

# MAINE STATE LEGISLATURE

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L.D. 1577

Date: 4/5/16 Majority

(Filing No. H-636)

**HEALTH AND HUMAN SERVICES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
127TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1070, L.D. 1577, Bill, "An Act To Increase the Availability of Mental Health Services"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**'Sec. 1. 15 MRSA §101-D, sub-§5, ¶A,** as amended by PL 2013, c. 434, §1 and affected by §15, is further amended to read:

A. Commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital, an intensive outpatient treatment program or any program specifically approved by the court. The Commissioner of Health and Human Services shall place the defendant in a state mental health institute if a suitable bed is available. If a suitable bed is not available in a state mental health institute, the Commissioner of Health and Human Services shall place the defendant at an in-state facility that at the time of placement possesses accreditation by a nationally recognized health care organization accrediting body whose standards for accreditation meet or exceed the requirements for a health care facility to be eligible to receive payment from the Medicare or Medicaid program if a suitable bed is available. If a suitable bed is not available in a state mental health institute or at an in-state facility that possesses accreditation by a nationally recognized health care organization accrediting body whose standards for accreditation meet or exceed the requirements for a health care facility to be eligible to receive payment from the Medicare or Medicaid program, the Commissioner of Health and Human Services shall place the defendant at an out-of-state facility that at the time of placement possesses accreditation by a nationally recognized health care organization accrediting body whose standards for accreditation meet or exceed the requirements for a health care facility to be eligible to receive payment from the

**COMMITTEE AMENDMENT**

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1        Medicare or Medicaid program. At the end of 30 days or sooner, and again, in the  
2        event of recommitment, at the end of 60 days and 180 days, the State Forensic  
3        Service or other appropriate office of the Department of Health and Human Services  
4        shall forward a report to the Commissioner of Health and Human Services relative to  
5        the defendant's competence to stand trial and its reasons. The Commissioner of  
6        Health and Human Services shall without delay file the report with the court having  
7        jurisdiction of the case. The court shall hold a hearing on the question of the  
8        defendant's competence to stand trial and receive all relevant testimony bearing on  
9        the question. If the State Forensic Service's report or the report of another  
10       appropriate office of the Department of Health and Human Services to the court  
11       states that the defendant is either now competent or not restorable, the court shall  
12       within 30 days hold a hearing. If the court determines that the defendant is not  
13       competent to stand trial, but there does exist a substantial probability that the  
14       defendant will be competent to stand trial in the foreseeable future, the court shall  
15       recommit the defendant to the custody of the Commissioner of Health and Human  
16       Services for placement in an appropriate program for observation, care and treatment  
17       of people with mental illness or persons with intellectual disabilities or autism. An  
18       appropriate program may be in an institution for the care and treatment of people  
19       with mental illness, an intermediate care facility for persons who have intellectual  
20       disabilities or autism, a crisis stabilization unit, a nursing home, a residential care  
21       facility, an assisted living facility, a hospice, a hospital, an intensive outpatient  
22       treatment program or any program specifically approved by the court. The  
23       Commissioner of Health and Human Services shall place the defendant in a state  
24       mental health institute if a suitable bed is available. If a suitable bed is not available  
25       in a state mental health institute, the Commissioner of Health and Human Services  
26       shall place the defendant at an in-state facility that at the time of placement possesses  
27       accreditation by a nationally recognized health care organization accrediting body  
28       whose standards for accreditation meet or exceed the requirements for a health care  
29       facility to be eligible to receive payment from the Medicare or Medicaid program if a  
30       suitable bed is available. If a suitable bed is not available in a state mental health  
31       institute or at an in-state facility that possesses accreditation by a nationally  
32       recognized health care organization accrediting body whose standards for  
33       accreditation meet or exceed the requirements for a health care facility to be eligible  
34       to receive payment from the Medicare or Medicaid program, the Commissioner of  
35       Health and Human Services shall place the defendant at an out-of-state facility that at  
36       the time of placement possesses accreditation by a nationally recognized health care  
37       organization accrediting body whose standards for accreditation meet or exceed the  
38       requirements for a health care facility to be eligible to receive payment from the  
39       Medicare or Medicaid program. When a person who has been evaluated on behalf of  
40       the court by the State Forensic Service or other appropriate office of the Department  
41       of Health and Human Services is committed into the custody of the Commissioner of  
42       Health and Human Services under this paragraph, the court shall order that the State  
43       Forensic Service or other appropriate office of the Department of Health and Human  
44       Services share any information that it has collected or generated with respect to the  
45       person with the institution or residential program in which the person is placed. If the  
46       defendant is charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title  
47       17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not  
48       competent to stand trial and there does not exist a substantial probability that the

## COMMITTEE AMENDMENT

1 defendant can be competent in the foreseeable future, the court shall dismiss all  
 2 charges against the defendant and, unless the defendant is subject to an undischarged  
 3 term of imprisonment, order the Commissioner of Health and Human Services to  
 4 commence proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If the  
 5 defendant is charged with an offense other than an offense under Title 17-A, chapter  
 6 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that  
 7 the defendant is not competent to stand trial and there does not exist a substantial  
 8 probability that the defendant can be competent in the foreseeable future, the court  
 9 shall dismiss all charges against the defendant and, unless the defendant is subject to  
 10 an undischarged term of imprisonment, notify the appropriate authorities, who may  
 11 institute civil commitment proceedings for the individual. If the defendant is subject  
 12 to an undischarged term of imprisonment, the court shall order the defendant into  
 13 execution of that sentence and the correctional facility to which the defendant must  
 14 be transported shall execute the court's order; or

15 **Sec. 2. 15 MRSA §103**, as amended by PL 2013, c. 424, Pt. B, §3, is further  
 16 amended to read:

17 **§103. Commitment following acceptance of negotiated insanity plea or following**  
 18 **verdict or finding of insanity**

19 When a court accepts a negotiated plea of not criminally responsible by reason of  
 20 insanity or when a defendant is found not criminally responsible by reason of insanity by  
 21 jury verdict or court finding, the judgment must so state. In those cases the court shall  
 22 order the person committed to the custody of the Commissioner of Health and Human  
 23 Services to be placed in an appropriate institution for the care and treatment of persons  
 24 with mental illness or in an appropriate residential program that provides care and  
 25 treatment for persons who have intellectual disabilities or autism for care and treatment.  
 26 The Commissioner of Health and Human Services shall place the person in a state mental  
 27 health institute if a suitable bed is available. If a suitable bed is not available in a state  
 28 mental health institute, the Commissioner of Health and Human Services shall place the  
 29 person at an in-state facility that at the time of placement possesses accreditation by a  
 30 nationally recognized health care organization accrediting body whose standards for  
 31 accreditation meet or exceed the requirements for a health care facility to be eligible to  
 32 receive payment from the Medicare or Medicaid program if a suitable bed is available. If  
 33 a suitable bed is not available in a state mental health institute or at an in-state facility that  
 34 possesses accreditation by a nationally recognized health care organization accrediting  
 35 body whose standards for accreditation meet or exceed the requirements for a health care  
 36 facility to be eligible to receive payment from the Medicare or Medicaid program, the  
 37 Commissioner of Health and Human Services shall place the person at an out-of-state  
 38 facility that at the time of placement possesses accreditation by a nationally recognized  
 39 health care organization accrediting body whose standards for accreditation meet or  
 40 exceed the requirements for a health care facility to be eligible to receive payment from  
 41 the Medicare or Medicaid program. Upon placement in the appropriate institution or  
 42 residential program and in the event of transfer from one institution or residential  
 43 program to another of persons committed under this section, notice of the placement or  
 44 transfer must be given by the commissioner to the committing court.

1           When a person who has been evaluated on behalf of a court by the State Forensic  
2 Service is committed into the custody of the Commissioner of Health and Human  
3 Services pursuant to this section, the court shall order that the State Forensic Service  
4 share any information it has collected or generated with respect to the person with the  
5 institution or residential program in which the person is placed.

6           As used in this section, "not criminally responsible by reason of insanity" has the  
7 same meaning as in Title 17-A, section 39 and includes any comparable plea, finding or  
8 verdict in this State under former section 102; under a former version of Title 17-A,  
9 section 39; under former Title 17-A, section 58; or under former ~~section 17-B~~, chapter  
10 149, section 17-B of the Revised Statutes of 1954.

11           **Sec. 3. Facility development.** By December 31, 2016, the Department of Health  
12 and Human Services shall develop a facility separate from the Riverview Psychiatric  
13 Center that will provide the least restrictive setting possible for forensic patients in the  
14 custody of the Commissioner of Health and Human Services and for whom the  
15 Department of Health and Human Services has verified a hospital level of care is no  
16 longer needed.

17           **Sec. 4. Report.** By August 1, 2016, and at least every 90 days thereafter, the  
18 Department of Health and Human Services shall submit a written report to the joint  
19 standing committee of the Legislature having jurisdiction over matters concerning the  
20 State's psychiatric hospitals that includes the following information:

21           1. The status of any forensic patients who have been placed by the Commissioner of  
22 Health and Human Services at an in-state facility accredited by a nationally recognized  
23 health care organization accrediting body whose standards for accreditation meet or  
24 exceed the requirements for a health care facility to be eligible to receive payment from  
25 the Medicare or Medicaid program or an out-of-state facility accredited by a nationally  
26 recognized health care organization accrediting body whose standards for accreditation  
27 meet or exceed the requirements for a health care facility to be eligible to receive  
28 payment from the Medicare or Medicaid program pursuant to the Maine Revised Statutes,  
29 Title 15, section 101-D and section 103, including, to the extent permitted by state and  
30 federal laws, the names of any patients and the location, timeline and reason for their  
31 placement;

32           2. The status of the Department of Health and Human Services' development of a  
33 unit separate from the Riverview Psychiatric Center that will provide the least restrictive  
34 setting possible for forensic patients in the custody of the Commissioner of Health and  
35 Human Services who no longer need a hospital level of care;

36           3. The status of staffing levels at Riverview Psychiatric Center including data about  
37 any vacancies among the direct care staff positions and licensed professional positions,  
38 information about any recent hiring that has occurred or efforts that have been made to  
39 fill any vacancies and information about any recent training provided to current or newly  
40 hired staff members; and

41           4. Any recommendations, including proposed statutory changes, that the Department  
42 of Health and Human Services determines to be necessary regarding the placement of  
43 individuals in the custody of the Commissioner of Health and Human Services pursuant  
44 to the Maine Revised Statutes, Title 15, section 101-D and section 103, the use of the

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1 required new facility that is separate from the Riverview Psychiatric Center for forensic  
2 patients in the custody of the Commissioner of Health and Human Services who no  
3 longer need a hospital level of care and the staffing situation at Riverview Psychiatric  
4 Center.'

5 **SUMMARY**

6 This amendment, which is the majority report of the committee, strikes the language  
7 in the bill and replaces it with the following provisions.

8 1. For individuals in the custody of the Commissioner of Health and Human Services  
9 pursuant to the Maine Revised Statutes, Title 15, section 101-D and section 103,  
10 placements must be made in the following priority:

- 11 A. In the State at a state-owned hospital;
- 12 B. In the State at another facility accredited by a nationally recognized health care  
13 organization accrediting body whose standards for accreditation meet or exceed the  
14 requirements for a health care facility to be eligible to receive payment from the  
15 Medicare or Medicaid program;
- 16 C. Outside the State at a facility accredited by a nationally recognized health care  
17 organization accrediting body whose standards for accreditation meet or exceed the  
18 requirements for a health care facility to be eligible to receive payment from the  
19 Medicare or Medicaid program.

20 2. By December 31, 2016, the Department of Health and Human Services is required  
21 to develop a facility separate from the Riverview Psychiatric Center that will provide the  
22 least restrictive setting possible for forensic patients in the custody of the Commissioner  
23 of Health and Human Services and for whom the Department of Health and Human  
24 Services has verified a hospital level of care is no longer needed.

25 3. By August 1, 2016, and at least every 90 days thereafter, the Department of Health  
26 and Human Services is required to submit a written report to the joint standing committee  
27 of the Legislature having jurisdiction over matters concerning the State's psychiatric  
28 hospitals that includes the following information:

- 29 A. The status of any forensic patients who have been placed by the Commissioner of  
30 Health and Human Services at an in-state facility accredited by a nationally  
31 recognized health care organization accrediting body whose standards for  
32 accreditation meet or exceed the requirements for a health care facility to be eligible  
33 to receive payment from the Medicare or Medicaid program or an out-of-state facility  
34 accredited by a nationally recognized health care organization accrediting body  
35 whose standards for accreditation meet or exceed the requirements for a health care  
36 facility to be eligible to receive payment from the Medicare or Medicaid program  
37 pursuant to Title 15, section 101-D and section 103, including, as permitted by law,  
38 the names of any patients and the location, timeline and reason for their placement;
- 39 B. The status of the Department of Health and Human Services' development of a  
40 unit separate from the Riverview Psychiatric Center that will provide the least  
41 restrictive setting possible for forensic patients in the custody of the Commissioner of  
42 Health and Human Services who no longer need a hospital level of care;

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- 1 C. The status of staffing levels at Riverview Psychiatric Center, including data about
- 2 any vacancies among the direct care staff positions and licensed professional
- 3 positions, information about any recent hiring that has occurred or efforts that have
- 4 been made to fill any vacancies and information about any recent training provided to
- 5 current or newly hired staff members; and
  
- 6 D. Any recommendations, including proposed statutory changes, that the Department
- 7 of Health and Human Services determines to be necessary regarding the placement of
- 8 individuals in the custody of the Commissioner of Health and Human Services
- 9 pursuant to Title 15, section 101-D and section 103, the use of the required new
- 10 facility that is separate from the Riverview Psychiatric Center for forensic patients in
- 11 the custody of the Commissioner of Health and Human Services who no longer need
- 12 a hospital level of care and the staffing situation at Riverview Psychiatric Center.

**FISCAL NOTE REQUIRED**  
**(See attached)**

**COMMITTEE AMENDMENT**



# 127th MAINE LEGISLATURE

LD 1577

LR 2589(02)

**An Act To Increase the Availability of Mental Health Services**

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

**Committee: Health and Human Services**

**Fiscal Note Required: Yes**

*A (H-636)*

## Fiscal Note

Current biennium cost increase - General Fund  
 Current biennium cost increase - Other Special Revenue Funds  
 Current biennium revenue increase - Other Special Revenue Funds

### Fiscal Detail and Notes

This bill requires the Department of Health and Human Services (DHHS) to create priorities for placement of certain individuals in the custody of the Commissioner of Health and Human Services. The bill also requires that the DHHS, by December 31, 2016, shall develop a facility separate from the Riverview Psychiatric Center that will provide the least restrictive setting possible for forensic patients in the custody of the Commissioner of Health and Human Services and for whom the DHHS verified a hospital level of care is no longer needed. For comparison, the DHHS currently has a contract with an out of state provider to provide this service to similar individuals at a cost of \$494 per bed per day. It is not known at this time how many total beds would be needed, what staffing levels would be or when it is feasible to assume this unit would be created. Some federal money may be available to offset some of the staffing costs of a new facility. Construction of a facility would be a cost of the General Fund. No estimate of the increased cost can be made at this time.

This bill also requires the DHHS, by August 1, 2016 and at least every ninety days thereafter, to submit a written report to the joint standing committee of the Legislature having jurisdiction over the State's psychiatric hospitals. Any additional costs to the DHHS to fulfill these reporting requirements are expected to be minor and can be absorbed within existing budgeted resources.