

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HOUSE BILL 2211

AN ACT

AMENDING SECTION 14-5312.01, ARIZONA REVISED STATUTES; REPEALING SECTION 14-5312.02, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 14-5312.02; AMENDING SECTION 36-3284, ARIZONA REVISED STATUTES; RELATING TO INPATIENT MENTAL HEALTH CARE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-5312.01, Arizona Revised Statutes, is amended to
3 read:

4 14-5312.01. Inpatient treatment; rights and duties of ward and
5 guardian

6 A. Except as provided in subsection B of this section, a guardian of
7 an incapacitated person may consent to psychiatric and psychological care and
8 treatment, including the administration of psychotropic medications, if the
9 care and treatment take place outside a level one behavioral health facility
10 licensed by the department of health services.

11 B. On clear and convincing evidence that the ward is incapacitated as
12 a result of a mental disorder as defined in section 36-501, and is currently
13 in need of inpatient mental health care and treatment, the court may
14 authorize a guardian appointed pursuant to this title to give consent for the
15 ward to receive inpatient mental health care and treatment, including
16 placement in a level one behavioral health facility licensed by the
17 department of health services and medical, psychiatric and psychological
18 treatment associated with that placement. The evidence shall be supported by
19 the opinion of a mental health expert who is either a physician licensed
20 pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry
21 or a psychologist who is licensed pursuant to title 32, chapter 19.1.

22 C. In making its decision to grant authority to a guardian pursuant to
23 subsection B of this section, the court shall consider the cause of the
24 ward's disability and the ward's foreseeable clinical needs. The court shall
25 limit the guardian's authority to what is reasonably necessary to obtain the
26 care required for the ward in the least restrictive treatment alternative.
27 The court may limit the duration of the guardian's authority to consent to
28 inpatient mental health care and treatment and include other orders the court
29 determines necessary to protect the ward's best interests.

30 D. Within forty-eight hours after placement of the ward pursuant to
31 this section, the guardian shall give notice of this action to the ward's
32 attorney. When the attorney receives this notice the attorney shall assess
33 the appropriateness of the placement pursuant to section 36-537, subsection B
34 and section 36-546, subsection H. If requested by the attorney, the court
35 shall hold a hearing on the appropriateness of the placement within three
36 days after receiving that request.

37 E. The behavioral health treatment facility shall assess the
38 appropriateness of the ward's placement every thirty days and shall provide a
39 copy of the assessment report to the ward's attorney. The ward's attorney
40 may attend the ward's evaluation, staffing, treatment team and case
41 management meetings.

42 F. When the ward is admitted to a level one behavioral health
43 treatment facility pursuant to this section, the guardian shall provide the
44 facility with the name, address and telephone number of the ward's attorney.
45 The facility shall include this information in the ward's treatment record.

1 G. Within twenty-four hours after the facility receives any writing in
2 which the ward requests release from the facility, any change in placement or
3 a change in the type or duration of treatment, the facility shall forward
4 this information to the ward's attorney.

5 H. All health care providers, treatment facilities and regional
6 behavioral health authorities shall allow the ward's attorney access to all
7 of the ward's medical, psychiatric, psychological and other treatment
8 records.

9 I. The ward's guardian shall place the ward in a least restrictive
10 treatment alternative within ~~ten~~ FIVE days after the guardian is notified by
11 the medical director of the inpatient facility that the ward no longer needs
12 inpatient care. The ward, a representative of the inpatient treatment
13 facility, the ward's attorney, the ward's physician or any other interested
14 person may petition the court to order the facility to discharge the ward to
15 a least restrictive treatment alternative if the guardian does not act
16 promptly to do so.

17 J. If the ward is in a behavioral health treatment facility at the
18 time of the initial hearing on the petition for appointment of a guardian,
19 the court investigator and the ward's attorney shall advise the court of the
20 appropriateness of the placement.

21 K. An attorney appointed pursuant to section 14-5303, subsection C
22 remains the attorney of record until the attorney is discharged by the court.
23 The court shall ensure that a ward whose guardian has been granted mental
24 health treatment authority is represented by an attorney at all times the
25 guardian has that authority. Unless the court finds that the ward has
26 insufficient assets to meet the ward's reasonable and necessary care and
27 living expenses, the ward shall pay the attorney's reasonable fees.

28 L. If deemed necessary to adequately assess a request for mental
29 health treatment authority or to review the ward's placement in a behavioral
30 health treatment facility, the court may order an independent evaluation by
31 either a physician who is licensed pursuant to title 32, chapter 13 or 17 and
32 who is a specialist in psychiatry or a psychologist who is licensed pursuant
33 to title 32, chapter 19.1. If the ward has insufficient funds to pay the
34 total cost of this evaluation, the court may deem all or any part of the
35 evaluator's fee to be a county expense after determining the reasonableness
36 of that fee.

37 M. Instead of ordering an independent evaluation pursuant to
38 subsection L of this section, the court may accept a report conducted on
39 behalf of the behavioral health treatment facility if the court finds that
40 the report meets the requirements of an independent evaluation.

41 N. The court may decide that the ward's right to retain or obtain a
42 driver license and any other civil right that may be suspended by operation
43 of law is not affected by the appointment of a guardian.

44 O. If the court grants the guardian the authority to consent to
45 inpatient mental health care and treatment pursuant to this section, the

1 medical director of a level one behavioral health facility licensed by the
2 department of health services may admit the ward at the guardian's request.

3 P. A guardian who is authorized by the court to consent to inpatient
4 mental health care and treatment pursuant to this section shall file with the
5 annual report of the guardian required pursuant to section 14-5315 an
6 evaluation report by a physician or a psychologist who meets the requirements
7 of subsection B of this section. The evaluation report shall indicate if the
8 ward currently needs inpatient mental health care and treatment. If the
9 guardian does not file the evaluation report or if the report indicates that
10 the ward does not need inpatient mental health care and treatment, the
11 guardian's authority to consent to this treatment ceases. If the report
12 indicates that the ward currently needs this treatment, the guardian's
13 authority to consent to this treatment continues. If the report supports the
14 continuation of the guardian's authority to consent to this treatment, the
15 ward's attorney shall review the report with the ward. The ward may contest
16 the continuation of the guardian's authority by filing a request for a court
17 hearing within ten business days after the report is filed. The court shall
18 hold this hearing within thirty calendar days after it receives the request.
19 The guardian's authority continues pending the court's ruling on the issue.
20 At the hearing the guardian has the burden of proving by clear and convincing
21 evidence that the ward is currently in need of inpatient mental health care
22 and treatment.

23 Q. The court may discharge an attorney who was appointed pursuant to
24 section 14-5303, subsection C subsequent to the appointment of a guardian if
25 it clearly appears from specific facts presented by affidavit or verified
26 petition that continued representation of the ward is no longer necessary or
27 desirable. The factual basis must include, at a minimum, consideration of
28 the following:

- 29 1. The nature and history of the ward's illness.
- 30 2. The ward's history of hospitalization.
- 31 3. The ward's current and anticipated living arrangements.
- 32 4. Whether the ward's inpatient treatment is anticipated to be a
33 one-time hospitalization for the purpose of stabilizing the ward's condition
34 and further hospitalizations are not likely to be necessary.
- 35 5. Whether the ward's current and anticipated living arrangements are
36 the least restrictive alternatives possible.

37 Sec. 2. Repeal

38 Section 14-5312.02, Arizona Revised Statutes, is repealed.

39 Sec. 3. Title 14, chapter 5, article 3, Arizona Revised Statutes, is
40 amended by adding a new section 14-5312.02, to read:

41 14-5312.02. Admission for evaluation or treatment by guardian;
42 duties of physician or mental health care
43 provider

44 A. NOTWITHSTANDING THE PROCEDURES AND REQUIREMENTS PRESCRIBED IN TITLE
45 36, CHAPTER 5, ARTICLES 4 AND 5 RELATING TO INVOLUNTARY COURT-ORDERED

1 EVALUATION OR TREATMENT, IF THE GUARDIAN WHO IS GRANTED THE AUTHORITY TO
2 CONSENT TO INPATIENT MENTAL HEALTH CARE OR TREATMENT PURSUANT TO SECTION
3 14-5312.01 HAS REASONABLE CAUSE TO BELIEVE THAT THE WARD IS IN NEED OF
4 EVALUATION OR TREATMENT, THE GUARDIAN MAY APPLY FOR ADMISSION OF THE WARD FOR
5 EVALUATION OR TREATMENT AT ANY LEVEL ONE BEHAVIORAL HEALTH FACILITY. THE
6 GUARDIAN MUST PRESENT THE FACILITY WITH A CERTIFIED COPY, OR A PHOTOCOPY OF
7 THE CERTIFIED COPY, OF THE GUARDIAN'S LETTERS OF GUARDIANSHIP AND WITH A
8 SWORN STATEMENT UNDER PENALTY OF PERJURY THAT THE GUARDIAN HAS PRESENTED TO
9 THE FACILITY A CERTIFIED COPY, OR A TRUE AND CORRECT COPY OF A CERTIFIED
10 COPY, OF LETTERS OF GUARDIANSHIP WITH MENTAL HEALTH AUTHORITY THAT AUTHORIZE
11 THE GUARDIAN TO ADMIT THE WARD TO A LEVEL ONE BEHAVIORAL HEALTH FACILITY
12 ISSUED PURSUANT TO 14-5312.01, SUBSECTION B AND THAT THE LETTERS OF
13 GUARDIANSHIP ARE CURRENTLY EFFECTIVE AND HAVE NOT BEEN REVOKED, TERMINATED OR
14 RESCINDED.

15 B. IF THE GUARDIAN REQUESTS ADMISSION, THE FACILITY TO WHICH THE
16 GUARDIAN APPLIES MAY ADMIT THE PERSON IF PRIOR TO ADMISSION A PHYSICIAN WHO
17 IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17 DOES ALL OF THE FOLLOWING:

18 1. CONDUCTS AN INVESTIGATION THAT CAREFULLY PROBES THE WARD'S
19 PSYCHIATRIC AND PSYCHOLOGICAL HISTORY, DIAGNOSIS AND TREATMENT NEEDS.

20 2. CONDUCTS A THOROUGH INTERVIEW WITH THE WARD AND THE GUARDIAN.

21 3. OBTAINS THE GUARDIAN'S INFORMED CONSENT. FOR THE PURPOSES OF THIS
22 PARAGRAPH, "INFORMED CONSENT" HAS THE SAME MEANING PRESCRIBED IN SECTION
23 36-501.

24 4. MAKES A WRITTEN DETERMINATION THAT THE WARD NEEDS AN EVALUATION OR
25 WILL BENEFIT FROM INPATIENT CARE AND TREATMENT OF A MENTAL DISORDER OR OTHER
26 PERSONALITY DISORDER OR EMOTIONAL CONDITION AND THAT THE EVALUATION OR
27 TREATMENT CANNOT BE ACCOMPLISHED IN A LESS RESTRICTIVE SETTING.

28 5. DOCUMENTS IN THE WARD'S MEDICAL CHART A SUMMARY OF THE DOCTOR'S
29 FINDINGS AND RECOMMENDATIONS FOR TREATMENT.

30 C. AFTER ADMISSION, IF THE WARD REFUSES TREATMENT OR REQUESTS
31 DISCHARGE AND THE TREATING PHYSICIAN BELIEVES THAT FURTHER INPATIENT
32 TREATMENT IS NECESSARY OR ADVISABLE, THE FACILITY MAY RELY ON THE CONSENT OF
33 THE GUARDIAN FOR TREATMENT, RELEASE AND DISCHARGE DECISIONS PURSUANT TO THE
34 GUARDIAN'S AUTHORITY UNDER THE GUARDIANSHIP.

35 Sec. 4. Section 36-3284, Arizona Revised Statutes, is amended to read:
36 36-3284. Operation of mental health care power of attorney; admission
37 for evaluation and treatment by agent; duties of physician
38 or mental health care provider

39 A. A mental health care power of attorney is effective when it is
40 executed and remains in effect until it is revoked by the principal pursuant
41 to section 36-3285 or by court order.

42 B. NOTWITHSTANDING THE PROCEDURES AND REQUIREMENTS PRESCRIBED IN
43 CHAPTER 5, ARTICLES 4 AND 5 OF THIS TITLE RELATING TO INVOLUNTARY
44 COURT-ORDERED EVALUATION OR TREATMENT, if the mental health care power of
45 attorney specifically authorizes the agent to admit the principal to a level

1 one behavioral health facility, ~~a principal shall not be admitted to a level~~
2 ~~one behavioral health facility licensed by the department of health services~~
3 ~~unless~~ AND THE AGENT HAS REASONABLE CAUSE TO BELIEVE THAT THE PRINCIPAL IS IN
4 NEED OF AN EVALUATION OR TREATMENT, THE AGENT MAY APPLY FOR ADMISSION OF THE
5 PRINCIPAL FOR EVALUATION OR TREATMENT AT A LEVEL ONE BEHAVIORAL HEALTH
6 FACILITY. THE AGENT MUST PRESENT THE FACILITY WITH A COPY OF THE POWER OF
7 ATTORNEY THAT SPECIFICALLY AUTHORIZES THE AGENT TO ADMIT THE PRINCIPAL TO A
8 LEVEL ONE BEHAVIORAL HEALTH FACILITY AND EXECUTE A SWORN STATEMENT UNDER
9 PENALTY OF PERJURY THAT THE AGENT HAS PRESENTED TO THE FACILITY A TRUE AND
10 CORRECT COPY OF A CURRENT POWER OF ATTORNEY THAT SPECIFICALLY AUTHORIZES THE
11 AGENT TO ADMIT THE PRINCIPAL TO A LEVEL ONE BEHAVIORAL HEALTH FACILITY
12 PURSUANT TO THIS SECTION AND THAT THE POWER OF ATTORNEY IS CURRENTLY
13 EFFECTIVE AND HAS NOT BEEN REVOKED, TERMINATED OR RESCINDED. IF ADMISSION IS
14 REQUESTED BY THE AGENT, THE FACILITY TO WHICH THE AGENT APPLIES MAY ADMIT THE
15 PRINCIPAL IF PRIOR TO ADMISSION a physician who is licensed pursuant to title
16 32, chapter 13 or 17 ~~and who is a specialist in psychiatry or a psychologist~~
17 ~~who is licensed pursuant to title 32, chapter 19.1~~ does all of the following:
18 1. Conducts an investigation that carefully probes the principal's
19 psychiatric and psychological history, diagnosis and treatment needs.
20 2. Conducts a thorough interview with the principal and the agent.
21 3. Obtains the agent's informed consent, as defined in section 36-501.
22 4. Makes a written determination that the principal needs an ~~inpatient~~
23 evaluation or will benefit from **INPATIENT** care and treatment of a mental
24 disorder or other personality disorder or emotional condition ~~in the program~~
25 and that the evaluation or treatment cannot be accomplished in a less
26 restrictive setting.
27 5. Documents in the principal's medical chart a summary of the
28 doctor's findings and recommendations for treatment.
29 **C. AFTER ADMISSION, IF THE PATIENT REFUSES TREATMENT OR REQUESTS**
30 **DISCHARGE AND THE TREATING PHYSICIAN BELIEVES THAT FURTHER INPATIENT**
31 **TREATMENT IS NECESSARY OR ADVISABLE, THE FACILITY MAY RELY ON THE CONSENT OF**
32 **THE AGENT FOR TREATMENT, RELEASE AND DISCHARGE DECISIONS PURSUANT TO THE**
33 **AGENT'S AUTHORITY UNDER THE POWER OF ATTORNEY.**
34 ~~C.~~ **D.** The level one behavioral health facility licensed by the
35 department of health services shall conduct a review of the principal's
36 condition and need for admission into the facility and assess the
37 appropriateness of the principal's placement at least once every thirty days.
38 The agent may participate in each review. If possible the agent shall
39 participate in person.