



STATEMENT OF CONCERN

The Crisis of “Stuck” Hospital Patients: Default Surrogate Statute Bills Are Not the Answer

Dignity Alliance Massachusetts calls upon the Administration and the Legislature to recognize and address the multi-faceted problems that are leading people to be unnecessarily “stuck” in hospitals as they await discharge to a community-based setting, post-acute care facility, or a psychiatric unit.

Dignity Alliance applauds the long-awaited official acknowledgement of the crisis in the recently released [Department of Public Health \(DPH\) Report](#), issued pursuant to the provisions of Chapter 197 of the Acts of 2024. This Statement of Concern focuses on only one issue raised in the DPH Report. The Report urges a study of so-called Default Surrogate Statute bills, which gives rise to Dignity Alliance’s concerns.

Default Surrogate Statute bills are misguided and deeply flawed, and they do not substantially solve the multi-faceted problems causing the delay in discharge.

There is broad consensus within the Dignity Alliance that major factors contributing to this troubling phenomenon include:

1. Lack of available, appropriate, and accessible community-based services, supports, and settings as discharge options.
2. Misunderstandings about a person’s capacity to execute a health care proxy and/or consent, with or without support, to discharge arrangements.
3. Insurance complications, including excessively complex MassHealth rules, procedures, and practices; private insurance administrative barriers; and lack of secondary insurance.
4. The need for specialized behavioral health/substance use disorder services.
5. People with no existing health care proxy, who might have capacity, but who have nobody available to serve as a health care agent.

6. People with no existing health care proxy, and no current capacity to make healthcare decisions or execute a health care proxy, even with support and reasonable accommodations.

Dignity Alliance urges policymakers to address all these factors, and it is preparing additional statements of concern and proposed solutions for consideration. This Statement is focused on the last major factor as it relates to proposed Default Surrogate Statute legislation.

People considered “stuck” in hospitals still have legal and fundamental constitutional rights, which Default Surrogate Statute bills seek to abrogate. They short circuit statutory provisions and Probate and Family Court rules and procedures designed to protect people from losing their decision-making rights and control over their own lives without due process. Even a court appointed guardian is required to get the Court’s approval before arranging an incapacitated person’s admission to a nursing home. See [M.G.L. c. 190B § 5-309](#).

In its Report’s recommendations, DPH acknowledged the need for “further research and stakeholder engagement” before significant decisions were made. Dignity Alliance wants to participate in that study effort and calls for the intentional inclusion of people with disabilities, older adults, their advocates, and other impacted community members. During the COVID-19 pandemic, such voices were underrepresented in critical healthcare policy discussions, and that misguided and devastating error should not be repeated.

As an appropriate alternative to quickly begin to address the “stuck” hospital patient challenge, Dignity Alliance urges policymakers to actively support passage of the Supported Decision-Making Bill, [H. 5644](#). The bill strengthens and advances the Commonwealth’s gold standard of personal decision-making with or without the support of others. Passage of the bill would have an immediate positive outcome for hospital patients who are able to make their own decisions with the support of people they trust. A patient’s Supported Decision-Making Agreement would help to foster a timely transition to an appropriate post-acute setting and avoid an unnecessary guardianship.

Dignity Alliance is ready and prepared to participate in the effort to address these problems with effective remedies that respect and value choice, quality care, and community options.

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