

STATE OF MAINE

 IN THE YEAR OF OUR LORD

TWO THOUSAND AND THIRTEEN

 H.P. 883 - L.D. 1249

**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**

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

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

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 intellectual disabilities 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 intellectual disabilities or autism, including reports developed by or on behalf of the department and reports prepared by others about the department.

B. ~~The advocacy agency designated pursuant to Title 5, section 19502, or 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 an alleged dehumanizing practice or violation of rights of a person with intellectual disabilities 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.

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

2. Duties. The department shall contract with the agency to: perform the following duties statewide in at least 5 geographically dispersed locations.

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

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

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

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

E. ~~Refer~~ The agency may refer individuals with intellectual disabilities 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~~ The agency shall act as an information source regarding the rights of all individuals with intellectual disabilities 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, intellectual disabilities and autism, both in this State and in other parts of the country; ~~and.~~

G. ~~Make~~ The agency may make and publish reports necessary to the performance of the duties described in this section. The agency may report its findings to groups outside the department, such as legislative bodies, advisory committees, commissions, law enforcement agencies and the press. At least annually, the agency shall report both in person and in writing to the joint standing committee of the

Legislature having jurisdiction over health and human services matters and the department regarding the performance of the duties described in this section.

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

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

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

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

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

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

5. Confidentiality. ~~Requests for~~ The following provisions govern confidentiality are treated as follows.

A. Any request by or on behalf of an individual with intellectual disabilities or autism for action by the agency 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.

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

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

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

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

- (1) On the recommendation of the person's personal planning team;
- (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 a representative from the department, a representative from the advocacy agency designated pursuant to Title 5, section 19502 and a representative designated by the Maine Developmental Services Oversight and Advisory Board. The advocacy agency representative serves as a nonvoting member of the review team and shall be present to advocate on behalf of the person. The department shall provide sufficient advance notice of all scheduled review team meetings to the advocacy agency and provide the advocacy agency with any plans for which approval is sought along with any supporting documentation; 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 a representative from the advocacy agency designated pursuant to Title 5, section 19502, a team leader of the department's children's services division and the children's services medical director or the director's designee. The advocacy agency representative serves as a nonvoting member of the review team and shall be present to advocate on behalf of the person. The department shall provide sufficient advance notice of all scheduled review team meetings to the advocacy agency and provide the advocacy agency with any plans for which approval is sought along with any supporting documentation. 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.

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

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

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

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

to another agency or entity and collaborate with that agency or entity for the purpose of advocating for the rights and dignity of that individual.

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

§5611. Complaints

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

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

2. Complaints arising in community. A complaint arising in the community must be addressed to the executive director of the provider agency.

3. Response to be provided within 5 business days. A formal written response, including a statement of the remedial action to be taken, if any, must be provided to the complainant within 5 business days of receipt by the person listed in subsection 2.

4. Decision appealable to director. A decision described in subsection 3 is appealable within 5 business days to the director of the department's office of aging and disability services or the director's designee, who shall provide a formal written response, including a statement of the remedial action to be taken, if any, to the complainant within 5 business days.

5. Decision appealable to commissioner. A decision of the director or the director's designee pursuant to subsection 4 is appealable within 5 business days to the commissioner, who shall provide a formal written response, including a statement of the remedial action to be taken, if any, to the complainant within 5 business days. This written response constitutes the department's final agency action on the matter.