

MAINE STATE LEGISLATURE

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L.D. 230

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 182, L.D. 230, Bill, "An Act Adopting the Uniform Health-care Decisions Act"

Amend the bill in Part A in section 1 in Part 8 by inserting at the end of the PREFATORY NOTE the following:

'MAINE PREFATORY NOTE

Except as expressly provided, the Maine Legislature adopts the Uniform Health-care Decisions Act.

The intent and philosophy of the Act is to recognize the authority of the patient and the patient's designated agent, surrogates or guardians to make health-care decisions based on the patient's directions and values or, if unknown, on the patient's best interest without the necessity of seeking court approval. The Act rests on the principle of individual autonomy and nothing in these amendments undercuts or diminishes the right of individuals to make their own health-care decisions.

1. Capacity. Implicit in the Act is the understanding that all persons making health-care decisions must have the capacity to make those decisions. To make the understanding explicit, the words "with capacity" or "by an individual with capacity" have been added throughout the Act. In addition, the definition of "capacity" has been revised to conform with current Maine law.

2. Life-sustaining treatment. The Act appears to apply to all forms of health care, including life-sustaining treatment. For clarity, the amendment explicitly states that life-sustaining treatment is included within the definition of health-care decisions.

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3. Witnesses. This amendment adds the requirement of two witnesses for health care directives. Current Maine law requires two witnesses in solemn documents such as wills where a person directs the disposition of the person's property prior to death. These amendments impose the same type of solemnity on health-care directives. Because of this change, section 5-802, subsection (h) is also changed to recognize health-care directives that are valid under the laws of another state.

4. Surrogates authorized to consent. The Maine enactment of the Uniform Rights of the Terminally Ill Act provided a priority listing of potential surrogate decision makers when a patient in a terminal condition or in a persistent vegetative state had not executed a living will and had not designated an attorney-in-fact to make health-care decisions and for whom a guardian had not been appointed. The decisions were limited to the withholding or withdrawal of life-sustaining treatment when the patient was no longer able to make and communicate health-care decisions. As amended, this Act retains the existing interpretation of law regarding the types of decisions that can be made in particular circumstances by surrogates. The category of persons authorized to consent for the patient when the patient is unable to consent have been expanded to include other adult relatives who are familiar with the patient's personal values. This revision brings the Act closer to existing Maine law while preserving the Act's intent of restricting surrogates to those with a reasonable likelihood of knowing the patient's wishes or values.

5. Good faith and disputes among family members. Section 5-805 is amended to add a requirement of good faith that currently exists in Maine law. Similar to the requirements of good faith, these amendments make explicit that a consent by a surrogate is not valid if it conflicts with the expressed intention of the patient. A procedure that addresses the situation when members of a class of surrogates disagree regarding a health-care decision is also added. When the disagreement is within the family, the physician is permitted to comply with the decision of the class having priority or a majority of the members of a class authorized to consent to decide. The physician, however, is not required under these circumstances to comply with the surrogates' decision and may seek assistance from neutral 3rd parties or from a court.

6. Obligations of a health-care provider. Section 5-807 is expanded to permit a health-care provider to decline to comply with a health-care decision if the decision does not comply with the Act and to seek the assistance of a court under those circumstances. Similarly, the immunity section is amended to be consistent with these changes.

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2 7. Persons permitted to seek judicial relief. Section
3 5-814 is amended to expand the categories of persons who may seek
4 judicial relief and to allow all those involved in a patient's
5 care, family members, adult friends and the Department of Human
6 Services an opportunity to challenge a health-care decision by
7 bringing a court action.'

8
9 Further amend the bill in Part A in section 1 in that part
10 designated "~~§5-801.~~" by striking out all of subsection (a) (page
11 3, lines 10 and 11 in L.D.) and inserting in its place the
12 following:

13 '(a) "Advance health-care directive" means an individual
14 instruction from, or a power of attorney for health care by, an
15 individual with capacity.'

16
17 Further amend the bill in Part A in section 1 in that part
18 designated "~~§5-801.~~" in subsection (b) in the first line (page 3,
19 line 13 in L.D.) by inserting after the following: "individual"
20 the following: 'with capacity'

21
22 Further amend the bill in Part A in section 1 in that part
23 designated "~~§5-801.~~" by striking out all of subsection (c) (page
24 3, lines 17 to 19 in L.D.) and inserting in its place the
25 following:

26
27 '(c) "Capacity" means the ability to have a basic
28 understanding of the diagnosed condition and to understand the
29 significant benefits, risks and alternatives to the proposed
30 health care and the consequences of foregoing the proposed
31 treatment, the ability to make and communicate a health care
32 decision and the ability to understand the consequences of
33 designating an agent or surrogate to make health-care decisions.'

34
35 Further amend the bill in Part A in section 1 in that part
36 designated "~~§5-801.~~" in subsection (f) in the 2nd line (page 3,
37 line 30 in L.D.) by striking out the following: "individual or"
38 and inserting in its place the following: 'individual with
39 capacity or by'

40
41 Further amend the bill in Part A in section 1 in that part
42 designated "~~§5-801.~~" in subsection (f) in paragraph (3) in the
43 last line (page 3, line 41 in L.D.) by inserting after the
44 following: "care," the following: ', including life-sustaining
45 treatment'

46
47 Further amend the bill in Part A in section 1 in that part
48 designated "~~§5-801.~~" in subsection (i) in the first and 2nd lines
49 (page 4, lines 4 and 5 in L.D.) by striking out the following:
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2 "an individual's direction" and inserting in its place the following: 'a direction from an individual with capacity'

4 Further amend the bill in Part A in section 1 in that part designated "§5-801." in subsection (l) in the 2nd line (page 4, line 16 in L.D.) by inserting after the following: "agent" the following: 'with capacity'

8 Further amend the bill in Part A in section 1 in that part designated "§5-801." in subsection (m) in the 2nd line (page 4, line 20 in L.D.) by striking out the following: "individual or" and inserting in its place the following: 'individual with capacity or by'

14 Further amend the bill in Part A in section 1 in that part designated "§5-801." by striking out all of subsection (q) (page 4, lines 42 to 44 in L.D.) and inserting in its place the following:

20 '(q) "Surrogate" means an individual with capacity, other than a patient's agent or guardian, authorized under this Part to make a decision to withhold or withdraw life-sustaining treatment for a patient who does not have capacity and who is either in a terminal condition or in a persistent vegetative state.

26 '(r) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a person without capacity and in either a terminal condition or a persistent vegetative state, will serve only to prolong the process of dying. "Life-sustaining treatment" may include artificially administered nutrition and hydration, which is the provision of nutrients and liquids through the use of tubes, intravenous procedures or similar medical interventions.

34 '(s) "Persistent vegetative state" means a state that occurs after coma in which the patient totally lacks higher cortical and cognitive function, but maintains vegetative brain stem processes, with no realistic possibility of recovery, as diagnosed in accordance with acceptable medical standards.

40 '(t) "Terminal condition" means an incurable and irreversible condition that, without the administration of life-sustaining treatment, in the opinion of the primary physician, will result in death within a relatively short time.'

46 Further amend the bill in Part A in section 1 in that part designated "§5-801." by inserting after the Comment the following:

48 'MAINE COMMENT

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2 The Maine Health-care Consent Act clarifies that a person
3 who makes health-care decisions must have the capacity to make
4 those decisions. The definition of "capacity" [subsection (c)]
5 is expanded to include the ability to have a basic understanding
6 of the diagnosed condition and the consequences of foregoing the
7 proposed treatment.

8 The definition of "health care decision" [subsection (g)] is
9 amended to specifically include life-sustaining treatment as a
10 form of health care that can be the subject of directions to
11 provide, withhold or withdraw.

12 The definition of "primary physician" [subsection (m)] is
13 broader than the definition of "attending physician" used in
14 prior Maine living wills law, but it covers the responsibilities
15 of the attending physician.

16 The definition of "surrogate" [subsection (q)] is amended to
17 retain the authority provided to surrogates under the Maine
18 enactment of the Uniform Rights of the Terminally Ill Act. The
19 only decisions a surrogate may make under the prior law and this
20 Act are limited to withholding or withdrawing life-sustaining
21 treatment for a patient who is in a terminal condition or in a
22 persistent vegetative state and who can not make and communicate
23 health care decisions. See §5-805. This change to the Uniform
24 Health-care Decisions Act is intended to retain the surrogate
25 decision-making authority contained in the Maine enactment of the
26 Uniform Rights of the Terminally Ill Act, and is not intended to
27 affect current practice concerning informed consent to health
28 care for patients who have not provided an individual
29 instruction, appointed an agent or had a guardian appointed for
30 them. This Act does not address situations in which a patient
31 who does not have capacity has not provided an individual
32 instruction, appointed an agent or had a guardian appointed for
33 the patient and is not in a terminal condition or a persistent
34 vegetative state.

35 Three additional definitions are added to the Uniform Act.
36 These definitions were part of the Maine enactment of the Uniform
37 Rights of the Terminally Ill Act. They are "life-sustaining
38 treatment" [subsection (r)], "persistent vegetative state"
39 [subsection (s)] and "terminal condition" [subsection (t)].

40 Further amend the bill in Part A in section 1 in that part
41 designated "~~§5-802.~~" in subsection (a) in the first line (page 6,
42 line 33 in L.D.) by inserting after the following: "minor" the
43 following: 'with capacity'

44 Further amend the bill in Part A in section 1 in that part
45 designated "~~§5-802.~~" in subsection (a) by inserting at the end
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2 the following new sentence: 'An oral instruction is valid only
3 if made to a health-care provider or to an individual who may
4 serve as a surrogate under section 5-805, subsection (b).'

6 Further amend the bill in Part A in section 1 in that part
7 designated "§5-802." in subsection (b) in the first line (page 6,
8 line 38 in L.D.) by inserting after the following: "minor" the
9 following: 'with capacity'

10 Further amend the bill in Part A in section 1 in that part
11 designated "§5-802." in subsection (b) in the 5th line (page 6,
12 line 42 in L.D.) by inserting after the following: "principal"
13 the following: 'and 2 witnesses'

14 Further amend the bill in Part A in section 1 in that part
15 designated "§5-802." in subsection (d) in the last 2 lines (page
16 7, lines 8 and 9 in L.D.) by striking out the following: "or the
17 authority of an agent must be made by the primary physician' and
18 inserting in its place the following: ',' the authority of an
19 agent or the validity of an advanced health-care directive must
20 be made by the primary physician or by a court of competent
21 jurisdiction'

22 Further amend the bill in Part A in section 1 in that part
23 designated "§5-802." in subsection (h) in the last line (page 7,
24 line 27 in L.D.) by inserting after the following:
25 "communicated" the following: ',' or if valid under the laws of
26 the state in which it was executed'

27 Further amend the bill in Part A in section 1 in that part
28 designated "§5-802." by inserting after the Comment the following:

30 'MAINE COMMENT

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35 The Maine amendment provides that if an individual orally
36 gives an instruction concerning a health-care decision, the
37 person who receives that instruction must be either a health-care
38 provider or a person who can serve as a surrogate under section
39 5-805. This should not restrict the current relationship between
40 the health-care provider and the patient, and how the patient
41 makes and communicates health-care decisions directly to the
42 health-care provider. It is intended to avoid the potential
43 problem of unrelated and uninterested persons claiming to have
44 received oral instructions regarding an individual's health care.

45 The Maine amendment requires a power of attorney to be
46 signed by two witnesses [subsection (b)].

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49 The Maine amendment to the Uniform Health-care Decisions Act
50 requires the primary physician or a court of competent

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jurisdiction to determine whether the patient's capacity, lack of capacity or condition affects an individual instruction, the authority of an agent or the validity of an advance health care directive.'

Further amend the bill in Part A in section 1 in that part designated "~~§5-803.~~" in subsection (a) in first line (page 10, line 4 in L.D.) by inserting after the following: "individual" the following: 'with capacity'

Further amend the bill in Part A in section 1 in that part designated "~~§5-803.~~" in subsection (b) in the first line (page 10, line 8 in L.D.) by inserting after the following: "individual" the following: 'with capacity'

Further amend the bill in Part A in section 1 in that part designated "~~§5-803.~~" in subsection (c) in the 2nd line (page 10, line 13 in L.D.) by inserting after the following: "revocation" the following: 'by an individual with capacity'

Further amend the bill in Part A in section 1 in that part designated "~~§5-804.~~" in the first paragraph in the next to last line (page 11, line 25 in L.D.) by inserting after the following: "individual" the following: 'with capacity'

Further amend the bill in Part A in section 1 in that part designated "~~§5-804.~~" by striking out all of the 4th indented paragraph and subsections (a) to (d) (page 12, lines 1 to 22 in L.D.) and inserting in their place the following:

'Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

(a) Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition;

(b) Select or discharge health-care providers and institutions;

(c) Approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and

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2 (d) Direct the provision, withholding or withdrawal of
3 artificial nutrition and hydration and all other forms of health
4 care, including life-sustaining treatment.'

6 Further amend the bill in Part A in section 1 in that part
7 designated "~~§5-804.~~" in the 8th indented paragraph by striking
8 out all of the 2nd sentence (page 12, lines 40 and 41 in L.D.)
9 and inserting in its place the following: 'You must have 2 other
10 individuals sign as witnesses.'

12 Further amend the bill in Part A in section 1 in that part
13 designated "~~§5-804.~~" by inserting after the Comment the following:

14 'MAINE COMMENT

16 The Maine sample form includes specific mention of life-
17 sustaining treatment as a form of health care that can be the
18 subject of directions to provide, withhold or withdraw.

20 The Maine sample form also includes the requirement of the
21 signatures of two witnesses.'

22 Further amend the bill in Part A in section 1 by striking
23 out all of that part designated "~~§5-805.~~" and inserting in its
24 place the following:

26 '~~§5-805.~~ Decisions by surrogate

28 (a) A surrogate may make a decision to withhold or
29 withdraw life-sustaining treatment for a patient who is an adult
30 or emancipated minor if the patient has been determined by the
31 primary physician to lack capacity, no agent or guardian has been
32 appointed or the agent or guardian is not reasonably available
33 and the patient is in a terminal condition or a persistent
34 vegetative state as determined by the primary physician.

36 (b) Any member of the following classes of the patient's
37 family who is reasonably available, in descending order of
38 priority, may act as surrogate:

40 (1) The spouse, unless legally separated;

42 (2) An adult child;

44 (3) A parent;

46 (4) An adult brother or sister;

48 (5) An adult grandchild;

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(6) An adult niece or nephew, related by blood or adoption;

(7) An adult aunt or uncle, related by blood or adoption; or

(8) Another adult relative of the patient, related by blood or adoption, who is familiar with the patient's personal values and is reasonably available for consultation.

(c) If none of the individuals eligible to act as surrogate under subsection (b) is reasonably available, an adult who has exhibited special concern for the patient, who is familiar with the patient's personal values and who is reasonably available may act as surrogate.

(d) A surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the members of the patient's family specified in subsection (b) who can be readily contacted.

(e) If more than one member of a class assumes authority to act as surrogate and they, or members of different classes who are reasonably available, do not agree on a health-care decision and the supervising health-care provider is so informed, the supervising health-care provider may comply with the decision of the class having priority or a majority of the members of that class who have communicated their views to the provider. The health care provider may refer the members of the class or classes to a neutral 3rd party for assistance in resolving the dispute or to a court of competent jurisdiction. If the class is evenly divided concerning the health-care decision and the supervising health-care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.

(f) A surrogate shall make a health-care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest and in good faith. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate. A consent is not valid if it conflicts with the intention of the patient previously expressed to the surrogate.

(g) A health-care decision made by a surrogate for a patient lacking capacity is effective without judicial approval.

(h) An individual with capacity at any time may disqualify another, including a member of the individual's family, from

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acting as the individual's surrogate by a signed writing or by personally informing the supervising health-care provider of the disqualification.

(i) A surrogate may not be an owner, operator or employee of a residential long-term health-care institution at which the patient is receiving care unless the surrogate is one of the following:

- (1) The spouse of the patient;
- (2) An adult child of the patient;
- (3) A parent of the patient; or
- (4) A relative of the patient with whom the patient has resided for more than 6 months prior to the decision.

(j) A supervising health-care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.'

Further amend the bill in Part A in section 1 in that part designated "~~§5-805.~~" by inserting after the Comment the following:

'MAINE COMMENT

All of section 5-805 is replaced in the Maine amendment to the Uniform Health-care Decisions Act. The type of decisions that a surrogate can make under this section are the same as those permitted under the Maine enactment of the Uniform Rights of the Terminally Ill Act. The patient must not be able to make and communicate health-care decisions and must be in a terminal condition or a persistent vegetative state. If the patient has not appointed an agent and no guardian has been appointed for the patient, this section provides a priority listing of who may make decisions to withhold or withdraw life-sustaining treatment for the patient.

The priority listing is expanded to include an adult grandchild, an adult niece or nephew, an adult aunt or uncle or another adult relative, related by blood or adoption, who is familiar with the patient's personal values and is reasonably available for consultation.

The Maine amendment adds a procedure to address situations in which members of a class of surrogates disagree regarding a decision to withhold or withdraw life-sustaining treatment. When

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2 there is disagreement within the family, the physician is
3 permitted to comply with the decision of the class having
4 priority or a majority of the members authorized to consent to
5 decide. The physician, however, is not required under those
6 circumstances to comply with the surrogate's decision and may
7 seek assistance from neutral 3rd parties or a court.

8 A consent is not valid if it conflicts with the intention of
9 the patient previously expressed to the surrogate.'

10 Further amend the bill in Part A in section 1 in that part
11 designated "~~§5-806.~~" by striking out all of subsection (a) (page
12 24, lines 20 to 22 in L.D.) and inserting in its place the
13 following:
14

15 '(a) Except as authorized by a court of competent
16 jurisdiction, a guardian shall comply with the ward's individual
17 instructions and other wishes, if any, expressed while the ward
18 had capacity and to the extent known to the guardian, and may not
19 revoke the ward's advance health-care directive unless the
20 appointing court expressly so authorizes.'
21

22 Further amend the bill in Part A in section 1 in that part
23 designated "~~§5-806.~~" by striking out all of subsection (c) (page
24 24, lines 27 and 28 in L.D.) and inserting in its place the
25 following:
26

27 '(c) A health care decision made by a guardian for the ward
28 is effective without judicial approval, except under the
29 following circumstances:
30

31 (1) The guardian's decision is contrary to the ward's
32 individual instructions and other wishes, expressed while
33 the ward had capacity; or
34

35 (2) The guardian seeks to withhold or withdraw
36 life-sustaining treatment from the ward, against the advice
37 of the ward's primary physician and in the absence of
38 instructions from the ward, made while the ward had
39 capacity.'
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41 Further amend the bill in Part A in section 1 in that part
42 designated "~~§5-806.~~" by inserting after the Comment the following:
43

44 'MAINE COMMENT

45 The Maine amendment requires a guardian to also comply with
46 the individual's wishes expressed by the individual while having
47 capacity and if known by the guardian.
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2 The Maine amendment requires judicial authorization for a
guardian's decision in two situations. First, if the guardian's
4 decision is contrary to the ward's instructions and other wishes,
or 2nd, when the guardian seeks to withhold or withdraw
6 life-sustaining treatment against the advice of the ward's
physician and in the absence of instructions or wishes of the
ward.'

8
10 Further amend the bill in Part A in section 1 in that part
designated "~~§5-807.~~" in subsection (c) in the 4th line (page 25,
line 38 in L.D.) by inserting after the following: "surrogate"
12 the following: 'or the validity of an advance health-care
directive'

14
16 Further amend the bill in Part A in section 1 in that part
designated "~~§5-807.~~" in subsection (e) in the 2nd line (page 26,
line 10 in L.D.) by inserting after the following: "decision"
18 the following: 'if the instruction or decision appears not to be
in compliance with this Act or' and in the 4th line (page 26,
20 line 12 in L.D.) by inserting after the following: "decision"
the following: 'if the instruction or decision appears not to be
22 in compliance with this Act or'

24
26 Further amend the bill in Part A in section 1 in that part
designated "~~§5-807.~~" in subsection (g) in paragraph (2) in the
last line (page 26, line 34 in L.D.) by inserting after the
following: "effected" the following: 'or a court of competent
28 jurisdiction issues a final order regarding the decision'

30
32 Further amend the bill in Part A in section 1 in that part
designated "~~§5-807.~~" by inserting after the Comment the following:

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'MAINE COMMENT

The Maine amendment expands section 5-807 to permit a
health-care provider to decline to comply with a health-care
decision if the decision does not comply with the Act and to seek
the assistance of a court under those circumstances. The
immunities provided by section 5-809 are similarly amended.'

40
42 Further amend the bill in Part A in section 1 in that part
designated "~~§5-809.~~" in subsection (a) in paragraph (1) in the
2nd line (page 28, line 49 in L.D) by inserting after the
44 following: "authority" the following: 'and capacity'

46
48 Further amend the bill in Part A in section 1 in that part
designated "~~§5-809.~~" in subsection (a) in paragraph (2) in the
last line (page 29, line 6 in L.D.) by striking out the
following: "authority; or" and inserting in its place the

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following: 'authority or capacity, or that the decision otherwise does not comply with this Act;'

Further amend the bill in Part A in section 1 in that part designated "~~§5-809.~~" in subsection (a) in paragraph (3) in the last line (page 29, line 10 in L.D.) by striking out the following: "~~.~~" and inserting in its place the following: '; or'

Further amend the bill in Part A in section 1 in that part designated "~~§5-809.~~" in subsection (a) by adding at the end the following:

'(4) Seeking judicial relief from a court of competent jurisdiction.'

Further amend the bill in Part A in section 1 in that part designated "~~§5-809.~~" in subsection (b) in the first line (page 29, line 12 in L.D.) by inserting after the following: "agent" the following: ', guardian'

Further amend the bill in Part A in section 1 in that part designated "~~§5-811.~~" in subsection (b) by inserting at the end a new sentence to read: 'This presumption may be rebutted by a determination by the individual's primary physician or by a court of competent jurisdiction.'

Further amend the bill in Part A in section 1 by striking out all of that part designated "~~§5-814.~~" (page 32, lines 15 to 21 in L.D.) and inserting in its place the following:

'§5-814. Judicial relief

On petition of a patient, the patient's agent, guardian or surrogate, a health-care or social services provider or institution involved with the patient's care, a state agency mandated to provide adult protective services pursuant to Title 22, sections 3472 to 3487, or an adult relative or adult friend of the patient, the court may enjoin or direct a health-care decision or other equitable relief.'

Further amend the bill in Part A in section 1 in that part designated "~~§5-814.~~" by inserting after the Comment the following:

'MAINE COMMENT

The Maine amendment expands the categories of persons who may seek judicial relief and to allow all those involved in a patient's care, family members, adult friends and the Department of Human Services an opportunity to challenge a health care decision by bringing a court action.'

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2 Further amend the bill in Part B in section 1 in subsection
4 (c) by striking out all of the 2nd sentence (page 33, lines 20 to
6 23 in L.D.) and inserting in its place the following: 'The
8 guardian is empowered to withhold or withdraw life-sustaining
10 treatment ~~when the ward is in a terminal condition or persistent
vegetative state as defined in section 5-701 with respect to
qualified patients as set forth in section 5-312, subsection (a),
paragraph (3).~~'

12 Further amend the bill in Part B in section 2 by striking
14 out all of paragraph (3) and inserting in its place the following:

16 '(3) A guardian may give or withhold consents or approvals
18 related to medical or other professional care, counsel,
20 treatment or service for the ward. ~~The guardian is
empowered to withhold or withdraw life-sustaining treatment
when the ward is in a terminal condition or persistent
vegetative state as defined in section 5-701 with respect to
qualified patients provided, however, that the guardian
shall honor any effective living will declaration executed
by the ward pursuant to section 5-702. Except as authorized
by a court of competent jurisdiction, a guardian shall make
24 a health-care decision in accordance with the ward's
individual instructions, if any, and other wishes expressed
26 while the ward had capacity to the extent known to the
guardian. Otherwise, the guardian shall make the decision
28 in accordance with the guardian's determination of the
ward's best interest. In determining the ward's best
30 interest, the guardian shall consider the ward's personal
values to the extent known to the guardian. A decision of a
32 guardian to withhold or withdraw life-sustaining treatment
is effective without court approval unless the guardian's
34 decision is made against the advice of the ward's primary
physician and in the absence of instructions from the ward
36 made while the ward had capacity.'~~

38 Further amend the bill by inserting at the end before the
statement of fact the following:

40
42 **FISCAL NOTE**

44 The Bureau of Motor Vehicles within the Department of the
Secretary of State will incur some minor additional costs to
46 provide new forms. These costs can be absorbed within the
bureau's existing budgeted resources.

48 The additional costs to cover the additional court time
resulting from this bill can be absorbed by the Department of the
50 Attorney General utilizing existing budgeted resources.

2 This bill may increase the number of civil cases filed in
the court system. The additional workload and administrative
4 costs associated with the minimal number of new cases filed can
be absorbed within the budgeted resources of the Judicial
6 Department. The collection of additional filing fees may also
increase General Fund revenue by minor amounts.'

8
10 STATEMENT OF FACT

12 This amendment clarifies portions of the Uniform Health-care
Decisions Act, modifies certain provisions to be consistent with
14 current Maine law, broadens the safeguards of the Act by
increasing the categories of persons who may seek judicial
16 relief, eliminates inconsistencies with respect to the powers and
duties of guardians and grants physicians greater discretion to
18 question the validity of the decisions made by surrogates and to
seek the assistance of a court when they deem appropriate.