

MAINE STATE LEGISLATURE

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M
R.A.S.

L.D. 2164

DATE: 4-2-02

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REPORT A
HEALTH AND HUMAN SERVICES
JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1656, L.D. 2164, Bill, "An Act to Provide Government with the Necessary Authority to Respond to a Public Health Emergency Caused by an Act of Bioterrorism"

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

PART A

Sec. A-1. 22 MRSA c. 250, sub-c. II-A is enacted to read:

SUBCHAPTER II-A
EXTREME PUBLIC HEALTH EMERGENCIES

§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.

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 medical provider, pharmacist or veterinarian shall provide to the department health information directly related to a declared extreme public health emergency.

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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.

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.

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2 B. Notice of the hearing must be served upon the person
3 subject to prescribed care within a reasonable time before
4 the hearing. The notice must specify: the time, date and
5 place of the hearing; the grounds and underlying facts upon
6 which the prescribed care is sought; the right to appear at
7 the hearing, either in person, by electronic means or by
8 representation, and to present and cross-examine witnesses;
9 and the right to counsel.

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

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

16 (2) There are no less restrictive alternatives
17 available to protect the public health and safety.

18 D. Within 24 hours of completion of the hearing, the court
19 shall enter a finding approving prescribed care and shall
20 issue an order of prescribed care for a period not to exceed
21 30 days or shall dismiss the petition and order the person
22 released from prescribed care immediately.

23 E. If the department determines that it is necessary to
24 continue an order obtained under this subsection, the
25 department shall petition the court that issued the order.
26 The court shall hold a hearing in accordance with paragraphs
27 B, C and D and shall make such orders as the court
28 determines necessary, except that an order may not exceed 30
29 days in duration without further review by the court.

30 F. The court may order applications under this section to
31 be joined.

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

39 4. Medical-legal advisory panel. The commissioner shall
40 establish an ongoing medical-legal advisory panel consisting of
41 not more than 3 members who have expertise in either medicine or
42 public health law. Membership on the panel must be planned to
43 ensure that at least one member has expertise in medicine and at
44 least one member has expertise in public health law.

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least one member has expertise in public health law. The panel shall provide advice concerning extreme public health emergencies. Upon the declaration of an extreme public health emergency, as soon as practicable the commissioner shall convene the panel, either in person or by electronic means, to further advise the Governor on the extreme public health emergency.

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.

PART B

Sec. B-1. 22 MRSA §801, sub-§4-A is enacted to read:

4-A. Extreme public health emergency. "Extreme public health emergency" means the occurrence or imminent threat of widespread exposure to a highly infectious or toxic agent that poses an imminent threat of substantial harm to the population of the State.

Sec. B-2. 22 MRSA §801, sub-§8-A is enacted to read:

8-A. Prescribed care. "Prescribed care" means isolation, quarantine, examination, vaccination, medical care or treatment ordered by the department or a court pursuant to section 820.

Sec. B-3. 22 MRSA §802, sub-§2-A is enacted to read:

2-A. Declaration of extreme public health emergency by Governor. The Governor may declare an extreme public health emergency pursuant to this chapter and Title 37-B, chapter 13, subchapter II.

Sec. B-4. 22 MRSA §802, sub-§3, as enacted by PL 1989, c. 487, §11, is repealed and the following enacted in its place:

3. Rules. The department shall adopt rules to carry out its duties as specified in this chapter. The application of rules adopted pursuant to Title 5, section 8052 to implement section 820 must be limited to periods of an extreme public health emergency. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. B-5. 37-B MRSA §703, sub-§2, as enacted by PL 1983, c. 460, §3, is amended to read:

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2 possible but not later than 48 hours after the person becomes
subject to the prescribed care. It contains an appeal
4 procedure. It establishes a medical-legal advisory group to
advise the Commissioner of Human Services regarding extreme
6 public health emergencies and to provide advice to the Governor
after an extreme public health emergency has been declared.

8 2. It allows the Department of Human Services to exercise
its extreme public health emergency powers upon a declaration of
10 a state of extreme public health emergency by the Governor.

12 3. It contains a sunset date of October 31, 2003.

14 4. It adds a fiscal note.

COMMITTEE AMENDMENT