

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1911

H.P. 1350

House of Representatives, April 18, 2018

An Act To Improve Access to Services for Adults with Serious and Persistent Mental Illness

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

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative MALABY of Hancock. (GOVERNOR'S BILL)

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

2 **Sec. 1. 34-B MRSA §3613** is enacted to read:

3 **§3613. Access to services**

4 **1. Department review.** An adult with serious and persistent mental illness, as
5 defined in rules adopted by the department pursuant to this section, who is receiving or is
6 eligible to receive mental health services from a provider operating an agency, facility or
7 program under contract with the department may seek department review of the
8 provider's actions in the following circumstances:

9 A. When the provider refuses to accept a referral to provide a mental health service
10 for which the adult is clinically eligible that is included in rules of the department
11 governing the MaineCare program or otherwise required to be provided under the
12 terms of the provider's contract with the department and that the adult's treatment or
13 discharge planning team has determined is necessary in order for that adult to
14 transition from a hospital into the community, unless accepting the referral would
15 cause the provider to exceed preestablished staff-client ratios required by law, rule or
16 contract or unless the service is a residential service and the provider has no
17 vacancies;

18 B. When the provider refuses to accept a referral to provide community integration
19 services or assertive community treatment as defined in section 3801, subsection 11
20 to an adult with serious and persistent mental illness who is clinically eligible for the
21 services, unless accepting the referral would cause the provider to exceed
22 preestablished staff-client ratios required by law, rule or contract; or

23 C. When the provider terminates or suspends a mental health service included in
24 rules of the department governing the MaineCare program or otherwise required to be
25 provided under the terms of the provider's contract with the department in violation of
26 the terms of that contract.

27 **2. Private right of action.** An adult with serious and persistent mental illness who
28 is aggrieved by the action of a provider as described in subsection 1 and whose access to
29 services has not been resolved following department review may bring a private civil
30 action in District Court to restrain or enjoin a provider by restraining order or injunction,
31 temporarily or permanently, or enforce by restraining order or injunction, temporarily or
32 permanently, the terms of the provider's contract with the department.

33 A. An individual bringing an action under this subsection is not required to allege or
34 prove that the refusal, termination or suspension of services would cause irreparable
35 injury or harm to that individual.

36 B. An individual bringing an action under this subsection is not required to post a
37 bond.

38 C. The remedies available in an action under this subsection include both mandatory
39 and prohibitory injunctive relief.

1 D. An individual who obtains injunctive relief in an action under this subsection may
2 recover reasonable attorney's fees and costs, not to exceed \$1,000, from the provider
3 against whom judgment was entered.

4 E. An individual who brings an action under this subsection is not liable to the
5 provider for damages resulting from bringing or pursuing the action unless the action
6 was brought in bad faith or without a reasonable belief that the provider was not
7 acting in compliance with its obligations under its contract with the department.

8 **3. Rulemaking.** The department shall adopt rules, which are routine technical rules
9 pursuant to Title 5, chapter 375, subchapter 2-A, governing the process for department
10 review described in this section. The rules must include a definition of "adult with
11 serious and persistent mental illness."

12 SUMMARY

13 This bill establishes the right of an adult with serious and persistent mental illness
14 who is denied access to services by a provider contrary to the terms of the provider's
15 contract with the Department of Health and Human Services to seek department review
16 of that action. If department review does not resolve the matter, the consumer may bring
17 a private right of action in District Court for injunctive relief.