MaineHealth

MaineHealth Local Health Systems

Franklin Community Health Network
LincolnHealth
MaineHealth Care At Home
Maine Behavioral Healthcare
Memorial Hospital
Maine Medical Center
Mid Coast-Parkview Health
NorDx
Pen Bay Medical Center
Southern Maine Health Care
Synernet
Waldo County General Hospital
Western Maine Health

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MaineGeneral Health
New England Rehabilitation Hospital of Portland
St. Mary's Health System

Frank Chessa, Ph.D., MaineHealth
Testimony in Support of
LD 1419, "An Act to Support Health Care Providers during State Public Health Emergencies"
April 30, 2021

Senator Carney, Representative Harnett, and distinguished members of the Joint Standing Committee on Judiciary, my name is Frank Chessa, Director of Clinical Ethics at Maine Medical Center, and I am here to testify in support of LD 1419, "An Act To Support Health Care Providers during State Public Health Emergencies."

The National Academy of Medicine defines crisis standards of care (CSC) as a "Substantial change in the usual health care operations and the level of care it is possible to deliver . . . justified by specific circumstances and . . . formally declared by a state government in recognition that crisis operations will be in effect for a sustained period. When CSC are declared "Public health disasters justify temporarily adjusting practice standards and/or shifting the balance of ethical concerns to emphasize the needs of the community rather than the needs of individuals." In short, the emergency requires the health care system to elevate the ethical importance of population health, as standards of care shift in response to shortages of equipment, pharmaceuticals and staff, and in response to the need to defend against a new infectious agent or other grave health threat.

There has been a good deal of focus over the last year on the potential shortage of ventilators and critical care resources for persons with respiratory failure due to COVID-19. This is an important topic, and as an ethicist I shudder at the tragic choices such a shortage would bring. However, this focus obscures the others ways in which the COVID-19 pandemic has shifted the standard of care. To use an example from my experience, blood product shortages (caused by the cancellation of blood drives and other changes in operations of the American Red Cross) required us to meet almost daily to prioritize which cases went to surgery. You cannot predict with certainty which patients will hemorrhage during surgery, and it would be unsafe to take two patients at moderate risk for hemorrhage to the operating room at the same time, if you only had enough blood product to rescue one of them. We were in this situation many times in the last year – sometimes we learned how much blood was available only on opening the Red Cross delivery for the day. These circumstances required us to stagger, delay and cancel surgeries. While there may be a risk to delaying a surgery, the physicians involved determined that the risk of bleeding-out during surgery was greater. There is no substitute for using clinical judgment during rapidly changing circumstances to prioritize patient well-being.

110 Free Street • Portland, ME 04101 Phone: 207-661-7001 Fax: 207-661-7029 mainehealth.org

Of course, there were many other types of healthcare services modified, delayed or cancelled during the pandemic. Some screening procedures, for example, colonoscopies and mammograms, were delayed because of a critical need to preserve personal protective equipment and to utilize staff to care for patients with acute illness. In some cases it took time to figure out how to provide services safely, minimizing the risk of COVID-19 transmission during the provision of non-critical health care services.

I often heard it said, in the media and elsewhere, that "elective" procedures were being cancelled. I wonder how many of the procedures performed in Maine hospitals are "elective" in the sense that the procedure would not positively affect someone's health? Not many – people choose to undergo procedures because they provide a health benefit. Delay and cancellation of health care services are rarely benign, and it is heart-rending that the pandemic forced these choices on clinicians, policy makers and patient's themselves.

The reason to support this legislation is that difficult choices cannot be avoided in times of crisis. Clinicians need to have the confidence to use their clinical judgment to prioritize patient well-being in rapidly changing circumstances. This is what should be driving their decisions in the moment – not legalistic concerns about practicing under "usual" standards of care that do not serve patient interests during a crisis. And after the crisis has passed, it is not fair to judge clinicians as if the emergency conditions had never existed.

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