Testimony of Jim Bailinson, MaineHealth
Tuesday, January 31, 2023


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 22,000 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.

My colleagues at MaineHealth, Northern Light Health and the Maine Hospital Association have appeared before this Committee over the years to discuss the challenges we experience with guardianship – which, as you know, is key to not only providing care to a patient, but also securing MaineCare coverage and discharging a patient to the next appropriate level of care. Today, I am here to share our collective support for one component of LD 196 – the postponement of changes to the confidentiality provisions – and that you consider a permanent exemption for hospitals.

As of January 1st of this year, the Probate Code changes that were approved by the 128th Legislature have limited our access to the court records of guardianship and similar probate proceedings, the existence of a guardianship, and the restrictions of power of a guardian. As a result, hospitals are not able to determine if a patient has the legal authority to act as their own decision maker, including regarding their discharge.

Our social work teams are now only able to access the name, docket number, and filing date of a guardianship action. They are left wondering if the
application was approved or denied, if a temporary guardianship expired, and who the petitioner is. The situation is made even worse during emergencies when a patient is unconscious, in an altered mental state, or unable to communicate.

Hospitals continue to weather the long-term impacts of the pandemic, including caring for an increased volume of patients who are more acutely ill and staying longer than they ever have before. On any given day, approximately 70 patients are stuck in MaineHealth hospitals awaiting access to an appropriate level of care. Our inpatient census has been at capacity nearly every day and our Emergency Departments are often forced to go on diversion – two situations that rarely occurred before the pandemic. With the changes to the Probate Code restricting our access to information, this number could potentially grow if we are not able to easily and quickly determine guardianship status.

With that said, we are in strong support of the recommendation before you today to extend the effective date of these changes to access to Probate proceedings. We would ask, however, that the Committee consider a permanent exemption for hospitals so that we don’t find ourselves in the same position we are in today in January 2025. Additionally, we would urge the Committee to consider making this legislation effective immediately as was done with LD 145 in 2021, so that our impacted patients don’t continue to languish in hospitals until these changes take effect 90 days after the Legislature adjourns.

On the subject of changes to the guardianship provisions of the new Probate Code to facilitate medical providers effectively caring for their patients, there is one more issue I would bring to the Committee’s attention. Section 5-806 of the Code contains a vitally important mechanism to identify a surrogate decision-maker for patients unable to make their own care decisions for reasons such as lack of capacity or unconsciousness, when those patients do not have a guardian or power of attorney. Family members and interested adults in a defined order of priority can serve as a surrogate decision-maker. Subsection 5 addresses the situation where members of a class cannot agree on a course of action. If the conflict cannot be resolved, however, the statute disqualifies that class and all lower classes from serving. Arguably, the disqualification should apply only to that class and allow authority to flow to the next lowest class. Otherwise medical providers can be stymied by having no available decision-maker. If the Committee is unwilling to consider addressing this issue as part of LD 196, we would urge you to ask PATLAC to consider this issue in its next round of potential amendments to the Code.

Thank you and I would be happy to answer any questions you may have.