

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 1593

H.P. 1166

House of Representatives, April 30, 2003

### **An Act To Amend Laws Relating to Development of Service Plans for Persons with Mental Retardation**

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Submitted by the Department of Behavioral and Developmental Services pursuant to Joint Rule 204.

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative WALCOTT of Lewiston.

Cosponsored by Representatives: CAMPBELL of Newfield, CRAVEN of Lewiston, EARLE of Damariscotta, LAVERRIERE-BOUCHER of Biddeford, LEWIN of Eliot, Senator: WESTON of Waldo.

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

2  
4       **Sec. 1. 34-B MRSA §5437, sub-§4**, as enacted by PL 1985, c.  
486, §2, is amended to read:

6       **4. Disbursement not to be approved.** No A disbursement for  
client needs may not be approved for any service or activity not  
8 recommended by interdisciplinary a planning team or necessary to  
comply with regulations. No A disbursement may not be made unless  
10 evidence is provided that the expense is not reimbursable by the  
Medicaid Program. It is the intent of the Legislature that the  
12 contingency fund established in this section be the funding  
source of last resort.

14       **Sec. 2. 34-B MRSA §5461, sub-§7**, as enacted by PL 1983, c.  
16 459, §7, is repealed.

18       **Sec. 3. 34-B MRSA §5461, sub-§§8-B and 8-C** are enacted to read:

20       **8-B. Personal planning process.** "Personal planning  
process" means a process of planning with a client for the  
22 coordination and delivery of supportive and other services  
through the development of a personal plan or service plan. The  
24 type of plan, participants and agenda at the planning meeting  
must be selected by the client or guardian.

26       **8-C. Planning team.** "Planning team" means those persons,  
28 including at a minimum the client, the client's guardian and the  
client's individual support coordinator and others selected by  
30 the client or guardian to participate, who develop a personal  
plan or service plan. The planning team may include family,  
32 friends, service providers, correspondents, advocates and others.

34       **Sec. 4. 34-B MRSA §5461, sub-§9**, as enacted by PL 1983, c.  
459, §7, is repealed.

36       **Sec. 5. 34-B MRSA §5461, sub-§10-A**, as enacted by PL 1983, c.  
38 580, §13, is amended to read:

40       **10-A. Service plan.** "Service plan" means an-annual-written  
one type of plan resulting from the personal planning process for  
42 the delivery and coordination of specific services to a client  
when the-following-conditions-exist:

44       A. The client or guardian has waived--the--prescriptive  
46 program--plan--process chosen this type of plan over a  
personal plan; or

48

2 ~~B. ---The--prescriptive--program--plan--process--unnecessarily~~  
~~restricts-the-client's-own-ability-to-make-decisions;~~

4 ~~C. ---Another-type-of-formal-written-program-plan-exists;-or~~

6 D. The client has either a single service need or routine  
service coordination needs.

8  
10 **Sec. 6. 34-B MRSA §5462, sub-§1, ¶B**, as amended by PL 1983, c.  
580, §15, is repealed and the following enacted in its place:

12 B. The development of a personal plan or service plan for  
14 the delivery and coordination of services to the person  
through a personal planning process.

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

18 **§5463. Notice**

20 The commissioner shall provide the client, if ~~he~~ the client  
22 is competent~~;~~ the client's next of kin or guardian, if any  
exists~~;~~ and the client's advocate with timely written notice in  
24 advance of procedures and actions to be taken with respect to the  
development, implementation and assessment of prescriptive  
26 program personal plans and service plans.

28 **Sec. 8. 34-B MRSA §5465, sub-§2, ¶¶A and B**, as enacted by PL  
1983, c. 459, §7, are amended to read:

30 A. The membership, functions and procedures of the  
32 interdisciplinary planning teams;

34 B. The procedures to be used in developing prescriptive  
36 programs personal plans and service plans and service  
agreements;

38 **Sec. 9. 34-B MRSA §5467**, as amended by PL 1995, c. 560, Pt.  
K, §56, is further amended to read:

40 **§5467. Application and preliminary procedures**

42 **1. Application.** An application for mental retardation  
44 services, on a form provided by the commissioner, must be  
initiated at or referred to a regional office of the department.  
46 Except for referrals identifying a possible need for adult  
protective services, the department shall accept only those  
48 referrals to which the client or client's guardian has consented.

2           **2. Preliminary procedures.** Within 10 work days from the  
3 day of the department's receipt of the application and a  
4 permission for service form signed by the client or the client's  
5 guardian, the department shall:

6           A. Observe Determine when a visit to observe the client in  
7 his the client's current environment or other setting  
8 familiar and comfortable to the client will be appropriate  
9 and useful;

10           B. Obtain a brief family survey;

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

14           D. Ensure the client's access to an advocate throughout the  
15 process of mental retardation services under sections 5467  
16 to 5474;

17           E. Determine what information is needed to establish  
18 eligibility;

19           F. Provide services or referral for services to meet  
20 singular immediate needs for the client's health and safety;  
21 and

22           G. Begin to gather information for a service plan or a  
23 personal plan.

24           **Sec. 10. 34-B MRSA §5468, first ¶,** as enacted by PL 1983, c.  
25 459, §7, is amended to read:

26           After completing the tasks specified in section 5467,  
27 subsection 2, the commissioner shall ~~forthwith~~ cause a  
28 comprehensive evaluation of the client, including a consideration  
29 of physical, emotional, social and cognitive factors, to be  
30 conducted if a recent comprehensive and informative evaluation is  
31 not already available to the department.

32           **Sec. 11. 34-B MRSA §5469, sub-§2, ¶¶A and B,** as enacted by PL  
33 1983, c. 580, §20, are amended to read:

34           A. The department, through the regional office, shall  
35 determine the client's case management status and develop a  
36 ~~prescriptive-program~~ personal plan or service plan, ~~or both;~~  
37 and

38           B. ~~If a prescriptive-program plan is to be developed, the~~  
39 The department, through the interdisciplinary planning team,

2 shall develop ~~and begin to implement~~ a ~~prescriptive-program~~  
personal plan or service plan for the client ~~within 60 days~~  
4 ~~of the application made under section 5467~~ within 45 days of  
the date of the determination of eligibility.  
6 Implementation of the plan is governed by section 5471,  
subsection 4.

8 **Sec. 12. 34-B MRSA §5469, sub-§3**, as amended by PL 1995, c.  
560, Pt. K, §57, is further amended to read:

10 **3. Preschool child.** If the report of the comprehensive  
12 evaluation concludes that a child, aged 0 to 5 years, is  
developmentally delayed and is in need of infant development  
14 services or other early intervention services:

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

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

26 **Sec. 13. 34-B MRSA §5470**, as amended by PL 1983, c. 580, §21,  
is repealed.

28 **Sec. 14. 34-B MRSA §5470-A** is enacted to read:

30 **§5470-A. Personal planning process**

32 **1. Process.** The personal planning process must:

34 A. Be understandable to the client and in plain language,  
36 and if the client is deaf or nonverbal, uses sign language  
or speaks another language, the process must include  
38 qualified interpreters;

40 B. Focus on the client's choice;

42 C. Reflect and be supportive of the client's goals and  
aspirations;

44 D. Be developed at the direction of the client and include  
46 people whom the client chooses to participate;

48 E. Be flexible enough to change as new opportunities arise;

2           F. Be reviewed according to a specified schedule and by a  
3           person designated for monitoring;

4  
5           G. Include all of the needs and desires of the client  
6           without respect to whether those desires are reasonably  
7           achievable or the needs are presently capable of being  
8           addressed; and

9  
10          H. Include a provision for ensuring the client's  
11          satisfaction with the quality of the plan and the supports  
12          that the client receives.

13          **Sec. 15. 34-B MRSA §5471**, as amended by PL 1995, c. 560, Pt.  
14          K, §58, is further amended to read:

15

16          **§5471. Service agreements**

17

18                 **1. Service agreement required.** Each ~~prescriptive-program~~  
19                 ~~personal plan or service plan shall~~ must be carried out pursuant  
20                 to a written service agreement.

21

22                 **2. Signatures.** Each service agreement shall must be signed  
23                 and dated by at least:

24

25                     A. The client, if ~~he~~ the client is able;

26

27                     B. The client's guardian or next of kin, if that person  
28                     exists and is available;

29

30                     C. A client advocate, if the client has no guardian;

31

32                     D. The individual ~~program-plan~~ support coordinator of the  
33                     ~~interdisciplinary planning team which that~~ developed the  
34                     ~~individual-program personal plan or service~~ plan for the  
35                     client;

36

37                     E. The regional director or designee of the appropriate  
38                     regional office, if a client is being admitted to or  
39                     discharged from a facility or if a client is under the  
40                     supervision of the regional office;

41

42                     F. The chief administrative officer of the facility or ~~his~~  
43                     the chief administrative officer's agent, if a client is  
44                     being admitted to, treated in or discharged from a facility;  
45                     and

46

47                     G. The chief administrative officer, or ~~his~~ the chief  
48                     administrative officer's agent, of other public or private

2 agencies or groups which that agree to provide services to  
the client.

4 **3. Contents.** Each service ~~agreement shall~~ agreement must  
include at least the following information.

6 A. It ~~shall~~ must specify the respective responsibilities,  
8 where applicable, of the client, the family or guardian of  
the client, the regional office, the facility, and each  
10 public and private agency which that intends to provide  
services to the client.

12 B. It ~~shall~~ must identify by job classification or other  
14 description each individual who is responsible for carrying  
out each part of the ~~prescriptive-program~~ service plan or  
16 personal plan.

18 ~~C. It shall specify the date on which the review required~~  
~~in subsection 5 shall occur.~~

20 **4. Implementation of service plan or personal plan.**  
22 Implementation of a ~~prescriptive-program~~ service plan or personal  
plan is governed as follows.

24 A. No part of a ~~prescriptive--program~~ service plan or  
26 personal plan may be implemented until each person required  
to sign the service agreement under subsection 2 has signed  
28 it, except that if a client is to be admitted to a facility,  
the service agreement need not be completed until 5 days  
30 after the date of admission.

32 B. Any existing ~~prescriptive--program~~ service plan or  
34 personal plan is considered to be in effect until all  
persons required to sign under subsection 2 have signed the  
new service agreement.

36 C. ~~No prescriptive-program~~ A service plan or personal plan  
38 may not be in effect longer than one year and 2 weeks from  
the day on which the last person signed the service  
40 agreement for the plan.

42 ~~5. Review. At least 30 days prior to the termination of a~~  
~~service agreement, an interdisciplinary team shall meet to assess~~  
44 ~~the present prescriptive-program plan and, if further services~~  
~~are recommended, to prepare a new plan.~~

46 **6. Amendment.** Any major changes in a client's ~~prescriptive~~  
48 ~~program~~ service plan or personal plan may occur only after the  
service agreement has been amended and signed by the persons  
50 specified in subsection 2.



2           **Sec. 16. 34-A MRSA §5473, sub-§1**, as amended by PL 1995, c.  
560, Pt. K, §59, is further amended to read:

4  
6           **1. Respite care.** Respite care may be provided to any  
client by a facility without full compliance with the procedures  
for admission by judicial certification under section 5475, if it  
8 is recommended by ~~an--interdisciplin~~ a planning team and a  
service agreement has been completed.

10           A. The purpose of the respite care is for evaluation,  
12 diagnosis or other clearly stated and broadly defined  
therapeutic purposes of the client or ~~his~~ the client's  
14 family.

16           B. Respite care may be provided, upon application to the  
regional office of the department by the client, guardian or  
18 parent, for not more than 21 days at a time and not more  
than 60 days during any 12-month period.

20           C. Continuing placement in the facility beyond the time  
22 periods stated in paragraph B, if indicated, may be  
accomplished only upon full compliance with procedures  
24 described by this chapter.

26           **Sec. 17. 34-B MRSA §5473, sub-§2, ¶C**, as enacted by PL 1983,  
c. 459, §7, is amended to read:

28           C. An initial ~~prescriptive-program-plan~~ personal planning  
30 process has been developed ~~according-to-section-5470~~.

32           **Sec. 18. 34-B MRSA §5475, sub-§2, ¶C**, as amended by PL 1983,  
c. 580, §22, is further amended to read:

34           C. Unless waived by a client and ~~his~~ the client's counsel,  
36 cause the client who is the subject of the proceeding to be  
examined by a professional.

38           (1) The client or ~~his~~ the client's counsel may choose  
40 the professional, if the professional he ~~he~~ the client  
chooses is reasonably available.

42           (2) The professional may not be the same one who  
44 performed any part of the evaluation required under  
section 5468 or who participated in the development of  
46 the ~~prescriptive-program~~ personal plan or service plan.

48           (3) Upon completion of the examination, the  
professional shall report to the court ~~his~~ the  
50 professional's opinion whether the client is mentally

2                   retarded and therefore requires treatment, stating his  
3                   the professional's reasons for his the professional's  
4                   opinion;

5                   **Sec. 19. 34-B MRSA §5476, first ¶,** as repealed and replaced by  
6                   PL 1983, c. 580, §23, is amended to read:

7                   Any client recommended for admission to a mental retardation  
8                   facility ~~pursuant to section 5470~~ may be admitted by judicial  
9                   commitment according to the following procedures.

10                   **Sec. 20. 34-B MRSA §5478, sub-§3, ¶A,** as enacted by PL 1983, c.  
11                   580, §26, is amended to read:

12                   A. A ~~prescriptive-program~~ personal plan or service plan, as  
13                   ~~provided in section 5470~~, has been agreed to by the  
14                   superintendent chief administrative officer of the facility  
15                   and the guardian;

16                   **Sec. 21. 34-B MRSA §5479,** as enacted by PL 1983, c. 459, §7,  
17                   is amended to read:

18                   **§5479. Post-admission responsibilities of the department**

19                   **1. Provision of care and treatment.** Post-admission care  
20                   and treatment in a facility is governed as follows.

21                   A. An initial service agreement for services to be received  
22                   in the facility shall must be executed within 5 days of  
23                   admission and shall must include a date, within 30 days of  
24                   the client's admission to the facility, for a meeting of the  
25                   persons who signed the agreement to assess and, if  
26                   necessary, refine the client's ~~prescriptive-program~~ personal  
27                   plan or service plan.

28                   B. While residing in the facility, the client shall must  
29                   receive care, treatment and services only according to the  
30                   procedures set forth in this section and in ~~sections 5470~~  
31                   and section 5471.

32                   **2. Preparation for discharge.** Preparation for a client's  
33                   discharge from a facility is governed as follows.

34                   A. When an ~~interdisciplinary~~ a planning team finds that the  
35                   client may be ready for discharge and determines that  
36                   temporary placement of the client in the community is  
37                   required to assist in its evaluation of the client, the team  
38                   may recommend that placement and shall develop a  
39                   ~~prescriptive-program~~ personal plan or service plan and

2 service agreement ~~which shall~~ that must include provisions  
to ensure that:

4 (1) The client's money is adequately managed;

6 (2) The client has a legal representative, if  
required;

8 (3) The client receives needed services in the  
10 community; and

12 (4) The client's parent or guardian, if available,  
continues to be involved with the client.

14 B. The chief administrative officer of the facility may  
16 release the client pursuant to such a recommendation for  
community placement through the regional office.

18 **3. Role of the regional office.** The role of the regional  
20 office under this section is as follows.

22 A. The regional office ~~which that~~ will have responsibility  
for the client ~~shall must~~ be included in the preparation of  
24 the ~~prescriptive-program~~ personal plan or service plan and  
service agreement specified in subsection 2.

26 B. The regional office ~~shall--be~~ is responsible for  
28 implementing the client's release.

30 C. The regional office shall, along with the other members  
of the ~~interdisciplinary~~ planning team, evaluate the success  
32 of the client's reintegration into the community and shall  
assist in obtaining the client's discharge when assured that  
34 the provisions of the ~~prescriptive-program~~ personal plan or  
service plan and service agreement have been met.

36 **Sec. 22. 34-B MRSA §5480, sub-§2,** as enacted by PL 1983, c.  
38 459, §7, is amended to read:

40 **2. Discharge.** When a judicially certified client is  
prepared for discharge, under section 5479, subsection 2, he  
42 ~~shall~~ the client must be discharged if the regional office and  
the ~~interdisciplinary~~ planning team so recommend.

44 **Sec. 23. MRSA §5609, sub-§1,** as amended by PL 1995, c. 560,  
46 Pt. K, §60, is further amended to read:

48 **1. Habilitation services.** The department and the  
Department of Labor, through the Office of Rehabilitation  
50 Services, shall provide, to the extent of the resources

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

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

16 B. All other persons receiving services who are between 20  
18 and 26 years of age and are not receiving an appropriate day  
program.

20 All persons receiving services who are served under this program  
22 prior to their 26th birthday must be allowed to continue to  
24 receive services through the voucher system established by  
subsection 2.

26 For purposes of this section, ~~an interdisciplinary~~ a planning  
28 team includes the person receiving services and a member of the  
person's family or the guardian of the person receiving services.

30 **Sec. 24. 34-B MRSA §5609, sub-§2**, as amended by PL 1995, c.  
560, Pt. K, §61, is further amended to read:

32 **2. Payment for service.** The department shall establish a  
34 voucher system to allow the ~~interdisciplinary~~ planning team to  
36 incorporate only those services determined critical and otherwise  
38 unavailable into a program, including work, habilitation and  
other services designated in subsection 1, when appropriate. The  
department shall establish a limit on the amount of transitional  
services available to persons receiving services eligible for  
services under this section.

40 **Sec. 25. 34-B MRSA §6252, sub-§4, ¶A**, as enacted by PL 1985,  
42 c. 503, §12, is amended to read:

44 A. When considered necessary by ~~an interdisciplinary~~ a  
46 planning team and with the consent of the director, persons  
may be admitted to the Elizabeth Levinson Center short-term  
evaluation program for a period of 40 program days,  
48 excluding weekends, without certification.

2

## SUMMARY

4

This bill amends the laws relating to development of service plans for persons with mental retardation.

6