



Testimony of Sarah Calder, MaineHealth
In Support of LD 960, “An Act Facilitating the Discharge of Hospitalized Patients to
Nursing Facilities”
Monday, March 24, 2025

Senator Ingwersen, Representative Meyer and distinguished members of the Joint Standing Committee on Health and Human Services, I am Sarah Calder, Senior Government Affairs Director at MaineHealth, and I am here to testify in support of LD 960, “An Act Facilitating the Discharge of Hospitalized Patients to Nursing Facilities.”

MaineHealth is an integrated non-profit health care system that provides a continuum of health care services to communities throughout Maine and New Hampshire. Every day, our over 24,000 care team members support our vision of “Working Together so Our Communities are the Healthiest in America” by providing a range of services from primary and specialty physician services to a continuum of behavioral health care services, community and tertiary hospital care, home health care and a lab.

We are particularly supportive of Section 1 of the legislation before you today, which clarifies that a nursing facility bed does not need to be identified first in order to file a petition for emergency guardianship.

As you may know, the 130th Legislature passed Public Law, Chapter 463, which amended the statute to include that “delay of discharge of a patient in a hospital until the appointment of a guardian constitutes substantial harm” for purposes of establishing grounds for appointment of an emergency guardian. Unfortunately, the Department of Health and Human Services has set a list of conditions for emergency guardianship that are negating the intent of the newly passed law and unnecessarily extending patients’ hospital stays and delaying other acutely ill patients from accessing scarce hospital beds.

To help clarify the issue, I have attached to my testimony a flowchart that describes the process to secure guardianship for hospitalized patients who lack capacity. It is important to highlight several barriers to discharge and the impetus for introducing LD 366, now Chapter 463:

- A long-term care provider requires a prospective resident who lacks capacity to have an appointed guardian before accepting their placement.
- A long-term care provider requires a payment source (for example, MaineCare Long-term Care coverage) for a prospective resident before accepting their placement.
- An application for MaineCare Long-Term Care coverage cannot be completed without an appointed guardian to access the patient’s banking and financial records.
- A hospital cannot secure a placement for a patient without these two items in place first – both a guardian and long-term care coverage.

Chapter 463 was passed with the intent to expedite the process described above which can take 6 months or longer to complete; however, the Department has maintained that they will not begin the process of

applying for emergency guardianship until an appropriate placement outside the hospital has been secured, which, as described above, can't be achieved without an appointed guardian and long-term care coverage. I have attached the Department's memo to my testimony.

As just one example of how this standard is in direct contradiction with the intent of the law, Maine Medical Center currently has a patient who has been in the hospital for 106 days. They were admitted in early December and less than two weeks later, Maine Medical Center requested a guardianship study as they were not able to identify an appropriate candidate for guardianship. The Department did not apply for emergency guardianship as specified in Chapter 463, but on January 6, 2025, Adult Protective Services (APS) filed for guardianship. The hearing has been scheduled for the first week of April. We are not able to secure a long-term care bed without a guardian, and APS has declined to file for emergency guardianship without a formal bed offer. Unless APS changes course, we anticipate this patient will still be at Maine Medical Center in May – nearly 6 months after they were admitted.

This is only one example. MaineHealth had 42 patients just in the last 6 months of 2024 who were waiting for the appointment of a guardian to be discharged to the next appropriate level of care and the average length of stay was 138 days.

Keeping a patient in a hospital who no longer needs acute care is not patient-centered care – we often see patients who require residential care regress both physically and psychologically the longer they stay in the hospital. Additionally, if we aren't able to turn over beds to care for acutely ill patients, it leads to long wait times in our Emergency Departments – or even diversion. We urge the Committee to support LD 960 and clarify that a nursing facility bed does not need to be identified in order to file a petition for emergency guardianship.

Thank you for the opportunity and I would be happy to answer any questions that you may have.

State (Public) Guardianship Process for Hospitalized Patients Awaiting Placement

Hospitalized patient without capacity is assessed by hospital psychiatry team to determine need for a guardian, and psychiatry team completes report which explains reasoning for guardianship.



Hospital social work team begins the search for next of kin who are willing and able to apply for guardianship and if no one is identified, the social work team files an Adult Protective Services (APS) report requesting a guardianship study.



Hospital social work team completes a guardianship study packet and returns the packet to APS for their review.



APS assigns an investigator and reviews the guardianship study packet and begins the search for next of kin. APS meets with the hospital social work team to obtain more information and request medical documentation.



APS investigator meets with the patient to assess for capacity and need for guardian.



If APS agrees that the patient needs a guardian, they will file for guardianship with the court PENDING A BED OFFER.



In the rare event that a bed can be identified without a guardian in place and without MaineCare long-term care coverage in place, APS will file for emergency guardianship with the court.

Time
Frame:
1-2
weeks

Time
Frame:
1-2
weeks

MaineCare
Long-term Care
coverage can take up to 8
weeks to be
secured.

Identifying
and securing a bed
placement can take 2-3
months, if not
longer.

**State (Public) Guardianship Process for
Hospitalized Patients Awaiting Placement
con'td.**

Probate judge reviews the APS petition and grants temporary emergency guardianship.



A court worker (assigned by the court) visits with the patient to inform them of the guardianship and asks if the patient is in agreement.



If the patient agrees, there is not further action. Temporary guardianship is in place until a court hearing is held months later for permanent guardianship.



If the patient disagrees, there is an emergency court hearing scheduled.



Patient is assigned a court-appointed attorney, and providers, APS, and the patient attend the court hearing.



Judge rules for or against guardianship.

Time
Frame:
Court
hearing
scheduled
within
3-4
days.

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



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Tel: (207) 287-9200; Toll Free: (800) 262-2232
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TTY: Dial 711 (Maine Relay)

MEMORANDUM

TO: Maine Hospital Association
FROM: Erin Salvo, Associate Director – Adult Protective Services
DATE: November 19, 2021
RE: *LD 366 – An Act Regarding Emergency Guardianship*

In light of the passage of LD 366, An Act Regarding Emergency Guardianship, this memo is intended to communicate the Department's approach to applying the law during the public guardianship petition process.

As you know, LD 366 was enacted during the first special session of the 130th Legislature and went into effect October 18, 2021. Accordingly, 18-C MRSA § 5-312 is amended to include that "delay of discharge of a patient in a hospital until the appointment of a guardian constitutes substantial harm" for purposes of establishing grounds for appointment of an emergency guardian.

The Maine Department of Health and Human Services (Department), through the Adult Protective Services program, has the authority to petition for guardianship when an adult is being abused, neglected or exploited (or at risk thereof) and lacks the capacity to consent to protective services, and all less restrictive alternatives have been tried and have failed. In other words, the Department petitions for public guardianship as a last resort when an adult requires a substitute decision-maker, no alternatives to guardianship are sufficient to meet the individual's needs, and no private party is able and willing to serve as a guardian or surrogate decision-maker.

The Department recognizes that there are several factors that may impact an individual's ability to discharge from the hospital unrelated to an individual's guardianship status, and probate courts may have differing responses to the language established by LD 366. In order to maintain consistent expectations statewide, the Department will rely on some key basic guidelines when making decisions on the type of petition to file. Accordingly, the need for appointment of a guardian will generally be considered the reason for delay of discharge for purposes of filing an emergency public guardianship petition when the following conditions exist:

1. The individual has been medically cleared for discharge from a hospital; AND
2. A Petition for Appointment of Guardian for Adult requesting permanent guardianship over the individual has been or is being filed in the appropriate Probate Court; AND
3. A placement outside the hospital has been identified that will meet the individual's level of care needs and such placement is reasonably expected to be available to the individual only upon appointment of a guardian; AND
4. Appointment of an emergency guardian is reasonably expected to result in the individual's discharge from the hospital to an appropriate placement outside the hospital prior to the final guardianship hearing.

These guidelines are intended to provide a general framework regarding the Department's plans pursuant to LD 366 and may not encompass every factor relevant to a specific individual's situation. If you have any questions on a particular public guardianship study, please contact the Adult Protective Services

Investigation Supervisor based on the districts listed below. If you have any questions on this policy generally, please contact the Associate Director of Adult Protective Services, Erin Salvo (erin.salvo@maine.gov). To initiate APS involvement with an adult in need of a guardian or in a situation involving abuse, neglect, or exploitation of an incapacitated or dependent adult, please contact APS Intake: 1-800-624-8404 (available 24/7).

District	County	APS Supervisor	Email
1	York	Jessica Gagne	Jessica.L.Gagne@maine.gov
2	Cumberland	Sarah Bennett	Sarah.Bennett@maine.gov
3	Androscoggin	Benjamin Bergeron	Benjamin.A.Bergeron@maine.gov
	Oxford		
	Franklin		
4	Sagadahoc	Joanne Cookson	Joanne.Cookson@maine.gov
	Lincoln		
	Knox		
	Waldo		
5	Kennebec	Heather Pease	Heather.Pease@maine.gov
	Somerset		
6	Penobscot	Janice Archer	Janice.Archer@maine.gov
	Piscataquis		
7	Hancock	Michael Libby	Michael.Libby@maine.gov
	Washington		
8	Aroostook	Annie Torres	Annie.Torres@maine.gov

cc: Paul Saucier, Director – DHHS Office of Aging and Disability Services
Molly Bogart, DHHS Government Relations Director
Cody Hopkins, Assistant Attorney General