

The Michigan Association for Justice (MAJ) is strongly opposed to the immunity provision in Senate Bill 352. The bill creates rules about how much and the sort of instruction that should be given by hospitals to patients and their friends or family members who will be providing post-hospital care. The goal being that better informed home care will result in fewer readmissions due to failure follow post-operative instructions.

Although the main goals of the bill are admirable, the immunity provision is so broad that it would prevent a hospital or its employees from being responsible even if the post-operative instructions were actually wrong.

The actual language in the bill states -

**“A hospital, a hospital employee, or a consultant or contractor with whom a hospital has a contractual relationship shall not be held liable, in any way, for the services rendered or not rendered by the caregiver to the patient at the patient's residence.”**

Although the MAJ is not opposed to barring the hospital from facing liability for the negligent actions of the home caregiver, this provision states the that hospital is not liable for any harm that is caused by the caregiver – EVEN if the caregiver was actually following the instructions given by the hospital.

This could mean that a patient could be discharged with an inaccurate dosage for a medication - as in one case where instructions required a dose of 10 mg of a medication, when the correct dose was 1 mg - Or without proper follow-up care as when a patient was sent home without oxygen, when it was still necessary for her survival. Both of these instance are cases where the caregiver simply followed the instructions given by the hospital and it resulted in the death of a family member. In both of these cases, under this bill, the hospital would be barred from facing any consequences for its inaccurate instructions.

Fortunately, this is something that is easy to fix, while still protecting the hospitals' reasonable desire to avoid being held to account for mistakes made by the assigned caregiver. MAJ has suggested an amendment to simply change the immunity provision to read like this –

**“A hospital, hospital employee, or a consultant or contractor with whom a hospital has a contractual relationship shall not be held liable for injuries resulting from services rendered or not rendered by the caregiver to the patient at the patient's residence, unless the services rendered or not rendered by the caregiver to the patient at the patient's residence complied with instructions provided to the caregiver directly before the patient was discharged, or as part of the discharge plan.”**

By adding language to clarify that the hospital is still liable if following the hospital's instructions caused the harm, this amendment would prevent any unintended consequences.