

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 (New Draft of S.P. 794, L.D. 1995)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 2253

8
9 S.P. 896

In Senate, March 21, 1986

10 Reported by Senator Sewall of Lincoln from the Committee on Judiciary
11 and printed under Joint Rule 2. Original bill sponsored by Senator Clark of
12 Cumberland. Cosponsored by Senator Gill of Cumberland, Representative
Dexter of Kingfield and Representative Murray of Bangor.

JOY J. O'BRIEN, Secretary of the Senate

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-SIX
18

19 AN ACT to Enhance the Protection of Mental
20 Health Recipients' Rights.
21

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

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

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

32 Whereas, in the judgment of the Legislature,
33 these facts create an emergency within the meaning of
34 the Constitution of Maine and require the following
35 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)
6 is enacted to read:

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

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11 c. 540, §1, is repealed and the following enacted in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, withhold consent to or approve
37 on behalf of the principal any medical or other pro-
38 fessional care, counsel, treatment or service of or
39 to the principal by a licensed or certified profes-

1 sional person or institution engaged in the practice
2 of, or providing, a healing art. A durable power of
3 attorney to consent to medical or other professional
4 care shall be executed in accordance with the re-
5 quirements of section 2-502.

6 All acts done by the attorney-in-fact or agent
7 pursuant to the power during any period of disability
8 or incapacity or uncertainty as to whether the prin-
9 cipal is dead or alive have the same effect and inure
10 to the benefit of and bind the principal or his
11 heirs, devisees and personal representative as if the
12 principal were alive, competent and not disabled. If
13 a conservator or guardian thereafter is appointed for
14 the principal, the attorney-in-fact or agent, during
15 the continuance of the appointment, shall account to
16 the conservator or guardian rather than the princi-
17 pal. The conservator or guardian has the same power
18 the principal would have had if he were not disabled
19 or incapacitated to revoke, suspend or terminate all
20 or any part of the power of attorney or agency with
21 the exception of a durable power of attorney to con-
22 sent to medical or other professional care. The
23 court shall have the power, upon petition of the
24 guardian of an incapacitated person, to decide wheth-
25 er to revoke, suspend or terminate the authority of
26 the attorney-in-fact or agent to consent to medical
27 or other professional care.

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

29 §1209-A. Mental Health Rights Advisory Board

30 1. Establishment. The Mental Health Rights Ad-
31 visory Board as established pursuant to Title 5, sec-
32 tion 12004, subsection 10, shall consist of 11 mem-
33 bers as follows:

34 A. Six persons who are consumers of mental
35 health services, including clients, at least 3 of
36 whom have received services from a state institu-
37 tion or a community mental health agency, and
38 their families; and

39 B. Five persons concerned with the quality of
40 the delivery of mental health services, at least
41 4 of whom are providers of services in a hospital

1 pursuant to subchapter IV or in a program or fa-
2 cility administered or licensed by the department
3 under section 3606.

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

6 At least 3 nominations to the commissioner shall be
7 made by majority vote of the board 30 days before the
8 expiration of a member's term. If the initial nomi-
9 nations are unacceptable, the board shall submit 3
10 alternative nominations. If a member's term expires
11 and the commissioner has not appointed a successor,
12 the member may be reelected by majority vote to con-
13 tinue as a member until the commissioner appoints a
14 successor.

15 2. Chairman. The members of the board shall
16 elect a chairman.

17 3. Meetings. The board shall meet at least
18 quarterly. A representative of the department shall
19 act as liaison between the board and the department
20 and shall have the right to attend all meetings of
21 the board.

22 4. Functions. The primary function of the board
23 is to advise the department in the implementation of
24 its rules promulgated pursuant to chapter 3, concern-
25 ing rights of recipients of mental health services.

26 5. Responsibilities. The board's responsibili-
27 ties include monitoring the implementation of the
28 rules and making recommendations concerning improving
29 the substantive content and implementation of the
30 rules. Board members shall have access to all living
31 and program areas and to all grievance records and
32 other records directly relevant to monitoring the im-
33 plementation of the rules, provided that the access
34 is in conformity with the law regarding confidential-
35 ity of mental health information.

36 6. Duties. The board shall prepare a yearly re-
37 port for the commissioner of its observations and
38 recommendations regarding the department's implemen-
39 tation of its rules.

1 The changes to section 3 of the original bill
2 change the composition of the Mental Health Rights
3 Advisory Board so that 4 providers of mental health
4 services and one person concerned with the quality of
5 delivery of these services are included. It also re-
6 vises the responsibilities of the board so that the
7 board monitors implementation of rules and has access
8 to grievance records directly relevant to this moni-
9 toring.

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