130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document **No. 1144**

H.P. 822 House of Representatives, March 22, 2021

An Act To Amend the Law Regarding Advance Health Care Directives

(EMERGENCY)

Received by the Clerk of the House on March 18, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

ROBERT B. HUNT
Clerk

Presented by Representative ROEDER of Bangor.

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Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation needs to take effect before the expiration of the 90-day period in order to assist persons affected by the COVID-19 pandemic in completing advance health care directives; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 18-C MRSA §5-803, sub-§11 is enacted to read:

11. Execution. A written individual instruction, advance health care directive or power of attorney for health care may be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the individual instruction, advance health care directive or power of attorney for health care. For purposes of this subsection an individual appearing via telecommunication who is able to verify or recognize the identity of the principal and assess the principal's capacity is considered to be in the principal's conscious presence. If necessary due to infectious disease protocols or other health concerns, an individual outside a hospital room where the patient who is the principal is located or in a location near the principal is also considered to be in the principal's conscious presence, as long as the individual can verify or recognize the identity of the principal and assess the principal's capacity. A witness may also appear via telecommunication if that witness is able to verify or recognize the identity of the principal and assess the principal's capacity. If necessary due to infectious disease protocols or other health concerns, an individual outside a hospital room where the patient who is the principal is located or in a location near the principal may also act as a witness, as long as that witness is able to verify or recognize the principal's identity and assess the principal's capacity. The signature of the principal and the witness must physically appear on the same document but do not need to be on the same page. The signature pages do not need to be in the same location as each other when they are signed, as long as all parties involved are clearly intending to complete a unified document by signing and the pages are promptly assembled as a complete document. The written instrument must be able to be tracked with a reasonable degree of certainty as it travels between the principal and the witness or any notary to ensure it is not altered from the condition it is in when the principal signs it. Any ambiguity with regard to effective execution presented by this subsection must be resolved in favor of permitting reasonable means of execution that allow an individual to memorialize that individual's instructions with regard to that individual's health care.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill provides that a written individual instruction, advance health care directive or power of attorney for health care may be signed in the principal's conscious presence by

another individual directed by the principal to sign the principal's name. An individual appearing via telecommunication who is able to verify or recognize the identity of the principal and assess the principal's capacity is considered to be in the principal's conscious presence. If necessary due to infectious disease protocols or other health concerns, an individual outside a hospital room where the patient who is the principal is located or in a location near the patient who is the principal is also considered to be in the principal's conscious presence as long as the individual can verify or recognize the identity of the principal and assess the principal's capacity. A witness may also appear via telecommunication if that witness is able to verify or recognize the identity of the principal and assess the principal's capacity. If necessary due to infectious disease protocols or other health concerns, an individual outside a hospital room where the patient is located or in a location near the patient may also act as a witness, as long as that witness is able to verify or recognize the patient's identity and assess the patient's capacity.