114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document **No. 1648**

S.P. 586 In Senate, May 11, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Appropriations and Financial Affairs suggested and ordered printed.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BUSTIN of Kennebec.

Cosponsored by President PRAY of Penobscot, Representative PEDERSON of Bangor and Senator TITCOMB of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Improve Services for Maine's Mentally Ill.

(EMERGENCY)
(After Deadline)

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the current overcrowding situation at the Augusta Mental Health Institute has resulted in the loss of Medicare certification at a cost of $4,100 a day to the State; and

Whereas, the reaccreditation of the Augusta Mental Health Institute by the federal Joint Commission on the Accreditation of Healthcare Organizations is in question; and

Whereas, the federal Joint Commission on the Accreditation of Healthcare Organizations has cited over 100 contingencies at the Bangor Mental Health Institute; and

Whereas, the recent findings of an advisory panel investigating 3 deaths at the Augusta Mental Health Institute indicate ongoing deficiencies in the care and treatment of patients at the facility similar to those identified during Medicare decertification; and

Whereas, the Department of Human Services, Division of Adult Services has recently investigated and identified a number of instances of abuse and neglect of public wards at the Augusta Mental Health Institute; and

Whereas, there is a need to assure the safety and appropriate treatment of the residents of the State's mental health institutes; and

Whereas, overcrowding and understaffing cannot be reduced until community services are developed and available; and

Whereas, the State is charged with providing for the care and treatment of the mentally ill; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 34-B MRSA §3203 is enacted to read:

§3203. Standards of care

1. Integration with the community. The Department of Mental Health and Mental Retardation shall create community options for individuals with mental illness with the goal of

reducing the census at the Augusta and Bangor mental health institutes to no more than 250 at the Augusta Mental Health Institute and 275 at the Bangor Mental Health Institute. The resident population at both facilities should be composed primarily of individuals living within 30 miles of the respective institutes. To accomplish this goal, the department shall:

A. Develop standards governing admission procedures to ensure that patients are afforded full protection of the laws pertaining to civil commitment and that medical, social and psychological information is available and fully considered during admission procedures. The department shall:

(1) Limit admissions through the development and implementation of standardized admission and discharge criteria to ensure that persons who are not in need of acute institutional care are not admitted and that persons in need of acute institutional care are not discharged without adequate review and preparation; and

(2) Ensure that professionals who are thoroughly trained to assess the need for hospital admission are on duty or on call in the Augusta Mental Health Institute and Bangor Mental Health Institute admission units at all times;

B. Provide crisis intervention services throughout the State at all times. Respite care, respite housing, telephone hot lines, mobile intervention teams and shelters shall be included as crisis intervention services;

C. Develop acute care services and community support services so that individuals with mental illness can live in the communities of their choice as independently as possible. Community services shall include, but not be limited to: the availability of personal support workers at the local level to assist individuals with mental illness to avoid hospitalization; an array of supportive community residential options, including in-home support services and small group living arrangements; vocational rehabilitation; supported employment and employment options; and recreational and subsidized avocational programs. In addition, the department shall receive assurances from contracting community agencies that provide personal support services that serve clients throughout the mental health service system;

D. Ensure that from the date of a patient's admission to the Augusta Mental Health Institute or the Bangor Mental Health Institute, the institute staff coordinate community services and resources to ensure that when a patient is

discharged, housing, financial, individual support and treatment needs will be met. Absent any patient objections, the department shall work in concert with the patient, family and other individual support networks in developing these services; and

E. Develop a program designed to reduce the stigma associated with mental illness and to educate the public, public service, health care and law enforcement communities.

2. Institutional services. The department shall ensure that the mentally ill residing at the Augusta Mental Health Institute and the Bangor Mental Health Institute receive a holistic integrated system of medical and psychological care throughout their stay. The department shall:

A. Prepare and distribute a comprehensive summary of resident rights in lay language to residents, guardians, parents and other interested persons. The summary shall include the names and telephone numbers of consumer advocates for the mentally ill. The summary shall address the right to:

(1) Receive treatment in the least restrictive setting using the least restrictive means appropriate to their needs;

(2) Medical treatment, education, training, care and rehabilitation which will maximize the resident's human abilities, enhance the resident's ability to cope with the environment and create a reasonable expectation of progress toward the goal of independent community living; and

(3) Freedom from unnecessary or excessive medication.

Any violation of a resident's rights or any incident affecting the resident's treatment and safety shall be promptly reported to the resident advocate who shall investigate and document the complaint;

B. Ensure that treatment is delivered according to a written individualized treatment and discharge plan developed by an interdisciplinary team that includes the patient; the patient's designated representatives; hospital staff representing the disciplines of social work, psychiatry, nursing, direct care and psychology. Absent any patient objections, individuals from the community who are involved in the patient's existing or proposed support network and other individuals as may be necessary to ensure that the patient's needs are adequately assessed and that appropriate recommendations are made will also be included

in the team. Each treatment plan shall guarantee that each patient receives individualized treatment and active programming in accordance with a written plan which provides for the integrated delivery of medical, psychological, social, recreational, vocational, educational and other related services according to patient needs. A written summary of each team meeting shall be kept in the patient's file and shall include the names of the persons present. Specifically, the treatment and discharge plan shall include:

(1) An assessment of the patient's strengths and medical, psychiatric, emotional, social, vocational, recreational, educational and financial needs. After authorized release from the patient, complete histories shall be obtained from the patient, community service providers and the patient's informal community support network;

(2) Goals meeting each area of identified need. Goals shall be stated in terms that allow for objective measurement of progress and shall reflect, to the extent possible, the patient's personal ambitions. The recommendations included in each resident's individual treatment plan shall be based on the interdisciplinary team's evaluation of the actual needs of the resident, rather than on what programs are currently available. Documentation shall include all of the options discussed and considered. The team shall note in the treatment plan when the services needed by a resident are unavailable and shall recommend an interim program based on available services which meet, as nearly as possible, the actual needs of the resident. The department shall compile figures on the number and the type of needs of residents in need of a service currently unavailable and shall use these figures to plan for the development of new services and programs;

(3) An analysis of the community placement best suited for that resident and a projected date for the resident's reentry into the community. Proposals for community services shall be based upon the patient's strengths and needs assessment. Mental health institute social work staff shall be responsible for ensuring that necessary community personnel participate in the planning process, that the community personnel are identified as persons responsible for delivery of post discharge services in the patient's individual treatment plan, and that the community personnel are kept apprised of the patient's progress and prospective discharge date. There shall be a review at least annually of each resident's progress toward community placement;

(4) The requirement that a written service agreement be entered into in which the respective responsibilities of the resident and each member of the interdisciplinary team, including family or other representatives, are delineated. The agreement shall specify, by job classification or other specific description, the person responsible for carrying out each portion of the individual treatment plan;

(5) A minimum of 6 scheduled hours each weekday of meaningful planned activity for each resident. This activity shall be designed to contribute to the achievement of objectives and goals established for each resident in that resident's treatment plan. If a physician certifies in writing, including descriptive reasoning, that 6 hours of activity would be harmful, the length of activity may be reduced; and

(6) Hospital chart entries that are written in terms of the patient's goals and objectives so that progress and treatment may be measured and the plan revised accordingly;

C. Administer the Augusta Mental Health Institute and the Bangor Mental Health Institute as holistic communities. To accomplish this, the department shall:

(1) Employ or contract for the services of a sufficient number of physicians to ensure that the general medical needs of the Augusta Mental Health Institute and the Bangor Mental Health Institute patients are met according to the highest standards of medical practice and employ sufficient nurses and other professionals to meet and maintain the standards of the federal Joint Commission on the Accreditation of Healthcare Organizations;

(2) Immediately, aggressively and on an ongoing basis train all direct-care providers in treatment philosophy and protocols for medications that are regularly administered within the hospital so that the providers are alert to signs and symptoms of any dangerous side effects and toxic or allergic reactions. The charts of all patients who have specialized medical needs shall be conspicuously flagged and all persons having responsibility for direct care of these patients shall be trained in potential signs and symptoms of illness and the appropriate initial intervention;

(3) Establish review teams to complete a review of the treatment needs and current individual treatment plans

of all patients residing at the Augusta Mental Health Institute and the Bangor Mental Health Institute for more than 60 days as of July 15, 1989. This review shall be conducted according to the quality and appropriateness of assessments, treatment, services provided and discharge planning. The teams conducting this review shall not be limited to persons employed by the Augusta Mental Health Institute or the Department of Mental Health and Mental Retardation and shall include at least 3 persons who are employed outside of State Government. Recommendations generated by this review process shall be implemented. The review of current residents shall be complete by January 15, 1990. A review of individual needs shall be ongoing after January 15, 1990, and shall be conducted annually and included in the compilation of figures on residents in need mandated by paragraph B;

(4) Ensure that no prescription medication is administered, except upon order of a physician. These orders shall be confirmed in writing by a physician within 12 hours. At least every 30 days, the physician shall review the drug regimen of each resident under that physician's care and document a rationale for either continuation or change. All prescriptions must contain a termination date, not to exceed 60 days. Psychotropic drugs shall be used only as an integrated part of an individualized treatment plan that is designed to lead to a less restrictive treatment. Repeated administration of psychotropic medication, including substitution of a medication of the same class, shall never cumulatively exceed 3 months without careful review of the attending physician and a full review by the patient's treatment team. Medication shall not be used as punishment, for staff convenience or in quantities that interfere with the rehabilitation of the patient. A written policy on medication shall be maintained and available to all staff, residents and members of the individual's treatment team. The following information shall be included in the patients' charts:

(a) The diagnosis and the specific behaviors and other signs and symptoms that indicate a need for the prescribed medication;

(b) The reasons for the choice of medication including any balance between expected therapeutic effects and potential adverse effects, the history of the resident's response to the same or similar medication; and

(c) The method for assessing the resident's progress or response to the treatment, including adverse effect and evidence of ongoing monitoring of the response to the medications prescribed;

D. Ensure the creation of an environment that provides patients privacy, dignity, comfort, safety and sanitation, including: attractive, comfortable and spacious living and sleeping areas; secure and accessible areas for storage of clothing and other personal belongings; and comfortable temperature and adequate ventilation in all areas, including seclusion rooms. The following steps shall be taken:

(1) The immediate enclosure of overhead pipes;

(2) The installation of equipment necessary to ensure that the temperature does not exceed that which is considered safe for individuals who are taking psychotropic medications or who may be medically frail;

(3) The renovation of patient living and sleeping areas as necessary to meet the Department of Human Services' intermediate care facilities licensing standards. The areas shall be attractively furnished and designed to promote patient privacy, dignity and comfort. Each patient shall be provided with a secure and readily accessible storage area for personal belongings. Patients will be encouraged to decorate their rooms as they wish. Padded chairs shall be provided in living areas for every patient; and

(4) The installation of a sufficient number of telephones in each living unit to allow patients and staff reasonable access;

E. Maintain patient to staff ratios that ensure adequate care, treatment and rehabilitative services. These ratios shall be designed on a ward-by-ward basis and shall be based upon the treatment, safety and programmatic needs of patients. Specifically, the following minimum patient to staff ratios shall apply:

(1) For general medicine physicians, a ratio of 75 to one during the hours of 8 a.m. to 5 p.m. on weekdays and one physician covering the hospital during all other hours;

(2) For psychiatrist, a ratio of 75 to one for direct care from 8 a.m. to 5 p.m. on weekdays and one psychiatrist hospital-wide during all other hours;

(3) For psychologists a ratio of 20 to one;

(4) For nurses, a ratio of 20 to one during waking hours and one nurse per unit during all other hours;

(5) For physician extenders, a ratio of 20 to one from 8 a.m. to 5 p.m. weekdays and one physician extender per unit all other hours;

(6) For clinical social workers, a ratio of 20 to one;

(7) For social workers, a ratio of 15 to one from 8 a.m. to 5 p.m. weekdays and one social worker hospital-wide all other hours; and

(8) For mental health workers and recreation aides, a ratio of 4 to one during waking hours and weekdays and a ratio of 6 to one during sleeping hours;

F. Ensure that the primary responsibility of living unit staff is the proper care, rehabilitation and treatment of each resident. Living unit personnel shall ensure that the rights of residence set out in this chapter are respected. For each shift, a specific direct-care employee shall be designated to have continuing primary responsibility for each resident's safety and progress. Records shall be maintained listing those employees and the residents for whom they are responsible;

G. Ensure that the Augusta Mental Health Institute and the Bangor Mental Health Institute reduce their reliance upon the use of seclusion and restraint, specifically:

(1) The routine use of all forms of restraint and seclusion shall be eliminated. Physical or chemical restraint shall be employed only when absolutely necessary to prevent a resident from serious self-injury or injury to others. Restraint shall never be used as a punishment, for the convenience of staff, or as a substitute for programs. Restraints may only be applied if alternative techniques have been attempted and failed and only if the restraints impose the least possible restriction. Failure of alternative techniques must be documented in the resident's records. The department shall develop treatment modalities designed to keep patients out of restraint. The Augusta Mental Health Institute and the Bangor Mental Health Institute shall have a written policy regarding the use of restraints, the professionals who may authorize the use of restraints and the mechanism for monitoring and controlling that use;

(2) Restraint orders shall not be effective for more than 12 hours. A resident placed in restraint shall be checked at least every 15 minutes by staff trained in the use of restraints and a written record of checks shall be kept;

(3) Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each hour in which mechanical restraint is employed; and

(4) No resident may be subjected to corporal punishment, degradation, seclusion, use of a straight jacket, be tied to a bed or placed in a locked room which the resident cannot leave at will without visual surveillance by the staff. In instances where the effects of physical restraint may prove psychologically harmful, the department shall provide treatment modalities necessary to mitigate negative effects;

H. Ensure that all alleged instances of mistreatment, neglect or abuse of any resident shall be reported immediately to the superintendent, the commissioner and the resident advocate. There shall be a written report that the allegation has been thoroughly and promptly investigated with the findings stated. Those reports shall be made available to persons and organizations with monitoring responsibility for the department within the bounds of the laws relating to confidentiality. The reporting of alleged incidents of abuse, neglect or the violation of individual patient rights shall be required of all individuals who have knowledge about those incidents. The Augusta Mental Health Institute and the Bangor Mental Health Institute each shall develop and implement a procedure for the reporting of incidents that includes remedies for failure to make those reports;

I. Ensure that the overall administration of the hospital includes a superintendent who is experienced in hospital administration, a medical director who is a physician or psychiatrist and a clinical director who is a professional trained in the social sciences who may be either a psychologist or a clinical social worker. In selecting the 3 chief administrators, a selection committee must emphasize a commitment to holistic biosocial orientation to the care of people with a mental illness; and

J. Cooperate with the Maine Commission on Mental Health, the joint standing committee of the Legislature having jurisdiction over human resource matters, the Office of Advocacy and the Maine Advocacy Services which shall have primary responsibility for ensuring that standards

pursuant to this chapter are implemented. The department shall:

(1) Complete a full review of treatment needs as required under paragraph C, subparagraph (3) and annually submit a copy of that report to the agencies listed in this paragraph beginning January 15, 1990;

(2) Issue a monthly report detailing the steps taken to meet and ensure fulfillment of the obligations and proposed future actions. Anticipated impediments to implementation shall be described and the need for assistance outlined. This report shall be forwarded to the Maine Commission on Mental Health, Maine Advocacy Services and the joint standing committee of the Legislature having jurisdiction over human resource matters. When the Legislature is not in session, reports shall be forwarded to the Executive Director of the Legislative Council for distribution to legislative leadership and members of the joint standing committee of the Legislature having jurisdiction over human resource matters; and

(3) Openly communicate with monitoring and evaluatory entities and shall receive and consider their suggestions.

Sec. 2. Supplemental appropriation from the General Fund. There is appropriated from the General Fund for the fiscal year ending June 30, 1989, to the departments listed, the following amounts:

	1989-90
MENTAL HEALTH AND MENTAL RETARDATION, DEPARTMENT OF	
Augusta Mental Health Institute	
Positions	(181.5)
Personal Services	$4,652,765
All Other	960,000
Capital Expenditures	4,266,914
TOTAL	$9,879,679

Provides funds for relief of overcrowding, to increase levels of active documented treatment, to reduce the level of stress and overtime required of direct service personnel and to regain Medicare certification and retain the federal Joint

Commission on the Accreditation of Healthcare Organization certification.

Includes funding for the following positions:

Classification	Positions
Chaplain	1
Clerk Typist II	5
Quality Assurance Specialist	5
Clerk Typist III	2
Custodial Worker I	8
Custodial Worker II	6
Data Control Specialist	2
Laundry Worker	4
Physicians	2
Mental Health Worker I	33
Mental Health Worker II	28
Mental Health Worker III	9
Mental Health Worker IV	2
Mental Health Worker V	3
Psychiatric Nurse Instructor	8
Psychiatric Therapy Instructor	4
Psychiatrist	8
Psychologist III	5
Registered Nurse II	11
Registered Nurse III	17
Social Work Supervisor	4
Social Worker II	2.5
Statistician II	1
Volunteer Services Assistant	1
Ward Clerks	6
Mental Health Program Coordinator	3
Advocate	1

Includes funding for the following Capital Expenditures: air conditioning and air transfer $1,674,184; pipe covering $2,092,730; and environmental improvements $500,000.

Includes funds for the following All Other: grow workshop $60,000; training $550,000; and Pilot Program Continuation - Alternative Living for Children $350,000.

Bangor Mental Health Institute

Positions	(137)
Personal Services	$3,031,104
All Other	305,000
Capital Expenditures	1,610,457
TOTAL	$4,946,561

Provides funds for relief of overcrowding, to increase levels of active documented treatment, to reduce the level of stress and overtime required of direct service personnel and to retain Medicare and the federal Joint Commission on the Accreditation of Healthcare Organizations certification. Includes funding for the following positions:

Classifications	Positions
Chaplain	.5
Clerk Typist II	4
Quality Assurance Specialist	2.5
Clerk Typist III	1
Custodial Worker I	6
Custodial Worker II	3
Data Control Specialist	1
Laundry Worker	2
Physicians	2
Mental Health Worker I	25
Mental Health Worker II	17.5
Mental Health Worker III	7.5
Mental Health Worker IV	1.5
Mental Health Worker V	1.5
Psychiatric Nurse Instructor	4
Psychiatric Therapy Instructor	2
Psychiatrist	4
Psychologist III	3.5
Registered Nurse II	15
Registered Nurse III	15
Social Work Supervisor	2
Social Worker II	2.5
Statistician II	.5
Volunteer Services Assistant	.5
Ward Clerks	6.5
Mental Health Program Coordinator	1.5
Advocate	.5

Includes funds for the following Capital Expenditures: air conditioning and air transfer $837,092; pipe covering $523,365; and environmental improvements $250,000.

Includes funds for the following All Other: workshop $30,000; and training $275,000.

DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION TOTAL $14,826,240

Sec. 3. Reporting date. The Superintendent of the Augusta Mental Health Institute and the Superintendent of the Bangor Mental Health Institute will evaluate the computer and word processing needs of their respective facilities and report back to the Second Regular Session of the 114th Legislature by January 15, 1990, regarding those needs and any necessary appropriations to ensure adequate data processing and word processing capacity for record keeping and documentation purposes.

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

STATEMENT OF FACT

This bill establishes specific standards of care for the treatment of Maine's mentally ill citizens. The bill requires the Department of Mental Health and Mental Retardation to put the standards into place, to report on progress toward compliance with the standards, to review the needs of all residents who have lived at a state institution for more than 60 days and to conduct an annual review of unmet patient needs. The bill funds staff and facility improvements at the Augusta Mental Health Institute and the Bangor Mental Health Institute.