PLEASE NOTE: Legislative Information ***cannot*** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Improve Maine's Involuntary Commitment Processes

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

Sec. 1. 34-B MRSA §3861, sub-§3, as amended by PL 2011, c. 657, Pt. DD, §§1 to 4, is further amended to read:

3. Involuntary treatment. Except for involuntary treatment ordered pursuant to the provisions of section 3864, subsection 7-A or emergency involuntary treatment authorized pursuant to subsection 4, involuntary treatment of a patient at a designated nonstate mental health institution or a state mental health institute who is an involuntarily committed patient under the provisions of this subchapter may be ordered and administered only in conformance with the provisions of this subsection. For the purposes of this subsection, involuntary treatment is limited to medication for the treatment of mental illness and laboratory testing and medication for the monitoring and management of side effects.

A. If the patient's primary treating physician proposes a treatment that the physician, in the exercise of professional judgment, believes is in the best interest of the patient and if the patient lacks clinical capacity to give informed consent to the proposed treatment and the patient is unwilling or unable to comply with the proposed treatment, the patient’s primary treating physician shall request in writing a clinical review of the proposed treatment by a clinical review panel. For a patient at a state mental health institute, the request must be made to the superintendent of the institute or the designee of the superintendent. For a patient at a designated nonstate mental health institution, the request must be made to the chief administrative officer or the designee of the chief administrative officer. The request must include the following information:

(1) The name of the patient, the patient’s diagnosis and the unit on which the patient is hospitalized;

(2) The date that the patient was committed to the institution or institute and the period of the court-ordered commitment;

(3) A statement by the primary treating physician that the patient lacks capacity to give informed consent to the proposed treatment. The statement must include documentation of a 2nd opinion that the patient lacks that capacity, given by a professional qualified to issue such an opinion who does not provide direct care to the patient but who may work for the institute or institution;

(4) A description of the proposed course of treatment, including specific medications, routes of administration and dose ranges, proposed alternative medications or routes of administration, if any, and the circumstances under which any proposed alternative would be used;

(5) A description of how the proposed treatment will benefit the patient and ameliorate identified signs and symptoms of the patient's psychiatric illness;

(6) A listing of the known or anticipated risks and side effects of the proposed treatment and how the prescribing physician will monitor, manage and minimize the risks and side effects;

(7) Documentation of consideration of any underlying medical condition of the patient that contraindicates the proposed treatment; and

(8) Documentation of consideration of any advance health-care directive given in accordance with Title 18-A, section 5-802 and any declaration regarding medical treatment of psychotic disorders executed in accordance with section 11001.

B. The provisions of this paragraph apply to the appointment, duties and procedures of the clinical review panel under paragraph A.

(1) Within one business day of receiving a request under paragraph A, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall appoint a clinical review panel of 2 or more licensed professional staff who do not provide direct care to the patient. At least one person must be a professional licensed to prescribe medication relevant to the patient's care and treatment. At the time of appointment of the clinical review panel, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall notify the following persons in writing that the clinical review panel will be convened:

(a) The primary treating physician;

(b) The commissioner or the commissioner's designee;

(c) The patient's designated representative or attorney, if any;

(d) The State's designated federal protection and advocacy agency; and

(e) The patient. Notice to the patient must inform the patient that the clinical review panel will be convened and of the right to assistance from a lay advisor, at no expense to the patient, and the right to obtain an attorney at the patient's expense. The notice must include

contact information for requesting assistance from a lay advisor, who may be employed by the institute or institution, and access to a telephone to contact a lay advisor must be provided to the patient.

(2) Within 4 days of receiving a request under paragraph A and no less than 24 hours before the meeting of the clinical review panel, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall provide notice of the date, time and location of the meeting to the patient's primary treating physician, the patient and any lay advisor or attorney.

(3) The clinical review panel shall hold the meeting and any additional meetings as necessary, reach a final determination and render a written decision ordering or denying involuntary treatment.

(a) At the meeting, the clinical review panel shall receive information relevant to the determination of the patient's capacity to give informed consent to treatment and the need for treatment, review relevant portions of the patient's medical records, consult with the physician requesting the treatment, review with the patient that patient's reasons for refusing treatment, provide the patient and any lay advisor or attorney an opportunity to ask questions of anyone presenting information to the clinical review panel at the meeting and determine whether the requirements for ordering involuntary treatment have been met.

(b) All meetings of the clinical review panel must be open to the patient and any lay advisor or attorney, except that any meetings held for the purposes of deliberating, making findings and reaching final conclusions are confidential and not open to the patient and any lay advisor or attorney.

(c) The clinical review panel shall conduct its review in a manner that is consistent with the patient's rights.

(d) Involuntary treatment may not be approved and ordered if the patient affirmatively demonstrates to the clinical review panel that if that patient possessed capacity, the patient would have refused the treatment on religious grounds or on the basis of other previously expressed convictions or beliefs.

(4) The clinical review panel may approve a request for involuntary treatment and order the treatment if the clinical review panel finds, at a minimum:

(a) That the patient lacks the capacity to make an informed decision regarding treatment;

(b) That the patient is unable or unwilling to comply with the proposed treatment;

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

(d) That the proposed treatment is the least intrusive appropriate treatment option.

(5) The clinical review panel may make additional findings, including but not limited to findings that:

(a) Failure to treat the illness is likely to produce lasting or irreparable harm to the patient; or

(b) Without the proposed treatment the patient's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the patient to pose a likelihood of serious harm.

(6) The clinical review panel shall document its findings and conclusions, including whether the potential benefits of the proposed treatment outweigh the potential risks.

C. The provisions of this paragraph govern the rights of a patient who is the subject of a clinical review panel under paragraph A.

(1) The patient is entitled to the assistance of a lay advisor without expense to the patient. The patient is entitled to representation by an attorney at the patient’s expense.

(2) The patient may review any records or documents considered by the clinical review panel.

(3) The patient may provide information orally and in writing to the clinical review panel and may present witnesses.

(4) The patient may ask questions of any person who provides information to the clinical review panel.

(5) The patient and any lay advisor or attorney may attend all meetings of the clinical review panel except for any private meetings authorized under paragraph B, subparagraph 3, division (b).

D. If the clinical review panel under paragraph A approves the request for involuntary treatment, the clinical review panel shall enter an order for the treatment in the patient's medical records and immediately notify the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution. The order takes effect:

(1) For a patient at a state mental health institute, one business day from the date of entry of the order; or

(2) For a patient at a designated nonstate mental health institution, one business day from the date of entry of the order, except that if the patient has requested review of the order by the commissioner under paragraph F, subparagraph (2), the order takes effect one business day from the day on which the commissioner or the commissioner's designee issues a written decision.

E. The order for treatment under this subsection remains in effect for 120 days or until the end of the period of commitment, whichever is sooner, unless altered by:

(1) An agreement to a different course of treatment by the primary treating physician and patient;

(2) For a patient at a designated nonstate mental health institution, modification or vacation of the order by the commissioner or the commissioner's designee; or

(3) An alteration or stay of the order entered by the Superior Court after reviewing the entry of the order by the clinical review panel on appeal under paragraph F.

F. The provisions of this paragraph apply to the review and appeal of an order of the clinical review panel entered under paragraph B.

(1) The order of the clinical review panel at a state mental health institute is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.

(2) The order of the clinical review panel at a designated nonstate mental health institution may be reviewed by the commissioner or the commissioner's designee upon receipt of a written request from the patient submitted no later than one day after the patient receives the order of the clinical review panel. Within 3 business days of receipt of the request for review, the commissioner or the commissioner's designee shall review the full clinical review panel record and issue a written decision. The decision of the commissioner or the commissioner's designee may affirm the order, modify the order or vacate the order. The decision of the commissioner or the commissioner's designee takes effect one business day after the commissioner or the

commissioner's designee issues a written decision. The decision of the commissioner or the commissioner's designee is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.

Sec. 2. 34-B MRSA §3861, sub-§4 is enacted to read:

4. Emergency involuntary treatment. Nothing in this section precludes a health care practitioner from administering involuntary treatment to a patient who is being held or detained by a hospital against the patient's will under the provisions of this subchapter if the following conditions are met:

A. An emergency exists relating to the patient's physical or mental health that poses a serious, imminent risk to the patient's welfare;

B. The patient lacks the decisional capacity either to provide informed consent for treatment or to make an informed refusal of treatment;

C. A person legally authorized to provide consent for treatment on behalf of the patient is not reasonably available under the circumstances;

D. The treatment being administered is a recognized form of treatment for the patient's emergency medical condition;

E. The patient's treating health care practitioner reasonably believes that the treatment being administered will tend to safeguard the physical or mental health of the patient; and

F. A reasonable person concerned for the welfare of the patient would conclude that the benefits of the treatment outweigh the risks and potential side effects of the treatment and would consent to the treatment under the circumstances.

Sec. 3. 34-B MRSA §3863, sub-§2-A, as amended by PL 2007, c. 319, §9, is further amended to read:

2-A. Custody agreement. A state, county or municipal law enforcement agency may meet with representatives of those public and private health practitioners and health care facilities that are willing and qualified to perform the certifying examination required by this section in order to attempt to work out a procedure for the custody of the person who is to be examined while that person is waiting for that examination. Any agreement must be written and signed by and filed with all participating parties. In the event of failure to work out an agreement that is satisfactory to all participating parties, the procedures of section 3862 and this section continue to apply.

As part of an agreement the law enforcement officer requesting certification may transfer protective custody of the person for whom the certification is requested to another law enforcement officer, a health officer if that officer agrees or the chief administrative officer of a public or private health practitioner or health facility or the chief administrative officer's designee. Any arrangement of this sort must be part of the written agreement between the law enforcement agency and the health practitioner or health care facility. In the event of a transfer, the law enforcement officer seeking the transfer shall provide the

written application required by this section. If the protective custody of the person is transferred by the law enforcement officer to a hospital, the hospital obtains a certificate as described in subsection 2 that states that the person meets criteria for emergency involuntary hospitalization and the hospital is unable to locate an available inpatient bed at a psychiatric hospital to admit the person, the hospital shall provide the written application required by this section and may detain the person in accordance with subsection 3, paragraphs D and E.

A person with mental illness may not be detained or confined in any jail or local correctional or detention facility, whether pursuant to the procedures described in section 3862, pursuant to a custody agreement or under any other circumstances, unless that person is being lawfully detained in relation to or is serving a sentence for commission of a crime.

Sec. 4. 34-B MRSA §3863, sub-§3, ¶A, as amended by PL 2007, c. 319, §9, is further amended to read:

A. If the judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, the judge or justice shall endorse them and promptly send them to the admitting psychiatric hospital and to the medical practitioner who signed the certificate. For purposes of carrying out the provisions of this section, an endorsement transmitted by facsimile machine has the same legal effect and validity as the original endorsement signed by the judge or justice.

Sec. 5. 34-B MRSA §3863, sub-§3, ¶¶D and E are enacted to read:

D. Notwithstanding paragraph B, a person may be held against the person's will and detained in a hospital under this section for a reasonable period of time, not to exceed 4 days, solely on the basis of a written medical certificate signed by a medical practitioner under subsection 2 if:

(1) The hospital, after undertaking reasonably diligent efforts, is unable to locate an available inpatient bed at a psychiatric hospital during the initial 24-hour period that the person is held;

(2) The hospital documents during each 24-hour period that the person is held the reasonably diligent efforts the hospital has taken to locate an available inpatient bed at a psychiatric hospital;

(3) The hospital obtains during each 24-hour period that the person is held a written medical recertification that the person continues to meet the criteria for emergency involuntary admission under subsection 2 that is signed by:

(a) A licensed psychiatrist or certified psychiatric clinical nurse specialist; or

(b) A licensed physician, licensed clinical psychologist, registered physician assistant or certified nurse practitioner, in consultation with a licensed psychiatrist; and

(4) The hospital or person seeking the emergency involuntary admission undertakes to secure judicial endorsement of the application for emergency involuntary admission immediately upon locating an available inpatient bed at a psychiatric hospital.

E. Notwithstanding paragraph B, if there is no available inpatient bed at a psychiatric hospital for a person held 4 days under paragraph D, the person may continue to be held against the person's will and detained in a hospital under this section for an additional reasonable period of time, not to exceed 3 days, if:

(1) The hospital continues to undertake reasonably diligent efforts to locate an available inpatient bed at a psychiatric hospital during each 24-hour period that the person continues to be held;

(2) The hospital documents during each 24-hour period that the person is held the reasonably diligent efforts the hospital has taken to locate an available inpatient bed at a psychiatric hospital;

(3) The hospital obtains, within 24 hours prior to the expiration of the 4-day period set forth in paragraph D, a written medical recertification that the person continues to meet the criteria for emergency involuntary admission under subsection 2 that is signed by:

(a) A licensed psychiatrist or certified psychiatric clinical nurse specialist; or

(b) A licensed physician, licensed clinical psychologist, registered physician assistant or certified nurse practitioner, in consultation with a licensed psychiatrist;

(4) The hospital documents on the application for emergency involuntary admission the name of the hospital at which the person is being held and the location in the hospital where the person is being held;

(5) The hospital obtains judicial endorsement of the application prior to the expiration of the 4-day period set forth in paragraph D;

(6) The hospital obtains, within 48 hours of the judicial endorsement, a written medical recertification that the person continues to meet the criteria for emergency involuntary admission under subsection 2 that is signed by:

(a) A licensed psychiatrist or certified psychiatric clinical nurse specialist; or

(b) A licensed physician, licensed clinical psychologist, registered physician assistant or certified nurse practitioner, in consultation with a licensed psychiatrist; and

(7) The hospital or person seeking the emergency involuntary admission undertakes to secure judicial endorsement of the application for emergency involuntary admission immediately upon locating an available inpatient bed at a psychiatric hospital.

Sec. 6. 34-B MRSA §3863, sub-§5-A, ¶C, as enacted by PL 2009, c. 651, §16, is amended to read:

C. An application under this subsection must be made to the District Court having territorial jurisdiction over the psychiatric hospital to which the person is admitted on an emergency basis and must be filed within ~~3~~5 days from the date of admission of the patient to a psychiatric hospital under this section, except that, if the ~~3rd~~5th day falls on a weekend or holiday, the application must be filed on the next business day following that weekend or holiday. If no application to the District Court is timely filed, the person must be promptly discharged.

Sec. 7. 34-B MRSA §3863, sub-§9, as enacted by PL 2011, c. 541, §2, is repealed and the following enacted in its place:

9. **Limitations.** The following limitations apply to actions taken under this section.

A. Admission to a psychiatric hospital on an emergency basis under the provisions of this section is not commitment to a psychiatric hospital.

B. A hospital holding or detaining a person against the person's will under subsection 3, paragraph D or E during the pendency of an available inpatient bed at a psychiatric hospital may not be held to the licensing standards of a psychiatric hospital by the Department of Health and Human Services with respect to:

(1) The person's involuntary detention; or

(2) Any care or treatment provided to the person during the involuntary detention period.

Sec. 8. 34-B MRSA §3863, sub-§10 is enacted to read:

10. Immunity. A hospital or medical practitioner is immune from liability for holding or detaining a person against the person's will beyond the time frames authorized by subsection 3, paragraphs D and E if:

A. The person was medically certified as meeting criteria for involuntary admission during the period of time the person was held or detained;

B. The person was held or detained by the hospital or medical practitioner due to the unavailability of an inpatient bed at a psychiatric hospital;

C. The hospital or medical practitioner undertook and documented reasonably diligent efforts to locate an available inpatient bed at a psychiatric hospital during the period of time the person was held or detained; and

D. The hospital or medical practitioner otherwise complied with the requirements of subsection 3, paragraphs D and E for the periods of time the person was authorized to be held or detained under those paragraphs.

Sec. 9. 34-B MRSA §3864, sub-§1, ¶D, as amended by PL 2009, c. 651, §20, is further amended to read:

D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:

(1) The patient's right to retain an attorney or to have an attorney appointed;

(2) The patient's right to select or to have the patient's attorney select an independent examiner; and

(3) How to contact the District Court; ~~and~~

Sec. 10. 34-B MRSA §3864, sub-§1, ¶E, as enacted by PL 1997, c. 422, §14, is amended to read:

E. A copy of the notice and instructions given to the patient~~.~~; and

Sec. 11. 34-B MRSA §3864, sub-§1, ¶F is enacted to read:

F. A copy of the recommended treatment plan, if applicable under subsection 7-A.

Sec. 12. 34-B MRSA §3864, sub-§3, ¶A, as amended by PL 1997, c. 422, §15, is further amended to read:

A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application and date of hearing and a copy of any applicable recommended treatment plan:

(1) To be mailed within 2 days of filing to the person; and

(2) To be mailed to the person's guardian, if known, and to the person's spouse, parent or one of the person's adult children or, if none of these persons exist or if none of those persons can be located, to one of the person's next of kin or a friend, except that if the chief administrative officer has reason to believe that notice to any of these individuals would pose risk of harm to the person who is the subject of the application, notice to that individual may not be given.

Sec. 13. 34-B MRSA §3864, sub-§5, ¶A, as amended by PL 2009, c. 651, §22, is further amended to read:

A. The District Court shall hold a hearing on the application not later than ~~14~~10 days from the date of the application. The District Court may separate the hearing on commitment from the hearing on involuntary treatment.

(1) For good cause shown, on a motion by any party or by the court on its own motion, the hearing on commitment or on involuntary treatment may be continued for a period not to exceed 21 additional days.

(2) If the hearing on commitment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(2-A) If the hearing on involuntary treatment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application for involuntary treatment.

(3) In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply.

Sec. 14. 34-B MRSA §3864, sub-§7-A, ¶A-1 is enacted to read:

A-1. During the pendency of the hearing on the application under this section, the court may grant a psychiatric hospital, on an expedited basis and without a hearing, the power to implement a recommended treatment plan without a person's consent to be implemented no sooner than 3 days following the date of the filing of the application and to remain in effect until the date of the hearing on the application if:

(1) The recommended treatment plan is submitted to the court with the application;

(2) The recommended treatment plan includes a certification by the physician responsible for implementing the plan that:

(a) The person lacks the capacity to make an informed decision regarding treatment;

(b) The person is unable or unwilling to comply with the recommended treatment;

(c) The need for the recommended treatment outweighs the potential risks and side effects; and

(d) The recommended treatment is the least intrusive appropriate treatment option; and

(3) A copy of the recommended treatment plan is provided to the person in accordance with subsection 3.

Sec. 15. 34-B MRSA §3873-A, sub-§5, ¶A, as enacted by PL 2009, c. 651, §29, is amended to read:

A. The District Court shall hold a hearing on the application or any subsequent motion not later than ~~14~~10 days from the date when the application or motion is filed. For good cause shown, on a motion by any party or by the court on its own motion, the hearing may be continued for a period not to exceed 21 additional days. If the hearing is not held within the time specified, or within the specified continuance period, the court shall dismiss the application or motion. In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply.

Sec. 16. 34-B MRSA §3874 is enacted to read:

§ 3874. Medical examinations and consultations conducted via telemedicine or similar technologies

Notwithstanding any other provision of this subchapter, a medical examination or consultation required or permitted to be conducted under this subchapter may be conducted using telemedicine as defined in Title 24-A, section 4316, subsection 1 or similar technologies that enable the medical examination or consultation to be conducted in accordance with applicable standards of care.

SUMMARY

This bill amends the laws governing involuntary hospitalization by:

1. Creating exceptions to the 18-hour protective custody period and 24-hour hospital emergency hold period to authorize a hospital to involuntarily detain a person meeting criteria for emergency psychiatric hospitalization for up to 4 days based on a medical certification obtained during each 24-hour period in circumstances when an inpatient bed at a psychiatric hospital cannot be located;

2. Authorizing a hospital to continue to detain a person meeting criteria for involuntary hospitalization against the person's will for up to an additional 3 days pending the availability of an inpatient bed at a psychiatric hospital, as long as the hospital continues to medically recertify the person's need for involuntary hospitalization during the additional hold period and obtains judicial endorsement for the continued involuntary detention of the person at the hospital;

3. Extending the period of time that a person may be involuntarily hospitalized on an emergency basis at a psychiatric hospital from 3 days to 5 days;

4. Authorizing a health care practitioner to administer involuntary treatment to a person being involuntarily held or detained if the person's condition constitutes an emergency that poses a serious, imminent risk to the person's physical or mental health and other conditions are met;

5. Creating an expedited process for judicial review and approval of a recommended treatment plan that may be implemented for an involuntarily hospitalized person during the pendency of the hearing on the application for judicial involuntary commitment;

6. Permitting medical examinations and consultations required or permitted under the laws governing involuntary hospitalization to be conducted using telemedicine or similar technologies;

7. Clarifying that hospitals detaining a person against the person's will while awaiting the availability of an inpatient bed at a psychiatric hospital may not be held to the licensing standards of a psychiatric hospital with respect to the detention or any care and treatment provided to that person during the detention;

8. Shortening the period between the filing of an application for judicial involuntary commitment and the hearing on the application from 14 days to 10 days; and

9. Affording immunity from liability to hospitals and medical practitioners that detain a person against the person's will beyond statutorily permitted time frames if the detention is due to the unavailability of an inpatient bed at a psychiatric hospital and other conditions are met.