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An Act To Permit Mental Health Professionals To Disclose Risks to People Likely To Be Harmed by a Patient

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

Sec. 1. 34-B MRSA §1207, sub-§5, as amended by PL 1995, c. 560, Pt. K, §19, is further amended to read:

5. Permitted disclosure. Notwithstanding subsections 1 to 4, a licensed mental health professional providing care and treatment to an adult client may provide information authorized by this subsection to a family member or other person if the family member or other person who lives with or provides direct care to the client, ~~if without the disclosure there would be significant deterioration in the client's daily functioning and if the disclosure is in the best interest of the client and is required for the client's effective care.~~ A licensed mental health professional may disclose information about the mental or medical status of a client to those who may be affected by the client's conduct to the extent that such information is reasonably necessary to protect any person from risk of harm.

~~A. Disclosure may be made only at the written request of the family member or other person living with the client.~~

~~B. Prior to the disclosure, the client must be informed in writing of the request, the name of the person requesting the information, the reason for the request and the specific information being provided. Information may not be disclosed unless the client, having received written notice of the request, consents to the disclosure. If the client does not consent to the disclosure, the person requesting the information may appeal to the department for authorization to disclose the information over the objections of the client.~~

~~C. Disclosures are limited to information regarding diagnosis, admission to or discharge from a treatment facility, the name of any medication prescribed, side effects of that medication, the likely consequences of failure of the client to take the prescribed medication, treatment plans and goals and behavioral management strategies.~~

~~D. By September 1, 1994, the department shall adopt rules to implement this subsection. The rules must include, but are not limited to, an appeal process for persons who are denied access to information under paragraph B. The appeal process must determine whether the person requesting information is a person who lives with or provides direct care to a client, whether disclosure of the information is in the best interest of the client and whether denial of access to the information will result in significant deterioration in the client's daily functioning. The commissioner shall appoint an advisory committee pursuant to Title 5, section 12002, subsection 1, paragraph A to assist the department in the development of the rules. The members of the advisory committee are not entitled to reimbursement for expenses or legislative per diem. The advisory committee must include, but is not limited to, proportionate representation from each of the following:~~

- ~~(1) Consumers nominated by the Director of the Office of Advocacy and Consumer Affairs;~~
- ~~(2) Members of the statewide alliance for the mentally ill;~~
- ~~(3) Mental health service providers; and~~
- ~~(4) The protection and advocacy agency designated pursuant to Title 5, section 19502.~~

Sec. 2. 34-B MRSA §1207, sub-§6, as enacted by PL 1997, c. 422, §2, is amended to read:

6. Duty to provide information. Any person conducting an evaluation of a mental health client in a professional capacity, who has a clear and substantial reason to believe that the mental health client poses an imminent danger of inflicting serious physical harm on the evaluator or others, shall provide information regarding such danger or harm to any other person to whom that client's care or custody is being transferred. For purposes of this subsection, the term "evaluation" includes professionally recognized methods and procedures for the purpose of assessing and treating mental illness and includes, but is not limited to, interviews, observation, testing and assessment techniques conducted by a person licensed as a physician, psychologist, nurse, clinical social worker or clinical professional counselor.

SUMMARY

This bill addresses conflicting confidentiality and reporting requirements imposed on mental health professionals who know or have reason to know that a client poses a danger of inflicting harm on a person. This bill provides that a licensed mental health professional may disclose information about the mental or medical status of a client to those who may be affected by the client's conduct to the extent that such information is reasonably necessary to protect any person from risk of harm. It also provides that the mental health professional is required to provide information about the danger to persons who have the responsibility of the care and custody of the client.