

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 SECOND REGULAR SESSION  
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE  
5

6 Legislative Document

No. 1995

7  
8 S.P. 794

In Senate, February 7, 1986

9 Submitted by the Department of Mental Health and Mental Retardation  
10 pursuant to Joint Rule 24.

Reference to the Committee on Judiciary suggested and ordered printed.

11 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Carpenter of Aroostook.

12 Cosponsored by Representative Cooper of Windham, Representative  
Lebowitz of Bangor and Representative Paradis of Augusta.

13 STATE OF MAINE  
14

15 IN THE YEAR OF OUR LORD  
16 NINETEEN HUNDRED AND EIGHTY-SIX  
17

18 AN ACT to Enhance the Protection of Mental  
19 Health Recipients' Rights.  
20

21 Emergency preamble. Whereas, Acts of the Legis-  
22 lature do not become effective until 90 days after  
23 adjournment unless enacted as emergencies; and

24 Whereas, this bill is necessary to validly dele-  
25 gate rule-making power to the Department of Mental  
26 Health and Mental Retardation to enact certain rules;  
27 and

28 Whereas, these rules establish important addi-  
29 tional due process protection for mental health cli-  
30 ents; and

31 Whereas, in the judgment of the Legislature,  
32 these facts create an emergency within the meaning of  
33 the Constitution of Maine and require the following  
34 legislation as immediately necessary for the preser-

1 vation of the public peace, health and safety; now,  
2 therefore,

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

5 Sec. 1. 5 MRSA §12004, sub-§10, ¶A, sub-¶58-A is  
6 enacted to read:

7	<u>(58-A) Mental Health</u>	<u>Mental Health</u>	<u>Not</u>	<u>34-B MRSA</u>
8	<u>and Mental</u>	<u>Rights Ad-</u>	<u>Author-</u>	<u>§1209-A</u>
9	<u>Retardation</u>	<u>visory Board</u>	<u>ized</u>	

10 Sec. 2. 18-A MRSA §5-501, as enacted by PL 1979,  
11 c. 540, §1, is repealed and the following enacted in  
12 its place:

13 §5-501. When power of attorney not affected by dis-  
14 ability

15 If a principal designates another as his attor-  
16 ney-in-fact or agent by a power of attorney in writ-  
17 ing and the writing contains the words: "This power  
18 of attorney shall not be affected by disability of  
19 the principal;" "This power of attorney shall become  
20 effective upon the disability of the principal;" or  
21 similar words showing the intent of the principal  
22 that the authority conferred shall be exercisable  
23 notwithstanding his disability, the authority of the  
24 attorney-in-fact or agent is exercisable by him as  
25 provided in the power, on behalf of the principal,  
26 notwithstanding later disability or incapacity of the  
27 principal at law or later uncertainty as to whether  
28 the principal is dead or alive.

29 The authority of the attorney-in-fact or agent to  
30 act on behalf of the principal shall be set forth in  
31 the power and may relate to any act, power, duty,  
32 right or obligation which the principal has or may  
33 acquire relating to the principal or any matter,  
34 transaction or property, real or personal, tangible  
35 or intangible, including, but not limited to, the  
36 power to consent to or approve on behalf of the prin-  
37 cipal any medical or other professional care, coun-  
38 sel, treatment or service of or to the principal by a  
39 licensed or certified professional person or institu-

1 tion engaged in the practice of, or providing, a  
2 healing art.

3 All acts done by the attorney-in-fact or agent  
4 pursuant to the power during any period of disability  
5 or incompetence or uncertainty as to whether the  
6 principal is dead or alive have the same effect and  
7 inure to the benefit of and bind the principal or his  
8 heirs, devisees and personal representative as if the  
9 principal were alive, competent and not disabled. If  
10 a conservator thereafter is appointed for the princi-  
11 pal, the attorney-in-fact or agent, during the con-  
12 tinuance of the appointment, shall account to the  
13 conservator rather than the principal. The conserva-  
14 tor has the same power the principal would have had  
15 if he were not disabled or incompetent to revoke,  
16 suspend or terminate all or any part of the power of  
17 attorney or agency.

18 Sec. 3. 34-B MRSA §1209-A is enacted to read:

19 §1209-A. Mental Health Rights Advisory Board

20 1. Establishment. The Mental Health Rights Ad-  
21 visory Board as established pursuant to Title 5, sec-  
22 tion 12004, subsection 10, shall consist of 11 mem-  
23 bers as follows:

24 A. Six persons who are consumers of mental  
25 health services, including clients, at least 3 of  
26 whom have received services from a state institu-  
27 tion or a community mental health agency, and  
28 their families; and

29 B. Five persons who are providers of mental  
30 health services, including providers of services  
31 in nonstate and state in-patient and out-patient  
32 facilities.

33 Members shall be appointed by the commissioner for  
34 staggered terms not to exceed 2 years.

35 At least 3 nominations to the commissioner shall be  
36 made by majority vote of the board 30 days before the  
37 expiration of a member's term. If the initial nomi-  
38 nations are unacceptable, the board shall submit 3  
39 alternative nominations. If a member's term expires

1 and the commissioner has not appointed a successor,  
2 the member may be reelected by majority vote to con-  
3 tinue as a member until the commissioner appoints a  
4 successor.

5 2. Chairman. The members of the board shall  
6 elect a chairman.

7 3. Meetings. The board shall meet at least  
8 quarterly. A representative of the department shall  
9 act as liaison between the board and the department  
10 and shall have the right to attend all meetings of  
11 the board.

12 4. Functions. The primary function of the board  
13 is to advise the department in the implementation of  
14 its rules promulgated pursuant to chapter 3 and  
15 rights of recipients of mental health services.

16 5. Responsibilities. The board's responsibili-  
17 ties include reviewing and making recommendations re-  
18 garding the substantive content of the rules and re-  
19 garding procedural implementation of the rules. The  
20 board may review grievances filed alleging violations  
21 of the rules and review any other data which  
22 illustrates the process of procedural implementation  
23 of the rules. Board members shall have direct access  
24 to all living and program areas and to all records  
25 directly related to resident care, other than person-  
26 nel records, provided that the access is in conformi-  
27 ty with the law regarding confidentiality of mental  
28 health information.

29 6. Duties. The board shall prepare a yearly re-  
30 port for the commissioner of its observations and  
31 recommendations regarding the department's implemen-  
32 tation of its rules.

33 Sec. 4. 34-B MRSA §3003, sub-§2, ¶C, as enacted  
34 by PL 1983, c. 459, §7, is amended to read:

35 C. Standards for informed consent to treatment  
36 and guidelines for exceptions to informed consent  
37 as permitted under applicable law or in emergency  
38 situations, including reasonable standards and  
39 procedural mechanisms for determining when to  
40 treat a client absent his informed consent, con-  
41 sistent with applicable law;

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.

## STATEMENT OF FACT

The purpose of this bill is to accomplish the following.

Section 1. All states, including Maine, currently authorize the execution of a durable power of attorney whereby a principal designates in writing another person to act as his agent and to exercise, on his behalf, certain powers the principal possesses under the law despite the principal's future legal disability or incapacity. This bill specifically enables persons who are unimpaired to designate in writing a person of their choice to consent on their behalf to the provision of health care services in the event of future disability and is modeled after the current law in Colorado, another Uniform Probate Code state. The Maine Revised Statutes, Title 18-A, section 5-501, will continue to require a designated agent or attorney-in-fact to account to a legally appointed guardian or conservator, after determination of the principal's legal incapacity, rather than the principal, and permits the guardian or conservator to revoke, suspend or terminate all or part of any power of attorney.

Section 2. The rules "Rights of Recipients of Mental Health Services" enacted by the Department of Mental Health and Mental Retardation were the result of the combined efforts of the department, client consumer groups, private and public providers of mental health services and the families of consumers of mental health services. Currently, the department is working to implement these rules in both the institutional and community setting.

The Recipients' Rights Task Force, composed of representatives from the above groups, was actively involved in the drafting of the rules and has advised the department that an on going advisory committee should be established to monitor the implementation

1 of the rules. The addition of the Maine Revised  
2 Statutes, Title 34-B, section 1209-A, provides for  
3 the establishment of such a group to fulfill that ob-  
4 jective.

5 Section 3. The Maine Revised Statutes, Title  
6 34-B, section 3003, subsection 2, paragraph C, is  
7 amended to clarify that treatment of mental health  
8 clients under departmental rules should occur with  
9 the informed consent of the client or a substitute  
10 decision maker and that treatment of certain mental  
11 health clients who refuse treatment or who are unable  
12 to give informed consent may only take place pursuant  
13 to substantive standards and procedural mechanisms in  
14 departmental rules which are consistent with the dic-  
15 tates of applicable law.

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