

# MAINE STATE LEGISLATURE

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Date: 06-15-07

(Filing No. S- 332)

**HEALTH AND HUMAN SERVICES**

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**STATE OF MAINE  
SENATE  
123RD LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 350, L.D. 1033, Bill, "An Act Regarding the Mandatory Administration of Medication in Hospitals Serving Psychiatric Patients"

Amend the bill by striking out the title and substituting the following:

**'An Act Regarding Involuntary Treatment of Mental Health Patients'**

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

**'Sec. 1. 34-B MRSA §3003, sub-§2, ¶C,** as amended by PL 1985, c. 645, §4, is further amended to read:

C. Standards for informed consent to treatment, including reasonable standards and procedural mechanisms for determining when to treat a client absent his informed consent, consistent with applicable law; The rules must include the following process:

- (1) The primary treating physician may request an order for involuntary treatment of a patient from a clinical review panel;
- (2) A clinical review panel that consists of 2 or more professional staff who do not provide direct care to the patient is convened. At least one member of the panel must be a professional licensed to prescribe the medications relevant to the patient's care;
- (3) The clinical review panel conducts the review and makes a decision on the request of the primary treating physician within 4 days of the request based on the criteria in section 3864, subsection 7-A, paragraph B;
- (4) If the clinical review panel decides to approve the request for involuntary treatment, the panel enters an order of involuntary treatment in the patient's

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1 hospital records. An order for involuntary treatment may be made for as long as  
2 the period of commitment and pending any appeal; and

3 (5) At any hearings or meetings pertaining to involuntary treatment, the patient is  
4 offered the assistance of a lay advisor, rather than legal counsel;

5 **Sec. 2. 34-B MRSA §3864, sub-§1-A** is enacted to read:

6 **1-A. Involuntary treatment.** An application under this section may also include a  
7 request for an order of involuntary treatment under subsection 7-A.

8 **Sec. 3. 34-B MRSA §3864, sub-§4,** as amended by PL 1997, c. 422, §16, is  
9 further amended to read:

10 **4. Examination.** Examinations under this section are governed as follows.

11 A. Upon receipt by the District Court of the application and the accompanying  
12 documents specified in subsection 1 and at least 3 days after the person who is the  
13 subject of the examination was notified by the psychiatric hospital of the proceedings  
14 and of that person's right to retain counsel or to select an examiner, the court shall  
15 cause the person to be examined by 2 examiners.

16 (1) Each examiner must be either a licensed physician or a licensed clinical  
17 psychologist. When involuntary treatment under subsection 1-A has been  
18 requested, one of the examiners must be a professional who is licensed to  
19 prescribe medications relevant to the patient's care.

20 ~~(2) One of the examiners must be a physician or psychologist chosen by the~~  
21 ~~person or by that person's counsel, if the chosen physician or psychologist is~~  
22 ~~reasonably available.~~

23 (2-A) If the person under examination or the counsel for that person selects a  
24 qualified examiner who is reasonably available, then the court shall choose that  
25 examiner as one of the 2 designated by the court.

26 (3) Neither examiner appointed by the court may be the certifying examiner  
27 under section 3863, subsection 2 or 7.

28 B. The examination shall must be held at the psychiatric hospital or at any other  
29 suitable place not likely to have a harmful effect on the mental health of the person.

30 ~~C. If the report of the examiners is to the effect that the person is not mentally ill or~~  
31 ~~does not pose a likelihood of serious harm, the application shall be ordered~~  
32 ~~discharged forthwith.~~

33 ~~D. If the report of the examiners is to the effect that the person is mentally ill or~~  
34 ~~poses a likelihood of serious harm, the hearing shall be held on the date, or on the~~  
35 ~~continued date, which the court has set for the hearing.~~

36 E. The examiners shall report to the court on:

37 (1) Whether the person is a mentally ill person within the meaning of section  
38 3801, subsection 5;

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1 (2) When the establishment of a progressive treatment plan under section 3873 is  
2 at issue, whether a person is suffering from a severe and persistent mental illness  
3 within the meaning of section 3801, subsection 8-A;

4 (3) Whether the person poses a likelihood of serious harm within the meaning of  
5 section 3801, subsection 4; and

6 (4) When involuntary treatment is at issue, whether the need for such treatment  
7 meets the criteria of subsection 7-A, paragraphs A and B.

8 **Sec. 4. 34-B MRSA §3864, sub-§7-A is enacted to read:**

9 **7-A. Involuntary treatment. This subsection governs involuntary treatment.**

10 **A. The court may grant a psychiatric hospital power to implement a recommended**  
11 **treatment plan without a person's consent for up to 120 days or until the end of the**  
12 **commitment, whichever is sooner, if upon application the court finds:**

13 **(1) That the person lacks the capacity to make an informed decision regarding**  
14 **treatment;**

15 **(2) That the person is unable or unwilling to comply with recommended**  
16 **treatment;**

17 **(3) That the need for the treatment outweighs the risks and side effects; and**

18 **(4) That the recommended treatment is the least intrusive appropriate treatment**  
19 **option.**

20 **Alternatively, the court may appoint a surrogate to make treatment decisions on the**  
21 **person's behalf for the duration of the commitment if the court is satisfied that the**  
22 **surrogate is suitable, willing and reasonably available to act in the person's best**  
23 **interests.**

24 **B. The need for involuntary treatment under paragraph A may be based on findings**  
25 **that include, but are not limited to, the following:**

26 **(1) That a failure to treat the illness is likely to produce lasting or irreparable**  
27 **harm to the person; or**

28 **(2) That without the recommended treatment the person's illness or involuntary**  
29 **commitment may be significantly extended without addressing the symptoms that**  
30 **cause the person to pose a likelihood of serious harm.**

31 **C. The hospital and person may agree to changes in the treatment plan during the**  
32 **time period of an order for involuntary treatment.**

33 **D. If a change in the treatment plan is needed and the hospital and patient do not**  
34 **agree on the change, the hospital shall apply to the court for a change in the treatment**  
35 **plan.**

36 **Sec. 5. Commissioner to adopt rules.** The Commissioner of Health and Human  
37 Services shall adopt rules to implement the Maine Revised Statutes, Title 34-B, section  
38 3003, subsection 2, paragraph C, subparagraphs 1 to 5 no later than January 1, 2008 for

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1 use beginning on that date. The rules must include amendment of Rule 14-198 Chapter 1:  
2 "Rights of Recipients of Mental Health Services." Rules adopted pursuant to this section  
3 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A and are not  
4 subject to the provisions of Title 34-B, section 3003, subsection 4.

5 **Sec. 6. Appropriations and allocations.** The following appropriations and  
6 allocations are made.

7 **JUDICIAL DEPARTMENT**

8 **Courts - Supreme, Superior, District and Administrative 0063**

9 Initiative: Provides funds for additional physician services related to certain involuntary  
10 treatment examinations.

11	<b>GENERAL FUND</b>	<b>2007-08</b>	<b>2008-09</b>
12	All Other	\$40,000	\$40,000
13			
14	<b>GENERAL FUND TOTAL</b>	<b>\$40,000</b>	<b>\$40,000</b>

15 **Sec. 7. Effective date.** Those sections of this Act that enact the Maine Revised  
16 Statutes, Title 34-B, section 3864, subsections 1-A and 7-A and amend section 3003,  
17 subsection 2, paragraph C and section 3864, subsection 4 take effect January 1, 2008.'

18 **SUMMARY**

19 This amendment replaces the bill. The amendment adds to the court procedure for  
20 involuntary commitment the option of a request for involuntary treatment. The  
21 amendment amends the law on rules adopted by the Department of Health and Human  
22 Services regarding standards for treatment of a client absent informed consent. The  
23 amendment requires the department to amend those rules to include a clinical review and  
24 decision within 4 days of a request by the primary treating physician by a clinical review  
25 panel, to specify that orders for involuntary treatment are for the term of commitment and  
26 pending any appeal where appropriate and to require the offer of the assistance of a lay  
27 advisor and to amend the rules regarding the rights of recipients of mental health services.  
28 The rules, which are designated routine technical rules, must be adopted by January 1,  
29 2008 for use beginning on that date. The amendment provides an effective date of  
30 January 1, 2008, except that rulemaking begins prior to that date. This amendment also  
31 adds an appropriations and allocations section.

32 **FISCAL NOTE REQUIRED**  
33 (See attached)

**COMMITTEE AMENDMENT**



# 123rd MAINE LEGISLATURE

LD 1033

LR 48(02)

**An Act Regarding the Mandatory Administration of Medication in Hospitals Serving Psychiatric Patients**

**Fiscal Note for Bill as Amended by Committee Amendment "A"**

**Committee: Health and Human Services**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor savings (JUD) - General Fund  
Minor cost increase (DHHS) - General Fund

### Fiscal Detail and Notes

This amendment may result in minor savings to the Judicial Department. Any additional costs to the Department of Health and Human Services can be absorbed by the department utilizing existing budget resources.