

PART BBBB (LD 151)

Sec. BBBB-1. 34-B MRSA §3801, sub-§4, ¶¶B and C, as enacted by PL 1983, c. 459, §7, are amended to read:

B. A substantial risk of physical harm to other persons as manifested by recent evidence of homicidal or other violent behavior or recent evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them and, after consideration of less restrictive treatment settings and modalities, a determination that community resources for the person's care and treatment are unavailable;

C. A reasonable certainty that severe physical or mental impairment or injury will result to the person alleged to be mentally ill as manifested by recent evidence of the person's actions or behavior that demonstrates the person's inability to avoid or protect the person from such impairment or injury, and, after consideration of less restrictive treatment settings and modalities, a determination that suitable community resources for the person's care are unavailable; or

Sec. BBBB-2. 34-B MRSA §3801, sub-§4, ¶D is enacted to read:

D. For the purposes of section 3873, subsection 5, in view of the person's treatment history, current behavior and inability to make an informed decision, a reasonable likelihood that deterioration of the person's mental health will occur and that the person will in the foreseeable future pose:

(1) A substantial risk of physical harm to the person as manifested by evidence of recent threats of, or attempts at, suicide or serious bodily harm;

(2) A substantial risk of physical harm to other persons as manifested by recent evidence of homicidal or other violent behavior or recent evidence that others are placed in reasonable fear of violent behavior and serious physical harm to themselves; or

(3) A substantial risk of severe physical or mental impairment or injury to the person as manifested by recent evidence of actions or behavior that demonstrates the person's inability to avoid or protect the person from such impairment or injury.

Sec. BBBB-3. 34-B MRSA §3801, sub-§§7-A, 8-A, 10 and 11 are enacted to read:

7-A. Progressive treatment program. "Progressive treatment program" or "program" means a program of court-ordered services provided to participants under section 3873.

8-A. Severe and persistent mental illness. "Severe and persistent mental illness" means a diagnosis of one or more qualifying mental illnesses or disorders plus a listed disability or functional impairment that has persisted continuously or intermittently or is expected to persist for at least one year as a result of that disease or disorder. The

qualifying mental illnesses or disorders are schizophrenia, schizoaffective disorder or other psychotic disorder, major depressive disorder, bipolar disorder or a combination of mental disorders sufficiently disabling to meet the criteria of functional disability. The listed disabilities or functional impairments, which must result from a diagnosed qualifying mental illness or disorder, include inability to adequately manage one's own finances, inability to perform activities of daily living and inability to behave in ways that do not bring the attention of law enforcement for dangerous acts or for acts that manifest the person's inability to protect the person from harm.

10. Inability to make an informed decision. "Inability to make an informed decision" means being unable to make a responsible decision whether to accept or refuse a recommended treatment as a result of lack of mental capacity to understand sufficiently the benefits and risks of the treatment after a thorough and informative explanation has been given by a qualified mental health professional.

11. Assertive community treatment. "Assertive community treatment" or "ACT" means a self-contained service with a fixed point of responsibility for providing treatment, rehabilitation and support services to persons with mental illness for whom other community-based treatment approaches have been unsuccessful. Assertive community treatment uses clinical and rehabilitative staff to address symptom stability; relapse prevention; maintenance of safe, affordable housing in normative settings that promote well-being; establishment of natural support networks to combat isolation and withdrawal; the minimizing of involvement with the criminal justice system; individual recovery education; and services to enable the person to function at a work site. Assertive community treatment is provided by multidisciplinary teams who are on duty 24 hours per day, 7 days per week; teams must include a psychiatrist, registered nurse, certified rehabilitation counselor or certified employment specialist, a peer recovery specialist and a substance abuse counselor and may include an occupational therapist, community-based mental health rehabilitation technician, psychologist, licensed clinical social worker or licensed clinical professional counselor. An ACT team member who is a state employee is, while in good faith performing a function as a member of an ACT team, performing a discretionary function within the meaning of Title 14, section 8104-B, subsection 3.

Sec. BBBB-4. 34-B MRSA §3832, sub-§1, as amended by PL 1983, c. 580, §10, is further amended to read:

1. Patient's right. A patient admitted under section 3831 is free to leave the hospital at any time after admission within 16 hours of the patient's request unless application for admission of the person under section 3863 is initiated within that time.

Sec. BBBB-5. 34-B MRSA §3863, sub-§2, ¶B, as amended by PL 1997, c. 438, §2, is further amended to read:

B. The physician, physician's assistant, certified psychiatric clinical nurse specialist, nurse practitioner or psychologist 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.

Sec. BBBB-6. 34-B MRSA §3863, sub-§5, ¶¶B and C, as amended by PL 1995, c. 496, §2, are further amended to read:

B. If the chief administrative officer of the hospital determines that admission of the person as an informally admitted patient is not suitable, or if the person declines admission as an informally admitted patient, the chief administrative officer of the hospital may seek involuntary commitment of the patient by filing an application for the issuance of an order for hospitalization under section 3864, except that if the hospital is a designated nonstate mental health institution and if the patient was admitted under the contract between the hospital and the department for receipt by the hospital of involuntary patients, then the chief administrative officer may seek involuntary commitment only by requesting the commissioner to file an application for the issuance of an order for hospitalization under section 3864.

(1) The application must be made to the District Court having territorial jurisdiction over the hospital to which the person was admitted on an emergency basis.

(2) The application must be filed within 3 days from the date of admission of the patient under this section, except that, if the 3rd day falls on a weekend or holiday, the application must be filed on the next business day following that weekend or holiday.

C. If neither readmission on an informal voluntary basis nor application to the District Court is effected under this subsection, the chief administrative officer of the hospital to which the person was admitted on an emergency basis shall discharge the person immediately.

Sec. BBBB-7. 34-B MRSA §3863, sub-§5, ¶D is enacted to read:

D. If the chief administrative officer of the hospital has filed an application in the District Court for an order of hospitalization under section 3864 but the hearing on the

application has not yet been conducted, the chief administrative officer may also submit in the interim a request for an administrative hearing before a hearing officer employed by or under contract with the department to administer medication on an involuntary basis to the patient if the court orders such commitment. In such cases, the administrative hearing to consider the request for involuntary treatment must be held within 4 business days of the date of the court's order permitting involuntary hospitalization under section 3864.

Sec. BBBB-8. 34-B MRSA §3863, sub-§8 is enacted to read:

8. Rehospitalization from progressive treatment program. The assertive community treatment team physician or psychologist may make a written application under this section to admit to a state mental health institute a person who fails to fully participate in the progressive treatment program in accordance with section 387 3, subsection 5. The provisions of this section apply to that application, except that the standard for admission is governed by section 3873, subsection 5, paragraph B.

Sec. BBBB-9. 34-B MRSA §3864, sub-§5, ¶A, as enacted by PL 1983, c. 459, §7, is amended to read:

A. The District Court shall hold a hearing on the application not later than 14 days from the date of the application.

(1) On a motion by any party, the hearing may be continued for cause for a period not to exceed 10 additional days.

(2) If the hearing is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(3) In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply.

Sec. BBBB-10. 34-B MRSA §3864, sub-§5, ¶E, as enacted by PL 1983, c. 459, §7, is amended to read:

E. In addition to proving that the patient is a mentally ill individual, the applicant must show:

(1) By evidence of the patient's recent actions and behavior, that due to the patient's mental illness the patient poses a likelihood of serious harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person.

Sec. BBBB-11. 34-B MRSA §3870, sub-§3, ¶C is enacted to read:

C. Discharge from convalescent status occurs upon expiration of the period of involuntary commitment.

Sec. BBBB-12. 34-B MRSA §3870, sub-§4, ¶C, as enacted by PL 1997, c. 422, §22, is amended to read:

C. If the order is not voluntarily complied with, an involuntarily committed patient on convalescent leave may be returned to the hospital if the following conditions are met:

- (1) An order is issued pursuant to paragraph A;
- (2) The order is brought before a District Court Judge or justice of the peace; and
- (3) Based upon clear and convincing evidence that return to the hospital is in the patient's best interest or that the patient poses a likelihood of serious harm, the District Court Judge or justice of the peace approves return to the hospital.

After approval by the District Court Judge or justice of the peace, a law enforcement officer may take the patient into custody and arrange for transportation of the patient in accordance with the provisions of section 3863, subsection 4. This paragraph does not preclude the use of protective custody by law enforcement officers pursuant to section 3862.

Sec. BBBB-13. 34-B MRSA §3871, sub-§6 is enacted to read:

6. Discharge to progressive treatment program. If a person participates in the progressive treatment program under section 3873, the time period of a commitment under this section terminates on entry into the progressive treatment program.

Sec. BBBB-14. 34-B MRSA §3873 is enacted to read:

§3873. Progressive treatment program

1. Program established. The department shall establish the progressive treatment program to provide care for persons who meet the criteria of subsection 2.

2. Criteria for participation. The following criteria apply to participation in the progressive treatment program.

A. Participation in the program must be ordered by the District Court in accordance with this paragraph.

(1) The superintendent of a state mental health institute may file an application for an order of admission to the progressive treatment program with the District Court.

(2) The procedures for commitment under section 3864 apply, except that an order of admission to the progressive treatment program requires the following:

(a) A finding that the person meets the criteria of paragraph B;

(b) A finding that an assertive community treatment team is available to provide treatment and care for the person; and

(c) A provision in the order that requires the person to return to the state mental health institute pursuant to subsection 5 in the event of failure to fully participate and deterioration of the person's mental health so that hospitalization is in the person's best interest and the person poses a likelihood of

serious harm as defined in section 3801, subsection 4, paragraph D.

B. The person must:

- (1) Be 21 years of age or older;
- (2) Have been clinically determined to be suffering from a severe and persistent mental illness;
- (3) Have been under an order of involuntary commitment to a state mental health institute at the time of filing of the application for progressive treatment; and
- (4) Have been clinically determined to be in need of the progressive treatment program in order to prevent interruptions in treatment, relapse and deterioration of mental health and to enable the person to survive safely in a community setting in the reasonably foreseeable future without posing a likelihood of serious harm as defined in section 3801, subsection 4, paragraph D. A determination under this subparagraph must be based on current behavior, treatment history, documented history of positive responses to treatment while hospitalized, relapse and deterioration of mental health after discharge and inability to make informed decisions regarding treatment.

3. Duration of participation. Except as provided in subsections 4 and 5, participation in the progressive treatment program must be for a term of 6 months. Participation ends if a person successfully completes the program in accordance with subsection 4 or is hospitalized pursuant to a court order entered under subsection 5. Participation in the program is temporarily suspended if the person is voluntarily rehospitalized and recommences upon discharge from the hospital.

4. Successful completion. A person who fully participates in the program and who follows the individualized treatment plan successfully completes the program upon expiration of 6 months or certification by the assertive community treatment team physician or psychologist that the person is no longer in need of the services of the program.

5. Termination of participation. Failure of a person to fully participate in the program and follow the individualized treatment plan may result in termination of participation in the program and rehospitalization under this subsection.

A. If the person does not fully participate in the program and follow the individualized treatment plan and if the assertive community treatment team physician or psychologist determines, based on clinical findings, that as a result of failure to fully participate or follow the individualized treatment plan the person's mental health has deteriorated so that hospitalization is in the person's best interest and the person poses a likelihood of serious harm as defined in section 3801, subsection 4, paragraph D, the assertive community treatment team physician or psychologist shall complete a certificate

stating that the person requires hospitalization and the grounds for that belief. The person may agree to hospitalization or may be subject to an application for readmission under paragraph B. B. A person who participates in the progressive treatment program may be rehospitalized on an emergency basis under the provisions of section 3863 if the judicial officer reviewing the certificate under section 3863, subsection 3 finds that rehospitalization is in the person's best interest and that the person poses a likelihood of serious harm as defined in section 3801, subsection 4, paragraph D.

This paragraph does not preclude the use of protective custody by law enforcement officers pursuant to section 3862.

C. A person who participates in the progressive treatment program may be committed under section 3864 if the court reviewing the application finds that hospitalization is in the person's best interest and that the person poses a likelihood of serious harm as defined in section 3801, subsection 4, paragraph D.

D. If the person has an advance directive or durable power of attorney or a guardian, the advance directive may be admitted into evidence and the attorney in fact or guardian may provide testimony and evidence to the court in any proceeding under this subsection. The court shall consider but is not required to follow any directions within the advance directive or durable power of attorney document or testimony from the attorney or guardian.

6. Repeal. This section is repealed July 1, 2010.

Sec. BBBB-15. Implementation. Implementation of the progressive treatment program under the Maine Revised Statutes, Title 34-B, section 3873 is subject to the following provisions.

1. The Department of Health and Human Services shall undertake a thorough review of the needs of persons who are eligible to participate in the progressive treatment program and the resources currently used to provide services to meet those needs. The department shall analyze the current costs of community-based care and hospitalization in community hospitals and state mental health institutes for persons who would be eligible to participate in the program. By October 1, 2006 the department shall report to the Joint Standing Committee on Health and Human Services with proposals for funding the progressive treatment program to the maximum extent possible by redirection of existing resources and use of funds that will not be needed because of participation in the program.

2. Operation of the progressive treatment program is limited for fiscal year 2006-07 to a project that may serve up to a maximum of 25 persons who are hospitalized on an involuntary basis at the Riverview Psychiatric Center, to be served by a combination

of state employees and contracted staff, and up to a maximum of 25 persons who are hospitalized on an involuntary basis at the Dorothea Dix Psychiatric Center, to be served by community providers. During fiscal year 2006-07 the development of new resources or redirection of existing resources for a new assertive community treatment team is limited to one team serving persons who were previously hospitalized at Riverview Psychiatric Center and one team serving persons who were previously hospitalized at the Dorothea Dix Psychiatric Center.

Sec. BBBB-16. Educational and training materials. The Department of Health and Human Services shall develop and distribute educational and training materials with input from interested consumer, advocacy and professional organizations describing assertive community treatment, guardianship, advance directives, convalescent status, the process for medications for hospitalized patients and the progressive treatment program for distribution to the courts, judges, providers of mental health services, law enforcement officials, consumers, family members and the general public.

Sec. BBBB-17. Department rules on progressive treatment program. The Department of Health and Human Services shall amend its MaineCare rules in Section 17, "Community Support Services," to prohibit any provider of assertive community treatment from rejecting any person participating in the progressive treatment program.

Sec. BBBB-18. Reports. The Department of Health and Human Services shall submit reports describing the progress in the implementation and the measurable outcomes of the progressive treatment program to the joint standing committee of the Legislature having jurisdiction over health and human services matters on or before April 1, 2007 and January 1, 2008, 2009 and 2010.

Sec. BBBB-19. Appropriations and allocations. The following appropriations and allocations are made.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (formerly BDS)

Mental Health Services - Community 0121

Initiative: Provides funds for the non-MaineCare reimbursable costs associated with assertive community treatment teams, including funds for one part-time Intensive Case Manager position.

GENERAL FUND 2005-06 2006-07

POSITIONS - FTE COUNT 0.000 0.500

Personal Services \$0 \$35,000

All Other \$0 \$86,222

GENERAL FUND TOTAL \$0 \$121,222

Mental Health Services - Community Medicaid 0732

Initiative: Provides funds for assertive community treatment teams at the Dorothea Dix Psychiatric Center.

GENERAL FUND 2005-06 2006-07

All Other \$0 \$115,237

GENERAL FUND TOTAL \$0 \$115,237

Mental Health Services - Community Medicaid 0732

Initiative: Provides funds for assertive community treatment teams at the Riverview Psychiatric Center.

GENERAL FUND 2005-06 2006-07

All Other \$0 \$190,000

GENERAL FUND TOTAL \$0 \$190,000

Mental Health Services - Community Medicaid 0732

Initiative: Provides funds for the state share of the costs to develop crisis residential units, including observation beds, as recommended by the Court Master in Paul Bates et al. v. Department of Behavioral and Developmental Services et al.

GENERAL FUND 2005-06 2006-07

All Other \$0 \$230,950

GENERAL FUND TOTAL \$0 \$230,950

Riverview Psychiatric Center 0105

Initiative: Transfers funds for assertive community treatment to the Mental Health Services - Community and Mental Health Services - Community Medicaid program.

GENERAL FUND 2005-06 2006-07

All Other \$0 (\$270,000)

GENERAL FUND TOTAL \$0 (\$270,000)

HEATH AND HUMAN SERVICES DEPARTMENT OF (Formerly BDS),

DEPARTMENT TOTALS 2005-06 2006-07

GENERAL FUND \$0 \$387,409

DEPARTMENT TOTAL - ALL FUNDS \$0 \$387,409

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (Formerly DHS)

Medical Care - Payments to Providers 0147

Initiative: Allocates the federal share of the costs associated with assertive community treatment teams.

FEDERAL EXPENDITURES FUND 2005-06 2006-07

All Other \$0 \$523,761

FEDERAL EXPENDITURES FUND TOTAL \$0 \$523,761

Medical Care - Payments to Providers 0147

Initiative: Provides funds for the federal share of the costs to develop crisis residential units, including observation beds, as recommended by the Court Master in Paul Bates et al. v. Department of Behavioral and Developmental Services et al.

FEDERAL EXPENDITURES FUND 2005-06 2006-07

All Other \$0 \$389,050

FEDERAL EXPENDITURES FUND TOTAL \$0 \$389,050

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (Formerly DHS)
DEPARTMENT TOTALS 2005-06 2006-07
FEDERAL EXPENDITURES FUND \$0 \$912,811
DEPARTMENT TOTAL - ALL FUNDS \$0 \$912,811

JUDICIAL DEPARTMENT

Courts - Supreme, Superior and District 0063

Initiative: Provides funds for the additional costs associated with assertive community treatment teams.

GENERAL FUND 2005-06 2006-07

Personal Services \$0 \$2,882

All Other \$0 \$45,718

GENERAL FUND TOTAL \$0 \$48,600

JUDICIAL DEPARTMENT

DEPARTMENT TOTALS 2005-06 2006-07

GENERAL FUND \$0 \$48,600

DEPARTMENT TOTAL - ALL FUNDS \$0 \$48,600

SECTION TOTALS 2005-06 2006-07

GENERAL FUND \$0 \$436,009

FEDERAL EXPENDITURES FUND \$0 \$912,811

SECTION TOTAL - ALL FUNDS \$0 \$1,348,820

Sec. BBBB-20. Effective date. This Part takes effect July 1, 2006.

Taken from Amendment A of the Governor's Supplemental Budget