
**Early Learning & Children's
Services Committee**

HB 2552

Brief Description: Changing provisions relating to minors who voluntarily seek mental health treatment.

Sponsors: Representatives Dickerson, Appleton, Roberts, Wood, Kenney, Kagi and Darneille.

Brief Summary of Bill

- Revises provisions for parental consent for mental health treatment for minors age 13 years and older.

Hearing Date: 1/31/08

Staff: Sydney Forrester (786-7120).

Background:

The general rule for consent to both inpatient and outpatient mental health treatment for children is that parental consent or authorization is required for children under the age of 13. Youth ages 13 years and older have the right to consent on their own behalf to outpatient or inpatient treatment without corresponding authorization from a parent. Exceptions to this rule allow for parent-initiated treatment based on an evaluation of the child and a finding that the treatment is medically necessary, and treatment initiated by a designated mental health professional.

Parent-Initiated Treatment

When a parent brings a child, regardless of age, to a facility for examination or evaluation, the consent of the minor is not required for admission, evaluation, and treatment. Evaluations in cases of parent-initiated treatment must be completed within 24 hours, with some exceptions for additional time, but in no case may a minor be held for evaluation longer than 72 hours. If, based on the evaluation, the mental health professional determines inpatient treatment is a medical necessity, the minor may be held for treatment. Within 24 hours of a decision to hold a minor for treatment absent the minor's consent, the facility must notify the Department of Social and Health Services (DSHS).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The DSHS then must conduct a review by an independent professional. The review must be conducted after the first week and before the end of the second week after the child is brought to the facility and must examine whether continuing the minor's inpatient treatment absent consent is a medical necessity. In making the determination, the DSHS must consult with the treatment provider, and the child's parent.

If, based on the review, the DSHS determines inpatient treatment is no longer a medical necessity, the DSHS must notify the facility and the child must be released to his/her parents within 24 hours. If, however, the treatment provider and the parent disagree with the decision to release the child, the child shall not be released until after the second judicial day following the determination in order to allow the parent time to file an at-risk youth petition. If after review, the DSHS determines outpatient treatment for the child is a medical necessity and the child declines such outpatient treatment, the child's refusal is grounds for filing of an at-risk youth petition.

Following the review conducted by DSHS, a youth who is not released may petition the court for release from the facility by filing a petition five or more days following the review. The court shall order the child released unless the court finds by a preponderance of the evidence that it is a medical necessity for the child to remain at the facility.

If the child is not released on the basis of the petition to the court, the child may be held for a maximum of 30 days following the date of the DSHS review or the filing of the petition to the court, whichever is later, unless a designated mental health professional initiates proceedings to have the child detained, evaluated, or admitted.

Medical Necessity

For purposes of inpatient treatment, medical necessity means that the treatment to be provided is reasonable calculated to:

- (a) diagnose, correct, cure, or alleviate an organic, mental or emotional impairment that substantially and adversely affects the person's functioning; or
- (b) prevent the exacerbation of mental conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a disability or cause a physical deformity or malfunction, and there is no adequate less restrictive alternative available.

Summary of Bill:

A parent of a minor age 13 years or older can consent, on behalf of the minor, to outpatient or inpatient mental health treatment without the minor also consenting. The right of a minor age 13 or older to consent to mental health treatment on his/her own is retained. A parent or other person with legal custody or rights to residential time with the child under a court order may object to consent by the other parent. The objecting parent may not, however, file a petition in objection if the consenting parent has sole decision-making authority regarding health care or medical care for the minor.

When a parent consents to outpatient or inpatient treatment or on behalf of a minor age 13 years or older:

- (1) The consent must be supported by a recommendation for such treatment from a psychiatrist, psychologist, or other licensed mental health professional with significant experience in the treatment of children with mental health disorders who has examined the minor; and

(2) Prior to initiating outpatient treatment or within 48 hours of admission to an inpatient facility, a child psychiatrist or psychologist must conduct a complete assessment of the minor and his/her family.

The assessment becomes part of the treatment record and must include determinations regarding:

- (1) Whether the minor has a mental disorder for which treatment is a medical necessity;
- (2) The relationship between the minor and his/her parents; and
- (3) Any other factors relevant to meeting the minor's need for mental health treatment.

At the beginning of treatment, the minor must be given a written explanation of the treatment that will be provided. The minor also must be provided notice of his/her right to petition the court to modify or terminate the consent to treatment.

If the minor elects to challenge the consent to treatment, the treatment provider must:

- (1) Within 24 hours provide the minor the appropriate forms for petitioning the court;
- (2) Offer to assist the minor in preparing the forms, and assist if requested; and
- (3) File the petition with the appropriate superior court within two business days of receiving the completed form from the minor.

Once the petition is filed, the court must appoint an attorney to represent the minor. A hearing must be held within 72 hours following the filing of the petition. In order for the court to order the treatment to continue, the court must find all of the following by a preponderance of the evidence:

- (1) The minor has a mental health disorder or needs an evaluation to determine whether there is a mental health disorder;
- (2) Mental health treatment is a medical necessity; and
- (3) The minor's disorder can be adequately treated by the proposed treatment provider.

The initial period of treatment allowed is up to 30 days. If the minor's treatment provider believes treatment of more than 30 days is needed, the court must conduct a review hearing to determine whether the minor should be released, or ordered to participate in up to an additional 60 days of treatment.

If the minor still does not consent and challenges the parent's consent to treatment, the total period of treatment ordered cannot exceed 90 days from the date treatment begins. A minor must be discharged from treatment when the treatment provider determines the minor is no longer in need of treatment, the minor's parent has revoked consent to treatment, or the time period of court ordered treatment has expired, whichever occurs first.

A parent cannot revoke a minor's consent to mental health treatment. A parent can revoke his/her own consent to treatment, but such revocation is ineffective if the minor has independently consented to treatment.

The Administrative Office of the Courts, in consultation with DSHS and other interested organizations, must develop the statement of rights and standard forms for use in a minor's petition to the court challenging a parent's consent to treatment. The statement and forms must be designed to be readily understood and completed by 13 year-old youth.

Current provisions relating to parent-initiated inpatient treatment are repealed.

Appropriation: None.

Fiscal Note: Requested on January 29, 2008.

Effective Date: The act takes effect on January 1, 2010.