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Date: (Filing No. H-)

HEALTH AND HUMAN SERVICES

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

COMMITTEE AMENDMENT “ ” 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. "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.

COMMITTEE AMENDMENT

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

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

9 B. For a patient without capacity to make health-care decisions, as described in Title
10 18-A, Article 5, Part 8, the hospital shall provide the patient's legal guardian, agent or
11 surrogate who is reasonably available and acting pursuant to Title 18-A, Article 5,
12 Part 8 with at least one opportunity to designate a lay caregiver following the patient's
13 admission to the hospital, or observation at the hospital for a period that includes
14 midnight of at least one calendar day, and prior to the patient's discharge.

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

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

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

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

1 the patient's medical record its attempt to notify the designated lay caregiver under this
2 subsection.

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

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

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 In the development of any rules pursuant to this subsection, the department shall consult
20 with representatives of hospitals, consumers and organizations that represent seniors.
21 Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5,
22 chapter 375, subchapter 2-A.'

23 **SUMMARY**

24 This amendment makes the following changes to section 6 of the bill:

- 25 1. It eliminates the definition of "entry";
- 26 2. It eliminates the requirement that the designation of a caregiver needs to be made
27 within the first 24 hours;
- 28 3. It changes the notice requirements to caregivers from a requirement to notify to a
29 requirement to make reasonable efforts to notify;
- 30 4. It eliminates what a discharge plan must include and defers to the hospital's
31 established policy; and
- 32 5. It eliminates the instruction requirements.

33 **FISCAL NOTE REQUIRED**

34 **(See attached)**