MHA Legislative Agenda

127th Legislature, First Session

2015

An Act to Regarding Health Care Coverage and Hospital Charity Care

Sponsor:
Contact: Jeffrey Austin, Maine Hospital Association (jaustin@themha.org)

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

CONCEPT DRAFT SUMMARY

This bill is a concept draft pursuant to Joint Rule 208.

This bill proposes to align Maine's mandatory charity care law and subsidized health insurance coverage with the ACA.

MHA Legislative Agenda

127th Legislature, First Session

2015

Sponsor:

Contact: Jeffrey Austin, Maine Hospital Association (jaustin@themha.org)

An Act To Improve Maine's Involuntary Commitment Processes

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

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

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;

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

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

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

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

F. A reasonable person concerned for the welfare of the patient 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.

Sec. 2. 34-B MRSA §3863, sub-§2 is amended to read

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

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

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

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

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

Sec. 3. 34-B MRSA §3863, sub-§3 is amended to read:

3. **Judicial review.** The application and accompanying certificate must be reviewed by a Justice of the Superior Court, Judge of the District Court, Judge of Probate or a justice of the peace, who may review the original application and accompanying certificate or a facsimile transmission of them.

A. If the judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, the judge or justice shall endorse them and promptly send them to the admitting psychiatric hospital. For purposes of carrying out the provisions of this section, an endorsement transmitted by facsimile machine has the same legal effect and validity as the original endorsement signed by the judge or justice.

B. A person may not be held against the person's will in a hospital under this section, except that a person for whom an examiner has executed the certificate under subsection 2 may be detained in a hospital for a reasonable period of time, not to exceed 24 hours, pending endorsement by a judge or justice, if:

(1) For a person informally admitted under section 3831, the chief administrative officer of the psychiatric hospital undertakes to secure the endorsement immediately upon execution of the certificate by the examiner; and

(2) For a person sought to be involuntarily admitted under this section, the person or persons seeking the involuntary admission undertake to secure the endorsement immediately upon execution of the certificate by the examiner.

C. Notwithstanding paragraph B, subparagraphs (1) and (2), a person sought to be admitted informally under section 3831 or involuntarily under this section may be transported to a psychiatric hospital and held there for evaluation and treatment pending judicial endorsement of the application and certificate if the endorsement is obtained between the soonest available hours of 7:00 a.m. and 11:00 p.m.

D. A person who has been held against the person’s will for no more than 24 hours pursuant to subsection B may be held for a reasonable period of time, not to exceed 48 hours, if:

(1) The hospital has had an evaluation of the person conducted by an appropriately designated individual and that evaluation concludes that the person poses a likelihood

of serious harm;

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

(3) The hospital has notified DHHS of the name of the person, the location of the person, the name of the appropriately designated individual who conducted the evaluation pursuant to sub-paragraph 1 and the time the person first presented to the hospital.

E. In the event that a person remains in a hospital for the full 48 hours allowed under subsection D, the person may held for one additional 48-hour period, if:

(1) The hospital satisfies again the requirements of subsection D, and

(2) DHHS certifies that it will provide its best efforts to find an inpatient bed at a psychiatric hospital or other appropriate alternatives

Sec. 4. 34-B MRSA §3863, sub-§4 is amended to read:

4. Custody and transportation. Custody and transportation under this section are governed as follows.

A. Upon endorsement of the application and certificate by the judge or justice, a law enforcement officer or other person designated by the judge or justice may take the person into custody and transport that person to the psychiatric hospital designated in the application. Transportation of an individual to a psychiatric hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual.

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

C. When a person who is under a sentence or lawful detention related to commission of a crime and who is incarcerated in a jail or local correctional or detention facility is admitted to a psychiatric hospital under any of the procedures in this subchapter, the county where the incarceration originated shall pay all expenses incident to transportation of the person between the psychiatric hospital and the jail or local correctional or detention facility.

Sec. 5. 34-B MRSA §3864, sub-§2 is amended to read:

§3864. Judicial procedure and commitment

1. Application. An application to the District Court to admit a person to a psychiatric hospital, filed under section 3863, subsection 5-A, must be accompanied by:

A. The emergency application under section 3863, subsection 1;

B. The accompanying certificate of the medical practitioner under section 3863, subsection 2;

C. The certificate of the physician or psychologist under section 3863, subsection 7;

D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:

(1) The patient's right to retain an attorney or to have an attorney appointed;

(2) The patient's right to select or to have the patient's attorney select an independent examiner; and

(3) How to contact the District Court; and

E. A copy of the notice and instructions given to the patient.

1-A. Involuntary treatment. An application under this section may also include a request for an order of involuntary treatment under subsection 7-A.

2. Detention pending judicial determination. Notwithstanding any other provisions of this subchapter, a person, with respect to whom an application for the issuance of an order for hospitalization has been filed, may not be released or discharged during the pendency of the proceedings, unless:

A. The District Court orders release or discharge upon the request of the patient or the patient's guardian, parent, spouse or next of kin;

B. The District Court orders release or discharge upon the report of the applicant that the person may be discharged with safety;

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

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

E. The person has voluntarily agreed to receive psychiatric services.

Sec. 6 34-B MRSA §3868 is amended to read**:**

§3868. Transfer to other institutions

1. To other hospitals. The commissioner may transfer, or authorize the transfer of, a patient from one hospital to another, either inside or outside the State, if the commissioner determines that it would be consistent with the medical or psychiatric needs of the patient to do so.

A. Before a patient is transferred, the commissioner shall give written notice of the transfer to the patient's guardian, the patient's parents or spouse or, if none of these persons exists or can be located, to the patient's next of kin or friend, except that if the chief administrative officer of the hospital to which the patient is currently admitted has reason to believe that notice to any of these individuals would pose risk of harm to the person, then notice may not be given to that individual.

B. In making all such transfers, the commissioner shall give due consideration to the relationship of the patient to the patient's family, guardian or friends, in order to maintain relationships and encourage visits beneficial to the patient.

C. For any patient transferred hereunder, the order of involuntary commitment and the order of involuntary treatment, if any, shall remain in effect and be transferred to the receiving hospital.

Sec. 7. 34-B MRSA §3874 is enacted to read:

§ 3874. Medical examinations conducted via telemedicine technologies

Notwithstanding any provision to the contrary in this subchapter, any medical examination or consultation required or permitted to be conducted under this subchapter, may be conducted utilizing telemedicine or other similar technologies that enable the medical examination or consultation to be conducted in accordance with applicable standards of care.

SUMMARY

This this bill amends Maine's involuntary hospitalization statutes by:

1. Creating exceptions to the 24-hour hospital emergency hold period to authorize a hospital to involuntarily detain a mentally ill person meeting criteria for emergency psychiatric hospitalization for two additional 48-hour periods;
2. A drafting clarification to an existing section of law that is not intended to make a substantive change.
3. Codifying Maine's common law "emergency exception" to informed consent to authorize 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;
4. It limits the State's costs related to transporting certain patients to "reasonable" costs;
5. It allows for the discharge of an involuntary petition if the patient subsequently agrees to voluntarily commit;
6. Clarifying that orders of treatment transfer with a patient that is transferred; and
7. Permitting medical examinations and consultations required or permitted under Maine's involuntary hospitalization statutes to be conducted using telemedicine technologies.

MHA Legislative Agenda

127th Legislature, First Session

2015

An Act to Protect Individuals Covered by Insurance

Sponsor:
Contact: Jeffrey Austin, Maine Hospital Association (jaustin@themha.org)

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

Sec 1. 24-A MRSA Sec. 4303, Sub-§ 19, as enacted by PL 2013, Chapter 535 is amended as follows:

19. Information about provider networks. A carrier offering a managed care plan shall prominently disclose to applicants, prospective enrollees and enrollees information about the carrier's provider network for the applicable managed care plan, including whether there are hospitals, health care facilities, physicians or other providers not included in the plan's network and any differences in an enrollee's financial responsibilities for payment of covered services to a participating provider and to a provider not included in a provider network. A carrier shall be responsible for reimbursing the usual and customary charges related to the care rendered to a carrier's enrollee by any health care provider who is listed by the carrier or the carrier's agent as being part of a plan's in-network list of providers but with whom the carrier does not have a contract for in-network care. The superintendent may adopt rules that set forth the manner, content and required disclosure of the information in accordance with this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Summary

Currently, individuals who rely on a carrier's representation of who is in-network bear full financial responsibility for any error made by the carrier. This bill makes errors of the carrier the responsibility of the carrier and not the patient.

MHA Legislative Agenda

127th Legislature, First Session

2015

An Act to Regarding Notice Provided by Carriers to Providers

Sponsor:
Contact: Jeffrey Austin, Maine Hospital Association (jaustin@themha.org)

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

Sec 1. 24-A MRSA Sec. 4320-J, is hereby enacted:

4320-J. Notice of Arrears. A carrier offering a health plan on the American Health Benefit Exchange pursuant to the federal Affordable Care Act shall make available to providers whether a person who is covered by an insurance product purchased through the American Health Benefit Exchange is more than 30 days in arrears with respect to the person's payment of premiums.

Summary

This bill requires insurance carriers to give health care providers notice that an individual is more than 30 days in arrears on their premiums because the carrier may not have to pay the individual's medical bills after day 30.

MHA Legislative Agenda

127th Legislature, First Session

2015

An Act to Update Reporting by the Bureau of Insurance

Sponsor:
Contact: Jeffrey Austin, Maine Hospital Association (jaustin@themha.org)

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

Sec 1. 24 MRSA §2601 as most recently amended by PL 1997, c. 126, §1 is hereby further amended as follows:

§2601. Report of claim

Every insurer providing professional liability insurance in this State to a person licensed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure ~~or to any health care provider~~ shall make a periodic report of claims made under the insurance to the department or board that regulates the insured. For purposes of this section, a claim is made whenever the insurer receives information from an insured, a patient of an insured or an attorney that an insured's liability for malpractice is asserted.

1. Date and place. The date and place of the occurrence for which each claim was made;

2. Name of insured; classification of risk. The name of the insured or insureds and the classification of risk;

3. Incident or occurrence for claim. The incident or occurrence for which each claim was made;

4. Amount. The amount claimed;

5. Arbitration agreement.

6. Filing of suit or arbitration.

7. Other information. Such other information as may be required pursuant to section 2603.

The failure of any insurer providing professional liability insurance in this State to a person licensed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure ~~or any health care provider~~ to report as required is a civil violation for which a fine of not more than $1,000 may be adjudged.

Sec 2. 24 MRSA §2602 as most recently amended by PL 1997, c. 126, §2 is hereby further amended as follows:

§2602. Report of disposition

1. Report; finality of judgment or award. The insurer shall make a report of disposition to the board or department that regulates the insured as provided in subsection 2 if any claim subject to section 2601 or any claim as otherwise defined in section 2601 but is made against a health care provider, results in:

A. A final judgment or award to the claimant in any amount;

B. A settlement involving payment in any amount of money or services; or

C. A final disposition not involving any payment of money or services.

For purposes of this subsection, a judgment or award is final when it can not be appealed, and a disposition is final when it results from judgment, dismissal, withdrawal or abandonment.]

2. Information included: The report of disposition required pursuant to subsection 1 shall include:

A. The name, address and specialty coverage of the insured;

B. The insured's policy number;

C. The date and place of the occurrence which created the claim;

D. The date of suit, if filed or arbitration if demanded;

E. The date and amount of judgment, award or settlement, if any;

F. The allocated claim expense, if any;

G. The date and reason for final disposition, if no judgment, award or settlement;

H. A summary of the occurrence which created the claim; and

I. Such other information as may be required pursuant to section 2603.

3. Fine. The failure of any insurer providing professional liability insurance in this State to a person licensed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure or any health care provider to report as required is a civil violation for which a fine of not more than $1,000 may be adjudged.

Summary

Section 1 changes the law so that notices of claims against health care providers do not have to be forwarded to the department. Section 2 changes the law so that notices of disposition of claims against health care providers do have to be forwarded.

MHA Legislative Agenda

127th Legislature, First Session

2015

An Act to Require Payment by Carriers for Health Care Services Provided to Enrollees of the Carrier

Sponsor:
Contact: Jeffrey Austin, Maine Hospital Association (jaustin@themha.org)

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

Sec 1. 24-A MRSA Sec. 4303, Sub-§ 2(D), as enacted by PL 2003, Chapter 108 is amended as follows:

D. A carrier shall make credentialling decisions, including those granting or denying credentials, within 60 days of receipt of a completed credentialling application from a provider. The time period for granting or denying credentials may be extended upon written notification from the carrier within 60 days following submission of a completed application stating that information contained in the application requires additional time for verification. All credentialling decisions must be made within 180 days of receipt of a completed application. For the purposes of this paragraph, an application is completed if the application includes all of the information required by the uniform credentialling application used by carriers and providers in this State, such attachments to that application as required by the carrier at the time of application and all corrections required by the carrier. A carrier shall review the entire application before returning it to the provider for corrections with a comprehensive list of all corrections needed at the time the application is first returned to the provider. A carrier may not require that a provider have a home address within the State before accepting an application. <u>The carrier shall pay claims for services rendered during the period following the carrier's receipt of a completed credentialling application for an individual provider up to the date the individual provider is accepted by the carrier.</u>

Summary

Providers who treat enrollees of a carrier are not compensated for care provided during the pendency of a credentialling application. This bill requires payment to a provider for services rendered during the pendency period if the provider is subsequently credentialed.

MHA Legislative Agenda (new)

127th Legislature, First Session

2015

An Act to Address Patients Improperly Boarded in Hospitals

Sponsor:
Contact: Jeffrey Austin, Maine Hospital Association (jaustin@themha.org)

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

CONCEPT DRAFT SUMMARY

This bill is a concept draft pursuant to Joint Rule 208.

This bill proposes to take steps to help place patients who are stuck in hospitals in an appropriate setting.

The bill will seek to do the following:

- Create and fund additional gero-psychiatric facilities.
- Review/Changes to the bed hold regulations for nursing homes and group homes to create incentives to take difficult mental health patients back after a hospital stay.
- Review/Changes to the bed hold regulations for nursing homes and group homes to create penalties for facilities that refuse to take difficult mental health patients back after a hospital stay.
- Create crisis facilities in the community to handle violent patients in crisis that don't need to be in the hospital.
- Review/Change "anti-dumping" regulations for community residential providers.
- Create and fund additional psychiatric observation units.
- Support and participate in the DHHS/Corrections initiative to expand psychiatric services for juveniles and adolescents at Long Creak and Mountain View.
- Propose an increase to the outpatient mental health fee schedule (Section 65, 90 etc).
- Create an effective and professional mental health placement rapid response team and/or ombudsman in the DHHS Commissioner's Office.
- Provide additional MaineCare reimbursement for long stay mental health ED patients and patients awaiting placement in psych units.
- Continue to pursue MHA sponsored legislation to improve the involuntary commitment process.