

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 2212

H.P. 1555

House of Representatives, April 21, 1999

An Act to Revise Laws Regarding Persons with Mental Retardation.

Submitted by the Department of Mental Health, Mental Retardation and Substance Abuse Services pursuant to Joint Rule 204.

Received by the Clerk of the House on April 20, 1999. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

JOSEPH W. MAYO, Clerk

Presented by Representative KANE of Saco.

Cosponsored by Senator RAND of Cumberland and

Representatives: BERRY of Livermore, POWERS of Rockport, Senator: HARRIMAN of Cumberland.

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

4 **Sec. 1. 34-B MRSA §5001, sub-§§1-B to 1-G** are enacted to read:

6 1-B. Advocate. "Advocate" means an employee of the Office
8 of Advocacy established in section 1205, unless a person or a
10 person's guardian has designated another individual or
12 organization to be the advocate, in which case it means the
14 individual or organization so designated.

16 1-C. Ally. "Ally" means an individual who supports a
18 person with mental retardation or autism.

20 1-D. Autism. "Autism" has the same meaning as in section
22 6002.

24 1-E. Correspondent. "Correspondent" means an individual
26 designated as next friend of a person according to the following
28 order of preference and principles:

30 A. In the first instance, the person's private guardian;

32 B. If the person does not have a guardian or has a public
34 guardian, the person's parents or parent;

36 C. If the parents are unavailable, and they have failed to
38 designate an appropriate representative, the relative, if
40 any, in closest relationship with the person; or

42 D. If no correspondent can be designated according to this
44 subsection, the correspondent is an appropriate individual
46 assigned by the Consumer Advisory Board.

48 1-F. Crisis. "Crisis" means any incident, behavior,
activity or pattern of activity that could lead to the loss of a
person's residence, program or employment.

1-G. Facility. "Facility" means a place of residence
operated by the department for persons with mental retardation or
autism.

Sec. 2. 34-B MRSA §5001, sub-§3-A, as enacted by PL 1989, c.
73, §4, is repealed.

Sec. 3. 34-B MRSA §5001, sub-§3-B is enacted to read:

3-B. Personal planning. "Personal planning" is a planning
process that focuses on the individual, provides real choice and

2 creativity in planning to the person and allows the needs and
3 desires of a person to be articulated and identified.

4 **Sec. 4. 34-B MRSA §5001, sub-§5,** as amended by PL 1995, c.
5 560, Pt. K, §39, is further amended to read:

6 **5. Region.** "Region" means any of the geographic service
7 regions established by the department.

10 **Sec. 5. 34-B MRSA §5001, sub-§5-A** is enacted to read:

12 **5-A. Respite.** "Respite" means planned time for family
13 caregivers, which provides a break from the responsibility of
14 caring for the person.

16 **Sec. 6. 34-B MRSA §5001, sub-§6, ¶¶D and E,** as enacted by PL
17 1983, c. 459, §7, are amended to read:

18 D. Medical and psychiatric care; and

20 E. Nutritional services; and

22 **Sec. 7. 34-B MRSA §5001, sub-§6, ¶F** is enacted to read:

24 F. Education.

26 **Sec. 8. 34-B MRSA §5002,** as enacted by PL 1983, c. 459, §7,
27 is repealed and the following enacted in its place:

30 **§5002. Policy**

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

36 **2. Setting.** The setting for all such services must,
37 consistent with adequate care and treatment:

38 A. Impose the fewest possible restrictions on the liberty
39 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. Principles guiding delivery of services.** Delivery of
45 services to persons with mental retardation or autism and the
46 interpretation of all laws pertaining to persons with mental
47 retardation or autism must be guided by the following principles.
48

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

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

8 C. Providers of all services must acknowledge and enhance
9 the role of the family, as appropriate, as the primary and
10 most natural caregiver. Family, for the purposes of this
11 section, may be defined individually by each person with
12 mental retardation or autism, and may include, where
13 appropriate, unpaid individuals with whom the person resides.

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

17 E. Services provided to persons with mental retardation or
18 autism must enhance each person's opportunity to assume
19 maximum control over that person's life.

20 F. Real work for real pay, in settings integrated into the
21 community, must be the cornerstone of all vocational
22 employment services.

23 G. Residential services must be small, integrated and
24 community based. Services designed to support each
25 individual in each individual's own home must be the primary
26 objective of the delivery system.

27 H. Connections in other areas of each person's life, such
28 as friends, recreation and spirituality, must be considered
29 in order to promote a high quality of life for each person.

30 4. Right to treatment by spiritual means. Nothing in this
31 chapter may replace or limit the right of any person with mental
32 retardation or autism to treatment by spiritual means alone,
33 through prayer, if that treatment is requested by the person or
34 the person's guardian.

35 5. Class members. Persons identified as class members in
36 Consumer Advisory Board v. Peet, Docket No. CV-91-321-P-C may not
37 be denied services by reason of not meeting the definition of
38 "mental retardation."

39 Sec. 9. 34-B MRSA §5003, as amended by PL 1995, c. 560, Pt.
40 K, §§41 to 45, is further amended to read:

41

2 **§5003. System of care for persons with mental retardation or**
3 **autism who receive services from the department**

4 1. **System of care.** The Legislature declares that the
5 system of care, through which the State provides services to and
6 programs for ~~mentally--retarded persons,--shall~~ with mental
7 retardation or autism must be designed not only to protect the
8 integrity of the legal and human rights of these persons, but
9 also to meet the needs of these persons.

10 2. **Responsibilities of the department.** To facilitate ~~the~~
11 ~~development of~~ maintain a system that meets the needs of persons
12 with mental retardation or autism, the commissioner shall:

13 A. Provide a mechanism for the identification, evaluation,
14 treatment and reassessment of and the provision of services
15 to persons with mental retardation, ~~---including---an~~
16 ~~habilitation--program--for--every--client--served--by--the~~
17 ~~department or autism;~~

18 B. ~~Divert--mentally--retarded--persons--from--institutional~~
19 ~~care,--whenever--professional--diagnosis--and--evaluation,--the~~
20 ~~personal--preference--of--the--client--or--the--client's--legal~~
21 ~~guardian,--and--the--availability--of--appropriate--these--persons~~
22 ~~should--be--placed--in--community--environments--and--programs~~ Fund
23 appropriate community environments and programs for persons
24 with mental retardation or autism. In so doing, the
25 department shall consider the personal preference of the
26 client or the client's legal guardian and, when appropriate,
27 utilize professional diagnosis and evaluation. The
28 department shall continuously retain the services of persons
29 experienced, skilled and trained in the development of
30 housing and employment resources sufficient to meet the
31 needs of its clients;

32 C. Provide Fund programs, so far as resources permit, for
33 ~~the--proper--habilitation~~ providing assistance and treatment
34 of ~~mentally--retarded~~ to persons with mental retardation or
35 autism that include, but are not limited to, comprehensive
36 medical care, education, recreation, physical therapy,
37 training, social services and habilitation and
38 rehabilitation services suited to the needs of the
39 individual regardless of age, degree of retardation,
40 handicapping condition or ability to pay;

41 D. ~~Work--toward--effectuating--the--normalization--principle~~
42 ~~through--the--establishment--of--community--services--for--the~~
43 ~~mentally--retarded--person--as--a--viable--and--practical~~
44 ~~alternative--to--institutional--care--at--each--stage--of~~
45 ~~individual--life--development,--but,--if--care--in--an~~

2 ~~institutional facility becomes necessary, it should be in~~
3 ~~the least restrictive setting, consistent with the proper~~
4 ~~care of the mentally retarded person;~~

5 E. Eliminate its own duplicative and unnecessary
6 administrative procedures and practices in the system of
7 care for mentally retarded persons with mental retardation
8 or autism, encourage other departments to do the same and
9 clearly define areas of responsibility in order to utilize
10 present resources economically;

11 ~~F. Strive toward having a sufficient number of personnel~~
12 ~~who are qualified and experienced to provide treatment that~~
13 ~~is beneficial to the mentally retarded clients;~~

14 G. Encourage other departments to provide to persons with
15 mental retardation or autism those services that are
16 required by law, and in particular:

17 (1) The commissioner shall work actively to ensure
18 that persons with mental retardation or autism, as
19 provided for in Title 20-A, chapter 303, receive
20 educational and training services beginning at 5 years
21 of age regardless of the degree of retardation or
22 accompanying disabilities or handicaps including autism;

23 (2) The commissioner shall advise the Department of
24 Human Services about standards and policies pertaining
25 to administration, staff, quality of care, quality of
26 treatment, health and safety of clients, rights of
27 clients, community relations and licensing procedures
28 and other areas that affect persons with mental
29 retardation or autism residing in facilities licensed
30 by the Department of Human Services; and

31 (3) The commissioner shall inform the joint standing
32 committee of the Legislature having jurisdiction over
33 human resources matters about areas where increased
34 cooperation by other departments is necessary in order
35 to improve the delivery of services to persons with
36 mental retardation or autism; and

37 (4) The commissioner or a designee of the commissioner
38 shall work closely with the Department of Human
39 Services, Division of Licensing and Certification to
40 ensure maximum coordination of policies, procedures and
41 services;

42 ~~H. Report annually to the joint standing committee of the~~
43 ~~Legislature having jurisdiction over human resources matters~~

2 on the activities of the Consumer Advisory Board established
by the community consent decree to oversee compliance with
4 the terms of that decree. The commissioner or the
commissioner's designee shall appear in person before the
6 committee and shall provide the committee with the most
recent annual audit of decree standards and the corrective
8 action plans required by the audit. The members of the
Consumer Advisory Board may attend the commissioner's
10 presentation and provide an independent report of its
activities to the committee.

12 I. Work toward the creation of broad public support for and
acceptance of persons with mental retardation or autism in
14 the communities of the State through public education and
training directed to health care providers, professionals,
16 law enforcement personnel, municipalities and recreational,
avocational and spiritual providers and the public at large;
18 and

20 J. Maintain an adequate record-keeping system that must, at
a minimum, be sufficient to generate reliable information
22 for accurately representing the desires and needs of the
person served by the department. The system must include,
24 but is not limited to, an electronic system of managing
information with the capacity to generate accurate data for
26 budget and planning purposes.

28 3. Plan. The commissioner shall prepare a plan, subject to
the following provisions.

30 A. The plan must indicate the most effective and efficient
32 manner in which to implement services and programs for
persons with mental retardation, while safeguarding and
34 respecting the legal and human rights of these persons.

36 B. The plan must be prepared once every 2 years and must be
submitted to the joint standing committee of the Legislature
38 having jurisdiction over health and human services matters
by no later than January 15th of every odd-numbered year.

40 C. The committee shall study the plan and make
42 recommendations to the Legislature with respect to funding
improvements in programs and services to persons with mental
44 retardation.

46 D. The plan must describe the system of mental retardation
services in each of the mental retardation service regions
48 and statewide.

2 E.---The plan must include both existing service resources
and deficiencies in the system of services.

4 F.---The plan must include an assessment of the roles and
responsibilities of mental retardation agencies, human
6 service agencies, health agencies and involved state
8 departments and suggest ways in which these departments and
agencies can better cooperate to improve the service systems.

10 G.---The plan must be made public within the State in such a
manner as to facilitate public involvement.

12 H.---The commissioner must ensure that the development of the
14 plan includes the participation of community mental
retardation service providers, consumer and family groups
16 and other interested persons or groups in annual statewide
hearings, as well as informal meetings and work sessions.

18 I.---The commissioner must consider community service needs,
20 relate these identified needs to biennial budget requests
and incorporate necessary service initiatives into a
22 comprehensive planning document.

24 3-A. Report. The commissioner shall report annually to the
26 joint standing committee of the Legislature having jurisdiction
over human resources matters on the provision of services to
28 persons with mental retardation or autism served by the
department. This report must include, at a minimum, the
following:

30 A. A comprehensive assessment of current needs;

32 B. The effectiveness of the department's programs in
34 addressing housing, vocational and program needs of clients;

36 C. An assessment of rules and responsibilities of state
38 departments and human services agencies in the provision of
services to clients;

40 D. A summary of any program reviews, audit or consumer or
42 family assessments, or other internal or external reviews of
the department's programs and services; and

44 E. Recommendations by the commissioner for further
46 improvements in the system, including information on
additional funding needs in order to meet outstanding unmet
48 needs and to fund improvements in the system.

50 The commissioner shall develop this report in such a way as to
facilitate public involvement and shall strive to involve

2 persons with mental retardation or autism, their guardians,
3 family members and allies in its creation.

4 **4. General Fund account; Medicaid match; mental**
5 **retardation.** The commissioner shall establish a General Fund
6 account to provide the General Fund match for mental retardation
7 Medicaid eligible services. Any unencumbered balances of General
8 Fund appropriations remaining at the end of each fiscal year must
9 be carried forward to be used for the same purposes.

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

28 **Sec. 10. 34-B MRSA §5003-A** is enacted to read:

30 **§5003-A. Rules**

32 **1. Rulemaking.** Adoption, amendment and repeal of rules
33 under this section are governed as follows.

34 **A. The department shall adopt, and may amend or repeal,**
35 **routine technical rules governing the administration of this**
36 **chapter in accordance with Title 5, chapter 375, subchapter**
37 **II-A.**

38 **B. Except in cases requiring emergency rulemaking, the**
39 **department shall hold a public hearing before adopting,**
40 **amending or repealing the rules, and shall give notice of**
41 **the public hearing in accordance with Title 5, chapter 375.**

42 **Sec. 11. 34-B MRSA §5004,** as enacted by PL 1993, c. 687, §9
43 and as amended by PL 1995, c. 560, Pt. K, §82 and affected by
44 §83, is further amended to read:

45 **§5004. Sexual activity with recipient of services prohibited**
46
47
48
49
50

2 A person who owns, operates or is an employee of an
organization, program or residence that is operated,
administered, licensed or funded by the ~~Department of Mental~~
4 ~~Health, Mental Retardation and Substance Abuse Services~~
department or the Department of Human Services may not engage in
6 a sexual act, as defined in Title 17-A, section 251, subsection
1, paragraph C, with another person or subject another person to
8 sexual contact, as defined in Title 17-A, section 251, subsection
1, paragraph D, if the other person, not the actor's spouse, is a
10 person with mental retardation or autism who receives
therapeutic, residential or habilitative programmatic services
12 from the organization, program or residence.

14 **Sec. 12. 34-B MRSA §5201**, as amended by PL 1995, c. 560, Pt.
K, §47 and affected by §83, is further amended to read:

16 **§5201. Duties**

18 The Department of Mental Health, Mental Retardation and
20 Substance Abuse Services is responsible for:

22 1. **Institutional programs.** The supervision of adult mental
retardation and autism programs in the state institutions;

24

26 2. **Statewide system.** The planning, promotion, coordination
and development of a complete and integrated statewide system of
services for persons with mental retardation ~~services for adults~~
28 or autism;

30 3. **Liaison.** Serving as liaison, coordinator and consultant
to the several state departments in order to develop the
32 statewide system of mental retardation and autism services;

34 4. **Community-based services.** Ensuring that adults with
mental retardation or autism residing in community residential
36 facilities, including nursing homes, boarding homes, foster
homes, group homes or halfway houses licensed by the Department
38 of Human Services are provided, insofar as possible, with
residential accommodations and access to habilitation services
40 appropriate to their needs; and

42 ~~4-A. **Quality improvement plan and management information**~~
~~**system.** Development and utilization of a comprehensive quality~~
44 ~~improvement plan and management information system in order to~~
46 ~~provide substantive information necessary for planning, budget~~
~~development, program development and resource allocation.~~

48 5. **Protective and supportive services.** Providing
protective and supportive services, in accordance with section

2 5203, to incapacitated persons who, with some assistance, are
capable of living and functioning in society.

4 **Sec. 13. 34-B MRSA §5203, sub-§3**, as amended by PL 1995, c.
560, Pt. K, §50, is repealed.

6 **Sec. 14. 34-B MRSA c. 5, sub-c. III**, as amended, is further
8 amended by repealing the headnote and inserting in its place the
following:

10 **SUBCHAPTER III**

12 **SERVICES FOR PERSONS WITH MENTAL RETARDATION OR AUTISM**

14 **Sec. 15. 34-B MRSA c. 5, sub-c. III, Art. I**, as amended, is further
16 amended by repealing the headnote and inserting in its place the
following:

18 **Article I**

20 **State-operated Facilities for Persons**
22 **with Mental Retardation or Autism**

24 **Sec. 16. 34-B MRSA §5401, first ¶**, as amended by PL 1995, c.
550, §3, is further amended to read:

26 The department shall maintain the following residential
28 facilities for the care and treatment of mentally--retarded
persons with mental retardation or autism:

30 **Sec. 17. 34-B MRSA §5403, sub-§1**, as enacted by PL 1983, c.
32 459, §7, is amended to read:

34 **1. Establishment.** ~~There is established the~~ The Aroostook
Residential Center ~~at Presque Isle in Aroostook County, which is~~
36 established in the Town of Presque Isle as a facility to provide
support for persons with mental retardation or autism.

38 ~~A.---Shall--be--maintained--for--the--training,--education,~~
40 ~~treatment-and-care-of-persons-who-are-mentally-retarded,-and~~

42 ~~B.---May--provide--living--accommodations--for--mentally--retarded~~
44 ~~persons--in--order--that--they--may--attend--educational--and~~
~~training--programs.~~

46 **Sec. 18. 34-B MRSA §5403, sub-§2, ¶C**, as enacted by PL 1983,
48 c. 459, §7, is amended to read:

50 C. In order to qualify for appointment as the director, a
person shall must have sufficient education and experience

2 to administer a facility providing services to ~~the-mentally~~
retarded persons with mental retardation or autism.

4 **Sec. 19. 34-B MRSA §5405, sub-§1**, as enacted by PL 1995, c.
550, §4, is amended to read:

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

10 **Sec. 20. 34-B MRSA §5406** is enacted to read:

12 **§5406. Crisis facilities**

14
15 **1. Statewide system.** The department must maintain a
16 statewide system of small facilities to assist in providing
17 crisis services as required by section 5433-A.

18
19 **2. Management.** The department shall employ a program
20 director of crisis services to direct and manage the facilities.

22 **Sec. 21. 34-B MRSA §5431**, as enacted by PL 1983, c. 459, §7,
is amended to read:

24 **§5431. Purpose**

26
27 The purpose of this Article is to assist in the
28 establishment and expansion of community-based mental retardation
services and programs for ~~mentally-retarded persons residing with~~
30 mental retardation or autism who reside in the community and
31 residing in privately-operated ~~privately operated~~ residential
care facilities.

34 **Sec. 22. 34-B MRSA §5432, sub-§1**, as enacted by PL 1983, c.
459, §7, is amended to read:

36
37 **1. Community participation.** Encourage persons in local
38 communities to participate in the provision of supportive
services for ~~mentally-retarded persons with mental retardation or~~
40 autism, so that persons in the community may have a better
understanding of the need for those services;

42
43 **Sec. 23. 34-B MRSA §5433**, as amended by PL 1985, c. 768, §§6
and 7, is further amended to read:

46 **§5433. Commissioner's powers**

48 The commissioner may:

1. **Funding.** Allocate money for the development of group homes residential living options, capital construction, purchase of buildings, supportive services and for other activities, but only those applicants for funds whose programs provide for adequate standards of professional service qualify for funds from the department. Other criteria for funding include, but are not limited to, the following.

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

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

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

D. All provider agencies are responsible for demonstrating and maintaining:

(1) A commitment to offering personal planning for persons with mental retardation or autism served by their programs;

(2) A workable quality improvement program approved by the department both that must include, at a minimum, a survey or other measurement of client satisfaction;

(3) A commitment to the provision of high-quality services and programs that will improve the quality of the lives of such persons; and

(4) A commitment to all aspects of personal planning;

2. **Services and programs.** Provide and help finance mental retardation services and programs throughout the State for mentally--retarded persons residing with mental retardation or autism who reside in the community and--residing or in privately-owned privately owned residential care facilities;

3. **Cooperation.** Cooperate with other state agencies, municipalities, other governmental units, unincorporated associations and nonstock corporations in order to provide and

2 help finance services and programs for ~~mentally-retarded~~ persons
with mental retardation or autism;

4 **4. Available funds.** Receive and use for the purpose of
this article money appropriated by the State, grants by the
6 Federal Government, gifts from individuals and money from any
other sources; and

8 **5. Transitional services coordination projects.**
10 Participate in the coordination of services for ~~mentally-retarded~~
persons with mental retardation or autism with local transitional
12 services coordination projects for handicapped youths, as
established in Title 20-A, chapter 308, assigning appropriate
14 regional staff and resources as available and necessary in each
region to be served by a project.

16 **Sec. 24. 34-B MRSA §5433-A** is enacted to read:

18 **§5433-A. Crisis and respite services**

20 The department shall provide an array of crisis and respite
22 services throughout the State in accordance with this section.

24 **1. Crisis services.** The department shall maintain the
26 capacity to intervene in personal crises that threaten the
stability of the current place of residence or employment of a
person with mental retardation or autism. This capacity must
28 include assessment, consultation, training and support for
persons with mental retardation or autism and their families or
30 allies both before and after a crisis occurs; providing staff
support at a person's home, program or workplace when necessary
32 to prevent or respond to a crisis; providing mental health
supports when necessary; and identifying professional services
34 appropriate to meet their needs. Available training must include
ways to respond to or avoid a crisis.

36 **2. Out-of-home services.** As a last resort, there must be
38 an adequate capacity to provide out-of-home security and support
by trained staff with appropriate professional backup resources
40 for a person with mental retardation or autism experiencing a
crisis that can not be safely managed at the person's residence.
42 Any stay in excess of 10 days in a residence providing such
support requires the written approval of the commissioner or the
44 commissioner's designee. A copy of all such approvals must be
forwarded immediately to the Office of Advocacy and the Consumer
46 Advisory Board.

48 **3. Post-crisis review.** The department must engage in a
post-crisis review no more than 10 working days after any
50 out-of-home crisis placement.

2 **4. Transportation.** Routine use of law enforcement
3 personnel to transport persons with mental retardation or autism
4 in crisis is prohibited. Transportation of persons in crisis by
5 law enforcement personnel may occur only if such transportation
6 has been specifically authorized by a person's guardian, by the
7 person's personal planning team or when absolutely necessary to
8 provide for the safety of that person or others.

10 **5. Respite services.** The department shall support the
11 development of a statewide respite system with the goal of
12 affording persons with mental retardation or autism or their
13 families a planned or unplanned respite. Respite services must
14 be made available in or reasonably near the current residence of
15 a person. The department shall, when appropriate, utilize and
16 fund the natural supports of a person in the development of
17 respite services.

18 **6. Information regarding utilization.** The department shall
19 maintain accurate information as to requests and needs for crisis
20 and respite services sufficient to plan and budget for adequate
21 crisis and respite systems. Consumers, parents, providers of
22 services and interested persons must be made aware of the
23 availability of these services and the proper means to access
24 them.

26 **Sec. 25. 34-B MRSA §5437, first ¶,** as amended by PL 1995, c.
27 560, Pt. K, §54, is further amended to read:

28 The department shall establish a contingency fund for use by
29 ~~community-based--intermediate--care--facilities--for~~ persons with
30 ~~mental retardation and department clients~~ or autism residing in
31 licensed boarding and foster homes or intermediate care
32 facilities or participating in appropriate day treatment
33 programs. This fund must be used in accordance with the
34 following provisions.
35

36 **Sec. 26. 34-B MRSA §5437, sub-§3, ¶A,** as enacted by PL 1985,
37 c. 486, §2, is amended to read:

38 A. Payment for special client assessment and treatment
39 services not reimbursed through the principles of
40 reimbursement for intermediate care facilities for the
41 ~~mentally-retarded~~ persons with mental retardation or autism;

42 **Sec. 27. 34-B MRSA §5437, sub-§4,** as enacted by PL 1985, c.
43 486, §2, is amended to read:

44 **4. Disbursement not to be approved.** ~~No--disbursement~~
45 Disbursement for client needs may not be approved for any service

2 or activity not recommended by ~~interdisciplinary team or~~ unless
3 identified as a need through the client's personal plan or other
4 assessment process or as necessary to comply with regulations
5 rules. ~~No--disbursement~~ Disbursement may not be made unless
6 evidence is provided that the expense is not reimbursable by the
7 Medicaid ~~Program~~ program. It is the intent of the Legislature
8 that the contingency fund established in this section be the
funding source of last resort.

10 **Sec. 28. 34-B MRSA §5461, sub-§1**, as enacted by PL 1983, c.
11 459, §7, is amended to read:

12 **1. Advocate.** "Advocate" means a person:

13 **A.** Who is familiar with the ~~procedures--involved--both--in~~
14 ~~admitting--mentally--retarded--persons--to--a--facility--and--in~~
15 ~~providing--services--to--those--persons~~ services and programs
16 available to persons with mental retardation or autism
17 either by department or private providers; and

18 **B.** Who is capable of advocating solely on behalf of a
19 ~~mentally-retarded person~~ with mental retardation or autism.

20 **Sec. 29. 34-B MRSA §5461, sub-§2**, as enacted by PL 1983, c.
21 459, §7, is repealed.

22 **Sec. 30. 34-B MRSA §5461, sub-§4, ¶A**, as enacted by PL 1983,
23 c. 459, §7, is amended to read:

24 **A.** Results in the distinguishing of mental retardation or
25 autism from other conditions;

26 **Sec. 31. 34-B MRSA §5461, sub-§5**, as enacted by PL 1983, c.
27 459, §7, is amended to read:

28 **5. Facility.** "Facility" means a residential facility
29 operated by the department for ~~mentally-retarded-clients~~ persons
30 with mental retardation or autism who qualify for placement at
31 the facility.

32 **Sec. 32. 34-B MRSA §5461, sub-§§6 and 7**, as enacted by PL 1983,
33 c. 459, §7, are repealed.

34 **Sec. 33. 34-B MRSA §5461, sub-§7-A**, as enacted by PL 1983, c.
35 580, §11, is repealed.

36 **Sec. 34. 34-B MRSA §5461, sub-§§8 and 9**, as enacted by PL 1983,
37 c. 459, §7, are repealed.

2 **Sec. 35. 34-B MRSA §5461, sub-§10**, as repealed and replaced by
PL 1983, c. 580, §12, is repealed.

4 **Sec. 36. 34-B MRSA §5461, sub-§10-A**, as enacted by PL 1983, c.
580, §13, is repealed.

6 **Sec. 37. 34-B MRSA §5461, sub-§11**, as enacted by PL 1983, c.
8 459, §7, is repealed.

10 **Sec. 38. 34-B MRSA §5462**, as amended by PL 1983, c. 580, §15,
is repealed.

12 **Sec. 39. 34-B MRSA §5462-A** is enacted to read:

14 **§5462-A. State policy**

16 **1. Identification of needs: services.** It is the policy of
18 the State that a person with mental retardation or autism who is
20 eligible for services receive needed services, insofar as
resources permit, when those needs are identified through:

22 A. A personal planning process; or

24 B. Any other assessment of the person's needs.

26 **2. Personal involvement.** It is the policy of the State
28 that a person with mental retardation or autism, and a person's
30 guardian and personal allies, should they be available, be
involved to the greatest extent possible in the identification of
needs and supports of the person.

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

38 **4. Regular contact.** It is the policy of the State that the
40 individual support coordinator supporting a person with mental
42 retardation or autism must have regular contact with the person,
44 which may include visits, with the person's permission, to the
person's residence, to the person's place of employment or to the
person's program site.

46 **5. Caseload.** It is the policy of this State that case
48 management caseloads be consistent with generally accepted
professional standards.

2 **Sec. 40. 34-B MRSA §5463**, as enacted by PL 1983, c. 459, §7,
is amended to read:

4 **§5463. Notice**

6 The ~~commissioner~~ department shall provide the client, if he
7 the client is competent, the client's next of kin or legal
8 guardian, if any exists, and the client's advocate with timely
9 written notice in advance of ~~procedures and actions to be taken~~
10 ~~with respect to the development, implementation and assessment of~~
11 ~~prescriptive program plans~~ the personal planning process.

12 **Sec. 41. 34-B MRSA § 5464**, as amended by PL 1987, c. 769, Pt.
13 A, §128, is further amended:

14 **§5464. Correspondence and reports**

15 The ~~commissioner~~ department shall provide the client, if the
16 client is competent, the client's next of kin or legal guardian,
17 if any exists, and the client's advocate with access to copies of
18 correspondence and reports concerning the client, in accordance
19 with section 1207.

20 **Sec. 42. 34-B MRSA §5465**, as enacted by PL 1983, c. 459, §7,
21 is repealed.

22 **Sec. 43. 34-B MRSA §5466, sub-§1**, as amended by PL 1983, c.
23 580, §16, is further amended to read:

24 1. **Entitlement.** Each client who receives services under
25 ~~sections 5467 to 5474~~ this chapter is entitled to have access to
26 an advocate. An applicant for services is also entitled to have
27 access to an advocate.

28 **Sec. 44. 34-B MRSA §5467**, as amended by PL 1995, c. 560, Pt.
29 K, §56, is further amended to read:

30 **§5467. Application and preliminary procedures**

31 1. **Application.** An application for mental retardation or
32 autism services under this subchapter, on a form provided by the
33 ~~commissioner~~ department, must be initiated at or referred to a
34 regional office of the department.

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

37 A. Observe the client in his the client's current
38 environment;

2 B. Obtain a brief family survey;

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

6 D. Ensure the client's access to an advocate throughout the
8 process of mental retardation or autism services under this
section and sections 5467 5468 to 5474 5470-A; and

10 E. Provide the person, and the person's family, guardian or
12 personal ally if appropriate, with materials and information
14 regarding the personal planning process and the department's
16 services. This information must include, but is not limited
to, information on personal planning, family support,
respite and advocacy services.

18 **Sec. 45. 34-B MRSA §5468, first ¶**, as enacted by PL 1983, c. c.
20 459, §7, is amended to read:

22 After completing the tasks specified in section 5467,
24 subsection 2, the ~~commissioner~~ department shall forthwith cause a
comprehensive evaluation of the client, including a consideration
of physical, emotional, social and cognitive factors, to be
conducted.

26 **Sec. 46. 34-B MRSA §5468, sub-§2**, as repealed and replaced by
28 PL 1983, c. 580, §18, is amended to read:

30 **2. Comprehensive evaluation.** The comprehensive evaluation
32 shall ~~must~~ be conducted by a ~~person who is a licensed physician,~~
~~licensed clinical psychologist or licensed psychological examiner~~
34 ~~and who has had training and experience~~ professional who has
appropriate training and experience in the diagnosis and
36 treatment of ~~mentally-retarded~~ persons with mental retardation or
autism.

38 **Sec. 47. 34-B MRSA §5469**, as amended by PL 1995, c. 560, Pt.
40 K, §57, is further amended to read:

42 **§5469. Report**

44 Within 30 days of the day ~~of~~ the application made under
section 5467 was made, the department shall obtain a report of
46 the comprehensive evaluation, which shall ~~shall~~ must state specifically
in the report whether or not the ~~client~~ applicant is ~~mentally~~
retarded a person with mental retardation or autism.

48 **1. Person without mental retardation or autism.** If the
50 comprehensive evaluation concludes that the ~~client~~ applicant is

2 ~~not-mentally-retarded~~ without mental retardation or autism, the
department shall deny the application for services, care and
4 treatment, but shall make appropriate referrals in cases where
clear needs of the ~~elient~~ applicant exist.

6 **2. Person with mental retardation or autism.** If the
comprehensive evaluation concludes that the ~~elient-is-mentally~~
8 ~~retarded-and-is-in-need-of-services,~~ applicant is a person with
mental retardation or autism, the department, through the
10 regional office, shall offer to that person a process to identify
needs through personal planning or any other assessment of the
12 person's needs.

14 A. ~~The--department,--through--the--regional--office,--shall~~
~~develop--a--prescriptive--program--plan--or--service--plan,--or~~
16 ~~both,--and~~

18 B. ~~If--a--prescriptive--program--plan--is--to--be--developed,--the~~
~~department,--through--the--interdisciplinary--team,--shall~~
20 ~~develop--and--begin--to--implement--a--prescriptive--program--plan~~
~~for--the--olient--within--60--days--of--the--application--made--under~~
22 ~~section--5467.~~

24 **3. Preschool child.** If the report of the comprehensive
evaluation concludes that a child, aged-0 from birth to 5 years
26 of age, is developmentally delayed and is in need of infant
development services or other early intervention services:

28 A. The department, through the regional office, shall
30 develop a prescriptive program plan or service plan, or
both; and

32 B. If a prescriptive program plan is to be developed, the
34 department, through the interdisciplinary team, shall
develop and begin to implement a prescriptive program plan
36 for the client within 60 days of the application made under
section 5467.

38 **Sec. 48. 34-B MRSA §5469-A** is enacted to read:

40 **§5469-A. Appeal**

42 **1. Rights.** Any denial of an application or request for
44 services may be administratively appealed through the
department's appeal and grievance process established pursuant to
46 section 1203, subsection 4.

48 **2. Notice.** The department shall provide regular notice of
the availability of this process to persons served by the
50 department. This notice must be included in informational

2 materials provided to persons served by the department, as well
3 as to guardians and allies. It must be included in personal
4 plans as well as in other documents where there is a denial of
5 services to persons served by the department. It must be written
6 in simple and easily understood language.

7 3. Training. Departmental staff must receive regular
8 training in the appeal and grievance process.

9 4. Rulemaking. The department shall fully establish the
10 grievance and appeal process through rulemaking by December 31,
11 1999. The rules are routine technical rules in accordance with
12 Title 5, chapter 375, subchapter II-A and must include, but are
13 not limited, strict time frames for the resolution of grievances
14 filed by persons served by the department.

15 **Sec. 49. 34-B MRSA §5470, as amended by PL 1983, c. 580, §21,**
16 **is repealed.**

17 **Sec. 50. 34-B MRSA §5470-A is enacted to read:**

18 **§5470-A. Personal planning**

19 1. Right to personal planning. A person who is eligible
20 for services must be afforded the opportunity to engage in a
21 personal planning process.

22 2. Process. The personal planning process is an ongoing
23 process, one that neither begins nor ends with a meeting with the
24 person. The planning process must include participants chosen by
25 the person. The planning process may include the person's
26 guardian and individual support coordinator. The planning
27 process may also include participation or input by friends,
28 service providers, advocates and others. Needs that the person
29 may not want to address, but that need to be addressed because of
30 concerns for the person's health, safety or welfare, will be
31 identified through the planning process in a way that is both
32 respectful of the person and involves the person to the degree
33 possible.

34 3. Action plan. The personal planning process must include
35 an action plan that describes the services to be provided, the
36 process of providing the services and who is responsible for
37 overseeing the provision of the services.

38 4. Review of personal plan. The person with mental
39 retardation or autism or another member of the planning team may
40 initiate a review of the person's plan, whenever a review is
41 needed.

2 A. The review must be conducted by meeting together or by
3 means sufficient to address the needed or desired changes.

4 B. The review may include the person, the person's
5 guardian, if any, and the individual support coordinator.

6 C. Events that pose a significant change in the person's
7 health, abilities or life circumstances may lead to plan
8 review.

9 D. Other events that lead to a plan review must be
10 identified by the person's planning group.

11 5. Information from planning process. During the personal
12 planning process, the department shall develop and record
13 information around a person's needs, define the projection of
14 needs without regard to service availability, define necessary
15 support services, recommend optimal courses of action and include
16 plans for the active and continued exploration of suitable
17 program or service alternatives based on client need. This
18 information must be recorded in the department's management
19 information system.

20 6. Implementation of personal plan. The department shall
21 assist persons with needs identified by their planning process to
22 obtain housing, employment or other meaningful occupation,
23 medical and other professional therapeutic services, recreational
24 and avocational opportunities and educational services insofar as
25 resources permit. Implementation of the personal plan must occur
26 at the earliest possible time. The personal plan must be agreed
27 to, as a part of its implementation, by the client, if the client
28 is able, or the client's legal guardian.

29 7. Training. The department shall ensure the provision of
30 regular and ongoing training on personal planning to its own
31 staff, providers and clients and their families, guardians and
32 allies. The department shall regularly provide clients and their
33 families and allies with informational materials regarding the
34 personal planning process. The department shall periodically
35 provide training to clients and their families and allies or
36 develop training materials for them that are designed to enhance
37 their ability to participate in personal planning.

38 **Sec. 51. 34-B MRSA §5471, as amended by PL 1995, c. 560, Pt.**
39 **K, §58, is repealed.**

40 **Sec. 52. 34-B MRSA §5472, as enacted by PL 1983, c. 459, §7,**
41 **is repealed.**

2 **Sec. 53. 34-B MRSA §5473**, as amended by PL 1995, c. 560, Pt.
K, §59, is repealed.

4 **Sec. 54. 34-B MRSA §5474**, as amended by PL 1985, c. 503, §9,
is repealed.

6 **Sec. 55. 34-B MRSA §5475**, as corrected by RR 1995, c. 2, §88,
8 is repealed.

10 **Sec. 56. 34-B MRSA §5476**, as amended by PL 1983, c. 763, is
repealed.

12 **Sec. 57. 34-B MRSA §5477**, as amended by PL 1987, c. 736, §55,
14 is repealed.

16 **Sec. 58. 34-B MRSA §5478**, as repealed and replaced by PL
1983, c. 580, §26, is repealed.

18 **Sec. 59. 34-B MRSA §5479**, as enacted by PL 1983, c. 459, §7,
20 is repealed.

22 **Sec. 60. 34-B MRSA §5480**, as amended by PL 1983, c. 580, §27,
is repealed.

24 **Sec. 61. 34-B, §6252, sub-§4, ¶B**, as amended by PL 1995, c. 560,
26 Pt. K, §76, is further amended to read:

28 B. Respite care may be provided to any person by the center
30 ~~without full compliance with the procedures for admission by~~
~~judicial certification under section 5475, if:~~

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

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

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

48 **Sec. 62. 34-B MRSA §6252, sub-§4, ¶C**, as enacted by PL 1985,
50 c. 503, §12, is repealed.

2

SUMMARY

4

This bill revises and updates the laws in the Maine Revised Statutes, Title 34-B dealing with persons with mental retardation or autism in order to more accurately reflect current practices and to bring the law into compliance with judicial mandates.

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