A bill for an act

relating to mental health; establishing procedures for administration of electroconvulsive therapy; proposing coding for new law in Minnesota Statutes, chapter 253B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[253B.094] ADMINISTRATION OF ELECTROCONVULSIVE THERAPY.**

Subdivision 1. **General.** Electroconvulsive therapy (ECT) shall be administered to patients subject to early intervention or civil commitment as mentally ill or mentally ill and dangerous only as provided in this section. For purposes of this section, "patient" means an individual who is the subject of a petition for early intervention or commitment as mentally ill or mentally ill and dangerous. In the case of patients under age 18, including emancipated minors, electroconvulsive therapy shall not be administered without judicial authorization.

Subd. 2. **Administration without judicial review.** Electroconvulsive therapy may be administered without judicial review only in the following circumstances:

(1) the patient has the capacity to make an informed decision under subdivisions 4 and 5; or

(2) the patient does not have the present capacity to consent to administration of electroconvulsive therapy but prepared a health care directive under chapter 145C or a declaration under section 253B.03, subdivision 6d, requesting treatment or authorizing an agent or proxy to request treatment, and the agent or proxy has requested the treatment.

Subd. 3. **Emergency administration.** When a treating physician determines that a patient's condition warrants emergency administration of electroconvulsive therapy,

if the patient does not have capacity to make a decision regarding administration of electroconvulsive therapy the head of the treatment facility may seek an expedited court hearing. The expedited hearing must be held within 72 hours of the request. Electroconvulsive therapy shall not be administered prior to issuance of a court order.

Subd. 4. **Patients with capacity to make informed decision.** A patient who has capacity to make an informed decision regarding the administration of electroconvulsive therapy may consent or refuse to consent to electroconvulsive therapy. The informed consent of a patient must be in writing and may be withdrawn at any time.

Subd. 5. **Determination of capacity.** (a) A patient is presumed to have capacity to make decisions regarding the administration of electroconvulsive therapy.

(b) A patient has capacity to give informed consent when the following conditions are met:

(1) the patient demonstrates an awareness of the nature of the patient's condition, including the need for treatment and the possible consequences of refusing electroconvulsive therapy;

(2) the patient demonstrates an understanding of the proposed treatment and the risks, benefits, and alternatives to electroconvulsive therapy; and

(3) the patient communicates verbally or nonverbally a clear choice regarding electroconvulsive therapy treatment, and the choice is a reasoned one, not based on delusion, even though the treatment may not be in the patient's best interests. Disagreement with the physician's recommendation is not evidence of incapacity.

Subd. 6. **Factors to be considered in determining medical indications.** In assessing whether electroconvulsive therapy is medically indicated, the medical director of the facility where the patient resides or the patient's physician shall consider the following factors:

(1) the predicted extent and duration of the therapeutic effects on the patient's mental activity and behavior patterns that the electroconvulsive therapy is expected to produce;

(2) the risks of adverse effects compared with the potential benefits to the patient;

(3) the likelihood electroconvulsive therapy will produce the desired effects;

(4) whether alternative treatments have been considered that produce less risk;

(5) the medical community's standard for use of electroconvulsive therapy; and

(6) the patient's capacity to determine whether the treatment is desirable.

Subd. 7. **Patient without capacity to make informed decision.** (a) If the patient refuses to consent to treatment with electroconvulsive therapy or is found to lack capacity to consent, and absent an advance directive, electroconvulsive therapy shall not be administered without a court order. Upon receiving a written request for a hearing, the

court shall schedule the hearing within 14 days of the request. The matter may be heard as part of any other district court proceeding under this chapter. By agreement of the parties or for good cause shown, the court may extend the time of hearing an additional 30 days.

(b) The petition shall state that consent is requested to administer electroconvulsive therapy, describe its purpose, recite the risks and the effects of the procedure, and recite the findings of the medical director or treating physician as provided in subdivisions 5 and 6.

(c) The court shall appoint a guardian ad litem to represent the interests of the patient. The guardian ad litem shall not be a person responsible for the patient's commitment.

(d) The patient is entitled to counsel.

(e) The patient must be examined by a court examiner prior to the hearing. If the patient refuses to participate in an examination, the examiner may rely on the patient's medical records to reach an opinion as to the appropriateness of electroconvulsive therapy. The patient is entitled to a second examiner if requested by the patient or the patient's counsel.

(f) The court may base its decision on relevant and admissible evidence, including testimony of a treating physician or other qualified physician, a member of the patient's treatment team, a court-appointed examiner, witness testimony, or the patient's medical records.

(g) The court shall determine the necessity and reasonableness of electroconvulsive therapy. The court shall balance the patient's need for treatment against the intrusiveness of the prescribed treatment. The court must consider the following factors:

(1) the extent and duration of changes in the patient's behavior patterns and mental activity affected by the treatment;

(2) the risks of adverse side effects;

(3) the experimental nature of the treatment;

(4) its acceptance by the medical community of this state;

(5) the extent of the intrusion into the patient's body and the pain connected with the treatment; and

(6) the patient's ability to competently determine for the patient's self whether the treatment is desirable.

(h) If the court finds the patient lacks capacity to give informed consent for administration of electroconvulsive therapy and has applied the standards set forth in this subdivision and subdivision 6, the court may authorize the treating facility to involuntarily administer electroconvulsive therapy. A copy of the order must be given to the patient, the patient's attorney, the treatment facility, and the facility's attorney before beginning the course of electroconvulsive therapy treatment.

(i) A finding of lack of capacity under this section must not be construed to determine the patient's competence for any other purpose.

(j) The standard of proof in proceedings pursuant to this section is clear and convincing evidence.

Subd. 8. **Duration of court order.** A court order authorizing the administration of electroconvulsive therapy pursuant to this section shall be effective for not more than 45 days. If the medical director or treating physician determines that another series of electroconvulsive therapy is indicated at the end of the 45 days, and the person continues to lack capacity, a new petition must be filed and a hearing must be held that meets the requirements of subdivision 7.