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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO HEALTH AND SAFETY - CAREGIVER ADVISE, RECORD AND ENABLE
ACT

Introduced By: Senators Goldin, and Satchell

Date Introduced: February 26, 2015

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 17.27

4 CAREGIVER ADVISE, RECORD AND ENABLE ACT

5 **23-17.27-1. Legislative findings and purpose.** – An estimated 148,000 Rhode Islanders
6 provide varying degrees of unreimbursed care to adults with limitations in daily activities. The
7 total value of the unpaid care provided to individuals in need of long-term services and supports
8 amounts to an estimated \$1.9 billion every year, based on 2009 data. Caregivers are often
9 members of the individual's immediate family, but friends and other community members also
10 serve as caregivers. While most caregivers are asked to assist an individual with basic activities
11 of daily living, such as mobility, eating, and dressing, many are expected to perform complex
12 tasks on a daily basis such as administering multiple medications, providing wound care, and
13 operating medical equipment.

14 Despite the vast importance of caregivers in the individual's day-to-day care, many
15 caregivers find that they are often left out of discussions involving a patient's care while in the
16 hospital and, upon the patient's discharge, receive little to no instruction on the tasks they are
17 expected to perform. The federal Centers for Medicare & Medicaid Services (CMS) estimates
18 that \$17 billion in Medicare funds or spent each year on unnecessary hospital readmissions.

1 Additionally, hospitals desire to avoid the imposition of new readmission penalties under the
2 federal Patient Protection and Affordable Care Act (ACA).

3 In order to successfully address the challenges of a surging population of older adults and
4 others living with chronic conditions and who have significant needs for long-term services and
5 supports, the purpose of the state must be to develop methods to enable caregivers to continue to
6 support their loved ones at home and in the community, and avoid costly hospital readmissions.
7 Therefore, it is the intent that this chapter enables caregivers to provide competent post-hospital
8 care to their family and other loved ones, at minimal cost to the taxpayers of this state.

9 **23-17.27-2. Definitions.** – As used in this chapter:

10 (1) "After-care" means any assistance provided by a caregiver to a patient under this
11 chapter after the patient's discharge from a hospital. Such assistance may include, but is not
12 limited to, assisting with basic activities of daily living (ADLs), instrumental activities of daily
13 living (IADLs), or carrying out medical/nursing tasks, such as managing wound care, assisting in
14 administering medications, and operating medical equipment.

15 (2) "Caregiver" means any individual duly designated as a caregiver by a patient under
16 this chapter who provides after-care assistance to a patient living in his or her residence. A
17 designated caregiver may include, but is not limited to, a relative, partner, friend, or neighbor who
18 has a significant relationship with the patient.

19 (3) "Discharge" means a patient's exit or release from a hospital to the patient's residence
20 following an inpatient admission.

21 (4) "Entry" means a patient's admission into a hospital for the purposes of medical care.

22 (5) "Hospital" means a facility licensed under Rhode Island statute.

23 (6) "Residence" means a dwelling that the patient considers to be his or her home. A
24 "residence" for the purposes of this chapter shall not include any rehabilitation facility, hospital,
25 nursing home, assisted living facility, or group home licensed by Rhode Island.

26 **23-17.27-3. Caregiver designation.** – (a) Any hospital licensed pursuant to this title
27 shall provide each patient or, if applicable, the patient's legal guardian with at least one
28 opportunity to designate at least one caregiver under this chapter, no later than twenty-four (24)
29 hours following the patient's entry into a hospital and prior to the patient's discharge or transfer to
30 another facility.

31 (1) In the event that the patient is unconscious or otherwise incapacitated upon his or her
32 entry into a hospital, the hospital shall provide such patient or his/her legal guardian with an
33 opportunity to designate a caregiver within twenty-four (24) hours following the patient's
34 recovery of his or her consciousness of capacity.

1 (2) In the event that the patient or the patient's legal guardian declines to designate a
2 caregiver under this chapter, the hospital shall promptly document this in the patient's medical
3 record.

4 (3) In the event that the patient or the patient's legal guardian designates an individual as
5 a caregiver under this chapter:

6 (i) The hospital shall promptly request the written consent of the patient or the patient's
7 legal guardian to release medical information to the patient's designated caregiver following the
8 hospital's established procedures for releasing personal health information and in compliance
9 with all federal and state laws.

10 (A) If the patient or the patient's legal guardian declines to consent to release medical
11 information to the patient's designated caregiver the hospital is not required to provide notice to
12 the caregiver under § 23-17.27-4 or provide information contained in the patient's discharge plan
13 under § 23-17.27-5.

14 (ii) The hospital shall record the patient's designation of the caregiver, the relationship of
15 the designated caregiver to the patient, and the name, telephone number, and the address of the
16 patient's designated caregiver in the patient's medical record.

17 (4) A patient may elect to change his or her designated caregiver at any time, and the
18 hospital must record this change in the patient's medical record within twenty-four (24) hours.

19 (b) A designation of a caregiver by a patient or patient's legal guardian under this section
20 does not obligate any individual to perform any after-care tasks for any patient.

21 (c) This section shall not be construed to require a patient or a patient's legal guardian to
22 designate any individual as a caregiver as defined by this chapter.

23 **23-17.27-4. Notice to Designated Caregiver.** – (a) Any hospital licensed pursuant to this
24 title shall notify the patient's designated caregiver of the patient's discharge or transfer to another
25 hospital or facility licensed by the state as soon as possible, which may be after the patient's
26 physician issues a discharge order, and not later than four (4) hours prior to the patient's actual
27 discharge or transfer to such facility.

28 **23-17.27-5. Instruction to Designated Caregiver.** – (a) As soon as possible and not later
29 than twenty than twenty-four (24) hours prior to a patient's discharge from a hospital, the hospital
30 shall consult with the designated caregiver along with the patient regarding the caregiver's
31 capabilities and limitations and issue a discharge plan that describes a patient's after-care needs at
32 his or her residence.

33 (1) At minimum, a discharge plan shall include:

34 (i) The name and contact information of the caregiver designated under this chapter;

1 (ii) A description of all after-care tasks necessary to maintain the patient's ability to
2 reside home, taking into account the capabilities and limitations of the caregiver;

3 (iii) Contact information for any health care, community resources, and long-term
4 services and support necessary to successfully carry out the patient's discharge plan.

5 (b) The hospital issuing the discharge plan must provide caregivers with instruction in all
6 after-care tasks described in the discharge plan.

7 (1) At minimum, such instruction shall include:

8 (i) A live demonstration of the tasks performed by the hospital employee or individual
9 with whom the hospital has a contractual relationship authorized to perform the after-care task,
10 provided in a culturally competent manner and in accordance with the hospital's requirements to
11 provide language access under state and federal law;

12 (ii) An opportunity for the caregiver and patient to ask questions about the after-care
13 tasks; and

14 (iii) Answers to the caregiver's and the patient's questions provided in a culturally
15 competent manner and in accordance with the hospital's requirements to provide language access
16 services under state and federal law.

17 (2) Any instruction required under this chapter shall be documented in the patient's
18 medical record, including, at minimum, the date, time, and contents of the instruction.

19 (c) The Rhode Island department of health is authorized to promulgate regulations to
20 implement the provisions of this chapter including, but not limited to, regulations to further define
21 the content and scope of any instruction provided to caregivers under this chapter.

22 **23-17.27-6. Non-Interference with Powers of Existing Health Care Directives. –**
23 Nothing in this chapter shall be construed to interfere with the rights of an agent operating under
24 a valid health care directive pursuant to Rhode Island general law.

25 **23-17.27-7. Limitations of Actions. –** Nothing in this chapter shall be construed to create
26 a private right of action against a hospital, a hospital employee, or an individual, with whom a
27 hospital has a contractual relationship, or to otherwise supersede or replace existing rights or
28 remedies under any other provision of law.

29 **23-17.27-8. Penalties. –** Whoever violates the provision of this chapter shall, upon
30 conviction, be punished by imprisonment for not more than one year or by a fine of not more than
31 five thousand dollars (\$5,000).

32 **23-17.27-9. Severability. –** If any provision of this chapter or the application of any
33 provision to any person or circumstances is held invalid or unconstitutional, the invalidity or
34 unconstitutionality shall not affect other provisions or applications of this chapter which can be

1 [given effect without the invalid or unconstitutional provision or application, and to this end the](#)
2 [provisions of this chapter are declared to be severable.](#)

3 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY - CAREGIVER ADVISE, RECORD AND ENABLE
ACT

- 1 This act would create the "Caregiver Advise, Record and Enable Act" to provide support
- 2 and assistance to individuals with post hospital care.
- 3 This act would take effect upon passage.

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