

CHAPTER 270
FORMERLY
SENATE BILL NO. 246

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO HEALTH AND SAFETY AND OBLIGATIONS OF HEALTH-CARE PROVIDERS FOR NON-ACUTE PATIENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, in 2019, the 150th General Assembly enacted Senate Concurrent Resolution No. 30 establishing the Non-Acute Medical Guardianship Task Force; and

WHEREAS, Senate Concurrent Resolution No. 30 recognized that inpatient stays at hospitals are designed to address the acute health needs of admitted patients, and

WHEREAS, Senate Concurrent Resolution No. 30 also recognized that when a patient's health status is no longer acute, whether they are best served by in-home health care or long-term care, their health interests are best served by discharge from a hospital; and

WHEREAS, some hospital patients who need assistance in making healthcare and financial decisions require either a guardian or medical decision maker to act in their best interests; and

WHEREAS, some patients do not have the financial means to afford a guardian or are dependent upon a family member to act as a decision maker, and some family care-givers actively or effectively abandon relatives at hospitals by failing to engage in communications and or actions with hospital discharge planners, resulting in the continued hospitalization of non-acute patients whose health status is not served by extended stays in hospitals; and

WHEREAS, a study examining the two-year period ending in 2017 of patients abandoned at Delaware hospitals revealed that 115 Extended Stay patients were in Delaware hospitals a total of 11,398 days; and

WHEREAS, it is not in the best health interests of non-acute patients to stay in hospitals beyond their period of acute need because hospital stays can expose individuals to increased risk of infection, will result in patients being confined to a smaller space than often afforded individuals who receive appropriate non-acute care at home or at a long-term care facility, will deny such patients the opportunity for programming and interactions available to individuals in long-term care facilities, and often means that such patients do not venture out-of-doors for extended periods of time; and

WHEREAS, the Non-Acute Medical Guardianship Task Force concluded that legislation is needed to establish a process and timeline whereby health-care institutions can take steps to help obtain a guardianship for non-acute patients who no longer require acute care and can be transferred to another type of health-care setting;

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 25, Title 16 of the Delaware Code, by adding a new § 2509, by making deletions as shown by strike through and insertions as shown by underline as follows, and by redesignating accordingly:

§ 2509 Health-care institutions and guardianships for non-acute patients.

(a) A health-care institution must, as early as 3 but no later than 5 business days of determining that a patient no longer requires acute care in the health-care institution, provide a written notice to the patient, the patient's surrogate, and, if the patient does not have a surrogate, to any member of the patient's family who is reasonably available, in the descending order of priority set forth in § 2507 of this title, that the health-care institution has concluded that the non-acute patient would benefit from the appointment of a guardian, who shall be fully authorized with powers necessary to transfer the patient from acute care to less restrictive non-acute care, and that a petition for the appointment of a guardian should be filed within 10 business days of the date of the notice.

(b) If the process of appointing a guardian for the non-acute patient has not been initiated within the period set forth in the notice required under paragraph (a) of this section, the institution shall provide a second written notice to the patient, the patient's surrogate, and if the patient does not have a surrogate, to any member of the patient's family who is reasonably available, in the descending order of priority set forth in § 2507 of this title, that the petition for the appointment of a guardian must be filed within 10 business days of the date of the second notice, or the institution will initiate the process of appointing a guardian.

(c) If the process of appointing a guardian for the non-acute patient has not been initiated within the time set forth in the second notice required under paragraph (b) of this section, or if a guardian who is fully authorized with powers necessary to transfer the patient from acute care to less restrictive non-acute care has not been appointed within 30 days from the date of the filing of a petition for appointment of a guardian, the health-care institution may initiate the process of appointing a guardian.

Approved August 6, 2020