

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Clarify and Affirm the Scope of Services Available to Persons with Mental Retardation or Autism

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 3 MRSA §959, sub-§1, ¶F, as amended by PL 2005, c. 397, Pt. C, §3, is further amended to read:

F. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall use the following list as a guideline for scheduling reviews:

(2) Office of Substance Abuse in 2005;

(6) Department of Health and Human Services in 2009;

(7) Board of the Maine Children's Trust Incorporated in 2011; and

(9) Maine Developmental Disabilities Council in 2011.

Sec. 2. 5 MRSA §12004-I, sub-§61, as amended by PL 1989, c. 73, §1, is repealed.

Sec. 3. 5 MRSA §12004-J, sub-§15 is enacted to read:

15.

34-B MRSA §1223

Mental Health and
Mental Retardation

Maine Developmental
Services Oversight
and Advisory Board

Per diem for
noncompensated
members, as specified
by board rule or
policy, and expenses
for all members of the
board

Sec. 4. 34-B MRSA §1205, as amended by PL 2005, c. 397, Pt. A, §§43 to 46 and c. 457, Pt. OO, §2 and affected by §5 and as repealed and replaced by c. 519, Pt. RR, §2 and affected by §4, is repealed.

Sec. 5. 34-B MRSA §1210, as amended by PL 1993, c. 410, Pt. CCC, §13, is repealed.

SP0707, LR 2585, item 1, Signed on 2007-06-20 00:00:00.0 - First Regular Session - 123rd Maine Legislature, page 1

Sec. 6. 34-B MRSA §1216, sub-§4, as enacted by PL 1995, c. 127, §1, is repealed and the following enacted in its place:

4. Repeal. This section is repealed on the later of:

A. Forty-five days after the United States District Court releases the State from all obligations under the community consent decree, Consumer Advisory Board et al. v. Glover, No. 91-321-P-C (D. Me., September 28, 1994); and

B. January 1, 2009.

Sec. 7. 34-B MRSA §1223 is enacted to read:

§ 1223. Maine Developmental Services Oversight and Advisory Board

1. Composition. The Maine Developmental Services Oversight and Advisory Board, as established by Title 5, section 12004-J, subsection 15 and referred to in this section as “the board,” consists of 15 members appointed by the Governor from a list of nominees proposed by the board pursuant to procedures established in the rules of the board.

A. The board shall submit nominees to the Governor at least 90 days prior to the expected date of each vacancy.

B. In making nominations, the board shall endeavor to ensure adequate representation at all times from different service regions of the State and from interested stakeholder groups, including but not limited to:

(1) The protection and advocacy agency designated pursuant to Title 5, section 19502;

(2) A statewide coalition that works to support and facilitate the ability of local and statewide self-advocacy organizations to network with each other and with national organizations;

(3) A nonprofit organization that serves teens and young adults in the State with emotional and intellectual disabilities;

(4) A statewide coalition that works to support and facilitate the ability of local and statewide self-advocacy organizations to network with each other and with national organizations; and

(5) The Maine Developmental Disabilities Council.

C. In making the nominations and appointments, the board and the Governor shall endeavor to ensure that at least 8 of the members of the board are persons with mental retardation or autism or family members, guardians or allies of persons with mental retardation or autism who receive services funded by the Department of Health and Human Services. Of these members, at least 4 must be persons with mental retardation or autism, referred to in this section as "self-advocates."

Members of the board must include stakeholders involved in services and supports for persons with mental retardation or autism in the State and other individuals interested in issues affecting persons with mental retardation or autism. Employees of the Department of Health and Human Services may not be appointed as members of the board.

2. Terms. Members of the board serve 3-year terms. A member serves until a successor is appointed. A vacancy must be filled as soon as practicable by appointment for the unexpired term.

3. Chair. The board shall elect a chair from among its members.

4. Compensation. Members of the board are entitled to reimbursement of reasonable expenses incurred in order to serve on the board as provided in Title 5, section 12004-J, subsection 15. Members not otherwise compensated by their employers or other entities whom they represent are entitled to receive a per diem as established by rule or policy adopted by the board for their attendance at authorized meetings of the board.

5. Staff. The board may hire an executive director and clerical support staff.

6. Budget. The board shall provide to the commissioner a proposed budget in accordance with a schedule agreed to by the chair and the commissioner. The department shall include in its estimate of expenditure and appropriation requirements filed pursuant to Title 5, section 1665 sufficient funds, listed in a separate account as a separate line item, to enable the board to perform its duties.

7. Maine Tort Claims Act. The board members and staff act as employees of the State, as defined in Title 14, section 8102, subsection 1, when engaged in official duties specified in this section or assigned by the board.

8. Oversight and advisory functions. The board shall:

A. Provide independent oversight over programs and services for adults with mental retardation or autism that are provided, authorized, funded or supported by the department or any other agency or department of State Government. The board shall focus on systemic concerns affecting the rights of persons with mental retardation or autism, including but not limited to issues surrounding health and safety, inclusion, identification of needs and desires of persons eligible for services by the department, the timely meeting of the identified needs and effective and efficient delivery of services and supports; and

B. Provide advice and systemic recommendations to the commissioner, the Governor and the Legislature regarding policies, priorities, budgets and legislation affecting the rights and interests of persons with mental retardation or autism.

9. Powers and duties of the board. In order to carry out its oversight and advisory functions, the board has the following powers and duties.

A. The board shall hold at least one hearing or other forum each year that is open to the public in order to gather information about the availability, accessibility and quality of services available to persons with mental retardation or autism and their families.

B. The board may accept funds from the Federal Government, the State, a political subdivision of the State, individuals, foundations and corporations and may expend those funds for purposes consistent with the board's functions, powers and duties.

C. The board shall establish priorities for its oversight and systems advocacy work. In establishing priorities, the board shall consider the results of its work in addressing the priorities established in previous years.

D. The board shall report at least annually to the Governor and the Legislature on its activities and recommendations regarding policies, priorities, budgets and legislation affecting the rights and interests of persons with mental retardation or autism. The board's annual report must include the board's assessment of its operations and progress in addressing the priorities established pursuant to paragraph C. The board's annual report must be made public and widely disseminated in a manner designed to inform interested stakeholders.

E. The board may provide reports and recommendations to the commissioner on matters of systemic concern arising from the board's oversight role. The board may recommend that the department undertake the study of specific systemic issues as part of the department's annual quality assurance activities and strategies, and the board may collaborate and cooperate with the department in the conduct of any such studies, if feasible. The commissioner shall provide a written response no later than 30 days following receipt of the recommendations from the board.

F. The board may refer individual cases that require investigation or action to the Office of Adults with Cognitive and Physical Disability Services or the Office of Advocacy within the department, the protection and advocacy agency designated pursuant to Title 5, section 19502 or other appropriate agency.

10. Access to information. The board is entitled to access to information from the department necessary to carry out its functions. Except as provided in paragraphs B, C, D and E, information provided pursuant to this subsection may not contain personally identifying information about a person with mental retardation or autism.

A. The department shall provide the board, on a schedule to be agreed upon between the board and the department, reports on case management, reportable events, adult protective and rights investigations, unmet needs, crisis services, quality assurance, quality improvement, budgets and other reports that contain data about or report on the delivery of services to or for the benefit of persons with mental retardation or autism, including reports developed by or on behalf of the department and reports prepared by others about the department.

B. The chief advocate and the manager of adult protective services in the Office of Adults with Cognitive and Physical Disability Services within the department, when requested by the board or pursuant to a written agreement with the board, shall release to the board information pertaining to

alleged abuse, exploitation or neglect or alleged dehumanizing practice or violation of rights of a person with mental retardation or autism. The board shall maintain the confidentiality of information disclosed to it or discovered by it as required by section 1207.

C. The board may request and review reports of actions taken by an entity to which a referral is made under subsection 9, paragraph F. If these reports are likely to reveal personally identifying information, the board shall conduct reviews in executive session and shall take all actions necessary and appropriate to preserve the confidentiality of the information.

D. The board may examine confidential information in individual records with written permission of the person or that person's guardian. If the person or that person's guardian provides the board with written permission to examine confidential information, the board must maintain the confidentiality of the information as required by section 1207.

E. The board or the board's staff may receive and examine confidential information when otherwise authorized to do so by law, including but not limited to when serving on a committee established by the department for which access to such information is necessary to perform the function of the committee.

11. Rulemaking. The board shall adopt rules governing its operations, including rules establishing its bylaws. Rules adopted pursuant to this subsection must address:

A. Procedures for nominating persons to fill vacancies on the board;

B. Procedures for holding annual hearings or other alternative means of receiving input from citizens throughout the State pursuant to subsection 9;

C. Procedures for exercising its powers pursuant to subsection 10, paragraph D in a manner that is respectful of the rights, interests and opinions of persons whose records are at issue;

D. Procedures concerning the hiring of an executive director, including the method for selection and the role of the executive director and procedures concerning the supervision, compensation and evaluation of the executive director; and

E. The provision of per diem stipends for members not otherwise compensated by their employers or other entities whom they represent for their attendance at authorized meetings of the board.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 8. 34-B MRSA §5001, sub-§1-B is enacted to read:

1-B. Correspondent. "Correspondent" means a person designated by the Consumer Advisory Board or its successor to act as a next friend of a person with mental retardation or autism.

Sec. 9. 34-B MRSA §5001, sub-§1-C is enacted to read:

1-C. Family. "Family" means those persons that the person defines as included in that person's family, including as appropriate unpaid individuals with whom the person resides.

Sec. 10. 34-B MRSA §5001, sub-§2-A is enacted to read:

2-A. Individual support coordinator. "Individual support coordinator" means a regional staff member of the department with the responsibility for coordinating the personal planning and professional services for a person with mental retardation or autism.

Sec. 11. 34-B MRSA §5001, sub-§3-B is enacted to read:

3-B. Person. "Person" means an adult with mental retardation or autism.

Sec. 12. 34-B MRSA §5001, sub-§3-C is enacted to read:

3-C. Personal planning. "Personal planning" means a process that assists and supports each person with mental retardation or autism in creating a vision for how to live in and be a part of the community.

Sec. 13. 34-B MRSA §5001, sub-§3-D is enacted to read:

3-D. Personal planning team. "Personal planning team" means the person with mental retardation or autism, the person's guardian, if any, the person's individual support coordinator or case manager and other individuals chosen or identified by the person to participate in personal planning.

Sec. 14. 34-B MRSA §5001, sub-§3-E is enacted to read:

3-E. Professional services. "Professional services" means services provided by individuals licensed to provide medical or behavioral health care and treatment, including but not limited to physicians, nurses, physical therapists, occupational therapists, psychologists, speech therapists and dentists.

Sec. 15. 34-B MRSA §5003, as amended by PL 1995, c. 368, Pt. GG, §5 and c. 560, Pt. K, §§41 to 45, is repealed.

Sec. 16. 34-B MRSA §5003-A is enacted to read:

§ 5003-A. System of care for clients with mental retardation or autism

1. System of care. The Legislature declares that the system of care through which the State provides services to and programs for persons with mental retardation or autism must be designed to protect the integrity of the legal and human rights of these persons and to meet their needs consistent with the principles guiding delivery of services as set forth in section 5610.

2. Responsibilities of the department. To facilitate the development of a system that meets the needs of persons with mental retardation or autism, the commissioner shall:

- A. Provide a mechanism for the identification, evaluation, treatment and reassessment of and the provision of services to persons with mental retardation or autism that is consistent with the principles guiding delivery of services, as set forth in section 5610, through appropriate personal planning offered to persons served by the department in accordance with section 5470-B;
- B. Identify the needs and desires of persons with mental retardation or autism through appropriate personal planning and record any unmet needs of persons served or eligible for service by the department for development of budget requests to the Governor that are adequate to meet such needs;
- C. Provide programs, insofar as resources permit, for appropriate services and supports to persons with mental retardation or autism regardless of age, severity of need or ability to pay;
- D. Support the establishment of community services for persons eligible to receive services from the department by promoting access to professional services in the person's community. Such support may be provided directly or through contracts with qualified providers. For persons who have professional service needs identified through personal planning, the department shall monitor the provision of those services;
- E. Eliminate the department's own duplicative and unnecessary administrative procedures and practices in the system of care for persons with mental retardation or autism, encourage other departments to do the same and clearly define areas of responsibility in order to use present resources economically;
- F. Strive toward having a sufficient number of personnel who are qualified and experienced to provide treatment that is beneficial to persons with mental retardation or autism; and
- G. Encourage other departments to provide to persons with mental retardation or autism those services that are required by law, and in particular:
- (1) The commissioner shall work actively with the Commissioner of Education to ensure that persons with mental retardation or autism receive appropriate services upon being diagnosed with either disability regardless of the degree of retardation or autism or accompanying disabilities or handicaps;
 - (2) The commissioner shall advise other departments about standards and policies pertaining to administration, staff, quality of care, quality of treatment, health and safety of clients, rights of clients, community relations and licensing procedures and other areas that affect persons with mental retardation or autism residing in facilities licensed by the department; and
 - (3) The commissioner shall inform the joint standing committee of the Legislature having jurisdiction over human resources matters about areas where increased cooperation by other departments is necessary in order to improve the delivery of services to persons with mental retardation or autism.

3. Plan. The commissioner shall prepare a plan pursuant to this subsection.

A. The plan must indicate the most effective and efficient manner in which to implement services and programs for persons with mental retardation or autism while safeguarding and respecting the legal and human rights of these persons.

B. The plan must be prepared once every 2 years and must be submitted to the joint standing committee of the Legislature having jurisdiction over health and human services matters by no later than January 15th of every odd-numbered year.

C. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall study the plan and make recommendations to the Legislature with respect to funding improvements in programs and services to persons with mental retardation or autism.

D. The plan must describe the system of mental retardation and autism services in each of the mental retardation service regions and statewide.

E. The plan must include both existing service resources and deficiencies in the system of services.

F. The plan must include an assessment of the roles and responsibilities of mental retardation and autism agencies, human service agencies, health agencies and involved state departments and suggest ways in which these departments and agencies can better cooperate to improve the service systems.

G. The plan must be made public within the State in such a manner as to facilitate public involvement.

H. The commissioner must ensure that the development of the plan includes the participation of community mental retardation and autism service providers, consumer and family groups and other interested persons or groups in annual statewide hearings, as well as informal meetings and work sessions.

I. The commissioner must consider community service needs, relate these identified needs to biennial budget requests and incorporate necessary service initiatives into a comprehensive planning document.

4. General Fund account; Medicaid match; mental retardation; autism. The commissioner shall establish a General Fund account to provide the General Fund match for mental retardation or autism Medicaid eligible services. Any unencumbered balances of General Fund appropriations remaining at the end of each fiscal year must be carried forward to be used for the same purposes.

5. Medicaid savings. Intermediate care facilities for persons with mental retardation or autism and providers of freestanding day habilitation programs shall submit payment to the department equal to 50% of any Medicaid savings due the State pursuant to the principles of reimbursement, as established under Title 22, sections 3186 and 3187, that are reported in any unaudited cost report for fiscal years ending June 30, 1995 and thereafter. Payment is due with the cost report. After audit, any

amount submitted in excess of savings allocated to the facility or provider pursuant to the principles of reimbursement must be returned to the facility or provider. Notwithstanding requirements or conditions contained in the principles of reimbursement, any amount due the State after final audit in excess of savings paid on submission of a cost report must be paid to the State within 90 days following receipt of the department's final audit report.

6. Required reporting by the department. The department shall make available, on at least an annual basis, a report or reports regarding the services and support provided by the department to persons with mental retardation or autism.

A. The goal of the reporting under this subsection is to provide the public with information on outcome measures established by the department. These measures may include, but are not limited to, whether:

- (1) Persons served by the department are healthy and safe;
- (2) Needs of persons are being met;
- (3) People are included in their communities; and
- (4) The system of care under this section is efficient and effective.

B. At a minimum, the department's report or reports under this subsection must offer information on the following:

- (1) Unmet needs;
- (2) Reportable events;
- (3) Adult protective services;
- (4) Crisis services;
- (5) Persons' and families' satisfaction with services;
- (6) Case management ratios;
- (7) Evaluations of costs of services;

(8) Grievances;

(9) Quality assurance and quality improvement efforts; and

(10) New initiatives.

C. A report under this subsection must be provided to the joint standing committee of the Legislature having jurisdiction over health and human services matters. The commissioner or the commissioner's designee shall appear in person before the committee and shall present the report. The report must be posted on the department's publicly accessible website and must be made easily available to persons served by the department, families, guardians, advocates, Legislators and the provider community.

Sec. 17. 34-B MRSA §5005 is enacted to read:

§ 5005. Office of Advocacy

1. Establishment. The Office of Advocacy, referred to in this section as "the office," is established within the department to provide the services described in subsection 3 to individuals with mental retardation or autism.

2. Chief advocate. A chief advocate shall direct and coordinate the program of the office.

A. The chief advocate shall report administratively to the commissioner and advise and consult with and inform the commissioner on the issues described in this section. The chief advocate shall provide the commissioner with regular reports on the office's findings, conclusions and recommendations regarding individual and systemic violations of the rights of individuals with mental retardation or autism.

B. The chief advocate shall select other advocates needed to carry out the intent of this section who shall report only to the chief advocate.

C. The chief advocate shall establish operating policies and procedures to guide the work of the office, including policies regarding priority setting.

D. The chief advocate and all other advocates are classified state employees.

3. Duties. The office, through the chief advocate and other advocates, shall:

A. Receive complaints made by or on behalf of individuals with mental retardation or autism and represent their interests in any matter pertaining to their rights and dignity;

B. Investigate the claims, grievances and allegations of violations of the rights of individuals with mental retardation or autism;

C. Intercede on behalf of individuals with mental retardation or autism with officials of any provider of service administered, licensed or funded by the department, except that the office may refuse to take action on any complaint that it considers to be trivial or moot or for which there is clearly another remedy available;

D. Assist individuals with mental retardation or autism in any hearing or grievance proceeding pertaining to their rights and dignity;

E. Refer individuals with mental retardation or autism to other agencies or entities and collaborate with those agencies or entities for the purpose of advocating for the rights and dignity of those individuals;

F. Act as an information source regarding the rights of all individuals with mental retardation or autism, keeping itself informed about all laws, administrative rules and institutional and other policies relating to the rights and dignity of those individuals and about relevant legal decisions and other developments related to the fields of mental health, mental retardation and autism, both in this State and in other parts of the country; and

G. Make and publish reports necessary to the performance of the duties described in this section. The chief advocate may report findings of the office to groups outside the department, such as legislative bodies, advisory committees, commissions, law enforcement agencies and the press, and may authorize the advocates in the office to so communicate. At least annually, the chief advocate shall report both in person and in writing to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the performance of the duties described in this section.

4. Participate in personal planning. The office, through the chief advocate and other advocates, may participate in personal planning when:

A. The department is the public guardian; or

B. An advocate has concerns regarding the rights or dignity of a person with mental retardation or autism.

A person who is not under guardianship has the right to refuse such participation by an advocate.

5. Access to files and records. The office, through the chief advocate and the other advocates, has access, limited only by the civil service law, to the files, records and personnel of any provider of services administered, licensed or funded by the department. Within the department, the office has access to all reports and related documents submitted pursuant to section 5604-A.

6. Confidentiality. Requests for confidentiality are treated as follows.

A. Any request by or on behalf of an individual with mental retardation or autism for action by the office and all written records or accounts related to the request are confidential as to the identity of the individual.

B. The records and accounts under paragraph A may be released only as provided by law.

7. Protection for advocates. Advocates may not be disciplined or sanctioned for any action taken pursuant to this section on behalf of individuals with mental retardation or autism.

8. Budget. When submitting any budget request to the Legislature, the department and the Governor shall provide that any funds for the office be listed in a separate account.

Sec. 18. 34-B MRSA §5201, as amended by PL 1995, c. 560, Pt. K, §47 and affected by §83 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

§ 5201. Duties

The Department of Health and Human Services is responsible for:

1. Institutional programs. ~~The supervision of adult mental retardation programs in the state institutions;~~

2. Statewide system. The planning, promotion, coordination and development of a complete and integrated statewide system of ~~mental retardation~~ services for adults with mental retardation or autism;

3. Liaison. Serving as liaison, coordinator and consultant to the several state departments in order to develop the statewide system of ~~mental retardation~~ services for adults with mental retardation or autism;

4. Community-based services. Ensuring that adults with mental retardation or autism residing in community residential facilities, including nursing homes, boarding homes, foster homes, group homes or halfway houses licensed by the Department of Health and Human Services, are provided, insofar as possible, with residential accommodations and access to habilitation services appropriate to their needs; and

5. Protective and supportive services. Providing protective and supportive services, in accordance with section 5203, to incapacitated and dependent persons who, with some assistance, are capable of living and functioning in society;:

6. Individual support coordinators. Providing persons with mental retardation or autism who are eligible for MaineCare services with case management services.

A. Case management services as defined in rules may be provided by qualified staff employed by the department or a contracted agency.

B. Unless otherwise specified in personal planning:

(1) Case managers shall maintain at least monthly contact with each person in order to ensure that the quality and availability of services and consumer satisfaction are maintained at a high level; and

(2) Visits to the person's home must occur at least twice a year.

C. The department shall ensure that case managers maintain adequate written and electronic records to permit monitoring and accountability.

D. The department shall provide sufficient numbers of case managers and supervisors to fulfill the duties specified in this subsection and shall maintain an overall ratio of one case manager to every 35 people in each region. The ratio must be calculated separately for staff employed by the department and by contracted agencies, and this ratio must be maintained for each group;

7. Crisis and respite. Provision of crisis and respite services to persons with mental retardation or autism in accordance with section 5206; and

8. Quality assurance. Developing through its comprehensive planning process goals and objectives for the department's quality assurance program.

A. The department shall determine at least annually appropriate quality assurance activities and strategies to achieve the goals and objectives of the program, with the overall purpose of assessing the quality of services and supports, consumer and family satisfaction with such services and supports and the consistency of such services and supports with the principles guiding delivery of services and supports as set forth in section 5610.

B. The department shall prepare an annual report of its quality assurance activities and such other periodic reports as it determines appropriate.

C. The department shall develop appropriate procedures for formulating and disseminating recommendations emanating from its quality assurance activities and for ensuring follow-up of the implementation of such recommendations.

9. Rules. The department shall adopt rules to implement this section as necessary. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 19. 34-B MRSA §5206 is enacted to read:

§ 5206. Crisis and respite services

The department shall provide crisis and respite services throughout the State in accordance with this section.

1. Crisis services. The department shall maintain the capacity to intervene in personal crises that could lead to the loss of the home, program or employment of a person with mental retardation or autism. Such capacity must include:

A. Assessment, consultation, planning, training and support for persons with mental retardation or autism and their families or allies both before and after a crisis occurs;

B. Providing staff support to prevent or respond to a crisis at the site of the crisis when appropriate;

C. Ensuring mental health supports when necessary, including access to a licensed mental health provider, inpatient treatment when indicated, psychiatric services and mental health aftercare services; and

D. Identifying appropriate professional services for the person in crisis.

2. Out-of-home services. The department shall provide out-of-home services in accordance with this subsection.

A. The department shall maintain an adequate capacity to provide out-of-home safety and support by trained staff with appropriate professional backup resources for a person with mental retardation or autism experiencing a crisis that cannot be safely managed at the person's residence.

B. Unless otherwise specified in personal planning, crisis intervention services must be provided at a person's home, program or workplace when prevention efforts are not successful. The services must assist with admission to an appropriate out-of-home service in the event that intervention in the home, program or workplace is inappropriate.

3. Transportation. The department may not routinely use law enforcement entities to transport persons with mental retardation or autism in crisis. Transportation of persons in crisis by law enforcement personnel may occur only if such transportation has been specifically authorized by the person's guardian or personal planning team or when determined by law enforcement personnel to be necessary to provide for the safety of the person or others.

4. Post-crisis review. A post-crisis review must occur no more than 10 working days after any out-of-home crisis placement. The review must include significant providers and supporters, including appropriate members of the person's planning team. The review must identify possible causes of the person's crisis and must recommend for the personal planning team changes in the person's environment, services and supports to prevent crises in the future.

5. Respite services. The department shall maintain and fund a statewide respite system for planned or unplanned respite for persons with mental retardation or autism and their families. The department shall, when appropriate, use the natural supports of a person in the development of respite services. For purposes of this subsection, "natural supports" means those supports provided by persons who are not disability service providers but who provide assistance, contact or companionship to enable a person with mental retardation or autism to participate independently in employment or other community settings.

6. Information regarding use. The department shall maintain information regarding use of crisis and respite services sufficient to plan and budget for adequate crisis and respite services. The information must include an assessment of the needs, both met and unmet, for crisis and respite services. The department shall provide information regarding the availability of services under this section and the proper means to obtain them to persons with mental retardation or autism, their parents and allies, providers of services and other interested persons.

7. Training. The department shall offer regular and ongoing information, consultation and training on crisis prevention and intervention and respite services to its own staff, providers, and persons with mental retardation or autism and their families, guardians, correspondents and allies.

Sec. 20. 34-B MRSA §5470-A, as enacted by PL 2003, c. 389, §14, is repealed.

Sec. 21. 34-B MRSA §5470-B is enacted to read:

§ 5470-B. Personal planning

1. Right to personal planning. Every adult with mental retardation or autism who is eligible for services must be provided the opportunity to engage in a personal planning process in which the needs and desires of the person are articulated and identified.

2. Process. The personal planning opportunities afforded to a person with mental retardation or autism pursuant to subsection 1 must:

A. Be understandable to that person and in plain language and, if that person is deaf or nonverbal, uses sign language or speaks another language, the process must include qualified interpreters;

B. Focus on the choices made by that person;

C. Reflect and support the goals and aspirations of that person;

D. Be developed at the direction of that person and include people whom the person chooses to participate. The planning process must minimally include the person, the person's guardian, if any, the correspondent, if any, and the person's case manager;

E. Be flexible enough to change as new opportunities arise;

F. Be offered to that person at least annually or on a schedule established through the planning process and be reviewed according to a specified schedule and by a person designated for monitoring;

G. Include all of the needs and desires of that person without respect to whether those desires are reasonably achievable or the needs are presently capable of being addressed; and

H. Include a provision for ensuring the satisfaction of that person with the quality of the plan and the supports that the person receives.

3. Action plans and unmet needs. The ongoing personal planning for a person with mental retardation or autism must include an action plan that describes the services to be provided, the process of providing the services and who is responsible for overseeing the provision of the services. In cases where resources required to address identified needs or desires are not available, the action plan must identify interim measures based on available resources that address the needs or desires as nearly as possible and identify steps toward meeting the person's actual identified needs.

Unmet needs must be documented continually, collated annually and used for appropriate development activities on a regional and statewide basis.

4. Review of personal plans. The person with mental retardation or autism or another member of the planning team may initiate a review of the person's personal plan when needed or desired.

A. A review under this subsection must be done by meeting or by other means sufficient to address the needed or desired changes. The review must include the person, the person's guardian, if any, and the person's case manager. Invitations to participate may also be sent to others who may be anticipated to assist the person in pursuing articulated needs and desires unless the person or a private guardian objects.

B. Events that could lead to the loss of the person's home, job or program and events defined in a departmental rule or in the person's plan must lead to a plan review.

5. Information from planning process. During personal planning, the department shall develop and record information about a person's needs, identify anticipated needs without regard to service availability, define necessary support services, recommend optimal courses of action and include plans for the active and continued exploration of suitable program or service alternatives based on the person's needs.

6. Implementation of personal plan. As part of its implementation, the personal plan must be agreed to by the person or the person's legal guardian. The department shall assist persons with the needs identified by their planning process to obtain housing, employment or other meaningful occupation, medical and other professional therapeutic services, recreational and vocational opportunities and educational services at the earliest possible time, insofar as resources permit.

7. Records. The department shall maintain records of personal plans developed under this section.

A. The department shall maintain adequate written and electronic records of the development and implementation of personal plans to permit monitoring and accountability.

B. The department shall provide the Office of Advocacy with sufficient advance notice of all scheduled personal planning meetings to permit the office to determine if the attendance or participation of an advocate in the planning process is appropriate pursuant to the duties and responsibilities of the office.

8. Training. The department shall provide training in personal planning.

A. The department shall prepare and maintain a comprehensive manual describing the procedures to be followed in implementing a personal planning process.

B. The department shall ensure the provision of regular and ongoing training in personal planning to persons with mental retardation or autism and their families, guardians, correspondents and allies as well as its own staff and providers. The department shall regularly provide persons with mental retardation or autism and their families, guardians and allies with informational materials regarding personal planning.

9. Rules. The department is authorized to adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 22. 34-B MRSA §5601, sub-§1-A is enacted to read:

1-A. Ally. "Ally" means an individual who a person trusts to provide assistance.

Sec. 23. 34-B MRSA §5604, as amended by PL 1993, c. 326, §8, is further amended to read:

§ 5604. Protection

The Legislature finds and declares that the rights of persons with mental retardation or autism can be protected best under a system of services that operates according to the principles of normalization and full inclusion and that the State's system of services must operate according to these principles with the goals of:

1. Community-based services. Continuing the development of community-based services that provide reasonable alternatives to institutionalization in settings that are least restrictive to the person receiving services; and

2. Independence and productivity. Providing habilitation, education and other training to persons with mental retardation or autism that will maximize their potential to lead independent and productive lives and that will afford opportunities for outward mobility from institutions; and

3. Grievance right. Providing a person with mental retardation or autism with the right to appeal a decision regarding actions or inactions by the department that affects the person's life. The department shall establish in rule a process for hearing such grievances pursuant to section 1203, subsection 4. The rules must contain strict time frames for the resolution of grievances. The rules may provide for resolution of grievances through mediation.

A. The department shall provide easily accessible and regular notice of the grievance process to persons with mental retardation or autism served by the department. This notice must be included in informational materials provided to such persons, as well as to guardians, families, correspondents and allies. Notice of the right to appeal must be prominently displayed in regional offices and on the department's publicly accessible website and must be readily available from provider agencies. Notice of the right to appeal must be included in all substantive correspondence regarding personal planning. Written notice of the right to appeal must also be provided when there is a denial or reduction of services or supports to persons served by the department. All notices and information

regarding the grievance process must be written in language that is plain and understandable and must include the address and telephone number of the Office of Advocacy and the protection and advocacy agency designated pursuant to Title 5, section 19502.

B. The department must make available a one-page form that enables a person with mental retardation or autism to file a grievance. A grievance may also be filed through an oral request. If a grievance is filed through an oral request, the person receiving the grievance shall reduce the grievance to writing using a one-page form made available by the department.

C. The department shall offer regular training in the grievance process for persons served by the department, their families, guardians and allies and department and service provider staff.

D. If an appeal proceeds to a hearing, the hearing officer's decision constitutes final agency action for the purposes of Rule 80C of the Maine Rules of Civil Procedure unless final decision-making authority has been reserved by the commissioner. If the commissioner makes the final decision and modifies or rejects the hearing officer's recommended decision, the commissioner must state in writing the basis for the commissioner's decision. When the commissioner rejects or modifies a hearing officer's factual findings or makes additional factual findings, the commissioner shall articulate the evidentiary basis for such rejection or modification with appropriate references to the record. The commissioner shall give substantial deference to a hearing officer's determinations on matters of credibility relating to testimony that was heard by the hearing officer, and when rejecting or modifying such determinations of credibility, the commissioner shall state with particularity the reasons with appropriate references to evidence in the record. In the event the commissioner fails to issue a written final decision within 30 days of the date of the recommended decision, the recommended decision of the hearing officer is deemed the final decision of the commissioner.

4. Rules. The department has authority to adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 24. 34-B MRSA §5604-A is enacted to read:

§ 5604-A. Duty to report incidents; Adult Protective Services Act and rights violations

1. Report incident. A person with knowledge about an incident related to client care, including client-to-client assault, staff-to-client assault, use of seclusion or excessive use of mechanical or chemical restraint, incidents stemming from questionable psychiatric and medical practice or any other alleged abuse or neglect, shall immediately report the details of that incident pursuant to policies and procedures established by the department in rules.

2. Maintain reporting system. The department shall maintain a reportable event and adult protective services system that provides for receiving reports of alleged incidents, prioritizing such reports, assigning reports for investigation by qualified investigators, reviewing the adequacy of the investigations, making recommendations for preventive and corrective actions as appropriate and

substantiating allegations against individuals who have been found under the Adult Protective Services Act to have abused, neglected or exploited persons with mental retardation or autism. The department shall fully establish the reportable event and adult protective services system through rulemaking.

3. Violation. All persons with knowledge of an alleged violation of the rights of an individual with mental retardation or autism as set out in section 5605 shall promptly report the details of the alleged violation to the Office of Advocacy as set forth in department rules.

4. Rules. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 25. 34-B MRSA §5605, sub-§13, ¶B, as amended by PL 2003, c. 564, §1, is further amended to read:

B. Treatment programs involving the use of noxious or painful stimuli or other aversive or severely intrusive techniques, as defined in department rules, may be used only to correct behavior more harmful than the treatment program to the person with mental retardation or autism and only:

(1) On the recommendation of a physician, psychiatrist or psychologist;

(2) For an adult 18 years of age or older, with the approval, following a case-by-case review, of a review team composed of an advocate from the Office of Advocacy; a representative of the ~~Division of Mental Retardation~~Office of Adults with Cognitive and Physical Disabilities; and a representative of the ~~Consumer Advisory Board~~Maine Developmental Services Oversight and Advisory Board; and

(3) For a child under 18 years of age, with the approval, following a case-by-case review, of a review team composed of an advocate from the Office of Advocacy, a team leader of the department's children's services division and the children's services medical director or the director's designee. Until rules are adopted by the department to govern behavioral treatment reviews for children, the team may not approve techniques any more aversive or intrusive than are permitted in rules adopted by the Secretary of the United States Department of Health and Human Services regarding treatment of children and youth in nonmedical community-based facilities funded under the Medicaid program.

The department may adopt rules as necessary to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 26. 34-B MRSA §5606, sub-§1, ¶A, as amended by PL 2005, c. 519, Pt. RR, §3 and affected by §4, is further amended to read:

A. The Office of Advocacy shall conduct an investigation of each alleged violation pursuant to section ~~12055005~~.

Sec. 27. 34-B MRSA §5610 is enacted to read:

§ 5610. Service delivery

1. Guiding service delivery. The delivery of services by providers of services and the department to persons with mental retardation and autism is guided by the following.

A. Persons with mental retardation or autism have the same rights as all citizens, including the rights to live, work and participate in the life of the community.

B. Community inclusion is achieved by connecting persons and their families, whenever possible, to local and generic supports within the community and by the use of residential services that are small and integrated into the community.

C. Real work for real pay for persons in integrated settings in the community is the cornerstone of all vocational and employment services.

D. Service delivery to persons with mental retardation and autism is based on the following fundamentals:

(1) Maximizing the growth and development of the person and inclusion in the community;

(2) Maximizing the person's control over that person's life;

(3) Supporting the person in that person's own home;

(4) Acknowledging and enhancing the role of the family, as appropriate, as the primary and most natural caregiver; and

(5) Planning for the delivery of community services that:

(a) Promotes a high quality of life;

(b) Is based on ongoing individualized assessment of the strengths, needs and preferences of the person and the strengths of that person's family; and

(c) Identifies and considers connections in other areas of the person's life, including but not limited to family, allies, friends, work, recreation and spirituality.

Sec. 28. 34-B MRSA §6004, first ¶, as amended by PL 1995, c. 560, Pt. K, §64, is further amended to read:

The commissioner shall submit a report on efforts to plan for and develop social and habilitative services for persons who have autism and other pervasive developmental disorders to the Governor and the joint standing committee of the Legislature having jurisdiction over health and institutional services matters. This report must be submitted no later than January 15th of every odd-numbered year and must be submitted in conjunction with the plan required by section ~~5003~~5003-A, subsection 3.

Sec. 29. Initial appointments. Notwithstanding the Maine Revised Statutes, Title 34-B, section 1223, subsection 1, the Consumer Advisory Board, established pursuant to Title 34-B, section 1216, and the Maine Advisory Committee on Mental Retardation, established pursuant to Title 5, section 12004-I, subsection 61, in anticipation of the effective date of Title 34-B, section 1223, one month prior to that date shall appoint the initial 15 members of the Maine Developmental Services Oversight and Advisory Board as follows:

1. Four members selected by the Consumer Advisory Board;
2. Two members selected by the Maine Advisory Committee on Mental Retardation;
3. One member selected by the protection and advocacy agency designated pursuant to Title 5, section 19502;
4. One member selected by a statewide coalition that works to support and facilitate the ability of local and statewide self-advocacy organizations to network with each other and with national organizations; and
5. Seven members who are selected by a group that consists of:
 - A. Two persons appointed by the Governor;
 - B. One person appointed by a statewide coalition that works to support and facilitate the ability of local and statewide self-advocacy organizations to network with each other and with national organizations;
 - C. One person appointed by the protection and advocacy agency designated pursuant to Title 5, section 19502;
 - D. One person appointed by a statewide association of community service providers; and
 - E. One person appointed by the Maine Developmental Disabilities Council established by Title 5, section 12004-I, subsection 66.

Notwithstanding the Maine Revised Statutes, Title 34-B, section 1223, subsection 2, of the initial appointments to the Maine Developmental Services Oversight and Advisory Board, the Consumer Advisory Board and the Maine Advisory Council on Mental Retardation shall designate 5 members to serve an initial term of one year, 5 members to serve an initial term of 2 years and 5 members to serve an initial term of 3 years.

Members initially appointed to the Maine Developmental Services Oversight and Advisory Board must include stakeholders involved in services and supports for persons with mental retardation or autism in the State and other individuals interested in issues affecting persons with mental retardation or autism. Employees of the Department of Health and Human Services may not be appointed as members of the board.

Sec. 30. Transition provisions.

1. Correspondent program. The Maine Developmental Services Oversight and Advisory Board, established in the Maine Revised Statutes, Title 5, section 12004-I, subsection 61-A and referred to in this section as "the board," shall work with the Department of Health and Human Services to improve and promote the correspondent program operated by the Consumer Advisory Board established pursuant to Title 34-B, section 1216. No later than January 1, 2009, the board shall present a report to the joint standing committee of the Legislature having jurisdiction over health and human services matters, together with a proposed plan that provides for the independent operation of the correspondent program with oversight by the board. After receipt and review of the report, the joint standing committee may submit a bill to the 124th Legislature.

2. Cooperation and collaboration. The board shall work with the Consumer Advisory Board to avoid duplication of effort, to ensure appropriate sharing of information and to facilitate a smooth transition of oversight responsibilities from the Consumer Advisory Board to the board upon the repeal of the Consumer Advisory Board in accordance with Title 34-B, section 1216, subsection 4.

3. Successor class representative. Upon the repeal of the Consumer Advisory Board in accordance with the Title 34-B, section 1216, subsection 4, the board shall cooperate and collaborate with any successor class representative that may be appointed by the United States District Court.

4. Budgets. The Department of Health and Human Services shall take the following actions with regard to the budgets of the Consumer Advisory Board and expenses with regard to the community consent decree, Consumer Advisory Board et al. v. Glover, No. 91-321-P-C (D. Me. September 28, 1994):

A. For state fiscal year 2008-09, on the date that the Consumer Advisory Board is repealed, the department shall transfer by financial order to the Maine Developmental Services Oversight and Advisory Board the remainder of the unencumbered balance in the budget of the Consumer Advisory Board for fiscal year 2008-09; and

B. Beginning with state fiscal year 2010-12, the department shall include a line item in the department budget submission to the State Budget Officer pursuant to the Maine Revised Statutes, Title 5, section 1665 for the Maine Developmental Services Oversight and Advisory Board. The submission to the State Budget Officer must reflect the budget decisions of the board with regard to funding and expenditures under Title 34-B, section 1223, subsection 9, paragraph B.

Sec. 31. Effective dates. This Act takes effect November 1, 2007, except that the following sections take effect upon elimination of the Consumer Advisory Board pursuant to the Maine Revised Statutes, Title 34-B, section 1216, subsection 4:

1. Those sections of this Act that repeal Title 3, section 959, subsection 1, paragraph F, and Title 5, section 12004-I, subsection 61;

2. That section of this Act that amends Title 34-B, section 5605, subsection 13, paragraph B; and

3. Those sections of this Act that enact Title 5, section 12004-J, subsection 15 and Title 34-B, section 1223.

PUBLIC Law, Chapter 356 LD 1907, item 1, 123rd Maine State Legislature
An Act To Clarify and Affirm the Scope of Services Available to Persons with Mental Retardation or Autism

Effective November 1, 2007, unless otherwise indicated.