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S.F. No. 55

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Introduction and first reading
Referred to Rules and Administration

OFFICIAL STATUS

- 1.1 A bill for an act
- 1.2 relating to civil commitment; banning involuntary electroconvulsive therapy;
- 1.3 amending Minnesota Statutes 2020, sections 253B.03, subdivisions 6, 6b, 6d;
- 1.4 524.5-313; repealing Minnesota Rules, part 9515.0700.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2020, section 253B.03, subdivision 6, is amended to read:
- 1.7 Subd. 6. **Consent for medical procedure.** (a) A patient has the right to give prior consent
- 1.8 to any medical or surgical treatment, other than treatment for chemical dependency or
- 1.9 nonintrusive treatment for mental illness.
- 1.10 (b) A court must not order a patient to be treated with electroconvulsive therapy without
- 1.11 the patient's informed written consent. If a patient objects to electroconvulsive therapy, a
- 1.12 court is not permitted to order the patient to be treated with electroconvulsive therapy.
- 1.13 ~~(b)~~ (c) The following procedures shall be used to obtain consent for any treatment
- 1.14 necessary to preserve the life or health of any committed patient:
- 1.15 (1) the written, informed consent of a competent adult patient for the treatment is
- 1.16 sufficient;
- 1.17 (2) if the patient is subject to guardianship which includes the provision of medical care,
- 1.18 the written, informed consent of the guardian for the treatment is sufficient, unless the
- 1.19 treatment is electroconvulsive therapy, in which case a guardian must not consent without
- 1.20 the informed written consent of the committed patient;
- 1.21 (3) if the head of the treatment facility or state-operated treatment program determines
- 1.22 that the patient is not competent to consent to the treatment and the patient has not been

2.1 adjudicated incompetent, written, informed consent for the surgery or medical treatment
2.2 shall be obtained from the person appointed the health care power of attorney, the patient's
2.3 agent under the health care directive, or the nearest proper relative. For this purpose, the
2.4 following persons are proper relatives, in the order listed: the patient's spouse, parent, adult
2.5 child, or adult sibling. If the nearest proper relatives cannot be located, refuse to consent to
2.6 the procedure, or are unable to consent, the head of the treatment facility or state-operated
2.7 treatment program or an interested person may petition the committing court for approval
2.8 for the treatment or may petition a court of competent jurisdiction for the appointment of a
2.9 guardian. However, a court must dismiss a petition requesting electroconvulsive therapy
2.10 from the head of the treatment facility or state-operated treatment program when the patient
2.11 has not given informed written consent to electroconvulsive therapy. The determination
2.12 that the patient is not competent, and the reasons for the determination, shall be documented
2.13 in the patient's clinical record; and

2.14 (4) consent to treatment of any minor patient shall be secured in accordance with sections
2.15 144.341 to 144.346. A minor 16 years of age or older may consent to hospitalization, routine
2.16 diagnostic evaluation, and emergency or short-term acute care; and.

2.17 ~~(5) in the case of an emergency when the persons ordinarily qualified to give consent~~
2.18 ~~cannot be located in sufficient time to address the emergency need, the head of the treatment~~
2.19 ~~facility or state-operated treatment program may give consent.~~

2.20 ~~(e)~~ (d) No person who consents to treatment pursuant to the provisions of this subdivision
2.21 shall be civilly or criminally liable for the performance or the manner of performing the
2.22 treatment. No person shall be liable for performing treatment without consent if written,
2.23 informed consent was given pursuant to this subdivision. This provision shall not affect any
2.24 other liability which may result from the manner in which the treatment is performed.

2.25 Sec. 2. Minnesota Statutes 2020, section 253B.03, subdivision 6b, is amended to read:

2.26 Subd. 6b. **Consent for mental health treatment.** A competent patient admitted
2.27 voluntarily to a treatment facility or state-operated treatment program may be subjected to
2.28 intrusive mental health treatment only with the patient's written informed consent. For
2.29 purposes of this section, "intrusive mental health treatment" means electroconvulsive therapy
2.30 and neuroleptic medication and does not include treatment for a developmental disability.
2.31 An incompetent patient who has prepared a directive under subdivision 6d regarding intrusive
2.32 mental health treatment must be treated in accordance with this section, ~~except in cases of~~
2.33 ~~emergencies.~~

3.1 Sec. 3. Minnesota Statutes 2020, section 253B.03, subdivision 6d, is amended to read:

3.2 Subd. 6d. **Adult mental health treatment.** (a) A competent adult patient may make a
3.3 declaration of preferences or instructions regarding intrusive mental health treatment. These
3.4 preferences or instructions may include, but are not limited to, consent to or refusal of these
3.5 treatments. A declaration of preferences or instructions may include a health care directive
3.6 under chapter 145C or a psychiatric directive.

3.7 (b) A declaration may designate a proxy to make decisions about intrusive mental health
3.8 treatment. A proxy designated to make decisions about intrusive mental health treatments
3.9 and who agrees to serve as proxy may make decisions on behalf of a declarant consistent
3.10 with any desires the declarant expresses in the declaration.

3.11 (c) A declaration is effective only if it is signed by the declarant and two witnesses. The
3.12 witnesses must include a statement that they believe the declarant understands the nature
3.13 and significance of the declaration. A declaration becomes operative when it is delivered
3.14 to the declarant's physician, advanced practice registered nurse, or other mental health
3.15 treatment provider. The physician, advanced practice registered nurse, or provider must
3.16 comply with the declaration to the fullest extent possible, consistent with reasonable medical
3.17 practice, the availability of treatments requested, and applicable law. The physician, advanced
3.18 practice registered nurse, or provider shall continue to obtain the declarant's informed consent
3.19 to all intrusive mental health treatment decisions if the declarant is capable of informed
3.20 consent. A treatment provider must not require a patient to make a declaration under this
3.21 subdivision as a condition of receiving services.

3.22 (d) The physician, advanced practice registered nurse, or other provider shall make the
3.23 declaration a part of the declarant's medical record. If the physician, advanced practice
3.24 registered nurse, or other provider is unwilling at any time to comply with the declaration,
3.25 the physician, advanced practice registered nurse, or provider must promptly notify the
3.26 declarant and document the notification in the declarant's medical record. The physician,
3.27 advanced practice registered nurse, or provider ~~may~~ must not subject the declarant to intrusive
3.28 treatment in a manner contrary to the declarant's expressed wishes, ~~only if the declarant is~~
3.29 ~~committed as a person who poses a risk of harm due to mental illness or as a person who~~
3.30 ~~has a mental illness and is dangerous to the public and a court order authorizing the treatment~~
3.31 ~~has been issued or an emergency has been declared under section 253B.092, subdivision 3.~~

3.32 (e) A declaration under this subdivision may be revoked in whole or in part at any time
3.33 and in any manner by the declarant if the declarant is competent at the time of revocation.
3.34 A revocation is effective when a competent declarant communicates the revocation to the

attending physician, advanced practice registered nurse, or other provider. The attending physician, advanced practice registered nurse, or other provider shall note the revocation as part of the declarant's medical record.

(f) A provider who administers intrusive mental health treatment according to and in good faith reliance upon the validity of a declaration under this subdivision is held harmless from any liability resulting from a subsequent finding of invalidity.

(g) In addition to making a declaration under this subdivision, a competent adult may delegate parental powers under section 524.5-211 or may nominate a guardian under sections 524.5-101 to 524.5-502.

Sec. 4. Minnesota Statutes 2020, section 524.5-313, is amended to read:

524.5-313 POWERS AND DUTIES OF GUARDIAN.

(a) A guardian shall be subject to the control and direction of the court at all times and in all things.

(b) The court shall grant to a guardian only those powers necessary to provide for the demonstrated needs of the person subject to guardianship.

(c) The court may appoint a guardian if it determines that all the powers and duties listed in this section are needed to provide for the needs of the incapacitated person. The court may also appoint a guardian if it determines that a guardian is needed to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this section. The duties and powers of a guardian or those which the court may grant to a guardian include, but are not limited to:

(1) the power to have custody of the person subject to guardianship and the power to establish a place of abode within or outside the state, except as otherwise provided in this clause. The person subject to guardianship or any interested person may petition the court to prevent or to initiate a change in abode. A person subject to guardianship may not be admitted to a regional treatment center by the guardian except:

(i) after a hearing under chapter 253B;

(ii) for outpatient services; or

(iii) for the purpose of receiving temporary care for a specific period of time not to exceed 90 days in any calendar year;

(2) the duty to provide for the care, comfort, and maintenance needs of the person subject to guardianship, including food, clothing, shelter, health care, social and recreational

requirements, and, whenever appropriate, training, education, and habilitation or rehabilitation. The guardian has no duty to pay for these requirements out of personal funds. Whenever possible and appropriate, the guardian should meet these requirements through governmental benefits or services to which the person subject to guardianship is entitled, rather than from the estate of the person subject to guardianship. Failure to satisfy the needs and requirements of this clause shall be grounds for removal of a private guardian, but the guardian shall have no personal or monetary liability;

(3) the duty to take reasonable care of the clothing, furniture, vehicles, and other personal effects of the person subject to guardianship, and, if other property requires protection, the power to seek appointment of a conservator of the estate. The guardian must give notice by mail to interested persons prior to the disposition of the clothing, furniture, vehicles, or other personal effects of the person subject to guardianship. The notice must inform the person of the right to object to the disposition of the property within ten days of the date of mailing and to petition the court for a review of the guardian's proposed actions. Notice of the objection must be served by mail or personal service on the guardian and the person subject to guardianship unless the person subject to guardianship is the objector. The guardian served with notice of an objection to the disposition of the property may not dispose of the property unless the court approves the disposition after a hearing;

(4)(i) the power to give any necessary consent to enable the person subject to guardianship to receive necessary medical or other professional care, counsel, treatment, or service, except that no guardian may give consent for psychosurgery, ~~electroshock~~ electroconvulsive therapy, sterilization, or experimental treatment of any kind unless the incapacitated person gives informed written consent to the procedure ~~is first approved by order of the court as provided in this clause~~. The guardian shall not consent to any medical care for the person subject to guardianship which violates the known conscientious, religious, or moral belief of the person subject to guardianship;

(ii) a guardian who believes a procedure described in item (i) requiring prior court approval to be necessary for the proper care of the person subject to guardianship, shall petition the court for an order and, in the case of a public guardianship under chapter 252A, obtain the written recommendation of the commissioner of human services. The court shall fix the time and place for the hearing and shall give notice to the person subject to guardianship in such manner as specified in section 524.5-308 and to interested persons. The court shall appoint an attorney to represent the person subject to guardianship who is not represented by counsel, provided that such appointment shall expire upon the expiration of the appeal time for the order issued by the court under this section or the order dismissing

a petition, or upon such other time or event as the court may direct. In every case the court shall determine if the procedure is in the best interest of the person subject to guardianship. In making its determination, the court shall consider a written medical report which specifically considers the medical risks of the procedure, whether alternative, less restrictive methods of treatment could be used to protect the best interest of the person subject to guardianship, and any recommendation of the commissioner of human services for a public person subject to guardianship. The standard of proof is that of clear and convincing evidence;

(iii) in the case of a petition for sterilization of a person with developmental disabilities subject to guardianship, the court shall appoint a licensed physician, a psychologist who is qualified in the diagnosis and treatment of developmental disability, and a social worker who is familiar with the social history and adjustment of the person subject to guardianship or the case manager for the person subject to guardianship to examine or evaluate the person subject to guardianship and to provide written reports to the court. The reports shall indicate why sterilization is being proposed, whether sterilization is necessary and is the least intrusive method for alleviating the problem presented, and whether it is in the best interest of the person subject to guardianship. The medical report shall specifically consider the medical risks of sterilization, the consequences of not performing the sterilization, and whether alternative methods of contraception could be used to protect the best interest of the person subject to guardianship;

(iv) any person subject to guardianship whose right to consent to a sterilization has not been restricted under this section or section 252A.101 may be sterilized only if the person subject to guardianship consents in writing or there is a sworn acknowledgment by an interested person of a nonwritten consent by the person subject to guardianship. The consent must certify that the person subject to guardianship has received a full explanation from a physician or registered nurse of the nature and irreversible consequences of the sterilization;

(v) a guardian or the public guardian's designee who acts within the scope of authority conferred by letters of guardianship under section 252A.101, subdivision 7, and according to the standards established in this chapter or in chapter 252A shall not be civilly or criminally liable for the provision of any necessary medical care, including, but not limited to, the administration of psychotropic medication or the implementation of aversive and deprivation procedures to which the guardian or the public guardian's designee has consented;

(5) in the event there is no duly appointed conservator of the estate of the person subject to guardianship, the guardian shall have the power to approve or withhold approval of any contract, except for necessities, which the person subject to guardianship may make or wish to make;

(6) the duty and power to exercise supervisory authority over the person subject to guardianship in a manner which limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services. A guardian may not restrict the ability of the person subject to guardianship to communicate, visit, or interact with others, including receiving visitors or making or receiving telephone calls, personal mail, or electronic communications including through social media, or participating in social activities, unless the guardian has good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological, or financial harm to the person subject to guardianship, and there is no other means to avoid such significant harm. In all cases, the guardian shall provide written notice of the restrictions imposed to the court, to the person subject to guardianship, and to the person subject to restrictions. The person subject to guardianship or the person subject to restrictions may petition the court to remove or modify the restrictions;

(7) if there is no acting conservator of the estate for the person subject to guardianship, the guardian has the power to apply on behalf of the person subject to guardianship for any assistance, services, or benefits available to the person subject to guardianship through any unit of government;

(8) unless otherwise ordered by the court, the person subject to guardianship retains the right to vote;

(9) the power to establish an ABLE account for a person subject to guardianship or conservatorship. By this provision a guardian only has the authority to establish an ABLE account, but may not administer the ABLE account in the guardian's capacity as guardian; and

(10) if there is no conservator appointed for the person subject to guardianship, the guardian has the duty and power to institute suit on behalf of the person subject to guardianship and represent the person subject to guardianship in expungement proceedings, harassment proceedings, and all civil court proceedings, including but not limited to restraining orders, orders for protection, name changes, conciliation court, housing court, family court, probate court, and juvenile court, provided that a guardian may not settle or compromise any claim or debt owed to the estate without court approval.

Sec. 5. **REPEALER.**

Minnesota Rules, part 9515.0700, is repealed.

9515.0700 HEARINGS.

Subpart 1. **Judicial authorization required.** If a court order is required to authorize electroconvulsive therapy, the state facility's medical director or the director's designee shall petition the district court in the county of commitment for an order authorizing the treatment. If the patient has a court-appointed guardian or conservator, the medical director shall ask the guardian or conservator to seek authority to consent to electroconvulsive therapy in the district court in which the guardianship or conservatorship was established. When necessary and appropriate for the patient's welfare, the petition may be filed in the county where the patient is present.

Subp. 2. **Contents of petition.** The petition shall state that consent is requested to administer electroconvulsive therapy, describe its purpose, recite the risks and effects of the procedure, and recite the findings of the medical director and treating physician as provided in parts 9515.0500 and 9515.0600.

The petition may request the appointment of a guardian ad litem to represent the patient's interests.

Subp. 3. **Copy of petition for agency.** A copy of the petition shall be supplied to the designated agency in the county of financial responsibility in advance of the hearing.

Subp. 4. **County attorney.** The medical director shall seek representation from the county attorney of the county in which the hearing is held. In the event the county attorney is unable to provide such representation, the medical director shall seek legal representation through the Department of Human Services.

Subp. 5. **Cost of hearing.** The cost of such hearings shall be met by the county financially responsible for the patient as specified by Minnesota Statutes, section 256D.18, subdivision 2.