

§3861. Reception of involuntary patients

1. Nonstate mental health institution. The chief administrative officer of a nonstate mental health institution may receive for observation, diagnosis, care and treatment in the institution any person whose admission is applied for under any of the procedures in this subchapter. An admission may be made under the provisions of section 3863 only if the certifying examination conducted pursuant to section 3863, subsection 2 was completed no more than 2 days before the date of admission.

A. The institution, any person contracting with the institution and any of its employees when admitting, treating or discharging a patient under the provisions of sections 3863 and 3864 under a contract with the department, for purposes of civil liability, must be deemed to be a governmental entity or an employee of a governmental entity under the Maine Tort Claims Act, Title 14, chapter 741. [PL 1989, c. 906 (NEW).]

B. Patients with a diagnosis of mental illness or psychiatric disorder in nonstate mental health institutions that contract with the department under this subsection are entitled to the same rights and remedies as patients in state mental health institutes as conferred by the constitution, laws, regulations and rules of this State and of the United States. [PL 1989, c. 906 (NEW).]

C. Before contracting with and approving the admission of involuntary patients to a nonstate mental health institution, the department shall require the institution to:

- (1) Comply with all applicable regulations;
- (2) Demonstrate the ability of the institution to comply with judicial decrees as those decrees relate to services already being provided by the institution; and
- (3) Coordinate and integrate care with other community-based services. [PL 1989, c. 906 (NEW).]

D. Beginning July 31, 1990, the capital, licensing, remodeling, training and recruitment costs associated with the start-up of beds designated for involuntary patients under this section must be reimbursed, within existing resources, of the Department of Health and Human Services. [PL 1989, c. 906 (NEW); PL 1995, c. 560, Pt. K, §82 (AMD); PL 1995, c. 560, Pt. K, §83 (AFF); PL 2001, c. 354, §3 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

E. The chief administrative officer of a nonstate mental health institution shall provide notice to the department and such additional information as may be requested by the department when a person who was involuntarily admitted to the institution has died, attempted suicide or sustained a serious injury resulting in significant impairment of physical condition. For the purposes of this paragraph, "significant impairment" includes serious injuries resulting from burns, lacerations, bone fractures, substantial hematoma and injuries to internal organs whether self-inflicted or inflicted by another person. The notice must be provided within 24 hours of occurrence and must include the name of the person; the name, address and telephone number of that person's legal guardian, conservator or legal representative and parents if that person is a minor; a detailed description of the occurrence and any injuries or impairments sustained; the date and time of the occurrence; the name, street address and telephone number of the facility; and the name and job title of the person providing the notice. [PL 2007, c. 89, §2 (NEW).]

[PL 2007, c. 89, §2 (AMD).]

2. State mental health institute. The chief administrative officer of a state mental health institute:

A. May receive for observation, diagnosis, care and treatment in the state mental health institute any person whose admission is applied for under section 3831 or 3863 if the certifying examination conducted pursuant to section 3863, subsection 2 was completed no more than 2 days before the date of admission; and [PL 2007, c. 319, §8 (AMD).]

B. May receive for observation, diagnosis, care and treatment in the state mental health institute any person whose admission is applied for under section 3864 or is ordered by a court. [PL 2007, c. 319, §8 (AMD).]

Any business entity contracting with the department for psychiatric physician services or any person contracting with a state mental health institute or the department to provide services pertaining to the admission, treatment or discharge of patients under sections 3863 and 3864 within a state mental health institute or any person contracting with a business entity to provide those services within a state mental health institute is deemed to be a governmental entity or an employee of a governmental entity for purposes of civil liability under the Maine Tort Claims Act, Title 14, chapter 741, with respect to the admission, treatment or discharge of patients within a state mental health institute under sections 3863 and 3864.

[PL 2007, c. 319, §8 (AMD).]

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;
- (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-C, section 5-803 and any declaration regarding medical treatment of psychotic disorders executed in accordance with section 11001. [PL 2017, c. 402, Pt. C, §96 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

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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 commissioner or the commissioner'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. [PL 2011, c. 657, Pt. DD, §1 (AMD).]

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). [PL 2007, c. 580, §2 (NEW).]

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 commissioner under paragraph F, subparagraph (2), the order takes effect one business day from the day on which the commissioner or the commissioner's designee issues a written decision. [PL 2011, c. 657, Pt. DD, §2 (AMD).]

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 commissioner or the commissioner's designee; 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. [PL 2011, c. 657, Pt. DD, §3 (AMD).]

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 commissioner or the commissioner's designee 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 commissioner or the commissioner's designee shall review the full clinical review panel record and issue a written decision. The decision of the commissioner or the commissioner's designee may affirm the order, modify the order or vacate the order. The decision of the commissioner or the commissioner's designee takes effect one business day after the commissioner or the commissioner's designee issues a written decision. The decision of the commissioner or the commissioner's 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. [PL 2011, c. 657, Pt. DD, §4 (AMD).]

[PL 2017, c. 402, Pt. C, §96 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

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

A. As a result of mental illness, the person poses a serious and immediate risk of harm to that person or others; [PL 2015, c. 309, §1 (NEW).]

B. The person lacks the decisional capacity either to provide informed consent for treatment or to make an informed refusal of treatment; [PL 2015, c. 309, §1 (NEW).]

C. A person legally authorized to provide consent for treatment on behalf of the person is not reasonably available under the circumstances; [PL 2015, c. 309, §1 (NEW).]

D. The treatment being administered is a currently recognized standard of treatment for treating the person's mental illness and is the least restrictive form of treatment appropriate in the circumstances; [PL 2015, c. 309, §1 (NEW).]

E. For purposes of evaluation for emergency involuntary treatment, the medical practitioner considers available history and information from other sources, including, but not limited to, family members, that are considered reliable by the examiner; and [PL 2015, c. 309, §1 (NEW).]

F. A reasonable person concerned for the welfare of the person would conclude that the benefits of the treatment outweigh the risks and potential side effects of the treatment and would consent to the treatment under the circumstances. [PL 2015, c. 309, §1 (NEW).]

[PL 2015, c. 309, §1 (NEW).]

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