ELECTRO SHOCK THERAPY AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Katherine M. Bryson

LONG TITLE
General Description:
This bill prohibits physicians, hospitals, and mental health facilities from administering electroconvulsive treatment on children younger than 14 and requires approval by a panel of physicians before administering electroconvulsive treatment on a child between 14 and 18 years of age.

Highlighted Provisions:
This bill:
- prohibits physicians, hospitals, and mental health facilities from administering electroconvulsive treatment on children younger than 14 and requires approval by a panel of physicians before administering electroconvulsive treatment on a child between 14 and 18 years of age;
- requires informed consent for the use of electroconvulsive treatment on adults;
- establishes the elements of informed consent;
- prohibits anyone other than a physician from performing electroconvulsive treatment;
- requires quarterly reporting of electroconvulsive treatment to the division and the Health Data Committee in the Department of Health;
- requires the division to enforce the reporting requirements and annually report statistical data regarding the use of electroconvulsive treatment to the governor and the Legislature; and
- sunsets the reporting requirements on July 1, 2009.
Monies Appropriated in this Bill:
None

Other Special Clauses:
This bill takes effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:
17-43-308, as renumbered and amended by Chapter 22, Laws of Utah 2003
62A-15-704, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

ENACTS:
62A-15-1101, Utah Code Annotated 1953
62A-15-1102, Utah Code Annotated 1953
62A-15-1103, Utah Code Annotated 1953
62A-15-1104, Utah Code Annotated 1953
62A-15-1105, Utah Code Annotated 1953
62A-15-1106, Utah Code Annotated 1953
62A-15-1107, Utah Code Annotated 1953
62A-15-1108, Utah Code Annotated 1953
63-55b-162, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:
Section 1. Section 17-43-308 is amended to read:
17-43-308. Specified treatments prohibited -- Criminal penalties.
(1) It is a misdemeanor to:
(a) give [shock treatment, lobotomy, or] surgery to anyone without the written consent
of the person or the person's next of kin or legal guardian[;]; or
(b) give electroconvulsive treatment to a person without the written consent of the
(2) Services provided under this part are governed by Title 58, Chapter 67, Utah Medical Practice Act.
[(2)] (3) It is a felony to give psychiatric treatment, nonvocational mental health
counseling, case-finding testing, psychoanalysis, drugs, [shock treatment] electroconvulsive
treatment, lobotomy, or surgery to any individual for the purpose of changing his concept of,
belief about, or faith in God.

Section 2. Section 62A-15-704 is amended to read:


(1) For purposes of this section, "invasive treatment" means treatment in which a
constitutionally protected liberty or privacy interest may be affected, including antipsychotic
medication, electroshock therapy, and psychosurgery.

(2) The requirements of this section, and Part 11, Electroconvulsive Treatment
Regulations, apply to all children receiving services or treatment from a local mental health
authority, its designee, or its provider regardless of whether a local mental health authority has
physical custody of the child or the child is receiving outpatient treatment from the local
authority, its designee, or provider.

(3) (a) The division shall promulgate rules, in accordance with Title 63, Chapter 46a,
Utah Administrative Rulemaking Act, establishing due process procedures for children prior to
any invasive treatment as follows:

(i) with regard to antipsychotic medications, if either the parent or child disagrees with
that treatment, a due process proceeding shall be held in compliance with the procedures
established under this Subsection (3);

(ii) with regard to psychosurgery and [electroshock therapy] electroconvulsive
treatment administered to a child age 14 or older, a due process proceeding shall be conducted
pursuant to the procedures established under this Subsection (3), regardless of whether the
parent or child agree or disagree with the treatment; and

(iii) other possible invasive treatments may be conducted unless either the parent or
child disagrees with the treatment, in which case a due process proceeding shall be conducted
pursuant to the procedures established under this Subsection (3).

(b) In promulgating the rules required by Subsection (3)(a), the division shall consider
the advisability of utilizing an administrative law judge, court proceedings, a neutral and
detached fact finder, and other methods of providing due process for the purposes of this
section. The division shall also establish the criteria and basis for determining when invasive
treatment should be administered.
Section 3. Section 62A-15-1101 is enacted to read:

Part 11. Electroconvulsive Treatment Regulations

(1) For purposes of this part, "electroconvulsive treatment" includes prefrontal sonic sound treatment, or applied electrical voltage to the brain through electrodes which results in a grand mal seizure or epileptic seizure and which is administered to treat mental illness.
(2) This part applies to the use of electroconvulsive treatment by any person who uses or administers electroconvulsive treatment, including:
   (a) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
   (b) a hospital or facility licensed under Section 26-21-9;
   (c) a local mental health authority subject to this title, its designee or providers; and
   (d) the Utah State Hospital and other mental health facilities.

Section 4. Section 62A-15-1102 is enacted to read:

Electroconvulsive treatment may not be used on:
(1) a person who is younger than 14 years of age;
(2) a person who is between 14 and 18 years of age, unless the provisions of Subsection 62A-15-1103(5) are met; or
(3) a person who is 18 years of age or older, unless the person consents to the use of the treatment in accordance with Section 62A-15-1103.

Section 5. Section 62A-15-1103 is enacted to read:

(1) The division shall adopt administrative rules which establish a standard written consent form to be used when electroconvulsive treatment is considered. The rule shall prescribe the information that must be contained in the written consent for electroconvulsive treatment.
(2) The written consent form must clearly state at a minimum:
   (a) the nature and purpose of the procedure;
   (b) the nature, potential, and probability of the side effects and significant risks of the treatment commonly known by the medical profession, especially noting the possible degree
and duration of memory loss, the possibility of permanent irrevocable memory loss, and the possibility of death; and

(c) the probable degree and duration of improvement or remission expected with or without the procedure.

(3) Before each treatment series begins, the physician administering the treatment shall ensure that:

(a) the person receives a written copy of the consent form that is in the person's primary language, if possible;

(b) the contents of the consent form are explained to the person:

(i) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(ii) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable;

(c) the person signs a copy of the consent form stating that the person has read the consent form and understands the information included in the documents; and

(d) the signed copy of the consent form is made a part of the person's clinical record.

(4) For a person 65 years of age or older, before each treatment series begins, the physician administering the procedure shall:

(a) ensure that a physician has conducted a physical examination of the person and has determined that the procedure is appropriate and is medically necessary;

(b) make the form described by Subsection (1) available to the person; and

(c) inform the person of any known current medical condition that may increase the possibility of injury or death as a result of the treatment.

(5) For a person between 14 and 18 years of age, before each treatment series begins, the physician administering the procedure shall ensure that:

(a) the due process provisions of Section 62A-15-704 have been met, if applicable; or

(b) if Section 62A-15-704 is not applicable:

(i) the parent or legal guardian of the child has been given the form described by Subsection (1); and

(ii) three physicians have signed an appropriate form that states the procedure is medically necessary.

(6) (a) A person who consents to the administration of electroconvulsive treatment may
revoke the consent for any reason and at any time.

(b) Revocation of consent is effective immediately.

Section 6. Section 62A-15-1104 is enacted to read:


(1) Only a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, may administer electroconvulsive treatment.

(2) A physician may not delegate the act of administering the treatment. A nonphysician who administers electroconvulsive treatment is considered to be practicing medicine in violation of Title 58, Chapter 67, Utah Medical Practice Act.

Section 7. Section 62A-15-1105 is enacted to read:


(1) A hospital or facility where electroconvulsive treatment is administered or a physician administering the treatment on an outpatient basis shall submit to the division and to the Health Data Committee created in Section 26-1-7, semiannual reports relating to the administration of the treatment in the hospital or facility or by the physician.

(2) A report must state semiannually:

(a) the name of each physician who has privileges in the facility to perform electroconvulsive treatment and the number of electroconvulsive treatments performed by each physician;

(b) the total number of persons who received the treatment;

(c) the age, sex, and race of each person receiving the treatment;

(d) the diagnosis for each person receiving the treatment;

(e) the source of the payment for the treatment;

(f) the average number of electroconvulsive treatments administered for each complete series of treatments, but not including maintenance treatments;

(g) the average number of maintenance electroconvulsive treatments administered per month;

(h) the number of fractures, reported complaints of severe and persistent memory losses, incidents of apnea, and cardiac arrests without death;

(i) autopsy findings, including investigation of petichial hemorrhages and other small
blood vessel hemorrhages in the brain tissue, if an autopsy was performed and if death followed within 14 days after the date of the administration of the treatment; and

(j) any other information required by the division.

(3) The information required by Subsections (2)(h) and (2)(i) must include the name of the physician who administered the treatment for each occurrence listed in Subsections (2)(h) and (2)(i).

Section 8. Section 62A-15-1106 is enacted to read:


(1) The division shall use the information received under Section 62A-15-1105 to analyze and monitor the use of electroconvulsive treatment administered to treat mental illness.

(2) (a) The division shall annually file with the governor and the Health and Human Services Interim Committee of the Legislature a written report summarizing the information received under Section 62A-15-1105. The information in the report shall be summarized by facility and by physician.

(b) The division may not directly or indirectly identify in a report issued under this section a patient who received the treatment.

(c) The report prepared in accordance with this Subsection (2) is a public document under the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

Section 9. Section 62A-15-1107 is enacted to read:


The division shall enforce the provisions of this part and may, as the division considers appropriate:

(1) issue a warning to any physician, hospital, or facility who fails to obtain consent or file a report required by this part; and

(2) report violations of this part to the appropriate licensing authority for the physician, hospital, or facility.

Section 10. Section 62A-15-1108 is enacted to read:


A health care provider who obtains informed consent in accordance with this part has also met the requirements for informed consent under Section 78-14-5.

Section 11. Section 63-55b-162 is enacted to read:
63-55b-162. Repeal dates -- Title 62A.


Section 12. Effective date.

This bill takes effect on July 1, 2004.

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Legislative Review Note
as of 12-22-03 3:50 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel
State Impact

Provisions of this bill would require an appropriation of $8,000 from the General Fund to the Division of Substance Abuse and Mental Health to administer the data reporting requirements.

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Individual and Business Impact

There could be additional cost to physicians and hospitals that provide electroconvulsive treatment.