

# MAINE STATE LEGISLATURE

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1008

L.D. 1739

DATE: 2-24-04

(Filing No. H-720)

HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
SECOND SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1261, L.D. 1739, Bill, "An Act To Clarify the Requirements of the Behavioral Treatment Review Team for Persons with Mental Retardation or Autism"

Amend the bill by striking out the title and substituting the following:

'An Act To Clarify the Requirements of the Behavioral Treatment and Safety Device Review Teams for Persons with Mental Retardation or Autism'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 34-B MRSA §5605, sub-§13, ¶B, as amended by PL 2003, c. 368, §1, is further amended to read:

B. Treatment programs involving the use of noxious or painful stimuli or other aversive or severely intrusive techniques, as defined in department rules, may be used only to correct behavior more harmful than the treatment program to the person with mental retardation or autism than-is-the treatment-program and only:

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

(2) With For an adult 18 years of age or older, with the approval, following a case-by-case review, of a review team composed of an advocate of from the department Office of Advocacy; a representative of the Division of Mental Retardation; and a representative of the Consumer Advisory Board; and

COMMITTEE AMENDMENT

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COMMITTEE AMENDMENT "A" to H.P. 1261, L.D. 1739

2 (3) For a child under 18 years of age, with the  
3 approval, following a case-by-case review, of a review  
4 team composed of an advocate from the Office of  
5 Advocacy, a team leader of the department's children's  
6 services division and the children's services medical  
7 director or the director's designee. Until rules are  
8 adopted by the department to govern behavioral  
9 treatment reviews for children, the team may not  
10 approve techniques any more aversive or intrusive than  
11 are permitted in rules adopted by the Secretary of the  
12 United States Department of Health and Human Services  
13 regarding treatment of children and youth in nonmedical  
14 community-based facilities funded under the Medicaid  
15 program.

16 The department may adopt rules as necessary to implement  
17 this paragraph. Rules adopted pursuant to this paragraph  
18 are routine technical rules as defined in Title 5, chapter  
19 375, subchapter 2-A.

20 **Sec. 2. 34-B MRSA §5605, sub-§13, ¶C** is enacted to read:

21 C. Notwithstanding paragraph B, for a child under 18 years  
22 of age, treatment programs involving the use of seclusion or  
23 any noxious or painful stimuli, as defined in department  
24 rules, may not be approved.

25 **Sec. 3. 34-B MRSA §5605, sub-§14, ¶D-1**, as amended by PL 2003,  
26 c. 368, §2, is repealed and the following enacted in its place:

27 D-1. A device whose effect is to reduce or inhibit a  
28 person's movement in any way but whose purpose is to  
29 maintain or ensure the safety of the person is not  
30 considered behavioral treatment. Such a device may be used  
31 only in conformity with applicable state and federal rules  
32 and regulations and only:

33 (1) When recommended by a qualified professional after  
34 approval of the person's service plan;

35 (2) For an adult 18 years of age or older, when use of  
36 the device is approved by a review team composed of an  
37 advocate from the Office of Advocacy, a representative  
38 of the Division of Mental Retardation and a  
39 representative of the Consumer Advisory Board; and

40 (3) For a child under 18 years of age, when use of the  
41 device is approved by a review team composed of an  
42 advocate from the Office of Advocacy, a team leader of  
43 the division of mental retardation, a representative of the  
44 division of mental retardation, a representative of the  
45 division of mental retardation, a representative of the  
46 division of mental retardation, a representative of the  
47 division of mental retardation, a representative of the  
48 division of mental retardation, a representative of the

2 the department's children's services division and the  
4 children's services medical director or the director's  
6 designee.'

8 **SUMMARY**

10 This amendment replaces the bill. The amendment retains the  
12 provisions of the bill that establish requirements for approval  
14 of a behavioral treatment program involving the use of aversive  
16 or severely intrusive techniques for a child under 18 years of  
18 age with mental retardation or autism. The amendment adds a  
provision that establishes requirements for approval of the use  
of safety devices for a child under 18 years of age with mental  
retardation or autism.

**FISCAL NOTE REQUIRED**  
(See attached)

Approved: 02/19/04 *MAC*

**121st Maine Legislature  
Office of Fiscal and Program Review**

**LD 1739**

**An Act To Clarify the Requirements of the Behavioral Treatment  
Review Team for Persons with Mental Retardation or Autism**

**LR 2607(02)**

**Fiscal Note for Bill as Amended by Committee Amendment " "**

**Committee: Health and Human Services**

**Fiscal Note Required: Yes**



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**Fiscal Note**

Minor cost increase - General Fund