

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1528

S. P. 466

In Senate, March 26, 1979

On Motion of Senator Pierce of Kennebec, reconsidered referral and referred to the Committee on Health and Institutional Services. Sent down for concurrence and ordered printed.

Presented by Senator Trafton of Androscoggin.

Cosponsor: Senator Gill of Cumberland.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Establish and Protect the Rights of Recipients of Mental Health Services.

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

Sec. 1. 34 MRSA § 2251, sub-§§ 9 and 10 are enacted to read:

9. Express, written and informed consent for treatment. “Express, written and informed consent for treatment” means that a person knowingly, clearly and explicitly manifests voluntary acceptance or allowance of the planned or proposed treatment in writing to the treatment staff. If the person is illiterate, or does not understand English, or is blind, deaf or otherwise unable to communicate, appropriate measures shall be taken to supply the information necessary to make an express, written and informed consent.

10. Recipient of mental health services. “Recipient of mental health services” hereinafter referred to as “recipient” means an individual who is receiving mental health treatment from an agency or facility licensed or funded by the Bureau of Mental Health or the Department of Human Services to provide mental health services.

Sec. 2. 34 MRSA § 2253 is amended by inserting at the end the following new paragraphs:

Seclusion and restraint are forms of management and treatment of acute behavioral disturbances, ordered by licensed health personnel when a recipient presents a threat to himself or others. The danger must be clear and immediate. As forms of treatment, seclusion and restraint are subject to the same quality assurance standards and monitoring of effectiveness as are other treatment methods. Thus, use of seclusion and restraint shall have the purpose and intended effect of treatment. Inappropriate use of seclusion and restraint as a threat or form of punishment constitute mistreatment within the intent of this section.

Safety precautions shall be followed to prevent injuries to the recipient in the seclusion room. Seclusion rooms shall be adequately lighted and heated. Regular meals and toilet privileges shall be offered at appropriate times and intervals. The recipient in the seclusion room shall be observed at least every 15 minutes by qualified personnel.

Sec. 3. 34 MRSA c. 194 is enacted to read:

CHAPTER 194

RIGHTS OF RECIPIENTS OF MENTAL HEALTH SERVICES

§ 2481. Legislative intent

It is the intent of the Legislature to articulate the rights of recipients of mental health services so that these rights may be exercised and protected. No recipient of services shall be deprived of any rights, benefits or privileges guaranteed by law, the Constitution of Maine or the Constitution of the United States solely on account of the receipt of mental health services or a diagnosis of mental illness. It is the clear, unequivocal intent of this chapter to guarantee individual dignity, liberty, pursuit of happiness and the protection of the civil and legal rights of recipients of mental health services.

§ 2482. Rights and basic protection of recipients

No recipient shall be presumed incompetent nor shall the person be held incompetent except as determined by a court. The determination shall be separate from a judicial proceeding held to determine whether a person is subject to involuntary admission or meets the standard for judicial admission.

§ 2483. Humane care

A recipient shall be provided with adequate and humane care and services in the least restrictive and appropriate environment pursuant to an active, individualized treatment plan monitored by qualified personnel.

The recipient has the right to maximum feasible involvement in the planning and implementation of the treatment plan, including the right to attend and have input into treatment planning, ongoing staffings and discharge planning. Further,

the intent of the recipient's involvement in the treatment planning and implementation is to achieve a treatment process agreeable to the treatment staff and the recipient. The recipient has the right to include disagreements and clarifications into the record and the right to sign or not to sign the treatment plan. Upon discharge, the recipient has the right to receive a copy of the discharge summary and treatment record, if so desired, after reviewing these with qualified personnel.

§ 2484. Practice of religion

Recipients have the right to religious freedom and practice. Maximum effort shall be made to facilitate the recipient's freedom to exercise religious practice and to protect other recipients' freedom to their own choice of religious practice.

§ 2485. Communication

Recipients shall have full rights to unimpeded, private and uncensored communication by mail, telephone and visitation, unless specifically restricted in the individual treatment plan for stated cause.

1. **Mail.** Each recipient shall be allowed to receive, send and mail sealed, unopened correspondence. No staff member employed by a hospital shall hold or censor any incoming or outgoing correspondence without the consent of the recipient or his legal guardian. The inpatient or residential facilities shall provide pens, paper, envelopes and postage in reasonable amounts to recipients who are otherwise unable to procure them.

2. **Telephone.** Recipients may make and receive a reasonable number of telephone calls per day at reasonable hours and in privacy. Staff assistance shall be provided as needed. Telephone funds or access thereto shall be provided by the inpatient or residential facility in reasonable amounts to recipients who are otherwise unable to procure these resources.

3. **Visitors.** Recipients shall have an unrestricted right to receive or refuse a reasonable number of visitors during reasonable hours. Nothing in this subsection shall be construed to permit infringement upon other recipients' rights. Recipients may receive their personal therapist, attorney, a representative of the Office of Advocacy or their clergy at any reasonable time.

§ 2486. Work

Recipients engaged in work programs which require compliance with state and federal wage and hour laws shall be provided with fair compensation for labor in compliance with state and federal statutes and regulations. Wages earned by a recipient shall be considered remuneration to which he is entitled and these wages shall be paid at least every 2 weeks. Activities which are considered normal in open community life and which relate to activities of daily living shall not be considered remunerable in the intent of this section.

§ 2487. Personal finances

A recipient may use his own finances as he chooses, within reason, unless this right is limited by guardianship or conservatorship. A recipient may deposit or cause to be deposited funds in his own name with the inpatient or residential facility or a financial institution. Funds deposited with the hospital shall not be retained by the hospital. Any earnings attributable to a recipient's funds shall accrue to him.

When a recipient is discharged from an inpatient or residential facility, all his assets, including funds, interest and personal property, shall be returned after notification to the individual or, if unclaimed, these may be disposed of after 180 days or as otherwise specified by statute. Illegal contraband may be impounded and disposed of as otherwise provided by statutes.

§ 2488. Personal property

Recipients have the right to control their own personal property. When necessary to protect the recipient or others from imminent injuries, articles may be temporarily taken into custody to be immediately returned when the emergency ends. Recipients may wear their own clothing. If the recipient is unable to provide owned clothing, the mental health institution will provide appropriately sized, seasonably appropriate and contemporary clothing. A reasonable amount of secure personal and central storage shall be available to all inpatient or residential recipients. Recipients shall not be subject to search without good cause.

§ 2489. General rights

All recipients, except those whose rights are legally abridged under provisions of other statutes and regulations, have the right to exercise all civil rights including, but not limited to, civil service status, the right to vote, rights relating to the granting, renewal, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law. Recipients have the right to enter contractual relationships and to manage their own property. No rights shall be abridged solely because of residential status in a mental health facility.

§ 2490. Legal representation

Each recipient shall not be denied the right to have access to an attorney, to seek legal advice, to take legal action and each recipient has the right to have private interviews with an attorney on any matter. Except as provided otherwise by statute, all recipients shall be responsible for the cost of retaining legal counsel.

§ 2491. Therapy

Each recipient has the right to be consulted as regards the choice of the recipient's major therapist. Confidences between the recipient and therapist shall

be held in trust to facilitate the therapeutic process without fear or reprisals, except in instances where the recipient is in danger of causing harm to himself or others.

§ 2492. Review

Reviews and records of recipients' mental health services shall be carried out and documented in accordance with appropriate state and national standards. The staff shall enter into the recipient's review record the response to treatment, current mental status and specific reasons why continued treatment is necessary in the current setting or whether a treatment program is available which is appropriate to physical, mental, social and personal sense of well-being and is less restrictive of the recipient's liberty.

§ 2493. Environment

Each recipient in inpatient or residential settings or facilities shall have the right to healthful, humane and safe physical environment. The environment shall be clean, well-ventilated, well-lit, suitably staffed and shall be comfortably arranged to allow adequate space for each recipient.

The recipient's need for privacy must be respected within constraints of physical environment and treatment needs.

§ 2494. Physical exercise

Each recipient shall have the right to appropriate and sufficient physical exercise including the use of available indoor and outdoor facilities and equipment.

§ 2495. Nutrition

Each recipient in an inpatient or residential facility shall have the right to varied and nutritious food in adequate quantities consistent with health needs. Basic meals shall not be withheld for disciplinary reasons. Dietary requirements and restrictions shall be included in the individual's clinical record and shall be considered in designing treatment plans.

§ 2496. Associations

Taking into consideration each recipient's treatment plan and the peace and security of the ward, each recipient shall have the right to associate freely or not with any person or group. Each recipient has the right to be with others of his own age group, if so desired. Each recipient shall have the right to have suitable opportunities for leisure time activities which include social interaction.

§ 2497. Consent to treatment

Except as otherwise provided, no recipient shall be subjected to electroconvulsive therapy or other convulsive therapies without his express, written and informed consent, unless the recipient has been found to be legally

incompetent, in which case, the recipient's guardian must give express, written and informed consent for any of the treatments to be done. In all cases specified in this section, in addition to the opinion of the treating physicians a 2nd qualified opinion in the applicable field must be obtained regarding the proposed procedure. The recipient or his guardian shall be personally informed of the 2 opinions.

1. **Psychosurgery.** Psychosurgery is defined as those operations currently referred to as lobotomy, psychiatric surgery and behaviorial surgery, the purpose of which is the modification or control of thoughts, feelings, actions or behavior rather than the treatment of a known and diagnosed physical disease of the brain. Psychosurgery may be performed only if:

A. The recipient, a responsible relative of the recipient's choosing and consent and the recipient's guardian, if there is one, gives express, written and informed consent as provided in this section;

B. The attending physician adequately documents the reasons for the procedure in the recipient's treatment record, establishes that all other appropriate treatment modalities have been exhausted and that this mode of treatment is definitely indicated and is the least drastic treatment alternative presently available to the recipient; and

C. Three physicians, board-certified or eligible in psychiatry or neurosurgery, have personally examined the recipient and unanimously agree with the attending physician's determinations stated in paragraph B and agree that the recipient has the capacity to give informed consent. Record of this agreement shall be documented in the recipient's treatment record and signed by each physician.

Under no circumstances shall psychosurgery be performed on a minor.

2. **Form provided.** Except as otherwise provided, any agency performing the procedures specified in this section shall provide a form setting forth clearly and in detail, the following:

A. The reason for treatment, that is, the nature and seriousness of the recipient's illness, disorder or defect;

B. The nature of the procedure to be used in the proposed treatment, including its probable frequency and duration;

C. The probable degree and duration, temporary or permanent, of the improvement or remission expected with and without the treatment;

D. The nature, degree, duration and probability of the side effects and significant risks, commonly known by the medical profession, of the treatment, especially noting the degree and duration of memory loss and its likelihood of irreversibility and the extent to which these side effects may be controlled;

E. That there exists a division of opinion as to the efficacy of the proposed treatment, why and how it works and its commonly known side effects and risks;

F. The reasonable alternative treatments and why the health professional is recommending this particular treatment; and

G. That the recipient has the right to accept or refuse the proposed treatment and if he consents, has the right to revoke his consent at any time prior to or between treatments.

The treating mental health professional shall then present this form to the recipient and orally, clearly and in detail explain all of the information in this section to the recipient. The recipient or his guardian, as applicable, shall sign the form if he is in agreement with receiving the treatment and subsequently it shall be dated and witnessed. A copy of this form shall be placed in the recipient's record.

The treating mental health professional may urge the proposed treatment as the best one but may not use, in an effort to gain consent, any reward or threat, express or implied, nor any other form of inducement or coercion.

A recipient shall not be deemed incapable of informed consent solely by virtue of being diagnosed as a mentally ill or disordered, abnormal or mentally disabled person.

Notwithstanding the absence of express, written and informed consent, emergency medical care may be given to any recipient who has been injured or who is suffering from an acute physical illness or physical condition if, within a high degree of medical certainty, delay in providing the emergency medical care would be life-threatening to the recipient or result in irreversible impairment of normal function.

Recipients of any procedures covered by this section have the right to examination to determine their condition and implications of the proposed procedures.

§ 2498. Medical treatment

Each recipient of inpatient or residential services has the right to have a thorough and competent physical examination by a licensed health professional to ensure that his mental condition is definitely not caused by any physical illness, injury or defect and each recipient has the right to seek a 2nd opinion from another licensed health professional of his own choice, if so desired by the recipient. Payment for the 2nd opinion is the responsibility of the recipient.

Each recipient of inpatient or residential services has the right to medical treatment for ordinary physical illnesses. All recipients have a right to access to treatment.

§ 2499. Information

Every recipient shall be informed in writing at the time of admission of the procedures for requesting release from the facility, the availability of counsel, the Office of Advocacy, the rights enumerated in this chapter and rules and

regulations applicable to or concerning his conduct while a recipient of services in the facility. If the person is illiterate or does not understand English, or is blind, deaf or otherwise unable to communicate, appropriate measures shall be made to supply this information. A summarized copy in laymen's terms of the rights of recipients of mental health services as enumerated in this chapter shall be prominently displayed in every area where recipients are housed or treated and a copy of these summarized rights shall be given to each recipient.

STATEMENT OF FACT

This bill, based upon Maine statutory rights and protections for the mentally retarded, establishes similar protections for mental health recipients. Currently, rights are protected by constitutional provisions, policies adopted by state mental health institutions and other provider services and present statutes which do not comprehensively take all rights into account. This bill would accomplish the purpose of guaranteeing human and civil rights for recipients of mental health services within a framework of therapeutic care.