

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

—
H.P. 447 - L.D. 666

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Notice to designated lay caregiver. For a patient unable to effectively communicate with a lay caregiver designated under subsection 2, and for whom written consent is received under subsection 3, a hospital shall make reasonable efforts to notify the designated lay caregiver prior to the patient's discharge or transfer to another hospital licensed under chapter 405. The hospital may not withhold, delay or otherwise fail to deliver medical care to the patient or an appropriate discharge or transfer of the patient because the hospital is unable to notify the designated lay caregiver in accordance with this subsection prior to the patient's discharge or transfer. A hospital shall document in the patient's medical record its attempt to notify the designated lay caregiver under this subsection.

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

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

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

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