

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1490

H.P. 1104

House of Representatives, April 14, 2021

**An Act To Improve Home and Community-based Services for  
Adults with Intellectual Disabilities, Autism, Brain Injury and  
Other Related Conditions**

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Received by the Clerk of the House on April 12, 2021. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

ROBERT B. HUNT  
Clerk

Presented by Representative MILLETT of Cape Elizabeth.  
Cosponsored by Senator CLAXTON of Androscoggin and  
Representatives: CRAVEN of Lewiston, WHITE of Waterville, Senator: BALDACCI of  
Penobscot.

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

2 **Sec. 1. 34-B MRSA §5003-A, sub-§1**, as amended by PL 2011, c. 542, Pt. A, §83,  
3 is further amended to read:

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

9 **Sec. 2. 34-B MRSA §5003-A, sub-§2, ¶E**, as amended by PL 2011, c. 542, Pt. A,  
10 §83, is further amended to read:

11 E. Eliminate the department's own duplicative and unnecessary administrative  
12 procedures and practices in the system of care services and support for persons with  
13 intellectual disabilities or autism, encourage other departments to do the same and  
14 clearly define areas of responsibility in order to use present resources economically;

15 **Sec. 3. 34-B MRSA §5003-A, sub-§2, ¶F**, as amended by PL 2011, c. 542, Pt. A,  
16 §83, is further amended to read:

17 F. Strive toward having a sufficient number of personnel who are qualified and  
18 experienced to provide treatment that is beneficial to persons with intellectual  
19 disabilities or autism; ~~and~~

20 **Sec. 4. 34-B MRSA §5003-A, sub-§2, ¶G**, as amended by PL 2011, c. 542, Pt. A,  
21 §83, is further amended by amending subparagraph (3) to read:

22 (3) The commissioner shall inform the joint standing committee of the Legislature  
23 having jurisdiction over human resources matters about areas where increased  
24 cooperation by other departments is necessary in order to improve the delivery of  
25 services to persons with intellectual disabilities or autism;

26 **Sec. 5. 34-B MRSA §5003-A, sub-§2, ¶H** is enacted to read:

27 H. Post at least monthly on the department's publicly accessible website, for each home  
28 and community-based services waiver from the United States Department of Health  
29 and Human Services, Centers for Medicare and Medicaid Services in which the State  
30 participates, data on how many persons were on a waiting list for services on the first  
31 day of that month, including, for prioritized waiting lists, how many persons were in  
32 each prioritization category; and

33 **Sec. 6. 34-B MRSA §5003-A, sub-§2, ¶I** is enacted to read:

34 I. Post at least quarterly on the department's publicly accessible website, for each home  
35 and community-based services waiver from the United States Department of Health  
36 and Human Services, Centers for Medicare and Medicaid Services in which the State  
37 participates, data on the median time from application for waiver services to approval  
38 by the department of the waiver application, using a statistically valid methodology.

39 **Sec. 7. 34-B MRSA §5003-A, sub-§3, ¶F**, as amended by PL 2011, c. 542, Pt. A,  
40 §83, is further amended to read:

1 F. The plan must include an assessment of the roles and responsibilities of intellectual  
2 disability and autism agencies, human service agencies, health agencies and involved  
3 state departments and suggest ways in which these departments and agencies can better  
4 cooperate to improve the service systems. The assessment must include quality metrics  
5 and data collection developed with input from stakeholder groups as described in  
6 paragraphs G and H.

7 **Sec. 8. 34-B MRSA §5003-A, sub-§3, ¶H**, as amended by PL 2011, c. 542, Pt. A,  
8 §83, is further amended to read:

9 H. The commissioner ~~must~~ shall ensure that the development of the plan includes the  
10 participation of persons with intellectual disabilities, autism, brain injury and other  
11 related conditions; community intellectual disability and autism service providers;  
12 consumer and family groups; direct care workers; and other interested persons or  
13 groups in annual statewide hearings, as well as informal meetings and work sessions.  
14 The commissioner shall ensure the participation of persons from immigrant and  
15 indigenous populations. The plan must describe how the commissioner achieved this  
16 inclusion and what feedback the department received from participants in each of these  
17 groups.

18 **Sec. 9. 34-B MRSA §5003-A, sub-§3, ¶J** is enacted to read:

19 J. The plan must project whether, given current budget projections and anticipated  
20 demographic changes, there will be any waiting lists for adult developmental services  
21 over the next 4 years and how many persons are projected to be on those waiting lists  
22 over that period of time. For prioritized waiting lists, the plan must indicate how many  
23 persons are projected to be in each prioritization category and how many persons would  
24 be in a different prioritization category except for their living with a parent.

25 **Sec. 10. 34-B MRSA §5003-A, sub-§3, ¶K** is enacted to read:

26 K. The plan must indicate the additional budgeted resources required to eliminate any  
27 waiting lists, if such waiting lists exist or are projected to exist over the next 4 years.  
28 The budget projections must detail any anticipated savings realized from a less  
29 expensive adult developmental service when a person relinquishes that less expensive  
30 adult developmental service in order to receive more comprehensive support from  
31 another adult developmental service.

32 **Sec. 11. 34-B MRSA §5003-A, sub-§3, ¶L** is enacted to read:

33 L. The plan may consider how home and community-based services may be  
34 redesigned to promote self-determination by persons with intellectual disabilities or  
35 autism, to promote less restrictive placements over more restrictive placements and to  
36 promote competitive integrated employment by persons with intellectual disabilities or  
37 autism.

38 **Sec. 12. 34-B MRSA §5003-A, sub-§6, ¶A**, as enacted by PL 2007, c. 356, §16  
39 and affected by §31, is amended by amending subparagraph (4) to read:

40 (4) The system of ~~care~~ services and support under this section is efficient and  
41 effective.

42 **Sec. 13. 34-B MRSA §5003-A, sub-§7** is enacted to read:

1           **7. Committee authorized to introduce legislation.** The joint standing committee of  
2 the Legislature having jurisdiction over health and human services matters is authorized to  
3 introduce a bill in each first regular session of the Legislature and a bill in each second  
4 regular session of the Legislature to address the system of services and support for persons  
5 with intellectual disabilities or autism.

6           **Sec. 14. 34-B MRSA §5610, sub-§1, ¶D,** as amended by PL 2011, c. 542, Pt. A,  
7 §131, is further amended to read:

8           D. Service delivery to persons with intellectual disabilities and autism is based on the  
9 following fundamentals:

10           (1) Maximizing the growth and development of the person and inclusion in the  
11 community;

12           (2) Maximizing the person's control over that person's life;

13           (3) Supporting the person in that person's own home;

14           (4) Acknowledging and enhancing the role of the family, as appropriate, as the  
15 primary and most natural caregiver; ~~and~~

16           (5) Planning for the delivery of community services that:

17                   (a) Promotes a high quality of life;

18                   (b) Is based on ongoing individualized assessment of the strengths, needs and  
19 preferences of the person and the strengths of that person's family; and

20                   (c) Identifies and considers connections in other areas of the person's life,  
21 including but not limited to family, allies, friends, work, recreation and  
22 spirituality; and

23           (6) Acknowledging that inadequate reimbursement rates to community service  
24 providers, extended stays on waiting lists for home and community-based services,  
25 and service definitions that do not meet the needs of persons who have need for  
26 significant levels of support are incompatible with this section.

27           **Sec. 15. Department of Health and Human Services to amend rules.** By  
28 September 30, 2021, the Department of Health and Human Services shall submit an  
29 amendment or renewal to the federally approved Medicaid waiver implemented in 10-144  
30 CMR Chapter 101, MaineCare Benefits Manual, Chapters II and III, Section 21 that  
31 separates the community supports rate structure into 3 different tiers of service delivery  
32 consisting of Community Support-Individual, Community Support-Group and Community  
33 Support-Center Based, as described generally in draft waiver renewal ME.0467 for which  
34 the department accepted comments in the period August 14, 2020 through September 13,  
35 2020.

36           **Sec. 16. Behavioral add-on to community support service delivery**  
37 **structure.** By December 15, 2021, the Department of Health and Human Services shall  
38 submit amendments or renewals to the federally approved Medicaid home and community-  
39 based services waivers implemented in 10-144 CMR Chapter 101, MaineCare Benefits  
40 Manual, Chapters II and III, Sections 21 and 29, to add a so-called "behavioral add-on" to  
41 the community support service delivery structure in order to support people with significant  
42 behavioral challenges whose needs would not otherwise be met by the community support

1 service delivery structure or who would not otherwise have access to community support  
2 because of their significant behavioral challenges.

### 3 SUMMARY

4 This bill amends the system of care for adults with intellectual disabilities, autism,  
5 brain injury and other related conditions in the following ways.

6 1. It renames "system of care" the "system of services and support."

7 2. It amends the principles guiding delivery of services by providers of services and  
8 the Department of Health and Human Services to add the principle that inadequate  
9 reimbursement rates, extended stays on waiting lists and service definitions that do not  
10 meet the needs of persons who have significant need for significant levels of support are  
11 incompatible with the other goals guiding delivery of services.

12 3. It requires the department to post at least monthly on the department's website, for  
13 each home and community-based services waiver in which the State participates, data on  
14 how many persons were on a waiting list for services on the first day of that month,  
15 including, for prioritized waiting lists, how many persons were in each prioritization  
16 category.

17 4. It requires the department to post at least quarterly on the department's website, for  
18 each home and community-based services waiver in which the State participates, data on  
19 median time from application for waiver services to approval by the department for receipt  
20 of the same waiver services, using a statistically valid methodology.

21 5. It requires that the Commissioner of Health and Human Services' plan include  
22 quality metrics and data collection developed with input from across stakeholder groups.

23 6. It requires that the commissioner's plan include participation of persons with  
24 intellectual disabilities, autism, brain injury and other related conditions; direct care  
25 workers; and persons from immigrant and indigenous populations. It requires the plan to  
26 describe how the commissioner achieved the required inclusion and to describe the  
27 feedback received from participants in each required group.

28 7. It requires that the commissioner's plan project whether there will be any waiting  
29 lists for home and community-based services waivers over the next 4 years, how many  
30 people are projected to be on those waiting lists, how many people are projected to be in  
31 each prioritization category of prioritized waiting lists and how many people would be in  
32 a different prioritization category if they were not currently living with a parent.

33 8. It requires that the commissioner's plan project the budgetary impact of eliminating  
34 any waiting lists for home and community-based services if such waiting lists are projected  
35 to exist over the next 4 years, including detailing any anticipated savings from release of  
36 resources of a less expensive service when a person transfers to another service.

37 9. It allows the commissioner's plan to consider how home and community-based  
38 services may be redesigned to promote self-determination by persons with intellectual  
39 disabilities or autism, to promote less restrictive placements over more restrictive  
40 placements and to promote competitive integrated employment by persons with intellectual  
41 disabilities or autism.

1           10. It authorizes the joint standing committee of the Legislature having jurisdiction  
2 over health and human services matters to introduce legislation in each regular session of  
3 the Legislature.

4           11. It requires the department to submit a waiver renewal or waiver amendment for  
5 home and community-based services that separates community support into tiered services  
6 as described in a draft waiver renewal for home and community-based services.

7           12. It requires the department to submit a waiver renewal or waiver amendment for  
8 home and community-based services to add a so-called "behavioral add-on" for persons  
9 who otherwise would be denied access to community support or whose needs would not  
10 otherwise be met by the community support service structure.