

§820. Extreme public health emergency

The provisions of this subchapter apply in the event of the declaration of an extreme public health emergency pursuant to section 802, subsection 2-A and Title 37-B, chapter 13, subchapter II. [PL 2001, c. 694, Pt. A, §1 (NEW); PL 2005, c. 383, §24 (AFF).]

1. Powers of the department. Upon the declaration of an extreme public health emergency, the department has the following powers.

A. Upon request of the department, a health care provider, pharmacist, medical laboratory or veterinarian shall provide to the department health information directly related to a declared extreme public health emergency. [PL 2005, c. 383, §15 (AMD); PL 2005, c. 383, §24 (AFF).]

B. The department may take a person into custody and order prescribed care of that person as provided in this subsection.

(1) The department may act without a court order if:

(a) The department has reasonable cause to believe that the person has been exposed to or is at significant medical risk of transmitting a communicable disease that poses a serious and imminent risk to public health and safety;

(b) There are no less restrictive alternatives available to protect the public health and safety; and

(c) The delay involved in securing a court order would pose an imminent risk to the person or a significant medical risk of transmission of the disease.

(2) The department may act pursuant to a court order obtained under subsection 2.

(3) A person is exempt from examination, vaccination, medical care or treatment if alternative public health measures are available, even if those measures are more restrictive, and if:

(a) The person demonstrates a sincere religious or conscientious objection to the examination, vaccination, medical care or treatment; or

(b) The person is at known risk of serious adverse medical reaction to the vaccination or medical care or treatment. [PL 2001, c. 694, Pt. A, §1 (NEW); PL 2005, c. 383, §24 (AFF).]

C. The department may implement rules to address the risk or potential risk of a shortage of health care workers. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 383, §16 (NEW).]

D. The department may implement rules to address the need for dispensing drugs in an emergency situation. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 383, §16 (NEW).]

[PL 2005, c. 383, §§15, 16 (AMD); PL 2005, c. 383, §24 (AFF).]

2. Judicial review. The following provisions apply to judicial review of the authority of the department under this subchapter.

A. A hearing must be held before a judge of the District Court, a justice of the Superior Court or a justice of the Supreme Judicial Court as soon as reasonably possible but not later than 48 hours after the person is subject to prescribed care to determine whether the person must remain subject to prescribed care. A hearing under this paragraph may be waived in writing after notice of the effect of a waiver and an opportunity to consult with an attorney. [PL 2001, c. 694, Pt. A, §1 (NEW); PL 2005, c. 383, §24 (AFF).]

B. Notice of the hearing must be served upon the person subject to prescribed care within a reasonable time before the hearing. The notice must specify: the time, date and place of the hearing;

the grounds and underlying facts upon which the prescribed care is sought; the right to appear at the hearing, either in person, by electronic means or by representation, and to present and cross-examine witnesses; and the right to counsel. [PL 2001, c. 694, Pt. A, §1 (NEW); PL 2005, c. 383, §24 (AFF).]

C. For a court to order prescribed care, the department must prove by clear and convincing evidence that:

(1) The person has been exposed to or is at significant medical risk of transmitting a communicable disease that poses a serious imminent risk to public health or safety; and

(2) There are no less restrictive alternatives available to protect the public health and safety. [PL 2001, c. 694, Pt. A, §1 (NEW); PL 2005, c. 383, §24 (AFF).]

D. Within 24 hours of completion of the hearing, the court shall enter a finding approving prescribed care and shall issue an order of prescribed care for a period not to exceed 30 days or shall dismiss the petition and order the person released from prescribed care immediately. [PL 2001, c. 694, Pt. A, §1 (NEW); PL 2005, c. 383, §24 (AFF).]

E. If the department determines that it is necessary to continue an order obtained under this subsection, the department shall petition the court that issued the order. The court shall hold a hearing in accordance with paragraphs B, C and D and shall make such orders as the court determines necessary, except that an order may not exceed 30 days in duration without further review by the court. [PL 2001, c. 694, Pt. A, §1 (NEW); PL 2005, c. 383, §24 (AFF).]

F. The court may order applications under this section to be joined. [PL 2001, c. 694, Pt. A, §1 (NEW); PL 2005, c. 383, §24 (AFF).]
[PL 2001, c. 694, Pt. A, §1 (NEW); PL 2005, c. 383, §24 (AFF).]

3. Appeal. A person aggrieved by a court order issued under subsection 2 may appeal from that order to the Supreme Judicial Court. The order remains in effect pending appeal. Any findings of fact may not be set aside unless clearly erroneous. Pursuant to order of court, appeals under this section may be joined. The Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection.

[PL 2001, c. 694, Pt. A, §1 (NEW); PL 2005, c. 383, §24 (AFF).]

4. Medical-legal advisory panel.

[PL 2005, c. 383, §17 (RP); PL 2005, c. 383, §24 (AFF).]

5. Interpretation. The provisions of sections 817, 818, 819 and 824 must be interpreted to apply to this subchapter to the extent not inconsistent with this subchapter.

[PL 2001, c. 694, Pt. A, §1 (NEW); PL 2005, c. 383, §24 (AFF).]

SECTION HISTORY

PL 2001, c. 694, §A1 (NEW). PL 2001, c. 694, §B6 (AFF). PL 2003, c. 366, §1 (AFF). PL 2005, c. 383, §§15-17 (AMD). PL 2005, c. 383, §24 (AFF).

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