

Senate File 2423

S-5048

1 Amend Senate File 2423 as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <Section 1. NEW SECTION. 144H.1 Definitions.

5 For purposes of this chapter, unless the context otherwise
6 requires:

7 1. "*Able to consent*" means a patient is willing and able
8 to communicate a decision independently or with appropriate
9 services, technological assistance, support decision making, or
10 other reasonable accommodation and is able to understand the
11 nature and consequences of the decision, including the primary
12 risks and benefits of a decision.

13 2. "*Authorized representative*" means any of the following:

14 a. An agent as that term is defined in section 633B.102.

15 b. An attorney in fact as that term is defined in section
16 144B.1.

17 c. A conservator as that term is defined in section
18 633B.102.

19 d. A guardian as that term is defined in section 633B.102.

20 e. A public guardian as that term is defined in chapter
21 231E.

22 3. "*Care facility*" means a facility that provides a patient
23 with health-related and personal care services, including any
24 of the following:

25 a. A hospital.

26 b. A medical clinic.

27 c. A nursing facility.

28 d. A rehabilitation facility as that term is defined in
29 section 135C.1.

30 e. A residential care facility as that term is defined in
31 section 135C.1.

32 4. "*Department*" means the department of health and human
33 services.

34 5. "*Patient*" means an adult who is receiving health-related
35 or personal care services from a care facility.

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(amending this SF 2423 to CONFORM to HF 2562)

1 6. "Person authorized to consent" means a member of any of
2 the following groups of individuals, in order of priority, who
3 is willing and able to consent, refuse to consent, or withdraw
4 consent on a patient's behalf:

5 a. The patient's spouse.

6 b. An adult child of the patient or, if the patient has more
7 than one adult child, the decision agreed to by half or more of
8 the adult children reasonably available for consultation with
9 the patient's physician.

10 c. A parent or parents of a patient, if one or both parents
11 are reasonably available for consultation with the patient's
12 physician.

13 d. An adult sibling of the patient or, if the patient has
14 more than one adult sibling, the decision agreed to by half or
15 more of the adult siblings who are reasonably available for
16 consultation with the patient's physician.

17 7. "Placement" means the admission, discharge, or transfer
18 of a patient.

19 8. "Public assistance program" means a state or federally
20 funded program including but not limited to:

21 a. The Medicaid program as that term is defined in section
22 249A.2.

23 b. Medicare pursuant to the federal government health
24 insurance program established under Tit. XVIII of the Social
25 Security Act.

26 c. A medical benefits package pursuant to 38 C.F.R. §17.38.

27 Sec. 2. NEW SECTION. 144H.2 Inability to consent —
28 certification.

29 Upon examination of a patient, a physician licensed under
30 chapter 148 may certify in the patient's medical records
31 that in the professional opinion of the physician all of the
32 following are true:

33 1. The patient is not able to consent.

34 2. Despite good-faith efforts, an authorized representative
35 for the patient has not been located by the physician.

1 3. It is in the patient's best interests to be discharged
2 from the patient's current care facility and to be transferred
3 or admitted to a care facility recommended by the physician.

4 Sec. 3. NEW SECTION. 144H.3 Person authorized to consent —
5 powers and duties.

6 1. Upon a physician's certification pursuant to section
7 144H.2, a person authorized to consent is authorized to do any
8 of the following:

9 a. Make decisions regarding the patient's care facility
10 placement.

11 b. Assist the patient in applying for health insurance
12 coverage through a private insurer, or applying for a public
13 assistance program, as necessary to facilitate the patient's
14 care facility placement.

15 c. Take any other action expressly authorized by the
16 patient.

17 2. A person authorized to consent shall act in good faith
18 and must consider all of the following:

19 a. The patient's wishes, if known.

20 b. The patient's rights.

21 c. The best interests of the patient.

22 3. A person authorized to consent may, as reasonably
23 necessary to assist the patient in applying for health
24 insurance coverage through a private insurer, or applying for a
25 public assistance program, do any of the following:

26 a. Access the patient's banking and other financial records
27 as permitted by state and federal law. This paragraph shall
28 not be construed to permit the person authorized to consent to
29 own, manage, use, or dispose of any of the patient's financial
30 resources without the patient's express consent.

31 b. Disclose the patient's relevant health information to
32 a third party. The person authorized to consent shall not
33 disclose a patient's protected health information in violation
34 of the federal Health Insurance Portability and Accountability
35 Act of 1996, Pub. L. No. 104-191.

1 4. The authority of a person authorized to consent shall
2 expire upon the earliest of any of the following:

3 a. The date that the patient's care facility placement
4 as decided by the person authorized to consent is completed,
5 and notice of approval or denial of an application for health
6 insurance coverage through a private insurer, or for a public
7 assistance program, if applicable, is received by a qualified
8 employee of the receiving care facility.

9 b. An authorized representative, or a person authorized to
10 consent who has higher priority, has been located.

11 **Sec. 4. NEW SECTION. 144H.4 Care facility — duties.**

12 1. A social worker, discharge planner, or other qualified
13 employee as designated by a patient's current care facility
14 shall do all of the following with respect to a person
15 authorized to consent:

16 a. Inform the person of the person's powers and duties
17 pursuant to this chapter.

18 b. Assist the person with identifying a receiving care
19 facility for the patient that can provide the appropriate
20 level of care, as recommended by the physician under section
21 144H.2, to the patient in the least restrictive environment and
22 consented to by a social worker, intake coordinator, or other
23 qualified employee of the receiving care facility.

24 2. If a receiving care facility as described in subsection
25 1 is identified, and the receiving care facility consents to
26 the transfer, the patient shall be transferred to the receiving
27 care facility.

28 **Sec. 5. NEW SECTION. 144H.5 Petition for court order.**

29 1. After good-faith efforts to locate an authorized
30 representative for the patient or a person authorized to
31 consent, a care facility or attending physician may petition a
32 court of competent jurisdiction to order any of the following:

33 a. The patient's care facility placement.

34 b. The patient's attending physician or a social worker,
35 intake worker, or other qualified employee of the receiving

1 care facility to assist the patient to apply for health
2 insurance coverage through a private insurer or apply for a
3 public assistance program, if appropriate.

4 2. The petition made must include the following
5 information:

6 a. The name, age, and address where the patient resides, if
7 known to the petitioner.

8 b. The name, address, and county of residence of the
9 petitioner.

10 c. The relationship of the petitioner to the patient.

11 d. The address where the patient can be found, if different
12 from the patient's residential address.

13 e. A physician's certification pursuant to section 144H.2.

14 f. An affidavit from the patient's attending physician,
15 that upon an examination of the patient and consultation with
16 another health care provider, all of the following are true:

17 (1) The patient is not able to consent.

18 (2) The patient has not identified, and despite good-faith
19 efforts the attending physician has been unable to locate, an
20 authorized representative or a person authorized to consent.

21 (3) The receiving care facility placement recommended by
22 the attending physician is in the patient's best interests.

23 (4) The receiving care facility placement recommended by
24 the attending physician will provide the most appropriate level
25 of care to the patient in the least restrictive environment,
26 and is within a reasonable proximity to the patient's
27 residence, if applicable.

28 g. An affidavit from a social worker, discharge planner, or
29 other qualified employee as designated by the patient's current
30 care facility attesting to all of the following:

31 (1) The patient has not identified, and despite good-faith
32 efforts the current care facility has been unable to locate, an
33 authorized representative or a person authorized to consent.

34 (2) The receiving care facility placement recommended
35 by the patient's attending physician will provide the

1 most appropriate level of care to the patient in the least
2 restrictive environment.

3 (3) Other care facilities within a reasonable proximity
4 to the patient's residence were considered for placement, if
5 applicable.

6 *h.* An affidavit from a social worker, intake coordinator,
7 or other qualified employee of the receiving care facility
8 recommended by the patient's attending physician attesting to
9 all of the following:

10 (1) The receiving care facility is an appropriate facility
11 available for the patient.

12 (2) The receiving care facility can provide the most
13 appropriate level of care to the patient in the least
14 restrictive environment.

15 (3) The receiving care facility consents to the transfer or
16 admission of the patient.

17 *i.* The name and address of the receiving care facility
18 recommended by the attending physician.

19 3. The court may grant the petition if the court finds all
20 of the following:

21 *a.* The patient is not able to consent.

22 *b.* Despite good-faith efforts by the attending physician
23 and the patient's current care facility, an authorized
24 representative or person authorized to consent has not been
25 located.

26 *c.* Placement in the receiving care facility recommended
27 by the patient's attending physician is in the patient's best
28 interest.

29 *d.* Placement in the receiving care facility recommended
30 by the patient's attending physician will provide the
31 most appropriate level of care to the patient in the least
32 restrictive environment.

33 *e.* A social worker, intake coordinator, or other qualified
34 employee of the receiving care facility recommended by the
35 patient's attending physician has consented to the admission

1 of the patient.

2 4. If the court grants the petition under subsection 3, the
3 court shall also order, if necessary, that a qualified employee
4 of the receiving care facility has the authority to apply for a
5 public assistance program on the patient's behalf.

6 5. An order authorizing placement pursuant to this section
7 shall remain in effect until the earliest of any of the
8 following:

9 a. A date specified by the court not to exceed thirty
10 calendar days from the date of issuance of the order.

11 b. The date the patient's placement in the receiving care
12 facility as ordered by the court is completed.

13 c. The date an attending physician certifies that the
14 patient is able to consent to the patient's placement in the
15 receiving care facility.

16 6. An order authorizing a qualified employee of a receiving
17 facility to apply for a public assistance program on a
18 patient's behalf pursuant to this section shall remain in
19 effect until the earliest of any of the following:

20 a. A date specified by the court.

21 b. Notice of approval or denial of an application for health
22 insurance coverage through a private insurer, or for a public
23 assistance program is received by a qualified employee of the
24 receiving facility.

25 c. The date that an attending physician certifies that the
26 patient is able to consent to the application for a public
27 assistance program.

28 **Sec. 6. NEW SECTION. 144H.6 Immunity — liability and**
29 **professional discipline.**

30 1. A person or care facility acting in good faith pursuant
31 to this chapter shall not be subject to civil or criminal
32 liability.

33 2. A licensee under chapter 148 acting reasonably and in
34 good faith pursuant to this chapter shall not be subject to
35 licensee discipline.

1 Sec. 7. NEW SECTION. 144H.7 Construction.

2 This chapter shall not be construed to do any of the
3 following:

4 1. Require a care facility to accept the transfer or
5 admission of a patient.

6 2. Repeal, abrogate, or impair the operation of any other
7 federal or state laws governing the transfer, admission, or
8 discharge of a patient to or from a care facility.

9 3. Infringe upon the rights of a patient under federal or
10 state law relating to the involuntary transfer, admission, or
11 discharge to or from a care facility.

12 Sec. 8. NEW SECTION. 144H.8 Rules.

13 The department may promulgate rules pursuant to chapter 17A
14 as necessary to administer this chapter.>

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