LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND SEVENTEENTH LEGISLATURE

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September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

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December 4, 1996 to March 27, 1997

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March 27, 1997 to June 20, 1997

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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

J.S. McCarthy Company
Augusta, Maine
1997

however, must be announced in meetings open to the public.

5. Confidentiality. Intake reports submitted to the boards are confidential. Information contained in intake reports or otherwise provided to the boards that is made confidential by law may not be disclosed in meetings of the boards open to the public or be otherwise disclosed except in accordance with the governing law.

6. Reporting. The department shall report on the progress of the community reparations boards to the joint standing committee of the Legislature having jurisdiction over criminal justice matters no later than January 1st of every year. The department shall make a final report on the effectiveness of community reparations boards to the joint standing committee of the Legislature having jurisdiction over criminal justice matters no later than March 1, 1999. Victims, the law enforcement community, prosecuting attorneys, defense attorneys and other parties that have been involved in community reparations boards may also address the committee at the time the department makes its final report.

7. Funding. Community reparations boards may not be established until federal funding or other special revenue is secured.

8. Repealed. This section is repealed May 1, 1999.

Sec. B-4. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1997-98	1998-99
CORRECTIONS, DEPARTMENT OF		
Administration - Corrections		
All Other	$500	$500
Provides allocations to authorize the expenditure of funds for community reparation boards in the event that outside funding becomes available.		

See title page for effective date.

CHAPTER 422

H.P. 1276 - L.D. 1806

An Act to Amend Maine's Involuntary Commitment Laws

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

Sec. 1. 17-A MRSA §1204, sub-§4 is enacted to read:

4. Before imposing any condition of psychiatric outpatient or inpatient treatment or mental health counseling, the court may request a report be submitted by an agent of the Department of Mental Health, Mental Retardation and Substance Abuse Services who has been designated pursuant to Title 34-B, section 1220 for the purpose of assessing the appropriateness of psychiatric treatment or mental health counseling for the individual and the availability of this treatment or counseling. Whether or not a report is requested, the court shall notify the designated agent of the Department of Mental Health, Mental Retardation and Substance Abuse Services when any conditions of probation are imposed that include psychiatric outpatient or inpatient treatment or mental health counseling. This notification must include the name and last known address of the individual placed on probation, the name and address of the attorney of record and the conditions of probation.

Sec. 2. 34-B MRSA §1207, sub-§6 is enacted to read:

6. Duty to provide information. Any person conducting an evaluation of a mental health client in a professional capacity, who has a clear and substantial reason to believe that the mental health client poses an imminent danger of inflicting serious physical harm on the evaluator or others, shall provide information regarding such danger or harm to any other person to whom that client's care or custody is being transferred. For purposes of this subsection, the term "evaluation" includes professionally recognized methods and procedures for the purpose of assessing and treating mental illness and includes, but is not limited to, interviews, observation, testing and assessment techniques conducted by a person licensed as a physician, psychologist, nurse, clinical social worker or clinical professional counselor.

Sec. 3. 34-B MRSA §1220 is enacted to read:

§1220. Mental health services to persons on probation

The department shall designate at least one individual within each of the 7 areas described in section 3607, subsection 3 to act as liaison to the District Courts and Superior Courts of the State and to the Department of Corrections in its administration of probation and parole services and the Intensive Supervision Program established pursuant to Title 17-A, section 1261.

1. Duties of liaison. A liaison has the following duties:

A. To provide reports in a timely fashion on behalf of the department in response to any requests made by a court pursuant to Title 17-A, section 1204, subsection 4 and to undertake or cause to be undertaken such inquires or evaluations as are necessary to complete the reports;

B. To obtain evaluations as may be required by this section from a person who is one of the following:

(1) A licensed psychiatrist;

(2) A licensed psychologist;

(3) A nurse certified by a national association of nurses as a psychiatric and mental health nurse or as a clinical specialist in adult psychiatric and mental health nursing;

(4) A social worker licensed as a licensed clinical social worker or a licensed master social worker; or

(5) A licensed clinical professional counselor; and

C. To receive any notice of imposition of a condition of probation given pursuant to Title 17-A, section 1204, subsection 4 and to assess or to obtain an assessment of the appropriateness and availability of the mental health services necessary for an individual to meet the conditions of probation imposed.

2. Mental health services inappropriate or unavailable. If, after completion of a report as required by subsection 1, paragraph A, the evaluator or the liaison is of the opinion, based upon profession judgment, that the mental health services necessary for an individual to meet the conditions of probation are inappropriate given the individual's clinical condition or that the mental health services are unavailable, then the liaison shall notify the court, the probation officer, the individual on probation and the individual's attorney, if known, that the mental health services are inappropriate or unavailable.

3. Mental health services appropriate and available. If, after completion of a report as required by subsection 1, paragraph A, the evaluator or the liaison is of the opinion, based upon professional judgment, that the mental health services necessary for an individual to meet the conditions of probation are appropriate given the individual's clinical condition and the evaluator or the liaison knows that the services are available, then the liaison shall assist the individual in obtaining the appropriate mental health services.

Sec. 4. 34-B MRSA §3801, sub-§1-B is enacted to read:

1-B. Least restrictive form of transportation. "Least restrictive form of transportation" means the vehicle used for transportation and any restraining devices that may be used during transportation that impose the least amount of restriction, taking into consideration the stigmatizing impact upon the individual being transported.

Sec. 5. 34-B MRSA §3861, as amended by PL 1997, c. 154, §1, is further amended to read:

§3861. Reception of involuntary patients

1. Nonstate mental health institution. The chief administrative officer of a nonstate mental health institution may receive for observation, diagnosis, care and treatment in the institution any person whose admission is applied for under any of the procedures in this subchapter. An admission may be made under the provisions of section 3863 only if the certifying examination conducted pursuant to section 3863, subsection 2 was completed no more than 2 days before the date of admission.

A. The institution, any person contracting with the institution and any of its employees when admitting, treating or discharging a patient under the provisions of sections 3863 and 3864 under a contract with the department, for purposes of civil liability, must be deemed to be a governmental entity or an employee of a governmental entity under the Maine Tort Claims Act, Title 14, chapter 741.

B. Patients with a diagnosis of mental illness or psychiatric disorder in nonstate mental health institutions that contract with the department under this subsection are entitled to the same rights and remedies as patients in state mental health institutes as conferred by the constitution, laws, regulations and rules of this State and of the United States.

C. Before contracting with and approving the admission of involuntary patients to a nonstate mental health institution, the department shall require the institution to:

(1) Comply with all applicable regulations;

(2) Demonstrate the ability of the institution to comply with judicial decrees as those decrees relate to services already being provided by the institution; and

(3) Coordinate and integrate care with other community-based services.

D. Beginning July 31, 1990, the capital, licensing, remodeling, training and recruitment costs associated with the start-up of beds designated for involuntary patients under this section must be reimbursed, within existing resources, of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

2. State mental health institute. The chief administrative officer of a state mental health institute:

A. May receive for observation, diagnosis, care and treatment in the hospital any person whose admission is applied for under section 3831 or 3863 if the certifying examination conducted pursuant to section 3863, subsection 2 was completed no more than 2 days before the date of admission; and

B. May receive for observation, diagnosis, care and treatment in the hospital any person whose admission is applied for under section 3864 or is ordered by a court.

Any business entity contracting with the department for psychiatric physician services or any person contracting with a state mental health institute or the department to provide services pertaining to the admission, treatment or discharge of patients under sections 3863 and 3864 within a state institute or any person contracting with a business entity to provide those services within a state institute is deemed to be a governmental entity or an employee of a governmental entity for purposes of civil liability under the Maine Tort Claims Act, Title 14, chapter 741, with respect to the admission, treatment or discharge of patients within a state institute under sections 3863 and 3864.

Sec. 6. 34-B MRSA §3862, sub-§1, as amended by PL 1995, c. 62, §1, is further amended to read:

1. Law enforcement officer's power. If a law enforcement officer has reasonable grounds to believe, based upon probable cause, that a person may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or to other persons, the law enforcement officer:

A. May take the person into protective custody; and

B. If the law enforcement officer does take the person into protective custody, shall deliver the person immediately for examination by an available licensed physician or licensed clinical psychologist, as provided in section 3863.

When, in formulating probable cause, the law enforcement officer relies upon information provided by a 3rd-party informant, the officer shall confirm that the informant has reason to believe, based upon the informant's recent personal observations of or conversations with a person, that the person may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or to other persons.

Sec. 7. 34-B MRSA §3862, sub-§4, as enacted by PL 1983, c. 459, §7, is amended to read:

4. Transportation costs. The costs of transportation under this section ~~shall~~ must be paid in the manner provided under section 3863. Any person transporting an individual to a hospital under the circumstances described in this section shall use the least restrictive form of transportation available that meets the security needs of the situation.

Sec. 8. 34-B MRSA §3863, sub-§2, ¶A, as enacted by PL 1983, c. 459, §7, is amended to read:

A. ~~He~~ The licensed physician or licensed clinical psychologist has examined the person on the date of the certificate~~, which date may not be more than 3 days before the date of admission to the hospital~~; and

Sec. 9. 34-B MRSA §3863, sub-§2-A, as amended by PL 1995, c. 143, §1, is further amended to read:

2-A. Custody agreement. A state, county or municipal law enforcement agency may meet with representatives of those public and private health practitioners and health care facilities that are willing and qualified to perform the certifying examination required by this section in order to attempt to work out a procedure for the custody of the person who is to be examined while that person is waiting for that examination. Any agreement must be written and signed by and filed with all participating parties. In the event of failure to work out an agreement that is satisfactory to all participating parties, the procedures of section 3862 and this section continue to apply.

As part of an agreement the law enforcement officer requesting certification may transfer protective custody of the person for whom the certification is requested to another law enforcement officer, a health officer if that officer agrees or the chief administrative officer of a public or private health practitioner or health facility or the chief administrative officer's designee. Any arrangement of this sort must be part of the written agreement between the law enforcement agency and the health practitioner or health care facility. In the event of a transfer, the law enforcement officer seeking the transfer shall provide the written application required by this section.

A person with mental illness may not be detained or confined in any jail or local correctional or detention facility, whether pursuant to the procedures described in section 3862, pursuant to a custody agreement, or under any other circumstances, unless that person is being lawfully detained in relation to or is serving a sentence for commission of a crime.

Sec. 10. 34-B MRSA §3863, sub-§4, ¶A, as enacted by PL 1983, c. 459, §7, is amended to read:

A. Upon endorsement of the application and certificate by the judge or justice, ~~any health officer,~~ law enforcement officer or other person designated by the judge or justice may take the person into custody and transport ~~him~~ that person to the hospital designated in the application. Transportation of an individual to a hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual.

Sec. 11. 34-B MRSA §3863, sub-§4, ¶C is enacted to read:

C. When a person who is under a sentence or lawful detention related to commission of a crime and who is incarcerated in a jail or local correctional or detention facility is admitted to a hospital under any of the procedures in this subchapter, the county where the incarceration originated shall pay all expenses incident to transportation of the person between the hospital and the jail or local correctional or detention facility.

Sec. 12. 34-B MRSA §3863, sub-§6, as enacted by PL 1983, c. 459, §7, is amended to read:

6. Notice. Upon admission of a person under this section, and after consultation with the person, the chief administrative officer of the hospital shall ~~mail notice of~~ notify, as soon as possible regarding the fact of admission ~~to~~, the person's:

A. ~~His guardian~~ Guardian, if known;

B. ~~His spouse~~ Spouse;

C. ~~His parent~~ Parent;

D. ~~His adult child~~ Adult child; or

E. One of next of kin or a friend, if none of the listed persons exists.

If the chief administrative officer has reason to believe that notice to any individual in paragraphs A to E would pose risk of harm to the person admitted, then notice may not be given to that individual.

Sec. 13. 34-B MRSA §3864, sub-§1, ¶¶B and C, as enacted by PL 1983, c. 459, §7, are amended to read:

B. The accompanying certificate of the physician or psychologist under section 3863, subsection 2; ~~and~~

C. The certificate of the physician or psychologist under section 3863, subsection 7~~,~~ that:

(1) ~~He~~ The physician or psychologist has examined the patient; and

(2) It is ~~his~~ the opinion of the physician or psychologist that the patient is a mentally ill person and, because of ~~his~~ that patient's illness, poses a likelihood of serious harm~~.~~ ;

Sec. 14. 34-B MRSA §3864, sub-§1, ¶¶D and E are enacted to read:

D. A written statement, signed by the chief administrative officer of the hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin have been notified of the patient's right to retain an attorney or to have an attorney appointed, of the patient's right to select or to have the patient's attorney select an independent examiner and regarding instructions on how to contact the District Court; and

E. A copy of the notice and instructions given to the patient.

Sec. 15. 34-B MRSA §3864, sub-§3, as enacted by PL 1983, c. 459, §7, is amended to read:

3. Notice of receipt of application. The giving of notice of receipt of application and date of hearing under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application and date of hearing:

(1) To be ~~given personally or by mail to the person within a reasonable time before the hearing, but not less than 3 days before the hearing~~ mailed within 2 days of filing to the person; and

(2) To be mailed to the person's guardian, if known, and to ~~his~~ the person's spouse, ~~his~~ parent or one of ~~his~~ the person's adult children or, if none of these persons exist or if none of ~~them~~ those persons can be located, to one of ~~his~~ the person's next of kin or a friend, except that if the chief administra-

tive officer has reason to believe that notice to any of these individuals would pose risk of harm to the person who is the subject of the application, notice to that individual may not be given.

B. A docket entry is sufficient evidence that notice under this subsection has been given.

Sec. 16. 34-B MRSA §3864, sub-§4, ¶A, as enacted by PL 1983, c. 459, §7, is amended to read:

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination was notified by the hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall ~~forthwith~~ cause the person to be examined by 2 examiners.

(1) Each examiner must be either a licensed physician or a licensed clinical psychologist.

(2) One of the examiners ~~shall~~ must be a physician or psychologist chosen by the person or by ~~his~~ that person's counsel, if the chosen physician or psychologist is reasonably available.

(3) Neither examiner appointed by the court may be the certifying examiner under section 3863, subsection 2 or 7.

Sec. 17. 34-B MRSA §3864, sub-§5, ¶B, as amended by PL 1995, c. 496, §4, is further amended to read:

B. The hearing must be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have harmful effect on the mental health of the person. If the setting is outside the hospital to which the patient is currently admitted, the ~~hospital~~ Department of Mental Health, Mental Retardation and Substance Abuse Services shall bear the responsibility and expense of transporting the patient to and from the hearing. If the patient is to be admitted to a hospital following the hearing, then the responsible hospital shall transport the patient to the admitting hospital. If the patient is to be released following the hearing, then the responsible hospital shall return the patient to the hospital or, at the patient's request, return the patient to the patient's place of residence.

Sec. 18. 34-B MRSA §3864, sub-§5, ¶F, as enacted by PL 1983, c. 459, §7, is amended to read:

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony, including expert psychiatric testimony, indicating the individual treatment plan to be followed by the hospital staff, if the person is committed under this section, and shall bear any expense for witnesses for this purpose.

Sec. 19. 34-B MRSA §3864, sub-§9, as enacted by PL 1983, c. 459, §7, is repealed and the following enacted in its place:

9. Transportation. Except for transportation expenses paid by the District Court pursuant to subsection 10, a continued involuntary hospitalization hearing that requires transportation of the patient to and from any hospital to a court that has committed the person must be provided at the expense of the Department of Mental Health, Mental Retardation and Substance Abuse Services. Transportation of an individual to a hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual and be in compliance with departmental regulations.

Sec. 20. 34-B MRSA §3867, as enacted by PL 1983, c. 459, §7, is amended to read:

§3867. Transfer from out-of-state institutions

1. Commissioner's authority. The commissioner may, upon request of a competent authority of the District of Columbia or of a state ~~which~~ that is not a member of the Interstate Compact on Mental Health, authorize the transfer of a mentally ill patient directly to a ~~state mental health institute~~ hospital in Maine, if:

A. The patient has resided in this State for a consecutive period of one year during the 3-year period immediately preceding commitment in the other state or the District of Columbia;

B. The patient is currently confined in a recognized institution for the care of the mentally ill as the result of proceedings considered legal by that state or by the District of Columbia;

C. A duly certified copy of the original commitment proceedings and a copy of the patient's case history is supplied;

D. The commissioner, after investigation, ~~deems~~ considers the transfer justifiable; and

E. All expenses of the transfer are borne by the agency requesting it.

2. Receipt of patient. When the commissioner has authorized a transfer under this section, the superintendent of the ~~state mental health institute~~ hospital designated by the commissioner shall receive

the patient as having been regularly committed to the mental health institute under section 3864.

Sec. 21. 34-B MRSA §3868, sub-§1, ¶A, as enacted by PL 1983, c. 459, §7, is amended to read:

A. ~~Whenever~~ Before a patient is transferred, the commissioner shall give written notice of the transfer to the patient's guardian, ~~his~~ the patient's parents or spouse or, if none of these persons exists or can be located, to ~~his~~ the patient's next of kin or friend, except that if the chief administrative officer of the hospital to which the patient is currently admitted has reason to believe that notice to any of these individuals would pose risk of harm to the person, then notice may not be given to that individual.

Sec. 22. 34-B MRSA §3870, as amended by PL 1987, c. 736, §54, is further amended to read:

§3870. Convalescent status

1. Authority. The chief administrative officer of a state mental health institute may release an improved patient on convalescent status when ~~he~~ the chief administrative officer believes that the release is in the best interest of the patient and that the patient does not pose a likelihood of serious harm. The chief administrative officer of a nonstate mental health institute may release an improved patient on convalescent status when the chief administrative officer believes that the release is in the best interest of the patient, the patient does not pose a likelihood of serious harm and, when releasing an involuntarily committed patient, the chief administrative officer has obtained the approval of the commissioner after submitting a plan for continued responsibility.

A. Release on convalescent status may include provisions for continuing responsibility to and by the ~~state mental health institute~~ hospital, including a plan of treatment on an outpatient or nonhospital basis.

B. Before release on convalescent status under this section, the chief administrative officer of a ~~state mental health institute~~ hospital shall make a good faith attempt to notify, by telephone, personal communication or letter, of the intent to release the patient on convalescent status and of the plan of treatment, if any:

(1) The parent or guardian of a minor patient;

(2) The legal guardian of an adult incompetent patient, if any is known; or

(3) The spouse or adult next of kin of an adult competent patient, if any is known, unless the patient requests in writing that the notice not be given.

If the chief administrative officer of the hospital to which the patient is currently admitted has reason to believe that notice to any of the individuals listed in this paragraph would pose risk of harm to the person, then notice may not be given to that individual.

C. The ~~state mental health institute~~ hospital is not liable when good faith attempts to notify the parents, spouse or guardian have failed.

D. Before releasing a patient on convalescent status, the chief administrative officer of the hospital shall advise the patient, orally and in writing, of the terms of the patient's convalescent status, the treatment available while the patient is on convalescent status and, if the patient is a voluntary patient, of the patient's right to request termination of the status and, if involuntarily committed, the means by which and conditions under which rehospitalization may occur.

2. Reexamination. Before a patient has spent a year on convalescent status, and at least once a year thereafter, the chief administrative officer of the ~~state mental health institute~~ hospital shall reexamine the facts relating to the hospitalization of the patient on convalescent status.

3. Discharge. Discharge from convalescent status is governed as follows.

A. If the chief administrative officer of the ~~state mental health institute~~ hospital determines that, in view of the condition of the patient, convalescent status is no longer necessary, ~~he~~ the chief administrative officer shall discharge the patient and make a report of the discharge to the commissioner.

B. The chief administrative officer shall terminate the convalescent status of a voluntary patient within 10 days after the day ~~he~~ the chief administrative officer receives from the patient a request for discharge from convalescent status.

4. Rehospitalization. Rehospitalization of patients under this section is governed as follows.

A. If, prior to discharge, there is reason to believe that it is in the best interest of an involuntarily committed patient on convalescent status to be rehospitalized, or if an involuntary committed patient on convalescent status poses a likelihood of serious harm the commissioner or the chief administrative officer of the ~~state mental health institute~~ hospital, with the approval of the com-

missioner, may issue an order for the immediate rehospitalization of the patient.

~~B. If the order is not voluntarily complied with, and if the order is endorsed by a District Court Judge or justice of the peace in the county in which the patient has his legal residence or is present, any health officer or police officer may take the patient into custody and transport him to:~~

~~(1) The state mental health institute, if the order is issued by the chief administrative officer of the state mental health institute; or~~

~~(2) A hospital designated by the commissioner, if the order is issued by the commissioner.~~

C. If the order is not voluntarily complied with, an involuntarily committed patient on convalescent leave may be returned to the hospital if the following conditions are met:

(1) An order is issued pursuant to paragraph A;

(2) The order is brought before a District Court Judge or justice of the peace; and

(3) Based upon clear evidence that return to the hospital is in the patient's best interest or that the patient poses a likelihood of serious harm, the District Court Judge or justice of the peace approves return to the hospital.

After approval by the District Court Judge or justice of the peace, a law enforcement officer may take the patient into custody and arrange for transportation of the patient in accordance with the provisions of section 3863, subsection 4.

This paragraph does not preclude the use of protective custody by law enforcement officers pursuant to section 3862.

5. Notice of change of status. Notice of the change of convalescent status of patients is governed as follows.

A. If the convalescent status of a patient in a ~~state mental health institute~~ hospital is to be changed, either because of a decision of the chief administrative officer of the ~~state mental health institute~~ hospital or because of a request made by a voluntary patient, the chief administrative officer of the ~~state mental health institute~~ hospital shall immediately make a good faith attempt to notify, by telephone, personal communication or letter, of the contemplated change:

(1) The parent or guardian of a minor patient;

(2) The guardian of an adult incompetent patient, if any is known; or

(3) The spouse or adult next of kin of an adult competent patient, unless the patient requests in writing that the notice not be given.

If the chief administrative officer of the hospital to which the patient is currently admitted has reason to believe that notice to any of the individuals listed in this paragraph would pose risk of harm to the person, then notice may not be given to that individual.

B. If the change in convalescent status is due to the request of a voluntary patient, the chief administrative officer of the ~~state mental health institute~~ hospital shall give the required notice within 10 days after the day ~~he~~ the chief administrative officer receives the request.

C. The ~~state mental health institute~~ hospital is not liable when good faith attempts to notify the parents, spouse or guardian have failed.

Sec. 23. 34-B MRSA §3871, as amended by PL 1995, c. 496, §§7 and 8, is further amended to read:

§3871. Discharge

1. Examination. The chief administrative officer of a ~~state mental health institute~~ hospital shall, as often as practicable, but no less often than every ~~12 months~~ 30 days, examine or cause to be examined every patient to determine ~~his~~ that patient's mental status and need for continuing hospitalization.

2. Conditions for discharge. The chief administrative officer of a ~~state mental health institute~~ hospital shall discharge, or cause to be discharged, any patient when:

A. Conditions justifying hospitalization no longer obtain;

B. The patient is transferred to another hospital for treatment for ~~his~~ that patient's mental or physical condition;

C. The patient is absent from the ~~state mental health institute~~ hospital unlawfully for a period of 90 days;

D. Notice is received that the patient has been admitted to another hospital, inside or outside the State, for treatment for ~~his~~ that patient's mental or physical condition; or

E. Although lawfully absent from the ~~state mental health institute~~ hospital, the patient is admitted to another hospital, inside or outside the State, for treatment of ~~his~~ that patient's mental or physical condition, except that, if the patient is directly admitted to another hospital and it is the opinion of the chief administrative officer of the ~~state mental health institute~~ hospital that the patient will directly reenter the ~~state mental health institute~~ hospital within the foreseeable future, the patient need not be discharged.

3. Discharge against medical advice. The chief administrative officer of a ~~state mental health institute~~ hospital may discharge, or cause to be discharged, any patient even though the patient is mentally ill and appropriately hospitalized in the ~~state mental health institute~~ hospital, if:

A. The patient and either the guardian, spouse or adult next of kin of the patient request ~~his~~ that patient's discharge; and

B. In the opinion of the chief administrative officer of the hospital, the patient does not pose a likelihood of serious harm due to ~~his~~ that patient's mental illness.

5. Notice. Notice of discharge is governed as follows.

A. When a patient is discharged under this section, the chief administrative officer of the hospital shall immediately make a good faith attempt to notify the following people, by telephone, personal communication or letter, that the discharge has taken or will take place:

(1) The parent or guardian of a minor patient;

(2) The guardian of an adult incompetent patient, if any is known; or

(3) The spouse or adult next of kin of an adult competent patient, if any is known, unless the patient requests in writing that the notice not be given or unless the patient was transferred from or will be returned to a state correctional facility.

If the chief administrative officer of the hospital to which the patient is currently admitted has reason to believe that notice to any of the individuals listed in this paragraph would pose a risk of harm to the person, then notice may not be given to that individual.

B. The hospital is not liable when good faith attempts to notify the parents, spouse or guardian have failed.

Sec. 24. 34-B MRSA §3872, as enacted by PL 1985, c. 615, is repealed.

See title page for effective date.

CHAPTER 423

S.P. 615 - L.D. 1814

An Act to Improve the Delivery of Mental Health Services in Maine

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

Sec. 1. 34-B MRSA §3608, first ¶, as enacted by PL 1995, c. 691, §7, is amended to read:

The department shall establish and oversee networks to participate with the area councils, as defined in section 3607, subsection 2, in the delivery of mental health services to children and adults under the authority of the department. A network consists of ~~persons and~~ organizations providing mental health services ~~under contract or grant from the department~~ funded by the General Fund and Medicaid in the corresponding area specified in section 3607, subsection 3. The local service networks must be established and operated in accordance with standards that are consistent with standards adopted by accredited health care organizations and other standards adopted by the department to establish and operate networks. Oversight must include, but is not limited to, establishing and overseeing protocols, quality assurance, writing and monitoring contracts for service, establishing outcome measures and ensuring that each network provides an integrated system of care. The department may adopt rules to carry out this section. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. This section may not be construed to supersede the authority of the Department of Human Services as the single state Medicaid agency under the Social Security Act, Title XII or to affect the professional standards and practices of nonnetwork providers.

Sec. 2. 34-B MRSA §3608, sub-§5 is enacted to read:

5. Data collection. The department shall collect data to assess the capacity of the local service networks, including, but not limited to, analyses of utilization of mental health services and the unmet needs of persons receiving publicly funded mental health services.

Sec. 3. 34-B MRSA §3610 is enacted to read:

§3610. Safety net services