

# 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.**

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2007**

sioner determines, with the assistance of the technical advisory group established under this section, that proven, reliable methods have been established.

The commissioner shall include in the annual work program a written statement providing the factual basis for the selection of the specific toxic substances to be monitored. Prior to implementation of the annual work program, the toxic substances to be monitored and, if not approved by the United States Environmental Protection Agency, the analytical test methods to be used must be approved by the technical advisory group by a 2/3 vote.

(4) When determining the intensity of the monitoring effort in the annual program, the commissioner shall consider:

- (a) The potential for annual variation in toxic contamination at a monitoring site;
- (b) The degree of homogeneity in the materials to be sampled; and
- (c) The uncertainty in observations due to possible systematic and analytic error.

(5) A technical advisory group composed of ~~11~~ 12 individuals is established. The commissioner shall appoint 2 members with scientific backgrounds in toxic contamination or monitoring, ecological assessment or public health from each of the following interests: business, municipal, conservation, public health and academic interests. The President of the Senate ~~and the Speaker of the House of Representatives~~ shall ~~jointly~~ appoint as a nonvoting member one ~~Legislator~~ Senator who serves on the joint standing committee of the Legislature having jurisdiction over natural ~~resource~~ resources matters. ~~The Speaker of the House shall appoint as a nonvoting member one member of the House of Representatives who serves on the joint standing committee of the Legislature having jurisdiction over marine resources matters.~~ The commissioner shall appoint the chair from among the voting members. A quorum of 6 voting members must be present for the conduct of business. Members do not receive compensation or reimbursement for expenses.

The members appointed by the commissioner serve for terms of 3 years except that, for the initial appointments, 2 members serve terms of one year, 4 members serve terms of 2 years and 4 members serve terms of 3 years. ~~The Legislator serves~~ Legislators serve for the duration of the Legislature to which the ~~Legislator is~~ Legislators are elected.

The group shall advise the commissioner during the development of the 5-year monitoring plan and the annual work programs.

**Sec. 2. 38 MRSA §420-B, sub-§4**, as amended by PL 1997, c. 179, §4, is further amended to read:

**4. Report.** No later than March 31st of each year, the commissioner shall report on the monitoring program to the joint standing ~~committee~~ committees of the Legislature having jurisdiction over natural ~~resource~~ resources matters and marine resources matters. This report must contain:

- A. At the start of each 5-year period, the 5-year monitoring plan;
- B. The annual work program for the past year and the current year;
- C. The commissioner's conclusions as to the levels of toxic contamination in the State's waters and fisheries;
- D. Any trends of increasing or decreasing levels of contaminants found; and
- E. The report on the results of the dioxin monitoring program required under section 420-A, subsection 4.

**Sec. 3. Continuance of program.** The Commissioner of Marine Resources and the Commissioner of Environmental Protection shall jointly prepare a report for submission to the Joint Standing Committee on Marine Resources and the Joint Standing Committee on Natural Resources no later than January 4, 2008. The report, which may include implementing legislation, must provide a detailed plan that ensures a reliable and consistent source of funding for the surface water ambient toxic monitoring program required under the Maine Revised Statutes, Title 38, section 420-B.

See title page for effective date.

**CHAPTER 446  
S.P. 350 - L.D. 1033**

**An Act Regarding Involuntary  
Treatment of Mental Health  
Patients**

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

**Sec. 1. 34-B MRSA §3003, sub-§2, ¶C**, as amended by PL 1985, c. 645, §4, is further amended to read:

- C. Standards for informed consent to treatment, including reasonable standards and procedural

mechanisms for determining when to treat a client absent his informed consent, consistent with applicable law; The rules must include the following process:

(1) The primary treating physician may request an order for involuntary treatment of a patient from a clinical review panel;

(2) A clinical review panel that consists of 2 or more professional staff who do not provide direct care to the patient is convened. At least one member of the panel must be a professional licensed to prescribe the medications relevant to the patient's care;

(3) The clinical review panel conducts the review and makes a decision on the request of the primary treating physician within 4 days of the request based on the criteria in section 3864, subsection 7-A, paragraph B;

(4) If the clinical review panel decides to approve the request for involuntary treatment, the panel enters an order of involuntary treatment in the patient's hospital records. An order for involuntary treatment may be made for as long as the period of commitment and pending any appeal; and

(5) At any hearings or meetings pertaining to involuntary treatment, the patient is offered the assistance of a lay advisor, rather than legal counsel;

**Sec. 2. 34-B MRSA §3864, sub-§1-A** is enacted to read:

**1-A. Involuntary treatment.** An application under this section may also include a request for an order of involuntary treatment under subsection 7-A.

**Sec. 3. 34-B MRSA §3864, sub-§4,** as amended by PL 2007, c. 319, §10, is further amended to read:

**4. Examination.** Examinations under this section are governed as follows.

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 psychiatric hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by 2 examiners.

(1) Each examiner must be either a licensed physician or a licensed clinical psychologist. When involuntary treatment under subsection 1-A has been requested, one of the examiners must be a professional who is licensed to prescribe medications relevant to the patient's care.

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

(2-A) If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, then the court shall choose that examiner as one of the 2 designated by the court.

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

B. The examination must be held at the psychiatric hospital or at any other suitable place not likely to have a harmful effect on the mental health of the person.

E. ~~The examiners shall report to the court as to whether the person is a mentally ill person within the meaning of section 3801, subsection 5 or is a person with severe and persistent mental illness, as appropriate to the proceedings for which the examination was performed: on:~~

(1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;

(2) When the establishment of a progressive treatment plan under section 3873 is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;

(3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection 4; and

(4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B.

~~F. The examiners shall report to the court as to whether the person presents a likelihood of serious harm within the meaning of section 3801, subsection 4.~~

**Sec. 4. 34-B MRSA §3864, sub-§7-A** is enacted to read:

**7-A. Involuntary treatment.** This subsection governs involuntary treatment.

A. The court may grant a psychiatric hospital power to implement a recommended treatment plan without a person's consent for up to 120 days or until the end of the commitment, whichever is sooner, if upon application the court finds:

(1) That the person lacks the capacity to make an informed decision regarding treatment;

- (2) That the person is unable or unwilling to comply with recommended treatment;
- (3) That the need for the treatment outweighs the risks and side effects; and
- (4) That the recommended treatment is the least intrusive appropriate treatment option.

Alternatively, the court may appoint a surrogate to make treatment decisions on the person's behalf for the duration of the commitment if the court is satisfied that the surrogate is suitable, willing and reasonably available to act in the person's best interests.

B. The need for involuntary treatment under paragraph A may be based on findings that include, but are not limited to, the following:

- (1) That a failure to treat the illness is likely to produce lasting or irreparable harm to the person; or
- (2) That without the recommended treatment the person's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the person to pose a likelihood of serious harm.

C. The hospital and person may agree to changes in the treatment plan during the time period of an order for involuntary treatment.

D. If a change in the treatment plan is needed and the hospital and patient do not agree on the change, the hospital shall apply to the court for a change in the treatment plan.

**Sec. 5. Commissioner to adopt rules.** The Commissioner of Health and Human Services shall adopt rules to implement the Maine Revised Statutes, Title 34-B, section 3003, subsection 2, paragraph C, subparagraphs 1 to 5 no later than January 1, 2008 for use beginning on that date. The rules must include amendment of Rule 14-198 Chapter 1: "Rights of Recipients of Mental Health Services." Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A and are not subject to the provisions of Title 34-B, section 3003, subsection 4.

**Sec. 6. Appropriations and allocations.** The following appropriations and allocations are made.

**JUDICIAL DEPARTMENT**

**Courts - Supreme, Superior, District and Administrative 0063**

Initiative: Provides funds for additional physician services related to certain involuntary treatment examinations.

GENERAL FUND	2007-08	2008-09
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All Other	\$40,000	\$40,000
GENERAL FUND TOTAL	\$40,000	\$40,000

**Sec. 7. Effective date.** Those sections of this Act that enact the Maine Revised Statutes, Title 34-B, section 3864, subsections 1-A and 7-A and amend section 3003, subsection 2, paragraph C and section 3864, subsection 4 take effect January 1, 2008.

See title page for effective date, unless otherwise indicated.

**CHAPTER 447**

**H.P. 347 - L.D. 431**

**An Act To Enable the Dirigo Health Program To Be Self-administered**

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

**Sec. 1. 5 MRSA §12004-G, sub-§14-D,** as enacted by PL 2003, c. 469, Pt. A, §3, is amended to read:

**14-D.**

Health Care	Board of <del>Directors</del> Trustees of Dirigo Health	\$100 per diem and expenses	24-A MRSA §6904
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**Sec. 2. 22 MRSA §3174-DD,** as amended by PL 2005, c. 400, Pt. C, §2, is further amended to read:

**§3174-DD. Dirigo health coverage**

The department may contract with one or more health insurance carriers or the Dirigo Health Self-administered Plan established pursuant to Title 24-A, section 6981 to purchase Dirigo Health Program coverage for MaineCare members who seek to enroll through their employers pursuant to Title 24-A, section 6910, subsection 4, paragraph B. A MaineCare member who enrolls in the Dirigo Health Program as a member of an employer group receives full MaineCare benefits through the Dirigo Health Program. The benefits are delivered through the employer-based health plan, subject to nominal cost sharing as permitted by 42 United States Code, Section 1396o(2003) and additional coverage provided under contract by the department.

**Sec. 3. 24-A MRSA §6903, sub-§1,** as enacted by PL 2003, c. 469, Pt. A, §8, is amended to read: