

Senate File 2423 - Introduced

SENATE FILE 2423
BY COMMITTEE ON HEALTH AND HUMAN
SERVICES

(SUCCESSOR TO SSB 3096)

A BILL FOR

1 An Act relating to care facility placement decisions for certain
2 adults.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. NEW SECTION. **144H.1 Definitions.**

2 For purposes of this chapter, unless the context otherwise
3 requires:

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

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

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

12 b. An attorney in fact as that term is defined in section
13 144B.1.

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

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

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

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

20 a. A hospital.

21 b. A medical clinic.

22 c. A nursing facility.

23 d. A rehabilitation facility as that term is defined in
24 section 135C.1.

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

27 4. "*Department*" means the department of health and human
28 services.

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

31 6. "*Person authorized to consent*" means a member of any of
32 the following groups of individuals, in order of priority, who
33 is willing and able to consent, refuse to consent, or withdraw
34 consent on a patient's behalf:

35 a. The patient's spouse.

1 b. An adult child of the patient or, if the patient has more
2 than one adult child, the decision agreed to by half or more of
3 the adult children reasonably available for consultation with the
4 patient's physician.

5 c. A parent or parents of a patient, if one or both parents
6 are reasonably available for consultation with the patient's
7 physician.

8 d. An adult sibling of the patient or, if the patient has
9 more than one adult sibling, the decision agreed to by half
10 or more of the adult siblings who are reasonably available for
11 consultation with the patient's physician.

12 7. "Placement" means the admission, discharge, or transfer of
13 a patient.

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

16 a. The Medicaid program as that term is defined in section
17 249A.2.

18 b. Medicare pursuant to the federal government health
19 insurance program established under Tit. XVIII of the Social
20 Security Act.

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

22 Sec. 2. NEW SECTION. **144H.2 Inability to consent —**
23 **certification.**

24 Upon examination of a patient, a physician licensed under
25 chapter 148 may certify in the patient's medical records that in
26 the professional opinion of the physician all of the following
27 are true:

28 1. The patient is not able to consent.

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

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

34 Sec. 3. NEW SECTION. **144H.3 Person authorized to consent —**
35 **powers and duties.**

- 1 1. Upon a physician's certification pursuant to section
2 144H.2, a person authorized to consent is authorized to do any
3 of the following:
- 4 a. Make decisions regarding the patient's care facility
5 placement.
- 6 b. Assist the patient in applying for health insurance
7 coverage through a private insurer, or applying for a public
8 assistance program, as necessary to facilitate the patient's care
9 facility placement.
- 10 c. Take any other action expressly authorized by the patient.
- 11 2. A person authorized to consent shall act in good faith and
12 must consider all of the following:
- 13 a. The patient's wishes, if known.
- 14 b. The patient's rights.
- 15 c. The best interests of the patient.
- 16 3. A person authorized to consent may, as reasonably
17 necessary to assist the patient in applying for health insurance
18 coverage through a private insurer, or applying for a public
19 assistance program, do any of the following:
- 20 a. Access the patient's banking and other financial records
21 as permitted by state and federal law. This paragraph shall
22 not be construed to permit the person authorized to consent to
23 own, manage, use, or dispose of any of the patient's financial
24 resources without the patient's express consent.
- 25 b. Disclose the patient's relevant health information to a
26 third party. The person authorized to consent shall not disclose
27 a patient's protected health information in violation of the
28 federal Health Insurance Portability and Accountability Act of
29 1996, Pub. L. No. 104-191.
- 30 4. The authority of a person authorized to consent shall
31 expire upon the earliest of any of the following:
- 32 a. The date that the patient's care facility placement as
33 decided by the person authorized to consent is completed, and
34 notice of approval or denial of an application for health
35 insurance coverage through a private insurer, or for a public

1 assistance program, if applicable, is received by a qualified
2 employee of the receiving care facility.

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

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

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

10 a. Inform the person of the person's powers and duties
11 pursuant to this chapter.

12 b. Assist the person with identifying a receiving care
13 facility for the patient that can provide the least restrictive
14 and appropriate level of care, as recommended by the physician
15 under section 144H.2, for the patient and consented to by a
16 social worker, intake coordinator, or other qualified employee of
17 the receiving care facility.

18 2. If a receiving care facility for the patient that can
19 provide the least restrictive and appropriate level of care as
20 described under subsection 1 is identified, and the receiving
21 care facility consents, the patient shall be transferred to the
22 receiving care facility.

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

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

28 a. The patient's care facility placement.

29 b. The patient's attending physician or a social worker,
30 intake worker, or other qualified employee of the receiving care
31 facility to assist the patient to apply for health insurance
32 coverage through a private insurer or apply for a public
33 assistance program, if appropriate.

34 2. The petition made must include the following information:

35 a. The name, age, and address where the patient resides, if

1 known to the petitioner.

2 *b.* The name, address, and county of residence of the
3 petitioner.

4 *c.* The relationship of the petitioner to the patient.

5 *d.* The address where the patient can be found, if different
6 from the patient's residential address.

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

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

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

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

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

17 (4) The receiving care facility placement recommended by the
18 attending physician will provide the least restrictive and most
19 appropriate level of care for the patient, and is within a
20 reasonable proximity to the patient's residence, if applicable.

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

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

27 (2) The receiving care facility placement recommended by the
28 attending physician will provide the least restrictive and most
29 appropriate level of care for the patient.

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

33 *h.* An affidavit from a social worker, intake coordinator,
34 or other qualified employee of the receiving care facility
35 recommended by the patient's attending physician attesting to all

1 of the following:

2 (1) The receiving care facility is the most appropriate
3 facility available for the patient.

4 (2) The receiving care facility can provide the least
5 restrictive and most appropriate level of care to the patient.

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

8 i. The name and address of the receiving care facility
9 recommended by the attending physician.

10 3. The court may grant the petition if the court finds all of
11 the following:

12 a. The patient is not able to consent.

13 b. Despite good-faith efforts by the attending physician and
14 the patient's current care facility, an authorized representative
15 or person authorized to consent has not been located.

16 c. Placement in the receiving care facility recommended by
17 the patient's attending physician is in the patient's best
18 interest.

19 d. Placement in the receiving care facility recommended
20 by the patient's attending physician will provide the least
21 restrictive and most appropriate level of care for the patient.

22 e. A social worker, intake coordinator, or other qualified
23 employee of the receiving care facility recommended by the
24 patient's attending physician has consented to the admission of
25 the patient.

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

30 5. An order authorizing placement pursuant to this section
31 shall remain in effect until the earliest of any of the
32 following:

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

35 b. The date the patient's placement in the receiving care

1 facility as ordered by the court is completed.

2 c. The date an attending physician certifies that the patient
3 is able to consent to the patient's placement in the receiving
4 care facility.

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

9 a. A date specified by the court.

10 b. Notice of approval or denial of an application for health
11 insurance coverage through a private insurer, or for a public
12 assistance program is received by a qualified employee of the
13 receiving facility.

14 c. The date that an attending physician certifies that the
15 patient is able to consent to the application for a public
16 assistance program.

17 Sec. 6. NEW SECTION. **144H.6 Immunity — liability and**
18 **professional discipline.**

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

21 2. A licensee under chapter 148 acting reasonably and in good
22 faith pursuant to this chapter shall not be subject to licensee
23 discipline.

24 Sec. 7. NEW SECTION. **144H.7 Construction.**

25 This chapter shall not be construed to do any of the
26 following:

27 1. Require a care facility to accept the transfer or
28 admission of a patient.

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

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

35 Sec. 8. NEW SECTION. **144H.8 Rules.**

1 The department may promulgate rules pursuant to chapter 17A as
2 necessary to administer this chapter.

3 EXPLANATION

4 The inclusion of this explanation does not constitute agreement with
5 the explanation's substance by the members of the general assembly.

6 This bill relates to care facility placement decisions for
7 certain adults.

8 The bill defines "authorized representative" as an agent,
9 attorney in fact, conservator, or guardian. "Person authorized
10 to consent" (authorized person) is defined as a member of any
11 of the following groups of individuals, in order of priority,
12 that is willing and able to consent, refuse to consent, or
13 withdraw consent on a patient's behalf: the patient's spouse,
14 the adult children, the parent or parents of a patient, or the
15 adult siblings of the patient. "Care facility" is defined as a
16 facility that provides a patient with health-related and personal
17 care services, including a hospital, medical clinic, nursing
18 facility, rehabilitation facility, or residential care facility.
19 "Placement" is defined as the admission, discharge, or transfer
20 of a patient.

21 The bill provides that a physician licensed under the laws of
22 this state may certify in a patient's record that the patient
23 is not able to consent, an authorized representative for the
24 patient has not been located by the physician despite good-faith
25 efforts, and that it is in the patient's best interests to
26 be discharged from the patient's current care facility and
27 transferred or admitted to a care facility recommended by the
28 physician. "Patient" and "able to consent" are defined in the
29 bill.

30 The bill provides that an authorized person shall act in
31 good faith and consider the patient's rights, wishes, and best
32 interests. The bill authorizes the authorized person, upon
33 the physician's certification, to make care facility placement
34 decisions and assist the patient in applying for health insurance
35 coverage through private insurance, or for a public assistance

1 program, as necessary to facilitate placement. The bill allows
2 the authorized person, as reasonably necessary to assist the
3 patient in applying for health insurance coverage through a
4 private insurer or a public assistance program and as permitted
5 under state and federal law, to access a patient's financial and
6 banking records as well as disclose relevant health information
7 to a third party.

8 The bill provides that the authority of an authorized person
9 expires when the placement decided by the authorized person is
10 completed and notice of approval or denial of an application
11 for health insurance coverage through a private insurer, or for
12 a public assistance program, if applicable, is received by a
13 qualified employee of the receiving care facility, or when an
14 authorized representative or authorized person of higher priority
15 is located.

16 The bill requires a social worker, discharge planner, or other
17 qualified employee as designated by the current care facility
18 of the patient to inform an authorized person of the person's
19 powers and duties and to assist the person with identifying
20 a receiving care facility for the patient that will provide
21 the least restrictive and appropriate level of care for the
22 patient as recommended by the certifying physician. If the
23 receiving care facility as described in the bill is identified
24 and consents, the patient shall be transferred to the receiving
25 care facility.

26 After a good-faith effort to locate an authorized
27 representative or authorized person, the bill allows an attending
28 physician or a care facility to petition a court of competent
29 jurisdiction to order placement or that a patient's attending
30 physician or a social worker, intake worker, or other qualified
31 employee of the receiving care facility assist the patient in
32 applying for health insurance coverage through a private insurer
33 or a public assistance program. The petition must include
34 certain information about the patient, the petitioner, the
35 current care facility, and the proposed receiving care facility,

1 and be supported by affidavits from an attending physician, a
2 social worker, intake coordinator, discharge planner, or other
3 qualified employee from both the current and the proposed
4 receiving care facility. The bill allows the court to grant the
5 petition if it finds that the patient is not able to consent,
6 no authorized representative for the patient or authorized person
7 has been located by the attending physician and the patient's
8 current care facility despite good-faith efforts, placement
9 in the receiving care facility recommended to the court by
10 the patient's attending physician is in the best interests of
11 the patient, and will provide the least restrictive and most
12 appropriate level of care for the patient. A social worker,
13 intake coordinator, or other qualified employee of the proposed
14 receiving care facility must consent to the admission of the
15 patient. If a court order authorizes a patient's transfer to the
16 receiving care facility, the authority, if necessary, to apply
17 for a public assistance program on the patient's behalf shall
18 transfer pursuant to court order to a qualified employee of the
19 receiving care facility.

20 The bill provides that the court's order shall be effective
21 until a date specified by the court not to exceed 30 calendar
22 days from the date of the issuance of the order, the completion
23 of any placement of the patient in the receiving care facility as
24 ordered, or the date that a physician certifies that the patient
25 is able to consent to the patient's placement in a care facility.

26 The bill provides that a court order authorizing a qualified
27 employee of a receiving facility to apply for a public assistance
28 program on a patient's behalf shall be effective until a date
29 specified by the court, the date notice of approval or denial of
30 an application for health insurance coverage through a private
31 insurer, or for a public assistance program is received by a
32 qualified employee of the receiving facility, or the date that an
33 attending physician certifies that the patient is able to consent
34 to the application for a public assistance program.

35 The bill provides immunity from civil or criminal liability to

1 a person or care facility acting in good faith under the bill.
2 Immunity from licensee discipline is also provided for licensees
3 acting reasonably and in good faith.

4 The bill is not to be construed to require a health care
5 facility to accept the transfer or admission of a patient; to
6 repeal, abrogate, or impair the operation of any other federal
7 or state laws governing the transfer, admission, or discharge of
8 a patient to or from a care facility; or to infringe upon the
9 rights of patients under federal or state law relating to the
10 involuntary transfer, admission, or discharge to or from a care
11 facility.

12 The bill authorizes the department of health and human
13 services to adopt rules to administer the bill.

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