

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1758

H.P. 1309

House of Representatives, December 2, 2021

**An Act Regarding Access to Telehealth Behavioral Health Services
during Public Health Emergencies**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on November 30, 2021. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative MADIGAN of Waterville.

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

2 **Sec. 1. 22 MRSA §51** is enacted to read:

3 **§51. Exemption to written informed consent requirement for mental health services**
4 **and substance use disorder treatment during public health emergency**

5 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
6 following terms have the following meanings.

7 A. “Licensed facility” means a facility licensed under Title 5, section 20005, subsection
8 6, paragraph B or Title 34-B, section 1203-A.

9 B. “Public health emergency” means a federal public health emergency declared
10 pursuant to 42 United States Code, Section 247d or a state public health emergency
11 declared pursuant to section 802 or Title 37-B, chapter 13, subchapter 2.

12 **2. Written informed consent not required.** The department may not require a
13 licensed facility to obtain written informed consent from a person receiving mental health
14 services or substance use disorder treatment from the licensed facility during a public health
15 emergency. The licensed facility may obtain consent through verbal, electronic or written
16 means from a person receiving mental health services or substance use disorder treatment
17 during a public health emergency.

18 **3. Rulemaking.** The department shall adopt rules to implement this section. Rules
19 adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter
20 375, subchapter 2-A.

21 **Sec. 2. Department of Health and Human Services to amend certain**
22 **licensing rules.** No later than January 1, 2023, the Department of Health and Human
23 Services shall amend its rules in 14-193 C.M.R. Chapter 6, Licensing of Mental Health
24 Facilities, and 14-118 C.M.R. Chapter 5, Regulations for Licensing and Certifying of
25 Substance Abuse Treatment Programs, to allow a facility licensed under the Maine Revised
26 Statutes, Title 5, section 20005, subsection 6, paragraph B or Title 34-B, section 1203-A to
27 obtain consent through verbal, electronic or written means from a person during a public
28 health emergency in accordance with Title 22, section 51. Rules adopted pursuant to this
29 section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

30 **SUMMARY**

31 This bill provides that the Department of Health and Human Services may not require
32 a licensed mental health facility or licensed substance use disorder treatment facility to
33 obtain written informed consent from a client during a federal or state public health
34 emergency. The licensed facility may instead obtain a client’s consent verbally,
35 electronically or in writing. The bill directs the Department of Health and Human Services
36 to, no later than January 1, 2023, amend its rules in 14-193 C.M.R. Chapter 6, Licensing
37 of Mental Health Facilities, and 14-118 C.M.R. Chapter 5, Regulations for Licensing and
38 Certifying of Substance Abuse Treatment Programs, to meet the requirements of this
39 legislation.