

2016 Regular Session

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 HORTON, JAMES, JEFFERSON, JENKINS, MORENO, REYNOLDS AND SMITH

HEALTH CARE. Creates the Louisiana Family Caregiver Act. (8/1/16)

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 immunity; to  
6 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.**

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

5           (3) "Caregiver" means an individual who meets the following conditions:

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

7           (b) Provides aftercare to an individual.

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

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

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

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

18          §1226.2. Designation of a caregiver

19          A. A hospital shall provide each patient or, if applicable, the patient's  
20          legal guardian with at least one opportunity to designate a caregiver following  
21          the patient's inpatient admission into a hospital and prior to the patient's  
22          discharge.

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

27          (2) In the event that the patient or the patient's legal guardian designates  
28          an individual as a caregiver, the hospital shall record the patient's designation  
29          of caregiver and the name, telephone number, and address of the patient's

1 designated caregiver in the patient's medical record.

2 (3) In the event the original designated caregiver becomes unavailable,  
3 unwilling, or unable to care for the patient prior to discharge, a patient may  
4 elect to change his designated caregiver, and the hospital must record this  
5 change in the patient's medical record.

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

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

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

14 §1226.3. Notice to caregiver

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

21 §1226.4. Education and instruction provided to caregiver

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

27 B. As part of the consultation under Subsection A of this Section, the  
28 hospital shall educate and instruct the caregiver concerning the aftercare needs  
29 of the patient in a manner that is consistent with current accepted practices and

1 is based on the learning needs of the caregiver. In addition, the hospital shall  
2 also provide an opportunity for the caregiver and patient to ask questions and  
3 receive explanations about the aftercare tasks.

4 C. In the event the hospital is unable to contact the designated caregiver,  
5 the lack of contact shall not interfere with, delay, or otherwise affect an  
6 appropriate discharge of the patient.

7 §1226.5. Noninterference with medical decision making

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

15 §1226.6. Limitation of liability

16 A. Nothing in this Part shall be construed to create a cause of action  
17 against a hospital, hospital employee, a duly authorized agent of the hospital or  
18 any consultants or contractors with whom the hospital has a contractual  
19 relationship.

20 B. A hospital, a hospital employee, or any consultants or contractors with  
21 whom a hospital has a contractual relationship shall not be liable to any person  
22 for any injury, death, loss, civil penalty, or damage as a result of any act or  
23 omission of a caregiver in rendering assistance or care to a patient or as a result  
24 of any act or failure to act or failure to provide care rendered by a caregiver to  
25 a patient.

26 §1226.7. Compensation of caregiver

27 A caregiver designated under the provisions of this Part shall not accept  
28 compensation in exchange for aftercare provided to the patient. A licensed  
29 medical professional may be designated as a caregiver as long as the individual

1           **does not accept compensation for aftercare provided to the patient.**

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

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

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The original instrument was prepared by Christine Arbo Peck. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

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DIGEST

SB 376 Reengrossed

2016 Regular Session

Colomb

Proposed law establishes the Louisiana Family Caregiver Act. Further provides requirements for hospitals to give a patient the opportunity to identify a caregiver upon discharge planning. Provides for notice to the designated caregiver and provides for hospital instructions to the caregiver and patient record documentation.

Proposed law provides for noninterference with existing laws on healthcare directives or any other legally authorized rights regarding healthcare decisions. Further provides limitation of liability for hospital, hospital employee, duly authorized agent of the hospital or any consultants or contractors of the hospital.

Proposed law prohibits the caregiver from receiving compensation.

Effective August 1, 2016.

(Adds R.S. 40:1226.1-1226.7)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Technical corrections.