

MAINE STATE LEGISLATURE

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L.D. 666

Date: 6/15/15 Minority

(Filing No. H-433)

HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 447, L.D. 666, Bill, "An Act To Allow a Patient To Designate a Caregiver in the Patient's Medical Record"

Amend the bill in section 3 in subsection 3 in paragraph E in the first line (page 1, line 11 in L.D.) by striking out the following: "The caregiver" and inserting the following: 'The lay caregiver'

Amend the bill in section 5 in subsection 6 in paragraph T in the first line (page 1, line 23 in L.D.) by striking out the following: "a caregiver" and inserting the following: 'a lay caregiver'

Amend the bill by striking out all of section 6 and inserting the following:

'Sec. 6. 22 MRSA §1711-G is enacted to read:

§1711-G. Designated lay caregivers

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Aftercare" means any assistance to a patient, after the patient's discharge, that is directly related to the content of the patient's hospital discharge plan and that is provided by a lay caregiver designated pursuant to subsection 2, including assistance with basic or instrumental activities of daily living, performance of medical and nursing tasks, assistance in administering medication and operation of medical equipment.

B. "Discharge" means a patient's exit or release from a hospital to the patient's residence or another health care setting following any medical care or treatment at the hospital or observation at the hospital for a period that includes midnight of at least one calendar day.

C. "Hospital" means a hospital that receives money under chapter 855 provided to Medicaid recipients under the provisions of the United States Social Security Act, Title XIX and successors to it and related rules of the department.

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1 D. "Residence" means a dwelling that a person considers to be the person's home.
2 "Residence" does not include a rehabilitation facility, hospital, nursing home, assisted
3 living facility, group home or any other health care facility licensed by the State.

4 **2. Designation of lay caregiver.** In accordance with this subsection, a hospital
5 licensed under chapter 405, but not a private mental hospital as described in chapter 404,
6 shall allow for the designation of a lay caregiver to provide aftercare to a patient.

7 A. For a patient with capacity to make health-care decisions, as described in Title
8 18-A, Article 5, Part 8, the hospital shall provide the patient with at least one
9 opportunity to designate a lay caregiver following the patient's admission to the
10 hospital, or observation at the hospital for a period that includes midnight of at least
11 one calendar day, and prior to the patient's discharge.

12 B. For a patient without capacity to make health-care decisions, as described in Title
13 18-A, Article 5, Part 8, the hospital shall provide the patient's legal guardian, agent or
14 surrogate who is reasonably available and acting pursuant to Title 18-A, Article 5,
15 Part 8 with at least one opportunity to designate a lay caregiver following the patient's
16 admission to the hospital, or observation at the hospital for a period that includes
17 midnight of at least one calendar day, and prior to the patient's discharge.

18 C. The hospital shall document the designation of a lay caregiver under this
19 subsection in the patient's medical record, including the lay caregiver's name,
20 relationship to the patient, telephone number, address and any other contact
21 information as provided. If the patient or the patient's legal guardian, agent or
22 surrogate who is reasonably available and acting pursuant to Title 18-A, Article 5,
23 Part 8 declines to designate a lay caregiver, the hospital shall document that decision
24 in the patient's medical record and that documentation constitutes compliance by the
25 hospital with the requirements of this section. A designated lay caregiver may be
26 removed or changed by the patient or the patient's legal guardian, agent or surrogate
27 at any time, so long as the change or removal is documented by the hospital in the
28 patient's medical record.

29 D. Designation of a lay caregiver under this subsection by the patient or the patient's
30 legal guardian, agent or surrogate who is reasonably available and acting pursuant to
31 Title 18-A, Article 5, Part 8 is optional. A designated lay caregiver is not obligated
32 under this section to perform any aftercare tasks for the patient.

33 **3. Written consent.** If a lay caregiver is designated under subsection 2, the hospital
34 shall request that the patient or the patient's legal guardian, agent or surrogate who is
35 reasonably available and acting pursuant to Title 18-A, Article 5, Part 8 provide written
36 consent to release medical information regarding the scope of care to the patient's
37 designated lay caregiver to carry out the purposes of this section. Written consent under
38 this subsection must be provided pursuant to the hospital's established procedures for
39 releasing personal health information and in compliance with state and federal law.

40 **4. Notice to designated lay caregiver.** For a patient unable to effectively
41 communicate with a lay caregiver designated under subsection 2, and for whom written
42 consent is received under subsection 3, a hospital shall make reasonable efforts to notify
43 the designated lay caregiver prior to the patient's discharge or transfer to another hospital
44 licensed under chapter 405. The hospital may not withhold, delay or otherwise fail to

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1 deliver medical care to the patient or an appropriate discharge or transfer of the patient
2 because the hospital is unable to notify the designated lay caregiver in accordance with
3 this subsection prior to the patient's discharge or transfer. A hospital shall document in
4 the patient's medical record its attempt to notify the designated lay caregiver under this
5 subsection.

6 **5. Discharge plan.** If written consent is received under subsection 3, a hospital shall
7 make reasonable efforts to communicate with a lay caregiver designated under subsection
8 2 regarding the development of a patient's discharge plan to help prepare the designated
9 lay caregiver for the patient's aftercare needs at the patient's residence in accordance with
10 the hospital's discharge policy.

11 **6. Instruction to designated lay caregiver.** If written consent is received under
12 subsection 3, prior to a patient's discharge, the hospital shall make reasonable efforts to
13 instruct the patient's lay caregiver designated under subsection 2, in a culturally
14 competent manner, on how to meet the patient's aftercare needs and shall provide a
15 meaningful opportunity for the designated lay caregiver to ask questions about the
16 patient's discharge plan.

17 **7. Noninterference with health care directives.** The provisions of this section may
18 not be construed to interfere with the rights of an agent of a patient operating under a
19 valid health care directive under Title 18-A, Article 5, Part 8.

20 **8. Rules.** The department may adopt rules to carry out the purposes of this section,
21 including defining the content and scope of any instruction given under subsection 5 or 6.
22 In the development of any rules pursuant to this subsection, the department shall consult
23 with representatives of hospitals, consumers and organizations that represent seniors.
24 Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5,
25 chapter 375, subchapter 2-A.'

26 **SUMMARY**

27 This amendment, which is the minority report, makes the following changes to
28 section 6 of the bill:

- 29 1. It adds a definition of "hospital" establishing that the provisions apply only to
30 hospitals that receive money under the Maine Revised Statutes, Title 22, chapter 855
31 provided to Medicaid recipients under the provisions of the United States Social Security
32 Act, Title XIX and successors to it and related rules of the State's Department of Health
33 and Human Services;
- 34 2. It eliminates the definition of "entry";
- 35 3. It eliminates the requirement that the designation of a caregiver needs to be made
36 within the first 24 hours;
- 37 4. It changes the notice requirements to caregivers from a requirement to notify to a
38 requirement to make reasonable efforts to notify;
- 39 5. It eliminates what a discharge plan must include and defers to the hospital's

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1 established policy; and

2 6. It eliminates the instruction requirements.

3 **FISCAL NOTE REQUIRED**

4 (See attached)



Approved: 06/03/15 *MRC*

127th MAINE LEGISLATURE

LD 666

LR 989(03)

An Act To Allow a Patient To Designate a Caregiver in the Patient's Medical Record

Fiscal Note for Bill as Amended by Committee Amendment

(H-433)

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Department of Health and Human Services to adopt the changes in this bill are expected to be minor and can be absorbed within existing budgeted resources.