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HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1070, L.D. 1577, Bill, “An Act To Increase the Availability of Mental Health Services”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 15 MRSA §101-D, sub-§5, ¶A, as amended by PL 2013, c. 434, §1 and affected by §15, is further amended to read:

A. Commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital, an intensive outpatient treatment program or any program specifically approved by the court. The Commissioner of Health and Human Services shall place the defendant in a state mental health institute if a suitable bed is available. If a suitable bed is not available in a state mental health institute, the Commissioner of Health and Human Services shall place the defendant at an in-state facility that at the time of placement possesses accreditation by a nationally recognized health care organization accrediting body whose standards for accreditation meet or exceed the requirements for a health care facility to be eligible to receive payment from the Medicare or Medicaid program if a suitable bed is available. If a suitable bed is not available in a state mental health institute or at an in-state facility that possesses accreditation by a nationally recognized health care organization accrediting body whose standards for accreditation meet or exceed the requirements for a health care facility to be eligible to receive payment from the Medicare or Medicaid program, the Commissioner of Health and Human Services shall place the defendant at an out-of-state facility that at the time of placement possesses accreditation by a nationally recognized health care organization accrediting body whose standards for accreditation meet or exceed the requirements for a health care facility to be eligible to receive payment from the

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1 Medicare or Medicaid program. At the end of 30 days or sooner, and again, in the
2 event of recommitment, at the end of 60 days and 180 days, the State Forensic
3 Service or other appropriate office of the Department of Health and Human Services
4 shall forward a report to the Commissioner of Health and Human Services relative to
5 the defendant's competence to stand trial and its reasons. The Commissioner of
6 Health and Human Services shall without delay file the report with the court having
7 jurisdiction of the case. The court shall hold a hearing on the question of the
8 defendant's competence to stand trial and receive all relevant testimony bearing on
9 the question. If the State Forensic Service's report or the report of another
10 appropriate office of the Department of Health and Human Services to the court
11 states that the defendant is either now competent or not restorable, the court shall
12 within 30 days hold a hearing. If the court determines that the defendant is not
13 competent to stand trial, but there does exist a substantial probability that the
14 defendant will be competent to stand trial in the foreseeable future, the court shall
15 recommit the defendant to the custody of the Commissioner of Health and Human
16 Services for placement in an appropriate program for observation, care and treatment
17 of people with mental illness or persons with intellectual disabilities or autism. An
18 appropriate program may be in an institution for the care and treatment of people
19 with mental illness, an intermediate care facility for persons who have intellectual
20 disabilities or autism, a crisis stabilization unit, a nursing home, a residential care
21 facility, an assisted living facility, a hospice, a hospital, an intensive outpatient
22 treatment program or any program specifically approved by the court. The
23 Commissioner of Health and Human Services shall place the defendant in a state
24 mental health institute if a suitable bed is available. If a suitable bed is not available
25 in a state mental health institute, the Commissioner of Health and Human Services
26 shall place the defendant at an in-state facility that at the time of placement possesses
27 accreditation by a nationally recognized health care organization accrediting body
28 whose standards for accreditation meet or exceed the requirements for a health care
29 facility to be eligible to receive payment from the Medicare or Medicaid program if a
30 suitable bed is available. If a suitable bed is not available in a state mental health
31 institute or at an in-state facility that possesses accreditation by a nationally
32 recognized health care organization accrediting body whose standards for
33 accreditation meet or exceed the requirements for a health care facility to be eligible
34 to receive payment from the Medicare or Medicaid program, the Commissioner of
35 Health and Human Services shall place the defendant at an out-of-state facility that at
36 the time of placement possesses accreditation by a nationally recognized health care
37 organization accrediting body whose standards for accreditation meet or exceed the
38 requirements for a health care facility to be eligible to receive payment from the
39 Medicare or Medicaid program. When a person who has been evaluated on behalf of
40 the court by the State Forensic Service or other appropriate office of the Department
41 of Health and Human Services is committed into the custody of the Commissioner of
42 Health and Human Services under this paragraph, the court shall order that the State
43 Forensic Service or other appropriate office of the Department of Health and Human
44 Services share any information that it has collected or generated with respect to the
45 person with the institution or residential program in which the person is placed. If the
46 defendant is charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title
47 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not
48 competent to stand trial and there does not exist a substantial probability that the

1 defendant can be competent in the foreseeable future, the court shall dismiss all
2 charges against the defendant and, unless the defendant is subject to an undischarged
3 term of imprisonment, order the Commissioner of Health and Human Services to
4 commence proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If the
5 defendant is charged with an offense other than an offense under Title 17-A, chapter
6 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that
7 the defendant is not competent to stand trial and there does not exist a substantial
8 probability that the defendant can be competent in the foreseeable future, the court
9 shall dismiss all charges against the defendant and, unless the defendant is subject to
10 an undischarged term of imprisonment, notify the appropriate authorities, who may
11 institute civil commitment proceedings for the individual. If the defendant is subject
12 to an undischarged term of imprisonment, the court shall order the defendant into
13 execution of that sentence and the correctional facility to which the defendant must
14 be transported shall execute the court's order; or

15 **Sec. 2. 15 MRSA §103**, as amended by PL 2013, c. 424, Pt. B, §3, is further
16 amended to read:

17 **§103. Commitment following acceptance of negotiated insanity plea or following**
18 **verdict or finding of insanity**

19 When a court accepts a negotiated plea of not criminally responsible by reason of
20 insanity or when a defendant is found not criminally responsible by reason of insanity by
21 jury verdict or court finding, the judgment must so state. In those cases the court shall
22 order the person committed to the custody of the Commissioner of Health and Human
23 Services to be placed in an appropriate institution for the care and treatment of persons
24 with mental illness or in an appropriate residential program that provides care and
25 treatment for persons who have intellectual disabilities or autism for care and treatment.
26 The Commissioner of Health and Human Services shall place the person in a state mental
27 health institute if a suitable bed is available. If a suitable bed is not available in a state
28 mental health institute, the Commissioner of Health and Human Services shall place the
29 person at an in-state facility that at the time of placement possesses accreditation by a
30 nationally recognized health care organization accrediting body whose standards for
31 accreditation meet or exceed the requirements for a health care facility to be eligible to
32 receive payment from the Medicare or Medicaid program if a suitable bed is available. If
33 a suitable bed is not available in a state mental health institute or at an in-state facility that
34 possesses accreditation by a nationally recognized health care organization accrediting
35 body whose standards for accreditation meet or exceed the requirements for a health care
36 facility to be eligible to receive payment from the Medicare or Medicaid program, the
37 Commissioner of Health and Human Services shall place the person at an out-of-state
38 facility that at the time of placement possesses accreditation by a nationally recognized
39 health care organization accrediting body whose standards for accreditation meet or
40 exceed the requirements for a health care facility to be eligible to receive payment from
41 the Medicare or Medicaid program. Upon placement in the appropriate institution or
42 residential program and in the event of transfer from one institution or residential
43 program to another of persons committed under this section, notice of the placement or
44 transfer must be given by the commissioner to the committing court.

1 When a person who has been evaluated on behalf of a court by the State Forensic
2 Service is committed into the custody of the Commissioner of Health and Human
3 Services pursuant to this section, the court shall order that the State Forensic Service
4 share any information it has collected or generated with respect to the person with the
5 institution or residential program in which the person is placed.

6 As used in this section, "not criminally responsible by reason of insanity" has the
7 same meaning as in Title 17-A, section 39 and includes any comparable plea, finding or
8 verdict in this State under former section 102; under a former version of Title 17-A,
9 section 39; under former Title 17-A, section 58; or under former ~~section 17-B~~, chapter
10 149, section 17-B of the Revised Statutes of 1954.

11 **Sec. 3. Facility development.** By December 31, 2016, the Department of Health
12 and Human Services shall develop a facility separate from the Riverview Psychiatric
13 Center that will provide the least restrictive setting possible for forensic patients in the
14 custody of the Commissioner of Health and Human Services and for whom the
15 Department of Health and Human Services has verified a hospital level of care is no
16 longer needed.

17 **Sec. 4. Report.** By August 1, 2016, and at least every 90 days thereafter, the
18 Department of Health and Human Services shall submit a written report to the joint
19 standing committee of the Legislature having jurisdiction over matters concerning the
20 State's psychiatric hospitals that includes the following information:

21 1. The status of any forensic patients who have been placed by the Commissioner of
22 Health and Human Services at an in-state facility accredited by a nationally recognized
23 health care organization accrediting body whose standards for accreditation meet or
24 exceed the requirements for a health care facility to be eligible to receive payment from
25 the Medicare or Medicaid program or an out-of-state facility accredited by a nationally
26 recognized health care organization accrediting body whose standards for accreditation
27 meet or exceed the requirements for a health care facility to be eligible to receive
28 payment from the Medicare or Medicaid program pursuant to the Maine Revised Statutes,
29 Title 15, section 101-D and section 103, including, to the extent permitted by state and
30 federal laws, the names of any patients and the location, timeline and reason for their
31 placement;

32 2. The status of the Department of Health and Human Services' development of a
33 unit separate from the Riverview Psychiatric Center that will provide the least restrictive
34 setting possible for forensic patients in the custody of the Commissioner of Health and
35 Human Services who no longer need a hospital level of care;

36 3. The status of staffing levels at Riverview Psychiatric Center including data about
37 any vacancies among the direct care staff positions and licensed professional positions,
38 information about any recent hiring that has occurred or efforts that have been made to
39 fill any vacancies and information about any recent training provided to current or newly
40 hired staff members; and

41 4. Any recommendations, including proposed statutory changes, that the Department
42 of Health and Human Services determines to be necessary regarding the placement of
43 individuals in the custody of the Commissioner of Health and Human Services pursuant
44 to the Maine Revised Statutes, Title 15, section 101-D and section 103, the use of the

1 required new facility that is separate from the Riverview Psychiatric Center for forensic
2 patients in the custody of the Commissioner of Health and Human Services who no
3 longer need a hospital level of care and the staffing situation at Riverview Psychiatric
4 Center.'

5 **SUMMARY**

6 This amendment, which is the majority report of the committee, strikes the language
7 in the bill and replaces it with the following provisions.

8 1. For individuals in the custody of the Commissioner of Health and Human Services
9 pursuant to the Maine Revised Statutes, Title 15, section 101-D and section 103,
10 placements must be made in the following priority:

11 A. In the State at a state-owned hospital;

12 B. In the State at another facility accredited by a nationally recognized health care
13 organization accrediting body whose standards for accreditation meet or exceed the
14 requirements for a health care facility to be eligible to receive payment from the
15 Medicare or Medicaid program;

16 C. Outside the State at a facility accredited by a nationally recognized health care
17 organization accrediting body whose standards for accreditation meet or exceed the
18 requirements for a health care facility to be eligible to receive payment from the
19 Medicare or Medicaid program.

20 2. By December 31, 2016, the Department of Health and Human Services is required
21 to develop a facility separate from the Riverview Psychiatric Center that will provide the
22 least restrictive setting possible for forensic patients in the custody of the Commissioner
23 of Health and Human Services and for whom the Department of Health and Human
24 Services has verified a hospital level of care is no longer needed.

25 3. By August 1, 2016, and at least every 90 days thereafter, the Department of Health
26 and Human Services is required to submit a written report to the joint standing committee
27 of the Legislature having jurisdiction over matters concerning the State's psychiatric
28 hospitals that includes the following information:

29 A. The status of any forensic patients who have been placed by the Commissioner of
30 Health and Human Services at an in-state facility accredited by a nationally
31 recognized health care organization accrediting body whose standards for
32 accreditation meet or exceed the requirements for a health care facility to be eligible
33 to receive payment from the Medicare or Medicaid program or an out-of-state facility
34 accredited by a nationally recognized health care organization accrediting body
35 whose standards for accreditation meet or exceed the requirements for a health care
36 facility to be eligible to receive payment from the Medicare or Medicaid program
37 pursuant to Title 15, section 101-D and section 103, including, as permitted by law,
38 the names of any patients and the location, timeline and reason for their placement;

39 B. The status of the Department of Health and Human Services' development of a
40 unit separate from the Riverview Psychiatric Center that will provide the least
41 restrictive setting possible for forensic patients in the custody of the Commissioner of
42 Health and Human Services who no longer need a hospital level of care;

- 1 C. The status of staffing levels at Riverview Psychiatric Center, including data about
- 2 any vacancies among the direct care staff positions and licensed professional
- 3 positions, information about any recent hiring that has occurred or efforts that have
- 4 been made to fill any vacancies and information about any recent training provided to
- 5 current or newly hired staff members; and
- 6 D. Any recommendations, including proposed statutory changes, that the Department
- 7 of Health and Human Services determines to be necessary regarding the placement of
- 8 individuals in the custody of the Commissioner of Health and Human Services
- 9 pursuant to Title 15, section 101-D and section 103, the use of the required new
- 10 facility that is separate from the Riverview Psychiatric Center for forensic patients in
- 11 the custody of the Commissioner of Health and Human Services who no longer need
- 12 a hospital level of care and the staffing situation at Riverview Psychiatric Center.