

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

FIRST REGULAR SESSION
December 6, 2006 to June 21, 2007

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 20, 2007

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

Penmor Lithographers
Lewiston, Maine
2007

B. Has been assessed as having an adaptive behavior score at a level of functional impairment as determined by the department.

See title page for effective date.

**CHAPTER 310
S.P. 371 - L.D. 1119**

An Act To Permit Mental Health Professionals To Disclose Risks to People Likely To Be Harmed by a Patient

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

Sec. 1. 34-B MRSA §1207, sub-§4, as enacted by PL 1983, c. 459, §7, is repealed.

Sec. 2. 34-B MRSA §1207, sub-§4-A is enacted to read:

4-A. Violation. Disclosure of client information in violation of this section is an offense under the licensing standards of the mental health professional committing the violation and must be promptly reported to the licensing board with jurisdiction for review, hearing and disciplinary action.

Sec. 3. 34-B MRSA §1207, sub-§5, as amended by PL 1995, c. 560, Pt. K, §19, is repealed.

Sec. 4. 34-B MRSA §1207, sub-§5-A is enacted to read:

5-A. Disclosure to family, caretakers. Under the following circumstances, a licensed mental health professional providing care to an adult client may disclose to a family member, to another relative, to a close personal friend or caretaker of the client or to anyone identified by the client, the client's health information that is directly relevant to the person's involvement with the client's care.

A. If a client with capacity to make health care decisions is either present or available prior to disclosure, the professional may disclose the information:

- (1) When the client gives oral or written consent;
- (2) When the client does not object in circumstances in which the client has the opportunity to object; or
- (3) When the professional may reasonably infer from the circumstances that the client does not object.

B. The professional may disclose the information if in the professional's judgment it is in the client's best interests to make the disclosure and the pro-

fessional determines either that the client lacks the capacity to make health care decisions or an emergency precludes the client from participating in the disclosure.

Sec. 5. 34-B MRSA §1207, sub-§6, as enacted by PL 1997, c. 422, §2, is repealed.

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

6-A. Disclosure of danger. A licensed mental health professional may disclose protected health information that the professional believes is necessary to avert a serious and imminent threat to health or safety when the disclosure is made in good faith to any person, including a target of the threat, who is reasonably able to prevent or minimize the threat.

See title page for effective date.

**CHAPTER 311
H.P. 922 - L.D. 1314**

An Act To Reimburse MaineCare in Certain Workers' Compensation Cases

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

Sec. 1. 22 MRSA §14, sub-§2-J is enacted to read:

2-J. Authority to contract for attorney services. The department is authorized to pursue rights under this section, including 3rd-party reimbursement of MaineCare costs in workers' compensation claims cases, through contracted attorney services. The department may adopt rules as necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 39-A MRSA §209, sub-§4 is enacted to read:

4. MaineCare reimbursement. MaineCare must be paid 100% of any expenses incurred for the treatment of an injury of an employee under this Title.

Sec. 3. 39-A MRSA §324, sub-§1, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

1. Order or decision. The employer or insurance carrier shall make compensation payments within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation. If the board enters a decision awarding compensation and an appeal is filed with the Law Court pursuant to section 322, payments may not be

suspended while the appeal is pending. The employer or insurer may recover from an employee payments made pending appeal to the Law Court if and to the extent that the Law Court has decided that the employee was not entitled to the compensation paid. The board has full jurisdiction to determine the amount of overpayment, if any, and the amount and schedule of repayment, if any. The board, in determining whether or not repayment should be made and the extent and schedule of repayment, shall consider the financial situation of the employee and the employee's family and may not order repayment that would work hardship or injustice. The board shall notify the Commissioner of Health and Human Services within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation identifying the employee who is to receive the compensation.

See title page for effective date.

CHAPTER 312

S.P. 506 - L.D. 1439

An Act To Enhance the Workers' Compensation Board Advocate Program

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

Sec. 1. 2 MRSA §6-E, sub-§2, as enacted by PL 1993, c. 145, §1, is amended to read:

2. General counsel. The salary of the general counsel is within salary range ~~86~~ 89.

Sec. 2. 39-A MRSA §153-A, sub-§3, as amended by PL 2003, c. 608, §11, is further amended to read:

3. Advocates and advocate attorneys. The executive director shall hire advocates and advocate attorneys under the authority of section 151, subsection 1-A, subject to the Civil Service Law, who must be qualified by experience and training.

A. The minimum qualifications for employment as an advocate must include at least the following:

- (1) A 6-year combination of appropriate experience, education and training in advocacy or dispute resolution;
- (2) Knowledge of administrative, adjudicatory or workers' compensation laws, rules and procedures;
- (3) Knowledge of legal documents, court procedures and rules of evidence; and

(4) Knowledge of medical and legal terminology and practices with respect to workers' compensation.

A-1. The minimum qualifications for employment as an advocate attorney must include at least admission to the practice of law in the State and current registration with the Board of Overseers of the Bar or eligibility for admission to practice law in the State, as long as the advocate attorney is admitted to practice law in the State and is registered with the Board of Overseers of the Bar within 12 months of the date the advocate attorney was hired.

B. The board shall ensure that advocates and advocate attorneys receive appropriate and ongoing education and training.

C. An advocate or advocate attorney may not represent before the board any insurer, self-insurer or 3rd-party administrator for a period of 2 years after terminating employment with the board.

Sec. 3. 39-A MRSA §153-A, sub-§4, as enacted by PL 1997, c. 486, §4, is amended to read:

4. Duties of advocates and advocate attorneys. Advocates and advocate attorneys have the following duties:

A. Assisting qualified employees in matters regarding workers' compensation claims, including negotiations;

B. Acting as an information resource to qualified employees on laws, decisions, rules, policies and procedures of the board;

C. Assisting and advocating on behalf of qualified employees to obtain appropriate rehabilitation, return to work and employment security services;

D. Meeting with or otherwise communicating with insurers, employers and health care and other authorized providers in order to assist qualified employees;

E. Assisting and advocating on behalf of qualified employees in any mediation or hearing proceeding under the jurisdiction of the board; and

F. Maintaining confidentiality of information and communications with respect to the assistance and representation provided to qualified employees.

Sec. 4. 39-A MRSA §153-A, sub-§5, as enacted by PL 1997, c. 486, §4, is amended to read:

5. Legal advice to advocates and advocate attorneys. The board's general counsel shall assign a staff attorney as necessary to advise advocates and, as necessary, advocate attorneys on the preparation of qualified employees' cases at the formal hearing stage.