

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 2150

H.P. 1507

House of Representatives, April 5, 1999

**An Act to Ensure Community-based Services for Persons With Mental Retardation or Autism.**

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative QUINT of Portland.  
Cosponsored by Senator PARADIS of Aroostook and  
Representatives: BRAGDON of Bangor, BROOKS of Winterport, CHIZMAR of Lisbon,  
SAXL of Portland, SNOWE-MELLO of Poland, TESSIER of Fairfield, Senators:  
CATHCART of Penobscot, PINGREE of Knox.

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

2  
3       **Sec. 1. 17-A MRSA §253, sub-§2, ¶J**, as enacted by PL 1993, c.  
4 687, §2 and amended by PL 1995, c. 560, Pt. K, §82 and affected  
5 by §83, is further amended to read:

6  
7       J. The actor owns, operates or is an employee of an  
8 organization, program or residence that is operated,  
9 administered, licensed or funded by the Department of Mental  
10 Health, Mental Retardation and Substance Abuse Services or  
11 the Department of Human Services and the other person, not  
12 the actor's spouse, receives services from the organization,  
13 program or residence and the organization, program or  
14 residence recognizes that person as a person with mental  
15 retardation. It is an affirmative defense to prosecution  
16 under this paragraph that the actor receives services for  
17 mental retardation or is a person with mental retardation as  
18 defined in Title 34-B, section 5001 4001, subsection 3 13.

19  
20       **Sec. 2. 17-A MRSA §255, sub-§1, ¶I**, as amended by PL 1995, c.  
21 104, §5 and c. 560, Pt. K, §82 and affected §83, is further  
22 amended to read:

23  
24       I. The actor owns, operates or is an employee of an  
25 organization, program or residence that is operated,  
26 administered, licensed or funded by the Department of Mental  
27 Health, Mental Retardation and Substance Abuse Services or  
28 the Department of Human Services and the other person, not  
29 the actor's spouse, receives services from the organization,  
30 program or residence and the organization, program or  
31 residence recognizes that person as a person with mental  
32 retardation. It is an affirmative defense to prosecution  
33 under this paragraph that the actor receives services for  
34 mental retardation or is a person with mental retardation as  
35 defined in Title 34-B, section 5001 4001, subsection 3 13; or  
36

37       **Sec. 3. 34-B MRSA §1205, sub-§7**, as enacted by PL 1989, c. 7,  
38 Pt. N, §3, is amended to read:

39  
40       **7. Protection for advocates.** Advocates may not be  
41 disciplined or sanctioned for any actions taken on behalf of  
42 clients. Advocates are authorized to cooperate and share  
43 nonconfidential information with other groups or agencies  
44 providing services to or advocating on behalf of persons with  
45 mental retardation or autism, including but not limited to the  
46 Consumer Advisory Board established pursuant to section 1216.

47       **Sec. 4. 34-B MRSA §1216**, as amended by PL 1995, c. 560, Pt.  
48 K, §§22 and 23, is further amended to read:  
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§1216. Consumer Advisory Board

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1. **Responsibilities.** The Consumer Advisory Board, as established by the community consent decree, Consumer Advisory Board et al. v. Glover, No. 91-321-P-C (D. Me., September 28, 1994), ~~functions as an independent oversight body that carries out responsibilities pursuant to this section, the consent decree and subsequent agreements approved by the United States District Court for the District of Maine. The Consumer Advisory Board may review alleged abuse, exploitation or neglect or an alleged dehumanizing practice or violation of rights of any person with mental retardation or autism who is a client of the department. The Consumer Advisory Board shall promote the normalization and habilitation of persons with mental retardation or autism.~~ has the following functions.

A. The Consumer Advisory Board may review alleged abuse, exploitation or neglect, or an alleged dehumanizing practice or violation of the rights of any person with mental retardation or autism who is a client of the department.

B. The Consumer Advisory Board shall promote the independence and habilitation of persons with mental retardation or autism.

C. The Consumer Advisory Board shall oversee a volunteer program that assigns individuals to serve as correspondents to persons with mental retardation or autism who are clients of the department and who have no family members actively involved in their lives. A correspondent must have access to the person to whom the correspondent is assigned; to the living, work and program areas where the person lives or works; to all personnel who support the person; and to all written records pertaining to the person. Correspondents must receive timely notice of any planning meeting pertaining to the person.

D. The Consumer Advisory Board shall initiate a biennial audit of the adequacy of services for people with mental retardation or autism. The Consumer Advisory Board also shall initiate an audit whenever the board determines that the complaints it receives indicate a significant lack of adequate services. The board may hold public hearings whenever it determines them necessary.

E. The Consumer Advisory Board shall report annually to the joint standing committee of the Legislature having jurisdiction over human resources matters about its activities and shall provide the committee with the most recent audit under paragraph D.

2           1-A. Pursue relief. The Consumer Advisory Board has  
3 standing to pursue administrative, judicial, and legislative  
4 relief on behalf of persons with mental retardation or autism.

6           2. Maine Tort Claims Act. The Consumer Advisory Board  
7 members and staff act as employees of the State, as defined in  
8 Title 14, section 8102, subsection 1, when engaged in official  
9 duties specified in the ~~consent judgment~~ or this section or  
10 assigned by the board.

12           3. Access to information. With regard to any institution,  
13 facility, agency or other provider serving persons with mental  
14 retardation or autism who are clients of the department or when  
15 any such person resides or participates in work or in a program  
16 in an institution, facility, agency or other provider, the  
17 Consumer Advisory Board members and staff must be given direct  
18 access to all living, work and program areas and to all living,  
19 work and program area records, including, but not limited to,  
20 records related to any personal planning process, and must be  
21 given access to the personnel, but not personnel records. The  
22 chief advocate of the department may shall release to the  
23 Consumer Advisory Board information pertaining to alleged abuse,  
24 exploitation or neglect or an alleged dehumanizing practice or  
25 violation of rights of a person with mental retardation or  
26 autism. The Consumer Advisory Board shall keep any confidential  
27 information disclosed to it or discovered by it confidential, as  
28 required by section 1207.

30           ~~4. Repeal. This section is repealed one year after the  
31 United States District Court releases the State from all  
32 obligations under the community consent decree, Consumer Advisory  
33 Board et al. v. Glover, No. 91-321-P-G (D. Me., September 28,  
34 1994).~~

36           5. Information. The department shall provide to the  
37 Consumer Advisory Board all information necessary for the board  
38 to carry out its functions.

40           6. Funding. The department shall provide to the Consumer  
41 Advisory Board funding for an executive director, 2 volunteer  
42 coordinators, a clerical and support person and other staff as  
43 necessary to carry out the board's duties.

44           7. Facilities. The department shall provide facilities  
45 required by the Consumer Advisory Board and shall reimburse the  
46 reasonable expenses of Consumer Advisory Board members, its  
47 regional committees and its staff.

2       8. Appointment. The Consumer Advisory Board consists of 11  
4       members, including one member from the Office of Advocacy. Each  
6       member is selected by the commissioner from nominees submitted by  
8       the Consumer Advisory Board for terms of 2 years. If the  
10       commissioner does not respond to a nomination within 60 days, the  
12       Consumer Advisory Board has the authority to appoint an interim  
14       member until a nominee is appointed by the commissioner.

16       9. Volunteer reimbursed. Volunteer members of the Consumer  
18       Advisory Board are reimbursed as provided in Title 5, sections  
20       12002-A and 12002-B.

22       Sec. 5. 34-B MRSA c. 4 is enacted to read:

24                               CHAPTER 4

26                               MENTAL RETARDATION OR AUTISM

28                               SUBCHAPTER I

30                               GENERAL PROVISIONS

32       §4001. Definitions

34       As used in this chapter, unless the context otherwise  
36       indicates, the following terms have the following meanings.

38       1. Advocate. "Advocate" means an employee of the Office of  
40       Advocacy established by section 1205, unless a person with mental  
42       retardation or autism who has no guardian or a person's guardian  
44       has designated another individual or organization to be the  
46       advocate, in which case it means the individual or organization  
48       so designated. In a case in which the department acts a public  
50       guardian, an employee of the Office of Advocacy serves as the  
      person's advocate unless good cause exists to choose an alternate.

2. Ally. "Ally" means an individual who supports a person  
      with mental retardation or autism, including, but not limited to,  
      a family member, guardian, friend, correspondent, advocate,  
      provider or employee or contractee of the department. A person  
      with mental retardation or autism may have more than one ally.

3. Autism. "Autism" has the same meaning as in section  
      6002.

4. Client. "Client" means:

A. A person with mental retardation or autism who receives  
      services from the department or from an agency or facility  
      licensed or funded, in whole or in part, to provide services

2 to persons with mental retardation or autism except those  
4 presently serving sentences for crime; or who has requested  
6 services from the department or such agency of facility; or  
8 B. A person who has been referred for services from the  
10 department until such time as it is determined that the  
12 person does not have mental retardation or autism.  
14 5. Community. "Community" means the municipality or other  
16 area in which the client resides when applying for services.  
18 6. Comprehensive evaluation. "Comprehensive evaluation"  
20 means a comprehensive set of evaluations of a person that:  
22 A. Results in the distinguishing of mental retardation or  
24 autism from all other conditions;  
26 B. Determines the severity of the mental retardation or  
28 autism and all other conditions; and  
30 C. Results in a comprehensive statement of specific support  
32 services needed as well as a detailed assessment of any  
34 accommodation needed for those services to be most  
36 effectively delivered.  
38 7. Consumer Advisory Board. "Consumer Advisory Board"  
40 means the Consumer Advisory Board established pursuant to section  
42 1216.  
44 8. Correspondent. "Correspondent" means an individual  
46 designated by the Consumer Advisory Board pursuant to section  
48 1216.  
50 9. Facility. "Facility" means a residence operated, staffed  
or funded, in whole or in part, by the State for persons with  
mental retardation or autism.  
10. Habilitation. "Habilitation" means a process by which  
a client is assisted to acquire and maintain skills that:  
A. Assist the client with self-care and other independent  
living needs;  
B. Assist the client in reaching the person's highest  
possible level of capabilities; and  
C. Enhance the client's sense of well-being.  
11. Incapacitated person. "Incapacitated person" means any  
person who has been found in a probate hearing to be impaired by

2 reason of mental retardation or autism to the extent that the  
3 person lacks sufficient understanding or capacity to make,  
4 communicate or implement responsible decisions concerning the  
5 person or the person's property.

6 12. Individual support coordinator. "Individual support  
7 coordinator" means regional staff of the department with  
8 responsibility for coordinating a client's planning process and  
9 services according to this chapter.

10 13. Likelihood of serious harm. "Likelihood of serious  
11 harm" means:

12 A. A substantial risk of physical harm to a person as  
13 manifested by evidence of recent threats of, or attempts of,  
14 suicide or serious bodily self-harm;

15 B. A substantial risk of physical harm to other persons as  
16 manifested by recent evidence of violent behavior or recent  
17 evidence that others are placed in reasonable fear of  
18 serious physical or emotional harm; or

19 C. A reasonable certainty that severe physical or mental  
20 impairment or injury will result to the person with mental  
21 retardation or autism as manifested by recent evidence of  
22 that person's actions or behavior that demonstrates  
23 inability to avoid or protect the person from that  
24 impairment or injury.

25 14. Mental retardation. "Mental retardation" means a  
26 condition of significantly subaverage intellectual functioning  
27 resulting in or associated with concurrent impairments in  
28 adaptive behavior and manifested during the developmental period.

29 15. Mentally retarded. Wherever "the mentally retarded,"  
30 "mentally retarded persons" or "mentally retarded clients"  
31 appears the phrase means "persons with mental retardation or  
32 autism."

33 16. Person-centered plan or personal plan.  
34 "Person-centered plan" or "personal plan" means the written plan  
35 developed in accordance with section 4270 and any associated  
36 planning documents.

37 17. Person-centered planning team. "Person-centered  
38 planning team" includes at a minimum the client, the client's  
39 guardian if any, the client's individual support coordinator and  
40 other individuals chosen or identified in accordance with section  
41 4270.



2 18. Professional. "Professional" means a person possessing  
appropriate licensure, certification or registration to practice  
4 the person's discipline in the community.

6 19. Protective services. "Protective services" means  
services that will separate an adult incapacitated person from  
8 danger, including, but not limited to:

10 A. Medical, psychiatric and support services necessary to  
preserve the person's rights and resources and to maintain  
12 the person's physical and mental well-being; and

14 B. Seeking guardianship or a protective order under Title  
18-A, Article V.

16 20. Region. "Region" means any of the regions established  
18 by the department pursuant to section 1201-A.

20 21. Service agreement. "Service agreement" means a written  
form in which the persons designated in section 4271 agree to the  
22 type of services and programs for and the manner of providing  
services to the client.

24 22. Service plan. "Service plan" means an annual written  
26 plan for the delivery and coordination of specific services to a  
client when:

28 A. The client or the client's guardian has waived the  
30 person-centered planning process;

32 B. Another type of formal written program plan exists; or

34 C. The client has a single service need.

36 23. Supportive services or support services. "Supportive  
services" or "support services" means services designed to assist  
38 a person with mental retardation or autism to become habilitated  
or self-sufficient to the maximum extent possible, including but  
40 not limited to:

42 A. Counseling;

44 B. Transportation;

46 C. Assistance in obtaining adequate housing;

48 D. Medical and psychiatric care including, but not limited  
to, occupational therapy, physical therapy, communication  
therapy and services, psychological services, dental

2 services and the identification of the need for and  
3 provision of adaptive, assistive, or augmentative equipment;

4 E. Nutritional services;

6 F. Educational habilitation, vocational training or  
7 assistance in obtaining a job;

8 G. Respite services;

10 H. Coordination of or assistance in obtaining recreational  
12 services;

14 I. Provision of social work services through the assignment  
15 of an individual support coordinator;

16 J. Facilitative and assistive services, including, but not  
18 limited to, guardianship, conservatorship or representative  
19 payee services;

20 K. Assistance in meeting any religious or spiritual needs  
22 as requested; and

24 L. Crisis prevention and intervention services.

26 24. Ward. "Ward" means a person for whom the department  
28 has been duly appointed guardian under Title 18-A, Article V,  
29 Part 6.

30 **§4002. Policy**

32 1. Services. It is the policy of the State to provide  
34 education, training and support services to persons with mental  
35 retardation or autism who need those services.

36 2. Setting. The setting for all services must be  
38 consistent with adequate care and treatment and must:

40 A. Impose the fewest possible restrictions on the liberty  
41 of each person with mental retardation or autism; and

42 B. Be as close as possible to the patterns and norms of the  
43 mainstream of society.

44 3. Service delivery; principles. Service delivery to  
46 persons with mental retardation or autism and the interpretation  
48 of all laws pertaining to persons with mental retardation or  
49 autism must be guided by the principles set out in this  
50 subsection.

2 A. Persons with mental retardation or autism have the same  
rights as all citizens, including the rights to live, work  
4 and enjoy recreational opportunities in the community.

6 B. All services provided should have the goal of maximizing  
development and social integration into the community.

8 C. All services must acknowledge and enhance the role of  
10 the family, as appropriate, as the primary and most natural  
12 caregiver. Family, for the purposes of this section, may be  
14 defined individually by each person with mental retardation  
or autism, and may include, when appropriate, unpaid  
individuals with whom the person resides or individuals who  
have a significant unpaid role in the person's well-being.

16 D. Community integration is achieved by connecting  
18 individuals and families with local and generic supports  
within the community.

20 E. Planning for community services must be based upon an  
22 ongoing process of individualized assessment of the needs,  
strengths and preferences of each person with mental  
24 retardation or autism.

26 F. Services must enhance the client's opportunity to assume  
maximum control over the client's life.

28 G. Real work for real pay, in settings integrated into the  
30 community, is the cornerstone of all vocational and  
employment services.

32 H. Residential services must be small, integrated and  
34 community-based. Services designed to support each person  
with mental retardation or autism in that person's own home  
36 must be the primary objective of the delivery system.

38 I. The first preference in providing residential services  
40 must be to provide services in the client's own home, with  
ongoing necessary supports.

42 J. Connections in other areas of a client's life such as  
44 friends, recreation and spirituality must be considered in  
order to promote a high quality of life for each client.

46 4. Spiritual treatment. This chapter may not replace or  
48 limit the right of any person with mental retardation or autism  
to treatment by spiritual means alone, through prayer, if that  
treatment is requested by the person or the person's guardian.

2 5. Services not denied. A person once found eligible to  
3 receive mental retardation or autism services may not be denied  
4 the services by reason of not meeting the definition of a person  
5 with mental retardation or autism.

6 **§4003. Duties**

8 The department is responsible for:

10 1. Institutional programs. The supervision of programs for  
11 adults with mental retardation or autism in the state  
12 institutions;

14 2. Statewide system. The planning, promotion, coordination  
15 and development of a complete and integrated statewide system of  
16 services for adults with mental retardation or autism;

18 3. Liaison. Serving as liaison, coordinator and consultant  
19 to the several state departments in order to develop the  
20 statewide system of services for persons with mental retardation  
21 or autism;

22 4. Community-based services. Ensuring that adults with  
23 mental retardation or autism residing in community residential  
24 facilities, including nursing homes, boarding homes, foster  
25 homes, group homes or halfway houses licensed or funded in whole  
26 or in part by the Department of Human Services or the department  
27 are provided, insofar as possible, with residential  
28 accommodations and access to support services appropriate to  
29 their needs; and

32 5. Protective and supportive services. Providing  
33 protective and supportive services, in accordance with section  
34 4004, to incapacitated persons.

36 **§4004. Protective and supportive services**

38 1. Department authority. The department shall provide  
39 protective or supportive services in response to complaints  
40 concerning, and requests for assistance from or on behalf of, any  
41 incapacitated person.

42 2. Payment for services. Payment for services under this  
43 section is governed by this subsection.

46 A. The department may pay for protective and supportive  
47 services to incapacitated persons from its own resources by  
48 mobilizing available community resources or by purchase of  
49 services from voluntary or state agencies.

50

2 B. To the extent that assets are available to incapacitated  
persons or wards, the cost of services must be borne by the  
4 estate of the person receiving the services.

6 C. The department may receive as payee any benefits from  
federal social security, veterans administration or railroad  
8 retirement or any like benefits paid on behalf of any  
incapacitated person and shall apply those benefits toward  
10 the care and treatment of the incapacitated person.

12 D. The department may operate an adaptive equipment and  
assistive technology program. Reimbursement for materials  
14 used in the manufacture of equipment may be received and  
must be retained for use within the program.

16 3. Rules. Adoption, amendment and appeal of rules under  
18 this section are governed by this subsection.

20 A. The department shall adopt and may amend or repeal rules  
governing the administration of this section in accordance  
22 with Title 5, chapter 375.

24 B. Rules adopted pursuant to this subsection are routine  
technical rules pursuant to Title 5, chapter 375, subchapter  
26 II-A.

28 **§4005. Payment of burial expenses for state wards**

30 The department shall pay burial expenses for persons who die  
while wards of the department as defined in section 4001,  
32 subsection 24 and who have no known survivors. The department  
may first apply to the cost of burial funds that are available as  
34 part of a mortuary trust or other funds of the ward remaining at  
the time of the ward's death that are available for this purpose.

36 **§4006. System of care for persons with mental retardation or**  
38 **autism**

40 1. System of care. The Legislature declares that the  
system of care through which the State provides services to and  
42 programs for persons with mental retardation or autism must be  
designed not only to protect the integrity of the legal and human  
44 rights of these persons but also to meet the needs of these  
persons.

46 2. Responsibilities of the department. To maintain a  
system that meets the needs of persons with mental retardation or  
48 autism, the department shall:

2 A. Provide a mechanism for the identification, evaluation,  
4 treatment and reassessment of and the provision of support  
6 services to persons with mental retardation or autism,  
8 including an habilitation program for every client served by  
10 the department;

12 B. Develop appropriate community environments and programs  
14 for persons with mental retardation or autism using  
16 professional diagnosis and evaluation and the personal  
18 preference of the client or the client's legal guardian or  
20 other representative. The department shall continuously  
22 retain the services of persons experienced, skilled and  
24 trained in the development of housing and employment  
26 resources, including:

28 (1) Across the State, a minimum of 10 regional  
30 resource development staff; and

32 (2) In the central office, one resource developer with  
34 access to professional assistance in the areas of law,  
36 zoning, financing and federal housing and employment  
38 program requirements;

40 C. Provide support services for the proper habilitation and  
42 treatment of persons with mental retardation or autism that  
44 include, but are not limited to, comprehensive medical care,  
46 education, recreation, physical therapy, training, social  
48 services and habilitation and rehabilitation services suited  
50 to the needs of the individual regardless of age, degree of  
retardation, handicapping condition or ability to pay;

D. Eliminate its own duplicative and unnecessary  
administrative procedures and practices in the system of  
care for persons with mental retardation or autism,  
encourage other departments to do the same and clearly  
define areas of responsibility in order to use present  
resources economically;

E. Ensure the availability of a sufficient number of  
personnel who are qualified and experienced to provide  
treatment that is designed to meet the needs of persons with  
mental retardation or autism;

F. Encourage other departments to provide to persons with  
mental retardation or autism those services that are  
required by law. To that end the commissioner shall:

(1) Work actively to ensure that persons with mental  
retardation or autism, as provided for in Title 20-A,  
chapter 303, receive educational and training services

2 beginning at 5 years of age regardless of the degree of  
3 disabilities or handicaps;

4 (2) Advise the Department of Human Services about  
5 standards and policies pertaining to administration,  
6 staff, quality of care, quality of treatment, health  
7 and safety of clients, rights of clients, community  
8 relations and licensing procedures and other areas that  
9 affect persons with mental retardation or autism  
10 residing in facilities licensed by the Department of  
11 Human Services; and

12 (3) Inform the joint standing committee of the  
13 Legislature having jurisdiction over human resources  
14 matters about areas where increased cooperation by  
15 other departments is necessary in order to improve the  
16 delivery of services to persons with mental retardation  
17 or autism;

18  
19 G. Maintain an adequate record-keeping system, which must  
20 include:

21  
22 (1) Records of the needs and desires of the client  
23 without respect to whether the desires are reasonably  
24 achievable or the needs presently capable of being  
25 addressed;

26  
27 (2) The written person-centered plan, which must be  
28 provided to the client, all identified allies of the  
29 client and all persons identified as responsible for  
30 any significant activity pursuant to the planning  
31 process;

32  
33 (3) Records that list all of the department's  
34 activities and findings related to the personal plan;

35  
36 (4) On a form clearly designed for the purpose of  
37 identifying unmet needs, a list of each service or  
38 activity that can not occur or is not occurring  
39 pursuant to a client's personal plan; and

40  
41 (5) An electronic system of record keeping sufficient  
42 to generate accurate information for the reports to the  
43 Legislature required by paragraph J;

44  
45 H. Ensure the maintenance of an effective system for  
46 collecting, retaining and publishing information sufficient  
47 to accurately assess unmet needs of the population of  
48 persons with mental retardation or autism. The commissioner  
49 shall ensure that unmet needs are documented on a monthly  
50

2 basis and are tabulated quarterly. The documentation and  
3 quarterly tabulation must be available to the Legislature,  
4 the Governor and the Consumer Advisory Board;

5 I. Determine on a monthly basis whether appropriated funds  
6 are sufficient to meet identified needs. If the  
7 commissioner determines that appropriated funds are  
8 insufficient, the commissioner shall report shortfalls  
9 quarterly to the Legislature, the Governor and the Consumer  
10 Advisory Board; and

11 J. File a report covering the matters set forth in this  
12 paragraph with the joint standing committee of the  
13 Legislature having jurisdiction over human resources matters  
14 by January 15th of every odd-numbered year. The  
15 commissioner or the commissioner's designee shall appear in  
16 person before the committee and shall advocate in favor of  
17 the report and of services and programs for persons with  
18 mental retardation or autism. Members of the Consumer  
19 Advisory Board may attend the commissioner's presentation  
20 and provide an independent report of its activities and any  
21 findings or concerns regarding the availability and delivery  
22 of services to persons with mental retardation or autism to  
23 the committee.

24  
25  
26 (1) The commissioner shall include within the report  
27 for the Legislature a comprehensive and accurate  
28 assessment of unmet needs. The commissioner must  
29 accurately describe within the report, for each of the  
30 service regions and statewide, the services provided,  
31 the existing service resources and the deficiencies in  
32 the system of services, including, but not limited to,  
33 a report from each of the liaison professionals,  
34 including occupational therapy, physical therapy,  
35 education, psychology, psychiatry and communication  
36 professionals under contract to the department.

37  
38 (2) As part of the report, the commissioner shall  
39 provide the committee with summaries of all internal  
40 and external reviews or audits of services and programs  
41 for persons with mental retardation or autism not  
42 previously provided to the committee, including  
43 independent audits and audits by the Consumer Advisory  
44 Board. Beyond the findings of such reviews and audits,  
45 the commissioner shall identify within the report any  
46 further obstacles, including lack of funding, to fully  
47 meeting all identified needs of persons with mental  
48 retardation or autism.



2                   (a) The commissioner shall include a plan for  
3                   corrective actions to address all shortcomings and  
4                   problems identified in any review or audit or by  
5                   the commissioner. The plan must set forth  
6                   services and programs to meet identified needs.  
7                   The plan must provide for the effective delivery  
8                   of supportive services and programs for persons  
9                   with mental retardation or autism at a level  
10                   sufficient to meet unmet needs while safeguarding  
11                   and respecting the legal and human rights of these  
12                   persons. The commissioner must consider community  
13                   service needs, relate those identified needs to  
14                   biennial budget requests and incorporate necessary  
15                   service initiatives into the plan.

16                   (b) The commissioner shall include a summary of  
17                   actions taken by the department in response to the  
18                   previous 3 plans for corrective action and the  
19                   current status of compliance with those previous  
20                   plans.

21                   (3) The report must include an assessment of the roles  
22                   and responsibilities of mental health agencies, human  
23                   services agencies, health agencies and other involved  
24                   state departments and suggest ways in which these  
25                   departments and agencies can improve cooperation to  
26                   improve the service systems.

27                   (4) In developing the report, the commissioner shall  
28                   ensure that community mental retardation or autism  
29                   service providers, consumer and family groups and other  
30                   interested persons or groups are provided an  
31                   opportunity to participate in annual statewide  
32                   hearings, to be held jointly with the Consumer Advisory  
33                   Board, as well as informal meetings and work sessions.

34                   (5) The report must be made public within the State in  
35                   a manner that facilitates public involvement.

36                   (6) The joint standing committee of the Legislature  
37                   having jurisdiction over human resources matters shall  
38                   study the report and make recommendations to the  
39                   Legislature with respect to funding improvements in  
40                   programs and services to persons with mental  
41                   retardation or autism.

42                   3. General Fund account; Medicaid match; mental retardation  
43                   or autism. The commissioner shall establish a General Fund  
44                   account to provide the General Fund match for mental retardation  
45                   or autism services eligible for Medicaid. Any unencumbered  
46                   or

2 balances of General Fund appropriations remaining at the end of  
3 each fiscal year must be carried forward to be used for the same  
4 purposes.

5 4. Medicaid savings. Intermediate care facilities for  
6 persons with mental retardation or autism and providers of  
7 freestanding day habilitation programs shall submit payment to  
8 the department equal to 50% of any Medicaid savings due the State  
9 pursuant to the principles of reimbursement, as established under  
10 Title 22, sections 3186 and 3187, that are reported in any  
11 unaudited cost report for fiscal years ending June 30, 1995 and  
12 thereafter. Payment is due with the cost report. After audit,  
13 any amount submitted that is in excess of savings allocated to  
14 the facility or provider pursuant to the principles of  
15 reimbursement must be returned to the facility or provider.  
16 Notwithstanding requirements or conditions contained in the  
17 principles of reimbursement, any amount due the State after final  
18 audit that is in excess of savings paid on submission of a cost  
19 report must be paid to the State within 90 days following receipt  
20 of the department's final audit report.

21 **§4007. Sexual activity with recipient of services prohibited**

22 A person who owns, operates or is an employee of an  
23 organization, program or residence that is operated,  
24 administered, licensed or funded by the Department of Mental  
25 Health, Mental Retardation and Substance Abuse Services or the  
26 Department of Human Services may not engage in a sexual act, as  
27 defined in Title 17-A, section 251, subsection 1, paragraph C,  
28 with another person or subject another person to sexual contact,  
29 as defined in Title 17-A, section 251, subsection 1, paragraph D,  
30 if the other person is a person with mental retardation or autism  
31 who receives therapeutic, residential or habilitative services  
32 from that organization, program or residence and is not the  
33 actor's spouse.

34 **SUBCHAPTER II**

35 **SERVICES FOR PERSONS WITH MENTAL**  
36 **RETARDATION OR AUTISM**

37 **Article 1**

38 **State-operated Facilities for Persons**  
39 **with Mental Retardation or Autism**

40 **§4201. Maintenance of facilities**

2       The department shall maintain the following residential  
3       facilities for the care and treatment of persons with mental  
4       retardation or autism:

5               1. Aroostook Residential Center. Aroostook Residential  
6               Center; and

7               2. Freeport Towne Square. Freeport Towne Square.

8  
9  
10       §4202. Aroostook Residential Center

11               1. Establishment. There is established the Aroostook  
12               Residential Center at Presque Isle in Aroostook County, which:

13                       A. Must be maintained for the training, education,  
14                       treatment and care of persons with mental retardation or  
15                       autism; and

16                       B. May provide living accommodations for persons with  
17                       mental retardation or autism in order that they may attend  
18                       educational and training programs.

19               2. Director. The chief administrative officer of the  
20               Aroostook Residential Center is called the director.

21                       A. The commissioner shall, with the advice of the Maine  
22                       Advisory Committee on Mental Retardation, appoint and set  
23                       the salary for the director.

24                       B. The appointment is for an indefinite term and until a  
25                       successor is appointed and qualified, or at the pleasure of  
26                       the commissioner.

27                       C. In order to qualify for appointment as the director, a  
28                       person must have sufficient education and experience to  
29                       administer a facility providing services to persons with  
30                       mental retardation or autism.

31               3. Duties of the director. The director:

32                       A. Is responsible for the training, education, treatment  
33                       and care of all persons received into or receiving services  
34                       from the Aroostook Residential Center;

35                       B. Is responsible for the discharge of all persons received  
36                       into the Aroostook Residential Center; and

37                       C. Has direct supervision, management and control of the  
38                       grounds, buildings, property, officers and employees of the  
39                       Aroostook Residential Center.

2       **§4203. Freeport Towne Square**

4           **1. Establishment.** Freeport Towne Square is established in  
6       the Town of Freeport as a facility to care for persons with  
      mental retardation or autism.

8           **2. Manager.** The administrative head of Freeport Towne  
10       Square is the manager. The manager reports directly to the  
      commissioner or the commissioner's designee.

12          **3. Duties of the manager.** The manager:

14           **A.** Is responsible for the training, education, treatment  
16       and care of all persons received into or receiving services  
      from Freeport Towne Square;

18           **B.** Is responsible for the discharge of all persons received  
20       into Freeport Towne Square; and

22           **C.** Has direct supervision, management and control of the  
24       grounds, buildings, property, officers and employees of  
      Freeport Towne Square, subject to the approval of the  
      commissioner.

26       **§4204. Statewide system of crisis facilities**

28           **1. Establishment.** The department shall maintain a  
30       well-dispersed statewide system of crisis respite facilities to  
32       include at least 4 small, staffed residences that may be used for  
      short-term crisis stabilization, status evaluation, emergency  
      placement and other uses defined in rules adopted by the  
      department.

34           **2. Management.** The manager of crisis services, as  
36       determined by the department, shall direct and manage the  
      facilities.

38           **3. Records.** The department shall maintain documentation  
40       sufficient to fulfill the requirements of section 4233,  
42       subsection 1 and section 4006, subsection 2, paragraph J.

44                           **Article 2**

46                                   **Community-based Services**

48       **§4231. Commissioner's duties**

50           The commissioner shall:

2 1. Community participation. Encourage persons in local  
3 communities to participate in the provision of supportive  
4 services for persons with mental retardation or autism so that  
5 persons in the community may have a better understanding of the  
6 need for those services;

7 2. Financial assistance. When offering assistance to  
8 community-based programs, follow the procedures set forth in this  
9 article; and

10 3. Rules. Adopt rules relating to the administration of  
11 the services authorized by this article. Rules adopted pursuant  
12 to this subsection are routine technical rules pursuant to Title  
13 5, chapter 375, subchapter II-A.

14 **§4232. Commissioner's powers**

15 The commissioner may:

16 1. Financial aid. Allocate money for the development of  
17 homes, capital construction, purchase of buildings, supportive  
18 services and other activities. Only applicants for funds whose  
19 programs provide for adequate standards of professional service  
20 qualify for funds from the department;

21 2. Services and programs. Provide and help to finance  
22 services and programs throughout the State for persons with  
23 mental retardation or autism residing in the community and  
24 residing in privately owned residential care facilities;

25 3. Cooperation. Cooperate with other state agencies,  
26 municipalities, other governmental units, unincorporated  
27 associations and nonstock corporations to provide and help to  
28 finance services and programs for persons with mental retardation  
29 or autism;

30 4. Available funds. Receive and use for the purpose of  
31 this article money appropriated by the State, grants from the  
32 Federal Government, gifts from individuals and money from any  
33 other source; and

34 5. Transitional services coordination projects.  
35 Participate in the coordination of services for persons with  
36 mental retardation or autism with local transitional services  
37 coordination projects for handicapped youths, as established in  
38 Title 20-A, chapter 308, assigning appropriate regional staff and  
39 resources as available and necessary in each region to be served  
40 by a project.

41 **§4233. Crisis and respite services**

2           The department shall provide an array of crisis and respite  
3           services throughout the State.

4  
5           1. Crisis services. The department shall maintain the  
6           capacity to intervene in personal crises that threaten the  
7           stability of a client's current place of residence or  
8           employment. This capacity must include assessment, consultation,  
9           training and support for clients and their families or allies  
10           before and after a crisis occurs; providing staff support at a  
11           client's home, program or workplace when necessary to prevent or  
12           respond to a crisis; and identifying professional services  
13           appropriate to meet a client's needs. Training must include ways  
14           to respond to or avoid a crisis.

15           2. Provide out-of-home security. As a last resort there  
16           must be an adequate capacity to provide out-of-home security and  
17           support by trained staff with appropriate professional back-up  
18           resources for a client experiencing a crisis that can not be  
19           safely managed at the client's residence. Any stay in excess of  
20           10 days in a residence providing such support requires the  
21           written approval of the commissioner or the commissioner's  
22           designee. A copy of all such approvals must be forwarded  
23           immediately to the Consumer Advisory Board.

24  
25           3. Routine use of law enforcement entities to transport  
26           persons in crisis is prohibited. Transportation of a client in  
27           crisis by law enforcement personnel may occur only if such  
28           transportation has been specifically authorized by the client's  
29           person-centered planning team or when absolutely necessary to  
30           provide for the safety of the client or others.

31  
32           4. Mental health services. The department shall ensure  
33           that persons in crisis who are in need of mental health services  
34           receive them. Mental health services include at least access to  
35           a licensed mental health professional, inpatient treatment when  
36           indicated, psychiatric services and mental health aftercare  
37           services.

38  
39           5. Post-crisis review. A post-crisis review must occur no  
40           more than 10 working days after any out-of-home crisis  
41           placement. The review must include significant providers and  
42           supports, and must identify variables and possible causes of the  
43           person's crisis and to plan improved support services. Notice of  
44           any such review must be given to the client's person-centered  
45           planning team and advocate.

46  
47           6. Respite services. The department shall develop and  
48           maintain a statewide respite system that affords clients, their  
49           families or their providers planned or unplanned respite as  
50

2 indicated by the client's personal plan. Respite services must  
3 be made available in or reasonably near a client's current  
4 residence. The department shall use and fund a client's natural  
5 supports in the development of this resource.

6 7. Information regarding utilization. The department must  
7 maintain accurate information as to requests and needs for crisis  
8 and respite services sufficient to plan and budget for adequate  
9 crisis and respite services. Clients, parents, providers of  
10 services and other interested persons must be made aware of the  
11 availability of these services and the proper means to access  
12 them. The department and the Consumer Advisory Board shall  
13 jointly assess annually the outcomes of the use of crisis  
14 prevention and intervention services to determine the  
15 effectiveness of those services.

16 **§4234. Municipalities and other governmental units**

17  
18 1. Authorization. A municipality or other governmental  
19 unit, such as a county, school district or health district,  
20 through its local board of health or other town or governmental  
21 agency approved by the commissioner, may adopt and carry out a  
22 program of services for persons with mental retardation or autism  
23 established or approved by the commissioner and appropriate money  
24 for that purpose.

25  
26 2. Joint ventures. A municipality or other governmental  
27 unit may join with another municipality or governmental unit to  
28 carry out a program authorized in subsection 1.

29  
30 3. Grants. Upon application to the department by a  
31 municipality or other governmental unit, the commissioner may  
32 grant to the applicant money to be used for carrying out its  
33 mental retardation or autism services, including any necessary  
34 capital expenditures or purchase of buildings.

35  
36 **§4235. Nongovernmental units**

37  
38 1. Department grants. Upon application to the department  
39 by an unincorporated association or nonstock corporation  
40 organized for the improvement of community health and welfare,  
41 the commissioner may grant to the applicant money to be used for  
42 carrying out its mental retardation or autism services, including  
43 any necessary capital expenditures or purchase of buildings.

44  
45 2. Department grants. The department may make grants to  
46 nonprofit corporations for amounts that are reasonable relative  
47 to the quantity and quality of services to be provided by the  
48 grantee.

49  
50

2           A. The department may request a display of effort on the  
4           part of the grantee to obtain appropriate local governmental  
          and other funding sources to assist in the financing of the  
          services for which the department is making the grant.

6           B. The department shall give consideration to the ability  
8           of the municipality or governmental unit to support the  
          mental retardation or autism services, as reflected by the  
          State's evaluation of the component communities.

10           C. In making grants to unincorporated associations or  
12           nonstock corporations, the department shall take into  
14           account all income and resources.

16           **§4236. Fees**

18           1. Authority. Fees may be charged for services provided  
          directly to an individual by any program authorized by the  
20           department if the individual is financially able to pay.

22           2. Use. Fees received by a municipality, governmental  
          unit, unincorporated association or nonstock corporation must be  
24           used by each entity in carrying out its programs approved under  
          this article.

26           **§4237. Contingency fund**

28           The department shall establish a contingency fund for use by  
30           facilities and programs serving persons with mental retardation  
          or autism. This fund must be used in accordance with this  
32           section.

34           1. Approval of disbursements. Disbursements must be  
          approved by the commissioner or the commissioner's designee.

36           2. List of approved uses. The commissioner or the  
          commissioner's designee and representatives of community-based  
38           facilities shall develop a list of approved uses of contingency  
          funds.

40           3. Approved uses; including. Approved uses of contingency  
42           funds include, but are not limited to:

44           A. Payment for special client assessment and treatment  
          services not reimbursed through the principles of  
46           reimbursement for intermediate care facilities for persons  
          with mental retardation or autism;

48           B. Payment for special client needs, such as eyeglasses and  
50           wheelchairs and nonreimbursable medications; or





2 **§4262. State policy**

4 **1. Services.** It is the policy of the State that persons  
6 with mental retardation or autism who are eligible for services  
8 receive needed services as resources permit when those needs are  
10 identified through:

12 **A. A personal planning process; or**

14 **B. Any other assessment of the person's needs.**

16 **2. Identification of needs.** It is the policy of the State  
18 that a person with mental retardation or autism and that person's  
20 guardian or personal ally be involved to the greatest extent  
22 possible in the identification of needs and supports of the  
24 person.

26 **3. Needs accurate collected.** It is the policy of the State  
28 that information regarding the needs and supports of persons with  
30 mental retardation or autism that are not immediately addressed  
32 must be accurately collected and used by the department in  
34 planning for the development of resources and budgeting for their  
36 development.

38 **4. Individual support coordinator.** The State shall ensure  
40 that the individual support coordinator supporting a client has  
42 regular contact with the client, unless that client affirmatively  
44 requests that contact not occur. Regular contact must include,  
46 at a minimum, monthly contact with the client and in-person  
48 visits to the client's program site, place of employment and  
50 residence twice per year unless more frequent visits are  
necessary or required by the client's personal plan. An  
individual support coordinator may not be assigned a caseload of  
more than 35 clients.

36 **§4263. Notice**

38 The department shall provide the client, the client's  
40 guardian, if any exists, and the client's advocate with timely  
42 written notice in advance of procedures and actions to be taken  
44 with respect to the development, implementation and assessment of  
46 a person-centered plan or shall ensure that such notice is  
48 provided.

46 **§4264. Correspondence and reports**

48 The department shall provide the client, the client's  
50 guardian, if any exists, and the client's advocate with access to  
copies of correspondence and reports concerning the client, in  
accordance with section 1207.

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**§4265. Rules**

1. Duty. The department shall adopt rules for the effective implementation of this article. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

2. Requirements. The rules adopted under subsection 1 must include, but need not be limited to, information on:

A. The membership, functions and procedures of the person-centered planning teams; and

B. The procedures to be used in developing person-centered plans and service agreements.

3. Public hearing and notice. The department shall hold at least one public hearing before adopting rules under this section and notice of any public hearing must be given pursuant to Title 5, chapter 375.

4. Amendment or repeal. The department may amend or repeal rules at any time after giving notice and holding a hearing, as prescribed in subsection 3, with respect to the rules amended or repealed.

**§4266. Advocate**

1. Entitlement. A client who receives services under this chapter is entitled to have access to an advocate.

2. List. The commissioner shall develop a list of advocates for each region.

**§4267. Application and preliminary procedures**

1. Application. An application for mental retardation or autism services, on a form provided by the department, must be initiated at or referred to a regional office of the department.

2. Preliminary procedures. Within 10 work days from the day of application, the department shall:

A. Observe the client in the client's current environment;

B. Obtain a brief family survey;

2           C. Make a preliminary assessment of the client's abilities  
3           and needs and of the relevant services presently available  
4           to the client; and

5           D. Ensure the client's access to an advocate throughout the  
6           process under this section and sections 4268 to 4273.

8           **§4268. Evaluation**

10           After completing the procedures specified in section 4267,  
11           subsection 2, the department shall immediately cause a  
12           comprehensive evaluation of the client to be conducted, including  
13           a consideration of physical, emotional, social and cognitive  
14           factors.

15           1. Location. The comprehensive evaluation must be  
16           conducted locally, except where resources required to carry out  
17           the evaluation are not available.

18           2. Comprehensive evaluation. The comprehensive evaluation  
19           must be conducted by professionals who have appropriate training  
20           and experience in the diagnosis and treatment of persons with  
21           mental retardation or autism and other relevant disciplines in  
22           assessing areas of need.

23           **§4269. Report**

24           Within 30 days of the date of application under section  
25           4267, the department shall obtain a report of the comprehensive  
26           evaluation, which must state specifically whether or not the  
27           client is a person with mental retardation or autism.

28           1. Client not a person with mental retardation or autism.  
29           If the comprehensive evaluation concludes that the client is not  
30           a person with mental retardation or autism, the department shall  
31           deny the application for services, care and treatment, but shall  
32           make appropriate referrals in cases in which clear needs of the  
33           client exist.

34           2. Client a person with mental retardation or autism. If  
35           the comprehensive evaluation concludes that the client is a  
36           person with mental retardation or autism and is in need of  
37           services:

38           A. The department, through the regional office, shall  
39           develop a person-centered plan or service plan, or both; and

40           B. If a person-centered plan is to be developed, the  
41           department, through the person-centered planning team, shall  
42           develop and begin to implement a person-centered plan for  
43           the client.

2           the client within 60 days of the date of application under  
3           section 4267.

4           3. Preschool child. If the report of the comprehensive  
5           evaluation concludes that a child, from birth to 5 years of age,  
6           is developmentally delayed and is in need of infant development  
7           services or other early intervention services:

8           A. The department, through the regional office, shall  
9           develop a person-centered plan or service plan, or both; and

10           B. If a person-centered plan is to be developed, the  
11           department, through the person-centered planning team, shall  
12           develop and begin to implement a person-centered plan for  
13           the client within 60 days of the date of application under  
14           section 4267.

15           §4270. Person-centered plan

16           1. Right to person-centered planning. A client must be  
17           afforded the opportunity to engage in a person-centered planning  
18           process in which the needs and desires of the client are  
19           identified and articulated. A client must be offered a planning  
20           process at least annually with the assent of the client or the  
21           client's guardian. All services must have the goal of maximizing  
22           development and social integration into the community.

23           2. Individually tailored plan. A person-centered plan must  
24           be individually tailored to the client's age, sex, condition,  
25           abilities, experiences and needs.

26           3. Process. The planning process must include members of  
27           the person-centered planning team chosen by the person and other  
28           participants who can be anticipated to assist the person in  
29           identifying and working toward meeting identified needs and  
30           desires. The planning process at minimum must include the  
31           person, the person's guardian and the person's individual support  
32           coordinator. The planning process may also include participation  
33           or input by friends, service providers, advocates, allies and  
34           others.

35           4. Contents of plan. Each person-centered plan must:

36           A. Define the projection of needs without regard to service  
37           availability;

38           B. Define support service needs for the client with regard  
39           to service availability and assess and define the need for  
40           the provision of support and training for parents and others  
41           who support clients; including, but not limited to, the use  
42           of support services.

2 of alternative communications systems, safe crisis  
3 intervention strategies and informal provisions of support  
4 services;

6 C. Define necessary services to meet the client's needs;

8 D. Recommend the optimal course of action; and

10 E. Include plans for the active and continued exploration  
11 of suitable program alternatives based on client need.

12 5. Implementation. Implementation of all parts of a  
13 person-centered plan must occur at the earliest possible time and  
14 is governed by section 4271, subsection 4. All parts of a  
15 person-centered plan must be agreed to, prior to implementation,  
16 by the client, if the client is able, or the client's legal  
17 guardian.

18 6. Person-centered planning reports. All identified needs  
19 and desires of the client must be recorded in a written report  
20 whether or not the desires are reasonably achievable or whether  
21 or not the needs can presently be addressed. An action plan to  
22 address each unmet need must be included in the report. In cases  
23 in which resources required to address identified needs are not  
24 available, the report must include a 2-part action plan based on  
25 available services that:

28 A. Addresses the needs as nearly as possible; and

30 B. Identifies steps toward meeting the client's actual  
31 identified needs.

32 Each action plan must include the names and signatures of the  
33 individuals responsible for each step of the action plan and an  
34 estimated time for fully addressing the need.

36 7. Review of person-centered plan. The client or another  
37 member of the person-centered planning team may initiate a review  
38 of the client's personal plan when necessary.

40 A. The review may be done by a meeting of the team or by  
41 other means sufficient to address the needed or desired  
42 changes.

44 B. The review must include the client, the client's  
45 guardian, if any, and the individual support coordinator.

48 C. Events that lead to plan review include, but are not  
49 limited to, use of crisis intervention services, use of  
50 physical restraints and events that pose a significant

2           change in or threat to the client's health, abilities or  
3           life circumstances.

4           D. Other events that lead to a plan review may be  
5           identified by the team.

6  
7           8. Assistance. The department shall assist clients for  
8           whom such needs are identified under this section to obtain  
9           housing, employment or other meaningful occupation, medical and  
10           other professional therapeutic services, recreational and  
11           vocational opportunities and educational services.

12  
13           9. Major changes. Any major changes in a client's  
14           person-centered plan may be made only in accordance with section  
15           4271, subsection 6.

16           **§4271. Service agreements**

17  
18           1. Service agreement required. A person-centered plan must  
19           be carried out pursuant to a written service agreement.

20  
21           2. Signatures. A service agreement must be signed and  
22           dated by at least:

23           A. The client, if competent;

24           B. The client's guardian if the client is not competent;

25           C. A client advocate, if the client has no guardian or is  
26           under public guardianship;

27           D. The individual support coordinator;

28           E. The chief administrative officer of the facility or the  
29           chief administrative officer's agent if a client is being  
30           admitted to, treated in or discharged from a facility; and

31           F. The chief administrative officer, or the chief  
32           administrative officer's agent, of other public or private  
33           agencies or groups that agree to provide services to the  
34           client.

35           3. Contents. A service agreement must at least:

36           A. Specify the respective responsibilities, as applicable,  
37           of the client, the family or guardian of the client, the  
38           regional office, the facility and each public and private  
39           agency that intends to provide services to the client;  
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2 B. Identify by job classification or other description each  
3 individual who is responsible for carrying out each part of  
4 the person-centered plan; and

5 C. Specify the date on which the review required in  
6 subsection 5 must occur.

7 4. Implementation of person-centered plan. Implementation  
8 of a person-centered plan is as follows.

9 A. No part of a person-centered plan may be implemented  
10 until each person required to sign the service agreement  
11 under subsection 2 has signed it.

12 B. An existing person-centered plan is considered to be in  
13 effect until all persons required to sign under subsection 2  
14 have signed the new service agreement.

15 C. A person-centered plan may not be in effect longer than  
16 one year and 2 weeks from the day on which the last person  
17 signed the service agreement.

18 5. Review. At least 30 days prior to the termination of a  
19 service agreement, a person-centered planning team shall meet to  
20 assess the present person-centered plan and, if further services  
21 are recommended, to prepare a new plan.

22 6. Amendment. A major change in a client's person-centered  
23 plan may occur only after the service agreement has been amended  
24 and signed by the persons specified in subsection 2.

25 **§4272. Grievances and appeals**

26 1. Advocacy system. The department shall ensure that an  
27 advocacy system adequate to meet the needs of all clients is in  
28 place.

29 2. File guidance. All persons who have applied for or who  
30 are receiving services from the department under this chapter  
31 have the right to file a grievance concerning any action or  
32 decision of the department or any failure of refusal to act by  
33 the department. Grievances may be filed by the person or by the  
34 person's representative.

35 3. Notices; easily understood language. Notices regarding  
36 grievance and appeal rights must be provided in language that is  
37 easily understood and must be included with all notices regarding  
38 the person-centered planning process and in all other  
39 circumstances where supportive services are provided or denied.  
40 All completed person-centered plans must provide such notice and  
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2 in addition, in easily understood language and in bold print,  
3 must inform clients and their representatives that a grievance  
4 may be filed over any disagreement regarding any part of the  
5 person-centered plan. All notices required in this section must  
6 provide the address and phone number of the Office of Advocacy as  
7 defined in section 1205.

8 4. Informal grievance procedure. Informal grievances must  
9 be addressed according to this subsection.

10 A. Any expression of disagreement by the client or the  
11 client's representative, either orally or in writing, with  
12 the provision of services or the failure or refusal to  
13 provide services constitutes an informal grievance. All  
14 informal grievances must be noted in the client's record on  
15 the date they occur. Notice of these grievances and appeal  
16 rights must be provided immediately to the client and the  
17 client's representative. If a grievance is not resolved  
18 within 5 working days, the department shall notify the  
19 Office of Advocacy as to the nature of the grievance and the  
20 persons involved.

21 B. If the grievance is resolved within 10 working days, the  
22 department shall note in the client's record the nature of  
23 the grievance and a description of the resolution.

24 C. If the grievance is not resolved within 10 working days,  
25 the department shall provide to the client, the client's  
26 representative and the Office of Advocacy a written decision  
27 setting forth the nature of the grievance, the department's  
28 decision on the grievance and the reasons for the decision.  
29 The decision must set forth, in easily understood language  
30 and in bold print, that the client or the client's  
31 representative may seek review of the department's decision  
32 in accordance with subsection 5. Such an appeal must be  
33 filed within 10 days of receipt of the department's decision.

34 D. If the department is unable to provide the written  
35 decision described in paragraph C within 10 days, the  
36 department shall inform the client, the client's  
37 representative and the Office of Advocacy in writing within  
38 the 10-day period that the grievance is deemed to be denied.  
39 The notice must set forth, in easily understood language and  
40 in bold print, that the client or the client's  
41 representative may seek review of the department's deemed  
42 denial in accord with subsection 5. Such an appeal must be  
43 filed within 10 days of receipt of the notice of the deemed  
44 denial.

2 E. If the department fails to provide either a decision as  
4 set out in paragraph C or a deemed denial as set out in  
paragraph D, then the grievance is deemed granted.

6 5. Formal review. Formal review must be held according to  
this subsection.

8 A. Appeals of any grievance decision or deemed denial must  
10 be filed within 10 days of receipt of notice of the decision  
12 or deemed denial. The department shall immediately forward  
14 all appeals to the hearings unit, which must schedule a  
16 hearing within 10 working days of receipt of the appeal. The  
18 hearings unit shall give notice of the hearing to the  
client, the client's representative and the department. The  
hearing may be held at a regional office of the department  
or such other location that can provide more suitable  
accommodations or level of comfort for the client.

20 B. The hearing must be held in accordance with the rules of  
22 the hearings unit. Within 3 working days of the  
24 administrative hearing, the hearing officer shall forward a  
written decision to the client, the client's representative,  
the Office of Advocacy and the department.

26 C. The hearing officer's decision shall constitute final  
28 agency action for purpose of Rule 80C of the Maine Rules of  
Civil Procedure.

30 6. Appeals. Appeals of the hearing officer's decision are  
32 governed by Rule 80C of the Maine Rules of Civil Procedure. If  
34 the client prevails in any such appeal, counsel for the client  
may be awarded a reasonable attorney's fee in addition to  
allowable costs if the department's position on appeal was not  
substantially justified.

36 **§4273. Quality assurance**

38 1. Comprehensive quality assurance plan. The department  
40 shall develop a comprehensive quality assurance plan. The plan  
42 must include the periodic measurement of the quality of life of  
44 each client. The plan must set forth objective standards in such  
46 areas as medication errors, restraints and assaults for  
determining the adequacy of services provided to clients. The  
quality assurance plan must ensure that any electronic record  
accurately reflects the unmet needs of each client. Quality  
assurance information must be made available to each client's  
person-centered planning team. At least once every 4 years, the  
48 department shall contract for a comprehensive independent audit  
of the mental retardation or autism service delivery system.

2 using a contractee mutually agreed upon by the department and the  
3 Consumer Advisory Board.

4 2. Provides, adequate knowledge. The department shall  
5 provide and ensure that providers of services to persons with  
6 mental retardation or autism have an adequate understanding of  
7 mental retardation and autism and are adequately trained in  
8 effectively delivering care, treatment and services in accordance  
9 with this subsection.

10 A. The department shall employ a minimum of one mental  
11 retardation or autism training supervisor and 5 training  
12 coordinators, located statewide, to provide training and  
13 support to any ally or other person serving a person with  
14 mental retardation or autism in any aspect of care,  
15 treatment or service that is sought or required, including  
16 but not limited to:

17 (1) Person-centered planning;

18 (2) Family support;

19 (3) Crisis assessment, prevention and intervention;

20 (4) Behavioral and restraint techniques;

21 (5) Administration of medication;

22 (6) Communication modes and adaptive devices; and

23 (7) Use of and access to benefits and service delivery  
24 systems.

25 B. The department shall employ the following professionals  
26 to develop resources and present training in their  
27 respective fields as well as to identify, and assist in,  
28 areas of the State where shortages of professional services  
29 exist:

30 (1) Medicaid specialist;

31 (2) Educational specialist;

32 (3) Communications expert;

33 (4) Physical therapist;

34 (5) Dentist;

35 (6) Psychologist; and

2                   (7) Psychiatrist specializing in the use of  
4                   psychotropic medications.

6                   C. The department shall publish and distribute through the  
8                   regional offices the information conveyed through training  
10                   in written and electronic form and shall publish a resource  
12                   directory of residential and program services in the State  
14                   at least annually.

16                   D. The department shall have an annual written agreement  
18                   with each provider of residential and program or work  
20                   services. The written agreement must:

22                   (1) Ensure that assessment of the client's  
24                   satisfaction with the client's residence, program,  
26                   workplace, supports and services is the primary  
28                   indicator of the provision of high-quality services and  
30                   supports;

32                   (2) Include the provider's agreement to follow all  
34                   applicable laws, rules and regulations;

36                   (3) Ensure that the department and its employees and  
38                   agents have reasonable access to the residence or  
40                   program of all clients and to the records of each  
42                   residence or program;

44                   (4) Contain an outline of the provider's financial  
46                   reimbursement and responsibilities;

48                   (5) Ensure participation by providers in the planning  
50                   process;

(6) Ensure compliance with each person's service  
                    agreement, as outlined in the planning process;

(7) Contain a description of the sanctions should the  
                    provider not meet the terms of the agreement; and

(8) Ensure that the provider develop and implement a  
                    quality assurance plan and make it available to the  
                    department.

44                   **§4274. Emergency procedures**

46                   1. Custody for emergency transport. If a law enforcement  
48                   officer or departmental crisis worker has reasonable grounds to  
50                   believe, based upon the officer's or worker's personal  
                    observation, that a person is a person with mental retardation or

2 autism and that the person presents a threat of imminent and  
3 substantial physical self-harm or harm to others and that an  
4 emergency exists requiring immediate residential placement, then  
5 the officer or client worker may take the person into custody.

6 A. If the officer or crisis worker does take the person  
7 into custody, the officer or crisis worker shall deliver the  
8 person, within 6 hours, for examination by an available  
9 licensed physician or licensed psychologist as provided in  
10 subsection 4.

11 B. When an employee of the Office of Advocacy, acting as  
12 the department's agent in compliance with the duties  
13 delineated in the Adult Protective Services Act, has  
14 reasonable cause to believe, based on a protective referral  
15 report, that the subject of the referral is an adult  
16 incapacitated person, that a condition exists that is  
17 alleged to place the subject at risk of serious harm and  
18 that the subject can not or will not cooperate in the  
19 process of assessing questions of safety raised by the  
20 report of abuse, neglect or exploitation and an advocate  
21 presents to a law enforcement officer or crisis worker a  
22 statement signed by an advocate that the conditions exist,  
23 the law enforcement officer or crisis worker shall  
24 immediately take the person into custody and proceed with  
25 the actions set out in paragraph A.

26 2. Certificate not executed. If a certificate relating to  
27 a person's likelihood of serious harm is not executed by the  
28 examiner under subsection 4, the officer or crisis worker shall:

29 A. Release the person from custody and, with the person's  
30 permission, return the person immediately to that person's  
31 place of residence;

32 B. Release the person from protective custody and, with the  
33 person's permission, return the person to the place where  
34 the person was taken into custody; or

35 C. If the person is also under arrest for violation of law,  
36 retain the person in custody until the person is released in  
37 accordance with the law.

38 3. Certificate executed. If the certificate is executed by  
39 the examiner under subsection 4, the officer shall undertake  
40 within 18 hours to obtain the endorsement by a judicial officer  
41 under subsection 4 and may detain the person for as long as  
42 necessary to obtain the endorsement.

2 4. Admission. A person may be admitted to a facility after  
3 the facility has received an application and certificate  
4 according to the procedures set out in this subsection.

5  
6 A. Any health officer, law enforcement officer or other  
7 person may make a written application to admit a person to a  
8 facility, subject to the prohibitions and penalties of  
9 section 3805, stating the belief that the person is in need  
10 of services in a facility offering a secure setting; that an  
11 emergency exists requiring immediate placement in a facility  
12 offering a secure setting; and the grounds for this belief.

13  
14 B. The written application must be accompanied by a dated  
15 certificate, signed by a licensed physician or a licensed  
16 clinical psychologist, stating:

17 (1) The physician or psychologist has examined the  
18 person on the date of the certificate, which date may  
19 not be more than 3 days before the date of admission to  
20 the facility; and

21 (2) The physician or psychologist is of the opinion  
22 that the person is a person with mental retardation or  
23 autism in need of services in a safe and secure  
24 facility.

25  
26  
27 C. The application and accompanying certificate must be  
28 reviewed by a Justice of the Superior Court, a Judge of the  
29 District Court, a Judge of Probate or a justice of the peace.

30  
31 (1) If the judge or justice finds the application and  
32 accompanying certificate to be regular and in  
33 accordance with the law, the judge or justice shall  
34 endorse them.

35 (2) A person may not held against the person's will in  
36 the facility under this subsection unless the  
37 application and certificate have been endorsed by a  
38 judge or justice, except that a person for whom an  
39 examiner has executed the certificate provided for  
40 under this subsection may be detained in a facility for  
41 as long as is necessary to obtain the endorsement by a  
42 judge or justice, if the person or persons transporting  
43 the person to the facility undertake to secure the  
44 endorsement forthwith upon execution of the certificate  
45 by the examiner.

46  
47 D. Upon endorsement by the judge or justice of the  
48 application and certificate, any health officer, police  
49 officer or other person designated by the judge or justice  
50

2           may take the person into custody and transport that person  
3           to the facility designated in the application.

4           E. The county in which the person is found is responsible  
5           for any expenses of transportation for the person under this  
6           subsection, including return from the facility if admission  
7           is declined.

8           F. Under this subsection, a facility may admit the client  
9           for no longer than 5 days, but if a petition for judicial  
10           commitment is filed, the facility may admit the client for  
11           an additional period not to exceed 25 days from the date of  
12           application.

14           **§4275. Client's right to leave facility**

16           A client admitted to any facility by informed consent may  
17           leave a facility at that client's own request.

20                           **SUBCHAPTER III**

22                           **RIGHTS OF PERSONS WITH MENTAL**  
23                           **RETARDATION OR AUTISM**

24           **§4301. Definitions**

26           As used in this subchapter, unless the context otherwise  
27           indicates, the following terms have the following meanings.

28           1. Day facility. "Day facility" means any nonresidential  
29           facility owned, operated, licensed or funded, in whole or in  
30           part, by the department or through the Department of Human  
31           Services.

32           2. Discipline. "Discipline" means methods or procedures to  
33           obtain compliance with a set of rules, such as house rules,  
34           designed to ensure order and safety.

35           3. Express and informed consent. "Express and informed  
36           consent" means consent voluntarily given with sufficient  
37           knowledge and comprehension of the subject matter involved so as  
38           to enable the person giving consent to make an enlightened  
39           decision, without any element of force, fraud, deceit, duress or  
40           other form of constraint or coercion.

41           4. Residential facility. "Residential facility" means a  
42           facility providing 24-hour residential services for persons with  
43           mental retardation or autism that is owned, operated, licensed or  
44           funded, in whole or in part, by the department or through the  
45           Department of Human Services.

2           5. Restraint. "Restraint" means any intervention intended  
4           to interfere with the voluntary movement of an individual or any  
6           part of the individual's body. "Restraint" may also include a  
            verbal demand coupled with an overt or implied threat to use  
            physical force.

8           6. Seclusion. "Seclusion" means the solitary placement of  
10           a client in a locked room for any period of time.

12           7. Supports. "Supports" are those actions or that  
14           assistance that permits a person with mental retardation or  
            autism to carry out activities as the person desires.

16           8. Treatment. "Treatment" means the prevention,  
18           amelioration or cure of physical and mental disabilities or  
            illness of a client.

20           **§4302. Entitlement**

22           A person with mental retardation or autism is entitled to  
24           the rights enjoyed by citizens of the State and of the United  
            States, unless some of these rights have been suspended as the  
            result of court guardianship proceedings.

26           **§4303. Protection**

28           The Legislature finds and declares that the rights of  
30           persons with mental retardation or autism can be protected best  
32           under a system of services that operates to guarantee individual  
34           dignity, liberty, pursuit of happiness and the protection of the  
            civil and legal rights of persons with mental retardation or  
            autism. The State's system of services must operate according to  
            these policies with the goals of:

36           1. Community-based services. Continuing the development of  
38           community-based services that provide reasonable alternatives to  
40           institutionalization in settings that are least restrictive to  
            the person receiving services; and

42           2. Independence and productivity. Providing habilitation,  
44           education and other training to persons with mental retardation  
46           or autism that will maximize their potential to lead independent  
            and productive lives and that will afford opportunities for  
            outward mobility to less restrictive settings.

48           **§4304. Rights and basic protections of a person**  
            with mental retardation or autism



2           1. Humane treatment. A person with mental retardation or  
autism is entitled to dignity, privacy and humane treatment.

4           2. Practice of religion. A person with mental retardation  
or autism is entitled to religious freedom and practice without  
6 any restriction or forced infringement on that person's right to  
religious preference and practice.

8           3. Communications. A person with mental retardation or  
10 autism is entitled to private communications.

12           A. A person with mental retardation or autism is entitled  
to receive, send and mail sealed, unopened correspondence. A  
14 person who owns or is employed by a day facility or a  
residential facility may not delay, hold or censor any  
16 incoming or outgoing correspondence of any person with  
mental retardation or autism, nor may any such  
18 correspondence be opened without the consent of the person  
or the person's legal guardian.

20           B. A person with mental retardation or autism in a  
22 residential facility is entitled to reasonable opportunities  
for telephone communication.

24           C. A person with mental retardation or autism is entitled  
26 to an unrestricted right to visitation during reasonable  
hours, except that nothing in this provision may be  
28 construed to permit infringement upon others' rights to  
privacy.

30           4. Work. A person with mental retardation or autism  
32 engaged in work programs that require compliance with state and  
federal wage and hour laws is entitled to fair compensation for  
34 labor in compliance with regulations of the United States  
Department of Labor.

36           5. Vote. A person with mental retardation or autism may  
38 not be denied the right to vote for reasons of mental illness, as  
provided in the Constitution of Maine, Article II, Section 1,  
40 unless under guardianship.

42           6. Personal property. A person with mental retardation or  
autism is entitled to the possession and use of that person's own  
44 clothing, personal effects and money, except that, when necessary  
to protect the person or others from imminent injury, the chief  
46 administrator of a day facility or a residential facility may  
take temporary custody of clothing or personal effects, which the  
48 administrator shall immediately return when the emergency ends.

2 7. Nutrition. A person with mental retardation or autism  
3 in a residential facility is entitled to nutritious food in  
4 adequate quantities, and meals may not be withheld for  
5 disciplinary reasons.

6 8. Medical care. A person with mental retardation or  
7 autism is entitled to receive prompt and appropriate medical and  
8 dental treatment and care for physical and mental ailments and  
9 for the prevention of any illness or disability, and medical  
10 treatment must be consistent with the accepted standards of  
11 medical practice in the community, unless the religion of the  
12 person with mental retardation or autism so prohibits.

13 A. Medication may be administered only at the written order  
14 of a physician.

15 B. Medication may not be used as punishment, for the  
16 convenience of staff, as a substitute for an habilitation  
17 plan or in unnecessary or excessive quantities.

18 C. Daily notation of medication received by each person  
19 with mental retardation or autism in a residential facility  
20 must be kept in the records of the person with mental  
21 retardation or autism.

22 D. Periodically, but no less frequently than every 6  
23 months, the drug regimen of each person with mental  
24 retardation or autism in a residential facility must be  
25 reviewed by the attending physician or other appropriate  
26 monitoring body, consistent with appropriate standards of  
27 medical practice.

28 E. All prescriptions for a person with mental retardation  
29 or autism in a residential facility must have a termination  
30 date.

31 F. Pharmacy services at each residential facility operated  
32 by the department must be directed or supervised by a  
33 professionally competent pharmacist licensed according to  
34 the provisions of Title 32, chapter 41.

35 G. Prior to instituting a plan of experimental medical  
36 treatment or carrying out any surgical procedure, express  
37 and informed consent must be obtained from the person with  
38 mental retardation or autism, unless the person has been  
39 found to be legally incompetent, in which case the person's  
40 guardian may consent.

41 (1) Before making a treatment or surgical decision,  
42 the person must be given information, including, but  
43 not limited to, the following:

2 not limited to, the nature and consequences of the  
3 procedures, the risks, benefits and purposes of the  
4 procedures and the availability of alternate procedures.

5 (2) The person or, if that person is legally  
6 incompetent, that person's guardian may withdraw  
7 express and informed consent at any time, with or  
8 without cause, before treatment or surgery.

10 H. Notwithstanding the absence of express and informed  
11 consent, emergency medical care or treatment may be provided  
12 to any person with mental retardation or autism who has been  
13 injured or who is suffering from an acute illness, disease  
14 or condition if delay in initiation of emergency medical  
15 care or treatment would endanger the health of the person.

16 I. Notwithstanding the absence of express and informed  
17 consent, emergency surgical procedures may be provided to  
18 any person with mental retardation or autism who has been  
19 injured or who is suffering from an acute illness, disease  
20 or condition if delay in initiation of emergency surgery  
21 would substantially endanger the health of the person.

22 9. Sterilization. A person with mental retardation or  
23 autism may not be sterilized, except in accordance with chapter 7.

24 10. Social activity. A person with mental retardation or  
25 autism is entitled to suitable opportunities for leisure  
26 activities that include social interaction.

27 11. Physical exercise. A person with mental retardation or  
28 autism is entitled to opportunities for appropriate physical  
29 exercise, including the use of available indoor and outdoor  
30 facilities and equipment.

31 12. Discipline. Discipline of persons with mental  
32 retardation or autism is governed by this subsection.

33 A. The chief administrative officer of a day or residential  
34 facility shall prepare a written statement of policies and  
35 procedures for the control and discipline of persons  
36 receiving services that is directed to the goal of  
37 maximizing the development of clients.

38 (1) Clients are entitled to participate, as  
39 appropriate, in the formulation of the policies and  
40 procedures.

41 (2) Copies of the statement of policies and procedures  
42 must be given to each client and, if the client has  
43

2 been adjudged incompetent, to that client's parent or  
3 legal guardian.

4 (3) Copies of the statement of policies and procedures  
5 must be posted in each residential and day facility.

6 (4) Copies of the statement of policies and  
7 procedures, as well as any subsequent revisions, must  
8 be provided promptly to the Office of Advocacy and to  
9 the department.

10  
11  
12 B. Corporal punishment or any form of inhumane discipline,  
13 including but not limited to enclosed cribs, barred  
14 enclosures, camisoles, straight jackets or any immobilizing  
15 tying or binding, is not permitted.

16 C. Seclusion is not permitted.

17  
18 D. Any use of discipline 3 or more times in 2 weeks or in  
19 any other regular pattern requires a review by the  
20 person-centered planning teams.

21  
22 13. Behavior modification. Behavior modification of a  
23 client is governed by this subsection.

24  
25  
26 A. A client may not be subjected to a treatment program to  
27 eliminate dangerous or maladaptive behavior without first  
28 being examined by a physician to rule out the possibility  
29 that the behavior is organically caused.

30  
31 B. Treatment programs involving the use of noxious or  
32 painful stimuli may be used only to correct behavior more  
33 harmful to the client than is the treatment program and only:

34  
35 (1) On the recommendation of a physician, psychiatrist  
36 or psychologist; and

37 (2) With the approval, following a case-by-case  
38 review, of the department, a designated representative  
39 of the Division of Mental Retardation, a representative  
40 of the Office of Advocacy and a 3rd person designated  
41 by the Consumer Advisory Board.

42  
43 C. The chief administrative officer of each facility shall  
44 prepare or adopt a written statement of policies and  
45 procedures for the behavior modification of clients that is  
46 directed to the goal of maximizing the development of  
47 clients.

2                   (1) Clients are entitled to participate in the  
formulation of the policies and procedures.

4                   (2) Copies of the statement of policies and procedures  
must be given to each client and, if the client has  
6                   been adjudged incompetent, to that client's parent or  
legal guardian.

8                   (3) Copies of the statement of policies and procedures  
10                   must be posted in each residential and day facility.

12                   (4) Copies of the statement of policies and  
procedures, as well as any subsequent revisions, must  
14                   be provided promptly to the Office of Advocacy and the  
department.

16                   14. Restraints. Persons with mental retardation or autism  
18                   are entitled to be free from restraints. Restraints may be  
employed only in emergencies as part of a behavior modification  
20                   program to protect the person from imminent injury to that person  
or others. Enclosed cribs, barred enclosures, camisoles,  
22                   straight jackets or any immobilizing tying or binding may not be  
used as emergency intervention.

24                   A. Restraints may not be used as punishment, for the  
26                   convenience of the staff or as a substitute for habilitative  
services.

28                   B. Restraints may impose only the least possible  
30                   restrictions consistent with their purpose and must be  
removed when the emergency ends.

32                   C. Restraints must be designed and used to allow the  
34                   greatest possible comfort and safety.

36                   D. Mechanical supports used in normative situations to  
achieve proper body position and balance are not considered  
38                   restraints, but mechanical supports must be prescriptively  
designed and applied under the supervision of a qualified  
40                   professional with concern for principles of good body  
alignment, circulation and allowance for change of position.

42                   E. A device whose effect is to reduce or inhibit a client's  
44                   movement in any way, but whose purpose is to maintain or  
ensure safety of the client, is not considered a restraint.  
46                   Such devices may be used only after being recommended by a  
qualified professional after approval of the client's  
48                   person-centered plan, and the committee described in  
subsection 13, paragraph B, subparagraph (2).

50

2 F. Daily reports on the use of restraints must be made to  
4 the appropriate chief administrative officer of the  
6 facility, the department and the Office of Advocacy.

8 The reports must summarize all cases involving the use of  
10 restraints, the type of restraints used, the duration of use  
12 and the reasons for the use.

14 A monthly summary of the reports must be relayed to the  
16 Office of Advocacy.

18 **15. Records.** All records of clients must remain  
20 confidential as provided in section 1207.

22 A. The person with mental retardation or autism or, if the  
24 person is incompetent, a parent or guardian is entitled to  
26 have access to the records upon request.

28 B. The commissioner is entitled to have access to the  
30 records of a day facility or a residential facility if  
32 necessary to carry out the statutory functions of the  
34 commissioner's office.

#### 26 **§4305. Violations**

28 **1. Report and investigation.** Any alleged violation of the  
30 rights of a client must be reported immediately to the Office of  
32 Advocacy, the department and the Attorney General's office.

34 A. The Office of Advocacy shall conduct an investigation of  
36 each alleged violation pursuant to section 1205.

38 B. The Office of Advocacy shall submit a written report of  
40 the findings and results of the investigation to the chief  
42 administrative officer of the facility in which the rights  
44 of the client were allegedly violated and to the  
46 commissioner within 2 working days after the day of the  
48 occurrence or discovery of the alleged incident.

**2. Civil liability.** Any person who violates or abuses any  
rights or privileges of a client granted by this subchapter is  
liable for damages as determined by law.

A. Civil damages may be awarded for negligent or  
intentional violations of this subchapter.

B. Good-faith compliance with the provisions of this  
subchapter in connection with evaluation, admission,  
habilitation programming, education, treatment or discharge

2 of a client is a defense to a civil action under this  
3 subchapter.

4 3. Prohibited acts; penalty; defense. A person is guilty  
5 of violation of the rights of a client if that person  
6 intentionally violates or abuses any rights or privileges of a  
7 client granted by this subchapter.

8  
9 A. Violation of the rights of a client is a Class E crime.

10  
11 B. Good-faith compliance with the provisions of this  
12 subchapter in connection with evaluation, admission,  
13 habilitation programming, education, treatment or discharge  
14 of a client is a defense to prosecution under this  
15 subchapter.

16 **§4306. Notice of rights**

17  
18 The commissioner shall provide a written copy of this  
19 subchapter and of section 1207 to each client and, if the client  
20 has been adjudged incompetent, to the parent or guardian of the  
21 client.

22  
23 1. Prompt notification. Each client must be promptly  
24 informed in clear language of that client's legal rights.

25  
26 2. Posting requirement. A copy of this subchapter must be  
27 posted in each residential and day facility.

28  
29 **§4307. Government**

30  
31 Upon request of a client, the chief administrative officer  
32 of a residential facility shall initiate and develop a program of  
33 government to hear the views and represent the interests of all  
34 clients at the facility.

35  
36 1. Composition. The government of the clients must be  
37 composed of residents elected by other residents and staff  
38 advisors skilled in the administration of community organizations.

39  
40 2. Duties. The government of the clients shall work  
41 closely with the department and the Office of Advocacy to promote  
42 the interests and welfare of all residents in the facility.

43  
44 **§4308. Habilitation and vocational rehabilitation services**

45  
46 1. Habilitation services. The department and the  
47 Department of Labor through the Office of Rehabilitation Services  
48 shall provide, to the extent of the resources available, for  
49 those habilitation and vocational rehabilitation services defined  
50

2 in Title 26, section 1411-A, subsection 6 and any other service,  
3 including, but not limited to, supported employment including  
4 work in rehabilitation facilities and work centers, as defined in  
5 Title 5, chapter 155, subchapter II; job coaching;  
6 transportation, recreational and leisure services; and respite or  
7 day programs designed in consultation with an interdisciplinary  
8 team in order to make available to clients receiving services  
9 those services that are otherwise not obtainable, in the  
10 following order of priority:

11 A. Those clients who are living at home or in unsubsidized  
12 foster care who are between 20 and 26 years of age and are  
13 not receiving any day program; and

14 B. All other clients who are between 20 and 26 years of age  
15 and are not receiving an appropriate day program.

16  
17 A client who is served under this section prior to the client's  
18 26th birthday must be allowed to continue to receive services  
19 through the voucher system established by subsection 2.

20  
21 2. Payment for service. The department shall establish a  
22 voucher system to allow the interdisciplinary team to incorporate  
23 only those services determined critical and otherwise unavailable  
24 into a program, including work, habilitation and other services  
25 designated in subsection 1, when appropriate. The department  
26 shall establish a limit on the amount of transitional services  
27 available to clients receiving services eligible for services  
28 under this section.

29  
30 3. Rules. The department shall adopt rules to establish a  
31 transitional program under subsections 1 and 2. Rules adopted  
32 pursuant to this subsection are routine technical rules pursuant  
33 to Title 5, chapter 375, subchapter II-A.

34  
35 For purposes of this section, "interdisciplinary team"  
36 includes the client and a member of the client's family or the  
37 guardian of the client.

38  
39 **Sec. 6. 34-B MRSA c. 5, as amended, is repealed.**

40  
41 **Sec. 7. 34-B MRSA §6004, first ¶, as amended by PL 1995, c.**  
42 **560, Pt. K, §64, is further amended to read:**

43  
44 The commissioner shall submit a report on efforts to plan  
45 for and develop social and habilitative services for persons who  
46 have autism and other pervasive developmental disorders to the  
47 Governor and the joint standing committee of the Legislature  
48 having jurisdiction over health and institutional services  
49 matters. This report must be submitted no later than January 15th  
50



of every odd-numbered year and must be submitted in conjunction with the plan required by section 5003 4006, subsection 3 2.

**Sec. 8. 34-B MRSA §6252, sub-§4, ¶B**, as amended by PL 1995, c. 560, Pt. K, §76, is further amended to read:

B. Respite care may be provided to any person by the center without full compliance with the procedures for admission by judicial certification under section 5475 4274, subsection 4, paragraph C, if:

(1) The purpose of the respite care is for evaluation, diagnosis or other clearly stated and broadly defined therapeutic purposes of the person or the person's family;

(2) Respite care may be provided, upon application to the department by the person, the person's guardian or the person's parent, for not more than 21 days at a time and not more than 60 days during any 12-month period; or

(3) Continuing placement in the center beyond the time periods stated in subparagraph 2, if indicated, may be accomplished only upon full compliance with section 5475.

**Sec. 9. 34-B MRSA §6252, sub-§4, ¶C**, as enacted by PL 1985, c. 503, §12, is amended to read:

C. Admission to the center by judicial certification may be accomplished according to the procedures in section 5475 4274, subsection 4, paragraph C.

**Sec. 10. 34-B MRSA §6252, sub-§5**, as enacted by PL 1985, c. 503, §12, is amended to read:

**5. Applicability of laws.** If a child with mental retardation or autism is in need of treatment ~~who is mentally retarded~~ and is admitted to the center, all provisions in chapter ~~5~~ 4 that are applicable to state institutions ~~shall~~ apply to the center with respect to that child.

**Sec. 11. 36 MRSA §1760, sub-§28, ¶B**, as amended by PL 1995, c. 560, Pt. K, §82 and affected by §83, is further amended to read:

B. Receiving support from the Department of Mental Health, Mental Retardation and Substance Abuse Services pursuant to Title 34-B, section 3604, ~~5433~~ 4232 or 6204.



2 required by the decree and that the department maintain the  
current system of crisis and respite services.

4 The bill provides mechanisms to promote the level of  
programs and services specified by the decree and it requires  
6 that the department provide a system for speedy resolution of  
grievances and appeals in cases where needs go unmet. It  
8 requires that the department maintain accurate records about  
needs for services, conduct public hearings and summarize and  
10 report the status of the system to the Legislature as well as  
plan to correct identified deficiencies. The bill continues the  
12 Consumer Advisory Board as an independent oversight body with  
reporting responsibilities and requires the department to  
14 develop a quality assurance plan.

16 The bill generally modernizes the statutes to conform with  
current practice and terminology.