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Public Law
123rd Legislature
First Regular Session

Chapter 446
S.P. 350 - L.D. 1033

An Act Regarding Involuntary Treatment of Mental Health Patients

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

Sec. 1. 34-B MRSA §3003, sub-§2, ¶C, as amended by PL 1985, c. 645, §4, is further amended to read:

C. Standards for informed consent to treatment, including reasonable standards and procedural mechanisms for determining when to treat a client absent his informed consent, consistent with applicable law; The rules must include the following process:

(1) The primary treating physician may request an order for involuntary treatment of a patient from a clinical review panel;

(2) A clinical review panel that consists of 2 or more professional staff who do not provide direct care to the patient is convened. At least one member of the panel must be a professional licensed to prescribe the medications relevant to the patient's care;

(3) The clinical review panel conducts the review and makes a decision on the request of the primary treating physician within 4 days of the request based on the criteria in section 3864, subsection 7-A, paragraph B;

(4) If the clinical review panel decides to approve the request for involuntary treatment, the panel enters an order of involuntary treatment in the patient's hospital records. An order for involuntary treatment may be made for as long as the period of commitment and pending any appeal; and

(5) At any hearings or meetings pertaining to involuntary treatment, the patient is offered the assistance of a lay advisor, rather than legal counsel;

Sec. 2. 34-B MRSA §3864, sub-§1-A is enacted to read:

1-A. Involuntary treatment. An application under this section may also include a request for an order of involuntary treatment under subsection 7-A.

Sec. 3. 34-B MRSA §3864, sub-§4, as amended by PL 2007, c. 319, §10, is further amended to read:

4. Examination. Examinations under this section are governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination was notified by the psychiatric hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by 2 examiners.

(1) Each examiner must be either a licensed physician or a licensed clinical psychologist. When involuntary treatment under subsection 1-A has been requested, one of the examiners must be a professional who is licensed to prescribe medications relevant to the patient's care.

~~(2) One of the examiners must be a physician or psychologist chosen by the person or by that person's counsel, if the chosen physician or psychologist is reasonably available.~~

(2-A) If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, then the court shall choose that examiner as one of the 2 designated by the court.

(3) Neither examiner appointed by the court may be the certifying examiner under section 3863, subsection 2 or 7.

B. The examination must be held at the psychiatric hospital or at any other suitable place not likely to have a harmful effect on the mental health of the person.

E. The examiners shall report to the court as to ~~whether the person is a mentally ill person within the meaning of section 3801, subsection 5 or is a person with severe and persistent mental illness, as appropriate to the proceedings for which the examination was performed on:~~

(1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;

(2) When the establishment of a progressive treatment plan under section 3873 is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;

(3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection 4; and

(4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B.

F. ~~The examiners shall report to the court as to whether the person presents a likelihood of serious harm within the meaning of section 3801, subsection 4.~~

Sec. 4. 34-B MRSA §3864, sub-§7-A is enacted to read:

7-A. Involuntary treatment. This subsection governs involuntary treatment.

A. The court may grant a psychiatric hospital power to implement a recommended treatment plan without a person's consent for up to 120 days or until the end of the commitment, whichever is sooner, if upon application the court finds:

(1) That the person lacks the capacity to make an informed decision regarding treatment;

(2) That the person is unable or unwilling to comply with recommended treatment;

(3) That the need for the treatment outweighs the risks and side effects; and

(4) That the recommended treatment is the least intrusive appropriate treatment option.

Alternatively, the court may appoint a surrogate to make treatment decisions on the person's behalf for the duration of the commitment if the court is satisfied that the surrogate is suitable, willing and reasonably available to act in the person's best interests.

B. The need for involuntary treatment under paragraph A may be based on findings that include, but are not limited to, the following:

(1) That a failure to treat the illness is likely to produce lasting or irreparable harm to the person;
or

(2) That without the recommended treatment the person's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the person to pose a likelihood of serious harm.

C. The hospital and person may agree to changes in the treatment plan during the time period of an order for involuntary treatment.

D. If a change in the treatment plan is needed and the hospital and patient do not agree on the change, the hospital shall apply to the court for a change in the treatment plan.

Sec. 5. Commissioner to adopt rules. The Commissioner of Health and Human Services shall adopt rules to implement the Maine Revised Statutes, Title 34-B, section 3003, subsection 2, paragraph C, subparagraphs 1 to 5 no later than January 1, 2008 for use beginning on that date. The rules must

include amendment of Rule 14-198 Chapter 1: "Rights of Recipients of Mental Health Services." Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A and are not subject to the provisions of Title 34-B, section 3003, subsection 4.

Sec. 6. Appropriations and allocations. The following appropriations and allocations are made.

JUDICIAL DEPARTMENT

Courts - Supreme, Superior, District and Administrative 0063

Initiative: Provides funds for additional physician services related to certain involuntary treatment examinations.

GENERAL FUND	2007-08	2008-09
All Other	\$40,000	\$40,000
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GENERAL FUND TOTAL	\$40,000	\$40,000

Sec. 7. Effective date. Those sections of this Act that enact the Maine Revised Statutes, Title 34-B, section 3864, subsections 1-A and 7-A and amend section 3003, subsection 2, paragraph C and section 3864, subsection 4 take effect January 1, 2008.

See title page for effective date, unless otherwise indicated.