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January 16, 2024

Senator Joseph Baldacci, Chair
Representative Michele Meyer, Chair
Members, Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, ME 04333-0100

Re: LD 2009 –*An Act to Prevent Abandonment of Children and Adults with Disabilities in Hospitals*

Senator Baldacci, Representative Meyer and Members of the Joint Standing Committee on Health and Human Services, thank you for the opportunity to provide input on LD 2009, *An Act to Prevent Abandonment of Children and Adults with Disabilities in Hospitals*. The Department strongly opposes this bill.

This bill would require hospitals to discharge children and adults with disabilities who are subject to guardianship within 48 hours of a determination by an attending physician that the patient is “safe for discharge.” If the guardian does not take custody within that timeframe, the hospital is required to notify Child Protective Services (CPS) or Adult Protective Services (APS) and either CPS or APS is required to take custody of the discharged patient. The process envisioned by the bill is not operationally feasible and would put DHHS in the position of legally separating children and adults from their legal guardians, who are most often close family members.

It is incredibly rare for individuals to be truly “abandoned” by their guardians. The far more common scenario is where a caregiver, who may also be the guardian, is no longer able to provide care to someone and needs assistance via the hospital’s discharge planning staff to identify a safe placement for the person. Depending on the specific needs of the individual, that placement may happen quickly or take a significant amount of time. In the event an adult were truly “abandoned,” the Department would receive a report seeking public guardianship from the hospital, a process that requires approval of the probate court. In certain instances, the Department may seek emergency guardianship, and even that expedited process can rarely be completed within 48 hours.

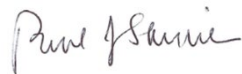
On the children’s side, there are very specific circumstances in which the Department can involve themselves in a family’s life based on Title 22 MRS, Chapter 1071. For the Department to take custody of a child a court order is required, and immediate risk of serious harm or jeopardy must be present and found by the court. So, while this bill would require the Office of Child and Family Services to “take custody of the minor,” we would not be legally authorized to do so.

Broadly, requiring the Department to “take custody” in these situations would interfere with probate courts’ authority over guardianships and the District Court’s authority over child protection matters. Important informal support for the individual would likely be lost, exacerbating an already challenging situation. Furthermore, DHHS does not have existing infrastructure for taking physical custody of clients and providing direct care to them as this bill envisions.

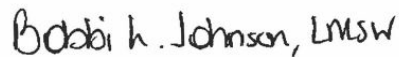
Overall, this bill would have major negative impacts on patients, guardians, families, and the Department’s ability to serve other individuals needing adult protective or child protective services. Importantly, it would undermine a key tenet of our society that puts the family first, and reserves coercive government intervention for cases of abuse, neglect, and exploitation.

Please feel free to contact us if you have any questions during your deliberation of this bill.

Sincerely,



Paul Saucier, Director
Office of Aging and Disability Services
Department of Health and Human Services



Bobbi Johnson, Acting Director
Office of Child and Family Services
Department of Health and Human Services

