

**Effective 5/3/2023**

**Part 5**  
**Essential Treatment and Intervention**

**26B-5-501 Definitions.**

In addition to the definitions in Section 26B-5-301, as used in this part:

- (1) "Emergency, life saving treatment" means treatment that is:
  - (a) provided at a licensed health care facility or licensed human services program;
  - (b) provided by a licensed health care professional;
  - (c) necessary to save the life of the patient; and
  - (d) required due to the patient's:
    - (i) use of an illegal substance; or
    - (ii) excessive use or misuse of a prescribed medication.
- (2) "Essential treatment examiner" means:
  - (a) a licensed physician, preferably a psychiatrist, who is designated by the division as specifically qualified by training or experience in the diagnosis of substance use disorder; or
  - (b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of substance use disorder.
- (3) "Relative" means an adult who is a spouse, parent, stepparent, grandparent, child, or sibling of an individual.
- (4) "Serious harm" means the individual, due to substance use disorder, is at serious risk of:
  - (a) drug overdose;
  - (b) suicide;
  - (c) serious bodily self-injury;
  - (d) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter; or
  - (e) causing or attempting to cause serious bodily injury to another individual.
- (5) "Substance use disorder" means the same as that term is defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Renumbered and Amended by Chapter 308, 2023 General Session

**26B-5-502 Statement of legislative intent.**

To address the serious public health crisis of substance use disorder related deaths and life-threatening opioid addiction, and to allow and enable caring relatives to seek essential treatment and intervention, as may be necessary, on behalf of a sufferer of a substance use disorder, the Legislature enacts the Essential Treatment and Intervention Act.

Renumbered and Amended by Chapter 308, 2023 General Session

**26B-5-503 Petition for essential treatment -- Contents -- Commitment to pay.**

- (1) A relative seeking essential treatment and intervention for a sufferer of a substance use disorder may file a petition with the court of the county in which the sufferer of the substance use disorder resides or is found.
- (2) The petition shall include:

- (a) the respondent's:
    - (i) legal name;
    - (ii) date of birth, if known;
    - (iii) social security number, if known; and
    - (iv) residence and current location, if known;
  - (b) the petitioner's relationship to the respondent;
  - (c) the name and residence of the respondent's legal guardian, if any and if known;
  - (d) a statement that the respondent:
    - (i) is suffering from a substance use disorder; and
    - (ii) if not treated for the substance use disorder presents a serious harm to self or others;
  - (e) the factual basis for the statement described in Subsection (2)(d); and
  - (f) at least one specified local substance abuse authority or approved treatment facility or program where the respondent may receive essential treatment.
- (3) Any petition filed under this section:
- (a) may be accompanied by proof of health insurance to provide for the respondent's essential treatment;
  - (b) shall be accompanied by a binding commitment to pay, signed by the petitioner or another individual, obligating the petitioner or other individual to pay all treatment costs beyond those covered by the respondent's health insurance policy for court-ordered essential treatment for the respondent; and
  - (c) may be accompanied by documentation of emergency, life saving treatment provided to the respondent.
- (4) Nothing in this section alters the contractual relationship between a health insurer and an insured individual.

Renumbered and Amended by Chapter 308, 2023 General Session

**26B-5-504 Criteria for essential treatment and intervention.**

A court shall order an individual to undergo essential treatment for a substance use disorder when the court determines by clear and convincing evidence that the individual:

- (1) suffers from a substance use disorder;
- (2) can reasonably benefit from the essential treatment;
- (3) is unlikely to substantially benefit from a less-restrictive alternative treatment; and
- (4) presents a serious harm to self or others.

Renumbered and Amended by Chapter 308, 2023 General Session

**26B-5-505 Proceeding for essential treatment -- Duties of court -- Disposition.**

- (1) A court shall review the assertions contained in the verified petition described in Section 26B-5-503.
- (2) If the court determines that the assertions, if true, are sufficient to order the respondent to undergo essential treatment, the court shall:
  - (a) set an expedited date for a time-sensitive hearing to determine whether the court should order the respondent to undergo essential treatment for a substance use disorder;
  - (b) provide notice of:
    - (i) the contents of the petition, including all assertions made;
    - (ii) a copy of any order for detention or examination;
    - (iii) the date of the hearing;

- (iv) the purpose of the hearing;
  - (v) the right of the respondent to be represented by legal counsel; and
  - (vi) the right of the respondent to request a preliminary hearing before submitting to an order for examination;
- (c) provide notice to:
- (i) the respondent;
  - (ii) the respondent's guardian, if any; and
  - (iii) the petitioner; and
- (d) subject to the right described in Subsection (2)(b)(vi), order the respondent to be examined before the hearing date:
- (i) by two essential treatment examiners; or
  - (ii) by one essential treatment examiner, if documentation before the court demonstrates that the respondent received emergency, life saving treatment:
    - (A) within 30 days before the day on which the petition for essential treatment and intervention was filed; or
    - (B) during the pendency of the petition for essential treatment and intervention.
- (3) An essential treatment examiner shall examine the respondent to determine:
- (a) whether the respondent meets each of the criteria described in Section 26B-5-504;
  - (b) the severity of the respondent's substance use disorder, if any;
  - (c) what forms of treatment would substantially benefit the respondent, if the examiner determines that the respondent has a substance use disorder; and
  - (d) the appropriate duration for essential treatment, if essential treatment is recommended.
- (4) An essential treatment examiner shall certify the examiner's findings to the court within 24 hours after completion of the examination.
- (5) The court may, based upon the findings of an essential treatment examiner, terminate the proceedings and dismiss the petition.
- (6) The parties may, at any time, make a binding stipulation to an essential treatment plan and submit that plan to the court for court order.
- (7) At the hearing, the petitioner and the respondent may testify and may cross-examine witnesses.
- (8) If, upon completion of the hearing, the court finds that the criteria in Section 26B-5-504 are met, the court shall order essential treatment for an initial period that:
- (a) does not exceed 360 days, subject to periodic review as provided in Section 26B-5-507; and
  - (b)
    - (i) is recommended by an essential treatment examiner; or
    - (ii) is otherwise agreed to at the hearing.
- (9) The court shall designate the facility for the essential treatment, as:
- (a) described in the petition;
  - (b) recommended by an essential treatment examiner; or
  - (c) agreed to at the hearing.
- (10) The court shall issue an order that includes the court's findings and the reasons for the court's determination.
- (11) The court may order the petitioner to be the respondent's personal representative, as described in 45 C.F.R. Sec. 164.502(g), for purposes of the respondent's essential treatment.

Renumbered and Amended by Chapter 308, 2023 General Session

**26B-5-506 Failure to comply with court order.**

- (1) The provisions of this section apply after a respondent has been afforded full due process rights, as provided in this Essential Treatment and Intervention Act, including notice, an opportunity to respond and appear at a hearing, and, as applicable, the court's finding that the evidence meets the clear and convincing standard, as described in Section 26B-5-504, for a court to order essential treatment and intervention.
- (2) When a respondent fails to comply with a court order issued under Subsection 26B-5-505(2)(d) or (10), the court may:
  - (a) find the respondent in contempt under Subsection 78B-6-301(5); and
  - (b) issue a warrant of commitment under Section 78B-6-312.
- (3) When a peace officer executes a warrant issued under this section, the officer shall take the respondent into protective custody and transport the respondent to the location specified by the court.
- (4) Notwithstanding Subsection (3), if a peace officer determines through the peace officer's experience and training that taking the respondent into protective custody or transporting the respondent would increase the risk of substantial danger to the respondent or others, a peace officer may exercise discretion to not take the respondent into custody or transport the respondent, as permitted by policies and procedures established by the peace officer's law enforcement agency and any applicable federal or state statute, or case law.

Renumbered and Amended by Chapter 308, 2023 General Session

**26B-5-507 Periodic review -- Discharge.**

A local substance abuse authority or an approved treatment facility or program that provides essential treatment shall:

- (1) at least every 90 days after the day on which a patient is admitted, unless a court orders otherwise, examine or cause to be examined a patient who has been ordered to receive essential treatment;
- (2) notify the patient and the patient's personal representative or guardian, if any, of the substance and results of the examination;
- (3) discharge an essential treatment patient if the examination determines that the conditions justifying essential treatment and intervention no longer exist; and
- (4) after discharging an essential treatment patient, send a report describing the reasons for discharge to the clerk of the court where the proceeding for essential treatment was held and to the patient's personal representative or guardian, if any.

Renumbered and Amended by Chapter 308, 2023 General Session

**26B-5-508 Seventy-two-hour emergency treatment pending a final court order.**

- (1) A court may order a respondent to be hospitalized for up to 72 hours if:
  - (a) an essential treatment examiner has examined the respondent and certified that the respondent meets the criteria described in Section 26B-5-504; and
  - (b) the court finds by clear and convincing evidence that the respondent presents an imminent threat of serious harm to self or others as a result of a substance use disorder.
- (2) An individual who is admitted to a hospital under this section shall be released from the hospital within 72 hours after admittance, unless a treating physician or essential treatment examiner determines that the individual continues to pose an imminent threat of serious harm to self or others.

- (3) If a treating physician or essential treatment examiner makes the determination described in Subsection (2), the individual may be detained for as long as the threat of serious harm remains imminent, but not more than 10 days after the day on which the individual was hospitalized, unless a court orders otherwise.
- (4) A treating physician or an essential treatment examiner shall, as frequently as practicable, examine an individual hospitalized under this section and release the individual if it is determined that a threat of imminent serious harm no longer exists.

Renumbered and Amended by Chapter 308, 2023 General Session

**26B-5-509 Emergency, life saving treatment -- Temporary personal representative.**

- (1) When an individual receives emergency, life saving treatment:
  - (a) a licensed health care professional, at the health care facility where the emergency, life saving treatment is provided, may ask the individual who, if anyone, may be contacted and informed regarding the individual's treatment;
  - (b) a treating physician may hold the individual in the health care facility for up to 48 hours, if the treating physician determines that the individual poses a serious harm to self or others; and
  - (c) a relative of the individual may petition a court to be designated as the individual's personal representative, described in 45 C.F.R. Sec. 164.502(g), for the limited purposes of the individual's medical and mental health care related to a substance use disorder.
- (2) The petition described in Subsection (1)(c) shall include:
  - (a) the respondent's:
    - (i) legal name;
    - (ii) date of birth, if known;
    - (iii) social security number, if known; and
    - (iv) residence and current location, if known;
  - (b) the petitioner's relationship to the respondent;
  - (c) the name and residence of the respondent's legal guardian, if any and if known;
  - (d) a statement that the respondent:
    - (i) is suffering from a substance use disorder; and
    - (ii) has received, within the last 72 hours, emergency, life saving treatment;
  - (e) the factual basis for the statement described in Subsection (2)(d); and
  - (f) the name of any other individual, if any, who may be designated as the respondent's personal representative.
- (3) A court shall grant a petition for designation as a personal representative, ex parte, if it appears from the petition for designation as a court-designated personal representative that:
  - (a) the respondent is suffering from a substance use disorder;
  - (b) the respondent received emergency, life saving treatment within 10 days before the day on which the petition for designation as a personal representative is filed;
  - (c) the petitioner is a relative of the respondent; and
  - (d) no other individual is otherwise designated as the respondent's personal representative.
- (4) When a court grants, ex parte, a petition for designation as a personal representative, the court:
  - (a) shall provide notice to the respondent;
  - (b) shall order the petitioner to be the respondent's personal representative for 10 days after the day on which the court designates the petitioner as the respondent's personal representative; and
  - (c) may extend the duration of the order:

- (i) for good cause shown, after the respondent has been notified and given a proper and sufficient opportunity to respond; or
- (ii) if the respondent consents to an extension.

Renumbered and Amended by Chapter 308, 2023 General Session

**26B-5-510 Confidentiality.**

- (1) The purpose of this part is to provide a process for essential treatment and intervention to save lives, preserve families, and reduce substance use disorder, including opioid addiction.
- (2) An essential treatment petition and any other document filed in connection with the petition for essential treatment is confidential and protected.
- (3) A hearing on an essential treatment petition is closed to the public, and only the following individuals and their legal counsel may be admitted to the hearing:
  - (a) parties to the petition;
  - (b) the essential treatment examiners who completed the court-ordered examination under Subsection 26B-5-505(3);
  - (c) individuals who have been asked to give testimony; and
  - (d) individuals to whom notice of the hearing is required to be given under Subsection 26B-5-505(2)(c).
- (4) Testimony, medical evaluations, the petition, and other documents directly related to the adjudication of the petition and presented to the court in the interest of the respondent may not be construed or applied as an admission of guilt to a criminal offense.
- (5) A court may, if applicable, enforce a previously existing warrant for a respondent or a warrant for a charge that is unrelated to the essential treatment petition filed under this part.

Renumbered and Amended by Chapter 308, 2023 General Session

**26B-5-511 Essential treatment for substance use disorder -- Rights of patient.**

All applicable rights guaranteed to a patient by Sections 26B-5-310 and 26B-5-311 shall be guaranteed to an individual who is ordered to undergo essential treatment for a substance use disorder.

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