

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

H.P. 404 - L.D. 559

**An Act To Improve the Rights and Basic Protections of Persons with
Acquired Brain Injuries**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, each person with an acquired brain injury is entitled to the same rights enjoyed by other citizens of the State and the United States; and

Whereas, the Department of Health and Human Services has adopted rules regarding the rights and basic protections of persons who receive adult mental health services and adult developmental services and children who receive behavioral health services but has not adopted rules regarding the rights and basic protections of adults with acquired brain injuries; and

Whereas, this legislation must take effect before the expiration of the 90-day period so that a study regarding the rights and basic protections of persons with acquired brain injuries may be completed and a report submitted in time for submission to the next legislative session; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. A-1. 22-A MRSA §101, sub-§1-B is enacted to read:

1-B. Acquired brain injury. "Acquired brain injury" has the same meaning as in Title 22, section 3086, subsection 1.

Sec. A-2. 22-A MRSA §206, sub-§4, as amended by PL 2011, c. 542, Pt. A, §51, is further amended to read:

4. Grievance procedures. The commissioner shall establish procedures for hearing grievances of clients who receive mental health services or adult developmental services ~~or~~ of children who receive behavioral health services or of adults who receive acquired brain injury services. The procedures must include the opportunity for a timely hearing before a state hearing examiner or an independent fair hearing examiner. The commissioner may contract for the services of the hearing examiner, who shall conduct adjudicatory proceedings pursuant to the Maine Administrative Procedure Act.

Sec. A-3. 34-B MRSA c. 5, sub-c. 4, headnote, is amended to read:

SUBCHAPTER 4

RIGHTS OF PERSONS WITH INTELLECTUAL DISABILITIES ~~OR~~ AUTISM OR ACQUIRED BRAIN INJURY

Sec. A-4. 34-B MRSA §5601, sub-§1-D is enacted to read:

1-D. Acquired brain injury. "Acquired brain injury" has the same meaning as in Title 22, section 3086, subsection 1.

Sec. A-5. 34-B MRSA §5602, as amended by PL 2011, c. 542, Pt. A, §125, is further amended to read:

§5602. Purpose

It is the intent of the Legislature to guarantee individual dignity, liberty, pursuit of happiness and the protection of the civil and legal rights of persons with intellectual disabilities ~~or~~ autism or acquired brain injuries and to articulate rights of persons with intellectual disabilities ~~or~~ autism or acquired brain injuries, so that these rights may be exercised and protected.

Sec. A-6. 34-B MRSA §5603, as amended by PL 2011, c. 542, Pt. A, §126, is further amended to read:

§5603. Entitlement

Each person with an intellectual disability ~~or~~ autism or an acquired brain injury is entitled to the rights enjoyed by citizens of the State and of the United States, unless some of these rights have been limited or suspended by a court of competent jurisdiction.

1. Person committed to the commissioner. The rights and basic protections set out in section 5605 of a person with an intellectual disability ~~or~~ autism or an acquired brain injury who is committed to the commissioner as not criminally responsible pursuant to Title 15, section 103 or as incompetent to stand trial pursuant to Title 15, section 101-D may be limited or suspended only if the commissioner submits to the applicable court a written treatment plan that specifies each limitation of a right or basic protection and the treatment plan has been approved by the court.

Sec. A-7. 34-B MRSA §5604, first ¶, as amended by PL 2011, c. 542, Pt. A, §127, is further amended to read:

The Legislature finds and declares that the rights of persons with intellectual disabilities ~~or~~ autism or acquired brain injuries 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:

Sec. A-8. 34-B MRSA §5604, sub-§3, as amended by PL 2011, c. 657, Pt. EE, §7, is further amended to read:

3. Grievance right. Providing a person with an intellectual disability ~~or~~, autism or an acquired brain injury 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 Title 22-A, section 206, 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 intellectual disabilities ~~or~~, autism or acquired brain injuries 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 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 an intellectual disability ~~or~~, autism or an acquired brain injury 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.

Sec. A-9. 34-B MRSA §5604, 2nd ¶, as amended by PL 2011, c. 542, Pt. A, §127, is further amended to read:

The rights and basic protections of a person with an intellectual disability ~~or~~, autism or an acquired brain injury under section 5605 may not be restricted or waived by that person's guardian, except as permitted by rules adopted pursuant to this section.

Sec. A-10. 34-B MRSA §5605, as amended by PL 2013, c. 500, §1, is further amended by amending the section headnote to read:

§5605. Rights and basic protections of a person with an intellectual disability ~~or~~, autism or an acquired brain injury

Sec. A-11. 34-B MRSA §5605, first ¶, as amended by PL 2011, c. 542, Pt. A, §129, is further amended to read:

A person with an intellectual disability or autism is entitled to the following rights and basic protections. A person with an acquired brain injury is entitled to the rights and basic protections outlined in subsections 1 to 11.

Sec. A-12. 34-B MRSA §5605, sub-§1, as amended by PL 2011, c. 542, Pt. A, §129, is further amended to read:

1. Humane treatment. A person with an intellectual disability ~~or~~, autism or an acquired brain injury is entitled to dignity, privacy and humane treatment.

Sec. A-13. 34-B MRSA §5605, sub-§2, as amended by PL 2011, c. 542, Pt. A, §129, is further amended to read:

2. Practice of religion. A person with an intellectual disability ~~or~~, autism or an acquired brain injury is entitled to religious freedom and practice without any restriction or forced infringement on that person's right to religious preference and practice.

Sec. A-14. 34-B MRSA §5605, sub-§3, as amended by PL 2011, c. 542, Pt. A, §129, is further amended to read:

3. Communications. A person with an intellectual disability ~~or~~, autism or an acquired brain injury is entitled to private communications.

A. A person with an intellectual disability ~~or~~, autism or an acquired brain injury is entitled to receive, send and mail sealed, unopened correspondence. A person who is a provider may not delay, hold or censor any incoming or outgoing correspondence of any person with an intellectual disability ~~or~~, autism or an acquired brain injury, nor may any such correspondence be opened without the consent of the person or the person's legal guardian.

B. A person with an intellectual disability ~~or~~, autism or an acquired brain injury is entitled to reasonable opportunities for telephone and Internet communication.

C. A person with an intellectual disability ~~or~~, autism or an acquired brain injury is entitled to an unrestricted right to visitations during reasonable hours unless this right has been restricted pursuant to rules adopted pursuant to section 5604.

Sec. A-15. 34-B MRSA §5605, sub-§4, as amended by PL 2011, c. 542, Pt. A, §129, is further amended to read:

4. Work. A person with an intellectual disability ~~or~~, autism or an acquired brain injury engaged in work programs that require compliance with state and federal wage and hour laws is entitled to fair compensation for labor in compliance with regulations of the United States Department of Labor.

Sec. A-16. 34-B MRSA §5605, sub-§5, as amended by PL 2011, c. 542, Pt. A, §129, is further amended to read:

5. Vote. A person with an intellectual disability ~~or~~, autism or an acquired brain injury may not be denied the right to vote.

Sec. A-17. 34-B MRSA §5605, sub-§6, as amended by PL 2011, c. 542, Pt. A, §129, is further amended to read:

6. Personal property. A person with an intellectual disability ~~or~~, autism or an acquired brain injury is entitled to the possession and use of that person's own clothing, personal effects and money, except when temporary custody of clothing or personal effects by a provider is necessary to protect the person or others from imminent injury or unless this right has been restricted pursuant to rules adopted pursuant to section 5604.

Sec. A-18. 34-B MRSA §5605, sub-§7, as amended by PL 2011, c. 542, Pt. A, §129, is further amended to read:

7. Nutrition. A person with an intellectual disability ~~or~~, autism or an acquired brain injury is entitled to nutritious food in adequate quantities and meals may not be withheld for disciplinary reasons.

Sec. A-19. 34-B MRSA §5605, sub-§8, as amended by PL 2011, c. 542, Pt. A, §129, is further amended to read:

8. Medical care. A person with an intellectual disability ~~or~~, autism or an acquired brain injury is entitled to receive prompt and appropriate medical and dental treatment and care for physical and mental ailments and for the prevention of any illness or disability, and medical treatment must be consistent with the accepted standards of medical practice in the community, unless the religion of the person with an intellectual disability ~~or~~, autism or an acquired brain injury so prohibits.

- A. Medication may be administered only at the written order of a physician.
- B. Medication may not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan or in unnecessary or excessive quantities.
- C. Daily notation of medication received by each person with an intellectual disability ~~or~~, autism or an acquired brain injury must be kept in the records of the person with an intellectual disability ~~or~~, autism or an acquired brain injury.
- D. Periodically, but no less frequently than every 6 months, the drug regimen of each person with an intellectual disability ~~or~~, autism or an acquired brain injury must be reviewed by a physician or other appropriate monitoring body, consistent with appropriate standards of medical practice.
- E. All prescriptions must have a termination date.

G. Prior to instituting a plan of experimental medical treatment or carrying out any surgical procedure, express and informed consent must be obtained from the person with an intellectual disability ~~or~~, autism or an acquired brain injury, unless the person has been found to be legally incompetent, in which case the person's guardian may consent.

(1) Before making a treatment or surgical decision, the person must be given information, including, but not limited to, the nature and consequences of the procedures, the risks, benefits and purposes of the procedures and the availability of alternate procedures.

(2) The person or, if legally incompetent, that person's guardian may withdraw express and informed consent at any time, with or without cause, before treatment or surgery.

H. Notwithstanding the absence of express and informed consent, emergency medical care or treatment may be provided to any person with an intellectual disability ~~or~~, autism or an acquired brain injury who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency medical care or treatment would endanger the health of the person.

I. Notwithstanding the absence of express and informed consent, emergency surgical procedures may be provided to any person with an intellectual disability ~~or~~, autism or an acquired brain injury who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency surgery would substantially endanger the health of the person.

Sec. A-20. 34-B MRSA §5605, sub-§9, as amended by PL 2011, c. 542, Pt. A, §129, is further amended to read:

9. Sterilization. A person with an intellectual disability ~~or~~, autism or an acquired brain injury may not be sterilized, except in accordance with chapter 7.

Sec. A-21. 34-B MRSA §5605, sub-§10, as amended by PL 2011, c. 542, Pt. A, §129, is further amended to read:

10. Social activity. A person with an intellectual disability ~~or~~, autism or an acquired brain injury is entitled to opportunities for behavioral and leisure time activities that include social interaction in the community, as set out in section 5610. This right may be waived or restricted only under the rules adopted pursuant to section 5604 or pursuant to a treatment plan approved pursuant to section 5603, subsection 1.

Sec. A-22. 34-B MRSA §5605, sub-§11, as amended by PL 2011, c. 542, Pt. A, §129, is further amended to read:

11. Physical exercise. A person with an intellectual disability ~~or~~, autism or an acquired brain injury is entitled to opportunities for appropriate physical exercise, including the use of available indoor and outdoor facilities and equipment.

Sec. A-23. 34-B MRSA §5610, as amended by PL 2011, c. 542, Pt. A, §131, is further amended to read:

§5610. Service delivery

1. Guiding service delivery. The delivery of services by providers of services and the department to persons with intellectual disabilities ~~and~~, autism or acquired brain injuries is guided by the following.

A. Persons with intellectual disabilities ~~or~~, autism or acquired brain injuries 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 intellectual disabilities ~~and~~, autism or acquired brain injuries 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.

PART B

Sec. B-1. Task force. The Commissioner of Health and Human Services, referred to in this Part as "the commissioner," shall convene a task force to develop and make recommendations on rules and procedures regarding the rights and basic protections of persons with acquired brain injuries, referred to in this Part as "the task force."

Sec. B-2. Composition. The task force must consist of:

1. Experts in the field of acquired brain injury;
2. Providers of services to persons with acquired brain injuries;
3. Persons with acquired brain injuries;
4. Family members of persons with acquired brain injuries;
5. Advocates for persons with acquired brain injuries; and
6. Representatives of the Acquired Brain Injury Advisory Council established under the Maine Revised Statutes, Title 34-B, section 19001.

Sec. B-3. Duties. The task force shall recommend:

1. Rules regarding the rights and basic protections of persons with acquired brain injuries;
2. Procedures for the annual instruction for persons receiving brain injury services, provider staff and others on the rights and basic protections of persons with acquired brain injuries;
3. Procedures for hearing grievances of persons with acquired brain injuries; and
4. Procedures for the filing and resolution of complaints regarding the brain injury service system for persons with acquired brain injuries.

Sec. B-4. Report. The commissioner shall report the findings and recommendations of the task force to the Joint Standing Committee on Health and Human Services by January 2, 2022. The Joint Standing Committee on Health and Human Services may report out legislation to the Second Regular Session of the 130th Legislature related to the report.

Sec. B-5. Staff assistance. The Department of Health and Human Services shall provide necessary staffing services to the task force.

PART C

Sec. C-1. Rulemaking. The Department of Health and Human Services, by July 1, 2022, shall adopt rules regarding this Act, including, but not limited to: the rights and basic protections of persons with acquired brain injuries; procedures for the annual instruction for persons receiving brain injury services, service provider staff and others on the rights and basic protections of persons with acquired brain injuries; procedures for hearing grievances of persons with acquired brain injuries; and procedures for the filing and resolution of complaints regarding acquired brain injury services for persons with acquired brain injuries. The department shall consider the recommendations of the task force established in Part B in its adoption of rules under this section. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A and are adopted in accordance with the department's rule-making authority under Titles 22, 22-A and 34-B, including, but not limited to, Title 22, section 3089, subsection 3; Title 22-A, section 205, subsection 2; Title 22-A, section 206, subsection 3; and Title 34-B, sections 5604 and 5605.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.