

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

Services shall adopt rules to ensure that prior to admission to a nursing facility a prospective resident or the family or guardian of a prospective resident is provided with information about the policy of the nursing facility regarding the use of restraints, including examples of the use of and alternatives to restraints in the nursing facility. The examples must include the use of bed side rails and other strategies to address falls from bed. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A; and be it further

Sec. 2. Report. Resolved: That on or before January 1, 2008, January 1, 2009 and January 1, 2010, the Department of Health and Human Services shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the use of bed side rails as restraints.

See title page for effective date.

CHAPTER 61

S.P. 112 - L.D. 339

Resolve, To Ensure Proper Levels of Care for the Elderly and the Disabled

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, certain disabled persons are living in inappropriate institutional settings, often at significant emotional costs to them and their families and at significant financial cost to the State; and

Whereas, the Legislature believes that suitable alternative living arrangements are available or can be made reasonably available within existing resources; and

Whereas, the Legislature believes that other individuals who could be maintained in their current living arrangements if appropriate supports and education were provided are unnecessarily transferred to more restrictive settings; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Assessment process. Resolved: That, within available resources, the Department of Health and Human Services shall establish an ongoing

process to assess the medically necessary physical, cognitive and behavioral needs of adult MaineCare members living in out-of-state facilities or living in state nursing or hospital facilities, including psychiatric hospitals and units, who could benefit from a less restrictive level of care but who have been unable to locate appropriate services because they have complex medical needs such as ventilator care or complex behavioral health needs; and be it further

Sec. 2. Planning for services. Resolved: That the Department of Health and Human Services shall plan for appropriate and medically necessary physical, cognitive and behavioral services within available resources, including residential and supportive services, so that individuals who are inappropriately placed, if they choose, may live in the least restrictive setting that meets their medical, physical, cognitive and behavioral needs. This planning must include a process for individualized planning that includes the hospital patient or nursing home resident, a guardian or other representative, representatives of the hospital or nursing facility, the assigned case manager and an appropriate representative of the Department of Health and Human Services; and be it further

Sec. 3. Positive behavioral support training. Resolved: That the Department of Health and Human Services shall work with interested parties to determine specific additions to the curriculum for positive behavioral support training for all long-term care settings as developed by the department and the Joint Advisory Committee on Select Services for Older Persons and to determine how this training can be delivered within available resources; and be it further

Sec. 4. Discussions among stakeholders. Resolved: That the Department of Health and Human Services shall facilitate discussions among the stakeholders with the following goals:

1. Creating useable procedures for transferring individuals between hospitals and nonhospital settings;
2. Developing an improved process for mutual clinical assistance and support when necessary; and
3. Reviewing and modifying, if necessary, the rules regarding the written notices provided to residents to ensure that they are adequately informed about the reasons for transfer, discharge or denial of admission or readmission; and be it further

Sec. 5. Process. Resolved: That the Department of Health and Human Services shall establish or collaborate with an appropriate working group that includes advocates and providers to ensure that the activities in sections 1 to 4 take place in a timely manner. The Department of Health and Human Services shall share with the working group data and information that is not personally identifiable collected through the planning process. The Department of

Health and Human Services shall complete the assessment and planning process for individuals who currently meet the criteria in section 1 no later than October 1, 2007; and be it further

Sec. 6. Report. Resolved: That, by November 1, 2007, the Department of Health and Human Services shall report to the Joint Standing Committee on Health and Human Services on the progress made to implement this resolve. This report must recount the activities to date and identify any needs to be addressed. The joint standing committee is authorized to submit legislation that it determines necessary to further the intent of this resolve to the Second Regular Session of the 123rd Legislature.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 6, 2007.

CHAPTER 62

H.P. 1238 - L.D. 1780

Resolve, To Convene a Working Group To Review Statutory Language and Propose Standards To Ensure the Use of Respectful Language

Sec. 1. Convene working group. Resolved: That the Maine Developmental Disabilities Council, referred to in this resolve as "the council," shall convene a working group to review the terminology that is currently contained in the Maine Revised Statutes to refer to persons with disabilities. The council may propose standards to be used prospectively by the Revisor of Statutes when preparing bills that enact or amend legislative language referring to persons with disabilities. In convening the working group, the council shall invite the participation of representatives of the Maine Disability Advocacy Coalition and other interested parties. In preparing its recommendations, the working group:

1. May identify terms that it recommends be designated for substitution and may recommend replacement terms;
2. Shall ensure that any proposal for terminology changes reflects a positive approach to persons with disabilities;
3. Shall include in any proposal language that ensures that terminology changes may not be implemented if the change would alter or render ambiguous the substantive meaning of any statutory unit;

4. Shall ensure that any proposed language changes are not in conflict with or prohibited by federal requirements; and

5. May recommend that each department, bureau and agency of State Government, when adopting or amending its rules and policies and when publishing or republishing its publications, incorporate the standards proposed; and be it further

Sec. 2. Report and recommendations. Resolved: That, by November 1, 2007, the council shall report to the Joint Standing Committee on Health and Human Services the findings and recommendations of the working group, including any necessary implementing legislation; and be it further

Sec. 3. Authority for legislation. Resolved: That, after receipt and review of the report and recommendations submitted pursuant to section 2, the Joint Standing Committee on Health and Human Services may submit legislation to the Second Regular Session of the 123rd Legislature.

See title page for effective date.

CHAPTER 63

H.P. 728 - L.D. 968

Resolve, Regarding Legislative Review of Portions of Chapter 587: In-stream Flow and Lake and Pond Water Levels, a Major Substantive Rule of the Department of Environmental Protection

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it