

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 449

H.P. 278

House of Representatives, February 2, 2023

An Act to Authorize the Department of Health and Human Services to License Home-based and Community-based Services for Persons with an Intellectual Disability, Autism Spectrum Disorder or a Related Condition or an Acquired Brain Injury and Define Autism Spectrum Disorder

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

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

ROBERT B. HUNT
Clerk

Presented by Representative JAVNER of Chester.

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

2 **Sec. 1. 22 MRSA §3089, sub-§2-A** is enacted to read:

3 **2-A. Licensing.** As provided in Title 34-B, section 1203-B, the department shall
4 license agencies, as defined in that section, that serve or provide support for an adult with
5 an acquired brain injury.

6 **Sec. 2. 22 MRSA §7801, sub-§3,** as amended by PL 1993, c. 661, §3, is further
7 amended to read:

8 **3. Residential care facilities.** A residential care facility providing care to no more
9 than 2 residents is not required to obtain a license under subsection 1, unless the license is
10 required for the residential care facilities to receive payment from available state funds,
11 including the State's share of MaineCare reimbursements. The department may issue 2-
12 year licenses and conduct modified surveys for compliance of those facilities as long as the
13 facilities have relatively deficiency-free surveys with no history of health or safety
14 violations.

15 **Sec. 3. 22 MRSA §7801, sub-§3-A** is enacted to read:

16 **3-A. Residential care facilities serving adults with certain conditions.** This
17 subsection applies to a residential care facility that provides a setting for an adult with an
18 intellectual disability, autism spectrum disorder, as defined in Title 34-B, section 6002,
19 subsection 1, a related condition, as defined in Title 34-B, section 5001, subsection 5-A, or
20 an acquired brain injury.

21 A. A residential care facility to which this subsection applies must obtain a license as
22 provided by Title 34-B, section 1203-B.

23 B. A license issued under this chapter before July 1, 2024 to a residential care facility
24 that provides a setting for an adult with an intellectual disability, autism spectrum
25 disorder, a related condition or an acquired brain injury continues in effect until the
26 license's expiration date, unless subject to the disciplinary authority of the department.

27 This paragraph is repealed July 1, 2026.

28 **Sec. 4. 22 MRSA §7862, first ¶,** as enacted by PL 2003, c. 546, §1, is amended to
29 read:

30 All Except as provided by subsection 2-A, all contracts or agreements executed by
31 providers of assisted living services under this chapter and a consumer or the legal
32 representative of the consumer are subject to the requirements of this section.

33 **Sec. 5. 22 MRSA §7862, sub-§2-A** is enacted to read:

34 **2-A. Exception.** This section does not apply to a contract for the provision of services
35 in a setting for an adult with an acquired brain injury, an intellectual disability, autism
36 spectrum disorder, as defined in Title 34-B, section 6002, subsection 1, a related condition,
37 as defined in Title 34-B, section 5001, subsection 5-A.

38 **Sec. 6. 34-B MRSA §1203-A,** as amended by PL 2019, c. 113, Pt. C, §108, is
39 further amended by amending the section headnote to read:

40 **§1203-A. Licenses for the provision of mental health services**

1 **Sec. 7. 34-B MRSA §1203-B** is enacted to read:

2 **§1203-B. Licenses for agencies that provide services to adults with certain conditions**

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

5 A. "Agency" means a firm, association, corporation or nonprofit organization.

6 B. "Related condition" means a condition that meets the definition of 42 Code of
7 Federal Regulations, Section 435.1010 in effect January 1, 2023.

8 **2. License required.** An agency that provides a service, if the service provided is
9 funded in whole or in part by the department, to an adult with an intellectual disability,
10 autism spectrum disorder, a related condition or an acquired brain injury, including a
11 service provided under Title 22, section 3089, may not provide that service without a
12 license issued by the department as provided by this section. This section applies to:

13 A. A provider of services regarding case management or care coordination, home
14 support, community support, employment support, personal support and residential
15 services; and

16 B. A residential care facility that provides a setting for an adult with an intellectual
17 disability, autism spectrum disorder, a related condition or an acquired brain injury.

18 **3. Full license.** Full licenses under this section are governed as follows.

19 A. The department may issue a full license to or renew a full license for an applicant
20 that the department determines has complied with all applicable laws and rules.

21 B. A full license has a term not to exceed 2 years.

22 **4. Conditional license.** Conditional licenses under this section are governed as
23 follows.

24 A. The department may issue a conditional license to an agency applying for or
25 renewing a full license if:

26 (1) The applicant fails to comply with applicable laws and rules; and

27 (2) In the judgment of the department, the best interests of the public would be
28 served by issuance of a conditional license.

29 B. A conditional license has a term for a specified period of time not to exceed one
30 year or the remaining period of the full license, if the applicant has a full license and
31 has applied for renewal, as determined by the department. The department shall
32 determine the period of the license based on the severity of the laws or rules violated
33 by the conditional licensee. The department shall specify the conditions imposed by
34 the department and when the conditional licensee must comply with those conditions.

35 C. If a conditional licensee fails to comply with conditions imposed by the department,
36 the department may initiate proceedings to revoke, suspend or refuse to renew the
37 conditional license in accordance with Title 5, chapter 375.

38 **5. Provisional license.** Provisional licenses under this section are governed as follows.

39 A. The department may issue a provisional license to an agency that:

1 (1) Has not previously operated as an agency serving an individual with an
2 intellectual disability, autism spectrum disorder, a related condition or an acquired
3 brain injury;

4 (2) Complies with all applicable laws and rules, except those that can be complied
5 with only once the applicant serves clients; and

6 (3) Demonstrates the ability to comply with all applicable laws and rules by the
7 end of the provisional license term.

8 B. A provisional license has a term for a specified period of time of at least 3 months
9 but no longer than 12 months, as determined by the department.

10 **6. Qualifications for license.** The department shall establish qualifications for a
11 license issued under this section, including qualifications regarding:

12 A. General requirements;

13 B. Professional personnel;

14 C. Paraprofessional personnel;

15 D. Treatment, services and the coordination of treatment and services;

16 E. Supervision of professional and nonprofessional personnel;

17 F. Organizational structure, including lines of authority;

18 G. Clinical records;

19 H. Business records; and

20 I. Other aspects of providing a service to an individual with an intellectual disability,
21 autism spectrum disorder, a related condition or an acquired brain injury that may be
22 necessary to protect the public.

23 **7. License not assignable or transferable.** A license issued under this section is not
24 assignable or transferable. A license is immediately void if ownership or control of the
25 agency changes.

26 **8. Quality assurance and technical assistance.** The department may perform
27 programmatic review of a licensee, monitor, audit and provide technical assistance to a
28 licensee and otherwise ensure that a licensee is compliant with standards of operation set
29 forth by the department. The department may:

30 A. Issue a notice of deficiency for failure to comply with applicable state statutes or
31 rules or federal regulations; and

32 B. Require licensees to submit and comply with acceptable plans of corrective action
33 to remedy the deficiency for which notice was issued under paragraph A.

34 The department shall monitor each licensee for continued compliance with applicable laws
35 and rules at least every 2 years.

36 **9. Confidentiality of records.** A department record that contains personally
37 identifiable information or health information and that is created or obtained in connection
38 with the department's licensing or quality assurance powers under this section is
39 confidential, with the exceptions of a notice of deficiency, a plan of corrective action and
40 a final action with respect to a license or a quality assurance activity.

1 **10. Right of entry; investigation.** The department has the right to enter and inspect
2 the premises of an agency licensed by the department under this section, an agency
3 requesting a license from the department under this section or an agency the department
4 determines is operating without a license required by this section.

5 A. The department has the right to inspect and copy any books, accounts, papers,
6 records and other documents in order to determine the state of an agency's compliance
7 with applicable laws and rules.

8 B. The department must enter the premises at a reasonable time.

9 C. To inspect an agency that the department knows or believes to be operating without
10 a license, the department may enter only with the permission of the owner or person in
11 charge or with an administrative inspection warrant issued pursuant to the Maine Rules
12 of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection.
13 An owner or operator of an agency that is unlicensed may not interfere with, impede
14 or obstruct an investigation by the department.

15 **11. Enforcement.** The following provisions govern enforcement of this section.

16 A. When an applicant or licensee fails to comply with applicable laws and rules or a
17 plan of corrective action, the department may refuse to issue or renew the license or
18 may impose one or more of the following sanctions if the department determines that
19 a sanction is necessary and appropriate to ensure compliance with applicable laws or
20 rules or to protect an individual served by an agency. The department may direct the
21 licensee or applicant to:

22 (1) Stop all new admissions or intake of new clients, regardless of payment source,
23 until the department determines that corrective action has been taken; and

24 (2) Correct any deficiencies in a manner and within a time frame that the
25 department determines is appropriate to ensure compliance with applicable laws or
26 rules or to protect a client of the licensee or applicant.

27 B. If, at the expiration of a full or provisional license or during the term of a full license,
28 a licensee fails to comply with applicable laws and rules and, in the judgment of the
29 department, the best interest of the public would be served by the issuance of a
30 conditional license, the department may issue a conditional license or change a full
31 license to a conditional license.

32 C. A license issued under this section may be suspended or revoked for violation of
33 applicable laws and rules; committing, permitting, aiding or abetting any illegal
34 practices in the operation of the agency; or conduct or practices detrimental to the
35 welfare of persons living in or attending a facility operated by the agency.

36 D. When the department determines that a license should be suspended or revoked,
37 the department shall file a complaint with the District Court as provided in Title 5,
38 chapter 375.

39 E. The department may petition the Superior Court to appoint a receiver to operate an
40 agency in the same manner as for a long-term care facility under Title 22, chapter
41 1666-A.

1 F. The department may impose a penalty on a licensee for a violation of this section.
2 The department shall establish a schedule of penalties according to the nature of the
3 violation. Each day of violation constitutes a separate offense.

4 G. The department may impose a penalty on an agency required to be licensed under
5 this section that is operating without the required license. The minimum penalty for
6 operating without a license is \$500 per day but not more than \$10,000 in total.

7 **12. Appeals.** A person aggrieved by a final action of the department under this section
8 may obtain judicial review in accordance with Title 5, chapter 375. A final action for
9 purposes of this subsection includes:

10 A. Issuing a conditional license;

11 B. Amending or modifying a license;

12 C. Refusing to issue or renew a full license;

13 D. Refusing to issue a provisional license; and

14 E. Imposing a sanction.

15 **13. Rules.** The department shall adopt rules to implement this section. Rules adopted
16 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
17 subchapter 2-A.

18 **14. Transitional provisions.** An agency that is otherwise required to obtain a license
19 under this section or a residential care facility that provides a setting for an adult with an
20 intellectual disability, autism spectrum disorder, a related condition or an acquired brain
21 injury that is otherwise required to obtain a license under this section is not required to
22 obtain the license before July 1, 2024.

23 This subsection is repealed July 2, 2024.

24 **Sec. 8. 34-B MRSA §5001, sub-§5-A** is enacted to read:

25 **5-A. Related condition.** "Related condition" means a condition that meets the
26 definition in 42 Code of Federal Regulations, Section 435.1010 in effect January 1, 2023.

27 **Sec. 9. 34-B MRSA §5433, sub-§2,** as amended by PL 2011, c. 542, Pt. A, §96, is
28 further amended to read:

29 **2. Services and programs.** Provide and help finance adult developmental services
30 and programs throughout the State for persons with intellectual disabilities or autism
31 spectrum disorder or related conditions residing in the community and residing in privately
32 owned residential care facilities;

33 **Sec. 10. 34-B MRSA §6002,** as repealed and replaced by PL 2007, c. 309, §1, is
34 repealed and the following enacted in its place:

35 **§6002. Autism spectrum disorder and autism defined**

36 **1. Generally.** "Autism spectrum disorder" or "autism" means a neurodevelopmental
37 disorder characterized by symptoms that typically present in the early developmental
38 period and result in clinically significant impairment in social, occupational or other
39 important areas of functioning, including:

40 A. Deficits in social communication and social interaction; and

