

Introduced by

Senators Poolman, Dever, Hogan

Representatives Beadle, Dobervich, Meier

1 A BILL for an Act to create and enact chapter 23-49 of the North Dakota Century Code, relating  
2 to hospital discharge policies.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 23-49 of the North Dakota Century Code is created and enacted as  
5 follows:

6 **23-49-01. Definitions.**

7 As used in this chapter:

- 8 1. "Aftercare assistance" means assistance provided by a lay caregiver to a patient  
9 following discharge of the patient which is a task directly related to the patient's  
10 condition at the time of discharge, does not require a licensed professional, and is  
11 determined to be appropriate by the patient's discharging physician or other licensed  
12 health care professional.
- 13 2. "Discharge" means the exit or release of a patient from inpatient care in a hospital to  
14 the residence of the patient.
- 15 3. "Lay informal caregiver" means an individual at least eighteen years old of age who a  
16 patient, or the patient's legal representative, designates at admission as a lay  
17 caregiver, and who following the discharge of the patient is willing and able to perform  
18 ~~aftercare assistance~~ posthospital care for the patient at the patient's residence.
- 19 4. ~~"Patient" means an individual who is or was receiving inpatient medical care in a~~  
20 hospital"Posthospital care" means care directly related to a patient's condition at the  
21 time of discharge and which is provided by an informal caregiver to the patient in the  
22 patient's residence.
- 23 5. "Residence" means the dwelling a patient considers to be the patient's home. The  
24 term does not include a hospital or rehabilitation facility.

1        **23-49-02. Aftercare assistance policies – Designation of lay caregiver****Patient and**  
2 **caregiver discharge planning, involvement, and documentation.**

3        1. A hospital shall adopt and maintain evidence-based a written discharge planning  
4 process, including policies and procedures, which applies to all patients.

5 ~~\_\_\_\_\_ a. At a minimum, the hospital's discharge policies and procedures must provide for~~  
6 ~~an assessment of the patient's ability for self care after discharge and, as part of~~  
7 ~~the assessment, must provide a patient, or if applicable, the patient's legal~~  
8 ~~representative, an opportunity to designate one lay caregiver before discharge of~~  
9 ~~the patient.~~

10 ~~\_\_\_\_\_ b. A hospital's evidence-based discharge policies and procedures may be based on~~  
11 ~~standards such as:~~

12 ~~\_\_\_\_\_ (1) The standards for accreditation adopted by the joint commission on the~~  
13 ~~accreditation of health care organizations, or any other nationally~~  
14 ~~recognized hospital accreditation organization; and~~

15 ~~\_\_\_\_\_ (2) The conditions of participation for hospitals adopted by the centers for~~  
16 ~~Medicare and Medicaid services.~~

17        2. A hospital may not give a legal representative who is an agent under a durable power  
18 of attorney for health care the opportunity to designate a lay caregiver in lieu of the  
19 patient's designation of a lay caregiver, unless, in the judgment of the attending  
20 physician, the patient is unable to make that health care decision. To the extent  
21 consistent with the powers and duties granted a guardian, a hospital shall give a legal  
22 representative who is a guardian the opportunity to designate a lay caregiver in lieu of  
23 the patient's designation of a lay caregiver.

24 ~~\_\_\_\_\_ 3. If a patient, or the patient's legal representative, declines to designate a lay caregiver,~~  
25 ~~the hospital shall document the declination in the patient's medical record and the~~  
26 ~~hospital is deemed to be in compliance with this section.~~

27 ~~\_\_\_\_\_ 4. If a patient or the patient's legal representative designates a lay caregiver, the hospital~~  
28 ~~shall:~~

29 ~~\_\_\_\_\_ a. Record in the patient's medical record the designation of the lay caregiver in~~  
30 ~~accordance with the hospital's policies and procedures. The information recorded~~

1 ~~may include information such as the relationship of the lay caregiver to the~~  
2 ~~patient and the name, telephone number, and address of the lay caregiver.~~

3 ~~b. Request written consent from the patient, or the patient's legal representative, to~~  
4 ~~release medical information to the lay caregiver in accordance with the hospital's~~  
5 ~~established procedures for releasing a patient's personal health information and~~  
6 ~~in compliance with all applicable state and federal laws. If a patient, or the~~  
7 ~~patient's legal representative, declines to consent to the release of medical~~  
8 ~~information to the lay caregiver, the hospital is neither required to provide notice~~  
9 ~~to the lay caregiver under section 23-49-03 nor to consult with or provide~~  
10 ~~information contained in the patient's discharge plan to the lay caregiver under~~  
11 ~~section 23-49-04.~~

12 ~~5. If a lay caregiver becomes incapacitated, the patient, or the patient's legal~~  
13 ~~representative, may change the designation of lay caregiver.~~ At an early stage of  
14 hospitalization, a hospital shall identify patients who are likely to suffer adverse health  
15 consequences if discharged without adequate discharge planning. A hospital shall  
16 involve a patient throughout the discharge planning process. As appropriate, a hospital  
17 shall involve the patient's informal caregiver or legal representative in the discharge  
18 planning process. A hospital shall:

19 a. Document the patient's discharge plan in the patient's medical record.

20 b. Communicate the plan to the patient, the patient's informal caregiver, or the  
21 patient's representative.

22 c. Document the arrangements made for initial implementation of the patient's  
23 discharge plan in the patient's medical record, including any training or materials  
24 provided to the patient, the patient's informal caregiver, or the patient's  
25 representative.

26 **23-49-03. Notification of transfer or discharge** **Posthospital care training.**

27 ~~If a lay caregiver is designated under this chapter, in accordance with the hospital's~~  
28 ~~established policies and procedures, as soon as practicable, the hospital shall attempt to notify~~  
29 ~~the lay caregiver of the discharge of the patient or of the transfer of the patient to another~~  
30 ~~hospital or facility.~~

1 ~~23-49-04. Aftercare assistance instructions.~~

2 ~~1. If a lay caregiver is designated, as soon as practicable before discharge of a patient,~~  
3 ~~the hospital shall attempt to:~~

4 ~~a. Consult with the patient's lay caregiver to prepare the lay caregiver for the~~  
5 ~~aftercare assistance the lay caregiver may provide;~~

6 ~~b. Issue a discharge plan that describes the aftercare assistance needs of the~~  
7 ~~patient;~~

8 ~~c. Offer to provide the lay caregiver with instructions for the aftercare assistance~~  
9 ~~tasks described in the discharge plan; and~~

10 ~~d. Provide an opportunity for the lay caregiver to ask questions regarding the~~  
11 ~~aftercare assistance tasks.~~

12 ~~2. The inability of a hospital to consult with a patient's lay caregiver may neither interfere~~  
13 ~~with, delay, or otherwise affect the medical care provided to the patient nor affect the~~  
14 ~~patient's discharge.~~

15 ~~23-49-05. Limitations.~~

16 ~~1. This chapter neither creates a private right of action against a hospital, a hospital~~  
17 ~~employee, or any consultant or contractor with whom a hospital has a contractual~~  
18 ~~relationship, nor limits or otherwise supersedes or replaces existing rights or remedies~~  
19 ~~under any other provision of law.~~

20 ~~2. This chapter may not be construed to delay the appropriate discharge or transfer of a~~  
21 ~~patient, including the hospital's inability to contact the designated caregiver at the time~~  
22 ~~of discharge or transfer. The lack of contact may not interfere with, delay, or otherwise~~  
23 ~~affect the discharge or transfer of the patient or the medical care provided to the~~  
24 ~~patient.~~

25 ~~3. This chapter may not be construed to:~~

26 ~~a. Interfere with or supersede a health care provider's instructions regarding a~~  
27 ~~Medicare-certified home health agency or any other postacute care provider.~~

28 ~~b. Grant decisionmaking authority to a lay caregiver to determine the type of~~  
29 ~~provider or the provider of the patient's posthospital care as specified in the~~  
30 ~~patient's discharge plan.~~

- 1 ~~c. Interfere with the authority or responsibilities of an agent operating under a valid~~  
2  ~~durable power of attorney for health care pursuant to or of the powers and duties~~  
3  ~~granted to a guardian.~~
- 4 ~~d. Require a patient or the patient's legal representative to designate a lay~~  
5  ~~caregiver.~~
- 6 ~~e. Obligate an individual who has been designated a lay caregiver to perform any~~  
7  ~~aftercare assistance for the patient.~~
- 8 1. A hospital shall educate or train a patient, the patient's informal caregiver, or the  
9  patient's representative to prepare the patient for posthospital care.
- 10 2. The education or training provided by hospital staff to a patient, the patient's informal  
11  caregiver, or the patient's representative must be tailored to the patient's identified  
12  needs, including medications, treatment modalities, physical and occupational  
13  therapies, psychosocial needs, appointments, or other posthospital care.
- 14 3. Education and training provided by a hospital may include repeated review of the  
15  training and materials with a patient, the patient's informal caregiver, or the patient's  
16  representative.