

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

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Legislative Document

No. 1897

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S.P. 722

In Senate, December 12, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Received by the Secretary of the Senate on December 12, 1989. Referred to the Committee on Human Resources and 1,600 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by President PRAY of Penobscot.

Cosponsored by Senator GAUVREAU of Androscoggin and Representative PEDERSON of Bangor.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

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An Act Relating to Contract Services.

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(EMERGENCY)



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

4  
Whereas, it is in the best interest of the people of the  
6 State to ensure stability in the provision of mental health  
services; and

8  
Whereas, it is generally in the best interest of the  
10 consumer to ensure the continuation of existing mental health  
services by the current provider unless the Department of Mental  
12 Health and Mental Retardation determines, after appropriate  
review and hearing, that adequate cause exists to terminate the  
14 service or to change the provider; and

16  
Whereas, an Act of the Legislature, Public Law 1989, chapter  
432, was approved on an emergency basis to prevent the Department  
18 of Mental Health and Mental Retardation from putting existing  
mental health services out to bid until such time as the  
20 department adopted adequate rules to safeguard the system; and

22  
Whereas, the Department of Mental Health and Mental  
Retardation has failed to adopt rules to ensure the stability of  
24 the health service delivery system as contemplated by that Act;  
and

26  
Whereas, it is clear that further guidance from the  
28 Legislature is necessary to assist the Department of Mental  
Health and Mental Retardation in the development and adoption of  
30 appropriate rules; and

32  
Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
34 Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
36 safety; now, therefore,

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

40 **34-B MRSA §1208, sub-§§7, 8 and 9** are enacted to read:

42 **7. Reasonable cause for change of providers of human**  
**services. The Department of Mental Health and Mental Retardation**  
44 **may change the provider of human services providing those**  
**services on the effective date of this subsection only if:**

46  
**A. The provider commits or has committed a material breach**  
48 **of its contract which the provider is unable or unwilling to**  
**cure;**

50  
**B. The department determines, after notice and opportunity**  
52 **for hearing, that the provider is or has been affected by**

2           such a material change in circumstances that it is no longer  
4           a qualified provider. A material change includes, but is  
6           not limited to, the following: loss of license, insolvency,  
8           or loss of eligibility to participate in the Medicaid  
10           program or the Medicare program when funding under one of  
12           these programs is an integral part of the provision of  
14           services;

16           C. The department determines, after notice and opportunity  
18           for hearing, that the provider has failed to correct  
20           deficiencies, improve services or reduce costs in a manner  
22           reasonably requested by the department in order to protect  
24           the consumer of the human services; or

26           D. The provider of human services is unwilling to continue  
28           to provide services.

30           8. Required findings to support a change in provider of  
32           human services. When the Department of Mental Health and Mental  
34           Retardation determines that reasonable cause exists to change the  
36           provider of human services, it shall issue, in support of its  
38           decision, a client impact statement.

40           A. The client impact statement must address all of the  
42           reasonably anticipated consequences to the consumer of a  
44           change in provider for the purposes of assuring:

46                   (1) That persons receiving services will not suffer  
48                   any adverse impact;

50                   (2) That a prospective provider has sufficient  
52                   facilities, trained staff and regulatory approvals to  
54                   meet the needs of persons already receiving services  
56                   and persons reasonably expected to seek those services;  
58                   and

60                   (3) That the department has sufficient resources to  
62                   adequately monitor, license and audit any new contract  
64                   for the provision of services.

66           9. Adoption of rules. The commissioner shall adopt rules  
68           in accordance with the Maine Administrative Procedure Act, Title  
70           5, chapter 375, for the purpose of implementing the notice,  
72           hearing and procedural requirements of subsections 7 and 8 and  
74           for the purpose of assuring the stability of the provider system.

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

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