

SPONSOR: Sen. Hall-Long & Rep. Bentz & Rep. Longhurst
Sens. Bonini, Poore; Reps. Baumbach, Heffernan, Jaques, D. Short

DELAWARE STATE SENATE

148th GENERAL ASSEMBLY

SENATE BILL NO. 52
AS AMENDED BY SENATE AMENDMENT NOS. 1 & 2 AND HOUSE AMENDMENT NO. 4 AS AMENDED BY HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT NO. 4

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO LAY CAREGIVERS.

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

Section 1. Amend § 10303, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 10303. Powers and duties.

(a) In furtherance of the purposes of this subchapter, the DHIN shall have the following powers and duties:

(18) ~~The DHIN shall make~~ Make annual reports to the Governor and members of the General Assembly setting forth in detail its operations and transactions, which shall include annual audits of the books and accounts of the DHIN made by a firm of independent certified public accountants mutually agreed to by the Auditor of Accounts and the Director of the Office of Management and Budget; ~~and~~

(19) Develop and maintain a process to enable a hospital to record in the patient's electronic health record contained in the DHIN the patient's designation of a lay caregiver and the lay caregiver's contact information, as required by § 3002J(b) of this title, and if the hospital attempted to or did interface with the lay caregiver, as required by § 3004J(b) of this title; and

Section 2. Amend Part II, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 30J. LAY CAREGIVER DESIGNATION, NOTICE, AND TRAINING ACT.

LC : MJC : RAY:4801480138
LC : HVW : RAY:5081480141

§ 3001J. Definitions.

As used in this chapter:

(1) "Aftercare" means assistance provided by a lay caregiver to a patient in a residence after the patient's discharge from a hospital that does not require the lay caregiver to be a health care provider.

(2) "Discharge" means a patient's exit or release from a hospital following an inpatient stay.

(3) "Health-care provider" means as defined in § 2501 of this title.

(4) "Hospital" means as defined in § 1001 of this title.

(5) "Interface" means training the lay caregiver in aftercare tasks contained in the discharge plan in a manner that is consistent with current accepted practices and provided through one of the following methods agreed to by the lay caregiver and the hospital: telehealth, as defined in § 3370 of Title 18, telemedicine, as defined in § 3370 of Title 18, or in-person.

(6) "Lay caregiver" means an individual who is 18 years of age or older, who is designated by a patient or a patient's agent under this chapter, and who provides aftercare to a patient in a residence. "Lay caregiver" includes direct support professionals and shared living providers who are paid staff in a neighborhood group home or shared or community living arrangement, as approved by the Division of Developmental Disabilities Services, and attendant caregivers, as provided for in § 1921(14) and (15) of Title 24.

(7) "Patient's agent" means a person authorized by other law to make decisions for a patient.

(8) "Residence" means a dwelling considered by a patient to be the patient's home. "Residence" does not include any rehabilitation facility, hospital, nursing home, or assisted living facility licensed under this title.

§ 3002J. Designation of a lay caregiver.

(a) A hospital shall provide a patient or a patient's agent at least one opportunity to designate at least one lay caregiver under this chapter following the patient's admission into a hospital and before the patient's discharge to a residence.

(b) A hospital shall record the patient's designation of a lay caregiver and the lay caregiver's contact information in the patient's electronic health record maintained by the hospital or in the patient's electronic health record contained in the Delaware Health Information Network.

(c) A hospital shall allow a patient or a patient's agent to change the individual designated as a lay caregiver by the patient or the patient's agent in the event that the individual designated as a lay caregiver becomes unavailable, unwilling, or unable to provide aftercare for the patient.

(d) The designation of an individual as a lay caregiver by a patient or a patient's agent under this chapter does not obligate the individual to accept the role of lay caregiver for the patient.

(e) This chapter may not be construed to require a patient to designate a lay caregiver.

(f) If a patient or a patient's agent declines to designate a lay caregiver under this section, a hospital shall promptly document the refusal to designate a lay caregiver in the patient's medical record.

(g) A hospital may not allow the ability of a patient or a patient's agent to appoint a lay caregiver or the refusal or failure to appoint a lay caregiver by a patient or a patient's agent to interfere with, delay, or otherwise affect the services provided to the patient by the hospital.

§ 3003J. Notice to a lay caregiver.

If a patient or a patient's agent has designated a lay caregiver under this chapter, a hospital shall notify the lay caregiver of the patient's discharge to a residence as soon as possible. If a hospital is unable to contact a designated lay caregiver, the inability to contact the lay caregiver may not interfere with, delay, or otherwise affect an appropriate discharge or transfer of the patient.

§ 3004J. Training of a lay caregiver.

(a) As soon as practical, a hospital shall attempt to interface with the lay caregiver to prepare the lay caregiver to provide aftercare.

(b) The hospital shall record in the patient's electronic health record maintained by the hospital or in the patient's electronic health record contained in the Delaware Health Information Network that it attempted to or did interface with the lay caregiver.

(c) If the hospital interfaces with the lay caregiver, the hospital shall provide an opportunity for the lay caregiver to ask questions and receive answers about the aftercare described to the lay caregiver.

(d) A hospital shall, with the consent of the patient or the patient's agent, provide the lay caregiver with a discharge plan for the patient that describes the patient's aftercare needs.

(e)(1) A discharge plan may include all of the following:

a. Competent training on how to provide aftercare.

b. Medication management guidelines.

c. Aftercare guidelines.

d. Identification of the aftercare tasks that a discharging health care provider specifies.

(2) A discharge plan must do all of the following:

a. Reflect the active engagement of a patient, a patient's agent, or lay caregiver in the discharge planning process and incorporate the goals and preferences of a patient or a patient's agent as much as possible.

b. Educate the lay caregiver in a manner that is consistent with current accepted practices and based on an assessment of the lay caregiver's learning needs.

(f) Training of a lay caregiver may not interfere with, delay, or otherwise affect an appropriate discharge or transfer of the patient.

(g) No hospital, hospital employee, an individual with whom a hospital has a contractual relationship, or an authorized agent of the hospital shall be liable for the death of a patient or injury to a patient caused by an act or an omission of a lay caregiver, unless the patient's death or injury was also caused in part or solely by the medical negligence of the hospital, hospital employee, the individual with whom a hospital has a contractual relationship, or the authorized agent of the hospital.

(h) When training the lay caregiver under this Chapter or any regulation promulgated pursuant to §3006J of this title, a hospital, hospital employee, an individual with whom a hospital has a contractual relationship, or an authorized agent of the hospital, shall provide the lay caregiver instructions and training that a person of ordinary intelligence and awareness in a position similar to that of the lay caregiver could reasonably be expected to appreciate and comprehend. In any action for health-care negligence or a violation of a regulation promulgated pursuant to §3006J of this title, based upon a claim of a failure to adequately train or instruct a lay caregiver, in addition to other defenses provided by law, it shall be a defense that the lay caregiver was given instructions and training in accordance with this Chapter or a regulation promulgated pursuant to §3006J of this title.

§ 3005J. Limitations.

Nothing in this chapter shall be construed to do any of the following:

(1) Interfere with the rights of a patient's agent operating under a valid advance health-care directive under Chapter 25 of this title.

(2) Interfere with a valid Delaware Medical Orders for Scope of Treatment (DMOST) under Chapter 25A of this title.

(3) Remove the obligation of a third-party payer to cover any health care item or service that the third-party payer is obligated to provide to a patient under the terms of a valid agreement, insurance policy, plan, certificate of coverage, or managed care organization contract.

(4) Otherwise supersede or replace existing rights, remedies, or procedures under any other law.

(5) Otherwise conflict with or replace any of the Center for Medicare and Medicaid Services Conditions of Participation.

§ 3006J. Regulatory authority; enforcement.

(a) The Department of Health and Social Services may promulgate regulations to implement and enforce this chapter.

(b) The Department of Health and Social Services may enforce the provisions of this chapter and any regulations promulgated under subsection (a) of this section.

§3007J Affidavit of Merit.

Any health-care negligence action, including one pertaining to training under § 3004J of this title, brought by an individual or the legal representative of an individual against a hospital, hospital employee, an individual with whom a hospital has a contractual relationship, or an authorized agent of the hospital for violating any provision of this Chapter that caused an individual's injuries or death shall be subject to the provisions of § 6853, Title 18 of the Delaware Code.

Section 3. Section 2 of this Act takes effect on January 1, 2017.

LC : MJC : RAY:4801480138
LC : HVW : RAY:5081480141