

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 666

H.P. 447

House of Representatives, March 3, 2015

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

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative GATTINE of Westbrook.
Cosponsored by Senator BRAKEY of Androscoggin and
Representatives: MALABY of Hancock, STUCKEY of Portland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §1711-B, sub-§3, ¶C**, as amended by PL 1997, c. 793, Pt. A,
3 §5 and affected by §10, is further amended to read:

4 C. The designee of a durable health care power of attorney executed by the person
5 who is the subject of the record, at such time as the power of attorney is in effect; ~~or~~

6 **Sec. 2. 22 MRSA §1711-B, sub-§3, ¶D**, as enacted by PL 1997, c. 793, Pt. A, §6
7 and affected by §10, is amended to read:

8 D. The agent, guardian or surrogate pursuant to the Uniform Health-care Decisions
9 Act; or

10 **Sec. 3. 22 MRSA §1711-B, sub-§3, ¶E** is enacted to read:

11 E. The caregiver designated pursuant to section 1711-G by the person who is the
12 subject of the record.

13 **Sec. 4. 22 MRSA §1711-C, sub-§6, ¶¶R and S**, as enacted by PL 1999, c. 512,
14 Pt. A, §5 and affected by §7 and c. 790, Pt. A, §§58 and 60, are amended to read:

15 R. To a member of the media who asks a health care facility about an individual by
16 name, of brief confirmation of general health status unless expressly prohibited by the
17 individual or a person acting pursuant to subsection 3-B; ~~and~~

18 S. To a member of the public who asks a health care facility about an individual by
19 name, of the room number of the individual and brief confirmation of general health
20 status unless expressly prohibited by the individual or a person acting pursuant to
21 subsection 3-B; and

22 **Sec. 5. 22 MRSA §1711-C, sub-§6, ¶T** is enacted to read:

23 T. To a caregiver designated by an individual pursuant to section 1711-G.

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

25 **§1711-G. Designated caregivers**

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

28 A. "Aftercare" means any assistance provided by a caregiver designated pursuant to
29 subsection 2 to a patient after the patient's discharge from a hospital, including
30 assistance with basic or instrumental activities of daily living, performance of
31 medical and nursing tasks, assistance in administering medication and operation of
32 medical equipment.

33 B. "Discharge" means a patient's exit or release from a hospital to the patient's
34 residence following any medical care, treatment or observation.

35 C. "Entry" means a patient's entrance into a hospital for the purpose of medical care,
36 treatment or observation.

1 D. "Residence" means a dwelling that the patient considers to be the patient'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 caregiver.** A hospital licensed under chapter 405 shall provide a
5 patient or patient's legal guardian with at least one opportunity to designate a caregiver no
6 later than 24 hours following the patient's entry into the hospital and prior to the patient's
7 discharge or transfer to another facility. If the patient is unconscious or otherwise
8 incapacitated upon entry into the hospital, the hospital shall provide the patient or
9 patient's legal guardian with an opportunity to designate a caregiver within 24 hours
10 following the patient's recovery of consciousness or capacity. The hospital shall
11 promptly document the designation of the caregiver in the patient's medical record,
12 including the caregiver's name, relationship to the patient, telephone number, address and
13 any other contact information. If the patient or patient's legal guardian declines to
14 designate a caregiver, the hospital shall promptly document in the patient's medical
15 record that the patient or patient's legal guardian declined to designate a caregiver. A
16 designation of a caregiver under this subsection does not obligate the person designated
17 as caregiver to perform any aftercare tasks for a patient. The designation of a caregiver
18 under this subsection is optional for a patient or patient's legal guardian, and a patient or
19 patient's legal guardian may change or remove a designated caregiver at any time, which
20 must be recorded in the patient's medical record by the hospital within 24 hours of
21 notification of the change or removal.

22 **3. Written consent.** If a caregiver is designated under subsection 2, the hospital
23 shall promptly request that the patient or patient's legal guardian provide written consent
24 to release medical information to the patient's designated caregiver, which must be
25 provided pursuant to the hospital's established procedures for releasing personal health
26 information and in compliance with state and federal law.

27 **4. Notice to designated caregiver.** If written consent is received under subsection
28 3, a hospital shall notify the designated caregiver under subsection 2 of the patient's
29 discharge or transfer to another facility licensed under chapter 405 as soon as possible
30 and no later than 4 hours before the patient's actual discharge or transfer.

31 **5. Discharge plan.** If written consent is received under subsection 3, as soon as
32 possible and no later than 24 hours before a patient's discharge from a hospital, the
33 hospital shall consult with the patient's designated caregiver under subsection 2 regarding
34 the caregiver's capabilities and limitations and issue a discharge plan that describes the
35 patient's aftercare needs at the patient's residence. The discharge plan must include:

36 A. The name and contact information of the caregiver;

37 B. A description of all aftercare tasks necessary to maintain the patient's ability to
38 remain at the patient's residence; and

39 C. Contact information for any health care services, community resources and long-
40 term services and support necessary to successfully implement the discharge plan.

41 **6. Instruction to designated caregiver.** If written consent is received under
42 subsection 3, the hospital issuing a discharge plan under subsection 5 shall provide the

1 designated caregiver with instruction in all aftercare tasks described in the discharge plan.
2 Any instruction given under this subsection must be documented in the patient's medical
3 record, including the contents of the instruction and the date and time at which the
4 instruction was given. Instruction to a caregiver under this subsection must include:

5 A. A live demonstration by a hospital employee authorized to perform an aftercare
6 task of the aftercare tasks described in the discharge plan. A demonstration under
7 this paragraph must be performed in a culturally competent manner and in
8 accordance with the hospital's requirement to provide language access services under
9 state and federal law;

10 B. An opportunity for the caregiver to ask questions about the discharge plan; and

11 C. Answers to the caregiver's questions provided in a culturally competent manner
12 and in accordance with the hospital's requirement to provide language access services
13 under state and federal law.

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

17 **8. Rules.** The department may adopt rules to carry out the purposes of this section,
18 including defining the content and scope of any instruction given under subsection 5 or 6.
19 Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5,
20 chapter 375, subchapter 2-A.

21 SUMMARY

22 This bill allows a patient admitted to a hospital to designate a caregiver, who may
23 provide aftercare for the patient and whose identifying information must be entered into
24 the patient's medical records at the hospital. If the patient or patient's legal guardian
25 provides written consent to release medical information to the designated caregiver, the
26 hospital is required to notify the caregiver prior to the patient's being discharged or
27 transferred, consult with the caregiver as to the patient's discharge plan and provide the
28 caregiver any necessary instruction in providing aftercare to the patient if the patient is
29 discharged to the patient's residence.