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OF THE

STATE OF MAINE

AS PASSED BY THE

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SECOND REGULAR SESSION
January 2, 2008 to March 31, 2008

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April 1, 2008 to April 18, 2008

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
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TITLE 3, SECTION 163-A, SUBSECTION 4.

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ability has lasted or can be expected to last for at least 12 months or can be expected to result in death; ~~provided~~ except that if the debtor's interest is held jointly with any other person or persons, the exemption may not exceed in value the lesser of ~~$70,000~~ $95,000 or the product of the fractional share of the debtor's interest times ~~$140,000~~ $190,000. This paragraph does not apply to liens obtained prior to its effective date or to judgments based on torts involving other than ordinary negligence on the part of the debtor.

See title page for effective date.

CHAPTER 580

S.P. 844 - L.D. 2193

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

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

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

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

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

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

Sec. 1. 34-B MRSA §3003, sub-§2, ¶C, as amended by PL 2007, c. 446, §1 and affected by §7, 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 informed consent, consistent with applicable law~~. The rules must include the following process:~~, except that involuntary treatment of involuntarily hospitalized incapacitated persons who are unwilling or unable to comply with treatment is allowed solely in accordance with the provisions of section 3861, subsection 3 or section 3864, subsection 1-A;

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

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

Sec. 2. 34-B MRSA §3861, sub-§3 is enacted 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 medication for the 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;

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

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

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

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

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

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

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

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

(a) The primary treating physician;

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

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

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

(e) The patient. Notice to the patient must inform the patient that the clinical review panel will be convened and of the right to assistance from a lay advisor, at no expense to the patient, and the right to obtain an attorney at the patient's expense. The notice must include contact information for requesting assistance from a lay advisor, who may be employed by the institute or institution, and access to a telephone to contact a lay advisor must be provided to the patient.

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

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

(a) At the meeting, the clinical review panel shall receive information relevant to the determination of the patient's capacity to give informed consent to treatment and the need for treatment, review relevant portions of the patient's medical records, consult with the physician requesting the treatment, review with the

patient that patient's reasons for refusing treatment, provide the patient and any lay advisor or attorney an opportunity to ask questions of anyone presenting information to the clinical review panel at the meeting and determine whether the requirements for ordering involuntary treatment have been met.

(b) All meetings of the clinical review panel must be open to the patient and any lay advisor or attorney, except that any meetings held for the purposes of deliberating, making findings and reaching final conclusions are confidential and not open to the patient and any lay advisor or attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The patient and any lay advisor or attorney may attend all meetings of the clinical review panel except for any private meetings authorized under paragraph B, subparagraph 3, division (b).

D. If the clinical review panel under paragraph A approves the request for involuntary treatment, the clinical review panel shall enter an order for the treatment in the patient's medical records and immediately notify the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution. The order takes effect:

(1) For a patient at a state mental health institute, one business day from the date of entry of the order; or

(2) For a patient at a designated nonstate mental health institution, one business day from the date of entry of the order, except that if the patient has requested review of the order by the director of the Office of Adult Mental Health Services within the department under paragraph F, subparagraph (2), the order takes effect one business day from the day on which the director issues a written decision.

E. The order for treatment under this subsection remains in effect for 120 days or until the end of the period of commitment, whichever is sooner, unless altered by:

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

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

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

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

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

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

Sec. 3. PL 2007, c. 446, §5 is repealed.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective April 8, 2008.

CHAPTER 581

H.P. 1580 - L.D. 2213

An Act To Implement the Recommendations of the Working Group To Improve Public Understanding and Participation in the Rulemaking Process

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

Sec. 1. 5 MRSA §8051-A, as enacted by PL 1989, c. 574, §2, is amended to read:

§8051-A. Appointment of liaison

The commissioner or director of each state agency shall designate a person to serve as a liaison between the agency and the general public, the Legislature, the Secretary of State and the office of the Attorney General with respect to rulemaking. The liaison shall serve as a representative of the agency with respect to providing information about agency rules. The liaison ~~shall be~~ is responsible for implementing the procedural provisions of this subchapter. The Secretary of State shall maintain a list of all agency liaisons and their contact information on a publicly accessible website.

Sec. 2. 5 MRSA §8052, sub-§1, as amended by PL 1997, c. 110, §2, is further amended to read:

1. Notice; public hearing. Prior to the adoption of any rule, the agency shall give notice as provided in section 8053 and may hold a public hearing, ~~provided~~ except that a public hearing ~~is~~ must be held if otherwise required by statute or requested by any 5 interested persons or if the rule is a major substantive rule as defined in section 8071, subsection 2, paragraph B.

A public meeting or other public forum held by an agency for any purpose that includes receiving public comments on a proposed agency rule is a public hearing and is subject to all the provisions of this subchapter regarding public hearings.

Sec. 3. 5 MRSA §8053, sub-§6 is enacted to read:

6. Electronic publication. In addition to the printed publication required in subsection 5, the Secretary of State shall maintain a publicly accessible website for posting the notices of all proposed and adopted rules. The notice must include a brief explanation of the proposed or adopted rule and an e-mail link to the agency liaison. Departments and agencies shall either post proposed and adopted rules in their jurisdictions on publicly accessible agency websites or link to the rules posted on the Secretary of State's website. Notice of each rule-making proceeding must be published on the Secretary of State's website 17 to 24 days prior to the public hearing on the proposed rule or at least 30 days prior to the last date on which views and arguments may be submitted to the agency for consideration if no public hearing was scheduled.

Sec. 4. 5 MRSA §8054, sub-§2, as amended by PL 1979, c. 425, §6, is further amended to read:

2. Agency findings. Any emergency rule ~~shall~~ must include, with specificity, the agency's findings with respect to the existence of an emergency, including any modifications of procedures, and such findings