

SENATE BILL NO. 376 (Substitute of Senate Bill No. 121 by Senator Colomb)

BY SENATORS COLOMB, ALARIO, BARROW, BISHOP, BOUDREAUX, BROWN, CARTER, CHABERT, CORTEZ, ERDEY, GATTI, JOHNS, LAFLEUR, LAMBERT, LONG, LUNEAU, MILLS, MIZELL, MORRELL, MORRISH, PETERSON, GARY SMITH AND TARVER AND REPRESENTATIVES AMEDEE, BAGLEY, BAGNERIS, BERTHELOT, BILLIOT, BOUIE, GARY CARTER, ROBBY CARTER, COX, GLOVER, HAZEL, HILL, HORTON, HUNTER, JAMES, JEFFERSON, JENKINS, ROBERT JOHNSON, JONES, LYONS, MAGEE, DUSTIN MILLER, MORENO, PEARSON, PIERRE, PRICE, PYLANT, REYNOLDS, RICHARD, SCHRODER, SMITH, WHITE, WILLMOTT AND ZERINGUE

1 AN ACT

2 To enact Part IX of Subchapter D of Chapter 5-D of Title 40 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 40:1226.1 through 1226.7, relative to
4 hospital discharge planning; to provide for designation of a family caregiver; to
5 provide for notice and instruction; to provide for exceptions and limitation of
6 liability; to provide for an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Part IX of Subchapter D of Chapter 5-D of Title 40 of the Louisiana
9 Revised Statutes of 1950, comprised of R.S. 40:1226.1 through 1226.7, is hereby enacted
10 to read as follows:

11 **PART IX. LOUISIANA FAMILY CAREGIVER ACT**

12 **§1226.1. Definitions**

13 **As used in this Part, the following terms shall have the meanings**
14 **ascribed to them in this Section unless otherwise provided for or unless the**
15 **context otherwise indicates:**

16 **(1) "Hospital" means a facility licensed under the provisions of Part II**
17 **of Chapter 11 of this Title.**

18 **(2) "Aftercare" means any assistance provided by a caregiver to a**
19 **patient pursuant to this Part after the patient's discharge from a hospital. Such**
20 **assistance may include tasks that are limited to the patient's condition at the**
21 **time of discharge and that do not require a licensed professional.**

1 (3) "Caregiver" means an individual who meets all of the following
2 conditions:

3 (a) Is eighteen years of age or older.

4 (b) Provides aftercare to an individual.

5 (c) Is identified by the patient or, if applicable, the legal guardian of the
6 patient as a person who is involved with the health care of the patient pursuant
7 to 45 C.F.R. §164.510(b), as it existed on January 1, 2015.

8 (4) "Discharge" means a patient's release from hospital care to the
9 patient's residence following an inpatient admission.

10 (5) "Patient" means an individual who has been admitted to a hospital
11 for inpatient care and who is eighteen years of age or older.

12 (6) "Residence" means a dwelling that the patient considers to be his
13 home. A residence shall not include any rehabilitation facility, hospital, nursing
14 home, assisted living facility, or group home.

15 §1226.2. Designation of a caregiver

16 A.(1) A hospital shall provide each patient or, if applicable, the patient's
17 legal guardian with at least one opportunity to designate a caregiver following
18 the patient's inpatient admission into a hospital and prior to the patient's
19 discharge.

20 (2) In the event that the patient is unconscious or otherwise incapacitated
21 upon his entry into a hospital, the hospital shall provide such patient or his legal
22 guardian with an opportunity to designate a caregiver following the patient's
23 recovery of his consciousness or capacity.

24 (3) In the event that the patient or the patient's legal guardian designates
25 an individual as a caregiver, the hospital shall record the patient's designation
26 of caregiver and the name, telephone number, and address of the patient's
27 designated caregiver in the patient's medical record.

28 (4) In the event the original designated caregiver becomes unavailable,
29 unwilling, or unable to care for the patient prior to discharge, a patient may
30 elect to change his designated caregiver, and the hospital shall record this

1 change in the patient's medical record.

2 B. The hospital shall be deemed to have complied in full with the
3 provisions of this Part in the event that the patient or, if applicable, the legal
4 guardian of the patient declines to designate a caregiver under this Part.

5 C. A designation of a caregiver by a patient or a patient's legal guardian
6 under this Part does not obligate any individual to perform any aftercare tasks
7 for any patient.

8 D. This Section shall not be construed to require a patient or a patient's
9 legal guardian to designate any individual as a caregiver.

10 §1226.3. Notice to caregiver

11 If a patient has designated a caregiver, a hospital shall make a good faith
12 attempt to notify the patient's designated caregiver of the patient's discharge to
13 the patient's residence as soon as possible prior to the patient's discharge. If the
14 hospital is unable to contact the designated caregiver, the lack of contact may
15 not interfere with, delay or otherwise affect the medical care provided to the
16 patient, or an appropriate discharge of the patient.

17 §1226.4. Education and instruction provided to caregiver

18 A. As soon as practicable prior to the patient's discharge, the hospital
19 shall make a reasonable effort to consult with the designated caregiver along
20 with the patient, taking into account the capabilities and limitations of the
21 caregiver, to accomplish the aftercare tasks that may be included in a discharge
22 care plan that describes the patient's aftercare needs at his residence.

23 B. As part of the consultation under Subsection A of this Section, the
24 hospital shall educate and instruct the caregiver concerning the aftercare needs
25 of the patient in a manner that is consistent with the discharge plan and is based
26 on the learning needs of the caregiver. In addition, the hospital shall also
27 provide an opportunity for the caregiver and patient to ask questions and
28 receive explanations about the aftercare tasks.

29 C. In the event the hospital is unable to contact the designated caregiver,
30 the lack of contact shall not interfere with, delay, or otherwise affect an

1 appropriate discharge of the patient.

2 **§1226.5. Noninterference with medical decision making**

3 **The provisions of this Part shall not allow or otherwise be interpreted or**
4 **construed to allow a caregiver to make any medical decisions or provide**
5 **informed consent on behalf of the patient unless the caregiver is otherwise**
6 **authorized to do so pursuant to law. Nothing in this Part shall be construed to**
7 **interfere with, supersede, or any other way affect the provisions of Parts I and**
8 **II of Subchapter A of this Chapter or with the rights of a mandatary of the**
9 **patient acting pursuant to a mandate.**

10 **§1226.6. Limitation of liability**

11 **A. Nothing in this Part shall be construed to create a cause of action**
12 **against a hospital, hospital employee, duly authorized agent of the hospital, or**
13 **any consultant or contractor with whom the hospital has a contractual**
14 **relationship.**

15 **B. A hospital, hospital employee, or any consultant or contractor with**
16 **whom a hospital has a contractual relationship shall not be liable, vicariously**
17 **or otherwise, to any patient for any injury, death, loss, civil penalty, or damage**
18 **as a result of any act or omission of a caregiver in rendering assistance or care**
19 **to a patient or as a result of any act or failure to act or failure to provide care**
20 **rendered by a caregiver to a patient.**

21 **C. A hospital, hospital employee, or any consultant or contractor with**
22 **whom a hospital has a contractual relationship shall not be liable to any**
23 **caregiver designated pursuant to the provisions of this Part, except for gross**
24 **negligence or willful and wanton misconduct directly related to the education**
25 **and instruction provided to the caregiver concerning the aftercare needs of the**
26 **patient, for any injury, death, loss, civil penalty, or damage as a result of any act**
27 **or omission of a caregiver in rendering assistance or care to a patient or as a**
28 **result of any act or failure to act or failure to provide care rendered by a**
29 **caregiver to a patient.**

30 **§1226.7. Compensation of caregiver**

1 **A caregiver designated under the provisions of this Part shall not accept**
2 **compensation in exchange for aftercare provided to the patient. A licensed**
3 **medical professional may be designated as a caregiver as long as the individual**
4 **does not accept compensation for aftercare provided to the patient.**

5 Section 2. This Act shall be known and may be cited as the "Louisiana Family
6 Caregiver Act".

7 Section 3. This Act shall become effective on August 1, 2016; if vetoed by the
8 governor and subsequently approved by the legislature, this Act shall become effective on
9 August 1, 2016, or on the day following such approval by the legislature, whichever is later.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____