



# Senate

General Assembly

**File No. 163**

February Session, 2016

Substitute Senate Bill No. 166

*Senate, March 23, 2016*

The Committee on Aging reported through SEN. FLEXER of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT EXPANDING UTILIZATION OF PATIENT-DESIGNATED CAREGIVERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2016*) (a) For purposes of this  
2 section and section 2 of this act:

3 (1) "Caregiver" means any individual who a resident designates as a  
4 caregiver to provide post-discharge assistance to the resident in the  
5 resident's home in the community. The term "caregiver" includes, but  
6 is not limited to, a relative, spouse, partner, friend or neighbor who has  
7 a significant relationship with the resident. For the purposes of this  
8 section and section 2 of this act, the term "caregiver" shall not include  
9 any individual who receives compensation for providing post-  
10 discharge assistance to the resident.

11 (2) "Home" means the dwelling that the resident considers to be the  
12 resident's home in the community. The term "home" shall not include,  
13 and the provisions of this section and section 2 of this act, shall not

14 apply to, a discharge to any rehabilitation facility, hospital, assisted  
15 living facility, group home or any other setting that was not the  
16 resident's home in the community immediately preceding the  
17 resident's admission.

18 (3) "Resident" means a resident of a nursing home facility.

19 (4) "Nursing home facility" has the same meaning as provided in  
20 section 19a-521 of the general statutes.

21 (5) "Post-discharge assistance" means nonprofessional care provided  
22 by a designated caregiver to a resident following the resident's  
23 discharge from a nursing home facility in accordance with the written  
24 discharge plan of care signed by the resident or the resident's  
25 representative, including, but not limited to, assisting with basic  
26 activities of daily living, instrumental activities of daily living and  
27 carrying out support tasks, such as assisting with wound care,  
28 administration of medications and use of medical equipment.

29 (b) The Department of Public Health may adopt regulations, in  
30 accordance with the provisions of chapter 54 of the general statutes, to  
31 set minimum standards for nursing home facility discharge planning  
32 services. Any such standards shall include, but need not be limited to,  
33 requirements for (1) a written discharge plan prepared in consultation  
34 with the resident, or the resident's family or representative, and the  
35 resident's physician, and (2) a procedure for advance notice to the  
36 resident of the resident's discharge and provision of a copy of the  
37 discharge plan to the resident prior to discharge.

38 (c) Whenever a discharge plan from a nursing home facility  
39 indicates that a resident shall be discharged to the resident's home, the  
40 nursing home facility shall allow the resident to designate a caregiver  
41 at, or prior to, the time that a written copy of the discharge plan is  
42 provided to the resident. A resident is not required to designate any  
43 individual as a caregiver and any individual designated as a caregiver  
44 under this section is not obligated to perform any post-discharge  
45 assistance for the resident.

46 (d) If a resident designates a caregiver pursuant to subsection (c) of  
47 this section prior to receiving written discharge instructions, the  
48 nursing home facility shall:

49 (1) Record the resident's designation of caregiver, the relationship of  
50 the designated caregiver to the resident and the name, telephone  
51 number and address of the resident's designated caregiver in the  
52 discharge plan.

53 (2) Make reasonable attempts to notify the resident's designated  
54 caregiver of the resident's discharge to the resident's home as soon as  
55 practicable. In the event the nursing home facility is unable to contact  
56 the designated caregiver, the lack of contact shall not interfere with,  
57 delay, or otherwise affect the medical care provided to the resident or  
58 an appropriate discharge of the resident.

59 (3) Prior to discharge, provide caregivers with instructions in all  
60 post-discharge assistance tasks described in the discharge plan.  
61 Training and instructions for caregivers may be conducted in person or  
62 through video technology, as determined by the nursing home facility  
63 to effectively provide the necessary instruction. Any training or  
64 instructions provided to a caregiver shall be provided in nontechnical  
65 language, to the extent possible. At a minimum, this instruction shall  
66 include: (A) A live or recorded demonstration of the tasks performed  
67 by an individual designated by the nursing home facility who is  
68 authorized to perform the post-discharge assistance task and is able to  
69 perform the demonstration in a culturally competent manner and in  
70 accordance with the requirements of the nursing home facility to  
71 provide language access services under state and federal law; (B) an  
72 opportunity for the caregiver to ask questions about the post-discharge  
73 assistance tasks; and (C) answers to the caregiver's questions provided  
74 in a culturally competent manner and in accordance with the  
75 requirements of the nursing home facility to provide language access  
76 services under state and federal law.

77 (4) Document in the resident's medical record any training for initial  
78 implementation of the discharge plan provided to the resident, the

79 resident's representative or the designated caregiver. Any instruction  
80 required under subdivision (3) of this subsection shall be documented  
81 in the resident's medical record, including, at a minimum, the date,  
82 time and contents of the instruction.

83 Sec. 2. (NEW) (*Effective October 1, 2016*) (a) Nothing in this section or  
84 section 1 of this act shall be construed to create a private right of action  
85 against a nursing home facility, a nursing home facility employee, or  
86 any consultants or contractors with whom a nursing home facility has  
87 a contractual relationship.

88 (b) A nursing home facility, a nursing home facility employee or  
89 any consultants or contractors with whom a nursing home facility has  
90 a contractual relationship shall not be held liable, in any way, for the  
91 services rendered or not rendered by the caregiver to the resident at  
92 the resident's home.

93 (c) Nothing in this section or section 1 of this act shall be construed  
94 to obviate the obligation of an insurance company, health service  
95 corporation, hospital service corporation, medical service corporation,  
96 health care center, as defined in section 38a-175 of the general statutes,  
97 or any other entity issuing health benefits plans to provide coverage  
98 required under a health benefits plan.

99 (d) (1) An individual designated as caregiver pursuant to subsection  
100 (c) of section 1 of this act shall not be reimbursed by any government  
101 or commercial payer for post-discharge assistance that is provided  
102 pursuant to section 1 of this act.

103 (2) Nothing in this section or section 1 of this act shall be construed  
104 to impact, impede or otherwise disrupt or reduce the reimbursement  
105 obligations of an insurance company, health service corporation,  
106 hospital service corporation, medical service corporation, health care  
107 center, as defined in section 38a-175 of the general statutes, or any  
108 other entity issuing health benefits plans.

109 (3) Nothing in this section or section 1 of this act shall delay the

110 discharge of a resident or the transfer of a resident from a nursing  
111 home facility to another facility.

112 (4) Nothing in this section or section 1 of this act shall affect, nor  
113 take precedence over, any advance directive, conservatorship or other  
114 proxy health care rights as may be delegated by the patient or  
115 applicable by law.

116 Sec. 3. Section 19a-535 of the general statutes is amended by adding  
117 subsection (j) as follows (*Effective October 1, 2016*):

118 (NEW) (j) Whenever a facility is discharging a resident to the  
119 resident's home in the community, the discharge shall be in accordance  
120 with sections 1 and 2 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	New section
Sec. 2	<i>October 1, 2016</i>	New section
Sec. 3	<i>October 1, 2016</i>	19a-535

**AGE** Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill, which allows the Department of Public Health to adopt regulations to set minimum standards for nursing home facility discharge planning services, does not result in a fiscal impact to the state, or municipalities. It extends to nursing homes existing requirements for hospitals regarding the designation of patient caregivers at the time of a patient's discharge.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****sSB 166*****AN ACT EXPANDING UTILIZATION OF PATIENT-DESIGNATED CAREGIVERS.*****SUMMARY:**

This bill extends to nursing homes existing requirements for hospitals regarding the designation of patient caregivers at the time of a patient's discharge. Specifically, the bill requires a nursing home, when discharging a resident to his or her home to:

1. allow the resident to designate a caregiver at, or before, the time the resident receives a written copy of his or her discharge plan;
2. document the designated caregiver in the resident's discharge plan;
3. attempt to notify the designated caregiver of the resident's discharge home; and
4. instruct the caregiver on post-discharge tasks with which he or she will assist the resident at home.

The bill specifies that it does not create a private right of action against a nursing home or its employees, contractors, or consultants. It prohibits these entities and people from being held liable for services a caregiver provides or fails to provide to the patient in his or her home.

Additionally, the bill does not affect (1) health insurers' benefit plan or reimbursement obligations, (2) a resident's discharge or transfer from a nursing home to another facility, or (3) a patient's proxy health care rights.

The bill allows the Department of Public Health (DPH) to adopt

related regulations. It also makes a conforming change.

EFFECTIVE DATE: October 1, 2016

### **DESIGNATED CAREGIVERS**

Under the bill, a “caregiver” is a person the resident designates to provide post-discharge assistance in the resident's home (e.g., a relative, spouse, neighbor, or friend). A resident's home does not include a setting that was not his or her home in the community immediately before entering the nursing home (e.g., assisted living facility, rehabilitation facility, hospital, or group home).

The bill requires caregivers to provide post-discharge assistance in accordance with the resident’s written discharge plan signed by the resident or his or her representative. Such assistance includes help with basic and instrumental activities of daily living and support tasks (e.g., wound care, medication administration, and medical equipment use).

The bill prohibits a caregiver from receiving compensation for providing such assistance, including reimbursement from a public or private health insurer.

It does not require a resident to designate a caregiver nor does it obligate the caregiver to perform any post-discharge assistance for the patient.

### **DOCUMENTATION AND NOTIFICATION REQUIREMENTS**

If a resident designates a caregiver before receiving his or her written discharge instructions, the bill requires the nursing home to:

1. record in the resident's discharge plan the caregiver's name, address, telephone number, and relationship to the resident and
2. make reasonable attempts to notify the caregiver of the resident's discharge home as soon as practical.

The bill specifies that the nursing home’s inability to contact the

designated caregiver must not interfere with, delay, or otherwise affect the resident's medical care or appropriate discharge.

## **CAREGIVER INSTRUCTION**

### ***Requirements***

The bill requires nursing homes, before discharging a resident, to provide the designated caregiver with instructions in all post-discharge assistance tasks included in the resident's discharge plan.

To the extent possible, caregiver training or instruction must use nontechnical language and may be conducted in person or using video technology. The bill requires nursing homes to determine which format will effectively provide the training but does not specify where the training must take place. At a minimum, it must include:

1. a live or recorded demonstration of the post-discharge assistance tasks performed by a nursing home designee authorized to perform the tasks,
2. an opportunity for the caregiver to ask questions about the tasks, and
3. answers to the caregiver's questions.

The demonstration must be conducted in a culturally competent manner according to the nursing home's requirements for providing language access services under state and federal law.

### ***Documentation***

The bill requires nursing homes to document in the resident's medical record any training provided to the resident or his or her representative or the designated caregiver on how to initially implement the discharge plan.

The nursing home must also document in the resident's medical record any caregiver instruction provided on post-discharge assistance tasks, including the date, time, and content of such instruction.

**HEALTH INSURER OBLIGATIONS**

The bill specifies that its provisions must not be construed to:

1. eliminate the obligation of an insurance company; health, hospital, or medical service corporation; HMO; or any other entity issuing health benefit plans to provide required benefit coverage or
2. impact, impede, or otherwise disrupt or reduce these entities' reimbursement obligations.

**PATIENTS' PROXY HEALTH RIGHTS**

The bill specifies that its provisions do not affect or take precedence over an advance directive, conservatorship, or other proxy health care rights the resident delegates or applies by law.

**REGULATIONS**

The bill allows DPH to adopt regulations to set minimum standards for nursing home discharge planning services. These standards must require (1) a written discharge plan prepared in consultation with the resident, the resident's family or representative, and resident's physician and (2) a procedure for notifying the resident in advance of his or her discharge and providing the resident a copy of the discharge plan before discharge.

**COMMITTEE ACTION**

Aging Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/08/2016)