



**LEGAL SERVICES
FOR MAINE ELDERS**

LD 960 – An Act Facilitating the Discharge of Hospitalized Patients to Nursing Facilities

Testimony of John Brautigam, Esq. for Legal Services for Maine Elders
Joint Standing Committee on Health and Human Services

March 24, 2025

Senator Ingwersen, Representative Meyer, and members of the Joint Standing Committee on Health and Human Services.

My name is John Brautigam, and I am here today on behalf of Legal Services for Maine Elders. LSE provides free legal help for Mainers aged 60 and older when their basic human needs are at stake.

The comparatively simple text of this bill conceals a complex interplay between some of Maine's most vulnerable people, MaineCare, the residential care sector, our hospital system, and the probate courts.

The starting point is to acknowledge that each of these entities has a legitimate interest in improving a system which most people would say is not serving anyone as well as it should, or as efficiently.

In this context, LSE's primary interest is the well-being of those who may be subject to guardianship. As we frequently say, we believe guardianship should be used with great caution, since it compromises core human rights and interests of the person. Guardianship should only occur after other measures have failed.

At any time, there are approximately 100 Mainers who are medically cleared for discharge from a hospital but remain hospitalized because they don't have anywhere else to go. By definition, these are people who have recently been medically compromised and are vulnerable for a variety of reasons. The hospital has met their medical needs, but a hospital bed is not the environment that best serves the long-term well-being of these people. Many of these are older Mainers.

Placing these people into an emergency guardianship may speed up eligibility determinations and otherwise facilitate moving these people into a residential placement. But at a significant cost.

Let me address the three parts of LD 960. Section 1 says that in order to file a petition for emergency guardianship of a hospital patient it is not necessary to identify a residential placement

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for the patient. Allowing the guardianship application to be filed without this precondition seems intended to reduce the amount of time required. Though we are mindful of the long delay in many cases, we don't see the need for this change. Nothing in current statute or the regulations says that a guardianship petition cannot be filed until a placement is identified. The department may consider this factor when prioritizing the cases for which it will file a petition, but identifying a placement is not currently a requirement.

Section 2 directs the department to amend its rules to remove the geographic limitation governing placement of a person being discharged from a hospital. For many patients, their well-being depends on contact with their friends and family.¹ Of course a residential setting is more conducive to good outcomes than a hospital room, but a distant placement is not ideal, especially if it becomes permanent. We would like to see the 60-mile limit remain and we would like to see the person subject to the placement be consulted on this decision.

Section 3 would reduce the time for MaineCare to make an eligibility determination in the case of hospitalized patients. If this would shorten the time before placement and facilitate transfer to a residential setting, we would support it.

We close by reiterating our request to tread carefully when guardianship is proposed as a solution to public policy problems. The reason 100 or more Mainers who are medically cleared remain languishing in hospitals is not because the guardianship process is holding them there.

Thank you.

¹ There is strong research and expert consensus supporting the idea that people under guardianship—especially those with cognitive, developmental, or psychiatric disabilities—tend to do better when they maintain frequent, meaningful contact with friends and family. National Council on Disability, *Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination*, 2018, <https://www.ncd.gov/report/beyond-guardianship-toward-alternatives-that-promote-greater-self-determination-for-people-with-disabilities> (highlights how social isolation harms individuals under guardianship and stresses the importance of connection).