

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND TWELFTH LEGISLATURE

**SECOND REGULAR SESSION**  
January 8, 1986 to April 16, 1986

**SECOND SPECIAL SESSION**  
May 28, 1986 to May 30, 1986

AND AT THE

**THIRD SPECIAL SESSION**  
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN  
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Co., Inc.  
Augusta, Maine

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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND TWELFTH LEGISLATURE  
1985

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to the investigation shall be made by agreement between the department and the agency.

Sec. 4. 22 MRSA §3554, sub-§1, ¶A is enacted to read:

A. The agency shall be able to obtain access to the records of a person with developmental disabilities who resides in a facility for persons with developmental disabilities if:

(1) A complaint has been received by the agency from or on behalf of that person; and

(2) That person does not have a legal guardian or the person is under public guardianship.

Sec. 5. 22 MRSA §3554, sub-§2, as amended by PL 1985, c. 159, §4, is further amended to read:

2. Investigation. The agency may conduct investigations upon its own initiative if there is reason to believe that the legal rights of a developmentally disabled or learning disabled person have been or are being violated. Prior to initiating its investigation, the agency shall notify the developmentally disabled or learning disabled person or, if he is a minor or has been judged incompetent, his legal guardian, of the specific rights which the agency alleges have been or are being violated. If the developmentally disabled or learning disabled adult has not been judged incompetent, then the agency must first receive his written consent to the investigation when the person is not residing in a facility for the developmentally disabled or when the agency is conducting the investigation upon its own initiative. If the developmentally disabled or learning disabled minor is competent to understand the purpose, significance and result of the investigation, then the agency shall inform him of his right to stop the investigation. The investigation shall stop if he expresses a clear desire that it stop.

Effective July 16, 1986.

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## CHAPTER 645

S.P. 896 - L.D. 2253

AN ACT to Enhance the Protection of Mental  
Health Recipients' Rights.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this bill is necessary to validly delegate rule-making power to the Department of Mental Health and Mental Retardation to enact certain rules; and

Whereas, these rules establish important additional due process protection for mental health clients; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 5 MRSA §12004, sub-§10, ¶A, sub-¶(58-A) is enacted to read:

<u>(58-A) Mental Health</u>	<u>Mental Health</u>	<u>Not</u>	<u>34-B MRSA</u>
<u>and Mental</u>	<u>Rights Ad-</u>	<u>Author-</u>	<u>§1209-A</u>
<u>Retardation</u>	<u>visory Board</u>	<u>ized</u>	

Sec. 2. 18-A MRSA §5-501, as enacted by PL 1979, c. 540, §1, is repealed and the following enacted in its place:

§5-501. When power of attorney not affected by disability

If a principal designates another as his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words: "This power of attorney shall not be affected by disability of the principal;" "This power of attorney shall become effective upon the disability of the principal;" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney-in-fact or agent is exercisable by him as provided in the power, on behalf of the principal, notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive.

The authority of the attorney-in-fact or agent to act on behalf of the principal shall be set forth in the power and may relate to any act, power, duty, right or obligation which the principal has or may acquire relating to the principal or any matter, transaction or property, real or personal, tangible or intangible, including, but not limited to, the power to consent to, withhold consent to or approve on behalf of the principal any medical or other professional care, counsel, treatment or service of or to the principal by a licensed or certified professional person or institution engaged in the practice of, or providing, a healing art. A power of attorney containing authority to consent to medical or other professional care must be notarized.

All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incapacity or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a conservator or guardian thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator or guardian rather than the principal. The conservator or guardian has the same power the principal would have had if he were not disabled or incapacitated to revoke, suspend or terminate all or any part of the power of attorney or agency with the exception of a durable power of attorney to consent to medical or other professional care. The court shall have the power, upon petition of the guardian of an incapacitated person, to decide whether to revoke, suspend or terminate the authority of the attorney-in-fact or agent to consent to medical or other professional care.

Sec. 3. 34-B MRSA §1209-A is enacted to read:

§1209-A. Mental Health Rights Advisory Board

1. Establishment. The Mental Health Rights Advisory Board as established pursuant to Title 5, section 12004, subsection 10, shall consist of 11 members as follows:

A. Six persons who are consumers of mental health services, including clients, at least 3 of whom have received services from a state institution or a community mental health agency, and their families; and

B. Five persons concerned with the quality of the delivery of mental health services, at least 4 of whom are providers of services in a hospital pursuant to subchapter IV or in a program or facility administered or licensed by the department under section 3606.

Members shall be appointed by the commissioner for staggered terms not to exceed 2 years.

At least 3 nominations to the commissioner shall be made by majority vote of the board 30 days before the expiration of a member's term. If the initial nominations are unacceptable, the board shall submit 3 alternative nominations. If a member's term expires and the commissioner has not appointed a successor, the member may be reelected by majority vote to continue as a member until the commissioner appoints a successor.

2. Chairman. The members of the board shall elect a chairman.

3. Meetings. The board shall meet at least quarterly. A representative of the department shall act as liaison between the board and the department and shall have the right to attend all meetings of the board.

4. Functions. The primary function of the board is to advise the department in the implementation of its rules promulgated pursuant to chapter 3, concerning rights of recipients of mental health services.

5. Responsibilities. The board's responsibilities include monitoring the implementation of the rules and making recommendations concerning improving the substantive content and implementation of the rules. Board members shall have access to all living and program areas and to all grievance records and other records directly relevant to monitoring the implementation of the rules, provided that the access is in conformity with the law regarding confidentiality of mental health information.

6. Duties. The board shall prepare a yearly report for the commissioner of its observations and recommendations regarding the department's implementation of its rules.

Sec. 4. 34-B MRSa §3003, sub-§2, ¶C, as enacted by PL 1983, c. 459, §7, is amended to read:

C. Standards for informed consent to treatment and guidelines for exceptions to informed consent as permitted under applicable law or in emergency situations, including reasonable standards and procedural mechanisms for determining when to treat a client absent his informed consent, consistent with applicable law;

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 4, 1986.

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## CHAPTER 646

S.P. 707 - L.D. 1832

### AN ACT to Clarify the Role of Cooperatives under the Maine Milk Pool.

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

Sec. 1. 7 MRSA §3152, sub-§4, as enacted by PL 1983, c. 573, §4, is repealed and the following enacted in its place:

4. Dealer. "Dealer" means any person or entity who purchases or receives milk from a producer within the State for processing and sale within or outside the State.

A. A producer-dealer which is not an agricultural cooperative shall be deemed a dealer only with respect to milk purchased or received from other producers.

B. A producer-dealer which is an agricultural cooperative shall be deemed a dealer:

(1) With respect to all milk purchased or received from other producers; and

(2) With respect to all milk purchased or received from its members except to the extent that it is exempt from the Maine Milk Pool under section 3152-A.

C. An agricultural cooperative which is not a producer-dealer shall be deemed a dealer with respect to all milk subject to the producer price