

MAINE STATE LEGISLATURE

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No. 1033

S.P. 350

March 6, 2007

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

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator NUTTING of Androscoggin.
Cosponsored by Representative GROSE of Woolwich and Senators: MARRACHÉ of
Kennebec, MILLS of Somerset, Representatives: HOLMAN of Fayette, LEWIN of Eliot,
PERRY of Calais.

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

2 **Sec. 1. 34-B MRSA §1432-A** is enacted to read:

3 **§1432-A. Mandatory administration of medication**

4 The mandatory administration of medication at the Dorothea Dix Psychiatric Center,
5 the Riverview Psychiatric Center and other specialty psychiatric hospitals or hospitals
6 that contain one or more units that provide inpatient psychiatric care is subject to the
7 provisions of this section.

8 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
9 following terms have the following meanings.

10 A. "Hospital" means a hospital in the State that is licensed as a specialty psychiatric
11 hospital or a hospital that contains one or more units that are licensed for inpatient
12 psychiatric care.

13 B. "Lay advisor" means an individual who is employed at a psychiatric center or
14 hospital who is knowledgeable about mental health practice and who assists patients
15 with questions about patient rights and rights complaints.

16 C. "Medication" means psychiatric medication prescribed by a psychiatrist for a
17 patient for the treatment of a mental illness or disorder.

18 D. "Panel" means a clinical review panel that determines whether to approve the
19 mandatory administration of medication under this section.

20 E. "Psychiatric center" means the Dorothea Dix Psychiatric Center or the Riverview
21 Psychiatric Center.

22 F. "Patient" means a person receiving inpatient care in a psychiatric center or
23 hospital.

24 **2. Appointment of panel.** A panel must consist of persons appointed by the
25 superintendent of the psychiatric center or chief administrative officer of the hospital but
26 may not include a person directly responsible for care of the patient refusing medication.
27 The panel must consist of 2 psychiatrists and a mental health professional who is not a
28 physician. At least one member of the panel must be employed on the unit of the
29 psychiatric center or hospital on which the patient receives care but may not provide
30 direct care for the patient.

31 **3. Limitation on mandatory administration of medication.** Medication may not
32 be administered to a patient who refuses medication except in the following
33 circumstances:

34 A. In an emergency, on the order of a physician when the patient presents a danger to
35 the life or safety of the patient or other persons; or

36 B. In a nonemergency, when the patient is involuntarily committed under chapter 3
37 and the mandatory administration of medication is approved by a panel.

1 4. Procedures for panel. The following requirements apply to the procedures for a
2 panel considering mandatory administration of medication under subsection 3, paragraph
3 B.

4 A. Upon application of a member of the treatment team for a patient, the
5 superintendent of the psychiatric center or chief administrative officer of the hospital
6 shall provide notice pursuant to paragraph B to the patient and appoint a panel.

7 B. Notice must be given to a patient who is the subject of a panel hearing under
8 paragraph D at least 24 hours prior to the panel hearing and must include the date,
9 time and location of the panel hearing; the purpose of the panel hearing; and a
10 description of the rights of the patient that is consistent with the rights of patients
11 described by rules adopted by the department.

12 C. A patient who is the subject of a panel hearing under paragraph D has the right to
13 the assistance of a lay advisor; to contact information for the lay advisor; to notice as
14 provided in paragraph B; to attend the hearing of the panel and present information,
15 including witnesses; to question witnesses presenting information to the panel; to
16 information regarding the patient's diagnosis; and to information regarding the
17 clinical need for the medication, including potential side effects and the material risks
18 and benefits of taking or refusing the medication.

19 D. A panel shall hold a hearing to determine whether to order mandatory
20 administration of medication to a patient when the patient has been involuntarily
21 committed under chapter 3 and is refusing medication. Prior to making a
22 determination the panel shall:

23 (1) Review the patient's clinical record, as appropriate;

24 (2) Assist the patient and the treating physician in their arriving at a mutually
25 agreeable treatment plan; and

26 (3) Meet for the purpose of holding the hearing, receiving information and
27 clinically assessing the patient's need for the medication and shall:

28 (a) Consult with the patient regarding the reason for the patient's refusing
29 medication and any appropriate alternative treatment;

30 (b) Consult with members of the patient's treatment team at the psychiatric
31 center or hospital regarding the patient's diagnosis, treatment and
32 medications and the medication that is the subject of the hearing;

33 (c) Receive information presented by or on behalf of the patient and other
34 persons participating in the panel hearing;

35 (d) Provide the patient with an opportunity to ask questions of anyone
36 presenting information to the panel; and

37 (e) Review the potential consequences of approving the mandatory
38 administration of medication.

39 E. The panel shall make a determination whether to order mandatory administration
40 of medication to a patient as provided in this paragraph.

- 1 (1) Notwithstanding the provisions of Title 1, chapter 13 and any other provision
2 of law to the contrary, the panel may meet privately to make its determination.
- 3 (2) The panel shall make its determination based on its clinical assessment of the
4 patient's record at the psychiatric center or hospital and information presented to
5 the panel.
- 6 (3) The panel shall dismiss an application for mandatory medication if since the
7 filing of the application for mandatory administration of medication the patient
8 and the patient's treatment team have agreed on the medication or an alternative
9 treatment.
- 10 (4) The panel shall document its consideration of the issues and the basis for its
11 decision and issue a written decision.
- 12 (5) The panel may approve mandatory administration of medication if the panel
13 determines that the medication represents a reasonable exercise of professional
14 judgment for treatment of the patient and that without the medication the patient
15 is at substantial risk of continued hospitalization because of the patient's:
- 16 (a) Remaining seriously mentally ill with no significant relief of the mental
17 illness symptoms that cause the patient to be a danger to the patient or others;
- 18 (b) Remaining seriously mentally ill for a significantly longer period of time
19 with symptoms that cause the patient to be a danger to the patient or others;
20 or
- 21 (c) Relapsing into a condition in which the patient is in danger of serious
22 physical harm resulting from the patient's inability to provide for essential
23 human needs of health and safety.
- 24 (6) A determination to approve mandatory administration of medication must
25 include the following:
- 26 (a) The name of any medication approved, with dosage and frequency range;
- 27 (b) The date for beginning the medication, which may not be sooner than 48
28 hours from the date that the determination is received by the patient, and the
29 duration of the approval, which may not exceed 90 days, except if extended
30 pursuant to a separate determination of approval under this section;
- 31 (c) If an alternative medication or treatment was rejected by the panel, the
32 reason for that rejection; and
- 33 (d) Notice of the right to appeal the approval to the Superior Court under the
34 Maine Administrative Procedure Act as final agency action under Title 5,
35 chapter 375, subchapter 7.
- 36 **5. Appeal.** Within 30 days of receipt by the patient of the notice of the
37 determination of approval of mandatory administration of medication under this section,
38 the patient may appeal the approval to the Superior Court as final agency action under
39 Title 5, chapter 375, subchapter 7.

1 A. Unless otherwise ordered by the Superior Court, the filing of a petition of appeal
2 as provided in Title 5, section 11002 does not suspend the determination of approval
3 of mandatory administration of medication issued by the panel.

4 B. A patient who has filed a petition of appeal in the Superior Court may file a
5 motion requesting a stay of judgment of approval of mandatory administration of
6 medication. The court may grant a stay of a judgment of approval of mandatory
7 administration of medication pending the disposition of the motion or the taking of
8 such an appeal or during the pendency of an appeal.

9 **6. Lay advisor duties.** A lay advisor shall assist a patient who is the subject of a
10 panel hearing in preparing for the panel hearing and, if the panel approves mandatory
11 administration of medication, shall discuss the determination with the patient; inform the
12 patient of the right to appeal and the appeal procedures, including how to request a stay of
13 the judgment of approval of mandatory administration of medication and the assistance of
14 counsel for an appeal; assist the patient with filing the petition of appeal if appropriate;
15 and notify the superintendent of the psychiatric center or chief administrative officer of
16 the hospital if the patient decides to appeal.

17 **Sec. 2. 34-B MRSA §3864, sub-§4, ¶C,** as enacted by PL 1983, c. 459, §7, is
18 repealed.

19 **Sec. 3. 34-B MRSA §3864, sub-§4, ¶D,** as enacted by PL 1983, c. 459, §7, is
20 repealed.

21 **Sec. 4. 34-B MRSA §3864, sub-§4, ¶E** is enacted to read:

22 E. The examiners shall report to the court as to whether the person is a mentally ill
23 person within the meaning of section 3801, subsection 5 or is a person with severe
24 and persistent mental illness, as appropriate to the proceedings for which the
25 examination was performed.

26 **Sec. 5. 34-B MRSA §3864, sub-§4, ¶F** is enacted to read:

27 F. The examiners shall report to the court as to whether the person presents a
28 likelihood of serious harm within the meaning of section 3801, subsection 4.

29 **Sec. 6. Rulemaking regarding rights of recipients of mental health**
30 **services.** By October 15, 2007, the Department of Health and Human Services shall
31 amend its rules entitled "Chapter 1, Rights of Recipients of Mental Health Services" to
32 amend those rules to reflect the mandatory administration of medication procedures
33 established in the Maine Revised Statutes, Title 34-B, section 1432-A. Rules adopted
34 pursuant to this section are routine technical rules as defined by Title 5, chapter 375,
35 subchapter 2-A.

36 **SUMMARY**

37 This bill amends the law with regard to inpatient psychiatric treatment as follows.

1 1. It ensures that a full District Court hearing is held before a person can be
2 involuntarily committed to a psychiatric hospital. At this hearing the examiners report to
3 the District Court as to whether the person is a mentally ill person or is a person with a
4 serious and persistent mental illness, as appropriate to the proceeding, and as to whether
5 the person poses a likelihood of serious harm and the hospital staff and family are able to
6 testify.

7 2. It enacts new law on mandatory administration of medication that provides
8 protections for the person through a hearing process that uses a panel of 2 psychiatrists
9 and 1 mental health professional. The process also includes a written decision by the
10 panel and an appeal to the Superior Court under the Maine Administrative Procedure Act.

11 3. It directs the Department of Health and Human Services to amend its rules entitled
12 "Rights of Recipients of Mental Health Services" to reflect the new law on mandatory
13 administration of medication.