

MAINE STATE LEGISLATURE

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L.D. 706

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 499, L.D. 706, Bill, "An Act to Expedite Treatment of Certain Persons with Mental Illness"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 18-A MRSA §5-802, sub-§(d), as enacted by PL 1995, c. 378, Pt. A, §1, is amended to read:

(d) Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity or that another condition exists that affects an individual instruction, the authority of an agent or the validity of an advanced advance health-care directive must be made by the primary physician ~~or~~ by a court of competent jurisdiction or, for an individual who has included a directive authorizing mental health treatment in an advance health-care directive, by a person qualified to conduct an examination pursuant to Title 34-B, section 3863.

Sec. 2. 18-A MRSA §5-802, sub-§(i) is enacted to read:

(i) An advance health care directive is valid for purposes of directing mental health treatment. The terms of the directive must be construed in accordance with this Part and Title 34-B, sections 3831 and 3862.

Sec. 3. 34-B MRSA §3831, sub-§6 is enacted to read:

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2 6. Adults with advance health care directives. An adult
3 with an advance health care directive authorizing mental health
4 hospital treatment may be admitted on an informal voluntary basis
5 if the conditions specified in the advance health care directive
6 for the directive to be effective are met in accordance with the
7 method stated in the advance health care directive or, if no such
8 method is stated, as determined by a physician or a
9 psychologist. If no conditions are specified in the advance
10 health care directive as to how the directive becomes effective,
11 the person may be admitted on an informal voluntary basis if the
12 person has been determined to be incapacitated pursuant to Title
13 18-A, Article 5, Part 8. A person may be admitted only if the
14 person does not at the time object to the admission or, if the
15 person does object, if the person has directed in the advance
16 health care directive that admission to the hospital may occur
17 despite that person's objections. The duration of the stay in
18 the hospital of a person under this subsection may not exceed 5
19 working days. If at the end of that time the chief
20 administrative officer of the hospital recommends further
21 hospitalization of the person, the chief administrative officer
22 shall proceed in accordance with section 3863, subsection 5.

23 This subsection does not create an affirmative obligation of a
24 hospital to admit a person consistent with the person's advance
25 health care directive. This subsection does not create an
26 affirmative obligation on the part of the hospital or treatment
27 provider to provide the treatment consented to in the person's
28 advance health care directive if the physician or psychologist
29 evaluating or treating the person or the chief administrative
30 officer of the hospital determines that the treatment is not in
31 the best interest of the person.

32 Sec. 4. 34-B MRSA §3862, as amended by PL 1997, c. 683, Pt.
33 A, §20, is further amended to read:

34 **§3862. Protective custody**

35 1. **Law enforcement officer's power.** If a law enforcement
36 officer has reasonable grounds to believe, based upon probable
37 cause, that a person may be mentally ill and that due to that
38 condition the person presents a threat of imminent and
39 substantial physical harm to that person or to other persons, or
40 if a law enforcement officer knows that a person has an advance
41 health care directive authorizing mental health treatment and the
42 officer has reasonable grounds to believe, based upon probable
43 cause, that the person lacks capacity, the law enforcement
44 officer:

45 A. May take the person into protective custody; and

46 B. If the law enforcement officer does take the person into
47 protective custody, shall deliver the person immediately for

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2 examination as provided in section 3863 or, for a person
3 taken into protective custody who has an advance health care
4 directive authorizing mental health treatment, for
5 examination as provided in Title 18-A, section 5-802,
6 subsection (d) to determine the individual's capacity and
7 the existence of conditions specified in the advance health
8 care directive for the directive to be effective. If the
9 examination occurs in a hospital emergency room, the
10 examination may be performed by a licensed physician, a
11 licensed clinical psychologist, a physician's assistant, a
12 nurse practitioner or a certified psychiatric clinical nurse
13 specialist. If the examination does not occur in a hospital
14 emergency room, the examination may be performed only by a
15 licensed physician or licensed clinical psychologist.

16 When, in formulating probable cause, the law enforcement officer
17 relies upon information provided by a 3rd-party informant, the
18 officer shall confirm that the informant has reason to believe,
19 based upon the informant's recent personal observations of or
20 conversations with a person, that the person may be mentally ill
21 and that due to that condition the person presents a threat of
22 imminent and substantial physical harm to that person or to other
23 persons.

24 **2. Certificate not executed.** If a certificate relating to
25 the person's likelihood of serious harm is not executed by the
26 examiner under section 3863, and, for a person who has an advance
27 health care directive authorizing mental health treatment, if the
28 examiner determines that the conditions specified in the advance
29 health care directive for the directive to be effective have not
30 been met or, in the absence of stated conditions, that the person
31 does not lack capacity, the officer shall:

32 **A.** Release the person from protective custody and, with his
33 the person's permission, return him the person forthwith to
34 his the person's place of residence, if within the
35 territorial jurisdiction of the officer;

36 **B.** Release the person from protective custody and, with his
37 the person's permission, return him the person forthwith to
38 the place where he the person was taken into protective
39 custody; or

40 **C.** If the person is also under arrest for a violation of
41 law, retain him the person in custody until he the person is
42 released in accordance with the law.

43 **3. Certificate executed.** If the certificate is executed by
44 the examiner under section 3863, the officer shall undertake
45 forthwith to secure the endorsement of a judicial officer under
46 section 3863 and may detain the person for a reasonable period of
47 time, not to exceed 18 hours, pending that endorsement.

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2 3-A. Advance health care directive effect. If the examiner
4 determines that the conditions specified in the advance health
6 care directive for the directive to be effective have been met
8 or, in the absence of stated conditions, that the person lacks
10 capacity, the person may be treated in accordance with the terms
12 of the advance health care directive.

14 **4. Transportation costs.** The costs of transportation under
16 this section must be paid in the manner provided under section
18 3863. Any person transporting an individual to a hospital under
20 the circumstances described in this section shall use the least
22 restrictive form of transportation available that meets the
24 security needs of the situation.'

26 Further amend the bill by inserting at the end before the
28 summary the following:

30 **FISCAL NOTE**

32 The additional costs associated with the new procedures for
34 mental health treatment agreements can be absorbed by the
36 Department of Mental Health, Mental Retardation and Substance
38 Abuse Services utilizing existing budgeted resources.'

40 **SUMMARY**

42 This amendment is the majority report of the committee.

44 This amendment replaces the bill.

46 This amendment amends the Uniform Health-care Decisions Act
48 to specifically provide for advance health care directives that
50 authorize mental health treatment. An advance health care
directive allows a person who is competent when executing the
directive to consent to specific health care in the future. It
allows persons to make decisions about their health care prior to
the time when they are no longer considered competent to make
those decisions for themselves.

Under this amendment, an advance health care directive
authorizing mental health treatment may contain conditions that
specify when the directive becomes effective, and it may specify
a particular method for determining when those conditions are
met. It may also provide consent to hospitalization for mental
health treatment, which may be honored if the person at the time
of examination and hospitalization lacks capacity, even if the
person objects to the hospitalization.

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2 This amendment also amends the voluntary hospitalization and
protective custody laws as they apply to persons with advance
4 health care directives authorizing mental health treatment. A
person may be admitted on an informal voluntary basis if the
6 conditions in the advance health care directive are met or, if
there are no conditions specified, if the person has been
8 determined to be incapacitated in accordance with the provisions
of the Uniform Health-care Decisions Act. A person may be
admitted only if the person does not object to the admission or
10 if the person's advance health care directive provides for such
admission and the person is incapacitated, even if the person
12 objects. The duration of the stay in the hospital of the person
may not exceed 5 working days. Further hospitalization is
14 possible only with the consent of the person or through the
emergency admission procedures.

16
18 This amendment clarifies that, although the advance health
care directive provides consent to informal voluntary
hospitalization, there is no affirmative obligation on the
20 hospital's part to admit the person. Admission may not be in the
best interest of the person or the hospital may not be able to
22 provide the appropriate treatment for various reasons; this
amendment ensures that the hospital is not obligated to admit the
24 person solely because the person's advance health care directive
authorizes the admission. This amendment also creates no
26 obligation on the hospital or treatment provider to provide the
treatment consented to in the advance health care directive if
28 the physician or psychologist evaluating or physician the person
or the chief administrative officer of the hospital determines
30 that the treatment is not in the person's best interest.

32 This amendment authorizes a law enforcement officer to take
into protective custody a person that the officer knows has an
34 advance health care directive authorizing mental health treatment
if the officer has reasonable grounds to believe, based on
36 probable cause, that the person lacks capacity. The law
enforcement officer must then deliver the person immediately for
38 examination in accordance with the Uniform Health-care Decisions
Act to determine whether the person is competent and whether the
40 conditions of the advance health care directive are met. If the
examiner determines that the person does not lack capacity or
42 that the conditions are not met, the person must be released from
protective custody. If the examiner determines that the person
44 lacks capacity or that the conditions stated in the advance
health care directive are met, the person may be treated in
46 accordance with the terms of the advance health care directive.
The amendment adds a fiscal note to the bill.

COMMITTEE AMENDMENT