

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1752

H. P. 1472

House of Representatives, April 25, 1977

On motion of Mr. Goodwin of So. Berwick, referred to Committee on Health and Institutional Services. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Nelson of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Revise the Statutes Relating to Services for Mentally Retarded Persons.

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

Sec. 1. 18 MRSA § 3621 as enacted by PL 1969, c. 265, is amended to read:

§ 3621. Public guardian; Bureau of Mental Retardation

The Bureau of Mental Retardation established under Title 34, section ~~2661~~ 2611, shall act as public guardian for mentally retarded persons as provided in this subchapter and whenever the term, "public guardian" is used in this subchapter it shall mean and refer to the Bureau of Mental Retardation.

Sec. 2. 18 MRSA § 3622, 2nd sentence, as enacted by PL 1969, c. 265, is amended to read:

The authority of the public guardian shall be exercised by the Director of Mental Retardation, whose office is established under Title 34, section ~~2662~~ 2612 and by any persons duly delegated by the Director of Mental Retardation to exercise such authority including a staff of competent social workers, or competent social workers assigned to the public guardian by the Department of Mental Health and Corrections.

Sec. 3. 34 MRSA, cc. 184, 184-A, 184-B, 184-C, 186 and 187, as amended, are repealed.

Sec. 4. 34 MRSA Pt. 4-A is enacted to read:

PART 4-A
SERVICES FOR MENTALLY RETARDED PERSONS
CHAPTER 221
GENERAL PROVISIONS

§ 2601. Statement of policy

1. Services. It is the policy of the State of Maine to provide education, training and habilitative services to mentally retarded persons who need those services.

2. Setting. It is further the policy of the State that the setting for such services shall, consistent with adequate care and treatment:

A. Impose the fewest possible restrictions on the liberty of mentally retarded persons; and

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

§ 2602. Definitions

Unless the context otherwise indicates, the following words shall have the following meanings.

1. Bureau. "Bureau" means the Bureau of Mental Retardation in the Department of Mental Health and Corrections.

2. Commissioner. "Commissioner" means the Commissioner of Mental Health and Corrections.

3. Department. "Department" means the Department of Mental Health and Corrections.

4. Mental retardation. "Mental retardation" means a condition of significantly subaverage intellectual functioning manifested during a person's developmental period, existing concurrently with demonstrated deficits in adaptive behavior.

5. Region. "Region" means any of the regions established by the bureau.

§ 2603. Treatment by spiritual means

Nothing in this Part shall replace or limit the right of any person to treatment by spiritual means alone, through prayer, if such is requested by the patient or by his next of kin or legal guardian.

CHAPTER 223
BUREAU OF MENTAL RETARDATION

§ 2611. Bureau of Mental Retardation

There is established within the Department of Mental Health and Corrections a Bureau of Mental Retardation which, at the direction of the commissioner, shall be responsible for:

1. Institutions. The supervision of mental retardation programs in the institutions of the department;

2. Community-based services. Ensuring that mentally retarded persons residing in community residential facilities, including nursing homes, boarding homes, foster homes, group homes or halfway houses licensed by the Department of Human Services, are provided with, insofar as possible, residential accommodations and access to habilitation services appropriate to their needs;

3. Statewide system. The planning, promotion, coordination and development of a complete and integrated statewide system of mental retardation services; and

4. Liaison. Serving as liaison, coordinator and consultant to the several state departments in order to develop the statewide system of mental retardation services.

§ 2612. Director; duties

The commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary, subject to the approval of the Governor, for the Director of the Bureau of Mental Retardation, who shall be a person with training and experience in mental retardation program administration or who has had satisfactory experience in the direction of work of a comparable nature. The appointment shall be for an indeterminate term and until a successor is appointed and qualified or during the pleasure of the commissioner. It shall be the duty of the director to carry out the purposes of the bureau.

§ 2613. Maine Committee on Problems of the Mentally Retarded; duties

There shall be a Maine Committee on Problems of the Mentally Retarded composed of 12 members, consisting of one member from the House of Representatives appointed by the Speaker of the House and one member from the Senate appointed by the President of the Senate, the President of the Maine Association for Retarded Citizens, and 9 representative citizens appointed by the Governor, who shall designate a chairman. Appointments shall be made for 3 years. Members of the committee shall serve without pay, but will be reimbursed for expenses on the same basis as state employees. The terms of the members serving on the effective date of this Part shall not terminate or be modified as the result of this Part.

The duties of the Maine Committee on Problems of the Mentally Retarded shall be to act in an advisory capacity to the commissioner and to the director of the bureau in assessing present programs, planning future programs and in developing means to meet the needs of the retarded in Maine.

§ 2614. State Planning and Advisory Council on Developmental Disabilities

1. Council established. The Governor shall establish a State Planning and Advisory Council on Developmental Disabilities and appoint appropriate representatives, not only including such representatives as are required as a condition of eligibility for benefits under the Act entitled, "Development

Disabilities Services and Facilities Construction Act of 1970," as enacted by P.L. 91-517 on October 30, 1970, by the Congress of the United States, but also ensuring that there is at least one representative from each of the regions established by the bureau. This council shall consult with the director of the bureau in carrying out the purposes of this chapter.

2. Sole administering agency; powers. Except where a single state agency is otherwise designated or established in accordance with any other state law, the bureau is designated to be the sole agency of the State to establish and administer any statewide plan for the construction, equipment, maintenance or operation of any facility for the provision of care, treatment, diagnosis, rehabilitation, training or related services, which plan is now or may hereafter be required as a condition to the eligibility for benefits pursuant to the provisions of the Federal Act specified in subsection 1. The bureau is also authorized to receive, administer and expend any funds that may be available under this Federal Act or from any other sources, public or private, for such purposes.

§ 2615. Legislative purpose

The purpose of sections 2615 to 2619 is to provide protective and supportive services to those persons who are incapacitated by reason of mental retardation and who, with some assistance, are capable of living and functioning in society.

§ 2616. Definitions

As used in sections 2615 to 2619, unless the context indicates otherwise, the following terms shall have the following meanings.

1. Incapacitated person. The term "incapacitated person" means any person who is impaired by reason of mental retardation to the extent that he lacks sufficient understanding or capacity to make, communicate or implement responsible decisions concerning his person or property.

2. Protective services. The term "protective services" means services the object of which is to protect an incapacitated person from himself and from others. These services shall consist of evaluation of the need for service and mobilization on the person's behalf of appropriate existing services. These services shall include, but need not be limited to, arrangements for appropriate living quarters, obtaining financial benefits to which the person is entitled, and securing medical services, supplies and legal services. In those situations where exploitation, prevention of injury, protection of the person and his property and serving the necessities or amenities of life are at issue, these protective services shall include seeking the appointment of a public or private guardian for the incapacitated person.

3. Supportive services. The term "supportive services" means services the objective of which is to make it possible for an incapacitated person to become rehabilitated or self-sufficient to the maximum extent possible. These supportive services shall include, but need not be limited to, counseling, transportation, assistance in obtaining adequate housing, medical and psychiatric and nutritional services.

4. Ward. The term "ward" means a person for whom the bureau has been duly appointed guardian pursuant to Title 18, chapter 501, subchapter III-A.

§ 2617. Responsibility and role of bureau

1. Responsibility. The bureau is authorized to respond to complaints concerning and requests for assistance from or on behalf of all incapacitated persons. Services provided by the bureau shall be protective or supportive in nature.

2. Role. The role of the bureau shall be primarily that of supervision and coordination.

3. Acquiescence and consultation. With the exception of seeking the appointment of a guardian, protective or supportive services shall be initiated only:

A. With the acquiescence of the incapacitated person; and

B. After consultation, insofar as possible, with the family or the guardian of the incapacitated person.

§ 2618. Payment for services

The bureau may pay for protective and supportive services to incapacitated persons from its own resources, by mobilizing available community resources or by purchase of services from voluntary or state agencies.

To the extent that assets are available to incapacitated persons or wards, the cost of services shall be borne by the estate of persons receiving the services.

The department, through the bureau and its other agents, is authorized to receive as payee any benefits from social security, veterans administration, railroad retirement or any other like benefits paid on behalf of any mentally retarded individual, and shall apply such benefits toward the care and treatment of any such mentally retarded individual.

§ 2619. Rules

1. Rules promulgated. The bureau shall promulgate rules for the administration of sections 2615 to 2618.

2. Public hearing. The bureau shall hold a public hearing prior to adopting these rules. Notice of the public hearing shall be published once, within 14 to 30 days before the hearing, in the state paper and in other newspapers or journals of general circulation adequate to provide reasonable notice to the public affected thereby.

3. Rules amended or repealed. Rules may be amended or repealed at any time by the bureau after like notice and hearing of the portions amended or repealed.

CHAPTER 225
STATE-OPERATED FACILITIES FOR
MENTALLY RETARDED PERSONS

§ 2631. Facilities maintained

The department of Mental Health and Corrections shall maintain 3 residential facilities for the care and treatment of mentally retarded persons.

§ 2632. Pineland Center

1. Pineland Center maintained. Pineland Center, heretofore established at New Gloucester in the County of Cumberland, shall be maintained for the training, education, treatment and care of persons who are mentally retarded and of persons between the ages of 3 and 16 who are mentally ill. The provisions of chapter 229 shall in all relevant respects apply to the aforementioned mentally ill persons.

2. Superintendent; appointment. The head of Pineland Center shall be called the superintendent. The commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the Superintendent of Pineland Center. The appointment shall be for an indefinite term and until his successor is appointed and qualified, or during the pleasure of the commissioner.

3. Qualifications of superintendent. The superintendent shall be a person qualified by reason of training and experience to deal with the problems of mentally retarded persons and shall be either a psychiatrist, a hospital administrator, a psychologist, or a person with a master's degree in education, social work, public administration, public health or rehabilitation. In making the appointment, the commissioner and the Maine Committee on Problems of the Mentally Retarded shall give due consideration to the appointee's qualifications and experience in mental retardation matters.

4. Responsibilities of superintendent. The superintendent shall:

A. Be responsible for the training, education, treatment and care of all persons received into Pineland Center;

B. Be responsible for the discharge of all such persons, except those placed in Pineland Center under Title 15, sections 101 or 103; and

C. Have direct supervision, management and control of the grounds, buildings and property and offices and employees of Pineland Center, subject to the approval of the commissioner.

§ 2632. Aroostook Residential Center

1. Aroostook Residential Center maintained. Aroostook Residential Center, heretofore established at Presque Isle in the County of Aroostook, shall be maintained for the training, education, treatment and care of persons who are mentally retarded and may provide living accommodations for mentally

retarded individuals in order that they attend education and training programs.

2. Director; appointment. The head of the Aroostook Residential Center shall be called the director. The commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the Director of the Aroostook Residential Center. The appointment shall be for an indefinite term and until his successor is appointed and qualified, or during the pleasure of the commissioner.

3. Qualifications of director. The director shall be a person qualified by education and experience to administer a facility providing services to the mentally retarded.

4. Responsibilities of director. The director shall:

A. Be responsible for the training, education, treatment and care of all persons received into or receiving services from the Aroostook Residential Center;

B. Be responsible for the discharge of all persons received into the Aroostook Residential Center; and

C. Have direct supervision, management and control of the grounds, buildings and property and officers and employees of the Aroostok Residential Center, subject to the approval of the commissioner.

§ 2633. Elizabeth Levinson Center

1. Elizabeth Levinson Center maintained. The Elizabeth Levinson Center, heretofore established at Bangor in the County of Penobscot, shall be maintained for the training, education, treatment and care of persons who are mentally retarded.

2. Director; appointment. The head of the Elizabeth Levinson Center shall be called the director and the commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the Director of the Elizabeth Levinson Center. The appointment shall be for an indefinite term and until his successor is appointed and qualified, or during the pleasure of the commissioner.

3. Qualifications of director. The director shall be a person qualified by education and experience to administer a facility providing services to the mentally retarded.

4. Responsibilities of the director. The director shall:

A. Be responsible for the training, education, treatment and care of all persons received into or receiving services from the Elizabeth Levinson Center;

B. Be responsible for the discharge of all persons received into Elizabeth Levinson Center; and

C. Have direct supervision, management and control of the grounds, buildings and property and officers and employees of the Elizabeth Levinson Center, subject to the approval of the commissioner.

CHAPTER 227
COMMUNITY-BASED SERVICES FOR
MENTALLY RETARDED PERSONS

§ 2641. Assistance for community-based mental retardation services and programs

One purpose of this chapter is to assist in the establishment and expansion of community-based mental retardation services and programs for mentally retarded persons residing in the community. To carry out this purpose, the Department of Mental Health and Corrections may allocate money for the development of group homes, for capital construction, for the purchase of buildings and for supportive services and other activities. The department shall encourage persons in local communities to participate in the provision of such services so that these persons can have a better understanding of the need for such services. When offering financial assistance to community-based programs, the department shall follow the procedures set forth in this chapter.

The 2nd purpose of this chapter is to assist in the establishment and expansion of community-based mental retardation programs specifically for retarded persons residing in privately-operated residential care facilities.

§ 2642. Powers

The department may provide and help finance mental retardation services and programs throughout the State for mentally retarded persons residing in the community, including those persons residing in privately-operated residential care facilities. The department may cooperate with other state agencies, municipalities, other governmental units, unincorporated associations and nonstock corporations in order to provide and help finance such services and programs.

The department, through the bureau, shall adopt and promulgate rules, regulations and standards relating to the administration of the services authorized by this chapter. Under this chapter, funds will be granted by the department only to those applicants whose programs provide for adequate standards of professional service. The department may receive and use for the purpose of this chapter money appropriated by the State and grants by the United States Government and gifts from individuals and any other sources.

§ 2643. Municipalities and other governmental units

A municipality or other governmental unit, such as a county, school district or health district, through its local board of health or other town or governmental agency approved by the department, is authorized to adopt and carry out a program of mental retardation services established or approved by the department and appropriate money for that purpose. A municipality or other governmental unit may join with another municipality or governmental unit to carry out such a program.

2644. State aid

Upon application to the department by a municipality, governmental unit, unincorporated association or nonstock corporation organized for the improvement of community health and welfare, the department may grant to such applicant money to be used for carrying out its mental retardation services, including any necessary capital expenditures or purchase of buildings.

§ 2645. Fees

Any program authorized by the department may include the provision of services by the department or the municipality, governmental unit, unincorporated association or nonstock corporation directly to individuals, for which a fee may be charged, if the individual is financially able to pay the same. Fees received by the municipality, governmental unit, unincorporated association or nonstock corporation shall be utilized by each in carrying out its programs approved under this chapter.

§ 2646. Amount

Any amount of money granted by the department to a program pursuant to this chapter shall not exceed in any single year $\frac{3}{4}$ of the operating expenses incurred by the applicant receiving the grant after deducting from said expense the fees, if any, received for the services rendered, except that no more than $\frac{1}{2}$ of the operating expenses shall be paid from the General Fund appropriation. The department may grant funds for capital construction or purchase of buildings. Consideration shall be given to the ability of the municipality or governmental unit to support the mental retardation services, as reflected by the state's evaluation of the component communities. As to unincorporated associations or nonstock corporations, all income and resources shall be taken into account.

CHAPTER 229**PROCESS FOR PROVISION OF MENTAL
RETARDATION SERVICES****§ 2651. Statement of policy**

I. Steps to ensure receipt of service. It is the policy of the State that, in order to ensure that mentally retarded persons, receive, to the extent possible, needed services, the following steps shall be taken for each person who has been found by the Department of Mental Health and Corrections to be mentally retarded and in need of services:

- A. An assessment of the person's needs;
- B. The development of a prescriptive program plan of services for the person;
- C. A determination of the suitability and quality of needed services which are available to the person, first in the community and second in state-operated facilities; and

D. Insofar as possible, obtaining high quality and suitable services for the person.

2. Persons involved with procedures. It is further the policy of the State that, to the extent possible, the mentally retarded person and his legal guardian or next of kin, shall be involved with the steps specified in subsection 1. In addition, an advocate shall be available to the mentally retarded person throughout these steps.

§ 2652. General provisions

1. Definitions. As used in this chapter, unless the context indicates otherwise, the following words shall have the following meanings.

A. "Advocate" means a person:

(1) Who is familiar with the procedures, involved both in admitting mentally retarded persons to a facility and in providing services to such persons; and

(2) Who is capable of advocating solely on behalf of a mentally retarded person.

B. "Client" means a person asking the department for mental retardation services or the person for whom such services are asked.

C. "Community" means the municipality or other area in which the client resides when applying for services.

D. "Comprehensive evaluation" means a comprehensive set of evaluations which:

(1) Results in the distinguishing of mental retardation from other conditions;

(2) Determines the severity of disability resulting from mental retardation and other conditions; and

(3) Estimates the degree to which mental retardation and other conditions can be ameliorated.

E. "Facility" means a residential facility operated by the department for mentally retarded clients.

F. "Habilitation" means a process by which a person is assisted to acquire and maintain skills which:

(1) Enable him to cope more effectively with the demands of his own person and of the environment;

(2) Raise the level of his physical, mental and social efficiency; and

(3) Upgrade his sense of well-being.

G. "Interdisciplinary team" means a team of persons, including at least one physician or doctor of psychology licensed to administer individual

psychological tests, which is established and conducted in accordance with professional standards.

H. "Prescriptive program plan" means a detailed written plan outlining in detail a mentally retarded client's specific needs for education, training, treatment and habilitation services, along with the methods to be utilized in implementing the plan. A prescriptive program plan shall be formulated by an appropriately constituted interdisciplinary team.

I. "Service agreement" means a written contract in which a mentally retarded client or his legal guardian or next of kin, an advocate for the client, and persons providing services to the client, agree to the type of services and programs for and the manner of providing services to the client.

2. Notification. The department shall provide the client, if he is competent; the client's next of kin or legal guardian, if such exists; and the client's advocate:

A. With timely written notice in advance of all procedures and actions to be taken with respect to the development, implementation and assessment of prescriptive program plans; and

B. With copies of all correspondence and reports concerning the client.

3. Rules. By not later than 90 days after the effective date of this chapter, the commissioner shall promulgate and adopt rules for the effective implementation of this chapter.

A. The rules shall include, but need not be limited to, rules pertaining to:

(1) The membership, functions and procedures of the interdisciplinary teams;

(2) The procedures to be used in developing prescriptive programs and service agreements;

(3) The rights of clients while at a facility or while in departmental programs; and

(4) The rights and procedures for administrative review in the event of either dissatisfaction with any step of the process of receiving services specified in this chapter or any grievance arising during the course of voluntary admission to or treatment in any facility, including provisions for the development of regional committees to review any grievance or dissatisfaction.

B. The Joint Standing Committee on Health and Institutional Services shall review all rules promulgated by the department pursuant to this chapter. Such review shall occur by no later than March of each year.

C. The commissioner shall hold at least one public hearing prior to adopting these rules. Notice of any public hearing shall be published at least once, within 14 to 30 days before the hearing, in the state paper and in other newspapers or journals of general circulation adequate to provide reasonable notice to the public affected thereby.

D. Rules may be amended or repealed at any time by the commissioner after like notice and hearing of the portions amended or repealed.

4. Advocate. Each client who receives services pursuant to sections 2653 to 2657 shall be represented by an advocate. The department shall develop a list of advocates, including attorneys, for each region of the bureau.

§ 2653. Application for services

1. Application initiated. An application for mental retardation services provided by the department shall be initiated at or referred to a regional office of the bureau.

2. Observation and assessment. Within 5 work days the department shall:

- A. Observe the client in his current environment;
- B. Obtain a brief family survey;
- C. Make a preliminary assessment of the client's abilities and needs, and of the relevant services presently available to the client; and
- D. Ensure the client's representation by an advocate.

§ 2654. Evaluation and report

1. Evaluation required. After completing the actions specified in section 2653, subsection 2, the department shall, forthwith, cause a comprehensive evaluation of the client, including a consideration of physical, emotion, social and cognitive factors, to be conducted.

2. Location of evaluation. The comprehensive evaluation shall be conducted locally, except where resources required to carry out the evaluation are not available.

3. Interdisciplinary team. The comprehensive evaluation shall be carried out by an interdisciplinary team.

4. Report of interdisciplinary team. Within 30 days of an application made pursuant to section 2653 the department shall obtain a report of the interdisciplinary team's findings, and shall furnish copies of the report pursuant to the provisions of section 2652, subsection 2. The physician or doctor of psychology shall state specifically in the report whether or not the client is mentally retarded.

A. If the report of the interdisciplinary team concludes that the client is not mentally retarded, the department shall deny the application for services, care and treatment, but shall make appropriate referrals in cases where clear needs of the client exist.

B. If the report of the interdisciplinary team concludes that a client is mentally retarded and is in need of services, the department, through the interdisciplinary team, shall develop and begin to implement a prescriptive program plan for this client within 60 days of the application made under section 2653.

§ 2655. Prescriptive program plan

1. Individually tailored plan. Each prescriptive program plan shall be individually tailored to the client's age, sex, condition, abilities, experiences and needs.

2. Contents of plan. Each prescriptive program plan shall:

A. Define training and treatment goals for the client without regard to service availability;

B. List all available and applicable programs of treatment, education and habilitation;

C. Weigh the advantages of each program in paragraph B in terms of cost, effectiveness, convenience and the client's needs;

D. Recommend the optimal course of action; and

E. Include plans for the active and continued exploration of suitable program alternatives.

3. Implementation. Implementation of all portions of a prescriptive program plan shall occur at the earliest possible time.

4. Agreement. All portions of a prescriptive program plan shall be agreed to, prior to implementation, by the client, if he is able, and by his next of kin or legal guardian, if such person exists and is available.

5. Recommendations of plan. Each prescriptive program plan shall recommend that the client be admitted to a facility, receive services in the community under the supervision of a regional office, or cease to receive services from the department.

§ 2656. Service agreements

1. Service agreement required. Each prescriptive program plan shall be carried out pursuant to a written service agreement.

2. Signatures. Each service agreement shall be signed and dated by at least:

A. The client, if he is able;

B. The client's legal guardian or next of kin, if such person exists and is available;

C. A physician or psychologist serving on the interdisciplinary team which developed the prescriptive plan for the client;

D. The head of the appropriate regional office, when a client is being admitted to or discharged from a facility or when a client is under the supervision of the regional office;

E. The head of the facility or his agent, when a client is being admitted to, treated in or discharged from a facility; and

F. The head, or his agent, of other public or private agencies or groups which agree to provide services to the client.

3. Contents. Each service agreement shall include at least the following information.

A. It shall specify the respective responsibilities, where applicable, of the client, the family or legal guardian of the client, the regional office, the facility, and each public and private agency which intends to provide services to the client.

B. It shall identify by job classification or other description each individual who is responsible for carrying out each portion of the prescriptive program plan.

C. It shall specify the date on which the review required in subsection 5 shall occur.

4. Period of agreement. No portion of a prescriptive program plan shall be implemented until each person required under subsection 2 has signed the service agreement for the plan. The existing prescriptive program plan, if any, shall be considered in effect until all persons so required have signed the new service agreement. In no case shall a prescriptive program plan be in effect for a period of time which is longer than one year and 2 weeks from the date on which the last person signed the service agreement for the plan.

5. Review. At least 30 days prior to the termination of a service agreement, an interdisciplinary team shall meet in order to assess the present prescriptive program plan and, if further services are recommended, in order to prepare a new plan.

6. Amendment. Any major changes in a client's prescriptive program plan, shall occur only after the service agreement has been amended and signed by the persons specified in subsection 2.

§ 2657. Voluntary admission to and discharge from a facility

1. Recommendation of admission. If admission to a facility is recommended by an interdisciplinary team, the prescriptive program plan shall include the following information.

A. There shall be documentation that:

(1) The client requires treatment, education and habilitation of an intensive nature;

(2) The client can benefit from programs at the facility; and

(3) Appropriate programs for treatment, education and habilitation are not presently available in the community, or the facility is the treatment setting of the client's choice.

B. There shall be:

- (1) Plans for preparing the client for admission, including, unless specifically contraindicated, a preadmission visit to the facility; and
- (2) Plans to facilitate, at the earliest feasible time, the client's return to the community.

2. Application. Application for voluntary admission to a facility may be made, in a form which shall be prescribed by the department, by a mentally retarded client or a representative of his choice, by the client's legal guardian or next of kin, or by any other responsible person.

The applicant shall state that he believes that compelling needs of the client are not being met, shall state in writing the factual basis of this belief and shall provide all available results of evaluations of the client which may be relevant.

3. Admission; initial service agreement. The facility shall admit a client on a voluntary basis only after an initial prescriptive program plan has been developed and a service agreement for carrying out the prescriptive program plan has been executed pursuant to section 2656.

In addition to the contents of the service agreement required in section 2656, subsection 3, an initial service agreement for services to be received in a facility shall include a date, within 30 days of the client's admission to the facility, for a meeting of the persons who signed the agreement. The purpose of this meeting shall be to assess and, if necessary, refine the client's prescriptive program plan.

4. Provision of care and treatment. While residing in a facility, a client shall receive care, treatment and services only according to the procedures set forth in this section and in sections 2655 and 2656.

5. Preparation for discharge. Whenever an interdisciplinary team recommends that a client is ready to leave the facility, the prescriptive program plan and service agreement shall include provisions to ensure:

- A. That the client's money shall be adequately managed;
- B. That the client has a legal representative, if such person is required;
- C. That the client shall receive needed services in the community; and
- D. That the client's next of kin or guardian, if such person is available, shall continue to be involved with the client.

6. Role of regional office. The regional office which is nearest to the place where the client will reside shall be included in the preparation of the prescriptive program plan and service agreement specified in subsection 5. The regional office shall also be responsible for implementing the client's successful integration into the community. Within 6 months of the client's release, the regional office shall, along with the other members of the interdisciplinary team, evaluate the success of the client's reintegration and shall assist in obtaining the client's discharge when assured the provisions of the prescriptive program plan and service agreement have been met.

7. Discharge; extension of plan. If the provisions in subsection 5 have been met and if the regional office and interdisciplinary team so recommend, a client shall be discharged from the facility by no later than 6 months and 2 weeks after the last person signed the service agreement for the prescriptive program plan.

The prescriptive program plan, developed and agreed to under subsection 5, may be extended for 6 months. After any such extension, the client shall either be discharged or returned to a facility pursuant to this chapter.

§ 2658. Respite care

Respite care may be provided by a facility without full compliance with the procedures set forth in sections 2653 through section 2657. The purpose of such respite care shall be evaluation, diagnosis or other clearly stated and defined therapeutic reasons. Respite care may be provided upon application to the regional office of the bureau by the client, legal guardian or parent, for a period not to exceed 21 days at a time and not more than 60 days during any 12-month period. Within 5 days of admission, an interdisciplinary team evaluation shall be completed and a prescriptive program plan shall be formulated. Continuing placement in the facility, if indicated, shall be accomplished only upon full compliance with procedures described by this Part.

§ 2659. Judicial review

1. Hearing for release by petition to District Court; request for release; violation; form. Every adult who is or has been admitted on a voluntary basis to a facility as a mentally retarded client shall have a right to a hearing, by petition to the District Court, for his release from the facility after he or any person acting on his behalf makes a request for release to any member of the treatment staff of the facility or to any employee of a regional office.

The member of the treatment staff or regional office employee, to whom a request for release is made, shall promptly provide the person making the request for his signature or mark, a copy of the form set forth below. The member of the treatment staff, or regional office employee, as the case may be, shall fill in his own name and the date, and, if the person signs by mark, shall fill in the person's name, and shall then deliver the completed copy to the medical director of the facility, or his designee, notifying him of the request. As soon as possible, the person notified shall inform the District Court having jurisdiction where the facility is located of the request for release and shall transmit a copy of the request for release to the person's parent, guardian, or conservator, together with a statement that notice of judicial proceedings taken pursuant to such request will be forwarded by the court. The copy of the request for release and such notice shall be sent by registered or certified mail, with proper postage prepaid, addressed to the addressee's last known address, with a return receipt requested. The person notified shall also transmit a copy of the request for release and the name and address of the person's parent, guardian or conservator to the court.

Intentional violation of this section shall be punishable by imprisonment, not to exceed 6 months, or a fine, as provided in Title 17-A, section 1301.

The form for a request for release shall be substantially as follows:

(Name of the facility or regional office) day of 19...
I, (member of the treatment staff of the facility or employee of
the regional office), have today received a request for release from
..... (name of facility) of (name of client) from
the undersigned client on his own behalf or from the undersigned person on
behalf of the client.

.....
Signature or mark of client
making request for release

.....
Signature or mark of person
making request on behalf of client

2. Place of hearing; counsel; grounds for release; appointment of guardian or conservator. Judicial review shall be in the District Court having jurisdiction where the facility is located. The adult requesting to be released shall be informed of his right to counsel by a member of the treatment staff of the facility and by the court; and if he does not have an attorney for the proceedings, the court shall immediately appoint an attorney to assist him in preparation of a petition and to represent him in the proceedings. The person shall pay the costs of such legal service if he is able.

At the time the petition is filed with the court, the clerk of the court shall transmit a copy of the petition, together with notification as to the time and place of any evidentiary hearing in the matter, to the parent, guardian or conservator of the person seeking release or for whom release is sought. Such notice shall be sent by registered or certified mail with proper postage prepaid, addressed to the addressee's last known address and with a return receipt requested.

The court shall either release the adult or order an evidentiary hearing to be held not sooner than 5 judicial days nor more than 10 judicial days after the petition and notice to the adult's parent, guardian or conservator is deposited in the United States mail pursuant to this section. If the court finds that the adult requesting release or for whom release is requested is not mentally retarded, or that he is mentally retarded and that he is able to provide safely for his basic personal needs for food, shelter and clothing, he shall be immediately released. If the court finds that he is mentally retarded and that he is unable to provide safely for his basic personal needs for food, shelter or clothing, but that a responsible person or a regional office or other public or private agency is willing and able to provide therefor, the court shall release the mentally retarded adult to such responsible person or regional office or other public or private agency, as the case may be, subject to any conditions which the court deems proper for the welfare of the mentally retarded adult and which are consistent with the purposes of this chapter.

If, in any proceeding under this section, the court finds that the adult is mentally retarded and has no parent, guardian or conservator, and is in need of a guardian or conservator, the court shall order the appropriate regional

office of the department to initiate, or cause to be initiated, proceedings for the appointment of a guardian or conservator for the mentally retarded adult.

§ 2660. Involuntary commitment

A person who is or who is believed to be mentally retarded may be committed on an involuntary basis, provided that all of the provisions in chapter 191, subchapter III, relating to the involuntary commitment of mentally ill persons govern such commitment.

STATEMENT OF FACT

Process of Services

The primary purpose of this bill is to clearly delineate the procedures to be followed when a mentally retarded client receives services from the Department of Mental Health and Corrections.

Chapter 229 of the bill (sections 2651-2660) enacts new language to spell out the process. The following are the key aspects of this process:

1. Application for services. Under section 2653, applications for mental retardation services are made to the regional offices of the Bureau of Mental Retardation. Within 5 days, the department will observe and assess the person needing services and will ensure the person's representation by an advocate.

2. Comprehensive evaluation. Section 2654 requires that within 30 days of the application an interdisciplinary team, which is established and conducted in accordance with professional standards, must complete a comprehensive evaluation of the client. A report, based on this evaluation, must state whether or not the client is mentally retarded and in need of services.

3. Prescriptive program plan. If a client is found to be mentally retarded and in need of services offered by the department, the interdisciplinary team is required to develop a prescriptive program plan of services for the client by no later than 60 days after his application to the regional office. Section 2655 provides that the plan be individually tailored to the client's age, sex, condition, abilities, experiences and needs. The plan also requires active exploration of program and service alternatives.

4. Service agreement. Section 2656 requires that each prescriptive program plan must be carried out according to a written service agreement. The client, if he is able; his guardian or next of kin, if he is available; a member of the interdisciplinary team; and the head of a residential facility or other agency or group providing services to the client must agree to and sign the service agreement. A service agreement spells out the respective responsibilities of each person, agency or group involved in providing or receiving services. No service agreement, or prescriptive program plan, can be in effect for longer than one year.

5. **Voluntary admission and discharge.** Section 2657 provides that admission of a mentally retarded client to a state residential facility can occur only after an initial prescriptive program plan has been developed and a service agreement has been executed. A prescriptive program plan, carried out and reviewed according to service agreements, is required throughout the client's stay in a state residential facility. When an interdisciplinary team recommends that a client is ready to leave the facility, the regional office nearest to the place where the client will reside becomes responsible for the client's integration into the community. A client must be either discharged or returned to the facility by no later than 6 months after he has been in the community. One 6-month extension is permitted.

6. **Advocate.** Throughout the process of receiving mental retardation services, the client is assured representation by an advocate. Section 2652, subsection 4, requires the department to develop a list of advocates for each region.

7. **Appeals and judicial review.** The bill provides for protection of the client's rights through 2 processes—administrative review and judicial review. Section 2652, subsection 3, requires the department to promulgate and adopt rules relating to the rights and procedures for the administrative review of dissatisfactions or grievances of clients. This subsection requires the establishment of regional committees to review dissatisfactions and grievances. Section 2659 provides that any mentally retarded adult who has been admitted to a state residential facility has a right to a hearing, by petition to the District Court, for his release from the facility.

8. **Respite care.** Section 2658 of the bill allows a client to be admitted to a state facility for respite care without full compliance with all of the procedures for voluntary admission. Respite care can be provided for a period not to exceed 21 days at a time and not more than 60 days during a year.

9. **Involuntary commitment.** The bill states in section 2660 that mentally retarded persons may be involuntarily committed to a state residential facility only in accordance with the commitment laws for mentally ill persons.

Clarification of Statutes

It should also be noted that this bill rewrites and reorganizes existing statutes on mental retardation services. Chapters 221 through 227 do not contain major substantive changes. The primary purposes of these changes are to clarify and improve upon existing language and (in chapter 225) to alter slightly the mandated purposes of the Elizabeth Levinson Center and the Aroostook Residential Center.