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No. 1249

H.P. 883

House of Representatives, March 27, 2013

An Act To Make Statutory Changes To Address Certain Conflicting Requirements of the Maine Rules of Professional Conduct and the Federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 Regarding Maine's Protection and Advocacy Agency

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PRIEST of Brunswick.
Cosponsored by Senator VALENTINO of York and
Representatives: BEAULIEU of Auburn, CROCKETT of Bethel, DeCHANT of Bath,
MONAGHAN-DERRIG of Cape Elizabeth, MOONEN of Portland, MORIARTY of
Cumberland, VILLA of Harrison, Senator: TUTTLE of York.

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

2 **Sec. 1. 34-B MRSA §1223, sub-§10**, as amended by PL 2011, c. 657, Pt. EE, §3,
3 is further amended to read:

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

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

15 B. ~~The advocacy agency designated pursuant to Title 5, section 19502, or the~~
16 ~~department, when requested by the board or pursuant to a written agreement with the~~
17 ~~board, shall release to the board information pertaining to alleged abuse, exploitation~~
18 ~~or neglect or an alleged dehumanizing practice or violation of rights of a person with~~
19 ~~intellectual disabilities or autism. The board shall maintain the confidentiality of~~
20 ~~information disclosed to it or discovered by it as required by section 1207.~~

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

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

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

35 **Sec. 2. 34-B MRSA §5005-A, sub-§2**, as enacted by PL 2011, c. 657, Pt. EE, §5,
36 is amended to read:

37 **2. Duties.** The department shall contract with the agency to: perform the following
38 duties in at least 5 regions.

39 A. ~~Receive~~ The agency shall receive complaints made by or on behalf of individuals
40 with intellectual disabilities or autism and represent their interests in any matter
41 pertaining to their rights and dignity.

1 B. ~~Investigate~~ The agency shall investigate the claims, grievances and allegations of
2 violations of the rights of individuals with intellectual disabilities or autism;

3 C. ~~Interecede on behalf~~ The agency may pursue legal, administrative and other
4 appropriate remedies or approaches to ensure the protection of, and advocacy for, the
5 rights of individuals with intellectual disabilities or autism ~~with officials of any~~
6 ~~provider of service~~ who are or may be eligible for services administered, licensed or
7 funded by the department, except that the agency may refuse to take action on any
8 complaint that it considers to be trivial, to be moot or ~~moot~~ to lack merit or for which
9 there is clearly another remedy available;

10 D. ~~Assist individuals with intellectual disabilities or autism in any hearing or~~
11 ~~grievance proceeding pertaining to their rights and dignity;~~

12 E. ~~Refer~~ The agency may refer individuals with intellectual disabilities or autism to
13 other agencies or entities and collaborate with those agencies or entities for the
14 purpose of advocating for the rights and dignity of those individuals;

15 F. ~~Act~~ The agency shall act as an information source regarding the rights of all
16 individuals with intellectual disabilities or autism, keeping itself informed about all
17 laws, administrative rules and institutional and other policies relating to the rights and
18 dignity of those individuals and about relevant legal decisions and other
19 developments related to the fields of mental health, intellectual disabilities and
20 autism, both in this State and in other parts of the country; ~~and.~~

21 G. ~~Make~~ The agency may make and publish reports necessary to the performance of
22 the duties described in this section. The agency may report its findings to groups
23 outside the department, such as legislative bodies, advisory committees,
24 commissions, law enforcement agencies and the press. At least annually, the agency
25 shall report both in person and in writing to the joint standing committee of the
26 Legislature having jurisdiction over health and human services matters regarding the
27 performance of the duties described in this section.

28 H. The agency may monitor the delivery of services, supports and other assistance or
29 residential services or treatment provided to persons with intellectual disabilities or
30 autism for the purpose of ensuring that services, supports and assistance meet the
31 needs of those persons and are delivered in conformity with laws, regulations, rules
32 and other standards regarding quality of care.

33 **Sec. 3. 34-B MRSA §5005-A, sub-§4**, as enacted by PL 2011, c. 657, Pt. EE, §5,
34 is amended to read:

35 **4. Access to files and records.** The agency has access, limited only by the civil
36 service law, to the files, records and personnel of any provider of services, including the
37 files and records of any person with an intellectual disability or autism held by any
38 provider of service, administered, licensed or funded by the department and to all reports
39 and related documents submitted pursuant to section 5604-A.

40 **Sec. 4. 34-B MRSA §5005-A, sub-§4-A** is enacted to read:

41 **4-A. Access to individuals.** The agency has access to individuals pursuant to Title
42 5, section 19506.

1 **Sec. 5. 34-B MRSA §5005-A, sub-§5**, as enacted by PL 2011, c. 657, Pt. EE, §5,
2 is amended to read:

3 **5. Confidentiality.** ~~Requests for~~ The following provisions govern confidentiality and
4 ~~are treated as follows.~~

5 A. Any request by or on behalf of an individual with intellectual disabilities or
6 autism for action by the agency and all written records or accounts related to the
7 request are confidential as to the identity of the individual.

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

10 C. Records maintained by the agency are the sole property of the individual with
11 intellectual disabilities or autism to whom the records pertain and the agency shall
12 protect the records from loss, damage, tampering or use by unauthorized individuals.
13 The agency shall keep the records confidential and may not release them without
14 written consent from the individual with intellectual disabilities or autism or the
15 individual's guardian.

16 **Sec. 6. 34-B MRSA §5470-B, sub-§7, ¶B**, as amended by PL 2011, c. 657, Pt.
17 EE, §6, is repealed.

18 **Sec. 7. 34-B MRSA §5605, sub-§13, ¶B**, as amended by PL 2011, c. 657, Pt.
19 EE, §9, is further amended to read:

20 B. Behavior modification and behavior management programs may be used only to
21 correct behavior more harmful to the person than the program and only:

22 (1) On the recommendation of the person's personal planning team;

23 (2) For an adult 18 years of age or older, with the approval, following a case-by-
24 case review, of a review team composed of a representative from the department,
25 a representative from the advocacy agency designated pursuant to Title 5, section
26 19502 and a representative designated by the Maine Developmental Services
27 Oversight and Advisory Board. The advocacy agency representative serves as a
28 nonvoting member of the review team and shall be present to advocate on behalf
29 of the person. The department shall provide sufficient advance notice of all
30 scheduled review team meetings to the advocacy agency and provide the
31 advocacy agency with any plans for which approval is sought along with any
32 supporting documentation; and

33 (3) For a child under 18 years of age, with the approval, following a case-by-
34 case review, of a review team composed of a representative from the advocacy
35 agency designated pursuant to Title 5, section 19502, a team leader of the
36 department's children's services division and the children's services medical
37 director or the director's designee. The advocacy agency representative serves as
38 a nonvoting member of the review team and shall be present to advocate on
39 behalf of the person. The department shall provide sufficient advance notice of
40 all scheduled review team meetings to the advocacy agency and provide the
41 advocacy agency with any plans for which approval is sought along with any

1 supporting documentation. Until rules are adopted by the department to govern
2 behavioral treatment reviews for children, the team may not approve techniques
3 any more aversive or intrusive than are permitted in rules adopted by the
4 Secretary of the United States Department of Health and Human Services
5 regarding treatment of children and youth in nonmedical community-based
6 facilities funded under the Medicaid program.

7 **Sec. 8. 34-B MRSA §5606, sub-§1**, as amended by PL 2011, c. 657, Pt. EE, §11,
8 is further amended to read:

9 **1. Reportable events.** Any alleged violation of the rights of a person receiving
10 services must be reported immediately to the advocacy agency designated pursuant to
11 Title 5, section 19502, referred to in this subsection as "the agency," and to the Attorney
12 General's office.

13 A. The agency shall ~~conduct an investigation of~~ investigate each alleged violation
14 pursuant to section 5005-A.

15 B. The agency shall ~~submit a written report of the findings and results of the~~
16 ~~investigation to the chief administrative officer of the facility in which the rights of~~
17 ~~the person receiving services were allegedly violated and to the commissioner within~~
18 ~~2 working days after the day of the occurrence or discovery of the alleged incident~~
19 may independently pursue a complaint or may pursue administrative, legal and other
20 appropriate remedies on behalf of an individual with intellectual disabilities or
21 autism. The agency may refuse to take action on any alleged violation that it
22 considers to be trivial, to be moot or to lack merit or for which there is clearly another
23 remedy available or may refer an individual who is the subject of an alleged violation
24 to another agency or entity and collaborate with that agency or entity for the purpose
25 of advocating for the rights and dignity of that individual.

26 **Sec. 9. 34-B MRSA §5611** is enacted to read:

27 **§5611. Complaints**

28 A complaint may be filed by the agency designated pursuant to Title 5, section
29 19502. The complaint procedure may be used when the agency knows or has reason to
30 believe that the practices, procedures or policies of the department or of any agency
31 licensed, funded or contracted by the department to provide services violate the rights of
32 individuals with intellectual disabilities or autism pursuant to section 5605.

33 **1. Allegations of employee misconduct.** A complaint that includes allegations of
34 employee misconduct must be processed, but no disciplinary action may be taken nor
35 facts found with regard to the alleged misconduct except in accordance with applicable
36 personnel rules, policies and labor contract provisions.

37 **2. Complaints arising in community.** A complaint arising in the community must
38 be addressed to the executive director of the provider agency, and a complaint concerning
39 department personnel must be addressed to the regional manager.

