

MAINE STATE LEGISLATURE

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L.D. 2252

Date: 4-17-08

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST SPECIAL SESSION

HOUSE AMENDMENT "C" to H.P. 1615, L.D. 2252, Bill, "An Act To Correct Errors and Inconsistencies in the Laws of Maine"

Amend the bill by inserting after Part B the following:

PART C

Sec. C-1. 34-B MRSA §3861, sub-§3, as enacted by PL 2007, c. 580, §2, is amended to read:

3. Involuntary treatment. Except for involuntary treatment ordered pursuant to the provisions of section 3864, subsection 7-A, involuntary treatment of a patient at a designated nonstate mental health institution or a state mental health institute who is an involuntarily committed patient under the provisions of this subchapter may be ordered and administered only in conformance with the provisions of this subsection. For the purposes of this subsection, involuntary treatment is limited to medication for the treatment of mental illness and laboratory testing and medication for the monitoring and management of side effects.

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

- (1) The name of the patient, the patient's diagnosis and the unit on which the patient is hospitalized;
- (2) The date that the patient was committed to the institution or institute and the period of the court-ordered commitment;

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

6 (4) A description of the proposed course of treatment, including specific
7 medications, routes of administration and dose ranges, proposed alternative
8 medications or routes of administration, if any, and the circumstances under
9 which any proposed alternative would be used;

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

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

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

17 (8) Documentation of consideration of any advance health-care directive given
18 in accordance with Title 18-A, section 5-802 and any declaration regarding
19 medical treatment of psychotic disorders executed in accordance with section
20 11001.

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

23 (1) Within one business day of receiving a request under paragraph A, the
24 superintendent of a state mental health institute or chief administrative officer of
25 a designated nonstate mental health institution or that person's designee shall
26 appoint a clinical review panel of 2 or more licensed professional staff who do
27 not provide direct care to the patient. At least one person must be a professional
28 licensed to prescribe medication relevant to the patient's care and treatment. At
29 the time of appointment of the clinical review panel, the superintendent of a state
30 mental health institute or chief administrative officer of a designated nonstate
31 mental health institution or that person's designee shall notify the following
32 persons in writing that the clinical review panel will be convened:

33 (a) The primary treating physician;

34 (b) The director of the Office of Adult Mental Health Services within the
35 department or that person's designee;

36 (c) The patient's designated representative or attorney, if any;

37 (d) The State's designated federal protection and advocacy agency; and

38 (e) The patient. Notice to the patient must inform the patient that the clinical
39 review panel will be convened and of the right to assistance from a lay
40 advisor, at no expense to the patient, and the right to obtain an attorney at the

- 1 patient's expense. The notice must include contact information for requesting
2 assistance from a lay advisor, who may be employed by the institute or
3 institute, and access to a telephone to contact a lay advisor must be
4 provided to the patient.
- 5 (2) Within 4 days of receiving a request under paragraph A and no less than 24
6 hours before the meeting of the clinical review panel, the superintendent of a
7 state mental health institute or chief administrative officer of a designated
8 nonstate mental health institution or that person's designee shall provide notice of
9 the date, time and location of the meeting to the patient's primary treating
10 physician, the patient and any lay advisor or attorney.
- 11 (3) The clinical review panel shall hold the meeting and any additional meetings
12 as necessary, reach a final determination and render a written decision ordering
13 or denying involuntary treatment.
- 14 (a) At the meeting, the clinical review panel shall receive information
15 relevant to the determination of the patient's capacity to give informed
16 consent to treatment and the need for treatment, review relevant portions of
17 the patient's medical records, consult with the physician requesting the
18 treatment, review with the patient that patient's reasons for refusing
19 treatment, provide the patient and any lay advisor or attorney an opportunity
20 to ask questions of anyone presenting information to the clinical review panel
21 at the meeting and determine whether the requirements for ordering
22 involuntary treatment have been met.
- 23 (b) All meetings of the clinical review panel must be open to the patient and
24 any lay advisor or attorney, except that any meetings held for the purposes of
25 deliberating, making findings and reaching final conclusions are confidential
26 and not open to the patient and any lay advisor or attorney.
- 27 (c) The clinical review panel shall conduct its review in a manner that is
28 consistent with the patient's rights.
- 29 (d) Involuntary treatment may not be approved and ordered if the patient
30 affirmatively demonstrates to the clinical review panel that if that patient
31 possessed capacity, the patient would have refused the treatment on religious
32 grounds or on the basis of other previously expressed convictions or beliefs.
- 33 (4) The clinical review panel may approve a request for involuntary treatment
34 and order the treatment if the clinical review panel finds, at a minimum:
- 35 (a) That the patient lacks the capacity to make an informed decision
36 regarding treatment;
- 37 (b) That the patient is unable or unwilling to comply with the proposed
38 treatment;
- 39 (c) That the need for the treatment outweighs the risks and side effects; and
- 40 (d) That the proposed treatment is the least intrusive appropriate treatment
41 option.

- 1 (5) The clinical review panel may make additional findings, including but not
2 limited to findings that:
- 3 (a) Failure to treat the illness is likely to produce lasting or irreparable harm
4 to the patient; or
- 5 (b) Without the proposed treatment the patient's illness or involuntary
6 commitment may be significantly extended without addressing the symptoms
7 that cause the patient to pose a likelihood of serious harm.
- 8 (6) The clinical review panel shall document its findings and conclusions,
9 including whether the potential benefits of the proposed treatment outweigh the
10 potential risks.
- 11 C. The provisions of this paragraph govern the rights of a patient who is the subject
12 of a clinical review panel under paragraph A.
- 13 (1) The patient is entitled to the assistance of a lay advisor without expense to
14 the patient. The patient is entitled to representation by an attorney at the patient's
15 expense.
- 16 (2) The patient may review any records or documents considered by the clinical
17 review panel.
- 18 (3) The patient may provide information orally and in writing to the clinical
19 review panel and may present witnesses.
- 20 (4) The patient may ask questions of any person who provides information to the
21 clinical review panel.
- 22 (5) The patient and any lay advisor or attorney may attend all meetings of the
23 clinical review panel except for any private meetings authorized under paragraph
24 B, subparagraph 3, division (b).
- 25 D. If the clinical review panel under paragraph A approves the request for
26 involuntary treatment, the clinical review panel shall enter an order for the treatment
27 in the patient's medical records and immediately notify the superintendent of a state
28 mental health institute or chief administrative officer of a designated nonstate mental
29 health institution. The order takes effect:
- 30 (1) For a patient at a state mental health institute, one business day from the date
31 of entry of the order; or
- 32 (2) For a patient at a designated nonstate mental health institution, one business
33 day from the date of entry of the order, except that if the patient has requested
34 review of the order by the director of the Office of Adult Mental Health Services
35 within the department under paragraph F, subparagraph (2), the order takes effect
36 one business day from the day on which the director issues a written decision.
- 37 E. The order for treatment under this subsection remains in effect for 120 days or
38 until the end of the period of commitment, whichever is sooner, unless altered by:

1 (1) An agreement to a different course of treatment by the primary treating
2 physician and patient;

3 (2) For a patient at a designated nonstate mental health institution, modification
4 or vacation of the order by the director of the Office of Adult Mental Health
5 Services within the department; or

6 (3) An alteration or stay of the order entered by the Superior Court after
7 reviewing the entry of the order by the clinical review panel on appeal under
8 paragraph F.

9 F. The provisions of this paragraph apply to the review and appeal of an order of the
10 clinical review panel entered under paragraph B.

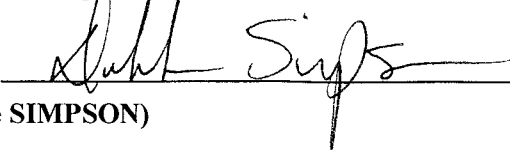
11 (1) The order of the clinical review panel at a state mental health institute is final
12 agency action that may be appealed to the Superior Court in accordance with
13 Rule 80C of the Maine Rules of Civil Procedure.

14 (2) The order of the clinical review panel at a designated nonstate mental health
15 institution may be reviewed by the director of the Office of Adult Mental Health
16 Services within the department or the designee of the director upon receipt of a
17 written request from the patient submitted no later than one day after the patient
18 receives the order of the clinical review panel. Within 3 business days of receipt
19 of the request for review, the director or designee shall review the full clinical
20 review panel record and issue a written decision. The decision of the director or
21 designee may affirm the order, modify the order or vacate the order. The
22 decision of the director or designee takes effect one business day after the
23 director or designee issues a written decision. The decision of the director or
24 designee is final agency action that may be appealed to the Superior Court in
25 accordance with Rule 80C of the Maine Rules of Civil Procedure.'

26 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
27 section number to read consecutively.

28 **SUMMARY**

29 The involuntary treatment law enacted in Public Law 2007, chapter 580 addresses
30 medication but does not address the laboratory testing that is necessary to monitor and
31 manage the possible side effects. This amendment authorizes laboratory testing for the
32 management and monitoring of the possible side effects of medication.

33 **SPONSORED BY:** 
34 **(Representative SIMPSON)**

35 **TOWN: Auburn**