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S.P. 640

In Senate, March 6, 2012

**An Act To Implement the Recommendations of the Department of
Health and Human Services and the Maine Developmental
Disabilities Council Regarding Respectful Language**

(EMERGENCY)

Reported by Senator McCORMICK of Kennebec for the Joint Standing Committee on
Health and Human Services pursuant to Public Law 2011, chapter 186, Part B, section 3.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

1 dystrophy; paralysis; Parkinson's disease; pervasive developmental disorders;
2 rheumatoid arthritis; schizophrenia; and acquired brain injury;

3 **Sec. A-4. 5 MRSA §12004-I, sub-§66**, as amended by PL 2003, c. 417, §1 and
4 affected by §4, is further amended to read:

5 **66.**
6 Mental Health and Maine Expenses Only 34-B MRSA §17001
7 ~~Mental~~ Developmental
8 ~~Retardation~~ Disabilities Council
9 Intellectual
10 Disability

11 **Sec. A-5. 5 MRSA §12004-J, sub-§15**, as enacted by PL 2007, c. 356, §3 and
12 affected by c. 695, Pt. D, §3, is amended to read:

13 **15.**
14 Mental Health and Maine Per diem for 34-B MRSA §1223
15 ~~Mental~~ Developmental noncompensated
16 ~~Retardation~~ Services Oversight members, as
17 Intellectual and Advisory Board specified by board
18 Disability rule or policy, and
19 expenses for all
20 members of the
21 board

22 **Sec. A-6. 5 MRSA §20005, sub-§6**, as amended by PL 2007, c. 116, §§3 and 4,
23 is further amended to read:

- 24 **6. Contracts and licensing.** Through the director:
- 25 A. Administer all contracts with community service providers for the delivery of
26 alcohol and drug abuse services;
- 27 A-1. Administer all contracts with community service providers for the delivery of
28 gambling addiction counseling services; and
- 29 B. Establish operating and treatment standards and inspect and issue certificates of
30 approval for approved treatment facilities, drug abuse treatment facilities or
31 programs, including residential treatment centers, community-based service providers
32 and facilities that are private nonmedical institutions pursuant to section 20024 and
33 subchapter 5.

34 The commissioner may delegate contract and licensing duties under this subsection to the
35 Department of Health and Human Services, the Department of Corrections or other
36 divisions of the department as long as that delegation ensures that contracting for alcohol
37 and other drug abuse services provided in community settings are consolidated within the
38 Department of Health and Human Services, that contracting for alcohol and other drug
39 abuse services delivered within correctional facilities are consolidated within the

1 Department of Corrections and that contracting for alcohol and other drug abuse services
2 delivered within ~~mental health and mental retardation~~ facilities or as a component of
3 programs serving persons with intellectual disabilities or autism are consolidated within
4 the department.

5 The commissioner may not delegate contract and licensing duties if that delegation results
6 in increased administrative costs.

7 The commissioner may not issue requests for proposals for existing contract services until
8 the commissioner has adopted rules in accordance with the Maine Administrative
9 Procedure Act to ensure that the reasons for which existing services are placed out for bid
10 and the performance standards and manner in which compliance is evaluated are
11 specified and that any change in provider is accomplished in a manner that fully protects
12 the consumer of services.

13 The commissioner shall establish a procedure to obtain assistance and advice from
14 consumers of alcohol and other drug abuse services regarding the selection of contractors
15 when requests for proposals are issued;

16 **Sec. A-7. 12 MRSA §10853, sub-§7, ¶A,** as repealed and replaced by PL 2005,
17 c. 397, Pt. C, §10, is amended to read:

18 A. Clients of the Department of Health and Human Services who reside in licensed
19 facilities for persons with ~~mental retardation~~ intellectual disabilities or autism or
20 licensed facilities for the treatment of mental illness;

21 **Sec. A-8. 15 MRSA §101-D, sub-§4,** as enacted by PL 2009, c. 268, §3, is
22 amended to read:

23 **4. Commitment for observation.** The court may commit the defendant to the
24 custody of the Commissioner of Health and Human Services for placement in an
25 appropriate institution for the care and treatment of people with mental illness or ~~mental~~
26 ~~retardation~~ in an appropriate residential program that provides care and treatment for
27 persons who have intellectual disabilities or autism, as set forth in this subsection.

28 A. If the State Forensic Service determines that observation of the defendant in an
29 appropriate institution for the care of people with mental illness or ~~mental retardation~~
30 in an appropriate residential program that provides care and treatment for persons
31 who have intellectual disabilities or autism will materially enhance its ability to
32 perform an evaluation ordered pursuant to subsection 1, 2, 3 or 9, the State Forensic
33 Service shall so advise the court. The State Forensic Service may make this
34 determination based upon consultation with the defendant's attorney and the attorney
35 for the State and the court and upon such other information as it determines
36 appropriate. In addition, the State Forensic Service may include such a determination
37 in a report to the court that recommends further evaluation of the defendant.

38 B. Upon a determination by the State Forensic Service under paragraph A, a court
39 having jurisdiction in a criminal case may commit the defendant to the custody of the
40 Commissioner of Health and Human Services for placement in an appropriate
41 institution for the care and treatment of people with mental illness or ~~mental~~
42 ~~retardation~~ in an appropriate residential program that provides care and treatment for

1 persons who have intellectual disabilities or autism for observation for a period not to
2 exceed 60 days. If the State Forensic Service requires additional time for
3 observation, it shall communicate its request and the reasons for that request to the
4 court and to counsel for the parties. The court shall accommodate a party's request to
5 be heard on the issue of whether an extension should be granted and may extend the
6 commitment for up to an additional 90 days. Unless the defendant objects, an order
7 under this paragraph must authorize the institution or residential program where the
8 defendant is placed by the Commissioner of Health and Human Services to provide
9 treatment to the defendant. When further observation of the defendant is determined
10 no longer necessary by the State Forensic Service, the commissioner shall report that
11 determination to the court and the court shall terminate the commitment.

12 C. If the court has provided for remand to a correctional facility following the
13 commitment under paragraph B, the correctional facility shall execute the remand
14 order upon advice from the Commissioner of Health and Human Services that
15 commitment is determined no longer necessary.

16 **Sec. A-9. 15 MRSA §101-D, sub-§5, ¶A**, as amended by PL 2011, c. 464, §1, is
17 further amended to read:

18 A. Commit the defendant to the custody of the Commissioner of Health and Human
19 Services to be placed in an appropriate institution for the care and treatment of people
20 with mental illness or ~~mental retardation~~ in an appropriate residential program that
21 provides care and treatment for persons who have intellectual disabilities or autism
22 for observation, care and treatment. At the end of 30 days or sooner, and again in the
23 event of recommitment, at the end of 60 days and one year, the State Forensic Service
24 shall forward a report to the Commissioner of Health and Human Services relative to
25 the defendant's competence to stand trial and its reasons. The Commissioner of
26 Health and Human Services shall without delay file the report with the court having
27 jurisdiction of the case. The court shall without delay set a date for and hold a
28 hearing on the question of the defendant's competence to stand trial and receive all
29 relevant testimony bearing on the question. If the court determines that the defendant
30 is not competent to stand trial, but there does exist a substantial probability that the
31 defendant will be competent to stand trial in the foreseeable future, the court shall
32 recommit the defendant to the custody of the Commissioner of Health and Human
33 Services to be placed in an appropriate institution for the care and treatment of people
34 with mental illness or ~~mental retardation~~ in an appropriate residential program that
35 provides care and treatment for persons who have intellectual disabilities or autism
36 for observation, care and treatment. When a person who has been evaluated on
37 behalf of the court by the State Forensic Service is committed into the custody of the
38 Commissioner of Health and Human Services under this paragraph, the court shall
39 order that the State Forensic Service share any information that it has collected or
40 generated with respect to the person with the institution or residential program in
41 which the person is placed. If the defendant is charged with an offense under Title
42 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court
43 determines that the defendant is not competent to stand trial and there does not exist a
44 substantial probability that the defendant can be competent in the foreseeable future,
45 the court shall dismiss all charges against the defendant and, unless the defendant is
46 subject to an undischarged term of imprisonment, order the Commissioner of Health

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

12 **Sec. A-10. 15 MRSA §103, first ¶**, as amended by PL 2009, c. 268, §4, is further
13 amended to read:

14 When a court accepts a negotiated plea of not criminally responsible by reason of
15 insanity or when a defendant is found not criminally responsible by reason of insanity by
16 jury verdict or court finding, the judgment must so state. In those cases the court shall
17 order the person committed to the custody of the Commissioner of Health and Human
18 Services to be placed in an appropriate institution for the care and treatment of persons
19 with mental illness or ~~mental retardation~~ in an appropriate residential program that
20 provides care and treatment for persons who have intellectual disabilities or autism for
21 care and treatment. Upon placement in the appropriate institution or residential program
22 and in the event of transfer from one institution or residential program to another of
23 persons committed under this section, notice of the placement or transfer must be given
24 by the commissioner to the committing court.

25 **Sec. A-11. 17-A MRSA §253, sub-§2, ¶J**, as amended by PL 2011, c. 423, §2,
26 is further amended to read:

27 J. The actor owns, operates or is an employee of an organization, program or
28 residence that is operated, administered, licensed or funded by the Department of
29 Health and Human Services and the other person, not the actor's spouse, receives
30 services from the organization, program or residence and the organization, program
31 or residence recognizes the other person as a person with ~~mental retardation~~ an
32 intellectual disability or autism. It is an affirmative defense to prosecution under this
33 paragraph that the actor receives services for ~~mental retardation~~ an intellectual
34 disability or autism or is a person with ~~mental retardation~~ an intellectual disability, as
35 defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B,
36 section 6002. Violation of this paragraph is a Class C crime;

37 **Sec. A-12. 17-A MRSA §255-A, sub-§1, ¶¶Q and R**, as corrected by RR
38 2003, c. 2, §26, are amended to read:

39 Q. The actor owns, operates or is an employee of an organization, program or
40 residence that is operated, administered, licensed or funded by the Department of
41 Health and Human Services and the other person, not the actor's spouse, receives
42 services from the organization, program or residence and the organization, program
43 or residence recognizes that other person as a person with ~~mental retardation~~ an

1 intellectual disability or autism. It is an affirmative defense to prosecution under this
2 paragraph that the actor receives services for ~~mental retardation~~ an intellectual
3 disability or autism or is a person with ~~mental retardation~~ an intellectual disability, as
4 defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B,
5 section 6002. Violation of this paragraph is a Class D crime;

6 R. The actor owns, operates or is an employee of an organization, program or
7 residence that is operated, administered, licensed or funded by the Department of
8 Health and Human Services and the other person, not the actor's spouse, receives
9 services from the organization, program or residence and the organization, program
10 or residence recognizes that other person as a person with ~~mental retardation~~ an
11 intellectual disability or autism and the sexual contact includes penetration. It is an
12 affirmative defense to prosecution under this paragraph that the actor receives
13 services for ~~mental retardation~~ an intellectual disability or autism or is a person with
14 ~~mental retardation~~ an intellectual disability, as defined in Title 34-B, section 5001,
15 subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this
16 paragraph is a Class C crime;

17 **Sec. A-13. 17-A MRSA §260, sub-§1, ¶I**, as amended by PL 2005, c. 450, §3, is
18 further amended to read:

19 I. The actor owns, operates or is an employee of an organization, program or
20 residence that is operated, administered, licensed or funded by the Department of
21 Health and Human Services and the other person, not the actor's spouse, receives
22 services from the organization, program or residence and the organization, program
23 or residence recognizes that other person as a person with ~~mental retardation~~ an
24 intellectual disability or autism. It is an affirmative defense to prosecution under this
25 paragraph that the actor receives services for ~~mental retardation~~ an intellectual
26 disability or autism or is a person with ~~mental retardation~~ an intellectual disability, as
27 defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B,
28 section 6002. Violation of this paragraph is a Class D crime;

29 **Sec. A-14. 18-A MRSA §5-601, sub-§(a)**, as enacted by PL 1979, c. 540, §1, is
30 amended to read:

31 (a). In any case in which a guardian or conservator may be appointed by the court
32 under this Article, the court may appoint a public guardian or conservator as provided in
33 this Part for ~~persons who are mentally retarded and for~~ incapacitated persons as defined in
34 section 5-101, ~~paragraph~~ subsection (1); who are in need of protective services.

35 **Sec. A-15. 18-A MRSA §5-601, sub-§(b)**, as amended by PL 2005, c. 397, Pt.
36 A, §12, is further amended to read:

37 (b). The Department of Health and Human Services shall act as the public guardian
38 or conservator for ~~persons with mental retardation and for other~~ incapacitated persons in
39 need of protective services.

40 **Sec. A-16. 18-A MRSA §5-606**, as corrected by RR 2003, c. 2, §29 and amended
41 by PL 2003, c. 689, Pt. B, §§6 and 7, is further amended to read:

1 **§5-606. Officials authorized to act as public guardian or conservator**

2 ~~(a). When the Department of Health and Human Services is appointed public~~
3 ~~guardian or conservator of a person with mental retardation, the authority of the public~~
4 ~~guardian or conservator must be exercised by the Commissioner of Health and Human~~
5 ~~Services and by any persons duly delegated by the commissioner to exercise such~~
6 ~~authority.~~

7 (b). When the Department of Health and Human Services is appointed public
8 guardian or conservator of an incapacitated person, the authority of the public guardian or
9 conservator ~~shall~~ must be exercised by the Commissioner of Health and Human Services
10 and by any persons duly delegated by ~~him~~ the commissioner to exercise such authority.

11 (c). Persons duly delegated by the officials authorized to act under ~~subsections (a)~~
12 ~~and subsection (b)~~ may include a staff of competent social workers, or competent social
13 workers assigned to the public guardian or conservator by the Department of Health and
14 Human Services. In the event that the delegation is to an individual, such individual must
15 be qualified therefor by reason of education or experience, or both, in administering to the
16 needs of the individual or individuals over whom the individual is to exercise
17 administrative or supervisory authority under the public guardian.

18 **Sec. A-17. 18-A MRSA §5-608**, as amended by PL 1995, c. 395, Pt. G, §6 and
19 affected by §20, is repealed.

20 **Sec. A-18. 18-A MRSA §5-609**, as enacted by PL 1979, c. 540, §1, is amended to
21 read:

22 **§5-609. No change in rights to services**

23 The appointment of a public guardian or conservator in no way enlarges or
24 diminishes the ward's or protected person's right to services made available to all
25 ~~mentally retarded or~~ incapacitated persons in the State except for the provision of
26 guardianship or conservatorship services as provided under this Article.

27 **Sec. A-19. 18-A MRSA §5-613, sub-§(2)**, as amended by PL 1993, c. 410, Pt.
28 CCC, §6 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

29 (2). Exception. ~~The Division of Mental Retardation or the~~ Department of Health
30 and Human Services is not liable for the costs set out in subsection (1) if ~~the division or~~
31 the department can demonstrate that the allegedly incapacitated person has assets against
32 which the costs may be assessed or that another more appropriate funding source is
33 available and subject to the court's jurisdiction.

34 **Sec. A-20. 19-A MRSA §701, sub-§3**, as enacted by PL 1995, c. 694, Pt. B, §2
35 and affected by Pt. E, §2, is amended to read:

36 **3. Persons legally determined to be incapacitated under the law.** A person who
37 ~~is impaired by reason of mental illness or mental retardation to the extent that that person~~
38 ~~lacks sufficient understanding or capacity to make, communicate or implement~~
39 ~~responsible decisions concerning that person's property or person is not capable of~~

1 ~~contracting~~ has been found to be an incapacitated person, as defined in Title 18-A, section
2 5-101, subsection (1), by a court of competent jurisdiction and for whom a guardian or
3 limited guardian has been appointed may not contract marriage without the approval of
4 the appointed guardian. For the purposes of this section: For persons under limited
5 guardianship, this subsection applies only if the court has granted the specific power to
6 contract for marriage to the guardian.

7 A. ~~"Mental illness" means a psychiatric or other disease that substantially impairs a~~
8 ~~person's mental health; and~~

9 B. ~~"Mental retardation" means a condition of significantly subaverage intellectual~~
10 ~~functioning resulting in or associated with concurrent impairments in adaptive~~
11 ~~behavior and manifested during the developmental period.~~

12 **Sec. A-21. 20-A MRSA §7001, sub-§1-B, ¶B**, as enacted by PL 2005, c. 662,
13 Pt. A, §15, is amended to read:

14 B. For children at least 3 years of age and under 20 years of age evaluated in
15 accordance with the federal Individuals with Disabilities Education Act, 20 United
16 States Code, Section 1414, subsections (a) to (c) as measured by both standardized,
17 norm-referenced diagnostic instruments and appropriate procedures with delays or
18 impairments such that the children need special education:

19 (1) A child at least 3 years of age and under 6 years of age with a significant
20 developmental delay, at the discretion of the intermediate educational unit or
21 school administrative unit, as defined in rules adopted by the department, in one
22 or more of the following areas: cognitive development; physical development,
23 including vision and hearing; communication development; social or emotional
24 development; adaptive development; or

25 (2) A child with at least one of the following:

- 26 (a) ~~Mental retardation~~ Intellectual disability;
- 27 (b) Hearing impairment, including deafness;
- 28 (c) Speech or language impairment;
- 29 (d) Visual impairment, including blindness;
- 30 (e) Serious emotional disturbance;
- 31 (f) Orthopedic impairment;
- 32 (g) Autism;
- 33 (h) Traumatic brain injury;
- 34 (i) Other health impairment;
- 35 (j) Specific learning disabilities;
- 36 (k) Deafness and blindness; and
- 37 (l) Multiple disabilities.

1 **Sec. A-22. 20-A MRSA §7258, sub-§§1-A and 1-B**, as enacted by PL 1997, c.
2 778, §1 and amended by PL 2001, c. 354, §3 and PL 2003, c. 689, Pt. B, §6, are further
3 amended to read:

4 **1-A. Care manager.** Within 2 years before the date that a student with ~~mental~~
5 ~~retardation~~ an intellectual disability, serious emotional disturbance or other
6 developmental disabilities will graduate or finish school, the Department of Health and
7 Human Services, in consultation with the pupil evaluation team of the school
8 administrative unit, shall designate a case manager to participate in transition planning for
9 that student. The case manager shall convene an adult services transition team, ensure
10 interagency coordination and access to adult services, serve as a single contact person for
11 the student transitioning into the adult services and attend pupil evaluation team meetings
12 or provide relevant information to the pupil evaluation team for transition planning
13 purposes.

14 **1-B. Annual report.** Beginning January 1, 1999 and annually thereafter, the
15 department, in conjunction with the Department of Health and Human Services, shall
16 report to the joint standing committee of the Legislature having jurisdiction over health
17 and human services matters and to the joint standing committee of the Legislature having
18 jurisdiction over appropriations and financial affairs regarding transition planning for the
19 adult services system and the number of persons 16 years of age or older on waiting lists
20 for services for persons with autism or ~~mental retardation~~ intellectual disabilities provided
21 by or under the authority of the department and the Department of Health and Human
22 Services.

23 **Sec. A-23. 22 MRSA §1-A, sub-§3** is enacted to read:

24 **3. Intermediate care facility for persons with intellectual disabilities.**
25 "Intermediate care facility for persons with intellectual disabilities" has the same meaning
26 as in Title 34-B, section 1001, subsection 4-B.

27 **Sec. A-24. 22 MRSA §42, sub-§1-A**, as amended by PL 1983, c. 284, §1, is
28 further amended to read:

29 **1-A. Administration of medication.** The administration of medication in boarding
30 care facilities, drug treatment centers, day care facilities, children's homes and nursery
31 schools and group home intermediate care facilities for ~~the mentally retarded shall~~
32 persons with intellectual disabilities must be in accordance with rules established by the
33 department. In other facilities licensed or approved by the department, excluding those
34 facilities licensed under section 1811, other than group home intermediate care facilities
35 for ~~the mentally retarded~~ persons with intellectual disabilities, the department may
36 establish rules for the administration of medication as it ~~deems~~ considers necessary. In
37 establishing rules for each type of facility, the department shall consider, among other
38 factors, the general health of the persons likely to receive medication, the number of
39 persons served by the facility and the number of persons employed at the facility who
40 might be involved in the administration of medication. Any rules for the administration
41 of medication ~~shall~~ must be established in accordance with ~~the Maine Administrative~~
42 ~~Procedure Act~~, Title 5, chapter 375.

1 **Sec. A-25. 22 MRSA §802, sub-§4-A, ¶A**, as enacted by PL 2001, c. 185, §2, is
2 amended to read:

3 A. "Designated health care facility" means a licensed nursing facility, residential care
4 facility, intermediate care facility for ~~the mentally retarded~~ persons with intellectual
5 disabilities, multi-level health care facility, hospital or home health agency.

6 **Sec. A-26. 22 MRSA §812, sub-§1, ¶G**, as amended by PL 2005, c. 383, §12, is
7 further amended to read:

8 G. Undergoing a comprehensive medical assessment by the State Forensic Service.
9 The court, in selecting the examination site, shall consider proximity to the court,
10 availability of an examiner and the need to protect the public health. No person may
11 be presented for examination under this subsection without arrangements for
12 examination having first been made by the court, clerk of the court or the petitioner
13 with the State Forensic Service. The opinion of the State Forensic Service must be
14 reported to the court forthwith following the examination.

15 The court shall order the individual to be further examined by a psychiatrist,
16 neurologist and any additional expert if, based on the report of the State Forensic
17 Service, it appears that:

18 (1) The individual suffers from a mental disease or defect that causes the
19 individual to act in such a manner as to endanger others with risk of infection
20 with a communicable disease; or

21 (2) Further observation or examination is required.

22 If, based on the examinations, the department determines that admission to an
23 appropriate institution for ~~the mentally ill~~ persons with mental illness or ~~mentally~~
24 ~~retarded~~ a residential program for persons with intellectual disabilities is necessary, it
25 shall petition for involuntary hospitalization pursuant to Title 34-B, chapter 3. If the
26 District Court orders the involuntary hospitalization of the individual pursuant to
27 Title 34-B, chapter 3, the petition brought pursuant to section 811 must be dismissed
28 without prejudice. If it is determined that admission to an appropriate institution for
29 ~~the mentally ill~~ persons with mental illness or ~~the mentally retarded~~ a residential
30 program for persons with intellectual disabilities is not necessary, the head of the
31 institution where the examinations have taken place shall notify the commissioner or
32 the commissioner's designee, prior to discharging the respondent.

33 In no event may the period of examination pursuant to this subsection exceed 60 days
34 without further order by the court, which may extend commitment for further
35 observation or examination for an additional 60 days, provided that the court finds
36 facts sufficient to show that the individual suffers from a mental disease or defect that
37 causes the individual to act in such a manner as to endanger others with risk of
38 infection with a communicable disease; and

39 **Sec. A-27. 22 MRSA §1714-A, sub-§1, ¶F**, as enacted by PL 1991, c. 9, Pt. G,
40 §4, is amended to read:

1 F. "Nursing home" means any facility that meets the definition of section 1812-A,
2 including an intermediate care facility for ~~the mentally retarded~~ persons with
3 intellectual disabilities.

4 **Sec. A-28. 22 MRSA §1812-B**, as amended by PL 1983, c. 284, §2, is further
5 amended to read:

6 **§1812-B. Hospitals and nursing homes**

7 The administration of medication in facilities licensed under section 1811, except
8 group home intermediate care facilities for ~~the mentally retarded~~ persons with intellectual
9 disabilities, may be delegated to unlicensed personnel when such personnel have received
10 appropriate training and instruction and the programs of training and instruction have
11 been approved by the State Board of Nursing. The administration of medication in group
12 home intermediate care facilities for ~~the mentally retarded~~ persons with intellectual
13 disabilities may be performed by unlicensed personnel when these personnel have
14 received appropriate training and instruction and the programs of training and instruction
15 have been approved by the department. Delegation of the administration of medication
16 ~~shall~~ does not require the personal presence of the delegating professional nurse at the
17 place where this service is performed, unless that personal presence is necessary to assure
18 that medications are safely administered. The board shall issue such rules concerning
19 delegation as it ~~deems~~ considers necessary to insure the highest quality of health care to
20 the patient. The department shall issue such rules as it ~~deems~~ considers necessary to
21 insure the highest quality of health care to residents of group home intermediate care
22 facilities for ~~the mentally retarded~~ persons with intellectual disabilities.

23 **Sec. A-29. 22 MRSA §1826, sub-§2, ¶B**, as enacted by PL 1985, c. 291, §1, is
24 amended to read:

25 B. Each contract or agreement ~~shall~~ must contain a complete copy of the department
26 rules establishing residents' rights and ~~shall~~ must contain a written acknowledgement
27 that the resident has been informed of those rights. ~~In the case of a mentally retarded~~
28 ~~or otherwise incompetent individual, the written acknowledgement of those rights~~
29 ~~shall be made by a representative of the resident~~ If a resident is under full
30 guardianship, there must be a written acknowledgement of the receipt of those rights
31 by the guardian. If a resident is under limited guardianship, both the resident and the
32 guardian must acknowledge receipt of the rights. All notices and information
33 regarding rights must be written in language that is plain and understandable. No
34 provision in the contract or agreement may negate, limit or otherwise modify any
35 provision of the residents' rights.

36 **Sec. A-30. 22 MRSA §2053, sub-§2-A**, as repealed and replaced by PL 1995, c.
37 179, §1, is amended to read:

38 **2-A. Community health or social service facility.** "Community health or social
39 service facility" means a community-based facility that provides medical or medically
40 related diagnostic or therapeutic services, mental health ~~or mental retardation~~ services,
41 services for persons with intellectual disabilities or autism, substance abuse services or
42 family counseling and domestic abuse intervention services; and is licensed by the State.

1 **Sec. A-31. 22 MRSA §3172-B, sub-§1**, as amended by PL 1981, c. 493, §2 and
2 PL 1995, c. 560, Pt. K, §82 and affected by §83 and amended by PL 2001, c. 354, §3 and
3 PL 2003, c. 689, Pt. B, §6, is further amended to read:

4 **1. Fund.** All ~~moneys~~ money received by the department under section 3172 ~~which~~
5 ~~are that is~~ generated by services rendered at any of the mental health ~~and mental~~
6 ~~retardation~~ institutions operated by that department ~~shall~~ must be credited to the General
7 Fund.

8 **Sec. A-32. 22 MRSA §3172-B, sub-§4**, as amended by PL 1979, c. 293, Pt. B,
9 §1, is further amended to read:

10 **4. Budget.** Those mental health programs and ~~mental retardation~~ those programs
11 providing services for persons with intellectual disabilities or autism receiving legislative
12 approval for funding for fiscal year 1979 ~~shall~~ must be considered current services by the
13 Bureau of the Budget.

14 **Sec. A-33. 22 MRSA §3174-I, sub-§2**, as amended by PL 1993, c. 410, Pt. FF,
15 §12, is further amended to read:

16 **2. Assessment for mental illness, intellectual disability, autism or related**
17 **conditions.** The department shall assess every applicant to a nursing facility to screen for
18 ~~mental retardation and~~ mental illness, intellectual disability, autism or other related
19 conditions in accordance with the ~~Federal Omnibus Budget Reconciliation Act of 1987,~~
20 ~~Public Law 100-203, Section 4211~~ federal Nursing Home Reform Act, Public Law 100-
21 203, Section 4211, 42 United States Code, Section 1396r. Such assessments are intended
22 to increase the probability that any individual who ~~is mentally retarded~~ has an intellectual
23 disability, autism or other related condition or ~~mentally ill~~ a mental illness will receive
24 active treatment for that individual's ~~mental~~ condition.

25 **Sec. A-34. 22 MRSA §3186, last ¶**, as enacted by PL 1987, c. 869, §1, is
26 amended to read:

27 Principles of reimbursement established for intermediate care facilities for ~~the~~
28 ~~mentally retarded~~ shall persons with intellectual disabilities must be amended to
29 implement the recommendations of the Advisory Committee on Staff Retention. ~~These~~
30 ~~amendments shall become effective on April 1, 1989.~~

31 **Sec. A-35. 22 MRSA §3187**, as amended by PL 2011, c. 380, Pt. XXX, §1, is
32 further amended to read:

33 **§3187. Principles of reimbursement; rules**

34 The department shall meet annually with providers of community-based intermediate
35 care facilities for ~~the mentally retarded~~ persons with intellectual disabilities to review
36 current principles of reimbursement under the federal Social Security Act, Title XIX, 42
37 United States Code, Chapter 7; and discuss necessary and appropriate changes.

1 Principles of reimbursement established for intermediate care facilities for ~~the~~
2 ~~mentally retarded~~ persons with intellectual disabilities must ensure maximum flexibility
3 enabling facilities to shift variable cost funds within accounts established pursuant to the
4 principles. These principles may not set any artificial limits on specific variable cost
5 accounts as long as facility totals are met.

6 Rules regarding principles of reimbursement for intermediate care facilities for ~~the~~
7 ~~mentally retarded~~ persons with intellectual disabilities adopted pursuant to section 3173
8 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A, except that
9 rules adopted to establish an approval process for capital expenditures to renovate or
10 construct intermediate care facilities for ~~the mentally retarded~~ persons with intellectual
11 disabilities are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

12 **Sec. A-36. 22 MRSA §3573, sub-§1, ¶B**, as enacted by PL 2003, c. 602, §1, is
13 amended to read:

14 B. "Mental and physical impairments" ~~include~~ includes, but ~~are~~ is not limited to, the
15 following conditions: ~~mental retardation~~ intellectual disability, autism, cerebral palsy,
16 Asperger syndrome, mental illness, Prader-Willi syndrome and epilepsy.

17 **Sec. A-37. 22 MRSA §5104, sub-§5-A**, as enacted by PL 1989, c. 329, §9, is
18 amended to read:

19 **5-A. Dependent adult.** "Dependent adult" means any adult who is wholly or
20 partially dependent upon one or more other persons for care or support, either emotional
21 or physical, and who would be in danger if that care or support were withdrawn. ~~For the~~
22 ~~purpose of this Part only, the term "dependent adult" excludes any adult who is mentally~~
23 ~~retarded.~~

24 **Sec. A-38. 22 MRSA §5104, sub-§7-A**, as enacted by PL 1989, c. 329, §12, is
25 amended to read:

26 **7-A. Incapacitated adult.** "Incapacitated adult" means any adult who is impaired
27 by reason of mental illness, mental deficiency, physical illness or disability to the extent
28 that the adult lacks sufficient understanding or capacity to make or communicate
29 responsible decisions concerning that individual's person, or to the extent the adult cannot
30 effectively manage or apply that individual's estate to necessary ends. ~~For the purpose of~~
31 ~~this Part only, the term "incapacitated adult" excludes any adult who is mentally retarded.~~

32 **Sec. A-39. 22 MRSA §5106, sub-§2, ¶E**, as amended by PL 1989, c. 329, §16,
33 is further amended to read:

34 E. Conducting a continuous evaluation of the impact, quality and value of facilities,
35 programs and services, including their administrative adequacy and capacity.
36 Activities operated by or with the assistance of the State and Federal Governments
37 ~~shall~~ must be evaluated. Activities to be included, but to which the bureau ~~shall~~ is not
38 ~~be~~ limited, are those relating to education, employment and vocational services,
39 income, health, housing, transportation, community, social, rehabilitation, protective
40 services and public guardianship or conservatorship for older people and
41 incapacitated and dependent adults and programs such as the supplemental security

1 income program, Medicare, Medicaid, property tax refunds and the setting of
2 standards for the licensing of nursing, intermediate care and boarding homes.
3 Included ~~shall be~~ are activities as authorized by this and so much of the several Acts
4 and amendments to them enacted by the people of the State; and those authorized by
5 United States Acts and amendments to them such as the:

- 6 (1) Elderly Householders Tax and Rent Refund Act of 1971;
- 7 (2) Priority Social Services Act of 1973;
- 8 (3) Chapter 470 of the public laws of 1969 creating the State Housing Authority;
- 9 (4) United States Social Security Act of 1935;
- 10 (5) United States Housing Act of 1937;
- 11 (6) United States Older Americans Act of 1965;
- 12 (7) United States Age Discrimination Act of 1967;
- 13 (8) Home Based Care Act of 1981;
- 14 (9) Congregate Housing Act of 1979;
- 15 (10) Adult Day Care Services Act of 1983;
- 16 (11) Adult Day Care Licensing Act of 1987;
- 17 (12) Adult Protective Services Act of 1981; ~~and~~
- 18 (13) The Uniform Probate Code, Title 18-A;
- 19 (14) The Americans with Disabilities Act of 1990;
- 20 (15) The Developmental Disabilities Assistance and Bill of Rights Act of 2000;
- 21 and
- 22 (16) The ADA Amendments Act of 2008;

23 **Sec. A-40. 22 MRSA §5106, sub-§11-B**, as amended by PL 2003, c. 653, §21, is
24 further amended to read:

25 **11-B. Adult protective services.** Administer a program of protective services as
26 provided in chapter 958-A designed to protect incapacitated and dependent adults, ~~other~~
27 ~~than adults who are mentally retarded~~, from abuse, neglect, exploitation and physical
28 danger. The program is described in the Adult Protective Services Act;

29 **Sec. A-41. 22 MRSA §5304, sub-§1-A** is enacted to read:

30 **1-A. Adult developmental services.** "Adult developmental services" has the same
31 meaning as in Title 34-B, section 1001, subsection 1-A.

32 **Sec. A-42. 22 MRSA §5310, sub-§9**, as enacted by PL 1973, c. 793, §12, is
33 amended to read:

34 **9.** Carry on a continuing evaluation of the social services programs and activities
35 affecting Maine's residents, to determine the needs and priorities for types of social

1 services; the types of services available; the number, location and characteristics of
2 people served by each type of service; the amount, type and source of resources
3 supporting types of services, the administrative adequacy and capacity of social service
4 agencies; and the quality and quantity of types of social services; as well as to determine
5 the value and impact of programs operated by or administered with the assistance of the
6 State and Federal Governments; including social services as authorized by this and the
7 several Acts and amendments to them enacted by the People of the State of Maine; and
8 those authorized by these United States Acts and amendments to them; the Social
9 Security Act of 1935, the Economic Opportunity Act of 1965, and similar Acts. Such
10 human services to be included, but to which the bureau ~~shall~~ is not ~~be~~ limited, are those
11 relating to education, employment and vocational services, income, health, housing,
12 community, mental health, ~~mental retardation~~ adult developmental, social, transportation
13 and rehabilitation services for people, except older people. Maintaining statistical
14 information through use of uniform methods, which are reasonable, feasible and
15 economically efficient, ~~shall~~ must be specified for use by public and private agencies,
16 organizations and individuals assisted by state or federal funds pursuant to this Part;

17 **Sec. A-43. 22 MRSA §6110, 4th ¶**, as repealed and replaced by PL 1975, c. 523,
18 §1, is amended to read:

19 Services for ~~the Mentally Retarded~~ Persons with Intellectual Disabilities or Autism;

20 **Sec. A-44. 22 MRSA §6111, sub-§4**, as amended by PL 1977, c. 317, §3, is
21 further amended to read:

22 **4. Maximum state share of cost.** State funds appropriated for priority social
23 services may be used to pay a portion of expenditures under each agreement for each type
24 of social service in an amount not to exceed the maximum percentage for state funds of
25 100% of the total expenditures for each type of priority social service as specified below.
26 One hundred percent funding ~~shall~~ must be available for not more than 2 years
27 consecutively or in total. State funds appropriated for priority social services may be used
28 to pay a portion of expenditures under each agreement for each type of social service in
29 an amount not to exceed the maximum percentage for state funds of the total expenditures
30 for each type of priority social service as specified below when programs have been
31 funded for a total of 2 years, consecutively or in total. The maximum percentage of state
32 funds of the total expenditures for each type of service ~~shall~~ may not exceed:

33 75% for homemaker service;

34 75% for developmental day care, including family day care;

35 75% for services for ~~the mentally retarded~~ persons with intellectual disabilities or autism;

36 75% for meals for older people;

37 75% for mental health services;

38 75% for transportation services;

39 75% for health and home care needs for the elderly.

1 **Sec. A-45. 22 MRSA §6111, sub-§5**, as amended by PL 1981, c. 608, §3, is
2 further amended to read:

3 **5. Maximum use of nonstate resources.** State funds paying a portion only of
4 expenditures for priority social services ~~shall be~~ are valid only when "earned" or
5 "matched" by expenditure of nonstate resources, which may be cash or in-kind. The
6 expenditure of such resource ~~shall~~ must be in an amount at least equal to the minimum
7 percentage for nonstate resources of the total expenditures for each type of priority social
8 services as specified below. The minimum percentage for nonstate resources of the total
9 expenditures for each type of service ~~shall be~~ is:

- 10 25% for homemaker service;
- 11 25% for developmental day care, including family day care;
- 12 25% for services for ~~the mentally retarded~~ persons with intellectual disabilities or autism;
- 13 25% for meals for older people;
- 14 25% for mental health services;
- 15 25% for transportation services;
- 16 25% for health and home care needs for the elderly.

17 Nonstate resources authorized to qualify to earn or match state funds ~~shall~~ include private
18 funds such as gifts, grants, fees for service or contributions; in-kind resources that are
19 actual out-of-pocket expenditures; or actual loss of revenue related directly and
20 essentially as an integral part of the operation of a priority social service; and public
21 revenues such as municipal taxes, a municipal or county amount of federal revenue
22 sharing funds, other appropriate federal resources and state revenue sharing funds and
23 such other public resources as may be received by, generated by or available to a
24 municipal or county government or other political subdivision or quasi-governmental
25 bodies.

26 **Sec. A-46. 22 MRSA §7302, sub-§6**, as amended by PL 2001, c. 596, Pt. B, §10
27 and affected by §25, is further amended to read:

28 **6. Institutional settings.** "Institutional settings" means residential care facilities,
29 licensed pursuant to chapter 1664; intermediate care and skilled nursing facilities and
30 units and hospitals, licensed pursuant to chapter 405; and state institutions for individuals
31 ~~who are mentally ill or mentally retarded or who~~ have a mental illness or who have
32 intellectual disabilities or autism or other related conditions.

33 **Sec. A-47. 22 MRSA §7942, sub-§7**, as amended by PL 2003, c. 634, §8, is
34 further amended to read:

35 **7. State licensing rules.** "State licensing rules" refers to the department's rules
36 governing the licensing and functioning of nursing facilities, intermediate care facilities
37 for persons with ~~mental retardation~~ intellectual disabilities and assisted living programs
38 or residential care facilities.

1 **Sec. A-48. 22 MRSA §8752, sub-§2**, as amended by PL 2009, c. 358, §1, is
2 further amended to read:

3 **2. Health care facility.** "Health care facility" or "facility" means a state institution
4 as defined under Title 34-B, chapter 1 or a health care facility licensed by the division,
5 except that it does not include a facility licensed as a nursing facility or licensed under
6 chapter 1664. "Health care facility" includes a general and specialty hospital, an
7 ambulatory surgical facility, an end-stage renal disease facility and an intermediate care
8 facility for persons with ~~mental-retardation~~ intellectual disabilities or other developmental
9 disabilities.

10 **Sec. A-49. 22-A MRSA §101, sub-§1-A** is enacted to read:

11 **1-A. Adult developmental services.** "Adult developmental services" has the same
12 meaning as in Title 34-B, section 1001, subsection 1-A.

13 **Sec. A-50. 22-A MRSA §203, sub-§1, ¶C**, as enacted by PL 2003, c. 689, Pt. A,
14 §1, is amended to read:

15 C. ~~Mental-retardation and developmental~~ Developmental disability services;

16 **Sec. A-51. 22-A MRSA §206, sub-§4**, as enacted by PL 2007, c. 539, Pt. N, §45,
17 is amended to read:

18 **4. Grievance procedures.** The commissioner shall establish procedures for hearing
19 grievances of clients who receive mental health services or ~~mental-retardation~~ adult
20 developmental services or of children who receive behavioral health services. The
21 procedures must include the opportunity for a timely hearing before a state hearing
22 examiner or an independent fair hearing examiner. The commissioner may contract for
23 the services of the hearing examiner, who shall conduct adjudicatory proceedings
24 pursuant to the Maine Administrative Procedure Act.

25 **Sec. A-52. 22-A MRSA §207, sub-§7**, as enacted by PL 2007, c. 539, Pt. N, §46,
26 is amended to read:

27 **7. Contracts with health care servicing entities.** The commissioner may enter into
28 contracts with health care servicing entities for the financing, management and oversight
29 of the delivery of mental health, ~~mental-retardation~~ adult developmental and substance
30 abuse services to clients pursuant to a state or federally sponsored health program in
31 which the department participates or that the department administers. For the purposes of
32 this subsection, "health care servicing entity" means a partnership, association,
33 corporation, limited liability company or other legal entity that enters into a contract with
34 the State to provide or arrange for the provision of a defined set of health care services; to
35 assume responsibility for some aspects of quality assurance, utilization review, provider
36 credentialing and provider relations or other related network management functions; and
37 to assume financial risk for provision of such services to clients through capitation
38 reimbursement or other risk-sharing arrangements. "Health care servicing entity" does
39 not include insurers or health maintenance organizations. In contracting with health care
40 servicing entities, the commissioner:

1 A. Shall include in all contracts with the health care servicing entities standards,
2 developed in consultation with the Superintendent of Insurance, to be met by the
3 contracting entity in the areas of financial solvency, quality assurance, utilization
4 review, network sufficiency, access to services, network performance, complaint and
5 grievance procedures and records maintenance;

6 B. Prior to contracting with any health care servicing entity, must have in place a
7 memorandum of understanding with the Superintendent of Insurance for the
8 provision of technical assistance, which must provide for the sharing of information
9 between the department and the superintendent and the analysis of that information
10 by the superintendent as it relates to the fiscal integrity of the contracting entity;

11 C. May require periodic reporting by the health care servicing entity as to activities
12 and operations of the entity, including the entity's activities undertaken pursuant to
13 commercial contracts with licensed insurers and health maintenance organizations;

14 D. May share with the Superintendent of Insurance all documents filed by the health
15 care servicing entity, including documents subject to confidential treatment if the
16 information is treated with the same degree of confidentiality as is required of the
17 department; and

18 E. May make all necessary rules for the administration of contracts with health care
19 servicing entities. All rules adopted pursuant to this paragraph are routine technical
20 rules as defined in Title 5, chapter 375, subchapter 2-A.

21 **Sec. A-53. 30-A MRSA §1561, sub-§1, ¶E**, as enacted by PL 1995, c. 201, §1,
22 is amended to read:

23 E. Is an inpatient at a state-funded mental health ~~or mental retardation~~ facility or is a
24 resident at a state-funded facility for individuals with adult developmental
25 disabilities;

26 **Sec. A-54. 30-A MRSA §4349-A, sub-§1, ¶C**, as amended by PL 2001, c. 613,
27 §2, is further amended to read:

28 C. Areas other than those described in paragraph A or B for the following projects:

29 (1) A project certified to the Land and Water Resources Council established in
30 Title 5, section 3331 by the head of the agency funding the project as necessary
31 to remedy a threat to public health or safety or to comply with environmental
32 clean-up laws;

33 (2) A project related to a commercial or industrial activity that, due to its
34 operational or physical characteristics, typically is located away from other
35 development, such as an activity that relies on a particular natural resource for its
36 operation;

37 (3) An airport, port or railroad or industry that must be proximate to an airport, a
38 port or a railroad line or terminal;

39 (4) A pollution control facility;

40 (5) A project that maintains, expands or promotes a tourist or cultural facility
41 that is required to be proximate to a specific historic, natural or cultural resource

1 or a building or improvement that is related to and required to be proximate to
2 land acquired for a park, conservation, open space or public access or to an
3 agricultural, conservation or historic easement;

4 (6) A project located in a municipality that has none of the geographic areas
5 described in paragraph A or B and that prior to January 1, 2000 formally
6 requested but had not received from the office funds to assist with the preparation
7 of a comprehensive plan or that received funds to assist with the preparation of a
8 comprehensive plan within the previous 2 years. This exception expires for a
9 municipality 2 years after such funds are received;

10 (7) A housing project serving the following: individuals with mental illness,
11 ~~mental retardation~~, developmental disabilities, physical disabilities, brain injuries,
12 substance abuse problems or a human immunodeficiency virus; homeless
13 individuals; victims of domestic violence; foster children; or children or adults in
14 the custody of the State. A nursing home is not considered a housing project
15 under this paragraph; or

16 (8) A project certified to the Land and Water Resources Council established in
17 Title 5, section 3331 by the head of the agency funding the project as having no
18 feasible location within an area described in paragraph A or B if, by majority
19 vote of all members, the Land and Water Resources Council finds that
20 extraordinary circumstances or the unique needs of the agency require state funds
21 for the project. The members of the Land and Water Resources Council may not
22 delegate their authority under this subparagraph to the staffs of their member
23 agencies.

24 **Sec. A-55. 30-A MRSA §4722, sub-§2, ¶C**, as amended by PL 1991, c. 511, Pt.
25 B, §1 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

26 C. Any nursing home or related institution licensed or subject to license by the
27 Department of Health and Human Services under Title 22, section 1817, except
28 intermediate care facilities for ~~the mentally retarded~~ persons with intellectual
29 disabilities and persons with related conditions or the construction, substantial
30 rehabilitation or improvement of homeless shelter facilities that may be related to an
31 institution licensed or subject to license by the Department of Health and Human
32 Services under Title 22, section 1817.

33 **Sec. A-56. 32 MRSA §63-A, sub-§1**, as amended by PL 2007, c. 402, Pt. E, §1,
34 is further amended to read:

35 **1. Membership.** The Nursing Home Administrators Licensing Board, as established
36 by Title 5, section 12004-A, subsection 23, consists of 7 members appointed by the
37 Governor. The members must be residents of this State. One member must be a
38 registered nurse with not less than 5 years of active practice in nursing homes in the State.
39 Two members must be public members as defined in Title 5, section 12004-A. Three
40 members must be administrators of nursing homes with not less than 5 years of active
41 experience in the State. One member must be an administrator of an intermediate care
42 facility for ~~the mentally retarded~~ persons with intellectual disabilities with not less than 5
43 years of active practice in that capacity.

1 **Sec. A-57. 34-A MRSA §1001, sub-§1-B** is enacted to read:

2 **1-B. Adult developmental services.** "Adult developmental services" has the same
3 meaning as in Title 34-B, section 1001, subsection 1-A.

4 **Sec. A-58. 34-A MRSA §1206, sub-§1, ¶D,** as enacted by PL 1983, c. 459, §6,
5 is amended to read:

6 D. "Human service" means any alcoholism, children's community action,
7 corrections, criminal justice, developmental disability, donated food, education,
8 elderly, food stamp, income maintenance, health, juvenile, law enforcement, legal,
9 medical care, mental health, ~~mental retardation~~ adult developmental, poverty, public
10 assistance, rehabilitation, social, substance abuse, transportation, welfare or youth
11 service operated by a community agency under an agreement financially supporting
12 the service, wholly or in part, by funds authorized for expenditure for the department.

13 **Sec. A-59. 34-A MRSA §3031, sub-§2, ¶A,** as amended by PL 1995, c. 462, Pt.
14 D, §6, is further amended to read:

15 A. A client is exempt from payment of medical and dental services fees and fees for
16 prescriptions, medication or prosthetic devices when the client:

- 17 (1) Receives treatment initiated by facility staff;
- 18 (2) Is a juvenile;
- 19 (3) Is pregnant;
- 20 (4) Is ~~seriously mentally ill or developmentally disabled~~ a person with a serious
21 mental illness or developmental disability. For the purposes of this paragraph,
22 "seriously mentally ill" or "developmentally disabled" "a person with a serious
23 mental illness or developmental disability" means a client who, as a result of a
24 mental disorder or developmental disability, exhibits emotional or behavioral
25 functioning that is so impaired as to interfere substantially with the client's
26 capacity to remain in the general prison population without supportive treatment
27 or services of a long-term or indefinite duration, as determined by the facility's
28 psychiatrist or psychologist;
- 29 (5) Is an inpatient at a state-funded mental health ~~or mental retardation~~ facility or
30 is a resident at a state-funded facility for individuals with adult developmental
31 disabilities;
- 32 (6) Is undergoing follow-up treatment;
- 33 (7) Receives emergency treatment as determined by the facility's medical or
34 dental staff; or
- 35 (8) Has less than \$15 in the client's facility account and did not receive
36 additional money from any source for 6 months following the medical or dental
37 service or provision of the prescription, medication or prosthetic device.

38 **Sec. A-60. 34-B MRSA §1001, sub-§§1-A and 4-B** are enacted to read:

1 **1-A. Adult developmental services.** "Adult developmental services" means any
2 support or assistance provided, licensed or funded in whole or in part by the department
3 pursuant to chapter 5 or 6 to an adult with an intellectual disability or autism.

4 **4-B. Intermediate care facility for persons with intellectual disabilities.**
5 "Intermediate care facility for persons with intellectual disabilities" means an
6 intermediate care facility for the mentally retarded as defined in Section 1905(d) of the
7 federal Social Security Act, 42 United States Code, Section 1396d(d) and its
8 implementing regulations.

9 **Sec. A-61. 34-B MRSA §1207, sub-§3, ¶A,** as enacted by PL 1983, c. 459, §7,
10 is repealed and the following enacted in its place:

11 A. A facility or a provider that receives funds from the department to provide
12 services for persons eligible for such services under this Title shall send information
13 and records to the commissioner, if requested by the commissioner pursuant to the
14 department's obligation to maintain the overall responsibility for the care and
15 treatment of persons receiving mental health services funded in full or in part by the
16 State.

17 **Sec. A-62. 34-B MRSA §1208, sub-§1, ¶D,** as enacted by PL 1983, c. 459, §7,
18 is amended to read:

19 D. "Human service" means any alcoholism, children's community action,
20 corrections, criminal justice, developmental disability, donated food, education,
21 elderly, food stamp, income maintenance, health, juvenile, law enforcement, legal,
22 medical care, mental health, ~~mental retardation~~ child and adult developmental,
23 poverty, public assistance, rehabilitation, social, substance abuse, transportation,
24 welfare or youth service operated by a community agency under an agreement
25 financially supporting the service, wholly or in part, by funds authorized for
26 expenditure by the department.

27 **Sec. A-63. 34-B MRSA §1208, sub-§1, ¶H,** as enacted by PL 2003, c. 673, Pt.
28 SSS, §1, is amended to read:

29 H. "Service provider" means a community agency providing services for children
30 with mental health needs, ~~mental retardation and~~ intellectual disabilities or autism.

31 **Sec. A-64. 34-B MRSA §1208, sub-§7,** as enacted by PL 1999, c. 401, Pt. SS,
32 §1 and affected by §4, is amended to read:

33 **7. Community agency staff retention.** The commissioner shall, through contracts
34 and service agreements with community agencies, provide funding to retain qualified
35 direct-care workers employed by community ~~mental retardation~~ services providers
36 agencies providing services for children and adults with intellectual disabilities or autism.

37 **Sec. A-65. 34-B MRSA §1218, sub-§2,** as amended by PL 1995, c. 560, Pt. K,
38 §24, is further amended to read:

1 **2. Services for persons with intellectual disabilities or autism.** The department
2 shall provide accommodations and services ensuring access for persons who are deaf or
3 hard-of-hearing to ~~mental retardation~~ programs funded or licensed by the department
4 providing services for persons who have intellectual disabilities or autism. These
5 accommodations and services must include, but are not limited to, the following.

6 A. The department shall ensure the provision of appropriate assessments for clients
7 who are deaf or hard-of-hearing. Assessments must be performed by a person who is
8 proficient in American Sign Language and must include an assessment of ~~mental~~
9 ~~retardation~~ intellectual disability or autism and an assessment of communication
10 skills, including the capacity to communicate using American Sign Language. The
11 department shall survey the client population to determine which clients are deaf or
12 hard-of-hearing.

13 B. For purposes of treatment, the department shall ensure the provision of interpreter
14 services by a person proficient in American Sign Language.

15 C. The department shall ensure that ~~mental retardation~~ staff providing direct services
16 to persons who are deaf or hard-of-hearing have education and training in American
17 Sign Language and deaf culture.

18 D. The department shall provide for the placement ~~in comprehensive community~~
19 ~~mental retardation facilities~~ of telecommunication devices for persons who are deaf
20 or hard-of-hearing in any location that provides residential, employment or other
21 community-based services for persons eligible under this Title.

22 E. The department shall ensure the provision of support and training for families
23 with members ~~with mental retardation~~ who have an intellectual disability or autism
24 who are deaf or hard-of-hearing.

25 F. The department shall establish therapeutic residence options for persons with
26 ~~mental retardation~~ intellectual disabilities or autism who are deaf or hard-of-hearing
27 and in need of a residence. The therapeutic residences must be operated in
28 conjunction with existing rehabilitation, education, ~~mental retardation treatment and~~
29 housing and other community-based service resources. The therapeutic residences
30 must be staffed by individuals trained in ~~mental retardation treatment~~ providing
31 services for persons with intellectual disabilities and autism and proficient in
32 American Sign Language. Therapeutic residence options must be flexible and allow
33 for individual choice.

34 G. The department shall designate in each regional office one staff person who is
35 responsible for the coordination of deaf services in that office. The department shall
36 provide ongoing training to regional office staff with the goal of having at least one
37 person in each regional office who is proficient in American Sign Language.

38 **Sec. A-66. 34-B MRSA §1223, sub-§§1 and 8,** as enacted by PL 2007, c. 356,
39 §7 and affected by c. 695, Pt. D, §3, are amended to read:

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

1 nominees proposed by the board pursuant to procedures established in the rules of the
2 board.

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

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

8 (1) The protection and advocacy agency designated pursuant to Title 5, section
9 19502;

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

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

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

18 (5) The Maine Developmental Disabilities Council.

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

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

31 **8. Oversight and advisory functions.** The board shall:

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

40 B. Provide advice and systemic recommendations to the commissioner, the Governor
41 and the Legislature regarding policies, priorities, budgets and legislation affecting the

1 rights and interests of persons with ~~mental retardation~~ intellectual disabilities or
2 autism.

3 **Sec. A-67. 34-B MRSA §1223, sub-§9, ¶¶A and D**, as enacted by PL 2007, c.
4 356, §7 and affected by c. 695, Pt. D, §3, are amended to read:

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

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

16 **Sec. A-68. 34-B MRSA §1223, sub-§10**, as enacted by PL 2007, c. 356, §7 and
17 affected by c. 695, Pt. D, §3, is amended to read:

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

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

30 B. The chief advocate and the manager of adult protective services in the Office of
31 Adults with Cognitive and Physical Disability Services within the department, when
32 requested by the board or pursuant to a written agreement with the board, shall
33 release to the board information pertaining to alleged abuse, exploitation or neglect or
34 alleged dehumanizing practice or violation of rights of a person with ~~mental~~
35 ~~retardation~~ intellectual disabilities or autism. The board shall maintain the
36 confidentiality of information disclosed to it or discovered by it as required by section
37 1207.

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

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

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

10 **Sec. A-69. 34-B MRSA §1402, sub-§1**, as amended by PL 1995, c. 560, Pt. K,
11 §27, is further amended to read:

12 **1. Commissioner's duty.** In every state institution to which a person with mental
13 illness or ~~mental retardation~~ an intellectual disability may be committed, the
14 commissioner shall organize and administer the duties set forth in subsection 2.

15 **Sec. A-70. 34-B MRSA §1402, sub-§2, ¶C**, as amended by PL 1995, c. 560, Pt.
16 K, §27, is further amended to read:

17 C. Acquire and disseminate knowledge of mental disease, ~~mental retardation~~
18 intellectual disabilities, autism and allied other related conditions with a view to
19 promoting a better understanding and the most enlightened public sentiment and
20 policy in these matters, and in this work the department may cooperate with local
21 authorities, schools and social agencies.

22 **Sec. A-71. 34-B MRSA §1407**, as enacted by PL 1983, c. 459, §7, is amended to
23 read:

24 **§1407. Appointment of physician**

25 In every state institution to which a ~~mentally ill or mentally retarded~~ person with
26 mental illness or a person with an intellectual disability or autism may be committed, the
27 commissioner shall appoint a physician experienced in the care and treatment of such
28 persons and the necessary assistants to the physician.

29 **Sec. A-72. 34-B MRSA §1408**, as enacted by PL 1983, c. 459, §7, is amended to
30 read:

31 **§1408. Cooperation with state departments**

32 Whenever it is ~~deemed~~ determined advisable, the chief administrative officer of any
33 institution providing services for the mentally ill or mentally retarded persons with mental
34 illness, intellectual disabilities or autism may cooperate with state departments to
35 examine upon request and recommend suitable treatment and supervision for:

36 **1. Mental illness, intellectual disability or autism.** Persons thought to ~~be mentally~~
37 ill or mentally retarded have a mental illness, an intellectual disability or autism; and

38 **2. Juvenile Court.** Children brought before any Juvenile Court.

1 **Sec. A-73. 34-B MRSA §1431, sub-§2**, as enacted by PL 1983, c. 459, §7, is
2 amended to read:

3 **2. Requirements.** The chief administrative officer of any state institution, or a
4 person designated by ~~him~~ the chief administrative officer, may place any person who has
5 been hospitalized ~~as mentally ill or mentally retarded~~ based on a diagnosis of mental
6 illness, intellectual disability or autism, except residents described in chapter 3,
7 subchapter ~~IV~~ 4, ~~Article II~~ article 2, on indefinite convalescence status, if the officer or
8 ~~his~~ the officer's designee determines that the residential facility in which the person will
9 be residing is at least equivalent in the quality of living conditions to the state institution
10 in which the person is hospitalized.

11 **Sec. A-74. 34-B MRSA §5001, sub-§1-B**, as enacted by PL 2007, c. 356, §8 and
12 affected by §31, is amended to read:

13 **1-B. Correspondent.** "Correspondent" means a person designated by the Consumer
14 Advisory Board or its successor to act as a next friend of a person with ~~mental retardation~~
15 an intellectual disability or autism.

16 **Sec. A-75. 34-B MRSA §5001, sub-§2**, as enacted by PL 1983, c. 459, §7, is
17 amended to read:

18 **2. Incapacitated person.** "Incapacitated person" means any person who is impaired
19 by reason of ~~mental retardation~~ intellectual disability or autism to the extent that ~~he~~ the
20 person lacks sufficient understanding or capacity to make, communicate or implement
21 responsible personal decisions ~~concerning his person or property~~ or decisions regarding
22 the person's property.

23 **Sec. A-76. 34-B MRSA §5001, sub-§2-A**, as enacted by PL 2007, c. 356, §10
24 and affected by §31, is amended to read:

25 **2-A. Individual support coordinator.** "Individual support coordinator" means a
26 regional staff member of the department with the responsibility for coordinating the
27 personal planning and professional services for a person ~~with mental retardation or autism~~
28 eligible for adult developmental services under this Title.

29 **Sec. A-77. 34-B MRSA §5001, sub-§3**, as amended by PL 1989, c. 73, §3, is
30 further amended to read:

31 **3. Intellectual disability.** "~~Mental retardation~~ Intellectual disability" means a
32 condition of significantly subaverage intellectual functioning resulting in or associated
33 with concurrent impairments in adaptive behavior and manifested during the
34 developmental period.

35 **Sec. A-78. 34-B MRSA §5001, sub-§3-A**, as enacted by PL 1989, c. 73, §4, is
36 repealed.

37 **Sec. A-79. 34-B MRSA §5001, sub-§3-B**, as enacted by PL 2007, c. 356, §11
38 and affected by §31, is amended to read:

1 **3-B. Person.** "Person" means an adult with ~~mental retardation~~ an intellectual
2 disability or autism.

3 **Sec. A-80. 34-B MRSA §5001, sub-§3-C,** as enacted by PL 2007, c. 356, §12
4 and affected by §31, is amended to read:

5 **3-C. Personal planning.** "Personal planning" means a process that assists and
6 supports each person ~~with mental retardation~~ who has an intellectual disability or autism
7 in creating a vision for how to live in and be a part of the community.

8 **Sec. A-81. 34-B MRSA §5001, sub-§3-D,** as enacted by PL 2007, c. 356, §13
9 and affected by §31, is amended to read:

10 **3-D. Personal planning team.** "Personal planning team" means the person with
11 ~~mental retardation~~ an intellectual disability or autism, the person's guardian, if any, the
12 person's individual support coordinator or case manager and other individuals chosen or
13 identified by the person to participate in personal planning.

14 **Sec. A-82. 34-B MRSA §5002,** as enacted by PL 1983, c. 459, §7, is amended to
15 read:

16 **§5002. Policy**

17 **1. Services.** It is the policy of the State to provide education, training and
18 habilitative services to ~~mentally retarded~~ persons with intellectual disabilities or autism
19 who need those services, except that nothing in this chapter may replace or limit the right
20 of any ~~mentally retarded~~ person with an intellectual disability or autism to treatment by
21 spiritual means alone, through prayer, if that treatment is requested by the person or by
22 his the person's next of kin or guardian.

23 **2. Setting.** It is the policy of the State that the setting for the services described in
24 subsection 1 ~~shall~~ must, consistent with adequate care and treatment:

25 A. Impose the fewest possible restrictions on the liberty of ~~mentally retarded~~ persons
26 with intellectual disabilities or autism; and

27 B. Be as close as possible to the patterns and norms of the mainstream of society.

28 **Sec. A-83. 34-B MRSA §5003-A,** as enacted by PL 2007, c. 356, §16 and
29 affected by §31, is amended to read:

30 **§5003-A. System of care for clients with intellectual disabilities or autism**

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

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

4 A. Provide a mechanism for the identification, evaluation, treatment and
5 reassessment of and the provision of services to persons with ~~mental retardation~~
6 intellectual disabilities or autism that is consistent with the principles guiding
7 delivery of services, as set forth in section 5610, through appropriate personal
8 planning offered to persons served by the department in accordance with section
9 5470-B;

10 B. Identify the needs and desires of persons with ~~mental retardation~~ intellectual
11 disabilities or autism through appropriate personal planning and record any unmet
12 needs of persons served or eligible for service by the department for development of
13 budget requests to the Governor that are adequate to meet such needs;

14 C. Provide programs, insofar as resources permit, for appropriate services and
15 supports to persons with ~~mental retardation~~ intellectual disabilities or autism
16 regardless of age, severity of need or ability to pay;

17 D. Support the establishment of community services for persons eligible to receive
18 services from the department by promoting access to professional services in the
19 person's community. Such support may be provided directly or through contracts
20 with qualified providers. For persons who have professional service needs identified
21 through personal planning, the department shall monitor the provision of those
22 services;

23 E. Eliminate the department's own duplicative and unnecessary administrative
24 procedures and practices in the system of care for persons with ~~mental retardation~~
25 intellectual disabilities or autism, encourage other departments to do the same and
26 clearly define areas of responsibility in order to use present resources economically;

27 F. Strive toward having a sufficient number of personnel who are qualified and
28 experienced to provide treatment that is beneficial to persons with ~~mental retardation~~
29 intellectual disabilities or autism; and

30 G. Encourage other departments to provide to persons with ~~mental retardation~~
31 intellectual disabilities or autism those services that are required by law, and in
32 particular:

33 (1) The commissioner shall work actively with the Commissioner of Education
34 to ensure that persons with ~~mental retardation~~ intellectual disabilities or autism
35 receive appropriate services upon being diagnosed with either disability
36 regardless of the degree of ~~retardation or autism~~ functional limitation or
37 accompanying disabilities ~~or handicaps~~;

38 (2) The commissioner shall advise other departments about standards and
39 policies pertaining to administration, staff, quality of care, quality of treatment,
40 health and safety of clients, rights of clients, community relations and licensing
41 procedures and other areas that affect persons with ~~mental retardation~~ intellectual
42 disabilities or autism residing in facilities licensed by the department; and

1 (3) The commissioner shall inform the joint standing committee of the
2 Legislature having jurisdiction over human resources matters about areas where
3 increased cooperation by other departments is necessary in order to improve the
4 delivery of services to persons with ~~mental retardation~~ intellectual disabilities or
5 autism.

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

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

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

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

18 D. The plan must describe the system of ~~mental retardation~~ intellectual disability and
19 autism services in each of the ~~mental retardation~~ adult developmental service regions
20 and statewide.

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

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

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

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

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

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

1 **5. Medicaid savings.** Intermediate care facilities for persons with ~~mental retardation~~
2 intellectual disabilities or autism and providers of freestanding day habilitation programs
3 shall submit payment to the department equal to 50% of any Medicaid savings due the
4 State pursuant to the principles of reimbursement, as established under Title 22, sections
5 3186 and 3187, that are reported in any unaudited cost report for fiscal years ending June
6 30, 1995 and thereafter. Payment is due with the cost report. After audit, any amount
7 submitted in excess of savings allocated to the facility or provider pursuant to the
8 principles of reimbursement must be returned to the facility or provider. Notwithstanding
9 requirements or conditions contained in the principles of reimbursement, any amount due
10 the State after final audit in excess of savings paid on submission of a cost report must be
11 paid to the State within 90 days following receipt of the department's final audit report.

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

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

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

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

- 24 (1) Unmet needs;
- 25 (2) Reportable events;
- 26 (3) Adult protective services;
- 27 (4) Crisis services;
- 28 (5) Persons' and families' satisfaction with services;
- 29 (6) Case management ratios;
- 30 (7) Evaluations of costs of services;
- 31 (8) Grievances;
- 32 (9) Quality assurance and quality improvement efforts; and
- 33 (10) New initiatives.

34 C. A report under this subsection must be provided to the joint standing committee
35 of the Legislature having jurisdiction over health and human services matters. The
36 commissioner or the commissioner's designee shall appear in person before the
37 committee and shall present the report. The report must be posted on the
38 department's publicly accessible website and must be made easily available to

1 persons served by the department, families, guardians, advocates, Legislators and the
2 provider community.

3 **Sec. A-84. 34-B MRSA §5004**, as corrected by RR 2003, c. 2, §103, is amended
4 to read:

5 **§5004. Sexual activity with recipient of services prohibited**

6 A person who owns, operates or is an employee of an organization, program or
7 residence that is operated, administered, licensed or funded by the Department of Health
8 and Human Services may not engage in a sexual act, as defined in Title 17-A, section
9 251, subsection 1, paragraph C, with another person or subject another person to sexual
10 contact, as defined in Title 17-A, section 251, subsection 1, paragraph D, if the other
11 person, not the actor's spouse, is a person with ~~mental retardation~~ an intellectual disability
12 or autism who receives therapeutic, residential or habilitative services from the
13 organization, program or residence.

14 **Sec. A-85. 34-B MRSA §5005, sub-§1**, as enacted by PL 2007, c. 356, §17 and
15 affected by §31, is amended to read:

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

19 **Sec. A-86. 34-B MRSA §5005, sub-§2, ¶A**, as enacted by PL 2007, c. 356, §17
20 and affected by §31, is amended to read:

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

27 **Sec. A-87. 34-B MRSA §5005, sub-§3**, as enacted by PL 2007, c. 356, §17 and
28 affected by §31, is amended to read:

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

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

33 B. Investigate the claims, grievances and allegations of violations of the rights of
34 individuals with ~~mental retardation~~ intellectual disabilities or autism;

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

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

3 E. Refer individuals with ~~mental-retardation~~ intellectual disabilities or autism to
4 other agencies or entities and collaborate with those agencies or entities for the
5 purpose of advocating for the rights and dignity of those individuals;

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

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

20 **Sec. A-88. 34-B MRSA §5005, sub-§4, ¶B**, as enacted by PL 2007, c. 356, §17
21 and affected by §31, is amended to read:

22 B. An advocate has concerns regarding the rights or dignity of a person with ~~mental~~
23 ~~retardation~~ an intellectual disability or autism.

24 **Sec. A-89. 34-B MRSA §5005, sub-§6, ¶A**, as enacted by PL 2007, c. 356, §17
25 and affected by §31, is amended to read:

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

29 **Sec. A-90. 34-B MRSA §5005, sub-§7**, as enacted by PL 2007, c. 356, §17 and
30 affected by §31, is amended to read:

31 **7. Protection for advocates.** Advocates may not be disciplined or sanctioned for
32 any action taken pursuant to this section on behalf of individuals with ~~mental-retardation~~
33 intellectual disabilities or autism.

34 **Sec. A-91. 34-B MRSA §5201, sub-§§2, 3 and 4**, as amended by PL 2007, c.
35 356, §18 and affected by §31, are further amended to read:

36 **2. Statewide system.** The planning, promotion, coordination and development of a
37 complete and integrated statewide system of services for adults with ~~mental-retardation~~
38 intellectual disabilities or autism;

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

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

9 **Sec. A-92. 34-B MRSA §5201, sub-§§6 and 7,** as enacted by PL 2007, c. 356,
10 §18 and affected by §31, are amended to read:

11 **6. Individual support coordinators.** Providing persons with ~~mental-retardation~~
12 intellectual disabilities or autism who are eligible for MaineCare services with case
13 management services.

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

16 B. Unless otherwise specified in personal planning:

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

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

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

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

28 **7. Crisis and respite.** Provision of crisis and respite services to persons with ~~mental~~
29 ~~retardation~~ intellectual disabilities or autism in accordance with section 5206; and

30 **Sec. A-93. 34-B MRSA §5206,** as enacted by PL 2007, c. 356, §19 and affected
31 by §31, is amended to read:

32 **§5206. Crisis and respite services**

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

35 **1. Crisis services.** The department shall maintain the capacity to intervene in
36 personal crises that could lead to the loss of the home, program or employment of a
37 person with ~~mental-retardation~~ an intellectual disability or autism. Such capacity must
38 include:

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

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

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

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

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

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

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

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

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

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

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

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

12 **Sec. A-94. 34-B MRSA §5431**, as enacted by PL 1983, c. 459, §7, is amended to
13 read:

14 **§5431. Purpose**

15 The purpose of this Article is to assist in the establishment and expansion of
16 community-based ~~mental retardation~~ adult developmental services and programs for
17 ~~mentally-retarded~~ persons with intellectual disabilities or autism residing in the
18 community and residing in ~~privately-operated~~ privately operated residential care
19 facilities.

20 **Sec. A-95. 34-B MRSA §5432, sub-§1**, as enacted by PL 1983, c. 459, §7, is
21 amended to read:

22 **1. Community participation.** Encourage persons in local communities to
23 participate in the provision of supportive services for ~~mentally-retarded~~ persons with
24 intellectual disabilities or autism, so that persons in the community may have a better
25 understanding of the need for those services;

26 **Sec. A-96. 34-B MRSA §5433, sub-§2**, as enacted by PL 1983, c. 459, §7, is
27 amended to read:

28 **2. Services and programs.** Provide and help finance ~~mental retardation~~ adult
29 developmental services and programs throughout the State for ~~mentally-retarded~~ persons
30 with intellectual disabilities or autism residing in the community and residing in
31 ~~privately-owned~~ privately owned residential care facilities;

32 **Sec. A-97. 34-B MRSA §5433, sub-§3**, as amended by PL 1985, c. 768, §6, is
33 further amended to read:

34 **3. Cooperation.** Cooperate with other state agencies, municipalities, other
35 governmental units, unincorporated associations and nonstock corporations in order to
36 provide and help finance services and programs for ~~mentally-retarded~~ persons with
37 intellectual disabilities or autism;

1 **Sec. A-98. 34-B MRSA §5434, sub-§§1 and 3**, as enacted by PL 1983, c. 459,
2 §7, are amended to read:

3 **1. Authorization.** A municipality or other governmental unit, such as a county,
4 school district or health district, through its local board of health or other town or
5 governmental agency approved by the commissioner, may adopt and carry out a program
6 of ~~mental-retardation~~ adult developmental services established or approved by the
7 commissioner and appropriate money for that purpose.

8 **3. Grants.** Upon application to the department by a municipality or other
9 governmental unit, the commissioner may grant to the applicant money to be used for
10 carrying out its ~~mental-retardation~~ adult developmental services, including any necessary
11 capital expenditures or purchase of buildings.

12 **Sec. A-99. 34-B MRSA §5435, sub-§1**, as enacted by PL 1983, c. 459, §7, is
13 amended to read:

14 **1. Department grants.** Upon application to the department by an unincorporated
15 association or nonstock corporation organized for the improvement of community health
16 and welfare, the commissioner may grant to the applicant money to be used for carrying
17 out its ~~mental-retardation~~ adult developmental services, including any necessary capital
18 expenditures or purchase of buildings.

19 **Sec. A-100. 34-B MRSA §5435, sub-§2, ¶B**, as amended by PL 1995, c. 560,
20 Pt. K, §53, is further amended to read:

21 B. The department shall give consideration to the ability of the municipality or
22 governmental unit to support the ~~mental-retardation~~ adult developmental services, as
23 reflected by the State's evaluation of the component communities.

24 **Sec. A-101. 34-B MRSA §5437, first ¶**, as amended by PL 1995, c. 560, Pt. K,
25 §54, is further amended to read:

26 The department shall establish a contingency fund for use by community-based
27 intermediate care facilities for persons with ~~mental-retardation~~ intellectual disabilities or
28 autism and department clients residing in licensed boarding and foster homes or
29 intermediate care facilities or participating in appropriate day treatment programs. This
30 fund must be used in accordance with the following provisions.

31 **Sec. A-102. 34-B MRSA §5437, sub-§3, ¶A**, as enacted by PL 1985, c. 486, §2,
32 is amended to read:

33 A. Payment for special client assessment and treatment services not reimbursed
34 through the principles of reimbursement for intermediate care facilities for ~~the~~
35 ~~mentally-retarded~~ persons with intellectual disabilities or autism;

36 **Sec. A-103. 34-B MRSA §5438**, as enacted by PL 2007, c. 152, §1, is amended
37 to read:

1 **§5438. Services for adults with diagnoses of intellectual disabilities or other**
2 **developmental disabilities**

3 To the extent possible using available resources, the department shall provide adults
4 with diagnoses of ~~mental retardation~~ intellectual disabilities and other developmental
5 disabilities choices from among an array of supports and services, including but not
6 limited to: employment supports, personal supports, day programs and residential
7 services. The department shall pursue appropriate resources for the supports and services
8 needed by adults covered under this chapter.

9 **Sec. A-104. 34-B MRSA §5461, sub-§§1, 2, 4 and 5**, as enacted by PL 1983, c.
10 459, §7, are amended to read:

11 **1. Advocate.** "Advocate" means a person:

12 A. Who is familiar with the procedures involved ~~both in admitting mentally retarded~~
13 ~~persons to a facility and~~ in providing services to ~~those~~ persons with intellectual
14 disabilities or autism; and

15 B. Who is capable of advocating solely on behalf of a ~~mentally retarded~~ person with
16 an intellectual disability or autism.

17 **2. Client.** "Client" means a person asking the department for ~~mental retardation~~
18 adult developmental services or the person for whom those services are asked.

19 **4. Comprehensive evaluation.** "Comprehensive evaluation" means a
20 comprehensive set of evaluations ~~which that~~:

21 A. Results in the distinguishing of ~~mental retardation~~ intellectual disabilities and
22 autism from other conditions;

23 B. Determines the severity of disability resulting from ~~mental retardation~~ an
24 intellectual disability or autism and other conditions; and

25 C. Estimates the degree to which ~~mental retardation~~ the intellectual disability or
26 autism and other conditions can be ameliorated.

27 **5. Facility.** "Facility" means a residential facility operated, administered, licensed or
28 funded by the department to provide services for ~~mentally retarded clients~~ persons who
29 have intellectual disabilities or autism.

30 **Sec. A-105. 34-B MRSA §5461, sub-§7-A, ¶C**, as enacted by PL 1983, c. 580,
31 §11, is amended to read:

32 C. A reasonable certainty that severe physical or mental impairment or injury will
33 result to the ~~mentally retarded~~ person who has an intellectual disability as manifested
34 by recent evidence of his the person's actions or behavior ~~which that~~ demonstrates his
35 an inability to avoid or protect himself that person from that impairment or injury
36 and, after consideration of less restrictive treatment settings and modalities, a
37 determination that suitable community resources for his the person's care are
38 unavailable.

1 **Sec. A-106. 34-B MRSA §5461, sub-§8**, as enacted by PL 1983, c. 459, §7, is
2 amended to read:

3 **8. Person in need of institutional services.** "Person in need of institutional
4 services" means a person who, because of ~~mental retardation~~ an intellectual disability,
5 autism or other related condition, and other severely disabling conditions, is unable to
6 ~~care for himself~~ provide self-care and to avoid or protect ~~himself~~ that person from severe
7 physical or psychological impairment, and who needs habilitation in an institutional
8 setting designed to improve ~~his~~ the person's ability to care for and protect ~~himself~~ the
9 person.

10 **Sec. A-107. 34-B MRSA §5461, sub-§10, ¶B**, as enacted by PL 1983, c. 580,
11 §12, is amended to read:

12 B. Where licensure, certification or registration is not required, a person possessing
13 a master's degree in the appropriate discipline or a person possessing a bachelor's
14 degree in the appropriate discipline and 3 years' experience in treating ~~mentally~~
15 ~~retarded~~ persons with intellectual disabilities or autism or 3 years' experience in a
16 related human services field.

17 **Sec. A-108. 34-B MRSA §5462**, as amended by PL 2003, c. 389, §6, is further
18 amended to read:

19 **§5462. Procedure policies**

20 **1. Steps.** It is the policy of the State that, in order to ensure that ~~mentally-retarded~~
21 persons with intellectual disabilities or autism receive needed services, to the extent
22 possible, the following steps ~~shall~~ must be taken for each person found by the department
23 to ~~be mentally-retarded~~ have an intellectual disability or autism and be in need of
24 services:

- 25 A. An assessment of the person's needs;
- 26 B. The development of a personal plan or service plan for the delivery and
27 coordination of services to the person through a personal planning process;
- 28 C. A determination of the suitability and quality of needed services ~~which~~ that are
29 available to the person, first in the community and 2nd in state-operated facilities;
30 and
- 31 D. Insofar as possible, obtaining high quality and suitable services for the person.

32 **2. Persons involved with procedures.** It is the policy of the State that:

- 33 A. To the extent possible, the ~~mentally-retarded~~ person with an intellectual disability
34 or autism and ~~his~~ the person's guardian or next of kin be involved with the steps
35 specified in subsection 1; and
- 36 B. An advocate be available to the ~~mentally-retarded~~ person with an intellectual
37 disability or autism throughout the steps specified in subsection 1.

1 **Sec. A-109. 34-B MRSA §5467, sub-§1**, as amended by PL 2003, c. 389, §9, is
2 further amended to read:

3 **1. Application.** An application for ~~mental retardation~~ adult developmental services,
4 on a form provided by the commissioner, must be initiated at or referred to a regional
5 office of the department. Except for referrals identifying a possible need for adult
6 protective services, the department shall accept only those referrals to which the client or
7 client's guardian has consented.

8 **Sec. A-110. 34-B MRSA §5467, sub-§2, ¶D**, as amended by PL 2003, c. 389,
9 §9, is further amended to read:

10 D. Ensure the client's access to an advocate throughout the process of ~~mental~~
11 ~~retardation~~ adult developmental services under sections 5467 to 5474;

12 **Sec. A-111. 34-B MRSA §5468, sub-§2**, as repealed and replaced by PL 1983,
13 c. 580, §18, is amended to read:

14 **2. Comprehensive evaluation.** The comprehensive evaluation ~~shall~~ must be
15 conducted by a person who is a licensed physician, licensed clinical psychologist or
16 licensed psychological examiner and who has had training and experience in the
17 diagnosis and treatment of ~~mentally-retarded~~ persons with intellectual disabilities or
18 autism.

19 **Sec. A-112. 34-B MRSA §5469**, as amended by PL 2003, c. 388, §1 and c. 389,
20 §§11 and 12, is further amended to read:

21 **§5469. Report**

22 Within 90 days of the day of the application made under section 5467, the department
23 shall obtain a report of the comprehensive evaluation made under section 5468, which
24 must state specifically whether or not the client ~~is mentally-retarded~~ has an intellectual
25 disability or autism.

26 **1. Client without an intellectual disability or autism.** If the comprehensive
27 evaluation concludes that the client ~~is not mentally-retarded~~ does not have an intellectual
28 disability or autism, the department shall deny the application for services, care and
29 treatment, but shall make appropriate referrals in cases where clear needs of the client
30 exist.

31 **2. Client with an intellectual disability or autism.** If the comprehensive evaluation
32 concludes that the client ~~is mentally-retarded~~ has an intellectual disability or autism and is
33 in need of services:

34 A. The department, through the regional office, shall determine the client's case
35 management status and develop a personal plan or service plan; and

36 B. The department, through the planning team, shall develop a personal plan or
37 service plan for the client within 45 days of the date of the determination of
38 eligibility. Implementation of the plan is governed by section 5471, subsection 4.

1 **3. Preschool child.** If the report of the comprehensive evaluation concludes that a
2 child, aged 0 to 5 years, is developmentally delayed and is in need of infant development
3 services or other early intervention services:

4 A. The department, through the regional office, shall develop a personal plan or
5 service plan, or both; and

6 B. If a personal plan is to be developed, the department, through the planning team,
7 shall develop and begin to implement a personal plan for the client within 60 days of
8 the application made under section 5467.

9 **Sec. A-113. 34-B MRSA §5470-B, sub-§§1 to 4,** as enacted by PL 2007, c.
10 356, §21 and affected by §31, are amended to read:

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

15 **2. Process.** The personal planning opportunities afforded to a person with ~~mental~~
16 ~~retardation~~ an intellectual disability or autism pursuant to subsection 1 must:

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

20 B. Focus on the choices made by that person;

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

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

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

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

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

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

34 **3. Action plans and unmet needs.** The ongoing personal planning for a person with
35 ~~mental retardation~~ an intellectual disability or autism must include an action plan that
36 describes the services to be provided, the process of providing the services and who is
37 responsible for overseeing the provision of the services. In cases where resources
38 required to address identified needs or desires are not available, the action plan must
39 identify interim measures based on available resources that address the needs or desires

1 as nearly as possible and identify steps toward meeting the person's actual identified
2 needs.

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

5 **4. Review of personal plans.** The person with ~~mental retardation~~ an intellectual
6 disability or autism or another member of the planning team may initiate a review of the
7 person's personal plan when needed or desired.

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

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

15 **Sec. A-114. 34-B MRSA §5470-B, sub-§8, ¶B,** as enacted by PL 2007, c. 356,
16 §21 and affected by §31, is amended to read:

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

23 **Sec. A-115. 34-B MRSA §5474, sub-§3,** as enacted by PL 1983, c. 459, §7, is
24 amended to read:

25 **3. Emergency admission.** When immediate detention of a person believed to ~~be~~
26 ~~mentally retarded~~ have an intellectual disability or autism is necessary, the person may be
27 temporarily restrained in accordance with section 5477.

28 **Sec. A-116. 34-B MRSA §5475, sub-§2, ¶C,** as amended by PL 2003, c. 389,
29 §18, is further amended to read:

30 C. Unless waived by a client and the client's counsel, cause the client who is the
31 subject of the proceeding to be examined by a professional.

32 (1) The client or the client's counsel may choose the professional, if the
33 professional the client chooses is reasonably available.

34 (2) The professional may not be the same one who performed any part of the
35 evaluation required under section 5468 or who participated in the development of
36 the personal plan or service plan.

37 (3) Upon completion of the examination, the professional shall report to the
38 court the professional's opinion whether the client ~~is mentally retarded~~ has an

1 intellectual disability or autism and requires treatment, stating the professional's
2 reasons for the professional's opinion;

3 **Sec. A-117. 34-B MRSA §5476**, as amended by PL 2003, c. 389, §19, is further
4 amended to read:

5 **§5476. Judicial commitment**

6 Any client recommended for admission to a ~~mental retardation~~ facility that provides
7 services for persons with intellectual disabilities or autism may be admitted by judicial
8 commitment according to the following procedures.

9 **1. Application to the District Court.** If the chief administrative officer of the
10 facility determines that the admission of the client pursuant to section 5473, subsection 2,
11 is not suitable, or if the client declines admission pursuant to section 5473, subsection 2,
12 the chief administrative officer may apply to the District Court having territorial
13 jurisdiction over the facility for the issuance of an order of judicial commitment.

14 **2. Time of application.** The chief administrative officer shall file the application
15 within 5 days from the day of admission of the client under this section, excluding
16 Saturdays, Sundays and legal holidays.

17 **3. Accompanying documents.** The application ~~shall~~ must be accompanied by:

18 A. A written application, made subject to the prohibitions and penalties of section
19 3805 and made by any health officer, law enforcement officer or other person,
20 stating:

21 (1) ~~His~~ The belief that the client ~~is mentally retarded~~ has an intellectual disability
22 or autism and poses a likelihood of serious harm; and

23 (2) The grounds for this belief;

24 B. A dated certificate, signed by a private licensed physician or a private licensed
25 clinical psychologist, stating that:

26 (1) ~~He~~ The physician or psychologist has examined the client on the date of the
27 certificate, which date may not be more than 3 days before the date of admission
28 to the facility; and

29 (2) ~~He~~ The physician or psychologist is of the opinion that the client ~~is mentally~~
30 ~~retarded~~ has an intellectual disability or autism and poses a likelihood of serious
31 harm; and

32 C. A certificate of the facility's examining physician or psychologist, stating that ~~he~~
33 the physician or psychologist has examined the client and ~~it is his~~ of the opinion that
34 the client ~~is mentally retarded~~ has an intellectual disability or autism and poses a
35 likelihood of serious harm:

36 (1) The examiner may not be the certifying examiner under paragraph B; and

1 (2) If the examination is not held within 24 hours after the time of admission or
2 if the facility's examining physician or psychologist fails or refuses to make the
3 required certification, the client ~~shall~~ must be immediately discharged.

4 **4. Notice of receipt of application.** The giving of notice of receipt of application
5 under this section is governed as follows.

6 A. Upon receipt by the District Court of the application and accompanying
7 documents specified in this section, the court shall cause written notice of the
8 application:

9 (1) To be given personally or by mail to the client within a reasonable time
10 before the hearing, but not less than 3 days before the hearing; and

11 (2) To be mailed to the client's guardian, if known, and to ~~his~~ the client's spouse,
12 ~~his~~ the client's parent or one of ~~his~~ the client's adult children, or if none of these
13 persons exist or if none of them can be located, to one of ~~his~~ the client's next of
14 kin or an advocate.

15 B. A docket entry is sufficient evidence that notice under this subsection has been
16 given.

17 **5. Examination.** Examinations under this section are governed as follows.

18 A. Upon receipt by the District Court of the application and the accompanying
19 documents specified in this section, the court shall forthwith cause the client to be
20 examined by 2 examiners.

21 (1) Each examiner ~~shall~~ must be either a licensed physician or a licensed clinical
22 psychologist.

23 (2) One of the examiners ~~shall~~ must be a physician or psychologist chosen by the
24 client or by ~~his~~ the client's counsel, if the chosen physician or psychologist is
25 reasonably available.

26 (3) Neither examiner appointed by the court may be the certifying examiner
27 under subsection 3, paragraph B or C.

28 B. The examination ~~shall~~ must be held at the facility or at any other suitable place
29 not likely to have a harmful effect on the well-being of the client.

30 C. If the unanimous reports of the examiners are to the effect that the client ~~is not~~
31 ~~mentally retarded~~ does not have an intellectual disability or autism or does not pose a
32 likelihood of serious harm, the application ~~shall~~ must be dismissed and the client
33 ~~shall be~~ ordered discharged forthwith.

34 D. If the report of either or both of the examiners is to the effect that the client ~~is~~
35 ~~mentally retarded~~ has an intellectual disability or autism and poses a likelihood of
36 serious harm, the hearing ~~shall~~ must be held on the date, or on the continued date,
37 ~~which~~ that the court has set for the hearing.

38 **6. Hearing.** Hearings under this section are governed as follows.

39 A. The District Court shall hold a hearing on the application not later than 15 days
40 from the date of the application.

- 1 (1) On a motion by any party, the hearing may be continued for cause for a
2 period not to exceed 10 additional days.
- 3 (2) If the hearing is not held within the time specified, or within the specified
4 continuance period, the court shall dismiss the application and order the client
5 discharged forthwith.
- 6 (3) In computing the time periods set forth in this paragraph, the District Court
7 Rules of Civil Procedure ~~shall~~ apply.
- 8 B. The hearing ~~shall~~ must be conducted in as informal a manner as may be consistent
9 with orderly procedure and in a physical setting not likely to have a harmful effect on
10 the well-being of the person.
- 11 C. The court shall receive all relevant and material evidence ~~which~~ that may be
12 offered in accordance with accepted rules of evidence and accepted judicial
13 dispositions.
- 14 (1) The client, the applicant and all other persons to whom notice is required to
15 be sent ~~shall~~ must be afforded an opportunity to appear at the hearing to testify.
- 16 (2) The client and the applicant ~~shall~~ must be afforded the opportunity to cross-
17 examine witnesses.
- 18 (3) The court may, in its discretion, receive the testimony of any other person
19 and may subpoena any witness.
- 20 D. The client ~~shall~~ must be afforded an opportunity to be represented by counsel and,
21 if neither the client nor others provide counsel, the court shall appoint counsel for the
22 client.
- 23 E. In addition to proving that the client ~~is mentally retarded~~ has an intellectual
24 disability or autism, the applicant shall show:
- 25 (1) By evidence of the client's actions and behavior, that the client poses a
26 likelihood of serious harm; and
- 27 (2) That after full consideration of less restrictive treatment settings and
28 modalities, judicial commitment to a ~~mental-retardation~~ facility that provides
29 services for persons with intellectual disabilities or autism is the ~~best~~ least
30 restrictive available means for the treatment or security of the client.
- 31 F. In each case, the applicant shall submit to the court, at the time of the hearing,
32 testimony indicating the individual treatment plan to be followed by the facility's
33 staff, if the client is committed under this section, and shall bear any expense for this
34 purpose.
- 35 G. A stenographic or electronic record ~~shall~~ must be made of the proceedings in all
36 judicial commitment hearings.
- 37 (1) The record, all notes, exhibits and other evidence ~~shall be~~ are confidential.
- 38 (2) The record, all notes, exhibits and other evidence ~~shall~~ must be retained as
39 part of the District Court records for a period of 2 years from the date of the
40 hearing.

1 H. The hearing ~~shall be~~ is confidential. No report of the proceedings may be
2 released to the public or press, except by permission of the client, or ~~his~~ the client's
3 counsel and with approval of the presiding District Court Judge, except that the court
4 may order a public hearing on the request of the client or ~~his~~ the client's counsel.

5 **7. Court findings.** Procedures dealing with the District Court's findings under this
6 section are as follows.

7 A. The District Court shall so state in the record, if it finds upon completion of the
8 hearing and consideration of the record:

9 (1) Clear and convincing evidence that the client ~~is mentally retarded~~ has an
10 intellectual disability and that ~~his~~ the client's recent actions and behavior
11 demonstrate that ~~he~~ the client poses a likelihood of serious harm;

12 (2) That judicial commitment to the facility is the best available means for
13 treatment or security of the client; and

14 (3) That it is satisfied with the individual treatment plan offered by the facility.

15 B. If the District Court makes the findings described in paragraph A, subparagraphs
16 1 and 2, but is not satisfied with the individual treatment plan offered, it may continue
17 the case for not longer than 10 days, pending reconsideration and resubmission of an
18 individual treatment plan by the facility.

19 **8. Commitment.** Upon making the findings described in subsection 7, the court may
20 order commitment of the client to the facility for a period not to exceed 4 months in the
21 first instance and not to exceed one year after the first and all subsequent hearings.

22 A. The court may issue an order of commitment immediately after the completion of
23 the hearing or it may take the matter under advisement and issue an order within 24
24 hours of the hearing.

25 B. If the court does not issue an order of commitment within 24 hours of the
26 completion of the hearing, it shall dismiss the application and shall order the person
27 discharged forthwith.

28 **9. Continued judicial commitment.** If the chief administrative officer of the facility
29 determines that continued judicial commitment is necessary for a person who has been
30 ordered by the District Court to be committed, ~~he~~ the officer shall, not later than 30 days
31 prior to the expiration of a period of commitment ordered by the court, make application
32 in accordance with this section to the District Court ~~which~~ that has territorial jurisdiction
33 over the facility for a hearing to be held under this section.

34 **10. Transportation.** Unless otherwise directed by the court, the sheriff of the county
35 in which the District Court has jurisdiction and in which the hearing takes place shall
36 provide transportation to any facility to which the court has committed the person.

37 **11. Expenses.** With the exception of expenses incurred by the applicant pursuant to
38 subsection 6, paragraph F, the District Court ~~shall be~~ is responsible for any expenses
39 incurred under this section, including fees of appointed counsel, witness and notice fees
40 and expenses of transportation for the person.

1 **12. Appeals.** A person ordered by the District Court to be committed to the facility
2 may appeal from that order to the Superior Court.

3 A. The appeal ~~shall~~ must be on questions of law only.

4 B. Any findings of fact of the District Court may not be set aside unless clearly
5 erroneous.

6 C. The order of the District Court ~~shall remain~~ remains in effect pending the appeal.

7 D. The District Court Rules of Civil Procedure and the Maine Rules of Civil
8 Procedure apply to the conduct of the appeals, except as otherwise specified in this
9 subsection.

10 **13. Rules.** If necessary, the commissioner shall ~~promulgate~~ adopt rules for the
11 effective implementation of this section.

12 **Sec. A-118. 34-B MRSA §5477, sub-§1,** as amended by PL 1983, c. 580, §24, is
13 further amended to read:

14 **1. Protective custody.** If a law enforcement officer has reasonable grounds to
15 believe, based upon ~~his~~ personal observation, that a person may ~~be mentally retarded~~
16 have an intellectual disability, that ~~he~~ the person presents a threat of imminent and
17 substantial physical ~~harm to himself~~ self-harm or harm to other persons and that an
18 emergency exists requiring immediate residential placement:

19 A. The officer may take the person into protective custody; and

20 B. If the officer does take the person into protective custody, the officer shall deliver
21 the person forthwith, within 18 hours, for examination by an available licensed
22 physician or licensed psychologist as provided in subsection 4.

23 **Sec. A-119. 34-B MRSA §5477, sub-§4, ¶B,** as enacted by PL 1983, c. 459, §7,
24 is amended to read:

25 B. The written application ~~shall~~ must be accompanied by a dated certificate, signed
26 by a licensed physician or a licensed clinical psychologist, stating:

27 (1) ~~He~~ The physician or psychologist has examined the person on the date of the
28 certificate, which date may not be more than 3 days before the date of admission
29 to the facility; and

30 (2) ~~He~~ The physician or psychologist is of the opinion that the person ~~is a~~
31 mentally retarded person has an intellectual disability and is in need of
32 institutional protective services.

33 **Sec. A-120. 34-B MRSA §5478, sub-§1,** as repealed and replaced by PL 1983,
34 c. 580, §26, is amended to read:

35 **1. Authority to continue treatment.** A client who has been admitted to a facility by
36 judicial certification, or who has been retained in a facility pursuant to this section, may
37 continue extended care and treatment in that facility for an additional period, not to
38 exceed 2 years, only after judicial certification under section 5474 or after waiver of that

1 process as provided in this section, except that waiver of the judicial certification process
2 is not permitted for any ~~mentally retarded~~ person with an intellectual disability under
3 public guardianship.

4 **Sec. A-121. 34-B MRSA §5601, sub-§5**, as amended by PL 1993, c. 326, §3, is
5 further amended to read:

6 **5. Normalization principle.** "Normalization principle" means the principle of
7 assisting the person with ~~mental retardation~~ an intellectual disability or autism to obtain
8 an existence as close to normal as possible and making available to that person patterns
9 and conditions of everyday life that are as close as possible to the norms and patterns of
10 the mainstream of society.

11 **Sec. A-122. 34-B MRSA §5601, sub-§5-A**, as amended by PL 2011, c. 186, Pt.
12 A, §5, is further amended to read:

13 **5-A. Person receiving services.** "Person receiving services" means a person with
14 ~~mental retardation~~ an intellectual disability or autism receiving services from the
15 department or from an agency or facility licensed or funded to provide services to persons
16 with ~~mental retardation~~ intellectual disabilities or autism except those presently serving
17 sentences for crime.

18 **Sec. A-123. 34-B MRSA §5601, sub-§5-B**, as enacted by PL 2011, c. 186, Pt.
19 A, §6, is amended to read:

20 **5-B. Provider.** "Provider" means an entity, organization or individual providing
21 services to an adult with ~~mental retardation~~ an intellectual disability or autism, funded in
22 whole or in part or licensed or certified by the department.

23 **Sec. A-124. 34-B MRSA §5601, sub-§7-A**, as amended by PL 2011, c. 186, Pt.
24 A, §11, is further amended to read:

25 **7-A. Supports.** "Supports" means actions or assistance that empowers a person with
26 ~~mental retardation~~ an intellectual disability or autism to carry out life activities, build
27 relationships and learn the skills necessary to meet the person's needs and desires.

28 **Sec. A-125. 34-B MRSA §5602**, as amended by PL 1993, c. 326, §8, is further
29 amended to read:

30 **§5602. Purpose**

31 It is the intent of the Legislature to guarantee individual dignity, liberty, pursuit of
32 happiness and the protection of the civil and legal rights of persons with ~~mental~~
33 ~~retardation~~ intellectual disabilities or autism and to articulate rights of persons with
34 ~~mental retardation~~ intellectual disabilities or autism, so that these rights may be exercised
35 and protected.

36 **Sec. A-126. 34-B MRSA §5603**, as amended by PL 2011, c. 186, Pt. A, §14, is
37 further amended to read:

1 **§5603. Entitlement**

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

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

12 **Sec. A-127. 34-B MRSA §5604**, as amended by PL 2011, c. 186, Pt. A, §§15 to
13 17, is further amended to read:

14 **§5604. Protection**

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

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

22 **2. Independence and productivity.** Providing habilitation, education and other
23 training to persons with ~~mental retardation~~ intellectual disabilities or autism that will
24 maximize each person's potential to lead an independent and productive life and that will
25 afford opportunities for full inclusion into the community where each person lives; and

26 **3. Grievance right.** Providing a person with ~~mental retardation~~ an intellectual
27 disability or autism with the right to appeal a decision regarding actions or inactions by
28 the department that affects the person's life. The department shall establish in rule a
29 process for hearing such grievances pursuant to Title 22-A, section 206, subsection 4.
30 The rules must contain strict time frames for the resolution of grievances. The rules may
31 provide for resolution of grievances through mediation.

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

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

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

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

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

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

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

34 **Sec. A-128. 34-B MRSA §5604-A, sub-§§2 and 3**, as enacted by PL 2007, c.
35 356, §24 and affected by §31, are amended to read:

36 **2. Maintain reporting system.** The department shall maintain a reportable event
37 and adult protective services system that provides for receiving reports of alleged
38 incidents, prioritizing such reports, assigning reports for investigation by qualified
39 investigators, reviewing the adequacy of the investigations, making recommendations for
40 preventive and corrective actions as appropriate and substantiating allegations against
41 individuals who have been found under the Adult Protective Services Act to have abused,
42 neglected or exploited persons with ~~mental retardation~~ intellectual disabilities or autism.

1 The department shall fully establish the reportable event and adult protective services
2 system through rulemaking.

3 **3. Violation.** All persons with knowledge of an alleged violation of the rights of an
4 individual with ~~mental retardation~~ an intellectual disability or autism as set out in section
5 5605 shall promptly report the details of the alleged violation to the Office of Advocacy
6 as set forth in department rules.

7 **Sec. A-129. 34-B MRSA §5605**, as amended by PL 2011, c. 186, Pt. A, §§18 to
8 34, is further amended to read:

9 **§5605. Rights and basic protections of a person with an intellectual disability or**
10 **autism**

11 A person with ~~mental retardation~~ an intellectual disability or autism is entitled to the
12 following rights and basic protections.

13 **1. Humane treatment.** A person with ~~mental retardation~~ an intellectual disability or
14 autism is entitled to dignity, privacy and humane treatment.

15 **2. Practice of religion.** A person with ~~mental retardation~~ an intellectual disability or
16 autism is entitled to religious freedom and practice without any restriction or forced
17 infringement on that person's right to religious preference and practice.

18 **3. Communications.** A person with ~~mental retardation~~ an intellectual disability or
19 autism is entitled to private communications.

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

26 B. A person with ~~mental retardation~~ an intellectual disability or autism is entitled to
27 reasonable opportunities for telephone and Internet communication.

28 C. A person with ~~mental retardation~~ an intellectual disability or autism is entitled to
29 an unrestricted right to visitations during reasonable hours unless this right has been
30 restricted pursuant to rules adopted pursuant to section 5604.

31 **4. Work.** A person with ~~mental retardation~~ an intellectual disability or autism
32 engaged in work programs that require compliance with state and federal wage and hour
33 laws is entitled to fair compensation for labor in compliance with regulations of the
34 United States Department of Labor.

35 **5. Vote.** A person with ~~mental retardation~~ an intellectual disability or autism may
36 not be denied the right to vote.

37 **6. Personal property.** A person with ~~mental retardation~~ an intellectual disability or
38 autism is entitled to the possession and use of that person's own clothing, personal effects

1 and money, except when temporary custody of clothing or personal effects by a provider
2 is necessary to protect the person or others from imminent injury or unless this right has
3 been restricted pursuant to rules adopted pursuant to section 5604.

4 **7. Nutrition.** A person with ~~mental retardation~~ an intellectual disability or autism is
5 entitled to nutritious food in adequate quantities and meals may not be withheld for
6 disciplinary reasons.

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

13 A. Medication may be administered only at the written order of a physician.

14 B. Medication may not be used as punishment, for the convenience of staff, as a
15 substitute for a habilitation plan or in unnecessary or excessive quantities.

16 C. Daily notation of medication received by each person with ~~mental retardation~~ an
17 intellectual disability or autism must be kept in the records of the person with ~~mental~~
18 ~~retardation~~ an intellectual disability or autism.

19 D. Periodically, but no less frequently than every 6 months, the drug regimen of
20 each person with ~~mental retardation~~ an intellectual disability or autism must be
21 reviewed by a physician or other appropriate monitoring body, consistent with
22 appropriate standards of medical practice.

23 E. All prescriptions must have a termination date.

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

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

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

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

40 I. Notwithstanding the absence of express and informed consent, emergency surgical
41 procedures may be provided to any person with ~~mental retardation~~ an intellectual

1 disability or autism who has been injured or who is suffering from an acute illness,
2 disease or condition if delay in initiation of emergency surgery would substantially
3 endanger the health of the person.

4 **9. Sterilization.** A person with ~~mental retardation~~ an intellectual disability or autism
5 may not be sterilized, except in accordance with chapter 7.

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

11 **11. Physical exercise.** A person with ~~mental retardation~~ an intellectual disability or
12 autism is entitled to opportunities for appropriate physical exercise, including the use of
13 available indoor and outdoor facilities and equipment.

14 **12. Discipline.** Discipline of persons with ~~mental retardation~~ intellectual disabilities
15 or autism is governed as follows.

16 B. Corporal punishment or any form of inhumane discipline is not permitted.

17 C. Seclusion as a form of discipline is not permitted.

18 E. A provider of residential services may establish house rules in a residential unit
19 owned or operated by the provider. A person receiving services who resides in the
20 unit is entitled to participate, as appropriate, in the formulation of the house rules. A
21 house rule must be uniformly applied to all residents of the residential unit where the
22 rules apply. A copy of the house rules must be posted in a residential unit where the
23 rules apply and a copy of the rules must be given to all residents who receive services
24 and, if any resident is under guardianship, to the guardian of the person receiving
25 services.

26 **13. Behavioral support, modification and management.** Behavior modification
27 and behavior management of and supports for a person with ~~mental retardation~~ an
28 intellectual disability or autism are governed as follows.

29 A. A person with ~~mental retardation~~ an intellectual disability or autism may not be
30 subjected to a behavior modification or behavior management program to eliminate
31 dangerous or maladaptive behavior without first being assessed by a physician to
32 determine if the proposed program is medically contraindicated and that the
33 dangerous or maladaptive behavior could not be better treated medically.

34 A-1. Support programs may contain both behavior modification and behavior
35 management components.

36 A-2. The following practices are prohibited as elements of behavior modification or
37 behavior management programs:

38 (1) Seclusion;

39 (2) Corporal punishment;

- 1 (3) Actions or language intended to humble, dehumanize or degrade the person;
- 2 (4) Restraints that do not conform to rules adopted pursuant to this section;
- 3 (5) Totally enclosed cribs or beds; and
- 4 (6) Painful stimuli.

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

- 7 (1) On the recommendation of the person's personal planning team;
- 8 (2) For an adult 18 years of age or older, with the approval, following a case-by-
9 case review, of a review team composed of an advocate from the Office of
10 Advocacy; a representative designated by the Office of Adults with Cognitive
11 and Physical Disability Services; and a representative designated by the Maine
12 Developmental Services Oversight and Advisory Board; and
- 13 (3) For a child under 18 years of age, with the approval, following a case-by-
14 case review, of a review team composed of an advocate from the Office of
15 Advocacy, a team leader of the department's children's services division and the
16 children's services medical director or the director's designee. Until rules are
17 adopted by the department to govern behavioral treatment reviews for children,
18 the team may not approve techniques any more aversive or intrusive than are
19 permitted in rules adopted by the Secretary of the United States Department of
20 Health and Human Services regarding treatment of children and youth in
21 nonmedical community-based facilities funded under the Medicaid program.

22 **14-A. Restraints.** A person with ~~mental retardation~~ an intellectual disability or
23 autism is entitled to be free from restraint unless:

- 24 A. The restraint is a short-term step to protect the person from imminent injury to
25 that person or others; or
- 26 B. The restraint has been approved as a behavior management program in
27 accordance with this section.

28 A restraint may not be used as punishment, for the convenience of the staff or as a
29 substitute for habilitative services. A restraint may impose only the least possible
30 restriction consistent with its purpose and must be removed as soon as the threat of
31 imminent injury ends. A restraint may not cause physical injury to the person receiving
32 services and must be designed to allow the greatest possible comfort and safety.

33 Daily records of the use of restraints identified in paragraph A must be kept, which may
34 be accomplished by meeting reportable event requirements.

35 Daily records of the use of restraints identified in paragraph B must be kept, and a
36 summary of the daily records pertaining to the person must be made available for review
37 by the person's planning team, as defined in section 5461, subsection 8-C, on a schedule
38 determined by the team. The review by the personal planning team may occur no less
39 frequently than quarterly. The summary of the daily records must state the type of
40 restraint used, the duration of the use and the reasons for the use. A monthly summary of
41 all daily records pertaining to all persons must be relayed to the Office of Advocacy.

1 **14-D. Reimbursement provided.** Notwithstanding any other provision of law, the
2 department shall provide reimbursement within available resources for durable medical
3 equipment that provides a safe sleeping environment for individuals under 16 years of
4 age if:

5 A. The durable medical equipment is necessary to correct or ameliorate a behavioral
6 health condition;

7 B. The durable medical equipment is the least restrictive alternative for the treatment
8 of the behavioral health condition;

9 C. The durable medical equipment is approved on a case-by-case basis by a review
10 team composed of the same representatives as the team conducting children's
11 behavioral treatment reviews under subsection 13, paragraph B, subparagraph (3);
12 and

13 D. The department determines that the durable medical equipment is cost-effective in
14 comparison to the provision of other covered services or equipment that can
15 sufficiently correct or ameliorate the behavioral health condition.

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

19 **15. Records.** All records of persons receiving services must remain confidential as
20 provided in section 1207.

21 A. The person with ~~mental retardation~~ an intellectual disability or autism or, if the
22 person is incompetent, a parent or guardian is entitled to have access to the records
23 upon request.

24 B. The commissioner is entitled to have access to the records of a provider if
25 necessary to carry out the statutory functions of the commissioner's office.

26 **16. Therapeutic devices or interventions.** Therapeutic devices or interventions
27 must be prescriptively designed by a qualified professional and applied with concern for
28 principles of good body alignment and circulation and allowance for change of position.
29 The department may adopt rules concerning the use of therapeutic devices or
30 interventions. Rules adopted pursuant to this subsection are routine technical rules as
31 defined in Title 5, chapter 375, subchapter 2-A.

32 **17. Safety devices and practices.** A safety device or practice must be prescribed by
33 a physician. A safety device must be designed and applied with concern for principles of
34 good body alignment and circulation and allowance for change of position. The
35 department may adopt rules concerning the use and approval of safety devices or
36 practices. Rules adopted pursuant to this subsection are routine technical rules as defined
37 in Title 5, chapter 375, subchapter 2-A.

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

1 **Sec. A-130. 34-B MRSA §5606, sub-§3**, as amended by PL 1993, c. 326, §10, is
2 further amended to read:

3 **3. Prohibited acts; penalty; defense.** A person is guilty of violation of the rights of
4 a person with ~~mental retardation~~ an intellectual disability or autism who is receiving
5 services if that person intentionally violates or abuses any rights or privileges of persons
6 receiving services granted by this subchapter.

7 A. Violation of the rights of a person with ~~mental retardation~~ an intellectual
8 disability or autism who is receiving services is a Class E crime.

9 B. Good-faith compliance with the provisions of this subchapter in connection with
10 evaluation, admission, habilitation programming, education, treatment or discharge of
11 a person receiving services is a defense to prosecution under this subchapter.

12 **Sec. A-131. 34-B MRSA §5610, sub-§1**, as enacted by PL 2007, c. 356, §27 and
13 affected by §31, is amended to read:

14 **1. Guiding service delivery.** The delivery of services by providers of services and
15 the department to persons with ~~mental retardation~~ intellectual disabilities and autism is
16 guided by the following.

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

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

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

25 D. Service delivery to persons with ~~mental retardation~~ intellectual disabilities and
26 autism is based on the following fundamentals:

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

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

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

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

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

34 (a) Promotes a high quality of life;

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

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

4 **Sec. A-132. 34-B MRSA §6001**, as amended by PL 2001, c. 354, §3 and PL
5 2003, c. 689, Pt. B, §6, is further amended to read:

6 **§6001. Legislative intent**

7 It is the intent of the Legislature that social and habilitative services directed at
8 persons who have been diagnosed as ~~being autistic~~ having autism or ~~having~~ other
9 pervasive developmental disorders be developed and planned for, to the extent that
10 resources permit, by the Department of Health and Human Services ~~through the Division~~
11 ~~of Mental Retardation~~.

12 **Sec. A-133. 34-B MRSA §6201, sub-§2**, as amended by PL 1995, c. 560, Pt. K,
13 §67, is further amended to read:

14 **2. Child in need of treatment.** "Child in need of treatment" means:

15 B. A child 17 years of age or younger who has treatment needs related to mental
16 illness, ~~mental retardation~~ an intellectual disability, autism, other developmental
17 disabilities or emotional or behavioral needs that are not under current statutory
18 authority of other state agencies; or

19 C. A person 18 years of age or older and under 21 years of age who has treatment
20 needs related to mental illness, ~~mental retardation~~ an intellectual disability, autism,
21 other developmental disabilities or emotional or behavioral needs if the department
22 has determined that it is in the interest of that person to receive treatment through the
23 department.

24 **Sec. A-134. 34-B MRSA §6205**, as amended by PL 2003, c. 706, Pt. A, §14, is
25 further amended to read:

26 **§6205. Services for juveniles committed to the youth development centers**

27 **1. Department authority.** The department may provide consultation services to any
28 juvenile with ~~mental retardation~~ an intellectual disability or autism committed to the Long
29 Creek Youth Development Center or the Mountain View Youth Development Center if
30 those services are requested by the Commissioner of Corrections or the commissioner's
31 designee. Consultation services may include participation by appropriate department
32 professionals on the Classification Committee of the Long Creek Youth Development
33 Center or the Classification Committee of the Mountain View Youth Development
34 Center in order to assist in the design of individual treatment plans to provide habilitation,
35 education and skill training to juveniles with ~~mental retardation~~ an intellectual disability
36 or autism in residence at the Long Creek Youth Development Center or the Mountain
37 View Youth Development Center.

38 **2. Support services.** Whenever a program has been designed for a juvenile with
39 ~~mental retardation~~ an intellectual disability or autism by the Classification Committee of

1 the Long Creek Youth Development Center or the Classification Committee of the
2 Mountain View Youth Development Center and the classification committee has included
3 participation by the department professionals, the department shall provide, insofar as
4 possible, support services to implement that program.

5 **3. Case management.** The department may provide case management services to
6 juveniles with ~~mental retardation~~ intellectual disabilities or autism who are released from
7 the Long Creek Youth Development Center or the Mountain View Youth Development
8 Center.

9 **Sec. A-135. 36 MRSA §1760, sub-§28,** as amended by PL 1999, c. 708, §28; PL
10 2001, c. 354, §3; and PL 2003, c. 689, Pt. B, §6, is further amended to read:

11 **28. Community mental health facilities, community adult developmental**
12 **services facilities and community substance abuse facilities.** Sales to mental health
13 facilities, ~~mental retardation~~ adult developmental services facilities or substance abuse
14 facilities that are:

15 A. Contractors under or receiving support under the Federal Community Mental
16 Health Centers Act, or its successors; or

17 B. Receiving support from the Department of Health and Human Services pursuant
18 to Title 5, section 20005 or Title 34-B, section 3604, 5433 or 6204.

19 **Sec. A-136. 36 MRSA §2551, sub-§1-B,** as amended by PL 2007, c. 539, Pt.
20 DDD, §2, is further amended to read:

21 **1-B. Community support services for persons with intellectual disabilities or**
22 **autism.** "Community support services for persons with ~~mental retardation~~ intellectual
23 disabilities or autism" means services:

24 A. That are provided by community-based agencies to children or adults with ~~mental~~
25 ~~retardation~~ intellectual disabilities or autism and include assistance with the
26 acquisition, retention or improvement of self-help, socialization and adaptive living
27 skills; and

28 B. That take place in a nonresidential setting separate from the home or facility in
29 which the child or adult resides, except when a physician has ordered that such
30 services be provided in the child's or adult's home, and focus on enabling the child or
31 adult to attain or maintain maximum functional levels.

32 "Community support services for persons with ~~mental retardation~~ intellectual disabilities
33 or autism" includes only those services provided by designated agencies under a contract
34 with the Department of Health and Human Services.

35 **Sec. A-137. 36 MRSA §2551, sub-§1-G** is enacted to read:

36 **1-G. Adult developmental services facility.** "Adult developmental services
37 facility" means a facility that provides to an adult with an intellectual disability or autism
38 any support or assistance that is provided, licensed or funded in whole or in part by the
39 Department of Health and Human Services pursuant to Title 34-B, chapter 5 or 6.

1 **Sec. A-138. 36 MRSA §2551, sub-§7-B**, as amended by PL 2007, c. 539, Pt.
2 DDD, §3, is further amended to read:

3 **7-B. Home support services.** "Home support services" means services provided to
4 adults with ~~mental-retardation~~ intellectual disabilities or autism, including direct
5 assistance with eating, bathing, dressing, personal hygiene and other activities of daily
6 living. These services include only those services provided by designated agencies under
7 a contract with the Department of Health and Human Services and:

8 A. May include assistance with instrumental activities of daily living such as
9 assistance with the preparation of meals, but does not include the cost of the meals
10 themselves;

11 B. If specified in the adult's care plan, may include such housekeeping chores as bed
12 making, dusting and vacuuming that are incidental to the care furnished, or are
13 essential to the health and welfare of the adult; and

14 C. May be provided by a provider unrelated to the adult or by an adult relative other
15 than an adult recipient's spouse, but may not be provided in the same setting where
16 residential training is provided.

17 **Sec. A-139. 36 MRSA §2552, sub-§1, ¶I**, as amended by PL 2009, c. 434, §29,
18 is further amended to read:

19 I. Community support services for persons with ~~mental-retardation~~ intellectual
20 disabilities or autism;

21 **Sec. A-140. 36 MRSA §2557, sub-§6**, as amended by PL 2007, c. 438, §60, is
22 further amended to read:

23 **6. Community mental health facilities, community adult developmental services**
24 **facilities and community substance abuse facilities.** Sales to mental health facilities,
25 ~~mental-retardation~~ adult developmental services facilities or substance abuse facilities that
26 are:

27 A. Contractors under or receiving support under the federal Community Mental
28 Health Centers Act, or its successors; or

29 B. Receiving support from the Department of Health and Human Services pursuant
30 to Title 5, section 20005 or Title 34-B, section 3604, 5433 or 6204;

31 **Sec. A-141. 36 MRSA §2559**, as amended by PL 2009, c. 213, Pt. S, §13 and
32 affected by §16, is further amended to read:

33 **§2559. Application of revenues**

34 Revenues derived by the tax imposed by this chapter must be credited to a General
35 Fund suspense account. On or before the last day of each month, the State Controller
36 shall transfer a percentage of the revenues received by the State Tax Assessor during the
37 preceding month pursuant to the tax imposed by section 2552, subsection 1, paragraphs A
38 to F and L to the Local Government Fund as provided by Title 30-A, section 5681,
39 subsection 5. The balance remaining in the General Fund suspense account must be

1 transferred to service provider tax General Fund revenue. On or before the 15th day of
2 each month, the State Controller shall transfer all revenues received by the assessor
3 during the preceding month pursuant to the tax imposed by section 2552, subsection 1,
4 paragraphs G to J to the Medical Care Services Other Special Revenue Funds account,
5 the Other Special Revenue Funds Mental Health Services - Community Medicaid
6 program, the Medicaid Services - ~~Mental Retardation~~ Adult Developmental Services
7 program and the Office of Substance Abuse - Medicaid Seed program within the
8 Department of Health and Human Services.

9 **Sec. A-142. 36 MRSA §2871, sub-§3-B** is enacted to read:

10 **3-B. Intermediate care facility for persons with intellectual disabilities.**
11 "Intermediate care facility for persons with intellectual disabilities" has the same meaning
12 as in Title 34-B, section 1001, subsection 4-B.

13 **Sec. A-143. 36 MRSA §2871, sub-§6**, as amended by PL 2003, c. 2, Pt. GG, §1
14 and affected by §3, is further amended to read:

15 **6. Residential treatment facility.** "Residential treatment facility" means an
16 intermediate care facility for ~~the mentally retarded~~ persons with intellectual disabilities,
17 or a level I assisted living facility for ~~the mentally retarded~~ persons with intellectual
18 disabilities or autism, that falls within the definitions provided by the United States Social
19 Security Act, 42 United States Code, Section 1396(d) and that provides services to
20 individuals with developmental disabilities. "Residential treatment facility" also means a
21 community-based facility that provides similar services to the developmentally disabled
22 under a waiver granted pursuant to the United States Social Security Act, 42 United
23 States Code, Section 1396n(c) to the extent permitted by federal law and regulations.

24 **Sec. A-144. Maine Revised Statutes headnote amended; revision clause.**
25 In the Maine Revised Statutes, Title 34-B, chapter 5, in the chapter headnote, the words
26 "mental retardation" are amended to read "intellectual disabilities and autism" and the
27 Revisor of Statutes shall implement this revision when updating, publishing or
28 republishing the statutes.

29 **Sec. A-145. Maine Revised Statutes headnote amended; revision clause.**
30 In the Maine Revised Statutes, Title 34-B, chapter 5, subchapter 2, in the subchapter
31 headnote, the words "mental retardation services" are amended to read "services for
32 persons with intellectual disabilities or autism" and the Revisor of Statutes shall
33 implement this revision when updating, publishing or republishing the statutes.

34 **Sec. A-146. Maine Revised Statutes headnote amended; revision clause.**
35 In the Maine Revised Statutes, Title 34-B, chapter 5, subchapter 3, in the subchapter
36 headnote, the words "services for mentally retarded persons" are amended to read
37 "services for persons with intellectual disabilities or autism" and the Revisor of Statutes
38 shall implement this revision when updating, publishing or republishing the statutes.

39 **Sec. A-147. Maine Revised Statutes headnote amended; revision clause.**
40 In the Maine Revised Statutes, Title 34-B, chapter 5, subchapter 4, in the subchapter
41 headnote, the words "rights of persons with mental retardation or autism" are amended to

1 read "rights of persons with intellectual disabilities or autism" and the Revisor of Statutes
2 shall implement this revision when updating, publishing or republishing the statutes.

3 **PART B**

4 **Sec. B-1. Rename Consent Decree Reinvestment Fund - BDS-MR**
5 **program.** Notwithstanding any other provision of law, the Consent Decree
6 Reinvestment Fund - BDS-MR program within the Department of Health and Human
7 Services is renamed the Consent Decree Reinvestment Fund - Intellectual Disabilities
8 Services program.

9 **Sec. B-2. Rename Community Development Fund - Mental Retardation**
10 **program.** Notwithstanding any other provision of law, the Community Development
11 Fund - Mental Retardation program within the Department of Health and Human Services
12 is renamed the Community Development Fund - Intellectual Disabilities Services
13 program.

14 **Sec. B-3. Rename Community Development - Mental Retardation**
15 **program.** Notwithstanding any other provision of law, the Community Development -
16 Mental Retardation program within the Department of Health and Human Services is
17 renamed the Community Development - Intellectual Disabilities Services program.

18 **Sec. B-4. Rename MR/Elderly PNMI Room and Board program.**
19 Notwithstanding any other provision of law, the MR/Elderly PNMI Room and Board
20 program within the Department of Health and Human Services is renamed the PNMI
21 Room and Board program.

22 **Sec. B-5. Rules, forms, policies and publications.** When adopting or
23 amending its rules and developing, publishing and issuing forms, policies and
24 publications, the Department of Health and Human Services, as appropriate, shall replace
25 references to "mental retardation" and "mentally retarded" with references to "intellectual
26 disability" and "person with an intellectual disability" and shall ensure that language
27 referring to persons with disabilities is consistent with the recommendations of the
28 respectful language working group contained in the report submitted by the Maine
29 Developmental Disabilities Council to the Joint Standing Committee on Health and
30 Human Services pursuant to Resolve 2007, chapter 62.

31 **Sec. B-6. Intent; effect.** This Act is not intended to and does not change the
32 eligibility requirements for services or benefits or result in an expansion of services or
33 benefits provided by the Department of Health and Human Services.

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

36 **SUMMARY**

37 Part A of this bill implements the recommendations of the Department of Health and
38 Human Services and the Maine Developmental Disabilities Council regarding respectful

1 language developed pursuant to Public Law 2011, chapter 186, Part B and makes other
2 minor technical amendments to those statutory provisions to conform them to current
3 drafting standards.

4 Part B renames certain programs within the Department of Health and Human
5 Services. It also directs the department, when adopting or amending its rules and when
6 developing, publishing and issuing forms, policies and publications, to replace references
7 to "mental retardation" and "mentally retarded" with references to "intellectual disability"
8 and "person with an intellectual disability" and to ensure that language referring to
9 persons with disabilities is consistent with the recommendations of the respectful
10 language working group contained in the report submitted by the Maine Developmental
11 Disabilities Council to the Joint Standing Committee on Health and Human Services
12 pursuant to Resolve 2007, chapter 62.