

HOUSE No. 2081

The Commonwealth of Massachusetts

PRESENTED BY:

Chris Walsh

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing the caregiver advise, record and enable (CARE) act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>

<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>

HOUSE No. 2081

By Mr. Walsh of Framingham, a petition (accompanied by bill, House, No. 2081) of Chris Walsh and others relative to the designation of caregivers by certain patients. Public Health.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act establishing the caregiver advise, record and enable (CARE) act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Definitions

2 "Hospital" is defined for the purposes of this Act as a facility licensed under
3 Massachusetts General Law Chapter 111.

4 "After-Care" is defined for the purposes of this Act as any assistance provided by a
5 caregiver to a patient under this Act after the patient's discharge from a hospital. Such assistance
6 may include, but is not limited to, assisting with basic activities of daily living (ADLs),
7 instrumental activities of daily living (IADLs), or carrying out medical/nursing tasks, such as
8 managing wound care, assisting in administering medications, and operating medical equipment.

9 "Caregiver" is defined for the purposes of this Act as any individual duly designated as a
10 caregiver by a patient under this Act who provides after-care assistance to a patient living in his
11 or her residence. A designated caregiver may include, but is not limited to, a relative, partner,
12 friend, or neighbor who has a significant relationship with the patient.

13 “Discharge” is defined for the purposes of this Act as a patient’s exit or release from a
14 hospital to the patient’s residence following an inpatient admission.

15 “Entry” is defined for the purposes of this Act as a patient’s admission into a hospital for
16 the purposes of medical care.

17 “Residence” is defined for the purposes of this Act as a dwelling that the patient
18 considers to be his or her home. A “residence” for the purposes of this Act shall not include any
19 rehabilitation facility, hospital, nursing home, assisted living facility, or group home licensed by
20 the Massachusetts Department of Public Health.

21 SECTION 2. Caregiver—Opportunity to Designate.

22 A hospital shall provide each patient or, if applicable, the patient’s legal guardian with at
23 least one opportunity to designate at least one caregiver under this Act no later than twenty-four
24 (24) hours following the patient’s entry into a hospital and prior to the patient’s discharge or
25 transfer to another facility.

26 In the event that the patient is unconscious or otherwise incapacitated upon his or her
27 entry into a hospital, the hospital shall provide such patient or his/her legal guardian with an
28 opportunity to designate a caregiver within twenty-four (24) hours following the patient’s
29 recovery of his or her consciousness or capacity.

30 In the event that the patient or the patient’s legal guardian declines to designate a
31 caregiver under the Act, the hospital shall promptly document this in the patient’s medical
32 record.

33 In the event that the patient or the patient's legal guardian designates an individual as a
34 caregiver under this Act:

35 The hospital shall promptly request the written consent of the patient or the patient's legal
36 guardian to release medical information to the patient's designated caregiver following the
37 hospital's established procedures for releasing personal health information and in compliance
38 with all federal and state laws.

39 If the patient or the patient's legal guardian declines to consent to release medical
40 information to the patient's designated caregiver, the hospital is not required to provide notice to
41 the caregiver under Section 3 of this Act or provide information contained in the patient's
42 discharge plan under Section 4 of this Act.

43 The hospital shall record the patient's designation of caregiver, the relationship of the
44 designated caregiver to the patient, and the name, telephone number, and address of the patient's
45 designated caregiver in the patient's medical record.

46 A patient may elect to change his or her designated caregiver at any time, and the hospital
47 must record this change in the patient's medical record within twenty-four (24) hours.

48 A designation of a caregiver by a patient or a patient's legal guardian under this Section
49 does not obligate any individual to perform any after-care tasks for any patient.

50 This section shall not be construed to require a patient or a patient's legal guardian to
51 designate any individual as a caregiver as defined by this Act.

52 SECTION 3. Notice to Designated Caregiver.

53 A hospital shall notify the patient's designated caregiver of the patient's discharge or
54 transfer to another hospital or facility licensed by the Massachusetts Department of Public Health
55 as soon as possible, which may be after the patient's physician issues a discharge order, and not
56 later than four (4) hours prior to the patient's actual discharge or transfer to such facility.

57 SECTION 4. Instruction to Designated Caregiver.

58 As soon as possible and not later than twenty-four (24) hours prior to a patient's
59 discharge from a hospital, the hospital shall consult with the designated caregiver along with the
60 patient regarding the caregiver's capabilities and limitations and issue a discharge plan that
61 describes a patient's after-care needs at his or her residence.

62 At minimum, a discharge plan shall include:

63 The name and contact information of the caregiver designated under this Act;

64 A description of all after-care tasks necessary to maintain the patient's ability to reside at
65 home, taking into account the capabilities and limitations of the caregiver; and

66 Contact information for any health care, community resources, and long-term services
67 and supports necessary to successfully carry out the patient's discharge plan.

68 The hospital issuing the discharge plan must provide caregivers with instruction in all
69 after-care tasks described in the discharge plan.

70 At minimum, such instruction shall include:

71 A live demonstration of the tasks performed by a hospital employee or individual with
72 whom the hospital has a contractual relationship authorized to perform the after-care task,

73 provided in a culturally competent manner and in accordance with the hospital's requirements to
74 provide language access services under state and federal law;

75 An opportunity for the caregiver and patient to ask questions about the after-care tasks;
76 and

77 Answers to the caregiver's and patient's questions provided in a culturally competent
78 manner and in accordance with the hospital's requirements to provide language access services
79 under state and federal law.

80 Any instruction required under this Act shall be documented in the patient's medical
81 record, including, at minimum, the date, time, and contents of the instruction.

82 The Massachusetts Department of Public Health is authorized to promulgate regulations
83 to implement the provisions of this Act, including, but not limited to, regulations to further
84 define the content and scope of any instruction provided to caregivers under this Act.

85 Section 5. Non-Interference with Powers of Existing Health Care Directives.

86 Nothing in this Act shall be construed to interfere with the rights of an agent operating
87 under a valid health care directive under Massachusetts General Laws Chapter 201D.

88 SECTION 6. Limitations

89 Nothing in this act shall be construed to create a private right of action against a hospital,
90 a hospital employee, or an individual, with whom a hospital has a contractual relationship, or to
91 otherwise supersede or replace exiting rights or remedies under any other provision of law.

92 SECTION 7. Effective Date.

93 This Act shall be effective immediately upon ratification.