

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1153

H.P. 842

House of Representatives, March 7, 2019

An Act To Provide Flexibility in the Treatment of Individuals with Intellectual Disabilities or Autism

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HANDY of Lewiston.
Cosponsored by Senator LIBBY of Androscoggin and
Representatives: BROOKS of Lewiston, CLOUTIER of Lewiston, CRAVEN of Lewiston,
FARNSWORTH of Portland.

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

2 **Sec. 1. 34-B MRSA §5601, sub-§§1-D and 3-A** are enacted to read:

3 **1-D. Contingent reinforcement.** "Contingent reinforcement" means reinforcement
4 that is dependent on an individual's behavior.

5 **3-A. Functional behavioral assessment.** "Functional behavioral assessment"
6 means a process used to help identify challenging behaviors and their purpose or function
7 and to analyze the factors that lead to challenging behaviors within the environment in
8 which they occur.

9 **Sec. 2. 34-B MRSA §5601, sub-§4-A** is enacted to read:

10 **4-A. Noncontingent reinforcement.** "Noncontingent reinforcement" means
11 reinforcement that is independent of an individual's behavior.

12 **Sec. 3. 34-B MRSA §5605, sub-§6,** as amended by PL 2011, c. 542, Pt. A, §129,
13 is further amended to read:

14 **6. Personal property.** A person with an intellectual disability or autism is entitled
15 to the possession and use of that person's own clothing, personal effects and money,
16 except when temporary custody of clothing or personal effects by a provider is necessary
17 to protect the person or others from imminent injury, this right has been temporarily
18 restricted through use of contingent reinforcement or noncontingent reinforcement
19 procedures under a behavior modification or behavior management program consistent
20 with subsection 13, paragraph B, subparagraph (2) or unless this right has been restricted
21 pursuant to rules adopted pursuant to section 5604.

22 **Sec. 4. 34-B MRSA §5605, sub-§13, ¶B,** as amended by PL 2013, c. 310, §7, is
23 further amended to read:

24 B. Behavior modification and behavior management programs may be used only to
25 correct behavior more harmful to the person than the program and only:

26 (1) On the recommendation of the person's personal planning team;

27 (2) For an adult 18 years of age or older, with the approval, following a case-by-
28 case review, of a review team composed of a representative from the department,
29 a representative from the advocacy agency designated pursuant to Title 5, section
30 19502 and a representative designated by the Maine Developmental Services
31 Oversight and Advisory Board. One of the members must be qualified by
32 training and experience in the use of behavior change procedures and the
33 assessment and treatment of severe problem behavior. The advocacy agency
34 representative serves as a nonvoting member of the review team and shall be
35 present to advocate on behalf of the person. The department shall provide
36 sufficient advance notice of all scheduled review team meetings to the advocacy
37 agency and provide the advocacy agency with any plans for which approval is
38 sought along with any supporting documentation; ~~and.~~

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(a) A behavior modification or behavior management program submitted for review under this paragraph must:

- (i) Be based on the results of a functional behavioral assessment;
- (ii) Include intervention components that are consistent with established best practices in the treatment of severe problem behavior, including the use of reinforcement for adaptive behavior;
- (iii) Have been demonstrated to produce a significant and sustained improvement in severe problem behavior;
- (iv) Have been developed and overseen by a qualified individual; and
- (v) Have the consent of the person or legal guardian, if any, of the person.

(b) When determining whether to approve a behavior modification or behavior management program for a person under this paragraph, the review team shall consider the successful use of the program for the person in another state by a person licensed to provide behavioral health care and treatment in that state.

(c) The person or legal guardian, if any, of the person may appeal a determination by the review team in accordance with procedures established by rule by the department. The appeal process must include a review of the behavior modification or behavior management program by a group of professionals with training and experience in behavior modification and behavior management programs; and

(3) For a child under 18 years of age, with the approval, following a case-by-case review, of a review team composed of a representative from the advocacy agency designated pursuant to Title 5, section 19502, a team leader of the department's children's services division and the children's services medical director or the director's designee. The advocacy agency representative serves as a nonvoting member of the review team and shall be present to advocate on behalf of the person. The department shall provide sufficient advance notice of all scheduled review team meetings to the advocacy agency and provide the advocacy agency with any plans for which approval is sought along with any supporting documentation. Until rules are adopted by the department to govern behavioral treatment reviews for children, the team may not approve techniques any more aversive or intrusive than are permitted in rules adopted by the Secretary of the United States Department of Health and Human Services regarding treatment of children and youth in nonmedical community-based facilities funded under the Medicaid program.

SUMMARY

This bill requires a review team determining whether to approve a behavior modification or behavior management program for a person with an intellectual disability or autism to consider the successful use of the program for the person in another state. It requires that one member of the review team must be qualified by training and experience

1 in the use of behavior change procedures and the assessment and treatment of severe
2 problem behavior. It specifies criteria that a behavior modification or behavior
3 management program submitted for review must meet. It provides for a process for
4 appealing a review team's determination. It allows for temporary restrictions on the
5 possession or use of personal property through the use of reinforcement procedures under
6 a behavior modification or behavior management program.