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An Act To Implement the Recommendations of the Mental Health Working Group

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

PART A

Sec. A-1. 34-B MRSA §3861, sub-§4 is enacted to read:

4. Emergency involuntary treatment. Nothing in this section precludes a medical practitioner from administering involuntary treatment in accordance with subsection 3 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. For purposes of evaluation for emergency involuntary treatment, the medical practitioner has considered available history and information about the patient from other sources considered reliable by the examiner including, but not limited to, family members of the patient;

B. As a result of mental illness, the patient poses a serious and immediate risk of harm to the patient or others;

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

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

E. The treatment being administered is a recognized form of treatment for treating the patient's mental illness and is the least restrictive form of treatment appropriate in the circumstances; 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. A-2. 34-B MRSA §3863, sub-§2, as amended by PL 2009, c. 651, §14, is further amended to read:

2. Certifying examination. The written application must be accompanied by a dated certificate, signed by a medical practitioner stating:

A. That the practitioner has examined the person on the date of the certificate;

B. That the medical practitioner is of the opinion that the person is mentally ill and, because of that illness, poses a likelihood of serious harm. The written certificate must include a description of the grounds for that opinion. The opinion may be based on personal observation or on history and information about the patient from other sources considered reliable by the examiner, including, but not limited to, family members of the patient; and

C. That adequate community resources are unavailable for care and treatment of the person's mental illness; ~~and.~~

~~D. The grounds for the practitioner's opinion, which may be based on personal observation or on history and information from other sources considered reliable by the examiner.~~

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

D. A person who has been held against the person's will for no more than 24 hours pursuant to paragraph B may be held for a reasonable period of time, not to exceed 48 hours, if:

(1) The hospital has had an evaluation of the person conducted by an appropriately designated individual and that evaluation concludes that the person poses a likelihood of serious harm due to mental illness;

(2) The hospital, after undertaking its best efforts, has been unable to locate an available inpatient bed at a psychiatric hospital or a psychiatric unit of a hospital or other appropriate alternative; and

(3) The hospital has notified the department of the name of the person, the location of the person, the name of the appropriately designated individual who conducted the evaluation pursuant to subparagraph (1) and the time the person first presented to the hospital.

E. In the event that a person remains in a hospital for the full 48 hours allowed under paragraph D, the person may be held for one additional 48-hour period if:

(1) The hospital satisfies again the requirements of paragraph D; and

(2) The department has notified the hospital that it will provide its best efforts to find an inpatient bed at a psychiatric hospital or other appropriate alternative.

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

B. The Department of Health and Human Services is responsible for any reasonable transportation expenses under this section, including return from the psychiatric hospital if admission is declined. The department shall utilize any 3rd-party payment sources that are available.

Sec. A-5. 34-B MRSA §3864, sub-§2, as amended by PL 2007, c. 319, §10, is further amended to read:

2. Detention pending judicial determination. Notwithstanding any other provisions of this subchapter, a person, with respect to whom an application for the issuance of an order for hospitalization has been filed, may not be released or discharged during the pendency of the proceedings, unless:

- A. The District Court orders release or discharge upon the request of the patient or the patient's guardian, parent, spouse or next of kin;
- B. The District Court orders release or discharge upon the report of the applicant that the person may be discharged with safety;
- C. A court orders release or discharge upon a writ of habeas corpus under section 3804; ~~or~~
- D. Upon request of the commissioner, the District Court orders the transfer of a patient in need of more specialized treatment to another psychiatric hospital. In the event of a transfer, the court shall transfer its file to the District Court having territorial jurisdiction over the receiving psychiatric hospital.; or
- E. The person has voluntarily agreed to receive psychiatric services.

Sec. A-6. 34-B MRSA §3868, sub-§1, ¶C is enacted to read:

C. For any patient transferred pursuant to this subsection, the order of involuntary commitment and the order of involuntary treatment, if any, remain in effect and must be transferred to the receiving hospital.

Sec. A-7. 34-B MRSA §3874 is enacted to read:

§ 3874. Medical examinations conducted via telemedicine technologies

Notwithstanding any provision to the contrary in this subchapter, any medical examination or consultation required or permitted to be conducted under this subchapter may be conducted utilizing telemedicine or other similar technologies that enable the medical examination or consultation to be conducted in accordance with applicable standards of care. As used in this section, "telemedicine" has the same meaning as in Title 24-A, section 4316, subsection 1.

PART B

Sec. B-1. 34-B MRSA §1212, sub-§2, as amended by PL 2009, c. 268, §11, is further amended to read:

2. Duties. The State Forensic Service ~~shall have~~has the following duties:

- A. To perform examinations of the mental condition of a defendant pursuant to Title 15, section 101-D and to do the evaluations or examinations on behalf of any court of record, pursuant to agreement between the commissioner and the jurisdiction requesting that the evaluation be performed;

B. To perform examinations of the mental condition of persons committed to the custody of the commissioner under Title 15, section 103, for the purposes specified in Title 15, section 104-A;

C. To perform examinations of the mental condition of persons pursuant to Title 22, chapter 250; ~~and~~

D. To perform evaluations on behalf of any court of record. The State Forensic Service may contract with psychologists, psychiatrists and licensed clinical social workers to perform evaluations. The clinicians under contract are entitled to quasi-judicial immunity for all acts performed within the scope of their evaluation duties and in accordance with protocols for evaluations established by the State Forensic Service.; and

E. To perform examinations pursuant to section 3864, subsection 4 as directed by the court. If the application under section 3864, subsection 1 includes a request for an order for involuntary treatment under section 3864, subsection 7-A, the examiner must be a medical practitioner who is qualified to prescribe medication relevant to the patient's care pursuant to section 3864, subsection 4.

Sec. B-2. 34-B MRSA §3864, sub-§4, ¶A, as amended by PL 2009, c. 651, §21, is further amended to read:

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 ~~a medical practitioner~~the State Forensic Service. If the application includes a request for an order for involuntary treatment under subsection 7-A, the State Forensic Service medical practitioner must be a medical practitioner who is qualified to prescribe medication relevant to the patient's care. ~~If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, the court shall give preference to choosing that examiner.~~

SUMMARY

This bill contains the recommendations of the mental health working group pursuant to Resolve 2013, chapter 106.

Part A amends Maine's involuntary hospitalization statutes by:

1. Creating exceptions to the 24-hour hospital emergency hold period to authorize a hospital to detain on an involuntary basis a mentally ill person meeting criteria for emergency psychiatric hospitalization for up to 2 additional 48-hour periods;

2. Making a nonsubstantive clarification to a section of law;

3. Codifying Maine's common law emergency exception to informed consent to authorize a medical practitioner to administer involuntary treatment to a patient being involuntarily held or detained if the patient's condition poses a serious, imminent risk of harm to the patient or others and other conditions are met;

4. Limiting to reasonable costs the State's costs related to transporting certain patients;
5. Allowing for the release or discharge of an involuntary patient if the patient subsequently agrees to voluntary commitment;
6. Clarifying that orders of involuntary commitment and involuntary treatment transfer with a patient who is transferred to a different hospital; and
7. Permitting medical examinations and consultations required or permitted under the State's involuntary hospitalization statutes to be conducted using telemedicine technologies.

Part B expands the duties of the State Forensic Service within the Department of Health and Human Services to include performing the duties of an independent examiner at the direction of the District Court in response to applications for involuntary commitment and involuntary treatment.