

Amendment No. 111

Senate Amendment to Senate Bill No. 177	(BDR 40-512)
<b>Proposed by:</b> Senate Committee on Health and Human Services	
<b>Amends:</b> Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>
Receded	<input type="checkbox"/>	Not <input type="checkbox"/>	Receded	<input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

EWR/RBL



Date: 4/6/2015

S.B. No. 177—Allows a person to designate a caregiver when admitted to a hospital or in an advance directive. (BDR 40-512)



SENATE BILL NO. 177—COMMITTEE ON  
HEALTH AND HUMAN SERVICES

FEBRUARY 19, 2015

Referred to Committee on Health and Human Services

SUMMARY—Allows a person to designate a caregiver when admitted to a hospital, ~~for in an advance directive.~~ (BDR 40-512)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public health; authorizing certain persons to designate a caregiver for a ~~person~~ patient in certain circumstances; requiring a hospital to provide an opportunity for a patient who is admitted as an inpatient or certain other persons to designate a caregiver for the patient; requiring a hospital to attempt to provide certain notification, information and training to a caregiver before taking certain actions concerning a patient; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

~~Existing law establishes various forms of declarations and advance directives that a person may use to set forth his or her wishes concerning end of life care. (NRS 162A.700-162A.860, 449.535-449.697, 450B.400-450B.475) Sections 7 and 15-19 of this bill authorize, authorizes a person, patient, a legal representative of a person, patient who is incompetent or a parent or guardian of a person, patient who is a minor to designate one or more caregivers, a caregiver for the person: (1) in an advance directive; or (2) patient upon admission of the person, patient to a hospital as an inpatient. Section 7 authorizes the designation of another caregiver if the person originally designated is unable or unwilling to perform his or her duties. Section 7 also provides that a person is under no obligation to a patient solely because the person has been designated as a caregiver for another person, the patient.~~

~~Section 8 of this bill requires a hospital to provide the opportunity to designate one or more caregivers, a caregiver for the patient to: (1) a patient who is admitted to the hospital as an inpatient; and has not previously designated a caregiver in an advance directive; (2) a legal representative of such a patient who is incompetent; or (3) a parent or guardian of such a patient who is a minor. Section 8 also requires a hospital to provide a patient who was unconscious or otherwise incompetent upon admission but regains competence while an inpatient at the hospital with an opportunity to designate for change his or her, a caregiver. Section 9 of this bill requires a hospital to record the designation of a caregiver or declination to do so in the medical record of the patient.~~

Federal regulations provide that certain health information concerning a patient can only be released by a health care facility in certain circumstances. (45 C.F.R. § 164.502(a)) Federal regulations authorize the release of health information relevant to the care of a patient to a person designated by the patient or the patient's representative. (45 C.F.R. § 164.510(b)(1)(i))

If a patient has a designated caregiver, **section 9** requires a hospital to request the written consent of the patient, the representative of the patient or the parent or guardian of the patient, as applicable, to release medical information to the caregiver. **if such consent is required by federal or state law.**

If a patient provides such consent, **sections 10 and 11** of this bill require a hospital to attempt to notify a caregiver of the planned discharge or transfer of the patient and attempt to provide the caregiver with certain information and training concerning aftercare for the patient. **Section 12** of this bill requires a hospital to proceed with the planned discharge or transfer of the patient if the hospital is not successful in providing this notification, information and training to the caregiver. **Section 13** of this bill provides that a hospital is not liable for aftercare provided improperly or not provided by the caregiver.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 449 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this act.

**Sec. 2.** *As used in sections 2 to 14, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.*

**Sec. 3.** ~~“Advance directive” has the meaning ascribed to it in NRS 449.905.~~ **(Deleted by amendment.)**

**Sec. 4.** *“Aftercare” means care or assistance that is provided to a patient after the patient is discharged following inpatient treatment at a hospital.*

**Sec. 5.** *“Caregiver” means a person designated as such pursuant to section 7 of this act, including, without limitation, a relative, spouse, partner, foster parent, friend or neighbor.*

**Sec. 6.** *“Representative of the patient” means a legal guardian of the patient, a person designated by the patient to make decisions governing the withholding or withdrawal of life-sustaining treatment pursuant to NRS 449.600 or a person given power of attorney to make decisions concerning health care for the patient pursuant to NRS 162A.700 to 162A.860, inclusive.*

**Sec. 7.** 1. ~~One or more caregivers.~~ **A caregiver** may be designated for a ~~person~~ **patient** by:

(a) ~~The person~~ **patient** if he or she is 18 years of age or older and of sound mind;

(b) ~~The representative of the person~~ **patient** if the ~~person~~ **patient** is 18 years of age or older and incompetent; or

(c) ~~The parent or legal guardian of the person~~ **patient** if the ~~person~~ **patient** is less than 18 years of age.

2. A ~~person~~ **patient** described in subsection 1 may have **a caregiver** designated for him or her ~~one or more caregivers.~~

~~(a) Upon the person's admission to a hospital as an inpatient in the manner described in section 8 of this act, or~~

~~(b) In an advance directive.~~

3. ~~If a caregiver may be changed or~~ **is unable or unwilling to perform the duties of a caregiver, the designation of that person as a caregiver may be removed and a new caregiver may be designated by:**

(a) ~~The person~~ patient if he or she is 18 years of age or older and of sound mind;

(b) The representative of the ~~person~~ patient if the ~~person~~ patient is 18 years of age or older and incompetent; or

(c) The parent or legal guardian of the ~~person~~ patient if the ~~person~~ patient is less than 18 years of age.

4. A caregiver is under no obligation to a ~~person~~ patient solely because the ~~person~~ patient, the representative of the ~~person~~ patient or the parent or guardian of the ~~person~~ patient has designated the caregiver pursuant to this section.

~~5. As used in this section, "representative of the person" means a legal guardian of the person, a person designated by the person to make decisions governing the withholding or withdrawal of life sustaining treatment pursuant to NRS 449.600 or a person given power of attorney to make decisions concerning health care for the person pursuant to NRS 162.4700 to 162.4960, inclusive.~~

Sec. 8. 1. After admitting a patient ~~for whom a caregiver has not been designated in an advance directive~~ as an inpatient and before discharging the patient, a hospital shall provide the opportunity to designate ~~one or more caregivers~~ a caregiver for the patient to:

(a) The patient if he or she is 18 years of age or older and of sound mind;

(b) The representative of the patient if the patient is 18 years of age or older and incompetent; or

(c) The parent or legal guardian of the patient if the patient is less than 18 years of age.

2. If a patient ~~for whom a caregiver has not been designated in an advance directive~~ is unconscious or otherwise incompetent upon admission to a hospital as an inpatient and later regains competence while he or she is an inpatient at the hospital, the hospital shall, after the patient regains competence, provide the patient with the opportunity to designate ~~one or more caregivers or, if a caregiver has been designated by the representative of the patient, to remove or change his or her caregiver.~~

Sec. 9. 1. ~~If a caregiver has been designated in an advance directive for a patient who is admitted to a hospital as an inpatient or the~~ patient, the representative of ~~the~~ a patient or the parent or guardian of ~~such~~ a patient designates ~~for changes~~ a caregiver pursuant to section 8 of this act ~~or~~ or changes a caregiver pursuant to section 7 of this act, the hospital shall:

(a) Record the designation or change of the caregiver, the relationship of the caregiver to the patient and the name, telephone number and address of the caregiver in the medical record of the patient; and

(b) ~~Request~~ If required by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any regulations adopted pursuant thereto or any other federal or state law, request the written consent of the patient, the representative of the patient or the parent or guardian of the patient, as applicable, to release medical information to the caregiver in ~~compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the regulations adopted pursuant thereto.~~ a manner that complies with the applicable laws.

2. If a patient, the representative of a patient or the parent or guardian of a patient declines to designate a caregiver after being given the opportunity to do so pursuant to section 8 of this act, the hospital shall record the declination in the medical record of the patient.

Sec. 10. If a patient, the representative of a patient or the parent or guardian of a patient has provided consent for the hospital to release medical

information to a caregiver pursuant to subsection 1 of section 9 of this act, the hospital shall, before the patient is discharged or transferred to another facility, attempt to notify the caregiver of the planned discharge or transfer.

Sec. 11. If a patient, the representative of a patient or the parent or guardian of a patient has provided consent for a hospital to release medical information to a caregiver pursuant to subsection 1 of section 9 of this act, the hospital shall, before the patient is discharged other than to a facility licensed pursuant to this chapter:

1. Attempt to provide the caregiver with a discharge plan. A discharge plan must include, without limitation:

(a) The name and contact information of the caregiver;

(b) A description of all necessary aftercare, including, without limitation, any requirements to maintain the ability of the patient to reside at home; and

(c) Contact information for:

(1) Any providers of health care, community resources or other providers of services necessary to carry out the discharge plan; and

(2) An employee of the hospital who will be available before the patient is discharged to answer questions concerning the discharge plan. ~~It and~~

~~(d) Any additional information required by the Board.~~

2. Attempt to consult with the caregiver, in person or using video technology, ~~for the option of the caregiver,~~ concerning the aftercare set forth in the discharge plan. Such consultation must include, without limitation:

(a) A demonstration of the aftercare set forth in the discharge plan, performed by ~~a person designated by~~ an appropriate member of the hospital ~~It~~

~~(1) For whom the aftercare is within the scope of the person's license or certificate; and~~

~~(2) Who can perform the demonstration;~~ staff in a culturally and linguistically appropriate manner; and

(b) An opportunity for the caregiver to ask questions concerning the aftercare. ~~It and~~

~~(c) Any additional information required by the Board.~~

Sec. 12. 1. A hospital shall document in the medical record of the patient:

(a) The attempt or completion of any actions required pursuant to section 10 or 11 of this act;

(b) Any instructions given pursuant to section 11 of this act; and

(c) The date and time at which such instructions were given.

2. If a hospital is unable to reach a caregiver after attempting to provide any information pursuant to section 10 or 11 of this act, the hospital must proceed with the discharge or transfer of the patient as scheduled.

Sec. 13. A hospital or an employee or contractor of a hospital that acts in compliance with sections 2 to 14, inclusive, of this act is not liable for any aftercare that is provided improperly or not provided by a caregiver.

Sec. 14. ~~[The Board may adopt regulations to carry out the provisions of sections 2 to 14, inclusive, of this act, including, without limitation, regulations prescribing additional requirements for a discharge plan or a consultation pursuant to section 11 of this act.] (Deleted by amendment.)~~

Sec. 15. [NRS 449.600 is hereby amended to read as follows:

~~449.600 1. A person of sound mind and 18 or more years of age may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declarant may designate another natural person of sound mind and 18 or more years of age to make decisions governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant, or another at the declarant's direction, and attested by two witnesses.~~

~~2. A person who executes a declaration governing the withholding or withdrawal of life sustaining treatment may designate a caregiver pursuant to section 7 of this act in the same document.~~

~~3. A physician or other provider of health care who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant and any person designated to act for the declarant. (Deleted by amendment.)~~

**Sec. 16.** ~~[NRS 449.694 is hereby amended to read as follows:~~

~~449.694 The Board shall prescribe a standardized Physician Order for Life Sustaining Treatment form, commonly known as a POLST form, which:~~

- ~~1. Is uniquely identifiable and has a uniform color;~~
- ~~2. Provides a means by which to indicate whether the patient has made an anatomical gift pursuant to NRS 451.500 to 451.508, inclusive;~~
- ~~3. Gives direction to a provider of health care or health care facility regarding the use of emergency care and life sustaining treatment;~~
- ~~4. Is intended to be honored by any provider of health care who treats the patient in any health care setting, including, without limitation, the patient's residence, a health care facility or the scene of a medical emergency; [and]~~
- ~~5. Provides a means by which the patient may designate a caregiver pursuant to section 7 of this act; and~~
- ~~6. Includes such other features and information as the Board may deem advisable. (Deleted by amendment.)~~

**Sec. 17.** ~~[NRS 450B.520 is hereby amended to read as follows:~~

~~450B.520 Except as otherwise provided in NRS 450B.525:~~

- ~~1. A qualified patient may apply to the health authority for a do not resuscitate identification by submitting an application on a form provided by the health authority. To obtain a do not resuscitate identification, the patient must comply with the requirements prescribed by the board and sign a form which states that the patient has informed each member of his or her family within the first degree of consanguinity or affinity, whose whereabouts are known to the patient, or if no such members are living, the patient's legal guardian, if any, or if he or she has no such members living and has no legal guardian, his or her caretaker, if any, of the patient's decision to apply for an identification.~~
- ~~2. An application must include, without limitation:~~
  - ~~(a) Certification by the patient's attending physician that the patient suffers from a terminal condition;~~
  - ~~(b) Certification by the patient's attending physician that the patient is capable of making an informed decision or, when the patient was capable of making an informed decision, that the patient:~~
    - ~~(1) Executed:~~
      - ~~(I) A written directive that life resuscitating treatment be withheld under certain circumstances;~~
      - ~~(II) A durable power of attorney for health care pursuant to NRS 162A.700 to 162A.860, inclusive; or~~
      - ~~(III) A Physician Order for Life Sustaining Treatment form pursuant to NRS 449.691 to 449.697, inclusive, if the form provides that the patient is not to receive life resuscitating treatment; or~~
    - ~~(2) Was issued a do not resuscitate order pursuant to NRS 450B.510;~~
  - ~~(c) A statement that the patient does not wish that life resuscitating treatment be undertaken in the event of a cardiac or respiratory arrest;~~
  - ~~(d) The name, signature and telephone number of the patient's attending physician; and~~

~~(c) The name and signature of the patient or the agent who is authorized to make health care decisions on the patient's behalf pursuant to a durable power of attorney for health care decisions.~~

~~3. A form provided by the health authority pursuant to subsection 1 must provide a means by which a patient may designate a caregiver pursuant to section 7 of this act. (Deleted by amendment.)~~

**Sec. 18.** ~~[NRS 450B.525 is hereby amended to read as follows:~~

~~450B.525 1. A parent or legal guardian of a minor may apply to the health authority for a do not resuscitate identification on behalf of the minor if the minor has been:~~

~~(a) Determined by his or her attending physician to be in a terminal condition; and~~

~~(b) Issued a do not resuscitate order pursuant to NRS 450B.510.~~

~~2. To obtain such a do not resuscitate identification, the parent or legal guardian must:~~

~~(a) Submit an application on a form provided by the health authority; and~~

~~(b) Comply with the requirements prescribed by the board.~~

~~3. An application submitted pursuant to subsection 2 must include, without limitation:~~

~~(a) Certification by the minor's attending physician that the minor:~~

~~(1) Suffers from a terminal condition; and~~

~~(2) Has executed a Physician Order for Life Sustaining Treatment form pursuant to NRS 449.691 to 449.697, inclusive, if the form provides that the minor is not to receive life resuscitating treatment or has been issued a do not resuscitate order pursuant to NRS 450B.510;~~

~~(b) A statement that the parent or legal guardian of the minor does not wish that life resuscitating treatment be undertaken in the event of a cardiac or respiratory arrest;~~

~~(c) The name of the minor;~~

~~(d) The name, signature and telephone number of the minor's attending physician; and~~

~~(e) The name, signature and telephone number of the minor's parent or legal guardian.~~

~~4. The parent or legal guardian of the minor may revoke the authorization to withhold life resuscitating treatment by removing or destroying or requesting the removal or destruction of the identification or otherwise indicating to a person that he or she wishes to have the identification removed or destroyed.~~

~~5. If, in the opinion of the attending physician, the minor is of sufficient maturity to understand the nature and effect of withholding life resuscitating treatment:~~

~~(a) The do not resuscitate identification obtained pursuant to this section is not effective without the assent of the minor.~~

~~(b) The minor may revoke the authorization to withhold life resuscitating treatment by removing or destroying or requesting the removal or destruction of the identification or otherwise indicating to a person that the minor wishes to have the identification removed or destroyed.~~

~~6. A form provided by the health authority pursuant to subsection 2 must provide a means by which a parent or legal guardian of a minor may designate a caregiver for the minor pursuant to section 7 of this act. (Deleted by amendment.)~~

**Sec. 19.** ~~[NRS 162A.790 is hereby amended to read as follows:~~

~~162A.790 1. Any adult person may execute a power of attorney enabling the agent named in the power of attorney to make decisions concerning health care~~

~~for the principal if that principal becomes incapable of giving informed consent concerning such decisions.~~

~~2. A power of attorney for health care must be signed by the principal. The principal's signature on the power of attorney for health care must be:~~

~~(a) Acknowledged before a notary public; or~~

~~(b) Witnessed by two adult witnesses who know the principal personally.~~

~~3. Neither of the witnesses to a principal's signature may be:~~

~~(a) A provider of health care;~~

~~(b) An employee of a provider of health care;~~

~~(c) An operator of a health care facility;~~

~~(d) An employee of a health care facility; or~~

~~(e) The agent.~~

~~4. At least one of the witnesses to a principal's signature must be a person who is:~~

~~(a) Not related to the principal by blood, marriage or adoption; and~~

~~(b) To the best of the witnesses' knowledge, not entitled to any part of the estate of the principal upon the death of the principal.~~

~~5. If the principal resides in a hospital, residential facility for groups, facility for skilled nursing or home for individual residential care, at the time of the execution of the power of attorney, a certification of competency of the principal from a physician, psychologist or psychiatrist must be attached to the power of attorney.~~

~~6. A power of attorney executed in a jurisdiction outside of this State is valid in this State if, when the power of attorney was executed, the execution complied with the laws of that jurisdiction or the requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b.~~

~~7. A person who executes a power of attorney may designate a caregiver pursuant to section 7 of this act in the same document.~~

~~8. As used in this section:~~

~~(a) "Facility for skilled nursing" has the meaning ascribed to it in NRS 449.0029.~~

~~(b) "Home for individual residential care" has the meaning ascribed to it in NRS 449.0105.~~

~~(c) "Hospital" has the meaning ascribed to it in NRS 449.012.~~

~~(d) "Residential facility for groups" has the meaning ascribed to it in NRS 449.017.] (Deleted by amendment.)~~

**Sec. 20.** ~~[This act becomes effective:~~

~~1. Upon passage and approval for the purposes of adopting regulations and performing any preliminary administrative tasks that are necessary to carry out the provisions of this act; and~~

~~2. On January 1, 2016, for all other purposes.] (Deleted by amendment.)~~