

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1907

S.P. 707

May 16, 2007

An Act To Clarify and Affirm the Scope of Services Available to Persons with Mental Retardation or Autism

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

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRANNIGAN of Cumberland. (GOVERNOR'S BILL)
Cosponsored by Representative GROSE of Woolwich.

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

2 **Sec. 1. 3 MRSA §959, sub-§1, ¶F**, as amended by PL 2005, c. 397, Pt. C, §3, is
3 further amended to read:

4 F. The joint standing committee of the Legislature having jurisdiction over health
5 and human services matters shall use the following list as a guideline for scheduling
6 reviews:

- 7 (2) Office of Substance Abuse in 2005;
8 ~~(3) Maine Advisory Committee on Mental Retardation in 2007;~~
9 (6) Department of Health and Human Services in 2009;
10 (7) Board of the Maine Children's Trust Incorporated in 2011; and
11 (9) Maine Developmental Disabilities Council in 2011.

12 **Sec. 2. 5 MRSA §12004-I, sub-§61**, as amended by PL 1989, c. 73, §1, is
13 repealed.

14 **Sec. 3. 5 MRSA §12004-I, sub-§61-A** is enacted to read:

15 **61-A.**

16 <u>Mental Health</u>	16 <u>Maine</u>	16 <u>Expenses for All</u>	16 <u>34-B MRSA §1223</u>
17 <u>and Mental</u>	17 <u>Developmental</u>	17 <u>Members;</u>	
18 <u>Retardation</u>	18 <u>Services</u>	18 <u>Expenses and</u>	
19	19 <u>Oversight and</u>	19 <u>Legislative Per</u>	
20	20 <u>Advisory Board</u>	20 <u>Diem for</u>	
21		21 <u>Nonsalaried or</u>	
22		22 <u>Nonpaid Members</u>	

23 **Sec. 4. 34-B MRSA §1205**, as amended by PL 2005, c. 397, Pt. A, §§43 to 46 and
24 c. 457, Pt. OO, §2 and affected by §5 and as repealed and replaced by c. 519, Pt. RR, §2
25 and affected by §4, is repealed.

26 **Sec. 5. 34-B MRSA §1210**, as amended by PL 1993, c. 410, Pt. CCC, §13, is
27 repealed.

28 **Sec. 6. 34-B MRSA §1223** is enacted to read:

29 **§1223. Maine Developmental Services Oversight and Advisory Board**

30 **1. Composition.** The Maine Developmental Services Oversight and Advisory
31 Board, as established by Title 5, section 12004-I, subsection 61-A and referred to in this
32 section as "the board," consists of 15 members appointed by the Governor from a list of
33 nominees proposed by the board pursuant to procedures established in the rules of the
34 board.

1 A. The board shall submit nominees to the Governor at least 90 days prior to the
2 expected date of each vacancy.

3 B. In making nominations, the board shall endeavor to ensure adequate
4 representation at all times from different service regions of the State and from
5 interested stakeholder groups, including but not limited to:

6 (1) The protection and advocacy agency designated pursuant to Title 5, section
7 19502;

8 (2) A statewide coalition that works to support and facilitate the ability of local
9 and statewide self-advocacy organizations to network with each other and with
10 national organizations;

11 (3) A nonprofit organization that serves teens and young adults in the State with
12 emotional and intellectual disabilities;

13 (4) A statewide coalition that works to support and facilitate the ability of local
14 and statewide self-advocacy organizations to network with each other and with
15 national organizations; and

16 (5) The Maine Developmental Disabilities Council.

17 C. In making the nominations and appointments, the board and the Governor shall
18 endeavor to ensure that at least 8 of the members of the board are persons with
19 mental retardation or autism or family members, guardians or allies of persons with
20 mental retardation or autism who receive services funded by the Department of
21 Health and Human Services.

22 Members of the board must include stakeholders involved in services and supports for
23 persons with mental retardation or autism in the State and other individuals interested in
24 issues affecting persons with mental retardation or autism. Employees of the Department
25 of Health and Human Services may not be appointed as members of the board.

26 **2. Terms.** Members of the board serve 3-year terms. A member serves until a
27 successor is appointed. A vacancy must be filled as soon as practicable by appointment
28 for the unexpired term.

29 **3. Chair.** The board shall elect a chair from among its members.

30 **4. Compensation.** Members of the board are entitled to reimbursement of
31 reasonable expenses incurred in order to serve on the board as provided in Title 5, section
32 12004-I, subsection 61-A. Members not otherwise compensated by their employers or
33 other entities whom they represent are entitled to receive a per diem equal to the
34 legislative per diem for their attendance at authorized meetings of the commission.

35 **5. Staff.** The board may hire an executive director and clerical support staff.

36 **6. Budget.** The board shall provide to the commissioner a proposed budget in
37 accordance with a schedule agreed to by the chair and the commissioner. The
38 department shall include in its estimate of expenditure and appropriation requirements
39 filed pursuant to Title 5, section 1665 sufficient funds, listed in a separate account, to
40 enable the board to perform its duties.

1 **7. Maine Tort Claims Act.** The board members and staff act as employees of the
2 State, as defined in Title 14, section 8102, subsection 1, when engaged in official duties
3 specified in this section or assigned by the board.

4 **8. Oversight and advisory functions.** The board shall:

5 A. Provide independent oversight over programs and services to persons with mental
6 retardation or autism that are provided, authorized, funded or supported by the
7 department or any other agency or department of State Government. The board shall
8 focus on systemic concerns affecting the rights of persons with mental retardation or
9 autism, including but not limited to issues surrounding health and safety, inclusion,
10 identification of needs and desires of persons eligible for services by the department,
11 the timely meeting of the identified needs and effective and efficient delivery of
12 services and supports; and

13 B. Provide advice and systemic recommendations to the commissioner, the Governor
14 and the Legislature regarding policies, priorities, budgets and legislation affecting the
15 rights and interests of persons with mental retardation or autism.

16 **9. Powers and duties of the board.** In order to carry out its oversight and advisory
17 functions, the board has the following powers and duties.

18 A. The board shall hold at least one hearing or other alternative each year that is
19 open to the public in order to gather information about the availability, accessibility
20 and quality of services available to persons with mental retardation or autism and
21 their families.

22 B. The board may accept funds from the Federal Government, the State, a political
23 subdivision of the State, individuals, foundations and corporations and may expend
24 those funds for purposes consistent with the board's functions, powers and duties.

25 C. The board shall establish priorities for its oversight and systems advocacy work.
26 In establishing priorities, the board shall consider the results of its work in addressing
27 the priorities established in previous years.

28 D. The board shall report at least annually to the Governor and the Legislature on its
29 activities and recommendations regarding policies, priorities, budgets and legislation
30 affecting the rights and interests of persons with mental retardation or autism. The
31 board's annual report must include the board's assessment of its operations and
32 progress in addressing the priorities established pursuant to paragraph C. The board's
33 annual report must be made public and widely disseminated in a manner designed to
34 inform interested stakeholders.

35 E. The board may provide reports and recommendations to the commissioner on
36 matters of systemic concern arising from the board's oversight role. The board may
37 recommend that the department undertake the study of specific systemic issues as
38 part of the department's annual quality assurance activities and strategies, and the
39 board may collaborate and cooperate with the department in the conduct of any such
40 studies, if feasible. The commissioner shall provide a written response no later than
41 30 days following receipt of the recommendations from the board. The board may
42 refer individual cases that require investigation or action to the Office of Adults with

1 Cognitive and Physical Disability Services or the Office of Advocacy within the
2 department, the protection and advocacy agency designated pursuant to Title 5,
3 section 19502 or other appropriate agency.

4 **10. Access to information; referral of individual cases.** The board is entitled to
5 access to information from the department necessary to carry out its functions. Except as
6 provided in paragraphs B, C, D and E, information provided pursuant to this subsection
7 may not contain personally identifying information about a person with mental
8 retardation or autism.

9 A. The department shall provide the board, on a schedule to be agreed upon between
10 the board and the department, reports on case management, reportable events, adult
11 protective and rights investigations, unmet needs, crisis services, quality assurance,
12 quality improvement, budgets and other reports that contain data about or report on
13 the delivery of services to or for the benefit of persons with mental retardation or
14 autism, including reports developed by or on behalf of the department and reports
15 prepared by others about the department.

16 B. The chief advocate and the manager of adult protective services in the Office of
17 Adults with Cognitive and Physical Disability Services within the department, when
18 requested by the board or pursuant to a written agreement with the board, shall
19 release to the board information pertaining to alleged abuse, exploitation or neglect or
20 alleged dehumanizing practice or violation of rights of a person with mental
21 retardation or autism. The board shall maintain the confidentiality of information
22 disclosed to it or discovered by it as required by section 1207.

23 C. The board may refer individual cases that require investigation or action to the
24 manager of adult protective services in the Office of Adults with Cognitive and
25 Physical Disability Services or the Office of Advocacy within the department, the
26 protection and advocacy agency designated pursuant to Title 5, section 19502 or
27 other appropriate public authorities. The board may request and review reports of
28 actions taken by such entities in response to the board's referral. If these reports are
29 likely to reveal personally identifying information, the board shall conduct reviews in
30 executive session and shall take all actions necessary and appropriate to preserve the
31 confidentiality of the information.

32 D. The board may examine confidential information in individual records with
33 written permission of the person or that person's guardian. If the person or that
34 person's guardian provides the board with written permission to examine confidential
35 information, the board must maintain the confidentiality of the information as
36 required by section 1207.

37 E. The board or the board's staff may receive and examine confidential information
38 when otherwise authorized to do so by law, including but not limited to when serving
39 on a committee established by the department for which access to such information is
40 necessary to perform the function of the committee.

41 **11. Rulemaking.** The board shall adopt rules governing its operations, including
42 rules establishing its bylaws. Rules adopted pursuant to this subsection must address:

43 A. Procedures for nominating persons to fill vacancies on the board;

1 B. Procedures for holding annual hearings or other alternative means of receiving
2 input from citizens throughout the State pursuant to subsection 9;

3 C. Procedures for exercising its powers pursuant to subsection 10, paragraph D in a
4 manner that is respectful of the rights, interests and opinions of persons whose
5 records are at issue;

6 D. Procedures concerning the hiring of an executive director, including the method
7 for selection and the role of the executive director and procedures concerning the
8 supervision, compensation and evaluation of the executive director; and

9 E. The provision of stipends for certain members not otherwise compensated by their
10 employers or other entities whom they represent for their attendance at authorized
11 meetings of the board.

12 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
13 chapter 375, subchapter 2-A.

14 **Sec. 7. 34-B MRSA §5001, sub-§1-B** is enacted to read:

15 **1-B. Correspondent.** "Correspondent" means a person designated by the Consumer
16 Advisory Board or its successor to act as a next friend of a person with mental retardation
17 or autism.

18 **Sec. 8. 34-B MRSA §5001, sub-§2-B** is enacted to read:

19 **2-B. Individual support coordinator.** "Individual support coordinator" means a
20 regional staff member of the department with the responsibility for coordinating the
21 personal planning and professional services for a person with mental retardation or
22 autism.

23 **Sec. 9. 34-B MRSA §5001, sub-§3-B** is enacted to read:

24 **3-B. Personal planning.** "Personal planning" means a process that assists and
25 supports each person with mental retardation or autism in creating a vision for how to live
26 in and be a part of the community.

27 **Sec. 10. 34-B MRSA §5001, sub-§3-C** is enacted to read:

28 **3-C. Personal planning team.** "Personal planning team" means the person with
29 mental retardation or autism, the person's guardian, if any, the person's individual support
30 coordinator or case manager and other individuals chosen or identified by the person to
31 participate in personal planning.

32 **Sec. 11. 34-B MRSA §5001, sub-§3-D** is enacted to read:

33 **3-D. Professional services.** "Professional services" means services provided by
34 individuals licensed to provide medical or behavioral health care and treatment, including
35 but not limited to physicians, nurses, physical therapists, occupational therapists,
36 psychologists, speech therapists and dentists.

1 **Sec. 12. 34-B MRSA §5003**, as amended by PL 1995, c. 368, Pt. GG, §5 and c.
2 560, Pt. K, §§41 to 45, is repealed.

3 **Sec. 13. 34-B MRSA §5003-A** is enacted to read:

4 **§5003-A. System of care for clients with mental retardation or autism**

5 **1. System of care.** The Legislature declares that the system of care through which
6 the State provides services to and programs for persons with mental retardation or autism
7 must be designed to protect the integrity of the legal and human rights of these persons
8 and to meet their needs consistent with the principles guiding delivery of services as set
9 forth in section 5610.

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

12 A. Provide a mechanism for the identification, evaluation, treatment and
13 reassessment of and the provision of services to persons with mental retardation or
14 autism that is consistent with the principles guiding delivery of services, as set forth
15 in section 5610, through appropriate personal planning offered to persons served by
16 the department in accordance with section 5470-B;

17 B. Identify the needs and desires of persons with mental retardation or autism
18 through appropriate personal planning and record any unmet needs of persons served
19 or eligible for service by the department for development of budget requests to the
20 Governor that are adequate to meet such needs;

21 C. Provide programs, insofar as resources permit, for appropriate services and
22 supports to persons with mental retardation or autism regardless of age, severity of
23 need or ability to pay;

24 D. Support the establishment of community services for persons eligible to receive
25 services from the department by promoting access to professional services in the
26 person's community. Such support may be provided directly or through contracts
27 with qualified providers. For persons who have professional service needs identified
28 through personal planning, the department shall monitor the provision of those
29 services;

30 E. Eliminate the department's own duplicative and unnecessary administrative
31 procedures and practices in the system of care for persons with mental retardation or
32 autism, encourage other departments to do the same and clearly define areas of
33 responsibility in order to use present resources economically;

34 F. Strive toward having a sufficient number of personnel who are qualified and
35 experienced to provide treatment that is beneficial to persons with mental retardation
36 or autism; and

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

39 (1) The commissioner shall work actively to ensure that persons with mental
40 retardation or autism, as provided for in Title 20-A, chapter 303, receive

1 educational and training services beginning at 5 years of age regardless of the
2 degree of retardation or accompanying disabilities or handicaps;

3 (2) The commissioner shall advise other departments about standards and
4 policies pertaining to administration, staff, quality of care, quality of treatment,
5 health and safety of clients, rights of clients, community relations and licensing
6 procedures and other areas that affect persons with mental retardation or autism
7 residing in facilities licensed by the department; and

8 (3) The commissioner shall inform the joint standing committee of the
9 Legislature having jurisdiction over human resources matters about areas where
10 increased cooperation by other departments is necessary in order to improve the
11 delivery of services to persons with mental retardation or autism.

12 **3. Plan.** The commissioner shall prepare a plan pursuant to this subsection.

13 A. The plan must indicate the most effective and efficient manner in which to
14 implement services and programs for persons with mental retardation or autism while
15 safeguarding and respecting the legal and human rights of these persons.

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

19 C. The joint standing committee of the Legislature having jurisdiction over health
20 and human services matters shall study the plan and make recommendations to the
21 Legislature with respect to funding improvements in programs and services to
22 persons with mental retardation or autism.

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

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

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

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

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

37 I. The commissioner must consider community service needs, relate these identified
38 needs to biennial budget requests and incorporate necessary service initiatives into a
39 comprehensive planning document.

40 **4. General Fund account; Medicaid match; mental retardation; autism.** The
41 commissioner shall establish a General Fund account to provide the General Fund match

1 for mental retardation or autism Medicaid eligible services. Any unencumbered balances
2 of General Fund appropriations remaining at the end of each fiscal year must be carried
3 forward to be used for the same purposes.

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

15 **6. Required reporting by the department.** The department shall make available,
16 on at least an annual basis, a report or reports regarding the services and support provided
17 by the department to persons with mental retardation or autism.

18 A. The goal of the reporting under this subsection is to provide the public with
19 information on outcome measures established by the department. These measures
20 may include, but are not limited to, whether:

- 21 (1) Persons served by the department are healthy and safe;
- 22 (2) Needs of persons are being met;
- 23 (3) People are included in their communities; and
- 24 (4) The system of care under this section is efficient and effective.

25 B. At a minimum, the department's report or reports under this subsection must offer
26 information on the following:

- 27 (1) Unmet needs;
- 28 (2) Reportable events;
- 29 (3) Adult protective services;
- 30 (4) Crisis services;
- 31 (5) Persons' and families' satisfaction with services;
- 32 (6) Case management ratios;
- 33 (7) Evaluations of costs of services;
- 34 (8) Grievances;
- 35 (9) Quality assurance and quality improvement efforts; and
- 36 (10) New initiatives.

37 C. A report under this subsection must be provided to the joint standing committee
38 of the Legislature having jurisdiction over health and human services matters. The

1 commissioner or the commissioner's designee shall appear in person before the
2 committee and shall present the report. The report must be posted on the
3 department's publicly accessible website and must be made easily available to
4 persons served by the department, families, guardians, advocates, Legislators and the
5 provider community.

6 **Sec. 14. 34-B MRSA §5005** is enacted to read:

7 **§5005. Office of Advocacy**

8 **1. Establishment.** The Office of Advocacy, referred to in this section as "the
9 office," is established within the department to provide the services described in
10 subsection 3 to individuals with mental retardation or autism.

11 **2. Chief advocate.** A chief advocate shall direct and coordinate the program of the
12 office.

13 A. The chief advocate shall report administratively to the commissioner and advise
14 and consult with and inform the commissioner on the issues described in this section.
15 The chief advocate shall provide the commissioner with regular reports on the
16 office's findings, conclusions and recommendations regarding individual and
17 systemic violations of the rights of individuals with mental retardation or autism.

18 B. The chief advocate shall select other advocates needed to carry out the intent of
19 this section who shall report only to the chief advocate.

20 C. The chief advocate shall establish operating policies and procedures to guide the
21 work of the office, including policies regarding priority setting.

22 D. The chief advocate and all other advocates are classified state employees.

23 **3. Duties.** The office, through the chief advocate and other advocates, shall:

24 A. Receive complaints made by or on behalf of individuals with mental retardation
25 or autism and represent their interests in any matter pertaining to their rights and
26 dignity;

27 B. Investigate the claims, grievances and allegations of violations of the rights of
28 individuals with mental retardation or autism;

29 C. Intercede on behalf of individuals with mental retardation or autism with officials
30 of any provider of service administered, licensed or funded by the department, except
31 that the office may refuse to take action on any complaint that it considers to be
32 trivial or moot or for which there is clearly another remedy available;

33 D. Assist individuals with mental retardation or autism in any hearing or grievance
34 proceeding pertaining to their rights and dignity;

35 E. Refer individuals with mental retardation or autism to other agencies or entities
36 and collaborate with those agencies or entities for the purpose of advocating for the
37 rights and dignity of those individuals;

38 F. Act as an information source regarding the rights of all individuals with mental
39 retardation or autism, keeping itself informed about all laws, administrative rules and

1 institutional and other policies relating to the rights and dignity of those individuals
2 and about relevant legal decisions and other developments related to the field of
3 mental health and mental retardation, both in this State and in other parts of the
4 country; and

5 G. Make and publish reports necessary to the performance of the duties described in
6 this section. The chief advocate may report findings of the office to groups outside
7 the department, such as legislative bodies, advisory committees, commissions, law
8 enforcement agencies and the press, and may authorize the advocates in the office to
9 so communicate. At least annually, the chief advocate shall report both in person and
10 in writing to the joint standing committee of the Legislature having jurisdiction over
11 health and human services matters regarding the performance of the duties described
12 in this section.

13 **4. Participate in personal planning.** The office, through the chief advocate and
14 other advocates, may participate in personal planning when:

15 A. The department is the public guardian; or

16 B. An advocate has concerns regarding the rights or dignity of a person with mental
17 retardation or autism.

18 A person who is not under guardianship has the right to refuse such participation by an
19 advocate.

20 **5. Access to files and records.** The office, through the chief advocate and the other
21 advocates, has access, limited only by the civil service law, to the files, records and
22 personnel of any provider of services administered, licensed or funded by the department.
23 Within the department, the office has access to all reports and related documents
24 submitted pursuant to section 5604-A.

25 **6. Confidentiality.** Requests for confidentiality are treated as follows.

26 A. Any request by or on behalf of an individual with mental retardation or autism for
27 action by the office and all written records or accounts related to the request are
28 confidential as to the identity of the individual.

29 B. The records and accounts under paragraph A may be released only as provided by
30 law.

31 **7. Protection for advocates.** Advocates may not be disciplined or sanctioned for
32 any action taken pursuant to this section on behalf of individuals with mental retardation
33 or autism.

34 **8. Budget.** When submitting any budget request to the Legislature, the department
35 and the Governor shall provide that any funds for the office be listed in a separate
36 account.

37 **Sec. 15. 34-B MRSA §5201**, as amended by PL 1995, c. 560, Pt. K, §47 and
38 affected by §83 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

1 **§5201. Duties**

2 The Department of Health and Human Services is responsible for:

3 ~~1. Institutional programs. The supervision of adult mental retardation programs in~~
4 ~~the state institutions;~~

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

8 **3. Liaison.** Serving as liaison, coordinator and consultant to the several state
9 departments in order to develop the statewide system of ~~mental retardation~~ services for
10 adults with mental retardation or autism;

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

16 **5. Protective and supportive services.** Providing protective and supportive
17 services, in accordance with section 5203, to incapacitated and dependent persons who,
18 with some assistance, are capable of living and functioning in society;

19 **6. Individual support coordinators.** Providing persons with mental retardation or
20 autism who are eligible for MaineCare services with case management services.

21 A. Case management services as defined in rules may be provided by qualified staff
22 employed by the department or a contracted agency.

23 B. Unless otherwise specified in personal planning:

24 (1) Case managers shall maintain at least monthly contact with each person in
25 order to ensure that the quality and availability of services and consumer
26 satisfaction are maintained at a high level; and

27 (2) Visits to the person's home must occur at least twice a year.

28 C. The department shall ensure that case managers maintain adequate written and
29 electronic records to permit monitoring and accountability.

30 D. The department shall provide sufficient numbers of case managers and
31 supervisors to fulfill the duties specified in this subsection and shall maintain an
32 overall ratio of one case manager to every 35 people in each region. The ratio must be
33 calculated separately for staff employed by the department and by contracted
34 agencies, and this ratio must be maintained for each group;

35 **7. Crisis and respite.** Provision of crisis and respite services to persons with mental
36 retardation or autism in accordance with section 5206; and

37 **8. Quality assurance.** Developing through its comprehensive planning process
38 goals and objectives for the department's quality assurance program.

1 A. The department shall determine at least annually appropriate quality assurance
2 activities and strategies to achieve the goals and objectives of the program, with the
3 overall purpose of assessing the quality of services and supports, consumer and
4 family satisfaction with such services and supports and the consistency of such
5 services and supports with the principles guiding delivery of services and supports as
6 set forth in section 5610.

7 B. The department shall prepare an annual report of its quality assurance activities
8 and such other periodic reports as it determines appropriate.

9 C. The department shall develop appropriate procedures for formulating and
10 disseminating recommendations emanating from its quality assurance activities and
11 for ensuring follow-up of the implementation of such recommendations.

12 9. Rules. The department shall adopt rules to implement this section as necessary.
13 Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5,
14 chapter 375, subchapter 2-A.

15 **Sec. 16. 34-B MRSA §5206** is enacted to read:

16 **§5206. Crisis and respite services**

17 The department shall provide crisis and respite services throughout the State in
18 accordance with this section.

19 1. Crisis services. The department shall maintain the capacity to intervene in
20 personal crises that could lead to the loss of the home, program or employment of a
21 person with mental retardation or autism. Such capacity must include:

22 A. Assessment, consultation, planning, training and support for persons with mental
23 retardation or autism and their families or allies both before and after a crisis occurs;

24 B. Providing staff support to prevent or respond to a crisis at the site of the crisis
25 when appropriate;

26 C. Ensuring mental health supports when necessary, including access to a licensed
27 mental health provider, inpatient treatment when indicated, psychiatric services and
28 mental health aftercare services; and

29 D. Identifying appropriate professional services for the person in crisis.

30 2. Out-of-home services. The department shall provide out-of-home services in
31 accordance with this subsection.

32 A. The department shall maintain an adequate capacity to provide out-of-home
33 safety and support by trained staff with appropriate professional backup resources for
34 a person with mental retardation or autism experiencing a crisis that cannot be safely
35 managed at the person's residence.

36 B. Unless otherwise specified in personal planning, crisis intervention services must
37 be provided at a person's home, program or workplace when prevention efforts are
38 not successful. The services must assist with admission to an appropriate out-of-

1 home service in the event that intervention in the home, program or workplace is
2 inappropriate.

3 **3. Transportation.** The department may not routinely use law enforcement entities
4 to transport persons with mental retardation or autism in crisis. Transportation of persons
5 in crisis by law enforcement personnel may occur only if such transportation has been
6 specifically authorized by the person's guardian or personal planning team or when
7 determined by law enforcement personnel to be necessary to provide for the safety of the
8 person or others.

9 **4. Post-crisis review.** A post-crisis review must occur no more than 10 working
10 days after any out-of-home crisis placement. The review must include significant
11 providers and supporters, including appropriate members of the person's planning team.
12 The review must identify possible causes of the person's crisis and must recommend for
13 the personal planning team changes in the person's environment, services and supports to
14 prevent crises in the future.

15 **5. Respite services.** The department shall maintain and fund a statewide respite
16 system for planned or unplanned respite for persons with mental retardation or autism and
17 their families. The department shall, when appropriate, use the natural supports of a
18 person in the development of respite services. For purposes of this subsection, "natural
19 supports" means those supports provided by persons who are not disability service
20 providers but who provide assistance, contact or companionship to enable a person with
21 mental retardation or autism to participate independently in employment or other
22 community settings.

23 **6. Information regarding use.** The department shall maintain information
24 regarding use of crisis and respite services sufficient to plan and budget for adequate
25 crisis and respite services. The information must include an assessment of the needs, both
26 met and unmet, for crisis and respite services. The department shall provide information
27 regarding the availability of services under this section and the proper means to obtain
28 them to persons with mental retardation or autism, their parents and allies, providers of
29 services and other interested persons.

30 **7. Training.** The department shall offer regular and ongoing information,
31 consultation and training on crisis prevention and intervention and respite services to its
32 own staff, providers, and persons with mental retardation or autism and their families,
33 guardians, correspondents and allies.

34 **Sec. 17. 34-B MRSA §5470-A,** as enacted by PL 2003, c. 389, §14, is repealed.

35 **Sec. 18. 34-B MRSA §5470-B** is enacted to read:

36 **§5470-B. Personal planning**

37 **1. Right to personal planning.** Every person with mental retardation or autism who
38 is eligible for services must be provided the opportunity to engage in personal planning
39 when the needs and desires of the person are articulated and identified.

1 **2. Process.** The personal planning opportunities afforded to a person with mental
2 retardation or autism pursuant to subsection 1 must:

3 A. Be understandable to that person and in plain language and, if that person is deaf
4 or nonverbal, uses sign language or speaks another language, the process must
5 include qualified interpreters;

6 B. Focus on the choices made by that person;

7 C. Reflect and support the goals and aspirations of that person;

8 D. Be developed at the direction of that person and include people whom the person
9 chooses to participate. The planning process must minimally include the person, the
10 person's guardian, if any, the correspondent, if any, and the person's case manager;

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

12 F. Be offered to that person at least annually or on a schedule established through the
13 planning process and be reviewed according to a specified schedule and by a person
14 designated for monitoring;

15 G. Include all of the needs and desires of that person without respect to whether
16 those desires are reasonably achievable or the needs are presently capable of being
17 addressed; and

18 H. Include a provision for ensuring the satisfaction of that person with the quality of
19 the plan and the supports that the person receives.

20 **3. Action plans and unmet needs.** The ongoing personal planning for a person with
21 mental retardation or autism must include an action plan that describes the services to be
22 provided, the process of providing the services and who is responsible for overseeing the
23 provision of the services. In cases where resources required to address identified needs or
24 desires are not available, the action plan must identify interim measures based on
25 available resources that address the needs or desires as nearly as possible and identify
26 steps toward meeting the person's actual identified needs.

27 Unmet needs must be documented continually, collated annually and used for appropriate
28 development activities on a regional and statewide basis.

29 **4. Review of personal plans.** The person with mental retardation or autism or
30 another member of the planning team may initiate a review of the person's personal plan
31 when needed or desired.

32 A. A review under this subsection must be done by meeting or by other means
33 sufficient to address the needed or desired changes. The review must include the
34 person, the person's guardian, if any, and the person's case manager. Invitations to
35 participate may also be sent to others who may be anticipated to assist the person in
36 pursuing articulated needs and desires unless the person or a private guardian objects.

37 B. Events that could lead to the loss of the person's home, job or program and events
38 defined in a departmental rule or in the person's plan must lead to a plan review.

39 **5. Information from planning process.** During personal planning, the department
40 shall develop and record information about a person's needs, identify anticipated needs

1 without regard to service availability, define necessary support services, recommend
2 optimal courses of action and include plans for the active and continued exploration of
3 suitable program or service alternatives based on the person's needs.

4 **6. Implementation of personal plan.** As part of its implementation, the personal
5 plan must be agreed to by the person or the person's legal guardian. The department shall
6 assist persons with the needs identified by their planning process to obtain housing,
7 employment or other meaningful occupation, medical and other professional therapeutic
8 services, recreational and vocational opportunities and educational services at the earliest
9 possible time, insofar as resources permit.

10 **7. Records.** The department shall maintain records of personal plans developed
11 under this section.

12 A. The department shall maintain adequate written and electronic records of the
13 development and implementation of personal plans to permit monitoring and
14 accountability.

15 B. The department shall provide the Office of Advocacy with sufficient advance
16 notice of all scheduled personal planning meetings to permit the office to determine if
17 the attendance or participation of an advocate in the planning process is appropriate
18 pursuant to the duties and responsibilities of the office.

19 **8. Training.** The department shall provide training in personal planning.

20 A. The department shall prepare and maintain a comprehensive manual describing
21 the procedures to be followed in implementing a personal planning process.

22 B. The department shall ensure the provision of regular and ongoing training in
23 personal planning to persons with mental retardation or autism and their families,
24 guardians, correspondents and allies as well as its own staff and providers. The
25 department shall regularly provide persons with mental retardation or autism and
26 their families, guardians and allies with informational materials regarding personal
27 planning.

28 **9. Rules.** The department is authorized to adopt rules to implement this section.
29 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
30 chapter 375, subchapter 2-A.

31 **Sec. 19. 34-B MRSA §5601, sub-§1-A** is enacted to read:

32 **1-A. Ally.** "Ally" means an individual who a person trusts to provide assistance.

33 **Sec. 20. 34-B MRSA §5604,** as amended by PL 1993, c. 326, §8, is further
34 amended to read:

35 **§5604. Protection**

36 The Legislature finds and declares that the rights of persons with mental retardation
37 or autism can be protected best under a system of services that operates according to the

1 principles of normalization and full inclusion and that the State's system of services must
2 operate according to these principles with the goals of:

3 **1. Community-based services.** Continuing the development of community-based
4 services that provide reasonable alternatives to institutionalization in settings that are
5 least restrictive to the person receiving services; ~~and~~

6 **2. Independence and productivity.** Providing habilitation, education and other
7 training to persons with mental retardation or autism that will maximize their potential to
8 lead independent and productive lives and that will afford opportunities for outward
9 mobility from institutions; and

10 **3. Grievance right.** Providing a person with mental retardation or autism with the
11 right to appeal a decision regarding actions or inactions by the department that affects the
12 person's life. The department shall establish in rule a process for hearing such grievances
13 pursuant to section 1203, subsection 4. The rules must contain strict time frames for the
14 resolution of grievances. The rules may provide for resolution of grievances through
15 mediation.

16 A. The department shall provide easily accessible and regular notice of the grievance
17 process to persons with mental retardation or autism served by the department. This
18 notice must be included in informational materials provided to such persons, as well
19 as to guardians, families, correspondents and allies. Notice of the right to appeal
20 must be prominently displayed in regional offices and on the department's publicly
21 accessible website and must be readily available from provider agencies. Notice of
22 the right to appeal must be included in all substantive correspondence regarding
23 personal planning. Written notice of the right to appeal must also be provided when
24 there is a denial or reduction of services or supports to persons served by the
25 department. All notices and information regarding the grievance process must be
26 written in language that is plain and understandable and must include the address and
27 telephone number of the Office of Advocacy and the protection and advocacy agency
28 designated pursuant to Title 5, section 19502.

29 B. The department must make available a one-page form that enables a person with
30 mental retardation or autism to file a grievance. A grievance may also be filed
31 through an oral request. If a grievance is filed through an oral request, the person
32 receiving the grievance shall reduce the grievance to writing using a one-page form
33 made available by the department.

34 C. The department shall offer regular training in the grievance process for persons
35 served by the department, their families, guardians and allies and department and
36 service provider staff.

37 D. If an appeal proceeds to a hearing, the hearing officer's decision constitutes final
38 agency action for the purposes of Rule 80C of the Maine Rules of Civil Procedure
39 unless final decision-making authority has been reserved by the commissioner. If the
40 commissioner makes the final decision and modifies or rejects the hearing officer's
41 recommended decision, the commissioner must state in writing the basis for the
42 commissioner's decision. When the commissioner rejects or modifies a hearing
43 officer's factual findings or makes additional factual findings, the commissioner shall

1 articulate the evidentiary basis for such rejection or modification with appropriate
2 references to the record. The commissioner shall give substantial deference to a
3 hearing officer's determinations on matters of credibility relating to testimony that
4 was heard by the hearing officer, and when rejecting or modifying such
5 determinations of credibility, the commissioner shall state with particularity the
6 reasons with appropriate references to evidence in the record. In the event the
7 commissioner fails to issue a written final decision within 30 days of the date of the
8 recommended decision, the recommended decision of the hearing officer is deemed
9 the final decision of the commissioner.

10 **4. Rules.** The department has authority to adopt rules to implement this section.
11 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
12 chapter 375, subchapter 2-A.

13 **Sec. 21. 34-B MRSA §5604-A** is enacted to read:

14 **§5604-A. Duty to report incidents; Adult Protective Services Act and rights**
15 **violations**

16 **1. Report incident.** A person with knowledge about an incident related to client
17 care, including client-to-client assault, staff-to-client assault, use of seclusion or excessive
18 use of mechanical or chemical restraint, incidents stemming from questionable
19 psychiatric and medical practice or any other alleged abuse or neglect, shall immediately
20 report the details of that incident pursuant to policies and procedures established by the
21 department in rules.

22 **2. Maintain reporting system.** The department shall maintain a reportable event
23 and adult protective services system that provides for receiving reports of alleged
24 incidents, prioritizing such reports, assigning reports for investigation by qualified
25 investigators, reviewing the adequacy of the investigations, making recommendations for
26 preventive and corrective actions as appropriate and substantiating allegations against
27 individuals who have been found under the Adult Protective Services Act to have abused,
28 neglected or exploited persons with mental retardation or autism. The department shall
29 fully establish the reportable event and adult protective services system through
30 rulemaking.

31 **3. Violation.** All persons with knowledge of an alleged violation of the rights of an
32 individual with mental retardation or autism as set out in section 5605 shall promptly
33 report the details of the alleged violation to the Office of Advocacy as set forth in
34 department rules.

35 **4. Rules.** Rules adopted pursuant to this section are routine technical rules as
36 defined in Title 5, chapter 375, subchapter 2-A.

37 **Sec. 22. 34-B MRSA §5605, sub-§13, ¶B,** as amended by PL 2003, c. 564, §1,
38 is further amended to read:

39 B. Treatment programs involving the use of noxious or painful stimuli or other
40 aversive or severely intrusive techniques, as defined in department rules, may be used

1 only to correct behavior more harmful than the treatment program to the person with
2 mental retardation or autism and only:

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

4 (2) For an adult 18 years of age or older, with the approval, following a case-by-
5 case review, of a review team composed of an advocate from the Office of
6 Advocacy; a representative of the Division of Mental Retardation; and a
7 representative of the ~~Consumer Advisory Board~~ Maine Developmental Services
8 Oversight and Advisory Board; and

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

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

21 **Sec. 23. 34-B MRSA §5606, sub-§1, ¶A**, as amended by PL 2005, c. 519, Pt.
22 RR, §3 and affected by §4, is further amended to read:

23 A. The Office of Advocacy shall conduct an investigation of each alleged violation
24 pursuant to section ~~1205~~ 5005.

25 **Sec. 24. 34-B MRSA §5610** is enacted to read:

26 **§5610. Delivery of services; principles**

27 **1. Principles.** In providing services to persons with mental retardation or autism
28 under this chapter, every provider of services, including but not limited to the department,
29 shall ensure that the provision of such services is guided by the following principles.

30 A. Persons with mental retardation or autism have the same rights as all citizens,
31 including the rights to live, work and participate in the life of the community.

32 B. Community inclusion is achieved by connecting individuals and families with
33 local and generic supports within the community whenever possible.

34 C. One goal of services provided to persons with mental retardation or autism is to
35 maximize growth, development and inclusion in the community.

36 D. The primary and most natural caregiver is the family, when appropriate. For
37 purposes of this paragraph, "family" may be defined individually by each person with
38 mental retardation or autism and may include, when appropriate, unpaid individuals
39 with whom the person resides.

1 E. Ideally, services to a person with mental retardation or autism enhance that
2 person's opportunity to assume maximum control over that person's life.

3 F. The cornerstone of all vocational and employment services is the provision of real
4 work for real pay in integrated settings in the community.

5 G. The primary objective of the service delivery system is to provide services
6 designed to support each individual in each individual's own home.

7 H. Planning for community services that is based upon the ongoing process of
8 individualized assessment of individual and family strengths, needs and preferences
9 promotes a high quality of life. Proper planning for community services requires
10 identification and consideration of the connections in other areas of a person's life,
11 such as family, allies, friends, work, recreation and spirituality.

12 **Sec. 25. 34-B MRSA §6004, first ¶**, as amended by PL 1995, c. 560, Pt. K, §64,
13 is further amended to read:

14 The commissioner shall submit a report on efforts to plan for and develop social and
15 habilitative services for persons who have autism and other pervasive developmental
16 disorders to the Governor and the joint standing committee of the Legislature having
17 jurisdiction over health and institutional services matters. This report must be submitted
18 no later than January 15th of every odd-numbered year and must be submitted in
19 conjunction with the plan required by section ~~5003~~ 5003-A, subsection 3.

20 **Sec. 26. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 34-
21 B, section 1223, subsection 2, of the initial appointments to the Maine Developmental
22 Services Oversight and Advisory Board, the Governor shall designate 5 members to serve
23 an initial term of one year, 5 members to serve an initial term of 2 years and 5 members
24 to serve an initial term of 3 years.

25 **Sec. 27. Initial appointments.** Notwithstanding the Maine Revised Statutes,
26 Title 34-B, section 1223, subsection 1, the Governor shall appoint the initial 15 members
27 of the Maine Developmental Services Oversight and Advisory Board as follows:

28 A. Four members who serve on the Consumer Advisory Board established pursuant
29 to Title 34-B, section 1216;

30 B. Two members who served on the former Maine Advisory Committee on Mental
31 Retardation established by former Title 5, section 12004-I, subsection 61;

32 C. One member selected by the protection and advocacy agency designated pursuant
33 to Title 5, section 19502;

34 D. One member selected by a statewide coalition that works to support and facilitate
35 the ability of local and statewide self-advocacy organizations to network with each other
36 and with national organizations; and

37 E. Seven members who are nominated as a slate by a committee composed of:

38 (1) Two persons appointed by the Governor;

- 1 (2) One member appointed by a statewide coalition that works to support and
2 facilitate the ability of local and statewide self-advocacy organizations to network
3 with each other and with national organizations;
- 4 (3) One member appointed by the protection and advocacy agency designated
5 pursuant to Title 5, section 19502;
- 6 (4) One member appointed by a statewide association of community service
7 providers; and
- 8 (5) One member appointed by the Maine Developmental Disabilities Council
9 established under Title 5, section 12004-I, subsection 66.

10 Members initially appointed to the board must include stakeholders involved in
11 services and supports for persons with mental retardation or autism in the State and other
12 individuals interested in issues affecting persons with mental retardation or autism.
13 Employees of the Department of Health and Human Services may not be appointed as
14 members of the board.

15 **Sec. 28. Transition provisions.**

16 **1. Correspondent program.** The Maine Developmental Services Oversight and
17 Advisory Board, established in the Maine Revised Statutes, Title 5, section 12004-I,
18 subsection 61-A and referred to in this section as "the board," shall work with the
19 Department of Health and Human Services to improve and promote the correspondent
20 program operated by the Consumer Advisory Board established pursuant to Title 34-B,
21 section 1216. No later than January 1, 2009, the board shall present a report to the joint
22 standing committee of the Legislature having jurisdiction over health and human services
23 matters, together with a proposed plan that provides for the independent operation of the
24 correspondent program with oversight by the board. After receipt and review of the
25 report, the joint standing committee may submit a bill to the 124th Legislature.

26 **2. Cooperation and collaboration.** The board shall work with the Consumer
27 Advisory Board to avoid duplication of effort, to ensure appropriate sharing of
28 information and to facilitate a smooth transition of oversight responsibilities from the
29 Consumer Advisory Board to the board upon the repeal of the Consumer Advisory Board
30 in accordance with Title 34-B, section 1216, subsection 4.

31 **3. Successor class representative.** Upon the repeal of the Consumer Advisory
32 Board in accordance with the Title 34-B, section 1216, subsection 4, the board shall
33 cooperate and collaborate with any successor class representative that may be appointed
34 by the United States District Court.

35 **Sec. 29. Effective date.** That section of this Act that amends the Maine Revised
36 Statutes, Title 34-B, section 5605, subsection 13, paragraph B takes effect upon the repeal
37 of the Consumer Advisory Board pursuant to Title 34-B, section 1216, subsection 4.

1

SUMMARY

2 This bill incorporates into the Maine Revised Statutes, Title 34-B some of the
3 provisions required for compliance with the consent judgment in Consumer Advisory
4 Board et al. v. Glover, No. 91-321-P-C (D. Me., September 28, 1994) by specifying the
5 Department of Health and Human Services' obligation to persons with mental retardation
6 or autism to provide personal planning, case management services, crisis and respite
7 services and quality assurance activities. This bill clarifies the role of the Office of
8 Advocacy within the department and the processes applicable to client grievances and
9 appeals. This bill also sets out the principles guiding delivery of services to persons with
10 mental retardation or autism and establishes the requirement that the ratio of individual
11 support coordinators to clients must be one individual support coordinator to 35 persons
12 with mental retardation or autism. It repeals the Maine Advisory Committee on Mental
13 Retardation and establishes the Maine Developmental Services Oversight and Advisory
14 Board.