

1 HOUSE BILL 139

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO HEALTH CARE; PROVIDING FOR THE DESIGNATION AND  
12 TRAINING OF LAY CAREGIVERS TO PROVIDE CARE TO PATIENTS AFTER  
13 DISCHARGE.

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. [NEW MATERIAL] LAY CAREGIVER--AFTERCARE--  
17 DESIGNATION.--

18 A. A hospital shall provide each patient or the  
19 patient's legal guardian with an opportunity to designate one  
20 lay caregiver following the patient's admission into a hospital  
21 and before the patient's discharge to the patient's residence.

22 B. As soon as practicable, a hospital shall attempt  
23 to consult with a designated lay caregiver to prepare the lay  
24 caregiver to provide aftercare. The hospital shall provide the  
25 lay caregiver with a discharge plan for the patient that

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1 describes the patient's aftercare needs. This discharge plan:

2 (1) may include, but is not limited to:

3 (a) culturally competent training on how  
4 to provide care and tasks;

5 (b) medication management guidelines;

6 (c) aftercare guidelines; and

7 (d) an identification of tasks that the  
8 discharging health care provider specifies;

9 (2) shall reflect the active engagement of a  
10 patient or lay caregiver in the discharge planning process and  
11 incorporate a patient's goals and preferences as much as  
12 possible; and

13 (3) shall educate a lay caregiver in a manner  
14 that is consistent with current accepted practices and is based  
15 on an assessment of the lay caregiver's learning needs.

16 C. A hospital shall allow a patient to change the  
17 patient's designation of a lay caregiver in the event that the  
18 originally designated lay caregiver becomes unavailable,  
19 unwilling or unable to care for the patient.

20 D. Designation of an individual as a lay caregiver  
21 pursuant to this section does not obligate that individual to  
22 accept the role of lay caregiver for the patient.

23 E. The provisions of this section shall not be  
24 construed to require a patient to designate a lay caregiver.

25 F. In the event that a patient or a patient's legal

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1 guardian declines to designate a lay caregiver pursuant to this  
2 section, a hospital shall promptly document this refusal to  
3 designate a lay caregiver in the patient's medical record.

4 G. A hospital shall not allow the process of  
5 appointing or refusal or failure to appoint a lay caregiver for  
6 a patient to interfere with, delay or otherwise affect the  
7 services that the hospital provides to a patient.

8 H. In the event that a hospital is unable to  
9 contact a designated lay caregiver, this lack of contact shall  
10 not interfere with or otherwise affect an appropriate discharge  
11 of the patient.

12 I. The provisions of this section shall not be  
13 construed to:

14 (1) create a private right of action against a  
15 hospital, hospital employee, contractor having a contractual  
16 relationship with a hospital or duly authorized agent of a  
17 hospital; or

18 (2) remove the obligation of a third-party  
19 payer to cover any health care item or service that the third-  
20 party payer is obligated to provide to a patient pursuant to  
21 the terms of a valid agreement, insurance policy, plan or  
22 certificate of coverage or health maintenance organization  
23 contract.

24 J. A hospital, hospital employee, contractor having  
25 a contractual relationship with a hospital or duly authorized

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1 agent of a hospital shall not be held liable in any way for an  
2 act or omission of a lay caregiver.

3 K. No state or federal funds shall be used for  
4 payment to a lay caregiver for aftercare.

5 L. As used in this section:

6 (1) "aftercare" means assistance provided in a  
7 private home by a designated lay caregiver to a patient after  
8 the patient's discharge from a hospital. "Aftercare" includes  
9 exclusively those tasks related to a patient's condition at the  
10 time of discharge that do not require the lay caregiver  
11 performing the tasks to be a licensed, certified or otherwise  
12 authorized health care provider;

13 (2) "discharge" means a patient's exit or  
14 release from a hospital to that patient's residence following  
15 an inpatient stay;

16 (3) "hospital" means a health facility  
17 licensed as a general acute hospital by the department of  
18 health;

19 (4) "lay caregiver" means an individual who is  
20 eighteen years of age or older, who has been designated as a  
21 lay caregiver pursuant to this section and who provides  
22 aftercare to a patient in the patient's residence; and

23 (5) "residence" means a dwelling considered by  
24 a patient to be the patient's home, not including a hospital,  
25 nursing home or group home or assisted living facility.