

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

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No. 1145

H.P. 783

House of Representatives, March 31, 2015

An Act To Improve Maine's Involuntary Commitment Processes

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

A handwritten signature in black ink, reading "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MALABY of Hancock.

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

2 **Sec. 1. 34-B MRSA §3861, sub-§4** is enacted to read:

3 **4. Emergency involuntary treatment.** Nothing in this section precludes a medical
4 practitioner from administering involuntary treatment to a person who is being held or
5 detained by a hospital against the person's will under the provisions of this subchapter, if
6 the following conditions are met:

7 A. As a result of mental illness, the person poses a serious and immediate risk of
8 harm to that person or others;

9 B. The person lacks the decisional capacity either to provide informed consent for
10 treatment or to make an informed refusal of treatment;

11 C. A person legally authorized to provide consent for treatment on behalf of the
12 person is not reasonably available under the circumstances;

13 D. The treatment being administered is a recognized form of treatment for treating
14 the person's mental illness and is the least restrictive form of treatment appropriate in
15 the circumstances;

16 E. For purposes of evaluation for emergency involuntary treatment, the medical
17 practitioner considers available history and information from other sources
18 considered reliable by the examiner, including, but not limited to, family members;
19 and

20 F. A reasonable person concerned for the welfare of the person would conclude that
21 the benefits of the treatment outweigh the risks and potential side effects of the
22 treatment and would consent to the treatment under the circumstances.

23 **Sec. 2. 34-B MRSA §3863, sub-§2,** as amended by PL 2009, c. 651, §14, is
24 further amended to read:

25 **2. Certifying examination.** The written application must be accompanied by a
26 dated certificate, signed by a medical practitioner stating:

27 A. That the practitioner has examined the person on the date of the certificate;

28 B. That the medical practitioner is of the opinion that the person is mentally ill and,
29 because of that illness, poses a likelihood of serious harm. The written certificate
30 must include a description of the grounds for that opinion. The opinion may be based
31 on personal observation or on history and information from other sources considered
32 reliable by the examiner, including, but not limited to, family members; and

33 C. That adequate community resources are unavailable for care and treatment of the
34 person's mental illness; ~~and~~

35 ~~D. The grounds for the practitioner's opinion, which may be based on personal~~
36 ~~observation or on history and information from other sources considered reliable by~~
37 ~~the examiner.~~

38 **Sec. 3. 34-B MRSA §3863, sub-§3, ¶¶D and E** are enacted to read:

1 D. A person who has been held against that person's will for no more than 24 hours
2 pursuant to paragraph B may be held for a reasonable additional period of time, not to
3 exceed 48 hours, if:

4 (1) The hospital has had an evaluation of the person conducted by an
5 appropriately designated individual and that evaluation concludes that the person
6 poses a likelihood of serious harm due to mental illness;

7 (2) The hospital, after undertaking its best efforts, has been unable to locate an
8 available inpatient bed at a psychiatric hospital or other appropriate alternative;
9 and

10 (3) The hospital has notified the department of the name of the person, the
11 location of the person, the name of the appropriately designated individual who
12 conducted the evaluation pursuant to subparagraph (1) and the time the person
13 first presented to the hospital.

14 E. If a person remains in a hospital for the full 48 hours allowed under paragraph D,
15 the person may be held for one additional 48-hour period, if:

16 (1) The hospital satisfies again the requirements of paragraph D; and

17 (2) The department provides its best efforts to find an inpatient bed at a
18 psychiatric hospital or other appropriate alternative.

19 **Sec. 4. 34-B MRSA §3863, sub-§4, ¶B**, as amended by PL 2007, c. 319, §9, is
20 further amended to read:

21 B. The Department of Health and Human Services is responsible for any reasonable
22 transportation expenses under this section, including return from the psychiatric
23 hospital if admission is declined. The department shall utilize any 3rd-party payment
24 sources that are available.

25 **Sec. 5. 34-B MRSA §3864, sub-§2, ¶C**, as amended by PL 1995, c. 496, §3, is
26 further amended to read:

27 C. A court orders release or discharge upon a writ of habeas corpus under section
28 3804; ~~or~~

29 **Sec. 6. 34-B MRSA §3864, sub-§2, ¶D**, as amended by PL 2007, c. 319, §10, is
30 further amended to read:

31 D. Upon request of the commissioner, the District Court orders the transfer of a
32 patient in need of more specialized treatment to another psychiatric hospital. In the
33 event of a transfer, the court shall transfer its file to the District Court having
34 territorial jurisdiction over the receiving psychiatric hospital; ~~or~~

35 **Sec. 7. 34-B MRSA §3864, sub-§2, ¶E** is enacted to read:

36 E. The person voluntarily agrees to receive psychiatric services.

37 **Sec. 8. 34-B MRSA §3868, sub-§1, ¶C** is enacted to read:

C. For a patient transferred under this subsection, the order of involuntary commitment and the order of involuntary treatment, if any, remain in effect and are transferred to the receiving hospital.

Sec. 9. 34-B M RSA §3874 is enacted to read:

§3874. Medical examinations conducted via telemedicine technologies

Notwithstanding any other provision in this subchapter, any medical examination or consultation required or permitted to be conducted under this subchapter may be conducted using telemedicine or other similar technologies that enable the medical examination or consultation to be conducted in accordance with applicable standards of care. As used in this section, "telemedicine" has the same meaning as in Title 24-A, section 4316, subsection 1.

SUMMARY

This bill is based on certain recommendations in the report "Recommendations for Improving the Involuntary Commitment Process," by the Judicial Branch Mental Health Working Group dated December 15, 2014. It amends the laws governing involuntary hospitalization by:

1. Authorizing a health care practitioner to administer involuntary treatment to a person being involuntarily held or detained if the person's condition poses a serious, imminent risk to the person's physical or mental health and other conditions are met;

2. Specifying that family members may be the source of history and information that forms the basis of an opinion of a medical practitioner regarding a person for whom an emergency application for admittance to a psychiatric hospital has been filed;

3. Creating exceptions to the 24-hour hospital emergency hold period to authorize a hospital to involuntarily detain a mentally ill person meeting certain criteria for emergency psychiatric hospitalization for 2 additional 48-hour periods;

4. Limiting the State's costs related to transporting certain patients to reasonable costs;

5. Allowing for the discharge of an involuntary petition if the patient subsequently agrees to voluntary commitment;

6. Clarifying that orders of involuntary commitment and treatment also transfer with a patient that is transferred from one hospital to another; and

7. Permitting medical examinations and consultations required or permitted under involuntary hospitalization laws to be conducted using telemedicine technologies.