

# MAINE STATE LEGISLATURE

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

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

**THIRD SPECIAL SESSION**

October 1, 1992 to October 6, 1992

**FOURTH SPECIAL SESSION**

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

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J.S. McCarthy Company  
Augusta, Maine  
1993

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

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND SIXTEENTH LEGISLATURE**

**1993**

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**Sec. 1. 38 MRSA §1652, sub-§1**, as enacted by PL 1987, c. 804, is amended to read:

**1. Prohibition of polystyrene containers.** A food service providing or serving individual portions of food or a beverage at a facility or function of the State or of a political subdivision ~~shall~~ may not provide or serve those portions in or on containers that are composed in whole or in part of polystyrene foam plastic, unless the food service recycles the containers following use.

See title page for effective date.

## CHAPTER 324

S.P. 192 - L.D. 628

### An Act Concerning School Construction

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

**Sec. 1. 5 MRSA §1747, sub-§§1 and 2**, as enacted by PL 1989, c. 483, Pt. A, §20, are amended to read:

**1. Untimely completion.** If, in the opinion of the director, the contractor has not completed in a timely manner a prior construction project or projects and the resulting noncompletion clearly reflects disregard for the completion date and has created a hardship for the owner;

**2. Incomplete work.** If, in the opinion of the director, that contractor has a history of inability to complete similar work;

**Sec. 2. 20-A MRSA §15621**, as amended by PL 1991, c. 268, §4, is further amended to read:

#### §15621. Rulemaking

The commissioner may adopt rules pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375 to implement this chapter. On or before March 1, 1992, the commissioner shall adopt rules for approving the lease-purchase of bus garage and maintenance facilities as defined in section 15603, subsection 6-A and for determining the amount includable for subsidy purposes. On or before February 1, 1994 the commissioner shall adopt rules for approving lease costs for school buildings as defined in section 15603, subsection 8, paragraph B and for determining the amount includable for subsidy purposes.

**Sec. 3. 20-A MRSA §15905, sub-§4**, as amended by PL 1989, c. 911, §10, is further amended to read:

**4. Rules.** The state board may adopt or amend rules relating to the approval of school construction projects.

The state board is encouraged to review school construction rules regarding costs per square foot, consider other measures for containing building costs and report on these efforts to the joint standing committee of the Legislature having jurisdiction over education matters during the First Regular Session of the 115th Legislature. On or before February 1, 1994 the state board shall adopt rules for approving movable equipment costs for school construction.

See title page for effective date.

## CHAPTER 325

H.P. 1092 - L.D. 1470

### An Act to Establish a Risk-sharing Mechanism for Small Group Health Insurance Plans

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

**Sec. 1. 24-A MRSA §2808-B, sub-§9** is enacted to read:

**9. Reinsurance mechanism.** Small group carriers, except nonprofit hospital and medical service organizations, may form a reinsurance pool for the purpose of reinsuring small group risks. This pool may not become operative until the superintendent has approved a plan of operation. The superintendent may approve a plan only after the superintendent determines that the plan is in the public interest and is consistent with this section. The participants in the plan of operation of the pool shall guarantee, without limitation, the solvency of the pool. That guarantee constitutes a permanent financial obligation of each participant on a pro rata basis.

See title page for effective date.

## CHAPTER 326

H.P. 955 - L.D. 1284

### An Act to Amend the Bill of Rights for Persons with Mental Retardation

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

**Sec. 1. 34-B MRSA c. 5, sub-c. IV, first 2 lines** are repealed and the following enacted in their place:

SUBCHAPTER IVRIGHTS OF PERSONS WITH MENTAL  
RETARDATION OR AUTISM

**Sec. 2. 34-B MRSA §5601, sub-§1**, as enacted by PL 1983, c. 459, §7, is repealed.

**Sec. 3. 34-B MRSA §5601, sub-§5**, as enacted by PL 1983, c. 459, §7, is amended to read:

**5. Normalization principle.** "Normalization principle" means the principle of letting assisting the mentally-retarded person with mental retardation or autism to obtain an existence as close to normal as possible and making available to him that person patterns and conditions of everyday life which that are as close as possible to the norms and patterns of the mainstream of society.

**Sec. 4. 34-B MRSA §5601, sub-§5-A** is enacted to read:

**5-A. Person receiving services.** "Person receiving services" means a person with mental retardation or autism receiving services from the bureau or from an agency or facility licensed or funded to provide services to persons with mental retardation or autism except those presently serving sentences for crime.

**Sec. 5. 34-B MRSA §5601, sub-§§6 and 7**, as enacted by PL 1983, c. 459, §7, are amended to read:

**6. Residential facility.** "Residential facility" means a facility providing 24-hour residential care services for mentally-retarded persons which with mental retardation or autism that is owned, operated, licensed or funded, in whole or in part, by the department or through the Department of Human Services.

**7. Seclusion.** "Seclusion" means the solitary placement of a client alone person receiving services in a locked room for a period in excess of one hour any period of time.

**Sec. 6. 34-B MRSA §5601, sub-§7-A** is enacted to read:

**7-A. Supports.** "Supports" are those actions or that assistance that permits a person with mental retardation or autism to carry out life activities as the person desires.

**Sec. 7. 34-B MRSA §5601, sub-§8**, as enacted by PL 1983, c. 459, §7, is amended to read:

**8. Treatment.** "Treatment" means the prevention, amelioration or cure of a client's physical and mental disabilities or illness of a person receiving services.

**Sec. 8. 34-B MRSA §§5602 to 5604**, as enacted by PL 1983, c. 459, §7, are amended to read:

**§5602. Purpose**

It is the intent of the Legislature to guarantee individual dignity, liberty, pursuit of happiness and the protection of the civil and legal rights of mentally-retarded persons with mental retardation or autism and to articulate rights of mentally-retarded persons with mental retardation or autism, so that these rights may be exercised and protected.

**§5603. Entitlement**

Each mentally-retarded person with mental retardation or autism is entitled to the rights enjoyed by citizens of the State and of the United States, unless some of these rights have been suspended as the result of court guardianship proceedings.

**§5604. Protection**

The Legislature finds and declares that the rights of mentally-retarded persons with mental retardation or autism can be protected best under a system of care which services that operates according to the principles of normalization and full inclusion and that the state's State's system of care shall services must operate according to these principles with the goals of:

**1. Community-based services.** Continuing the development of community-based services which that provide reasonable alternatives to institutionalization in settings that are least restrictive to the client person receiving services; and

**2. Independence and productivity.** Providing habilitation, education and other training to mentally-retarded persons which with mental retardation or autism that will maximize their potential to lead independent and productive lives and which that will afford opportunities for outward mobility from institutions.

**Sec. 9. 34-B MRSA §5605**, as amended by PL 1987, c. 769, Pt. A, §129, is further amended to read:

**§5605. Rights and basic protections of a person with mental retardation or autism**

Mentally-retarded clients are A person with mental retardation or autism is entitled to the following rights and basic protections.

**1. Humane treatment.** Clients are A person with mental retardation or autism is entitled to dignity, privacy and humane care treatment.

**2. Practice of religion.** Clients are A person with mental retardation or autism is entitled to religious free-

dom and practice without any restriction or forced infringement on ~~a client's~~ that person's right to religious preference and practice.

**3. Communications.** ~~Clients are~~ A person with mental retardation or autism is entitled to private communications.

A. ~~Each client~~ A person with mental retardation or autism is entitled to receive, send and mail sealed, unopened correspondence. ~~No~~ A person who owns or is employed by a day facility or a residential facility may not delay, hold or censor any incoming or outgoing correspondence of any client person with mental retardation or autism, nor may ~~he~~ open any such correspondence be opened without the consent of the client person or ~~his~~ the person's legal guardian.

B. ~~Clients~~ A person with mental retardation or autism in ~~a residential facilities~~ are facility is entitled to reasonable opportunities for telephone communication.

C. ~~Clients are~~ A person with mental retardation or autism is entitled to an unrestricted right to visitations during reasonable hours, except that nothing in this provision may be construed to permit infringement upon ~~other clients'~~ others' rights to privacy.

**4. Work.** ~~Clients~~ A person with mental retardation or autism engaged in work programs ~~which~~ that require compliance with state and federal wage and hour laws are is entitled to fair compensation for labor in compliance with regulations of the United States Department of Labor.

**5. Vote.** ~~No client~~ A person with mental retardation or autism may not be denied the right to vote for reasons of mental illness, as provided in the Constitution of Maine, Article II, Section 1, unless under guardianship.

**6. Personal property.** ~~Each client~~ A person with mental retardation or autism is entitled to the possession and use of ~~his~~ that person's own clothing, personal effects and money, except that, when necessary to protect the client person or others from imminent injury, the chief administrator of a day facility or a residential facility may take temporary custody of clothing or personal effects, which ~~he~~ the administrator shall immediately return when the emergency ends.

**7. Nutrition.** ~~Each client~~ A person with mental retardation or autism in a residential facility is entitled to nutritious food in adequate quantities and meals may not be withheld for disciplinary reasons.

**8. Medical care.** ~~Each client~~ A person with mental retardation or autism is entitled to receive prompt

and appropriate medical and dental treatment and care for physical and mental ailments and for the prevention of any illness or disability, and medical treatment ~~shall~~ must be consistent with the accepted standards of medical practice in the community, unless the religion of the client person with mental retardation or autism so prohibits.

A. Medication may be administered only at the written order of a physician.

B. Medication may not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan or in unnecessary or excessive quantities.

C. Daily notation of medication received by each client person with mental retardation or autism in a residential facility ~~shall~~ must be kept in the client's records of the person with mental retardation or autism.

D. Periodically, but no less frequently than every 6 months, the drug regimen of each client person with mental retardation or autism in a residential facility ~~shall~~ must be reviewed by the attending physician or other appropriate monitoring body, consistent with appropriate standards of medical practice.

E. All prescriptions ~~shall~~ must have a termination date.

F. Pharmacy services at each residential facility operated by the department ~~shall~~ must be directed or supervised by a professionally competent pharmacist licensed according to the provisions of Title 32, chapter 41.

G. Prior to instituting a plan of experimental medical treatment or carrying out any surgical procedure, express and informed consent ~~shall~~ must be obtained from the client person with mental retardation or autism, unless the client person has been found to be legally incompetent, in which case the client's person's guardian may consent.

(1) Before making a treatment or surgical decision, the client ~~shall~~ person must be given information, including, but not limited to, the nature and consequences of the procedures, the risks, benefits and purposes of the procedures and the availability of alternate procedures.

(2) The client person or, if legally incompetent, ~~his~~ that person's guardian may withdraw ~~his~~ express and informed consent at any time, with or without cause, before treatment or surgery.

H. Notwithstanding the absence of express and informed consent, emergency medical care or treatment may be provided to any client person with mental retardation or autism who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency medical care or treatment would endanger the health of the client person.

I. Notwithstanding the absence of express and informed consent, emergency surgical procedures may be provided to any client person with mental retardation or autism who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency surgery would substantially endanger the health of the client person.

**9. Sterilization.** A client person with mental retardation or autism may not be sterilized, except in accordance with chapter 7.

**10. Social activity.** Each client A person with mental retardation or autism is entitled to suitable opportunities for behavioral and leisure time activities which that include social interaction.

**11. Physical exercise.** Each client A person with mental retardation or autism is entitled to opportunities for appropriate physical exercise, including the use of available indoor and outdoor facilities and equipment.

**12. Discipline.** Discipline of clients persons with mental retardation or autism is governed as follows.

A. The chief administrative officer of each facility shall prepare a written statement of policies and procedures for the control and discipline of clients; which persons receiving services that is directed to the goal of maximizing the growth and development of the clients persons receiving services.

(1) Clients Persons receiving services are entitled to participate, as appropriate, in the formulation of the policies and procedures.

(2) Copies of the statement of policies and procedures shall must be given to each client person receiving services and, if the client person has been adjudged incompetent, to his that person's parent or legal guardian.

(3) Copies of the statement of policies and procedures shall must be posted in each residential and day facility.

B. Corporal punishment or any form of inhumane discipline is not permitted.

C. Seclusion is not permitted.

~~D. The placement of a resident alone in a locked room for less than an hour is permitted, but:~~

~~(1) Is only permitted in emergencies to protect the client or others from imminent injury; and~~

~~(2) A staff person shall visually check a client so placed at 10-minute intervals throughout the duration of the placement.~~

**13. Behavior modification.** Behavior modification of clients persons receiving services is governed as follows.

A. ~~No client~~ A person receiving services may not be subjected to a treatment program to eliminate bizarre or unusual behavior without first being examined by a physician to rule out the possibility that such behaviors are the behavior is organically caused.

B. Treatment programs involving the use of noxious or painful stimuli may be used only to correct behavior more harmful to the client person receiving services than is the treatment program:

(1) On the recommendation of a physician or psychologist; and

(2) With the approval, following a case-by-case review, of the chief administrative officer of the residential facility and ~~a client an~~ advocate of the department.

**14. Physical restraints.** Clients Persons with mental retardation or autism are entitled to be free from physical restraints, which include totally enclosed cribs and barred enclosures, but physical restraints may be employed only in emergencies to protect the client person from imminent injury to himself that person or others.

A. Physical restraints may not be used as punishment, for the convenience of the staff or as a substitute for rehabilitative services.

B. Physical restraints may impose only the least possible restrictions consistent with their purpose and shall must be removed when the emergency ends.

C. Physical restraints may not cause physical injury to the client person receiving services and shall must be designed to allow the greatest possible comfort.

D. Mechanical supports used in normative situations to achieve proper body position and balance are not considered restraints, but mechanical sup-

ports ~~shall~~ must be prescriptively designed and applied under the supervision of a qualified professional with concern for principles of good body alignment, circulation and allowance for change of position.

E. Daily reports on the use of restraints ~~shall~~ must be made to the appropriate chief administrative officer of the facility.

(1) The reports ~~shall~~ must summarize all cases involving the use of restraints, the type of restraints used, the duration of usage and the reasons for the usage.

(2) A monthly summary of the reports ~~shall~~ must be relayed to the Office of Advocacy.

**15. Records.** All ~~client~~ records of persons receiving services ~~shall~~ must remain confidential as provided in section 1207.

A. The ~~client person with mental retardation or autism~~ or, if the ~~client person~~ is incompetent, a parent or guardian is entitled to have access to the records upon request.

B. The commissioner is entitled to have access to the records of a day facility or a residential facility if necessary to carry out the statutory functions of the commissioner's office.

**Sec. 10. 34-B MRSA §5606**, as enacted by PL 1983, c. 459, §7, is amended to read:

#### §5606. Violations

**1. Report and investigation.** Any alleged violation of ~~a client's~~ the rights shall of a person receiving services ~~must~~ be reported immediately to the Office of Advocacy of the department and to the Attorney General's office.

A. The Office of Advocacy shall conduct an investigation of each alleged violation pursuant to section 1205.

B. The Office of Advocacy shall submit a written report of the findings and results of the investigation to the chief administrative officer of the facility in which the ~~client's~~ rights of the person receiving services were allegedly violated and to the commissioner within 2 working days after the day of the occurrence or discovery of the alleged incident.

**2. Civil liability.** Any person who violates or abuses any rights or privileges of ~~clients~~ persons receiving services granted by this subchapter is liable for damages as determined by law.

A. Civil damages may be awarded for negligent or intentional violations of this subchapter.

B. Good-faith compliance with the provisions of this subchapter in connection with evaluation, admission, habilitation programming, education, treatment or discharge of a ~~client person receiving services~~ is a defense to a civil action under this subchapter.

**3. Prohibited acts; penalty; defense.** A person is guilty of violation of the rights of a ~~mentally-retarded client person with mental retardation or autism~~ who is receiving services if ~~he~~ that person intentionally violates or abuses any rights or privileges of ~~clients~~ persons receiving services granted by this subchapter.

A. Violation of the rights of a ~~mentally-retarded client person with mental retardation or autism~~ who is receiving services is a Class E crime.

B. Good-faith compliance with the provisions of this subchapter in connection with evaluation, admission, habilitation programming, education, treatment or discharge of a ~~client person receiving services~~ is a defense to prosecution under this subchapter.

**Sec. 11. 34-B MRSA §5607**, as amended by PL 1987, c. 769, Pt. A, §130, is further amended to read:

#### §5607. Notice of rights

The commissioner shall provide a written copy of this subchapter and of section 1207 to each ~~client person receiving services~~ and, if the ~~client person receiving services~~ has been adjudged incompetent, to the parent or guardian of the ~~client person receiving services~~.

**1. Prompt notification.** Each ~~client~~ person receiving services ~~must~~ be promptly informed in clear language of ~~the~~ that person's legal rights ~~of mentally retarded persons~~.

**2. Posting requirement.** A copy of this subchapter ~~shall~~ must be posted in each residential and day facility.

**Sec. 12. 34-B MRSA §5608**, as enacted by PL 1983, c. 459, §7, is amended to read:

#### §5608. Government

Upon request of a ~~client person receiving services~~, the chief administrative officer of a residential facility shall initiate and develop a program of ~~client~~ government to hear the views and represent the interests of all ~~clients served by persons receiving services~~ at the facility.



**1. Composition.** The ~~client~~ government ~~shall~~ of the persons receiving services must be composed of residents elected by other residents and staff advisors skilled in the administration of community organizations.

**2. Duties.** The ~~client~~ government ~~of the persons receiving services~~ shall work closely with the bureau and the Office of Advocacy to promote the interests and welfare of all residents in the facility.

**Sec. 13. 34-B MRSA §5609**, as amended by PL 1989, c. 328, is further amended to read:

**§5609. Habilitation and vocational rehabilitation services**

**1. Habilitation services.** The Department of Mental Health and Mental Retardation, through the Bureau of Mental Retardation, and the Department of Human Services, through the Bureau of Rehabilitation, shall provide, to the extent of the resources available, for those habilitation and vocational rehabilitation services, defined in Title 22, section 3054, subsection 8, and any other service, including, but not limited to, supported employment including work in rehabilitation facilities and work centers, as defined in Title 5, chapter 155, subchapter II; job coaching; transportation, recreational and leisure services; and respite or day programs designed in consultation with an interdisciplinary team, ~~as defined in section 5461, subsection 7~~, in order to make available to ~~clients persons receiving services, as defined in section 5461, subsection 2~~; those services that are otherwise not obtainable, in the following order of priority:

A. Those ~~clients persons receiving services who are~~ living at home or in unsubsidized foster care who are between the ages of 20 and 26 and are not receiving any day program; and

B. All other ~~clients persons receiving services who are~~ between the ages of 20 and 26 and are not receiving an appropriate day program.

~~C. All clients served under this program prior to their 26th birthday shall be allowed to continue to receive services through the voucher system established by subsection 2.~~

All persons receiving services who are served under this program prior to their 26th birthday must be allowed to continue to receive services through the voucher system established by subsection 2.

For purposes of this section, an interdisciplinary team ~~shall include~~ includes the client person receiving services and a member of the client's person's family or the client's guardian of the person receiving services.

**2. Payment for service.** The Bureau of Mental Retardation shall establish a voucher system to allow the interdisciplinary team to incorporate only those services ~~deemed~~ determined critical and otherwise unavailable

into a program, including work, habilitation and other services designated in subsection 1, when appropriate. The bureau shall establish a limit on the amount of transitional services available to ~~clients~~ persons receiving services eligible for services under this section.

**3. Rules.** The Bureau of Mental Retardation shall ~~promulgate~~ adopt rules in accordance with the Maine Administrative Procedure Act, ~~Title 5, chapter 375~~; to establish a transitional program under subsections 1 and 2.

See title page for effective date.

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## CHAPTER 327

### S.P. 214 - L.D. 685

#### An Act to Amend the Maine Human Rights Act to Include Provisions Concerning Employment Discrimination

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

**Sec. 1. 5 MRSA §4552**, as amended by PL 1991, c. 99, §1, is further amended to read:

**§4552. Policy**

To protect the public health, safety and welfare, it is declared to be the policy of this State to keep continually in review all practices infringing on the basic human right to a life with dignity, and the causes of these practices, so that corrective measures may, where possible, be promptly recommended and implemented, and to prevent discrimination in employment, housing or access to public accommodations on account of race, color, sex, physical or mental disability, religion, ancestry or national origin; and in employment, discrimination on account of age or because of the previous assertion of a claim or right under former Title 39 or Title 39-A and in housing because of familial status; and to prevent discrimination in the extension of credit on account of age, race, color, sex, marital status, religion, ancestry or national origin; and to prevent discrimination in education on account of sex or physical or mental disability.

**Sec. 2. 5 MRSA §4612, sub-§6** is enacted to read:

**6. Right to sue.** If within 180 days of a complaint being filed by the commission the commission has not filed a civil action in the case or has not entered into a conciliation agreement in the case, the complainant may request a right-to-sue letter, and, if a letter is given, the commission shall end its investigation.

**Sec. 3. 5 MRSA §4622, sub-§1, ¶¶A and B**, as enacted by PL 1981, c. 255, §4, are amended to read: