



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 611

131st General Assembly  
(As Introduced)

Rep. LaTourette

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## BILL SUMMARY

- Requires a hospital to offer a patient or the patient's guardian an opportunity to designate a lay caregiver for the patient (a person who provides after-care to the patient in the patient's residence following discharge).
- Specifies hospital duties once a lay caregiver has been designated, including a duty to review a discharge plan with the lay caregiver.
- Requires a live demonstration of each task to be performed under a patient's discharge plan if the attending physician determines that the demonstration would be appropriate.
- Specifies how a lay caregiver designation may be revoked.
- Grants a physician immunity from criminal prosecution, civil liability, or professional disciplinary action for an event or occurrence that allegedly arises out of the physician's determination that a patient's lay caregiver should or should not participate in the review of the patient's discharge plan.
- Specifies that it is the General Assembly's intent that the bill not be construed to create a right of action against a hospital or a hospital employee, agent, or contractor.
- Authorizes the Ohio Department of Health to adopt rules as necessary to implement the bill's provisions.

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## **CONTENT AND OPERATION**

### **Lay caregiver designation for hospital inpatients**

#### **Offer to patient or patient's guardian**

The bill requires a hospital to offer a patient who is at least 18 years of age, or the patient's guardian, an opportunity to designate a lay caregiver for the patient. The offer must be made after admission. However, if the patient is unconscious or otherwise incapacitated at the time of admission, the offer must be made after the patient regains consciousness or capacity, but before discharge.<sup>1</sup>

The bill defines a "lay caregiver" as an adult designated in accordance with the bill to provide after-care to a patient.<sup>2</sup> "After-care" means assistance provided by a lay caregiver to a patient in the patient's residence after the patient's discharge from a hospital and includes only the caregiving needs of the patient at the time of discharge.<sup>3</sup> A patient's residence may be either the dwelling that a patient or the patient's guardian considers to be the patient's home or the dwelling of a relative or other individual who has agreed to temporarily house the patient following discharge and who has communicated this fact to hospital staff. It excludes hospitals and other institutional settings.<sup>4</sup>

#### **Hospital duties if lay caregiver designation is made**

If a patient or guardian designates a lay caregiver, a hospital must do both of the following:<sup>5</sup>

--To the extent the information is available, record in the patient's medical record the lay caregiver's name, address, telephone number, electronic mail address, and relationship to the patient; and

--Request from the patient or guardian written consent to disclose the patient's medical information to the lay caregiver in accordance with hospital policy and state and federal law.

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<sup>1</sup> R.C. 3727.71.

<sup>2</sup> R.C. 3727.70(E).

<sup>3</sup> R.C. 3727.70(B).

<sup>4</sup> R.C. 3727.70(G).

<sup>5</sup> R.C. 3727.72(A).

If a patient or guardian declines to designate a lay caregiver, the hospital must note that decision in the patient's medical record. The bill provides that, under those circumstances, the hospital has no other obligation regarding a lay caregiver designation.<sup>6</sup>

### **Notification regarding discharge**

A hospital that intends to discharge a patient, or transfer a patient to another hospital or facility, must notify the patient's lay caregiver of that intent as soon as practicable. This requirement does not apply if the patient or guardian has not given consent to disclose the patient's medical information to the lay caregiver.<sup>7</sup>

### **Revocation**

A patient or guardian may revoke a lay caregiver designation at any time before discharge by communicating that intent to hospital staff. After a revocation, however, the patient or guardian may designate a new lay caregiver in accordance with the bill's provisions.<sup>8</sup>

### **Significance of the existence or absence of a lay caregiver designation**

The bill specifies that (1) its provisions do not require a patient or guardian to designate a lay caregiver, (2) a lay caregiver designation does not obligate any individual to perform after-care, and (3) the presence or absence of a lay caregiver designation does not affect the provision of health care to the patient.<sup>9</sup>

### **Discharge plan**

#### **Content; timing**

The bill requires a hospital that intends to discharge a patient to create a discharge plan and review that plan with the patient or the patient's guardian. The review must be done as soon as practicable and be conducted in accordance with the bill (see "**Review**," below).<sup>10</sup>

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<sup>6</sup> R.C. 3727.72(B).

<sup>7</sup> R.C. 3727.74. This provision refers to the written consent in R.C. 3727.72(B), but the correct reference is R.C. 3727.72(A)(2). An amendment may be drafted to correct this error.

<sup>8</sup> R.C. 3727.73.

<sup>9</sup> R.C. 3727.77.

<sup>10</sup> R.C. 3727.75(A).

The bill authorizes a discharge plan to include (1) a description of the tasks that are necessary to facilitate the patient's transition from the hospital to the patient's residence and (2) contact information for the health care providers or providers of community or long-term care services that the hospital and the patient or guardian believe are necessary for successful implementation of the discharge plan.<sup>11</sup> If a lay caregiver has been designated and the patient's attending physician has determined that the lay caregiver is to have a role in the discharge plan, the bill requires the plan to include:<sup>12</sup>

--The lay caregiver's name, address, telephone number, electronic mail address, and relationship to the patient, if available;

--A description of all after-care tasks to be performed by the lay caregiver, taking into account the lay caregiver's capability to perform such tasks; and

--Any other information the hospital believes is necessary for successful implementation of the discharge plan.

## **Review**

A hospital that has created a discharge plan must review the plan with the patient or the patient's guardian. If a lay caregiver has been designated for the patient, the patient's attending physician has determined that the lay caregiver's participation in the review would be appropriate, and the lay caregiver is available within a reasonable amount of time, the hospital must arrange for the lay caregiver to also participate in the review.<sup>13</sup> In addition, the review must be conducted in a manner that is culturally sensitive to each individual who participates in the review. In accordance with state and federal law and if appropriate, the hospital must arrange for an interpreter to be present during the instruction.<sup>14</sup>

A review of a discharge plan must include the following components:<sup>15</sup>

--If the patient's attending physician determines that it is appropriate, a live demonstration of each task described in the discharge plan performed by a hospital employee or an individual under contract with the hospital to provide the instruction;

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<sup>11</sup> R.C. 3727.75(B)(1).

<sup>12</sup> R.C. 3727.75(B)(2).

<sup>13</sup> R.C. 3727.75(A).

<sup>14</sup> R.C. 3727.76(A).

<sup>15</sup> R.C. 3727.76(B).

--An opportunity for each participant to ask questions and receive responses; and

--Any other component the hospital believes is necessary to ensure that each participant receives adequate instruction on the tasks described in the discharge plan.

The hospital must document information concerning the instruction provided in the patient's medical record. The information must include the date and time the instruction was provided and a description of the instruction content.<sup>16</sup>

### **Attending physician immunity**

The bill specifies that an attending physician is immune from criminal prosecution, civil liability, and professional disciplinary action for an event or occurrence that allegedly arises out of the physician's determination that a patient's lay caregiver should or should not participate in the review of the patient's discharge plan.<sup>17</sup>

### **Rulemaking**

The bill authorizes the Ohio Department of Health to adopt rules as necessary to implement the bill's provisions. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).<sup>18</sup>

### **Statutory intent**

The bill specifies that the intent of the General Assembly is that the bill's provisions not be construed to do any of the following:<sup>19</sup>

--Interfere with the authority of a patient's attorney-in-fact under a durable attorney for health care or a patient's proxy under a declaration for mental health treatment;

--Create a right of action against a hospital or an employee, agent, or contractor of the hospital;

--Create a liability for a hospital or an employee, agent, or contractor of the hospital;

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<sup>16</sup> R.C. 3727.76(C).

<sup>17</sup> R.C. 3727.75(C).

<sup>18</sup> R.C. 3727.79.

<sup>19</sup> R.C. 3727.78.

--Limit, impair, or supersede any right or remedy that a person has under any other statute, rule, regulation, or Ohio common law; or

--Alter the obligations of an insurer under a health insurance policy, contract, or plan.

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## HISTORY

ACTION	DATE
Introduced	11-03-16

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