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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2882

03/10/2014 Authored by Johnson, C., The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act
1.2 relating to human services; modifying provisions governing the administration of
1.3 neuroleptic medication to persons subject to civil commitment; establishing a
1.4 pilot program; amending Minnesota Statutes 2012, sections 253B.07, subdivision
1.5 7; 253B.09, subdivision 2; 253B.092, subdivision 2.

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

1.7 Section 1. Minnesota Statutes 2012, section 253B.07, subdivision 7, is amended to read:

1.8 Subd. 7. Preliminary hearing. (a) No proposed patient may be held in a treatment
1.9 facility under a judicial hold pursuant to subdivision 6 longer than 72 hours, exclusive
1.10 of Saturdays, Sundays, and legal holidays, unless the court holds a preliminary hearing
1.11 and determines that the standard is met to hold the person.

1.12 (b) The proposed patient, patient's counsel, the petitioner, the county attorney, and
1.13 any other persons as the court directs shall be given at least 24 hours written notice of
1.14 the preliminary hearing. The notice shall include the alleged grounds for confinement.
1.15 The proposed patient shall be represented at the preliminary hearing by counsel. The
1.16 court may admit reliable hearsay evidence, including written reports, for the purpose of
1.17 the preliminary hearing.

1.18 (c) The court, on its motion or on the motion of any party, may exclude or excuse a
1.19 proposed patient who is seriously disruptive or who is incapable of comprehending and
1.20 participating in the proceedings. In such instances, the court shall, with specificity on the
1.21 record, state the behavior of the proposed patient or other circumstances which justify
1.22 proceeding in the absence of the proposed patient.

1.23 (d) The court may continue the judicial hold of the proposed patient if it finds, by
1.24 a preponderance of the evidence, that serious physical harm to the proposed patient or
1.25 others is likely if the proposed patient is not immediately confined. If a proposed patient

2.1 was acquitted of a crime against the person under section 611.026 immediately preceding  
 2.2 the filing of the petition, the court may presume that serious physical harm to the patient or  
 2.3 others is likely if the proposed patient is not immediately confined.

2.4 (e) Upon a showing that a person subject to a petition for commitment may need  
 2.5 treatment with neuroleptic medications and that the person may lack capacity to make  
 2.6 decisions regarding that treatment, the court ~~may~~ shall appoint a substitute decision-maker  
 2.7 as provided in section 253B.092, subdivision 6. The substitute decision-maker shall  
 2.8 meet with the proposed patient and provider and make a report to the court at the hearing  
 2.9 under section 253B.08 regarding whether the administration of neuroleptic medications  
 2.10 is appropriate under the criteria of section 253B.092, subdivision 7. If the substitute  
 2.11 decision-maker consents to treatment with neuroleptic medications and the proposed  
 2.12 patient does not refuse the medication, neuroleptic medication may be administered to the  
 2.13 patient. If the substitute decision-maker does not consent or the patient refuses, neuroleptic  
 2.14 medication may not be administered without a court order, or in an emergency as set forth  
 2.15 in section 253B.092, subdivision 3. As part of a hearing under section 253B.08, the court  
 2.16 shall make a determination on the need for a court order authorizing the administration of  
 2.17 neuroleptic medication using the procedure in section 253B.092, subdivision 8.

2.18 Sec. 2. Minnesota Statutes 2012, section 253B.09, subdivision 2, is amended to read:

2.19 Subd. 2. **Findings.** The court shall find the facts specifically, and separately state its  
 2.20 conclusions of law. Where commitment is ordered, the findings of fact and conclusions of  
 2.21 law shall specifically state the proposed patient's conduct which is a basis for determining  
 2.22 that each of the requisites for commitment is met.

2.23 If commitment is ordered, the findings shall also identify less restrictive alternatives  
 2.24 considered and rejected by the court and the reasons for rejecting each alternative.

2.25 If the proceedings are dismissed, the court may direct that the person be transported  
 2.26 back to a suitable location.

2.27 Upon application to the court according to section 253B.07, subdivision 7, paragraph  
 2.28 (e), regarding the administration of neuroleptic medication, the court shall make a  
 2.29 determination on the need for a court order authorizing the administration of neuroleptic  
 2.30 medication using the procedure in section 253B.092, subdivision 8.

2.31 Sec. 3. Minnesota Statutes 2012, section 253B.092, subdivision 2, is amended to read:

2.32 Subd. 2. **Administration without judicial review.** Neuroleptic medications may be  
 2.33 administered without judicial review in the following circumstances:

2.34 (1) the patient has the capacity to make an informed decision under subdivision 4;

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

3.5 (3) the patient has been prescribed neuroleptic medication but lacks the capacity  
 3.6 to consent to the administration of that neuroleptic medication upon admission to the  
 3.7 treatment facility; continued administration of the medication is in the patient's best  
 3.8 interest; and the patient does not refuse administration of the medication. In this situation,  
 3.9 the previously prescribed neuroleptic medication may be continued for up to 14 days  
 3.10 while the treating physician:

3.11 (i) is obtaining a substitute decision-maker appointed by the court under subdivision  
 3.12 6; or

3.13 (ii) is requesting an amendment to a current court order authorizing administration  
 3.14 of neuroleptic medication;

3.15 (4) a substitute decision-maker appointed by the court consents to the administration  
 3.16 of the neuroleptic medication and the patient does not refuse administration of the  
 3.17 medication; or

3.18 ~~(4)~~ (5) the substitute decision-maker does not consent or the patient is refusing  
 3.19 medication, and the patient is in an emergency situation.

3.20 Sec. 4. **PILOT PROGRAM; NOTICE AND INFORMATION TO**  
 3.21 **COMMISSIONER OF HUMAN SERVICES REGARDING PATIENTS**  
 3.22 **COMMITTED TO COMMISSIONER.**

3.23 The commissioner of human services may create a pilot program that is designed to  
 3.24 respond to issues related to notice of commitment that were raised in the February 2013  
 3.25 Office of the Legislative Auditor report on state-operated services. The pilot program may  
 3.26 include no more than three counties to test the efficacy of providing notice and information  
 3.27 to the commissioner when a petition is filed to commit a patient exclusively to the  
 3.28 commissioner. The commissioner shall provide a status update to the chairs and ranking  
 3.29 minority members of the legislative committees with jurisdiction over civil commitment  
 3.30 and human services issues, no later than January 15, 2015.