

MAINE STATE LEGISLATURE

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Legislative Document

No. 2193

S.P. 844

February 6, 2008

An Act Regarding Clinical Review of Certain Requests for Involuntary Mental Health Treatment

(EMERGENCY)

Reported by Senator BRANNIGAN of Cumberland for the Joint Standing Committee on Health and Human Services pursuant to Joint Order S.P. 829.

Reference to the Committee on Health and Human Services suggested and ordered printed under Joint Rule 218.

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

JOY J. O'BRIEN
Secretary of the Senate

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** on January 1, 2008, Public Law 2007, chapter 446 became effective,
4 establishing clinical review of requests involuntary treatment for mental illness; and

5 **Whereas,** an repeal of Public Law 2007, chapter 446, section 6 on rulemaking and
6 enactment of law in place of those rules is necessary at the earliest possible time to
7 establish the procedures of the clinical review panel and the rights of the patient; and

8 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
9 the meaning of the Constitution of Maine and require the following legislation as
10 immediately necessary for the preservation of the public peace, health and safety; now,
11 therefore,

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

13 **Sec. 1. 34-B MRSA §3003, sub-§2, ¶C,** as amended by PL 2007, c. 446, §1 and
14 affected by §7, is further amended to read:

15 C. Standards for informed consent to treatment, including reasonable standards and
16 procedural mechanisms for determining when to treat a client absent informed
17 consent, consistent with applicable law. ~~The rules must include the following~~
18 ~~process;~~ except that involuntary treatment of involuntarily hospitalized incapacitated
19 persons who are unwilling or unable to comply with treatment is allowed solely in
20 accordance with the provisions of section 3861, subsection 3 or section 3864,
21 subsection 1-A;

22 ~~(1) The primary treating physician may request an order for involuntary~~
23 ~~treatment of a patient from a clinical review panel;~~

24 ~~(2) A clinical review panel that consists of 2 or more professional staff who do~~
25 ~~not provide direct care to the patient is convened. At least one member of the~~
26 ~~panel must be a professional licensed to prescribe the medications relevant to the~~
27 ~~patient's care;~~

28 ~~(3) The clinical review panel conducts the review and makes a decision on the~~
29 ~~request of the primary treating physician within 4 days of the request based on~~
30 ~~the criteria in section 3864, subsection 7 A, paragraph B;~~

31 ~~(4) If the clinical review panel decides to approve the request for involuntary~~
32 ~~treatment, the panel enters an order of involuntary treatment in the patient's~~
33 ~~hospital records. An order for involuntary treatment may be made for as long as~~
34 ~~the period of commitment and pending any appeal; and~~

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

37 **Sec. 2. 34-B MRSA §3861, sub-§3** is enacted to read:

1 **3. Involuntary treatment.** Except for involuntary treatment ordered pursuant to the
2 provisions of section 3864, subsection 7-A, involuntary treatment of a patient at a
3 designated nonstate mental health institution or a state mental health institute who is an
4 involuntarily committed patient under the provisions of this subchapter may be ordered
5 and administered only in conformance with the provisions of this subsection.

6 A. If the patient's primary treating physician proposes a treatment that the physician,
7 in the exercise of professional judgment, believes is in the best interest of the patient
8 and if the patient lacks clinical capacity to give informed consent to the proposed
9 treatment and the patient is unwilling or unable to comply with the proposed
10 treatment, the patient's primary treating physician shall request in writing a clinical
11 review of the proposed treatment by a clinical review panel. For a patient at a state
12 mental health institute, the request must be made to the superintendent of the institute
13 or the designee of the superintendent. For a patient at a designated nonstate mental
14 health institution, the request must be made to the chief administrative officer or the
15 designee of the chief administrative officer. The request must include the following
16 information:

17 (1) The name of the patient, the patient's diagnosis and the unit on which the
18 patient is hospitalized;

19 (2) The date that the patient was committed to the institution or institute and the
20 period of the court-ordered commitment;

21 (3) A statement by the primary treating physician that the patient lacks capacity
22 to give informed consent to the proposed treatment. The statement must include
23 documentation of a 2nd opinion that the patient lacks that capacity, given by a
24 professional qualified to issue such an opinion who does not provide direct care
25 to the patient but who may work for the institute or institution;

26 (4) A description of the proposed course of treatment, including specific
27 medications, routes of administration and dose ranges, proposed alternative
28 medications or routes of administration, if any, and the circumstances under
29 which any proposed alternative would be used;

30 (5) A description of how the proposed treatment will benefit the patient and
31 ameliorate identified signs and symptoms of the patient's psychiatric illness;

32 (6) A listing of the known or anticipated risks and side effects of the proposed
33 treatment and how the prescribing physician will monitor, manage and minimize
34 the risks and side effects;

35 (7) Documentation of consideration of any underlying medical condition of the
36 patient that contraindicates the proposed treatment; and

37 (8) Documentation of consideration of any advance health-care directive given
38 in accordance with Title 18-A, section 5-802 and any declaration regarding
39 medical treatment of psychotic disorders executed in accordance with section
40 11001.

41 B. The provisions of this paragraph apply to the appointment, duties and procedures
42 of the clinical review panel under paragraph A.

1 (1) Within one business day of receiving a request under paragraph A, the
2 superintendent of a state mental health institute or chief administrative officer of
3 a designated nonstate mental health institution or that person's designee shall
4 appoint a clinical review panel of 2 or more licensed professional staff who do
5 not provide direct care to the patient. At least one person must be a professional
6 licensed to prescribe medication relevant to the patient's care and treatment. At
7 the time of appointment of the clinical review panel, the superintendent of a state
8 mental health institute or chief administrative officer of a designated nonstate
9 mental health institution or that person's designee shall notify the following
10 persons in writing that the clinical review panel will be convened:

- 11 (a) The primary treating physician;
- 12 (b) The director of the Office of Adult Mental Health Services within the
13 department or that person's designee;
- 14 (c) The patient's designated representative or attorney, if any;
- 15 (d) The State's designated federal protection and advocacy agency; and
- 16 (e) The patient. Notice to the patient must inform the patient that the clinical
17 review panel will be convened and of the right to assistance from a lay
18 advisor, at no expense to the patient, and the right to obtain an attorney at the
19 patient's expense. The notice must include contact information for requesting
20 assistance from a lay advisor, who may be employed by the institute or
21 institution, and access to a telephone to contact a lay advisor must be
22 provided to the patient.

23 (2) Within 4 days of receiving a request under paragraph A and no less than 24
24 hours before the meeting of the clinical review panel, the superintendent of a
25 state mental health institute or chief administrative officer of a designated
26 nonstate mental health institution or that person's designee shall provide notice of
27 the date, time and location of the meeting to the patient's primary treating
28 physician, the patient and any lay advisor or attorney.

29 (3) The clinical review panel shall hold the meeting and any additional meetings
30 as necessary, reach a final determination and render a written decision ordering
31 or denying involuntary treatment.

32 (a) At the meeting, the clinical review panel shall receive information
33 relevant to the determination of the patient's capacity to give informed
34 consent to treatment and the need for treatment, review relevant portions of
35 the patient's medical records, consult with the physician requesting the
36 treatment, review with the patient that patient's reasons for refusing
37 treatment, provide the patient and any lay advisor or attorney an opportunity
38 to ask questions of anyone presenting information to the clinical review panel
39 at the meeting and determine whether the requirements for ordering
40 involuntary treatment have been met.

41 (b) All meetings of the clinical review panel must be open to the patient and
42 any lay advisor or attorney, except that any meetings held for the purposes of

1 deliberating, making findings and reaching final conclusions are confidential
2 and not open to the patient and any lay advisor or attorney

3 (c) The clinical review panel shall conduct its review in a manner that is
4 consistent with the patient's rights.

5 (d) Involuntary treatment may not be approved and ordered if the patient
6 affirmatively demonstrates to the clinical review panel that if that patient
7 possessed capacity, the patient would have refused the treatment on religious
8 grounds or on the basis of other previously expressed convictions or beliefs.

9 (4) The clinical review panel may approve a request for involuntary treatment
10 and order the treatment if the clinical review panel finds, at a minimum:

11 (a) That the patient lacks the capacity to make an informed decision
12 regarding treatment;

13 (b) That the patient is unable or unwilling to comply with the proposed
14 treatment;

15 (c) That the need for the treatment outweighs the risks and side effects; and

16 (d) That the proposed treatment is the least intrusive appropriate treatment
17 option.

18 (5) The clinical review panel may make additional findings, including but not
19 limited to findings that:

20 (a) Failure to treat the illness is likely to produce lasting or irreparable harm
21 to the patient; or

22 (b) Without the proposed treatment the patient's illness or involuntary
23 commitment may be significantly extended without addressing the symptoms
24 that cause the patient to pose a likelihood of serious harm.

25 (6) The clinical review panel shall document its findings and conclusions,
26 including whether the potential benefits of the proposed treatment outweigh the
27 potential risks.

28 C. The provisions of this paragraph govern the rights of a patient who is the subject
29 of a clinical review panel under paragraph A.

30 (1) The patient is entitled to the assistance of a lay advisor without expense to
31 the patient. The patient is entitled to representation by an attorney at the patient's
32 expense.

33 (2) The patient may review any records or documents considered by the clinical
34 review panel.

35 (3) The patient may provide information orally and in writing to the clinical
36 review panel and may present witnesses.

37 (4) The patient may ask questions of any person who provides information to the
38 clinical review panel.

- 1 (5) The patient and any lay advisor or attorney may attend all meetings of the
2 clinical review panel except for any private meetings authorized under paragraph
3 B, subparagraph 3, division (b).
- 4 D. If the clinical review panel under paragraph A approves the request for
5 involuntary treatment, the clinical review panel shall enter an order for the treatment
6 in the patient's medical records and immediately notify the superintendent of a state
7 mental health institute or chief administrative officer of a designated nonstate mental
8 health institution. The order takes effect:
- 9 (1) For a patient at a state mental health institute, one business day from the date
10 of entry of the order; or
- 11 (2) For a patient at a designated nonstate mental health institution, one business
12 day from the date of entry of the order, except that if the patient has requested
13 review of the order by the director of the Office of Adult Mental Health Services
14 within the department under paragraph F, subparagraph (2), the order takes effect
15 one business day from the day on which the director issues a written decision.
- 16 E. The order for treatment under this subsection remains in effect for 120 days or
17 until the end of the period of commitment, whichever is sooner, unless altered by:
- 18 (1) An agreement to a different course of treatment by the primary treating
19 physician and patient;
- 20 (2) For a patient at a designated nonstate mental health institution, modification
21 or vacation of the order by the director of the Office of Adult Mental Health
22 Services within the department; or
- 23 (3) An alteration or stay of the order entered by the Superior Court after
24 reviewing the entry of the order by the clinical review panel on appeal under
25 paragraph F.
- 26 F. The provisions of this paragraph apply to the review and appeal of an order of the
27 clinical review panel entered under paragraph B.
- 28 (1) The order of the clinical review panel at a state mental health institute is final
29 agency action that may be appealed to the Superior Court in accordance with
30 Rule 80C of the Maine Rules of Civil Procedure.
- 31 (2) The order of the clinical review panel at a designated nonstate mental health
32 institution may be reviewed by the director of the Office of Adult Mental Health
33 Services within the department or the designee of the director upon receipt of a
34 written request from the patient submitted no later than one day after the patient
35 receives the order of the clinical review panel. Within 3 business days of receipt
36 of the request for review, the director or designee shall review the full clinical
37 review panel record and issue a written decision. The decision of the director or
38 designee may affirm the order, modify the order or vacate the order. The
39 decision of the director or designee takes effect one business day after the
40 director or designee issues a written decision. The decision of the director or
41 designee is final agency action that may be appealed to the Superior Court in
42 accordance with Rule 80C of the Maine Rules of Civil Procedure.

