.

69 (e) The provisions of this section shall not be construed to create a private right of action
70 against a healthcare provider, as defined in section 1 of chapter 111, or a contractor to a
71 healthcare provider, nor shall it mandate a new scope of practice or licensure requirement for a
72 healthcare provider for any actions or conversations that may occur pursuant to this section;
73 provided further, that the healthcare provider shall not be required to determine the ability of a
74 caregiver to understand or perform any of the after-care tasks described in this section.

75 (f) The provisions of this section shall not interfere with or delay the discharge, transfer,
76 or medical care provided to a patient if the hospital is not able to contact or able to provide notice

77 or information to the designated caregiver prior to the discharge, transfer, or receipt of medical
78 care.

79 SECTION 2. The commissioner of public health, after consultation with the
80 Massachusetts Hospital Association and AARP of Massachusetts, shall promulgate guidance to
81 hospitals to implement the provisions of section 1 of this act, including, but not limited to: (i)
82 other legally authorized individuals who may designate a caregiver for the patient; (ii) defining
83 the content and scope of any information provided to caregivers; (iii) how a patient may
84 authorize the release of the discharge plan and health information to a caregiver; (iv) how a
85 patient may change a designated caregiver; and (v) the manner in which the hospital shall
86 document the hospital's discussions with the patient or caregiver.

87 SECTION 3. Section 1 of this act shall be effective after guidance is promulgated by the
88 department but not later than 8 months from the date of enactment.