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JUDICIARY

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

COMMITTEE AMENDMENT " " to H.P. 1043, L.D. 1518, Bill, "An Act To Ensure Children in the Care of Caretaker Relatives Can Access Fundamental Services"

Amend the bill by striking out the title and substituting the following:

'An Act To Ensure Children in the Care of Caretaker Relatives and Other Surrogates Can Access Health Care'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 22 MRSA §1501, sub-§§1-A and 4 are enacted to read:

1-A. Health care. "Health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

4. Surrogate. "Surrogate" means:

A. An adult who is not a parent or legal guardian but who is related to a minor by blood, marriage or adoption and with whom the minor resides and from whom the minor receives the ongoing care and support expected of a parent. "Surrogate" does not include a person to whom a parent has delegated parental authority to consent to the minor's medical treatment through a power of attorney or other written instrument; or

B. If an adult relative described in paragraph A does not exist, an adult to whom a parent or legal guardian has not delegated parental authority through a power of attorney or other written instrument with whom the minor resides and from whom the minor receives the ongoing care and support expected of a parent.

Sec. 2. 22 MRSA §1503-A is enacted to read:

§1503-A. Authority for consent by a surrogate

1. Consent by a surrogate; notice of need for health care. A surrogate may give consent for health care for a minor except that a surrogate may not withhold or withdraw life-sustaining treatment or deny surgery, procedures or other interventions that are life-

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1 saving and medically necessary. The existence of a surrogate does not affect the ability
2 of a minor to give consent as otherwise provided by law. Before the surrogate may give
3 consent, the surrogate must make a reasonable good faith attempt to inform the minor's
4 parents or legal guardian of the minor's need for health care and the parents' right to make
5 those decisions. If parental notification is not required by other provisions of law, the
6 surrogate is not required to inform or attempt to inform the minor's parents or legal
7 guardian.

8 **2. Notice of health care received.** Unless parental notification is not required by
9 other provisions of law, a surrogate giving consent pursuant to subsection 1 shall make a
10 reasonable good faith attempt to inform the minor's parents or legal guardian of the health
11 care that the minor received. A health care practitioner or health care provider who
12 provides health care pursuant to this section shall inform the minor's surrogate of this
13 obligation. The sending of correspondence by regular mail, e-mail, texting, posting to a
14 personal website or other written means of communication to the last known address or
15 contacting by telephone using the last known telephone number of the minor's parents or
16 legal guardian, whichever means the surrogate believes to be the most effective way to
17 ensure actual notification, is deemed a reasonable good faith attempt to provide notice for
18 purposes of this subsection.

19 **3. Penalties.** The following penalties apply to violations of this section.

20 A. A surrogate who makes decisions for a minor knowing that the decisions are
21 prohibited by subsection 1 commits a Class E crime.

22 B. A person who knowingly acts as a surrogate for a minor without meeting the
23 definition of "surrogate" in section 1501, subsection 4 commits a Class E crime.

24 C. A surrogate who fails to attempt to give notice as required in subsection 1 or 2
25 commits a Class E crime.

26 **Sec. 3. 22 MRSA §1504**, as enacted by PL 1995, c. 694, Pt. C, §8 and affected by
27 Pt. E, §2, is repealed and the following enacted in its place:

28 **§1504. Good faith reliance on consent**

29 **1. Reliance on minor's consent.** A health care practitioner or health care provider
30 who takes reasonable steps to ascertain that a minor is authorized to consent to health
31 care as authorized in section 1503 and who subsequently renders health care in reliance
32 on that consent is not liable for failing to have secured consent of the minor's parents or
33 legal guardian prior to providing health care to the minor.

34 **2. Reliance on surrogate's consent.** Recovery is not allowed against any health
35 care practitioner or health care provider upon the grounds that the health care was
36 rendered without informed consent if consent is given by the minor's surrogate pursuant
37 to section 1503-A and the health care practitioner or provider acts with good faith
38 reliance on that consent.

39 **Sec. 4. 22 MRSA §1507**, as enacted by PL 1999, c. 90, §1, is amended to read:

1 **§1507. Consent for sexual assault forensic examination**

2 Notwithstanding the limitations set forth in section 1503 or the existence of a
3 surrogate described in section 1503-A, a minor may consent to health services associated
4 with a sexual assault forensic examination to collect evidence after an alleged sexual
5 assault.'

6 **SUMMARY**

7 This amendment replaces the bill. Unlike the bill, which authorizes a "caretaker
8 relative" to make medical and educational decisions for a minor, this amendment
9 addresses only the issues related to health care for minors.

10 This amendment makes changes to the laws governing minors' authority to consent to
11 health care by identifying situations in which adults who voluntarily and without specific
12 legal authority through a power of attorney or appointment as a legal guardian provide
13 care that a parent normally would. This amendment recognizes that when parents are
14 temporarily absent from a minor's life, certain adults with whom a minor resides may
15 assume a surrogate role. As defined in the amendment, a surrogate may not be a parent,
16 legal guardian or an adult to whom a parent has given a power of attorney authorizing
17 health care treatment for the minor. Surrogates may include an adult related to a minor
18 by blood, marriage or adoption and from whom the minor receives the ongoing care and
19 support expected of a parent. If no such relatives exist, an adult with whom the minor
20 resides and who has provided the minor with the ongoing care and support expected of a
21 parent may act as a surrogate. The existence of a surrogate does not remove the ability of
22 a minor to give consent under any other existing law.

23 If a minor needs health care, a surrogate must make a good faith attempt to notify the
24 minor's parents or legal guardian of their right to make those decisions unless parental
25 notification is not required by other provisions of law. Absent a response, the surrogate
26 may make most health care decisions on behalf of the minor without parental consent. A
27 surrogate may not make decisions withholding or withdrawing life-sustaining treatments
28 or denying consent for treatments that are life-saving and medically necessary. A
29 surrogate giving consent on behalf of the minor must attempt to make a good faith effort
30 to notify the absent parents or legal guardian of any health care received by the minor
31 unless parental notification is not required by other provisions of law.

32 Health care practitioners and providers may rely on the consent given by the
33 surrogate. If they do so, they are immune from liability for providing treatment without
34 receiving informed consent from the parents or legal guardian. Health care practitioners
35 and providers must inform the surrogate of the surrogate's obligation to notify the minor's
36 parents or legal guardian about the minor's treatment.

37 This amendment allows the surrogate to use the means of communication the
38 surrogate believes is the most effective way to ensure actual notification of the parents or
39 legal guardian. The means of communication may be regular mail, e-mail, texting,
40 personal website posting or other written means of communication to the last known
41 address or contacting by telephone using the last known telephone number of the absent
42 parents or legal guardian.

1 This amendment provides that a surrogate who makes health care decisions for the
2 minor knowing that those specific decisions may not be made by the surrogate or without
3 attempting to contact the parents or legal guardian about the need for the health care or
4 the health care received commits a Class E crime. A person who makes health care
5 decisions for a minor when not qualified as a surrogate is guilty of a Class E crime.

6 This amendment provides that, as long as the health care practitioner or provider acts
7 with good faith reliance on the consent of the surrogate, there is no liability against the
8 health care practitioner or provider on the grounds that the health care treatment was
9 rendered without informed consent.

10 This amendment clarifies that a minor may consent to health services associated with
11 a sexual assault forensic examination to collect evidence after an alleged sexual assault
12 regardless of whether a surrogate exists.