

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
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SEPTEMBER 13, 2003

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

Penmor Lithographers
Lewiston, Maine
2003

participating local district employees to whom Title 5, section 17001, subsection 32, paragraph B applies.

Sec. 17. PL 2001, c. 699, §§9 and 10 are enacted to read:

Sec. 9. Interpretation and application; rulemaking. The provisions of this Act that establish the opportunity to retire from a position covered under the retirement system and to thereafter return to work in a position covered under the retirement system with no reduction of retirement benefits or limitation on compensation must be interpreted and applied in a manner that meets applicable requirements of federal law and regulation, including, but not limited to, the Internal Revenue Code and Internal Revenue Service regulations. The retirement system shall adopt rules for the interpretation and application of the provisions that reflect these requirements. Rules adopted under this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Sec. 10. Reporting requirements. Retirement system employers are required to identify and report to the retirement system, in the manner specified by the retirement system, each individual who is a retiree who becomes an employee of the employer. The employer shall report each such employee whenever and so long as an employee is the employer's employee. The employer shall inquire of individuals hired to ascertain whether an individual is a retiree and the individual shall disclose that. "Employer" includes the State, all school administrative units and all participating local districts. "Employee" means an already retired individual receiving a Maine State Retirement System retirement benefit, regardless of the retirement system plan retired under, who after retirement is employed by an employer as defined in this section. "Retire" means to receive a retirement benefit from the retirement system. "Retiree" means an individual who receives a retirement benefit from the retirement system under any of the retirement system's retirement plans.

See title page for effective date.

CHAPTER 388

H.P. 1085 - L.D. 1480

An Act To Change the Time Requirement for Mental Retardation Evaluations

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

Sec. 1. 34-B MRSA §5469, first ¶, as repealed and replaced by PL 1983, c. 580, §20, is amended to read:

Within ~~30~~ 90 days of the day of the application made under section 5467, the department shall obtain a report of the comprehensive evaluation made under section 5468, which ~~shall~~ must state specifically ~~in the report~~ whether or not the client is mentally retarded.

Sec. 2. Report. The Department of Behavioral and Developmental Services shall report to the Joint Standing Committee on Health and Human Services by January 30, 2004 regarding the length of time from application to completion of the comprehensive evaluation report for individuals who applied for mental retardation services during calendar year 2003. The department shall provide the committee with an accounting of the number of days between the date the application was made and the date the comprehensive evaluation report was completed for each application for mental retardation services received by the department during that period. The department shall also provide the committee with summary statistics, including the median number of days between application and report, for all applications for mental retardation services received in calendar year 2003 and separately for the periods before and after the effective date of this legislation.

See title page for effective date.

CHAPTER 389

H.P. 1166 - L.D. 1593

An Act To Amend Laws Relating to Development of Service Plans for Persons with Mental Retardation

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

Sec. 1. 34-B MRSA §5437, sub-§4, as enacted by PL 1985, c. 486, §2, is amended to read:

4. Disbursement not to be approved. ~~No A~~ A disbursement for client needs may not be approved for any service or activity not recommended by ~~interdisciplinary~~ primary a planning team or necessary to comply with regulations. ~~No A~~ A disbursement may not be made unless evidence is provided that the expense is not reimbursable by the Medicaid Program. It is the intent of the Legislature that the contingency fund established in this section be the funding source of last resort.

Sec. 2. 34-B MRSA §5461, sub-§7, as enacted by PL 1983, c. 459, §7, is repealed.

Sec. 3. 34-B MRSA §5461, sub-§§8-B and 8-C are enacted to read:

8-B. Personal planning process. "Personal planning process" means a process of planning with a client for the coordination and delivery of supportive and other services through the development of a personal plan or service plan. The type of plan, participants and agenda at the planning meeting must be selected by the client or guardian.

8-C. Planning team. "Planning team" means those persons, including at a minimum the client, the client's guardian and the client's individual support coordinator and others selected by the client or guardian to participate, who develop a personal plan or service plan. The planning team may include family, friends, service providers, correspondents, advocates and others.

Sec. 4. 34-B MRSA §5461, sub-§9, as enacted by PL 1983, c. 459, §7, is repealed.

Sec. 5. 34-B MRSA §5461, sub-§10-A, as enacted by PL 1983, c. 580, §13, is amended to read:

10-A. Service plan. "Service plan" means an annual written one type of plan resulting from the personal planning process for the delivery and coordination of specific services to a client when the following conditions exist:

A. The client or guardian has ~~waived the prescriptive program plan process~~ chosen this type of plan over a personal plan; or

B. ~~The prescriptive program plan process unnecessarily restricts the client's own ability to make decisions;~~

C. ~~Another type of formal written program plan exists; or~~

D. The client has either a single service need or routine service ~~coordination~~ needs.

Sec. 6. 34-B MRSA §5462, sub-§1, ¶B, as amended by PL 1983, c. 580, §15, is repealed and the following enacted in its place:

B. The development of a personal plan or service plan for the delivery and coordination of services to the person through a personal planning process.

Sec. 7. 34-B MRSA §5463, as enacted by PL 1983, c. 459, §7, is amended to read:

§5463. Notice

The commissioner shall provide the client, if ~~he~~ the client is competent; the client's next of kin or

guardian, if any exists; and the client's advocate with timely written notice in advance of procedures and actions to be taken with respect to the development, implementation and assessment of ~~prescriptive program~~ personal plans and service plans.

Sec. 8. 34-B MRSA §5465, sub-§2, ¶¶A and B, as enacted by PL 1983, c. 459, §7, are amended to read:

A. The membership, functions and procedures of the ~~interdisciplinary~~ planning teams;

B. The procedures to be used in developing ~~prescriptive programs~~ personal plans and service plans and service agreements;

Sec. 9. 34-B MRSA §5467, as amended by PL 1995, c. 560, Pt. K, §56, is further amended to read:

§5467. Application and preliminary procedures

1. Application. An application for mental retardation services, on a form provided by the commissioner, must be initiated at or referred to a regional office of the department. Except for referrals identifying a possible need for adult protective services, the department shall accept only those referrals to which the client or client's guardian has consented.

2. Preliminary procedures. Within 10 work days from the day of the department's receipt of the application and a permission for service form signed by the client or the client's guardian, the department shall:

A. ~~Observe~~ Determine when a visit to observe the client in ~~his~~ the client's current environment or other setting familiar and comfortable to the client will be appropriate and useful;

B. Obtain a brief family survey;

C. Make a preliminary ~~assessment~~ identification of the client's abilities and needs and of the relevant services presently available to the client; ~~and~~

D. Ensure the client's access to an advocate throughout the process of mental retardation services under sections 5467 to 5474;

E. Determine what information is needed to establish eligibility;

F. Provide services or referral for services to meet singular immediate needs for the client's health and safety; and

G. Begin to gather information for a service plan or a personal plan.

Sec. 10. 34-B MRSA §5468, first ¶, as enacted by PL 1983, c. 459, §7, is amended to read:

After completing the tasks specified in section 5467, subsection 2, the commissioner shall ~~forthwith~~ cause a comprehensive evaluation of the client, including a consideration of physical, emotional, social and cognitive factors, to be conducted if a recent comprehensive and informative evaluation is not already available to the department.

Sec. 11. 34-B MRSA §5469, sub-§2, ¶¶A and B, as enacted by PL 1983, c. 580, §20, are amended to read:

A. The department, through the regional office, shall determine the client's case management status and develop a ~~prescriptive program personal plan or service plan, or both;~~ and

B. ~~If a prescriptive program plan is to be developed, the~~ The department, through the ~~interdisciplinary~~ planning team, shall develop ~~and begin to implement a prescriptive program personal plan or service plan for the client within 60 days of the application made under section 5467 within 45 days of the date of the determination of eligibility. Implementation of the plan is governed by section 5471, subsection 4.~~

Sec. 12. 34-B MRSA §5469, sub-§3, as amended by PL 1995, c. 560, Pt. K, §57, is further amended to read:

3. Preschool child. If the report of the comprehensive evaluation concludes that a child, aged 0 to 5 years, is developmentally delayed and is in need of infant development services or other early intervention services:

A. The department, through the regional office, shall develop a ~~prescriptive program personal plan or service plan, or both;~~ and

B. If a ~~prescriptive program personal plan~~ is to be developed, the department, through the ~~interdisciplinary~~ planning team, shall develop and begin to implement a ~~prescriptive program personal plan~~ for the client within 60 days of the application made under section 5467.

Sec. 13. 34-B MRSA §5470, as amended by PL 1983, c. 580, §21, is repealed.

Sec. 14. 34-B MRSA §5470-A is enacted to read:

§5470-A. Personal planning process

1. Process. The personal planning process must:

A. Be understandable to the client and in plain language, and if the client is deaf or nonverbal, uses sign language or speaks another language, the process must include qualified interpreters;

B. Focus on the client's choice;

C. Reflect and be supportive of the client's goals and aspirations;

D. Be developed at the direction of the client and include people whom the client chooses to participate;

E. Be flexible enough to change as new opportunities arise;

F. Be reviewed according to a specified schedule and by a person designated for monitoring;

G. Include all of the needs and desires of the client without respect to whether those desires are reasonably achievable or the needs are presently capable of being addressed; and

H. Include a provision for ensuring the client's satisfaction with the quality of the plan and the supports that the client receives.

Sec. 15. 34-B MRSA §5471, as amended by PL 1995, c. 560, Pt. K, §58, is further amended to read:

§5471. Service agreements

1. Service agreement required. Each ~~prescriptive program personal plan or service plan~~ shall ~~must~~ be carried out pursuant to a written service agreement.

2. Signatures. Each service agreement ~~shall~~ must be signed and dated by at least:

A. The client, if ~~he~~ the client is able;

B. The client's guardian or next of kin, if that person exists and is available;

C. A client advocate, if the client has no guardian;

D. The individual ~~program plan support~~ coordinator of the ~~interdisciplinary planning~~ team ~~which that~~ developed the ~~individual program personal plan or service plan~~ for the client;

E. The regional director or designee of the appropriate regional office, if a client is being admitted to or discharged from a facility or if a client is under the supervision of the regional office;

F. The chief administrative officer of the facility or ~~his~~ the chief administrative officer's agent, if a client is being admitted to, treated in or discharged from a facility; and

G. The chief administrative officer, or ~~his~~ the chief administrative officer's agent, of other public or private agencies or groups ~~which that~~ agree to provide services to the client.

3. Contents. Each service ~~agreement shall~~ agreement must include at least the following information.

A. It ~~shall must~~ specify the respective responsibilities, where applicable, of the client, the family or guardian of the client, the regional office, the facility, and each public and private agency ~~which that~~ intends to provide services to the client.

B. It ~~shall must~~ identify by job classification or other description each individual who is responsible for carrying out each part of the ~~prescriptive program~~ service plan or personal plan.

~~C. It shall specify the date on which the review required in subsection 5 shall occur.~~

4. Implementation of service plan or personal plan. Implementation of a ~~prescriptive program~~ service plan or personal plan is governed as follows.

A. No part of a ~~prescriptive program~~ service plan or personal plan may be implemented until each person required to sign the service agreement under subsection 2 has signed it, except that if a client is to be admitted to a facility, the service agreement need not be completed until 5 days after the date of admission.

B. Any existing ~~prescriptive program~~ service plan or personal plan is considered to be in effect until all persons required to sign under subsection 2 have signed the new service agreement.

~~C. No prescriptive program~~ A service plan or personal plan may ~~not~~ be in effect longer than one year and 2 weeks from the day on which the last person signed the service agreement for the plan.

~~**5. Review.** At least 30 days prior to the termination of a service agreement, an interdisciplinary team shall meet to assess the present prescriptive program plan and, if further services are recommended, to prepare a new plan.~~

6. Amendment. Any major changes in a client's ~~prescriptive program~~ service plan or personal plan may occur only after the service agreement has been

amended and signed by the persons specified in subsection 2.

Sec. 16. 34-A MRSA §5473, sub-§1, as amended by PL 1995, c. 560, Pt. K, §59, is further amended to read:

1. Respite care. Respite care may be provided to any client by a facility without full compliance with the procedures for admission by judicial certification under section 5475, if it is recommended by ~~an interdisciplinary~~ a planning team and a service agreement has been completed.

A. The purpose of the respite care is for evaluation, diagnosis or other clearly stated and broadly defined therapeutic purposes of the client or ~~his~~ the client's family.

B. Respite care may be provided, upon application to the regional office of the department by the client, guardian or parent, for not more than 21 days at a time and not more than 60 days during any 12-month period.

C. Continuing placement in the facility beyond the time periods stated in paragraph B, if indicated, may be accomplished only upon full compliance with procedures described by this chapter.

Sec. 17. 34-B MRSA §5473, sub-§2, ¶C, as enacted by PL 1983, c. 459, §7, is amended to read:

C. An initial ~~prescriptive program plan~~ personal planning process has been developed ~~according to section 5470.~~

Sec. 18. 34-B MRSA §5475, sub-§2, ¶C, as amended by PL 1983, c. 580, §22, is further amended to read:

C. Unless waived by a client and ~~his~~ the client's counsel, cause the client who is the subject of the proceeding to be examined by a professional.

(1) The client or ~~his~~ the client's counsel may choose the professional, if the professional ~~he~~ the client chooses is reasonably available.

(2) The professional may not be the same one who performed any part of the evaluation required under section 5468 or who participated in the development of the ~~prescriptive program~~ personal plan or service plan.

(3) Upon completion of the examination, the professional shall report to the court ~~his~~ the professional's opinion whether the client is mentally retarded and ~~therefore~~ requires

treatment, stating ~~his~~ the professional's reasons for ~~his~~ the professional's opinion;

Sec. 19. 34-B MRSA §5476, first ¶, as repealed and replaced by PL 1983, c. 580, §23, is amended to read:

Any client recommended for admission to a mental retardation facility ~~pursuant to section 5470~~ may be admitted by judicial commitment according to the following procedures.

Sec. 20. 34-B MRSA §5478, sub-§3, ¶A, as enacted by PL 1983, c. 580, §26, is amended to read:

A. A ~~prescriptive program~~ personal plan or service plan, as provided in ~~section 5470~~, has been agreed to by the ~~superintendent~~ chief administrative officer of the facility and the guardian;

Sec. 21. 34-B MRSA §5479, as enacted by PL 1983, c. 459, §7, is amended to read:

§5479. Post-admission responsibilities of the department

1. Provision of care and treatment. Post-admission care and treatment in a facility is governed as follows.

A. An initial service agreement for services to be received in the facility ~~shall~~ must be executed within 5 days of admission and ~~shall~~ must include a date, within 30 days of the client's admission to the facility, for a meeting of the persons who signed the agreement to assess and, if necessary, refine the client's ~~prescriptive program~~ personal plan or service plan.

B. While residing in the facility, the client ~~shall~~ must receive care, treatment and services only according to the procedures set forth in this section and in ~~sections 5470 and~~ section 5471.

2. Preparation for discharge. Preparation for a client's discharge from a facility is governed as follows.

A. When ~~an interdisciplinary~~ a planning team finds that the client may be ready for discharge and determines that temporary placement of the client in the community is required to assist in its evaluation of the client, the team may recommend that placement and shall develop a ~~prescriptive program~~ personal plan or service plan and service agreement ~~which shall~~ that must include provisions to ensure that:

(1) The client's money is adequately managed;

(2) The client has a legal representative, if required;

(3) The client receives needed services in the community; and

(4) The client's parent or guardian, if available, continues to be involved with the client.

B. The chief administrative officer of the facility may release the client pursuant to such a recommendation for community placement through the regional office.

3. Role of the regional office. The role of the regional office under this section is as follows.

A. The regional office ~~which that~~ will have responsibility for the client ~~shall~~ must be included in the preparation of the ~~prescriptive program~~ personal plan or service plan and service agreement specified in subsection 2.

B. The regional office ~~shall be~~ is responsible for implementing the client's release.

C. The regional office shall, along with the other members of the ~~interdisciplinary~~ planning team, evaluate the success of the client's reintegration into the community and shall assist in obtaining the client's discharge when assured that the provisions of the ~~prescriptive program~~ personal plan or service plan and service agreement have been met.

Sec. 22. 34-B MRSA §5480, sub-§2, as enacted by PL 1983, c. 459, §7, is amended to read:

2. Discharge. When a judicially certified client is prepared for discharge, under section 5479, subsection 2, ~~he shall~~ the client must be discharged if the regional office and the ~~interdisciplinary~~ planning team so recommend.

Sec. 23. 34-B MRSA §5609, sub-§1, as amended by PL 1995, c. 560, Pt. K, §60, is further amended to read:

1. Habilitation services. The department and the Department of Labor, through the Office of Rehabilitation Services, shall provide, to the extent of the resources available, for those habilitation and vocational rehabilitation services, defined in Title 26, section 1411-A, subsection 6, 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 ~~H~~ 2; job coaching; transportation, recreational and leisure services; and respite or day programs designed in consultation with ~~an interdisciplinary~~ a planning

team in order to make available to persons receiving services those services that are otherwise not obtainable, in the following order of priority:

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

B. All other persons receiving services who are between 20 and 26 years of age and are not receiving an appropriate day program.

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~~ a planning team includes the person receiving services and a member of the person's family or the guardian of the person receiving services.

Sec. 24. 34-B MRSA §5609, sub-§2, as amended by PL 1995, c. 560, Pt. K, §61, is further amended to read:

2. Payment for service. The department shall establish a voucher system to allow the ~~interdisciplinary~~ planning team to incorporate only those services determined critical and otherwise unavailable into a program, including work, habilitation and other services designated in subsection 1, when appropriate. The department shall establish a limit on the amount of transitional services available to persons receiving services eligible for services under this section.

Sec. 25. 34-B MRSA §6252, sub-§4, ¶A, as enacted by PL 1985, c. 503, §12, is amended to read:

A. When considered necessary by ~~an interdisciplinary~~ a planning team and with the consent of the director, persons may be admitted to the Elizabeth Levinson Center short-term evaluation program for a period of 40 program days, excluding weekends, without certification.

See title page for effective date.

CHAPTER 390

S.P. 530 - L.D. 1571

An Act Concerning Technical Changes to the Tax Laws

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

Sec. 1. 36 MRSA §191, sub-§2, ¶R, as amended by PL 2001, c. 714, Pt. CC, §2 and affected by §8, is further amended to read:

R. The disclosure to the Department of Human Services or the Department of Behavioral and Developmental Services of information relating to the administration and collection of the tax imposed by chapter 373 and chapter 375;

Sec. 2. 36 MRSA §191, sub-§2, ¶Y, as amended by PL 2001, c. 439, Pt. L, §7, is further amended to read:

Y. The disclosure by the State Tax Assessor, upon request in writing of any individual against whom an assessment has been made pursuant to section 177, subsection 1, of the following information:

- (1) Information regarding the underlying tax liability to the extent necessary to apprise the individual of the basis of the assessment;
- (2) The name of any other individual against whom an assessment has been made for the same underlying tax debt; and
- (3) The general nature of any steps taken by the assessor to collect the underlying tax debt from any other individuals and the amount collected; ~~and~~

Sec. 3. 36 MRSA §191, sub-§2, ¶Z, as enacted by PL 2001, c. 439, Pt. L, §8, is amended to read:

Z. The disclosure to the Treasurer of State when necessary for the performance of the Treasurer of State's official duties as administrator under Title 33, chapter 41 of the following information:

- (1) The current mailing address for a taxpayer for purposes of returning unclaimed or abandoned property to the rightful owner or heir; and
- (2) The names and mailing addresses of all Maine corporate income tax filers in an electronic medium prescribed by the State Tax Assessor;

Sec. 4. 36 MRSA §191, sub-§2, ¶¶AA and BB are enacted to read:

AA. The disclosure by employees of the bureau to designated representatives of the Finance Authority of Maine of information required to ensure that recipients of certain benefits under Title 20-A, chapter 417-E are eligible to receive such benefits; and