

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**September 27, 2011**

**SECOND REGULAR SESSION**  
**January 4, 2012 to May 31, 2012**

**THE EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**LAWS IS**  
**SEPTEMBER 28, 2011**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 30, 2012**

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

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**Augusta, Maine**  
**2012**

**Sec. 2. 34-B MRSA §3863, sub-§9** is enacted to read:

**9. Limitation.** Admission to a psychiatric hospital on an emergency basis under the provisions of this section is not commitment to a psychiatric hospital.

**Sec. 3. 34-B MRSA §3873-A, sub-§7, ¶B,** as enacted by PL 2009, c. 651, §29, is amended to read:

B. ~~Issue an order of emergency commitment~~ Endorse an application for admission to a psychiatric hospital under section 3863 conditioned on receiving a certificate from a medical practitioner that the patient has failed to comply with an essential requirement of the treatment plan; and

See title page for effective date.

**CHAPTER 542**

**S.P. 640 - L.D. 1845**

**An Act To Implement the Recommendations of the Department of Health and Human Services and the Maine Developmental Disabilities Council Regarding Respectful Language**

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

**Whereas,** treating a person with intellectual disabilities with respect, including in the language that is used in referring to the person, to the system of delivering services and to the services, offices and personnel of the Department of Health and Human Services, is important to the dignity of the person and should be accomplished at the earliest possible time; 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 enacted by the People of the State of Maine as follows:**

**PART A**

**Sec. A-1. 4 MRSA §152, sub-§4,** as corrected by RR 2001, c. 2, Pt. A, §2, is amended to read:

**4. Exclusive jurisdiction.** Original jurisdiction, not concurrent with that of the Superior Court, of men-

tal health commitment hearings under Title 34-B, chapter 3, subchapter 4, ~~mental retardation intellectual disability~~ certification hearings under Title 34-B, chapter 5, habitual truancy actions under Title 20-A, chapters 119 and 211 under which equitable relief may be granted and small claims actions under Title 14, chapter 738;

**Sec. A-2. 5 MRSA §1642, sub-§6,** as enacted by PL 1985, c. 96, is amended to read:

**6. Social service.** "Social service" means any children's, youth, adult or elderly service and alcoholism, community action, developmental disability, drug or substance abuse, home-heating assistance, juvenile, mental health, ~~mental retardation intellectual disability~~, older Americans, poverty, rehabilitation, transportation, weatherization or other social service that may be defined in the future and that is operated by the departments or the division utilizing state-administered funds, including related health and medical services and income supplementation programs.

**Sec. A-3. 5 MRSA §4553-A, sub-§1, ¶B,** as enacted by PL 2007, c. 385, §3, is amended to read:

B. Without regard to severity unless otherwise indicated: absent, artificial or replacement limbs, hands, feet or vital organs; alcoholism; amyotrophic lateral sclerosis; bipolar disorder; blindness or abnormal vision loss; cancer; cerebral palsy; chronic obstructive pulmonary disease; Crohn's disease; cystic fibrosis; deafness or abnormal hearing loss; diabetes; substantial disfigurement; epilepsy; heart disease; HIV or AIDS; kidney or renal diseases; lupus; major depressive disorder; mastectomy; ~~mental retardation intellectual disability~~; multiple sclerosis; muscular dystrophy; paralysis; Parkinson's disease; pervasive developmental disorders; rheumatoid arthritis; schizophrenia; and acquired brain injury;

**Sec. A-4. 5 MRSA §12004-I, sub-§66,** as amended by PL 2003, c. 417, §1 and affected by §4, is further amended to read:

**66.**

Mental Health and <del>Mental Retardation Intellectual Disability</del>	Maine Developmental Disabilities Council	Expenses Only	34-B MRSA §17001
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**Sec. A-5. 5 MRSA §12004-J, sub-§15,** as enacted by PL 2007, c. 356, §3 and affected by c. 695, Pt. D, §3, is amended to read:

15.

Mental Health and <del>Mental Retardation</del> <u>Intellectual Disability</u>	Maine Developmental Services Oversight and Advisory Board	Per diem for noncompensated members, as specified by board rule or policy, and expenses for all members of the board	34-B MRSA §1223
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**Sec. A-6. 5 MRSA §2005, sub-§6**, as amended by PL 2007, c. 116, §§3 and 4, is further amended to read:

**6. Contracts and licensing.** Through the director:

A. Administer all contracts with community service providers for the delivery of alcohol and drug abuse services;

A-1. Administer all contracts with community service providers for the delivery of gambling addiction counseling services; and

B. Establish operating and treatment standards and inspect and issue certificates of approval for approved treatment facilities, drug abuse treatment facilities or programs, including residential treatment centers, community-based service providers and facilities that are private nonmedical institutions pursuant to section 20024 and subchapter 5.

The commissioner may delegate contract and licensing duties under this subsection to the Department of Health and Human Services, the Department of Corrections or other divisions of the department as long as that delegation ensures that contracting for alcohol and other drug abuse services provided in community settings are consolidated within the Department of Health and Human Services, that contracting for alcohol and other drug abuse services delivered within correctional facilities are consolidated within the Department of Corrections and that contracting for alcohol and other drug abuse services delivered within mental health ~~and mental-retardation~~ facilities or as a component of programs serving persons with intellectual disabilities or autism are consolidated within the department.

The commissioner may not delegate contract and licensing duties if that delegation results in increased administrative costs.

The commissioner may not issue requests for proposals for existing contract services until the commissioner has adopted rules in accordance with the Maine Administrative Procedure Act to ensure that the reasons for which existing services are placed out for bid and the performance standards and manner in which compliance is evaluated are specified and that any

change in provider is accomplished in a manner that fully protects the consumer of services.

The commissioner shall establish a procedure to obtain assistance and advice from consumers of alcohol and other drug abuse services regarding the selection of contractors when requests for proposals are issued;

**Sec. A-7. 12 MRSA §10853, sub-§7, ¶A**, as repealed and replaced by PL 2005, c. 397, Pt. C, §10, is amended to read:

A. Clients of the Department of Health and Human Services who reside in licensed facilities for persons with ~~mental-retardation~~ intellectual disabilities or autism or licensed facilities for the treatment of mental illness;

**Sec. A-8. 15 MRSA §101-D, sub-§4**, as enacted by PL 2009, c. 268, §3, is amended to read:

**4. Commitment for observation.** The court may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of people with mental illness or ~~mental-retardation~~ in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, as set forth in this subsection.

A. If the State Forensic Service determines that observation of the defendant in an appropriate institution for the care of people with mental illness or ~~mental-retardation~~ in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism will materially enhance its ability to perform an evaluation ordered pursuant to subsection 1, 2, 3 or 9, the State Forensic Service shall so advise the court. The State Forensic Service may make this determination based upon consultation with the defendant's attorney and the attorney for the State and the court and upon such other information as it determines appropriate. In addition, the State Forensic Service may include such a determination in a report to the court that recommends further evaluation of the defendant.

B. Upon a determination by the State Forensic Service under paragraph A, a court having jurisdiction in a criminal case may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of people with mental illness or ~~mental-retardation~~ in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for observation for a period not to exceed 60 days. If the State Forensic Service requires additional time for observation, it shall communicate its request and the reasons for that request to the court and to counsel for the par-

ties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may extend the commitment for up to an additional 90 days. Unless the defendant objects, an order under this paragraph must authorize the institution or residential program where the defendant is placed by the Commissioner of Health and Human Services to provide treatment to the defendant. When further observation of the defendant is determined no longer necessary by the State Forensic Service, the commissioner shall report that determination to the court and the court shall terminate the commitment.

C. If the court has provided for remand to a correctional facility following the commitment under paragraph B, the correctional facility shall execute the remand order upon advice from the Commissioner of Health and Human Services that commitment is determined no longer necessary.

**Sec. A-9. 15 MRSA §101-D, sub-§5, ¶A**, as amended by PL 2011, c. 464, §1, is further amended to read:

A. Commit the defendant to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of people with mental illness or ~~mental retardation~~ in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for observation, care and treatment. At the end of 30 days or sooner, and again in the event of recommitment, at the end of 60 days and one year, the State Forensic Service shall forward a report to the Commissioner of Health and Human Services relative to the defendant's competence to stand trial and its reasons. The Commissioner of Health and Human Services shall without delay file the report with the court having jurisdiction of the case. The court shall without delay set a date for and hold a hearing on the question of the defendant's competence to stand trial and receive all relevant testimony bearing on the question. If the court determines that the defendant is not competent to stand trial, but there does exist a substantial probability that the defendant will be competent to stand trial in the foreseeable future, the court shall recommit the defendant to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of people with mental illness or ~~mental retardation~~ in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for observation, care and treatment. When a person who has been evaluated on behalf of the court by the State Forensic Service is committed into the custody of the Commissioner of Health and

Human Services under this paragraph, the court shall order that the State Forensic Service share any information that it has collected or generated with respect to the person with the institution or residential program in which the person is placed. If the defendant is charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, order the Commissioner of Health and Human Services to commence involuntary commitment proceedings pursuant to Title 34-B, chapter 3, subchapter 4 or chapter 5, subchapter 3. If the defendant is charged with offenses not listed in the previous sentence and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, notify the appropriate authorities who may institute civil commitment proceedings for the individual. If the defendant is subject to an undischarged term of imprisonment, the court shall order the defendant into execution of that sentence and the correctional facility to which the defendant must be transported shall execute the court's order; or

**Sec. A-10. 15 MRSA §103, first ¶**, as amended by PL 2009, c. 268, §4, is further amended to read:

When a court accepts a negotiated plea of not criminally responsible by reason of insanity or when a defendant is found not criminally responsible by reason of insanity by jury verdict or court finding, the judgment must so state. In those cases the court shall order the person committed to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of persons with mental illness or ~~mental retardation~~ in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for care and treatment. Upon placement in the appropriate institution or residential program and in the event of transfer from one institution or residential program to another of persons committed under this section, notice of the placement or transfer must be given by the commissioner to the committing court.

**Sec. A-11. 17-A MRSA §253, sub-§2, ¶J**, as amended by PL 2011, c. 423, §2, is further amended to read:

J. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes the other person as a person with ~~mental retardation~~ an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for ~~mental retardation~~ an intellectual disability or autism or is a person with ~~mental retardation~~ an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class C crime;

**Sec. A-12. 17-A MRSA §255-A, sub-§1, ¶¶Q and R**, as corrected by RR 2003, c. 2, §26, are amended to read:

Q. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with ~~mental retardation~~ an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for ~~mental retardation~~ an intellectual disability or autism or is a person with ~~mental retardation~~ an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class D crime;

R. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with ~~mental retardation~~ an intellectual disability or autism and the sexual contact includes penetration. It is an affirmative defense to prosecution under this paragraph that the actor receives services for ~~mental retardation~~ an intellectual disability or autism or is a person with ~~mental retardation~~ an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class C crime;

**Sec. A-13. 17-A MRSA §260, sub-§1, ¶I**, as amended by PL 2005, c. 450, §3, is further amended to read:

I. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with ~~mental retardation~~ an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for ~~mental retardation~~ an intellectual disability or autism or is a person with ~~mental retardation~~ an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class D crime;

**Sec. A-14. 18-A MRSA §5-601, sub-§(a)**, as enacted by PL 1979, c. 540, §1, is amended to read:

(a). In any case in which a guardian or conservator may be appointed by the court under this Article, the court may appoint a public guardian or conservator as provided in this Part for ~~persons who are mentally retarded and for~~ incapacitated persons as defined in section 5-101, ~~paragraph~~ subsection (1); who are in need of protective services.

**Sec. A-15. 18-A MRSA §5-601, sub-§(b)**, as amended by PL 2005, c. 397, Pt. A, §12, is further amended to read:

(b). The Department of Health and Human Services shall act as the public guardian or conservator for ~~persons with mental retardation and for other~~ incapacitated persons in need of protective services.

**Sec. A-16. 18-A MRSA §5-606**, as corrected by RR 2003, c. 2, §29 and amended by PL 2003, c. 689, Pt. B, §§6 and 7, is further amended to read:

**§5-606. Officials authorized to act as public guardian or conservator**

(a). ~~When the Department of Health and Human Services is appointed public guardian or conservator of a person with mental retardation, the authority of the public guardian or conservator must be exercised by the Commissioner of Health and Human Services and by any persons duly delegated by the commissioner to exercise such authority.~~

(b). When the Department of Health and Human Services is appointed public guardian or conservator of an incapacitated person, the authority of the public guardian or conservator ~~shall~~ must be exercised by the Commissioner of Health and Human Services and by any persons duly delegated by ~~him~~ the commissioner to exercise such authority.

(c). Persons duly delegated by the officials authorized to act under ~~subsections (a) and subsection (b)~~ may include a staff of competent social workers, or competent social workers assigned to the public guardian or conservator by the Department of Health and Human Services. In the event that the delegation is to an individual, such individual must be qualified therefor by reason of education or experience, or both, in administering to the needs of the individual or individuals over whom the individual is to exercise administrative or supervisory authority under the public guardian.

**Sec. A-17. 18-A MRSA §5-608**, as amended by PL 1995, c. 395, Pt. G, §6 and affected by §20, is repealed.

**Sec. A-18. 18-A MRSA §5-609**, as enacted by PL 1979, c. 540, §1, is amended to read:

**§5-609. No change in rights to services**

The appointment of a public guardian or conservator in no way enlarges or diminishes the ward's or protected person's right to services made available to all ~~mentally retarded or~~ incapacitated persons in the State except for the provision of guardianship or conservatorship services as provided under this Article.

**Sec. A-19. 18-A MRSA §5-613, sub-§(2)**, as amended by PL 1993, c. 410, Pt. CCC, §6 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

(2). Exception. The ~~Division of Mental Retardation or the~~ Department of Health and Human Services is not liable for the costs set out in subsection (1) if ~~the division or~~ the department can demonstrate that the allegedly incapacitated person has assets against which the costs may be assessed or that another more appropriate funding source is available and subject to the court's jurisdiction.

**Sec. A-20. 19-A MRSA §701, sub-§3**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

**3. Persons legally determined to be incapacitated under the law.** A person who ~~is impaired by reason of mental illness or mental retardation to the extent that that person lacks sufficient understanding or capacity to make, communicate or implement responsible decisions concerning that person's property or person is not capable of contracting~~ has been found to be an incapacitated person, as defined in Title 18-A, section 5-101, subsection (1), by a court of competent jurisdiction and for whom a guardian or limited guardian has been appointed may not contract marriage without the approval of the appointed guardian. For the purposes of this section: For persons under limited guardianship, this subsection applies only if the court has granted the specific power to contract for marriage to the guardian.

~~A. "Mental illness" means a psychiatric or other disease that substantially impairs a person's mental health; and~~

~~B. "Mental retardation" means a condition of significantly subaverage intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period.~~

**Sec. A-21. 20-A MRSA §7001, sub-§1-B, ¶B**, as enacted by PL 2005, c. 662, Pt. A, §15, is amended to read:

B. For children at least 3 years of age and under 20 years of age evaluated in accordance with the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1414, subsections (a) to (c) as measured by both standardized, norm-referenced diagnostic instruments and appropriate procedures with delays or impairments such that the children need special education:

(1) A child at least 3 years of age and under 6 years of age with a significant developmental delay, at the discretion of the intermediate educational unit or school administrative unit, as defined in rules adopted by the department, in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; adaptive development; or

(2) A child with at least one of the following:

(a) ~~Mental retardation~~ Intellectual disability;

(b) Hearing impairment, including deafness;

(c) Speech or language impairment;

(d) Visual impairment, including blindness;

(e) Serious emotional disturbance;

(f) Orthopedic impairment;

(g) Autism;

(h) Traumatic brain injury;

(i) Other health impairment;

(j) Specific learning disabilities;

(k) Deafness and blindness; and

(l) Multiple disabilities.

**Sec. A-22. 20-A MRSA §7258, sub-§§1-A and 1-B**, as enacted by PL 1997, c. 778, §1 and amended by PL 2001, c. 354, §3 and PL 2003, c. 689, Pt. B, §6, are further amended to read:

**1-A. Care manager.** Within 2 years before the date that a student with ~~mental retardation~~ an intellectual disability, serious emotional disturbance or other developmental disabilities will graduate or finish school, the Department of Health and Human Services, in consultation with the pupil evaluation team of the school administrative unit, shall designate a case manager to participate in transition planning for that student. The case manager shall convene an adult services transition team, ensure interagency coordination and access to adult services, serve as a single contact person for the student transitioning into the adult services and attend pupil evaluation team meetings or provide relevant information to the pupil evaluation team for transition planning purposes.

**1-B. Annual report.** Beginning January 1, 1999 and annually thereafter, the department, in conjunction with 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 and to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs regarding transition planning for the adult services system and the number of persons 16 years of age or older on waiting lists for services for persons with autism or ~~mental retardation~~ intellectual disabilities provided by or under the authority of the department and the Department of Health and Human Services.

**Sec. A-23. 22 MRSA §1-A, sub-§3** is enacted to read:

**3. Intermediate care facility for persons with intellectual disabilities.** "Intermediate care facility for persons with intellectual disabilities" has the same meaning as in Title 34-B, section 1001, subsection 4-B.

**Sec. A-24. 22 MRSA §42, sub-§1-A**, as amended by PL 1983, c. 284, §1, is further amended to read:

**1-A. Administration of medication.** The administration of medication in boarding care facilities, drug treatment centers, day care facilities, children's homes and nursery schools and group home intermediate care facilities for ~~the mentally retarded~~ persons with intellectual disabilities must be in accordance with rules established by the department. In other facilities licensed or approved by the department, excluding those facilities licensed under section 1811, other than group home intermediate care facilities for ~~the mentally retarded~~ persons with intellectual disabilities, the department may establish rules for the administration of medication as it ~~deems~~ considers necessary. In establishing rules for each type of facility, the department shall consider, among other factors, the general health of the persons likely to receive medication, the number of persons served by the facility and the number of persons employed at the facility who

might be involved in the administration of medication. Any rules for the administration of medication ~~shall~~ must be established in accordance with ~~the Maine Administrative Procedure Act~~, Title 5, chapter 375.

**Sec. A-25. 22 MRSA §802, sub-§4-A, ¶A**, as enacted by PL 2001, c. 185, §2, is amended to read:

A. "Designated health care facility" means a licensed nursing facility, residential care facility, intermediate care facility for ~~the mentally retarded~~ persons with intellectual disabilities, multi-level health care facility, hospital or home health agency.

**Sec. A-26. 22 MRSA §812, sub-§1, ¶G**, as amended by PL 2005, c. 383, §12, is further amended to read:

G. Undergoing a comprehensive medical assessment by the State Forensic Service. The court, in selecting the examination site, shall consider proximity to the court, availability of an examiner and the need to protect the public health. No person may be presented for examination under this subsection without arrangements for examination having first been made by the court, clerk of the court or the petitioner with the State Forensic Service. The opinion of the State Forensic Service must be reported to the court forthwith following the examination.

The court shall order the individual to be further examined by a psychiatrist, neurologist and any additional expert if, based on the report of the State Forensic Service, it appears that:

- (1) The individual suffers from a mental disease or defect that causes the individual to act in such a manner as to endanger others with risk of infection with a communicable disease; or
- (2) Further observation or examination is required.

If, based on the examinations, the department determines that admission to an appropriate institution for ~~the mentally ill~~ persons with mental illness or ~~mentally retarded~~ a residential program for persons with intellectual disabilities is necessary, it shall petition for involuntary hospitalization pursuant to Title 34-B, chapter 3. If the District Court orders the involuntary hospitalization of the individual pursuant to Title 34-B, chapter 3, the petition brought pursuant to section 811 must be dismissed without prejudice. If it is determined that admission to an appropriate institution for ~~the mentally ill~~ persons with mental illness or ~~the mentally retarded~~ a residential program for persons with intellectual disabilities is not necessary, the head of the institution where the examinations have taken place shall notify the commissioner or



the commissioner's designee, prior to discharging the respondent.

In no event may the period of examination pursuant to this subsection exceed 60 days without further order by the court, which may extend commitment for further observation or examination for an additional 60 days, provided that the court finds facts sufficient to show that the individual suffers from a mental disease or defect that causes the individual to act in such a manner as to endanger others with risk of infection with a communicable disease; and

**Sec. A-27. 22 MRSA §1714-A, sub-§1, ¶F,** as enacted by PL 1991, c. 9, Pt. G, §4, is amended to read:

F. "Nursing home" means any facility that meets the definition of section 1812-A, including an intermediate care facility for ~~the mentally retarded persons with intellectual disabilities.~~

**Sec. A-28. 22 MRSA §1812-B,** as amended by PL 1983, c. 284, §2, is further amended to read:

**§1812-B. Hospitals and nursing homes**

The administration of medication in facilities licensed under section 1811, except group home intermediate care facilities for ~~the mentally retarded persons with intellectual disabilities,~~ may be delegated to unlicensed personnel when such personnel have received appropriate training and instruction and the programs of training and instruction have been approved by the State Board of Nursing. The administration of medication in group home intermediate care facilities for ~~the mentally retarded persons with intellectual disabilities~~ may be performed by unlicensed personnel when these personnel have received appropriate training and instruction and the programs of training and instruction have been approved by the department. Delegation of the administration of medication ~~shall does~~ not require the personal presence of the delegating professional nurse at the place where this service is performed, unless that personal presence is necessary to assure that medications are safely administered. The board shall issue such rules concerning delegation as it ~~deems~~ considers necessary to insure the highest quality of health care to the patient. The department shall issue such rules as it ~~deems~~ considers necessary to insure the highest quality of health care to residents of group home intermediate care facilities for ~~the mentally retarded persons with intellectual disabilities.~~

**Sec. A-29. 22 MRSA §1826, sub-§2, ¶B,** as enacted by PL 1985, c. 291, §1, is amended to read:

B. Each contract or agreement ~~shall must~~ contain a complete copy of the department rules establishing residents' rights and ~~shall must~~ contain a written acknowledgement that the resident has been

informed of those rights. ~~In the case of a mentally retarded or otherwise incompetent individual, the written acknowledgement of those rights shall be made by a representative of the resident. If a resident is under full guardianship, there must be a written acknowledgement of the receipt of those rights by the guardian. If a resident is under limited guardianship, both the resident and the guardian must acknowledge receipt of the rights. All notices and information regarding rights must be written in language that is plain and understandable.~~ No provision in the contract or agreement may negate, limit or otherwise modify any provision of the residents' rights.

**Sec. A-30. 22 MRSA §2053, sub-§2-A,** as repealed and replaced by PL 1995, c. 179, §1, is amended to read:

**2-A. Community health or social service facility.** "Community health or social service facility" means a community-based facility that provides medical or medically related diagnostic or therapeutic services, mental health ~~or mental retardation~~ services, services for persons with intellectual disabilities or autism, substance abuse services or family counseling and domestic abuse intervention services; and is licensed by the State.

**Sec. A-31. 22 MRSA §3172-B, sub-§1,** as amended by PL 1981, c. 493, §2 and PL 1995, c. 560, Pt. K, §82 and affected by §83 and amended by PL 2001, c. 354, §3 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

**1. Fund.** All ~~moneys~~ money received by the department under section 3172 ~~which are that is~~ generated by services rendered at any of the mental health ~~and mental retardation~~ institutions operated by that department ~~shall must~~ be credited to the General Fund.

**Sec. A-32. 22 MRSA §3172-B, sub-§4,** as amended by PL 1979, c. 293, Pt. B, §1, is further amended to read:

**4. Budget.** Those mental health programs and ~~mental retardation~~ those programs providing services for persons with intellectual disabilities or autism receiving legislative approval for funding for fiscal year 1979 ~~shall must~~ be considered current services by the Bureau of the Budget.

**Sec. A-33. 22 MRSA §3174-I, sub-§2,** as amended by PL 1993, c. 410, Pt. FF, §12, is further amended to read:

**2. Assessment for mental illness, intellectual disability, autism or related conditions.** The department shall assess every applicant to a nursing facility to screen for ~~mental retardation and~~ mental illness, intellectual disability, autism or other related conditions in accordance with the ~~Federal Omnibus Budget Reconciliation Act of 1987, Public Law 100-~~

~~203, Section 4211 federal Nursing Home Reform Act, Public Law 100-203, Section 4211, 42 United States Code, Section 1396r.~~ Such assessments are intended to increase the probability that any individual who ~~is mentally retarded~~ has an intellectual disability, autism or other related condition or ~~mentally ill~~ a mental illness will receive active treatment for that individual's ~~mental~~ condition.

**Sec. A-34. 22 MRSA §3186, last ¶**, as enacted by PL 1987, c. 869, §1, is amended to read:

Principles of reimbursement established for intermediate care facilities for ~~the mentally retarded~~ shall persons with intellectual disabilities must be amended to implement the recommendations of the Advisory Committee on Staff Retention. ~~These amendments shall become effective on April 1, 1989.~~

**Sec. A-35. 22 MRSA §3187**, as amended by PL 2011, c. 380, Pt. XXX, §1, is further amended to read:

**§3187. Principles of reimbursement; rules**

The department shall meet annually with providers of community-based intermediate care facilities for ~~the mentally retarded~~ persons with intellectual disabilities to review current principles of reimbursement under the federal Social Security Act, Title XIX, 42 United States Code, Chapter 7; and discuss necessary and appropriate changes.

Principles of reimbursement established for intermediate care facilities for ~~the mentally retarded~~ persons with intellectual disabilities must ensure maximum flexibility enabling facilities to shift variable cost funds within accounts established pursuant to the principles. These principles may not set any artificial limits on specific variable cost accounts as long as facility totals are met.

Rules regarding principles of reimbursement for intermediate care facilities for ~~the mentally retarded~~ persons with intellectual disabilities adopted pursuant to section 3173 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted to establish an approval process for capital expenditures to renovate or construct intermediate care facilities for ~~the mentally retarded~~ persons with intellectual disabilities are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. A-36. 22 MRSA §3573, sub-§1, ¶B**, as enacted by PL 2003, c. 602, §1, is amended to read:

B. "Mental and physical impairments" ~~include~~ includes, but ~~are~~ is not limited to, the following conditions: ~~mental retardation~~ intellectual disability, autism, cerebral palsy, Asperger syndrome, mental illness, Prader-Willi syndrome and epilepsy.

**Sec. A-37. 22 MRSA §5104, sub-§5-A**, as enacted by PL 1989, c. 329, §9, is amended to read:

**5-A. Dependent adult.** "Dependent adult" means any adult who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, and who would be in danger if that care or support were withdrawn. ~~For the purpose of this Part only, the term "dependent adult" excludes any adult who is mentally retarded.~~

**Sec. A-38. 22 MRSA §5104, sub-§7-A**, as enacted by PL 1989, c. 329, §12, is amended to read:

**7-A. Incapacitated adult.** "Incapacitated adult" means any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that the adult lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent the adult cannot effectively manage or apply that individual's estate to necessary ends. ~~For the purpose of this Part only, the term "incapacitated adult" excludes any adult who is mentally retarded.~~

**Sec. A-39. 22 MRSA §5106, sub-§2, ¶E**, as enacted by PL 1989, c. 329, §16, is further amended to read:

E. Conducting a continuous evaluation of the impact, quality and value of facilities, programs and services, including their administrative adequacy and capacity. Activities operated by or with the assistance of the State and Federal Governments ~~shall~~ must be evaluated. Activities to be included, but to which the bureau ~~shall~~ is not be limited, are those relating to education, employment and vocational services, income, health, housing, transportation, community, social, rehabilitation, protective services and public guardianship or conservatorship for older people and incapacitated and dependent adults and programs such as the supplemental security income program, Medicare, Medicaid, property tax refunds and the setting of standards for the licensing of nursing, intermediate care and boarding homes. ~~Included shall be~~ are activities as authorized by this and so much of the several Acts and amendments to them enacted by the people of the State; and those authorized by United States Acts and amendments to them such as the:

- (1) Elderly Householders Tax and Rent Refund Act of 1971;
- (2) Priority Social Services Act of 1973;
- (3) Chapter 470 of the public laws of 1969 creating the State Housing Authority;
- (4) United States Social Security Act of 1935;
- (5) United States Housing Act of 1937;

- (6) United States Older Americans Act of 1965;
- (7) United States Age Discrimination Act of 1967;
- (8) Home Based Care Act of 1981;
- (9) Congregate Housing Act of 1979;
- (10) Adult Day Care Services Act of 1983;
- (11) Adult Day Care Licensing Act of 1987;
- (12) Adult Protective Services Act of 1981; ~~and~~
- (13) The Uniform Probate Code, Title 18-A;
- (14) The Americans with Disabilities Act of 1990;
- (15) The Developmental Disabilities Assistance and Bill of Rights Act of 2000; and
- (16) The ADA Amendments Act of 2008;

**Sec. A-40. 22 MRSA §5106, sub-§11-B**, as amended by PL 2003, c. 653, §21, is further amended to read:

**11-B. Adult protective services.** Administer a program of protective services as provided in chapter 958-A designed to protect incapacitated and dependent adults, ~~other than adults who are mentally retarded,~~ from abuse, neglect, exploitation and physical danger. The program is described in the Adult Protective Services Act;

**Sec. A-41. 22 MRSA §5304, sub-§1-A** is enacted to read:

**1-A. Adult developmental services.** "Adult developmental services" has the same meaning as in Title 34-B, section 1001, subsection 1-A.

**Sec. A-42. 22 MRSA §5310, sub-§9**, as enacted by PL 1973, c. 793, §12, is amended to read:

**9.** Carry on a continuing evaluation of the social services programs and activities affecting Maine's residents, to determine the needs and priorities for types of social services; the types of services available; the number, location and characteristics of people served by each type of service; the amount, type and source of resources supporting types of services, the administrative adequacy and capacity of social service agencies; and the quality and quantity of types of social services; as well as to determine the value and impact of programs operated by or administered with the assistance of the State and Federal Governments; including social services as authorized by this and the several Acts and amendments to them enacted by the People of the State of Maine; and those authorized by these United States Acts and amendments to them; the Social Security Act of 1935, the Economic Opportunity Act of 1965, and similar Acts. Such human ser-

vices to be included, but to which the bureau ~~shall~~ is not ~~be~~ limited, are those relating to education, employment and vocational services, income, health, housing, community, mental health, ~~mental retardation~~ adult developmental, social, transportation and rehabilitation services for people, except older people. Maintaining statistical information through use of uniform methods, which are reasonable, feasible and economically efficient, ~~shall~~ must be specified for use by public and private agencies, organizations and individuals assisted by state or federal funds pursuant to this Part;

**Sec. A-43. 22 MRSA §6110, 4th ¶**, as repealed and replaced by PL 1975, c. 523, §1, is amended to read:

Services for ~~the Mentally Retarded~~ Persons with Intellectual Disabilities or Autism;

**Sec. A-44. 22 MRSA §6111, sub-§4**, as amended by PL 1977, c. 317, §3, is further amended to read:

**4. Maximum state share of cost.** State funds appropriated for priority social services may be used to pay a portion of expenditures under each agreement for each type of social service in an amount not to exceed the maximum percentage for state funds of 100% of the total expenditures for each type of priority social service as specified below. One hundred percent funding ~~shall~~ must be available for not more than 2 years consecutively or in total. State funds appropriated for priority social services may be used to pay a portion of expenditures under each agreement for each type of social service in an amount not to exceed the maximum percentage for state funds of the total expenditures for each type of priority social service as specified below when programs have been funded for a total of 2 years, consecutively or in total. The maximum percentage of state funds of the total expenditures for each type of service ~~shall~~ may not exceed:

- 75% for homemaker service;
- 75% for developmental day care, including family day care;
- 75% for services for ~~the mentally retarded~~ persons with intellectual disabilities or autism;
- 75% for meals for older people;
- 75% for mental health services;
- 75% for transportation services;
- 75% for health and home care needs for the elderly.

**Sec. A-45. 22 MRSA §6111, sub-§5**, as amended by PL 1981, c. 608, §3, is further amended to read:

**5. Maximum use of nonstate resources.** State funds paying a portion only of expenditures for priority social services ~~shall be~~ are valid only when

"earned" or "matched" by expenditure of nonstate resources, which may be cash or in-kind. The expenditure of such resource ~~shall~~ **must** be in an amount at least equal to the minimum percentage for nonstate resources of the total expenditures for each type of priority social services as specified below. The minimum percentage for nonstate resources of the total expenditures for each type of service ~~shall be~~ **is**:

25% for homemaker service;

25% for developmental day care, including family day care;

25% for services for ~~the mentally retarded persons with intellectual disabilities~~ **persons with intellectual disabilities or autism**;

25% for meals for older people;

25% for mental health services;

25% for transportation services;

25% for health and home care needs for the elderly.

Nonstate resources authorized to qualify to earn or match state funds ~~shall~~ include private funds such as gifts, grants, fees for service or contributions; in-kind resources that are actual out-of-pocket expenditures; or actual loss of revenue related directly and essentially as an integral part of the operation of a priority social service; and public revenues such as municipal taxes, a municipal or county amount of federal revenue sharing funds, other appropriate federal resources and state revenue sharing funds and such other public resources as may be received by, generated by or available to a municipal or county government or other political subdivision or quasi-governmental bodies.

**Sec. A-46. 22 MRSA §7302, sub-§6**, as amended by PL 2001, c. 596, Pt. B, §10 and affected by §25, is further amended to read:

**6. Institutional settings.** "Institutional settings" means residential care facilities, licensed pursuant to chapter 1664; intermediate care and skilled nursing facilities and units and hospitals, licensed pursuant to chapter 405; and state institutions for individuals who ~~are mentally ill or mentally retarded or who have a mental illness or who have intellectual disabilities or autism or other related conditions.~~

**Sec. A-47. 22 MRSA §7942, sub-§7**, as amended by PL 2003, c. 634, §8, is further amended to read:

**7. State licensing rules.** "State licensing rules" refers to the department's rules governing the licensing and functioning of nursing facilities, intermediate care facilities for persons with ~~mental retardation~~ **intellectual disabilities** and assisted living programs or residential care facilities.

**Sec. A-48. 22 MRSA §8752, sub-§2**, as amended by PL 2009, c. 358, §1, is further amended to read:

**2. Health care facility.** "Health care facility" or "facility" means a state institution as defined under Title 34-B, chapter 1 or a health care facility licensed by the division, except that it does not include a facility licensed as a nursing facility or licensed under chapter 1664. "Health care facility" includes a general and specialty hospital, an ambulatory surgical facility, an end-stage renal disease facility and an intermediate care facility for persons with ~~mental retardation~~ **intellectual disabilities** or ~~other~~ **developmental disabilities**.

**Sec. A-49. 22-A MRSA §101, sub-§1-A** is enacted to read:

**1-A. Adult developmental services.** "~~Adult developmental services~~" **has the same meaning as in Title 34-B, section 1001, subsection 1-A.**

**Sec. A-50. 22-A MRSA §203, sub-§1, ¶C**, as enacted by PL 2003, c. 689, Pt. A, §1, is amended to read:

~~C. Mental retardation and developmental~~ **Developmental** disability services;

**Sec. A-51. 22-A MRSA §206, sub-§4**, as enacted by PL 2007, c. 539, Pt. N, §45, is amended to read:

**4. Grievance procedures.** The commissioner shall establish procedures for hearing grievances of clients who receive mental health services or ~~mental retardation~~ **adult developmental** services or of children who receive behavioral health services. The procedures must include the opportunity for a timely hearing before a state hearing examiner or an independent fair hearing examiner. The commissioner may contract for the services of the hearing examiner, who shall conduct adjudicatory proceedings pursuant to the Maine Administrative Procedure Act.

**Sec. A-52. 22-A MRSA §207, sub-§7**, as enacted by PL 2007, c. 539, Pt. N, §46, is amended to read:

**7. Contracts with health care servicing entities.** The commissioner may enter into contracts with health care servicing entities for the financing, management and oversight of the delivery of mental health, ~~mental retardation~~ **adult developmental** and substance abuse services to clients pursuant to a state or federally sponsored health program in which the department participates or that the department administers. For the purposes of this subsection, "health care servicing entity" means a partnership, association, corporation, limited liability company or other legal entity that enters into a contract with the State to provide or arrange for the provision of a defined set of health care services; to assume responsibility for some aspects of quality assurance, utilization review, provider credentialing and provider relations or other related network management functions; and to assume financial risk for provision of such services to clients through capitation re-

imbursement or other risk-sharing arrangements. "Health care servicing entity" does not include insurers or health maintenance organizations. In contracting with health care servicing entities, the commissioner:

A. Shall include in all contracts with the health care servicing entities standards, developed in consultation with the Superintendent of Insurance, to be met by the contracting entity in the areas of financial solvency, quality assurance, utilization review, network sufficiency, access to services, network performance, complaint and grievance procedures and records maintenance;

B. Prior to contracting with any health care servicing entity, must have in place a memorandum of understanding with the Superintendent of Insurance for the provision of technical assistance, which must provide for the sharing of information between the department and the superintendent and the analysis of that information by the superintendent as it relates to the fiscal integrity of the contracting entity;

C. May require periodic reporting by the health care servicing entity as to activities and operations of the entity, including the entity's activities undertaken pursuant to commercial contracts with licensed insurers and health maintenance organizations;

D. May share with the Superintendent of Insurance all documents filed by the health care servicing entity, including documents subject to confidential treatment if the information is treated with the same degree of confidentiality as is required of the department; and

E. May make all necessary rules for the administration of contracts with health care servicing entities. All rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. A-53. 30-A MRSA §1561, sub-§1, ¶E,** as enacted by PL 1995, c. 201, §1, is amended to read:

E. Is an inpatient at a state-funded mental health ~~or mental retardation~~ facility or is a resident at a state-funded facility for individuals with adult developmental disabilities;

**Sec. A-54. 30-A MRSA §4349-A, sub-§1, ¶C,** as amended by PL 2001, c. 613, §2, is further amended to read:

C. Areas other than those described in paragraph A or B for the following projects:

(1) A project certified to the Land and Water Resources Council established in Title 5, section 3331 by the head of the agency funding the project as necessary to remedy a threat to

public health or safety or to comply with environmental clean-up laws;

(2) A project related to a commercial or industrial activity that, due to its operational or physical characteristics, typically is located away from other development, such as an activity that relies on a particular natural resource for its operation;

(3) An airport, port or railroad or industry that must be proximate to an airport, a port or a railroad line or terminal;

(4) A pollution control facility;

(5) A project that maintains, expands or promotes a tourist or cultural facility that is required to be proximate to a specific historic, natural or cultural resource or a building or improvement that is related to and required to be proximate to land acquired for a park, conservation, open space or public access or to an agricultural, conservation or historic easement;

(6) A project located in a municipality that has none of the geographic areas described in paragraph A or B and that prior to January 1, 2000 formally requested but had not received from the office funds to assist with the preparation of a comprehensive plan or that received funds to assist with the preparation of a comprehensive plan within the previous 2 years. This exception expires for a municipality 2 years after such funds are received;

(7) A housing project serving the following: individuals with mental illness, ~~mental retardation~~, developmental disabilities, physical disabilities, brain injuries, substance abuse problems or a human immunodeficiency virus; homeless individuals; victims of domestic violence; foster children; or children or adults in the custody of the State. A nursing home is not considered a housing project under this paragraph; or

(8) A project certified to the Land and Water Resources Council established in Title 5, section 3331 by the head of the agency funding the project as having no feasible location within an area described in paragraph A or B if, by majority vote of all members, the Land and Water Resources Council finds that extraordinary circumstances or the unique needs of the agency require state funds for the project. The members of the Land and Water Resources Council may not delegate their authority under this subparagraph to the staffs of their member agencies.

**Sec. A-55. 30-A MRSA §4722, sub-§2, ¶C,** as amended by PL 1991, c. 511, Pt. B, §1 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

C. Any nursing home or related institution licensed or subject to license by the Department of Health and Human Services under Title 22, section 1817, except intermediate care facilities for ~~the mentally retarded persons with intellectual disabilities~~ and persons with related conditions or the construction, substantial rehabilitation or improvement of homeless shelter facilities that may be related to an institution licensed or subject to license by the Department of Health and Human Services under Title 22, section 1817.

**Sec. A-56. 32 MRSA §63-A, sub-§1,** as amended by PL 2007, c. 402, Pt. E, §1, is further amended to read:

**1. Membership.** The Nursing Home Administrators Licensing Board, as established by Title 5, section 12004-A, subsection 23, consists of 7 members appointed by the Governor. The members must be residents of this State. One member must be a registered nurse with not less than 5 years of active practice in nursing homes in the State. Two members must be public members as defined in Title 5, section 12004-A. Three members must be administrators of nursing homes with not less than 5 years of active experience in the State. One member must be an administrator of an intermediate care facility for ~~the mentally retarded persons with intellectual disabilities~~ with not less than 5 years of active practice in that capacity.

**Sec. A-57. 34-A MRSA §1001, sub-§1-B** is enacted to read:

**1-B. Adult developmental services.** "Adult developmental services" has the same meaning as in Title 34-B, section 1001, subsection 1-A.

**Sec. A-58. 34-A MRSA §1206, sub-§1, ¶D,** as enacted by PL 1983, c. 459, §6, is amended to read:

D. "Human service" means any alcoholism, children's community action, corrections, criminal justice, developmental disability, donated food, education, elderly, food stamp, income maintenance, health, juvenile, law enforcement, legal, medical care, mental health, ~~mental retardation~~ adult developmental, poverty, public assistance, rehabilitation, social, substance abuse, transportation, welfare or youth service operated by a community agency under an agreement financially supporting the service, wholly or in part, by funds authorized for expenditure for the department.

**Sec. A-59. 34-A MRSA §3031, sub-§2, ¶A,** as amended by PL 1995, c. 462, Pt. D, §6, is further amended to read:

A. A client is exempt from payment of medical and dental services fees and fees for prescriptions, medication or prosthetic devices when the client:

- (1) Receives treatment initiated by facility staff;
- (2) Is a juvenile;
- (3) Is pregnant;
- (4) Is ~~seriously mentally ill or developmentally disabled~~ a person with a serious mental illness or developmental disability. For the purposes of this paragraph, "~~seriously mentally ill~~" or "~~developmentally disabled~~" "a person with a serious mental illness or developmental disability" means a client who, as a result of a mental disorder or developmental disability, exhibits emotional or behavioral functioning that is so impaired as to interfere substantially with the client's capacity to remain in the general prison population without supportive treatment or services of a long-term or indefinite duration, as determined by the facility's psychiatrist or psychologist;
- (5) Is an inpatient at a state-funded mental health ~~or mental retardation~~ facility or is a resident at a state-funded facility for individuals with adult developmental disabilities;
- (6) Is undergoing follow-up treatment;
- (7) Receives emergency treatment as determined by the facility's medical or dental staff; or
- (8) Has less than \$15 in the client's facility account and did not receive additional money from any source for 6 months following the medical or dental service or provision of the prescription, medication or prosthetic device.

**Sec. A-60. 34-B MRSA §1001, sub-§§1-A and 4-B** are enacted to read:

**1-A. Adult developmental services.** "Adult developmental services" means any support or assistance provided, licensed or funded in whole or in part by the department pursuant to chapter 5 or 6 to an adult with an intellectual disability or autism.

**4-B. Intermediate care facility for persons with intellectual disabilities.** "Intermediate care facility for persons with intellectual disabilities" means an intermediate care facility for the mentally retarded as defined in Section 1905(d) of the federal Social Security Act, 42 United States Code, Section 1396d(d) and its implementing regulations.

**Sec. A-61. 34-B MRSA §1207, sub-§3, ¶A,** as enacted by PL 1983, c. 459, §7, is repealed and the following enacted in its place:

A. A facility or a provider that receives funds from the department to provide services for persons eligible for such services under this Title shall send information and records to the commissioner, if requested by the commissioner pursuant to the department's obligation to maintain the overall responsibility for the care and treatment of persons receiving mental health services funded in full or in part by the State.

**Sec. A-62. 34-B MRSA §1208, sub-§1, ¶D,** as enacted by PL 1983, c. 459, §7, is amended to read:

D. "Human service" means any alcoholism, children's community action, corrections, criminal justice, developmental disability, donated food, education, elderly, food stamp, income maintenance, health, juvenile, law enforcement, legal, medical care, mental health, ~~mental retardation~~ child and adult developmental, poverty, public assistance, rehabilitation, social, substance abuse, transportation, welfare or youth service operated by a community agency under an agreement financially supporting the service, wholly or in part, by funds authorized for expenditure by the department.

**Sec. A-63. 34-B MRSA §1208, sub-§1, ¶H,** as enacted by PL 2003, c. 673, Pt. SSS, §1, is amended to read:

H. "Service provider" means a community agency providing services for children with mental health needs, ~~mental retardation and intellectual disabilities~~ or autism.

**Sec. A-64. 34-B MRSA §1208, sub-§7,** as enacted by PL 1999, c. 401, Pt. SS, §1 and affected by §4, is amended to read:

**7. Community agency staff retention.** The commissioner shall, through contracts and service agreements with community agencies, provide funding to retain qualified direct-care workers employed by community ~~mental retardation~~ services providers agencies providing services for children and adults with intellectual disabilities or autism.

**Sec. A-65. 34-B MRSA §1218, sub-§2,** as amended by PL 1995, c. 560, Pt. K, §24, is further amended to read:

**2. Services for persons with intellectual disabilities or autism.** The department shall provide accommodations and services ensuring access for persons who are deaf or hard-of-hearing to ~~mental retardation~~ programs funded or licensed by the department providing services for persons who have intellectual disabilities or autism. These accommodations and services must include, but are not limited to, the following.

A. The department shall ensure the provision of appropriate assessments for clients who are deaf

or hard-of-hearing. Assessments must be performed by a person who is proficient in American Sign Language and must include an assessment of ~~mental retardation~~ intellectual disability or autism and an assessment of communication skills, including the capacity to communicate using American Sign Language. The department shall survey the client population to determine which clients are deaf or hard-of-hearing.

B. For purposes of treatment, the department shall ensure the provision of interpreter services by a person proficient in American Sign Language.

C. The department shall ensure that ~~mental retardation~~ staff providing direct services to persons who are deaf or hard-of-hearing have education and training in American Sign Language and deaf culture.

D. The department shall provide for the placement ~~in comprehensive community mental retardation facilities~~ of telecommunication devices for persons who are deaf or hard-of-hearing in any location that provides residential, employment or other community-based services for persons eligible under this Title.

E. The department shall ensure the provision of support and training for families with members ~~with mental retardation~~ who have an intellectual disability or autism who are deaf or hard-of-hearing.

F. The department shall establish therapeutic residence options for persons with ~~mental retardation~~ intellectual disabilities or autism who are deaf or hard-of-hearing and in need of a residence. The therapeutic residences must be operated in conjunction with existing rehabilitation, education, ~~mental retardation treatment and housing~~ and other community-based service resources. The therapeutic residences must be staffed by individuals trained in ~~mental retardation treatment~~ providing services for persons with intellectual disabilities and autism and proficient in American Sign Language. Therapeutic residence options must be flexible and allow for individual choice.

G. The department shall designate in each regional office one staff person who is responsible for the coordination of deaf services in that office. The department shall provide ongoing training to regional office staff with the goal of having at least one person in each regional office who is proficient in American Sign Language.

**Sec. A-66. 34-B MRSA §1223, sub-§§1 and 8,** as enacted by PL 2007, c. 356, §7 and affected by c. 695, Pt. D, §3, are amended to read:

**1. Composition.** The Maine Developmental Services Oversight and Advisory Board, as established by Title 5, section 12004-J, subsection 15 and referred to in this section as "the board," consists of 15 members appointed by the Governor from a list of nominees proposed by the board pursuant to procedures established in the rules of the board.

A. The board shall submit nominees to the Governor at least 90 days prior to the expected date of each vacancy.

B. In making nominations, the board shall endeavor to ensure adequate representation at all times from different service regions of the State and from interested stakeholder groups, including but not limited to:

(1) The protection and advocacy agency designated pursuant to Title 5, section 19502;

(2) A statewide coalition that works to support and facilitate the ability of local and statewide self-advocacy organizations to network with each other and with national organizations;

(3) A nonprofit organization that serves teens and young adults in the State with emotional and intellectual disabilities;

(4) A statewide coalition that works to support and facilitate the ability of local and statewide self-advocacy organizations to network with each other and with national organizations; and

(5) The Maine Developmental Disabilities Council.

C. In making the nominations and appointments, the board and the Governor shall endeavor to ensure that at least 8 of the members of the board are persons with ~~mental retardation~~ intellectual disabilities or autism or family members, guardians or allies of persons with ~~mental retardation~~ intellectual disabilities or autism who receive services funded by the Department of Health and Human Services. Of these members, at least 4 must be persons with ~~mental retardation~~ intellectual disabilities or autism, referred to in this section as "self-advocates."

Members of the board must include stakeholders involved in services and supports for persons with ~~mental retardation~~ intellectual disabilities or autism in the State and other individuals interested in issues affecting persons with ~~mental retardation~~ intellectual disabilities or autism. Employees of the Department of Health and Human Services may not be appointed as members of the board.

**8. Oversight and advisory functions.** The board shall:

A. Provide independent oversight over programs and services for adults with ~~mental retardation~~ intellectual disabilities or autism that are provided, authorized, funded or supported by the department or any other agency or department of State Government. The board shall focus on systemic concerns affecting the rights of persons with ~~mental retardation~~ intellectual disabilities or autism, including but not limited to issues surrounding health and safety, inclusion, identification of needs and desires of persons eligible for services by the department, the timely meeting of the identified needs and effective and efficient delivery of services and supports; and

B. Provide advice and systemic recommendations to the commissioner, the Governor and the Legislature regarding policies, priorities, budgets and legislation affecting the rights and interests of persons with ~~mental retardation~~ intellectual disabilities or autism.

**Sec. A-67. 34-B MRSA §1223, sub-§9, ¶¶A and D,** as enacted by PL 2007, c. 356, §7 and affected by c. 695, Pt. D, §3, are amended to read:

A. The board shall hold at least one hearing or other forum each year that is open to the public in order to gather information about the availability, accessibility and quality of services available to persons with ~~mental retardation~~ intellectual disabilities or autism and their families.

D. The board shall report at least annually to the Governor and the Legislature on its activities and recommendations regarding policies, priorities, budgets and legislation affecting the rights and interests of persons with ~~mental retardation~~ intellectual disabilities or autism. The board's annual report must include the board's assessment of its operations and progress in addressing the priorities established pursuant to paragraph C. The board's annual report must be made public and widely disseminated in a manner designed to inform interested stakeholders.

**Sec. A-68. 34-B MRSA §1223, sub-§10,** as enacted by PL 2007, c. 356, §7 and affected by c. 695, Pt. D, §3, is amended to read:

**10. Access to information.** The board is entitled to access to information from the department necessary to carry out its functions. Except as provided in paragraphs B, C, D and E, information provided pursuant to this subsection may not contain personally identifying information about a person with ~~mental retardation~~ intellectual disabilities or autism.

A. The department shall provide the board, on a schedule to be agreed upon between the board and the department, reports on case management, reportable events, adult protective and rights investigations, unmet needs, crisis services, quality as-



surance, quality improvement, budgets and other reports that contain data about or report on the delivery of services to or for the benefit of persons with ~~mental retardation~~ intellectual disabilities or autism, including reports developed by or on behalf of the department and reports prepared by others about the department.

B. The chief advocate and the manager of adult protective services in the Office of Adults with Cognitive and Physical Disability Services within the department, when requested by the board or pursuant to a written agreement with the board, shall release to the board information pertaining to alleged abuse, exploitation or neglect or alleged dehumanizing practice or violation of rights of a person with ~~mental retardation~~ intellectual disabilities or autism. The board shall maintain the confidentiality of information disclosed to it or discovered by it as required by section 1207.

C. The board may request and review reports of actions taken by an entity to which a referral is made under subsection 9, paragraph F. If these reports are likely to reveal personally identifying information, the board shall conduct reviews in executive session and shall take all actions necessary and appropriate to preserve the confidentiality of the information.

D. The board may examine confidential information in individual records with written permission of the person or that person's guardian. If the person or that person's guardian provides the board with written permission to examine confidential information, the board must maintain the confidentiality of the information as required by section 1207.

E. The board or the board's staff may receive and examine confidential information when otherwise authorized to do so by law, including but not limited to when serving on a committee established by the department for which access to such information is necessary to perform the function of the committee.

**Sec. A-69. 34-B MRSA §1402, sub-§1**, as amended by PL 1995, c. 560, Pt. K, §27, is further amended to read:

**1. Commissioner's duty.** In every state institution to which a person with mental illness or ~~mental retardation~~ an intellectual disability may be committed, the commissioner shall organize and administer the duties set forth in subsection 2.

**Sec. A-70. 34-B MRSA §1402, sub-§2, ¶C**, as amended by PL 1995, c. 560, Pt. K, §27, is further amended to read:

C. Acquire and disseminate knowledge of mental disease, ~~mental retardation~~ intellectual disabilities,

autism and allied other related conditions with a view to promoting a better understanding and the most enlightened public sentiment and policy in these matters, and in this work the department may cooperate with local authorities, schools and social agencies.

**Sec. A-71. 34-B MRSA §1407**, as enacted by PL 1983, c. 459, §7, is amended to read:

**§1407. Appointment of physician**

In every state institution to which a ~~mentally ill or mentally retarded~~ person with mental illness or a person with an intellectual disability or autism may be committed, the commissioner shall appoint a physician experienced in the care and treatment of such persons and the necessary assistants to the physician.

**Sec. A-72. 34-B MRSA §1408**, as enacted by PL 1983, c. 459, §7, is amended to read:

**§1408. Cooperation with state departments**

Whenever it is ~~deemed~~ determined advisable, the chief administrative officer of any institution providing services for the mentally ill or mentally retarded persons with mental illness, intellectual disabilities or autism may cooperate with state departments to examine upon request and recommend suitable treatment and supervision for:

**1. Mental illness, intellectual disability or autism.** Persons thought to ~~be mentally ill or mentally retarded~~ have a mental illness, an intellectual disability or autism; and

**2. Juvenile Court.** Children brought before any Juvenile Court.

**Sec. A-73. 34-B MRSA §1431, sub-§2**, as enacted by PL 1983, c. 459, §7, is amended to read:

**2. Requirements.** The chief administrative officer of any state institution, or a person designated by ~~him~~ the chief administrative officer, may place any person who has been hospitalized ~~as mentally ill or mentally retarded~~ based on a diagnosis of mental illness, intellectual disability or autism, except residents described in chapter 3, subchapter ~~IV~~ 4, ~~Article II~~ article 2, on indefinite convalescence status, if the officer or ~~his~~ the officer's designee determines that the residential facility in which the person will be residing is at least equivalent in the quality of living conditions to the state institution in which the person is hospitalized.

**Sec. A-74. 34-B MRSA §5001, sub-§1-B**, as enacted by PL 2007, c. 356, §8 and affected by §31, is amended to read:

**1-B. Correspondent.** "Correspondent" means a person designated by the Consumer Advisory Board or its successor to act as a next friend of a person with ~~mental retardation~~ an intellectual disability or autism.

**Sec. A-75. 34-B MRSA §5001, sub-§2,** as enacted by PL 1983, c. 459, §7, is amended to read:

**2. Incapacitated person.** "Incapacitated person" means any person who is impaired by reason of ~~mental retardation~~ intellectual disability or autism to the extent that ~~he~~ the person lacks sufficient understanding or capacity to make, communicate or implement reasonable personal decisions ~~concerning his person or property or decisions regarding the person's property.~~

**Sec. A-76. 34-B MRSA §5001, sub-§2-A,** as enacted by PL 2007, c. 356, §10 and affected by §31, is amended to read:

**2-A. Individual support coordinator.** "Individual support coordinator" means a regional staff member of the department with the responsibility for coordinating the personal planning and professional services for a person ~~with mental retardation or autism~~ eligible for adult developmental services under this Title.

**Sec. A-77. 34-B MRSA §5001, sub-§3,** as amended by PL 1989, c. 73, §3, is further amended to read:

**3. Intellectual disability.** "~~Mental retardation~~ Intellectual disability" means a condition of significantly subaverage intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period.

**Sec. A-78. 34-B MRSA §5001, sub-§3-A,** as enacted by PL 1989, c. 73, §4, is repealed.

**Sec. A-79. 34-B MRSA §5001, sub-§3-B,** as enacted by PL 2007, c. 356, §11 and affected by §31, is amended to read:

**3-B. Person.** "Person" means an adult with ~~mental retardation~~ an intellectual disability or autism.

**Sec. A-80. 34-B MRSA §5001, sub-§3-C,** as enacted by PL 2007, c. 356, §12 and affected by §31, is amended to read:

**3-C. Personal planning.** "Personal planning" means a process that assists and supports each person ~~with mental retardation~~ who has an intellectual disability or autism in creating a vision for how to live in and be a part of the community.

**Sec. A-81. 34-B MRSA §5001, sub-§3-D,** as enacted by PL 2007, c. 356, §13 and affected by §31, is amended to read:

**3-D. Personal planning team.** "Personal planning team" means the person with ~~mental retardation~~ an intellectual disability or autism, the person's guardian, if any, the person's individual support coordinator or case manager and other individuals chosen or identified by the person to participate in personal planning.

**Sec. A-82. 34-B MRSA §5002,** as enacted by PL 1983, c. 459, §7, is amended to read:

**§5002. Policy**

**1. Services.** It is the policy of the State to provide education, training and habilitative services to ~~mentally retarded~~ persons with intellectual disabilities or autism who need those services, except that nothing in this chapter may replace or limit the right of any ~~mentally retarded person with an intellectual disability or autism~~ mentally retarded person with an intellectual disability or autism to treatment by spiritual means alone, through prayer, if that treatment is requested by the person or by ~~his~~ the person's next of kin or guardian.

**2. Setting.** It is the policy of the State that the setting for the services described in subsection 1 ~~shall~~ must, consistent with adequate care and treatment:

A. Impose the fewest possible restrictions on the liberty of ~~mentally retarded~~ persons with intellectual disabilities or autism; and

B. Be as close as possible to the patterns and norms of the mainstream of society.

**Sec. A-83. 34-B MRSA §5003-A,** as enacted by PL 2007, c. 356, §16 and affected by §31, is amended to read:

**§5003-A. System of care for clients with intellectual disabilities or autism**

**1. System of care.** The Legislature declares that the system of care through which the State provides services to and programs for persons with ~~mental retardation~~ intellectual disabilities or autism must be designed to protect the integrity of the legal and human rights of these persons and to meet their needs consistent with the principles guiding delivery of services as set forth in section 5610.

**2. Responsibilities of the department.** To facilitate the development of a system that meets the needs of persons with ~~mental retardation~~ intellectual disabilities or autism, the commissioner shall:

A. Provide a mechanism for the identification, evaluation, treatment and reassessment of and the provision of services to persons with ~~mental retardation~~ intellectual disabilities or autism that is consistent with the principles guiding delivery of services, as set forth in section 5610, through appropriate personal planning offered to persons served by the department in accordance with section 5470-B;

B. Identify the needs and desires of persons with ~~mental retardation~~ intellectual disabilities or autism through appropriate personal planning and record any unmet needs of persons served or eligible for service by the department for development of budget requests to the Governor that are adequate to meet such needs;

C. Provide programs, insofar as resources permit, for appropriate services and supports to persons with ~~mental retardation~~ intellectual disabilities or autism regardless of age, severity of need or ability to pay;

D. Support the establishment of community services for persons eligible to receive services from the department by promoting access to professional services in the person's community. Such support may be provided directly or through contracts with qualified providers. For persons who have professional service needs identified through personal planning, the department shall monitor the provision of those services;

E. Eliminate the department's own duplicative and unnecessary administrative procedures and practices in the system of care for persons with ~~mental retardation~~ intellectual disabilities or autism, encourage other departments to do the same and clearly define areas of responsibility in order to use present resources economically;

F. Strive toward having a sufficient number of personnel who are qualified and experienced to provide treatment that is beneficial to persons with ~~mental retardation~~ intellectual disabilities or autism; and

G. Encourage other departments to provide to persons with ~~mental retardation~~ intellectual disabilities or autism those services that are required by law, and in particular:

(1) The commissioner shall work actively with the Commissioner of Education to ensure that persons with ~~mental retardation~~ intellectual disabilities or autism receive appropriate services upon being diagnosed with either disability regardless of the degree of ~~retardation or autism~~ functional limitation or accompanying disabilities ~~or handicaps~~;

(2) The commissioner shall advise other departments about standards and policies pertaining to administration, staff, quality of care, quality of treatment, health and safety of clients, rights of clients, community relations and licensing procedures and other areas that affect persons with ~~mental retardation~~ intellectual disabilities or autism residing in facilities licensed by the department; and

(3) The commissioner shall inform the joint standing committee of the Legislature having jurisdiction over human resources matters about areas where increased cooperation by other departments is necessary in order to improve the delivery of services to persons with ~~mental retardation~~ intellectual disabilities or autism.

**3. Plan.** The commissioner shall prepare a plan pursuant to this subsection.

A. The plan must indicate the most effective and efficient manner in which to implement services and programs for persons with ~~mental retardation~~ intellectual disabilities or autism while safeguarding and respecting the legal and human rights of these persons.

B. The plan must be prepared once every 2 years and must be submitted to the joint standing committee of the Legislature having jurisdiction over health and human services matters by no later than January 15th of every odd-numbered year.

C. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall study the plan and make recommendations to the Legislature with respect to funding improvements in programs and services to persons with ~~mental retardation~~ intellectual disabilities or autism.

D. The plan must describe the system of ~~mental retardation~~ intellectual disability and autism services in each of the ~~mental retardation~~ adult developmental service regions and statewide.

E. The plan must include both existing service resources and deficiencies in the system of services.

F. The plan must include an assessment of the roles and responsibilities of ~~mental retardation~~ intellectual disability and autism agencies, human service agencies, health agencies and involved state departments and suggest ways in which these departments and agencies can better cooperate to improve the service systems.

G. The plan must be made public within the State in such a manner as to facilitate public involvement.

H. The commissioner must ensure that the development of the plan includes the participation of community ~~mental retardation~~ intellectual disability and autism service providers, consumer and family groups and other interested persons or groups in annual statewide hearings, as well as informal meetings and work sessions.

I. The commissioner must consider community service needs, relate these identified needs to biennial budget requests and incorporate necessary service initiatives into a comprehensive planning document.

**4. General Fund account; Medicaid match; intellectual disability; autism.** The commissioner shall establish a General Fund account to provide the General Fund match for ~~mental retardation~~ intellectual disability or autism Medicaid eligible services. Any unencumbered balances of General Fund appropria-

tions remaining at the end of each fiscal year must be carried forward to be used for the same purposes.

**5. Medicaid savings.** Intermediate care facilities for persons with ~~mental retardation~~ intellectual disabilities or autism and providers of freestanding day habilitation programs shall submit payment to the department equal to 50% of any Medicaid savings due the State pursuant to the principles of reimbursement, as established under Title 22, sections 3186 and 3187, that are reported in any unaudited cost report for fiscal years ending June 30, 1995 and thereafter. Payment is due with the cost report. After audit, any amount submitted in excess of savings allocated to the facility or provider pursuant to the principles of reimbursement must be returned to the facility or provider. Notwithstanding requirements or conditions contained in the principles of reimbursement, any amount due the State after final audit in excess of savings paid on submission of a cost report must be paid to the State within 90 days following receipt of the department's final audit report.

**6. Required reporting by the department.** The department shall make available, on at least an annual basis, a report or reports regarding the services and support provided by the department to persons with ~~mental retardation~~ intellectual disabilities or autism.

A. The goal of the reporting under this subsection is to provide the public with information on outcome measures established by the department. These measures may include, but are not limited to, whether:

- (1) Persons served by the department are healthy and safe;
- (2) Needs of persons are being met;
- (3) People are included in their communities; and
- (4) The system of care under this section is efficient and effective.

B. At a minimum, the department's report or reports under this subsection must offer information on the following:

- (1) Unmet needs;
- (2) Reportable events;
- (3) Adult protective services;
- (4) Crisis services;
- (5) Persons' and families' satisfaction with services;
- (6) Case management ratios;
- (7) Evaluations of costs of services;
- (8) Grievances;

(9) Quality assurance and quality improvement efforts; and

(10) New initiatives.

C. A report under this subsection must be provided to the joint standing committee of the Legislature having jurisdiction over health and human services matters. The commissioner or the commissioner's designee shall appear in person before the committee and shall present the report. The report must be posted on the department's publicly accessible website and must be made easily available to persons served by the department, families, guardians, advocates, Legislators and the provider community.

**Sec. A-84. 34-B MRSA §5004**, as corrected by RR 2003, c. 2, §103, is amended to read:

**§5004. Sexual activity with recipient of services prohibited**

A person who owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services may not engage in a sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C, with another person or subject another person to sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D, if the other person, not the actor's spouse, is a person with ~~mental retardation~~ an intellectual disability or autism who receives therapeutic, residential or habilitative services from the organization, program or residence.

**Sec. A-85. 34-B MRSA §5005, sub-§1**, as enacted by PL 2007, c. 356, §17 and affected by §31, is amended to read:

**1. Establishment.** The Office of Advocacy, referred to in this section as "the office," is established within the department to provide the services described in subsection 3 to individuals with ~~mental retardation~~ intellectual disabilities or autism.

**Sec. A-86. 34-B MRSA §5005, sub-§2, ¶A**, as enacted by PL 2007, c. 356, §17 and affected by §31, is amended to read:

A. The chief advocate shall report administratively to the commissioner and advise and consult with and inform the commissioner on the issues described in this section. The chief advocate shall provide the commissioner with regular reports on the office's findings, conclusions and recommendations regarding individual and systemic violations of the rights of individuals with ~~mental retardation~~ intellectual disabilities or autism.

**Sec. A-87. 34-B MRSA §5005, sub-§3**, as enacted by PL 2007, c. 356, §17 and affected by §31, is amended to read:

**3. Duties.** The office, through the chief advocate and other advocates, shall:

A. Receive complaints made by or on behalf of individuals with ~~mental retardation~~ intellectual disabilities or autism and represent their interests in any matter pertaining to their rights and dignity;

B. Investigate the claims, grievances and allegations of violations of the rights of individuals with ~~mental retardation~~ intellectual disabilities or autism;

C. Intercede on behalf of individuals with ~~mental retardation~~ intellectual disabilities or autism with officials of any provider of service administered, licensed or funded by the department, except that the office may refuse to take action on any complaint that it considers to be trivial or moot or for which there is clearly another remedy available;

D. Assist individuals with ~~mental retardation~~ intellectual disabilities or autism in any hearing or grievance proceeding pertaining to their rights and dignity;

E. Refer individuals with ~~mental retardation~~ intellectual disabilities or autism to other agencies or entities and collaborate with those agencies or entities for the purpose of advocating for the rights and dignity of those individuals;

F. Act as an information source regarding the rights of all individuals with ~~mental retardation~~ intellectual disabilities or autism, keeping itself informed about all laws, administrative rules and institutional and other policies relating to the rights and dignity of those individuals and about relevant legal decisions and other developments related to the fields of mental health, ~~mental retardation~~ intellectual disabilities and autism, both in this State and in other parts of the country; and

G. Make and publish reports necessary to the performance of the duties described in this section. The chief advocate may report findings of the office to groups outside the department, such as legislative bodies, advisory committees, commissions, law enforcement agencies and the press, and may authorize the advocates in the office to so communicate. At least annually, the chief advocate shall report both in person and in writing to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the performance of the duties described in this section.

**Sec. A-88. 34-B MRSA §5005, sub-§4, ¶B,** as enacted by PL 2007, c. 356, §17 and affected by §31, is amended to read:

B. An advocate has concerns regarding the rights or dignity of a person with ~~mental retardation~~ an intellectual disability or autism.

**Sec. A-89. 34-B MRSA §5005, sub-§6, ¶A,** as enacted by PL 2007, c. 356, §17 and affected by §31, is amended to read:

A. Any request by or on behalf of an individual with ~~mental retardation~~ an intellectual disability or autism for action by the office and all written records or accounts related to the request are confidential as to the identity of the individual.

**Sec. A-90. 34-B MRSA §5005, sub-§7,** as enacted by PL 2007, c. 356, §17 and affected by §31, is amended to read:

**7. Protection for advocates.** Advocates may not be disciplined or sanctioned for any action taken pursuant to this section on behalf of individuals with ~~mental retardation~~ intellectual disabilities or autism.

**Sec. A-91. 34-B MRSA §5201, sub-§§2, 3 and 4,** as amended by PL 2007, c. 356, §18 and affected by §31, are further amended to read:

**2. Statewide system.** The planning, promotion, coordination and development of a complete and integrated statewide system of services for adults with ~~mental retardation~~ intellectual disabilities or autism;

**3. Liaison.** Serving as liaison, coordinator and consultant to the several state departments in order to develop the statewide system of services for adults with ~~mental retardation~~ intellectual disabilities or autism;

**4. Community-based services.** Ensuring that adults with ~~mental retardation~~ intellectual disabilities or autism residing in community residential facilities, including nursing homes, boarding homes, foster homes, group homes or halfway houses licensed by the Department of Health and Human Services, are provided, insofar as possible, with residential accommodations and access to habilitation services appropriate to their needs;

**Sec. A-92. 34-B MRSA §5201, sub-§§6 and 7,** as enacted by PL 2007, c. 356, §18 and affected by §31, are amended to read:

**6. Individual support coordinators.** Providing persons with ~~mental retardation~~ intellectual disabilities or autism who are eligible for MaineCare services with case management services.

A. Case management services as defined in rules may be provided by qualified staff employed by the department or a contracted agency.

B. Unless otherwise specified in personal planning:

(1) Case managers shall maintain at least monthly contact with each person in order to

ensure that the quality and availability of services and consumer satisfaction are maintained at a high level; and

(2) Visits to the person's home must occur at least twice a year.

C. The department shall ensure that case managers maintain adequate written and electronic records to permit monitoring and accountability.

D. The department shall provide sufficient numbers of case managers and supervisors to fulfill the duties specified in this subsection and shall maintain an overall ratio of one case manager to every 35 people in each region. The ratio must be calculated separately for staff employed by the department and by contracted agencies, and this ratio must be maintained for each group;

**7. Crisis and respite.** Provision of crisis and respite services to persons with ~~mental retardation~~ intellectual disabilities or autism in accordance with section 5206; and

**Sec. A-93. 34-B MRSA §5206**, as enacted by PL 2007, c. 356, §19 and affected by §31, is amended to read:

**§5206. Crisis and respite services**

The department shall provide crisis and respite services throughout the State in accordance with this section.

**1. Crisis services.** The department shall maintain the capacity to intervene in personal crises that could lead to the loss of the home, program or employment of a person with ~~mental retardation~~ an intellectual disability or autism. Such capacity must include:

A. Assessment, consultation, planning, training and support for persons with ~~mental retardation~~ intellectual disabilities or autism and their families or allies both before and after a crisis occurs;

B. Providing staff support to prevent or respond to a crisis at the site of the crisis when appropriate;

C. Ensuring mental health supports when necessary, including access to a licensed mental health provider, inpatient treatment when indicated, psychiatric services and mental health aftercare services; and

D. Identifying appropriate professional services for the person in crisis.

**2. Out-of-home services.** The department shall provide out-of-home services in accordance with this subsection.

A. The department shall maintain an adequate capacity to provide out-of-home safety and sup-

port by trained staff with appropriate professional backup resources for a person with ~~mental retardation~~ an intellectual disability or autism experiencing a crisis that cannot be safely managed at the person's residence.

B. Unless otherwise specified in personal planning, crisis intervention services must be provided at a person's home, program or workplace when prevention efforts are not successful. The services must assist with admission to an appropriate out-of-home service in the event that intervention in the home, program or workplace is inappropriate.

**3. Transportation.** The department may not routinely use law enforcement entities to transport persons with ~~mental retardation~~ intellectual disabilities or autism in crisis. Transportation of persons in crisis by law enforcement personnel may occur only if such transportation has been specifically authorized by the person's guardian or personal planning team or when determined by law enforcement personnel to be necessary to provide for the safety of the person or others.

**4. Post-crisis review.** A post-crisis review must occur no more than 10 working days after any out-of-home crisis placement. The review must include significant providers and supporters, including appropriate members of the person's planning team. The review must identify possible causes of the person's crisis and must recommend for the personal planning team changes in the person's environment, services and supports to prevent crises in the future.

**5. Respite services.** The department shall maintain and fund a statewide respite system for planned or unplanned respite for persons with ~~mental retardation~~ intellectual disabilities or autism and their families. The department shall, when appropriate, use the natural supports of a person in the development of respite services. For purposes of this subsection, "natural supports" means those supports provided by persons who are not disability service providers but who provide assistance, contact or companionship to enable a person with ~~mental retardation~~ an intellectual disability or autism to participate independently in employment or other community settings.

**6. Information regarding use.** The department shall maintain information regarding use of crisis and respite services sufficient to plan and budget for adequate crisis and respite services. The information must include an assessment of the needs, both met and unmet, for crisis and respite services. The department shall provide information regarding the availability of services under this section and the proper means to obtain them to persons with ~~mental retardation~~ intellectual disabilities or autism, their parents and allies, providers of services and other interested persons.

**7. Training.** The department shall offer regular and ongoing information, consultation and training on crisis prevention and intervention and respite services to its own staff, providers, and persons with ~~mental retardation~~ intellectual disabilities or autism and their families, guardians, correspondents and allies.

**Sec. A-94. 34-B MRSA §5431**, as enacted by PL 1983, c. 459, §7, is amended to read:

**§5431. Purpose**

The purpose of this Article is to assist in the establishment and expansion of community-based ~~men-tal-retardation adult developmental~~ services and programs for ~~mentally-retarded~~ persons with intellectual disabilities or autism residing in the community and residing in ~~privately operated~~ privately operated residential care facilities.

**Sec. A-95. 34-B MRSA §5432, sub-§1**, as enacted by PL 1983, c. 459, §7, is amended to read:

**1. Community participation.** Encourage persons in local communities to participate in the provision of supportive services for ~~mentally-retarded~~ persons with intellectual disabilities or autism, so that persons in the community may have a better understanding of the need for those services;

**Sec. A-96. 34-B MRSA §5433, sub-§2**, as enacted by PL 1983, c. 459, §7, is amended to read:

**2. Services and programs.** Provide and help finance ~~mental-retardation adult developmental~~ services and programs throughout the State for ~~mentally-retarded~~ persons with intellectual disabilities or autism residing in the community and residing in ~~privately-owned~~ privately owned residential care facilities;

**Sec. A-97. 34-B MRSA §5433, sub-§3**, as amended by PL 1985, c. 768, §6, is further amended to read:

**3. Cooperation.** Cooperate with other state agencies, municipalities, other governmental units, unincorporated associations and nonstock corporations in order to provide and help finance services and programs for ~~mentally-retarded~~ persons with intellectual disabilities or autism;

**Sec. A-98. 34-B MRSA §5434, sub-§§1 and 3**, as enacted by PL 1983, c. 459, §7, are amended to read:

**1. Authorization.** A municipality or other governmental unit, such as a county, school district or health district, through its local board of health or other town or governmental agency approved by the commissioner, may adopt and carry out a program of ~~mental-retardation adult developmental~~ services established or approved by the commissioner and appropriate money for that purpose.

**3. Grants.** Upon application to the department by a municipality or other governmental unit, the commissioner may grant to the applicant money to be used for carrying out its ~~mental-retardation~~ adult developmental services, including any necessary capital expenditures or purchase of buildings.

**Sec. A-99. 34-B MRSA §5435, sub-§1**, as enacted by PL 1983, c. 459, §7, is amended to read:

**1. Department grants.** Upon application to the department by an unincorporated association or non-stock corporation organized for the improvement of community health and welfare, the commissioner may grant to the applicant money to be used for carrying out its ~~mental-retardation~~ adult developmental services, including any necessary capital expenditures or purchase of buildings.

**Sec. A-100. 34-B MRSA §5435, sub-§2, ¶B**, as amended by PL 1995, c. 560, Pt. K, §53, is further amended to read:

B. The department shall give consideration to the ability of the municipality or governmental unit to support the ~~mental-retardation~~ adult developmental services, as reflected by the State's evaluation of the component communities.

**Sec. A-101. 34-B MRSA §5437, first ¶**, as amended by PL 1995, c. 560, Pt. K, §54, is further amended to read:

The department shall establish a contingency fund for use by community-based intermediate care facilities for persons with ~~mental-retardation~~ intellectual disabilities or autism and department clients residing in licensed boarding and foster homes or intermediate care facilities or participating in appropriate day treatment programs. This fund must be used in accordance with the following provisions.

**Sec. A-102. 34-B MRSA §5437, sub-§3, ¶A**, as enacted by PL 1985, c. 486, §2, is amended to read:

A. Payment for special client assessment and treatment services not reimbursed through the principles of reimbursement for intermediate care facilities for ~~the mentally-retarded~~ persons with intellectual disabilities or autism;

**Sec. A-103. 34-B MRSA §5438**, as enacted by PL 2007, c. 152, §1, is amended to read:

**§5438. Services for adults with diagnoses of intellectual disabilities or other developmental disabilities**

To the extent possible using available resources, the department shall provide adults with diagnoses of ~~mental-retardation~~ intellectual disabilities and other developmental disabilities choices from among an array of supports and services, including but not limited to: employment supports, personal supports, day

programs and residential services. The department shall pursue appropriate resources for the supports and services needed by adults covered under this chapter.

**Sec. A-104. 34-B MRSA §5461, sub-§§1, 2, 4 and 5,** as enacted by PL 1983, c. 459, §7, are amended to read:

**1. Advocate.** "Advocate" means a person:

A. Who is familiar with the procedures involved ~~both in admitting mentally retarded persons to a facility and in providing services to those persons with intellectual disabilities or autism;~~ and

B. Who is capable of advocating solely on behalf of a ~~mentally retarded~~ person with an intellectual disability or autism.

**2. Client.** "Client" means a person asking the department for ~~mental retardation~~ adult developmental services or the person for whom those services are asked.

**4. Comprehensive evaluation.** "Comprehensive evaluation" means a comprehensive set of evaluations ~~which that:~~

A. Results in the distinguishing of ~~mental retardation~~ intellectual disabilities and autism from other conditions;

B. Determines the severity of disability resulting from ~~mental retardation~~ an intellectual disability or autism and other conditions; and

C. Estimates the degree to which ~~mental retardation~~ the intellectual disability or autism and other conditions can be ameliorated.

**5. Facility.** "Facility" means a residential facility operated, administered, licensed or funded by the department to provide services for mentally retarded clients persons who have intellectual disabilities or autism.

**Sec. A-105. 34-B MRSA §5461, sub-§7-A,** ¶C, as enacted by PL 1983, c. 580, §11, is amended to read:

C. A reasonable certainty that severe physical or mental impairment or injury will result to the ~~mentally retarded~~ person who has an intellectual disability as manifested by recent evidence of his the person's actions or behavior ~~which that~~ demonstrates his an inability to avoid or protect ~~himself that person~~ that person from that impairment or injury and, after consideration of less restrictive treatment settings and modalities, a determination that suitable community resources for ~~his the person's~~ care are unavailable.

**Sec. A-106. 34-B MRSA §5461, sub-§8,** as enacted by PL 1983, c. 459, §7, is amended to read:

**8. Person in need of institutional services.** "Person in need of institutional services" means a person who, because of ~~mental retardation~~ an intellectual disability, autism or other related condition, and other severely disabling conditions, is unable to ~~care for himself~~ provide self-care and to avoid or protect ~~himself~~ that person from severe physical or psychological impairment, and who needs habilitation in an institutional setting designed to improve ~~his~~ the person's ability to care for and protect ~~himself~~ the person.

**Sec. A-107. 34-B MRSA §5461, sub-§10,** ¶B, as enacted by PL 1983, c. 580, §12, is amended to read:

B. Where licensure, certification or registration is not required, a person possessing a master's degree in the appropriate discipline or a person possessing a bachelor's degree in the appropriate discipline and 3 years' experience in treating ~~mentally retarded~~ persons with intellectual disabilities or autism or 3 years' experience in a related human services field.

**Sec. A-108. 34-B MRSA §5462,** as amended by PL 2003, c. 389, §6, is further amended to read:

**§5462. Procedure policies**

**1. Steps.** It is the policy of the State that, in order to ensure that ~~mentally retarded~~ persons with intellectual disabilities or autism receive needed services, to the extent possible, the following steps ~~shall~~ must be taken for each person found by the department to ~~be mentally retarded~~ have an intellectual disability or autism and be in need of services:

A. An assessment of the person's needs;

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;

C. A determination of the suitability and quality of needed services ~~which that~~ are available to the person, first in the community and 2nd in state-operated facilities; and

D. Insofar as possible, obtaining high quality and suitable services for the person.

**2. Persons involved with procedures.** It is the policy of the State that:

A. To the extent possible, the ~~mentally retarded~~ person with an intellectual disability or autism and his the person's guardian or next of kin be involved with the steps specified in subsection 1; and

B. An advocate be available to the ~~mentally retarded~~ person with an intellectual disability or autism throughout the steps specified in subsection 1.



**Sec. A-109. 34-B MRSA §5467, sub-§1**, as amended by PL 2003, c. 389, §9, is further amended to read:

**1. Application.** An application for ~~mental retardation~~ adult developmental 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.

**Sec. A-110. 34-B MRSA §5467, sub-§2, ¶D**, as amended by PL 2003, c. 389, §9, is further amended to read:

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

**Sec. A-111. 34-B MRSA §5468, sub-§2**, as repealed and replaced by PL 1983, c. 580, §18, is amended to read:

**2. Comprehensive evaluation.** The comprehensive evaluation ~~shall~~ must be conducted by a person who is a licensed physician, licensed clinical psychologist or licensed psychological examiner and who has had training and experience in the diagnosis and treatment of ~~mentally retarded~~ persons with intellectual disabilities or autism.

**Sec. A-112. 34-B MRSA §5469**, as amended by PL 2003, c. 388, §1 and c. 389, §§11 and 12, is further amended to read:

**§5469. Report**

Within 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 must state specifically whether or not the client ~~is mentally retarded~~ has an intellectual disability or autism.

**1. Client without an intellectual disability or autism.** If the comprehensive evaluation concludes that the client ~~is not mentally retarded~~ does not have an intellectual disability or autism, the department shall deny the application for services, care and treatment, but shall make appropriate referrals in cases where clear needs of the client exist.

**2. Client with an intellectual disability or autism.** If the comprehensive evaluation concludes that the client ~~is mentally retarded~~ has an intellectual disability or autism and is in need of services:

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

B. The department, through the planning team, shall develop a personal plan or service plan for the client within 45 days of the date of the determination of eligibility. Implementation of the plan is governed by section 5471, subsection 4.

**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 personal plan or service plan, or both; and

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

**Sec. A-113. 34-B MRSA §5470-B, sub-§§1 to 4**, as enacted by PL 2007, c. 356, §21 and affected by §31, are amended to read:

**1. Right to personal planning.** Every adult with ~~mental retardation~~ an intellectual disability or autism who is eligible for services must be provided the opportunity to engage in a personal planning process in which the needs and desires of the person are articulated and identified.

**2. Process.** The personal planning opportunities afforded to a person with ~~mental retardation~~ an intellectual disability or autism pursuant to subsection 1 must:

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

B. Focus on the choices made by that person;

C. Reflect and support the goals and aspirations of that person;

D. Be developed at the direction of that person and include people whom the person chooses to participate. The planning process must minimally include the person, the person's guardian, if any, the correspondent, if any, and the person's case manager;

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

F. Be offered to that person at least annually or on a schedule established through the planning process and be reviewed according to a specified schedule and by a person designated for monitoring;

G. Include all of the needs and desires of that person 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 satisfaction of that person with the quality of the plan and the supports that the person receives.

**3. Action plans and unmet needs.** The ongoing personal planning for a person with ~~mental retardation~~ an intellectual disability or autism must include an action plan that describes the services to be provided, the process of providing the services and who is responsible for overseeing the provision of the services. In cases where resources required to address identified needs or desires are not available, the action plan must identify interim measures based on available resources that address the needs or desires as nearly as possible and identify steps toward meeting the person's actual identified needs.

Unmet needs must be documented continually, collated annually and used for appropriate development activities on a regional and statewide basis.

**4. Review of personal plans.** The person with ~~mental retardation~~ an intellectual disability or autism or another member of the planning team may initiate a review of the person's personal plan when needed or desired.

A. A review under this subsection must be done by meeting or by other means sufficient to address the needed or desired changes. The review must include the person, the person's guardian, if any, and the person's case manager. Invitations to participate may also be sent to others who may be anticipated to assist the person in pursuing articulated needs and desires unless the person or a private guardian objects.

B. Events that could lead to the loss of the person's home, job or program and events defined in a departmental rule or in the person's plan must lead to a plan review.

**Sec. A-114. 34-B MRSA §5470-B, sub-§8,** ¶B, as enacted by PL 2007, c. 356, §21 and affected by §31, is amended to read:

B. The department shall ensure the provision of regular and ongoing training in personal planning to persons with ~~mental retardation~~ intellectual disabilities or autism and their families, guardians, correspondents and allies as well as its own staff and providers. The department shall regularly provide persons with ~~mental retardation~~ intellectual disabilities or autism and their families, guardians and allies with informational materials regarding personal planning.

**Sec. A-115. 34-B MRSA §5474, sub-§3,** as enacted by PL 1983, c. 459, §7, is amended to read:

**3. Emergency admission.** When immediate detention of a person believed to ~~be mentally retarded~~ have an intellectual disability or autism is necessary, the person may be temporarily restrained in accordance with section 5477.

**Sec. A-116. 34-B MRSA §5475, sub-§2,** ¶C, as amended by PL 2003, c. 389, §18, is further amended to read:

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

(1) The client or the client's counsel may choose the professional, if the professional 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 personal plan or service plan.

(3) Upon completion of the examination, the professional shall report to the court the professional's opinion whether the client ~~is mentally retarded~~ has an intellectual disability or autism and requires treatment, stating the professional's reasons for the professional's opinion;

**Sec. A-117. 34-B MRSA §5476,** as amended by PL 2003, c. 389, §19, is further amended to read:

**§5476. Judicial commitment**

Any client recommended for admission to a ~~mental retardation~~ facility that provides services for persons with intellectual disabilities or autism may be admitted by judicial commitment according to the following procedures.

**1. Application to the District Court.** If the chief administrative officer of the facility determines that the admission of the client pursuant to section 5473, subsection 2, is not suitable, or if the client declines admission pursuant to section 5473, subsection 2, the chief administrative officer may apply to the District Court having territorial jurisdiction over the facility for the issuance of an order of judicial commitment.

**2. Time of application.** The chief administrative officer shall file the application within 5 days from the day of admission of the client under this section, excluding Saturdays, Sundays and legal holidays.

**3. Accompanying documents.** The application ~~shall~~ must be accompanied by:

A. A written application, made subject to the prohibitions and penalties of section 3805 and made by any health officer, law enforcement officer or other person, stating:

(1) ~~His~~ The belief that the client ~~is mentally retarded~~ has an intellectual disability or autism and poses a likelihood of serious harm; and

(2) The grounds for this belief;

B. A dated certificate, signed by a private licensed physician or a private licensed clinical psychologist, stating that:

(1) ~~He~~ The physician or psychologist has examined the client on the date of the certificate, which date may not be more than 3 days before the date of admission to the facility; and

(2) ~~He~~ The physician or psychologist is of the opinion that the client ~~is mentally retarded~~ has an intellectual disability or autism and poses a likelihood of serious harm; and

C. A certificate of the facility's examining physician or psychologist, stating that ~~he~~ the physician or psychologist has examined the client and ~~is his~~ of the opinion that the client ~~is mentally retarded~~ has an intellectual disability or autism and poses a likelihood of serious harm:

(1) The examiner may not be the certifying examiner under paragraph B; and

(2) If the examination is not held within 24 hours after the time of admission or if the facility's examining physician or psychologist fails or refuses to make the required certification, the client ~~shall~~ must be immediately discharged.

**4. Notice of receipt of application.** The giving of notice of receipt of application under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in this section, the court shall cause written notice of the application:

(1) To be given personally or by mail to the client within a reasonable time before the hearing, but not less than 3 days before the hearing; and

(2) To be mailed to the client's guardian, if known, and to ~~his~~ the client's spouse, ~~his~~ the client's parent or one of ~~his~~ the client's adult children, or if none of these persons exist or if none of them can be located, to one of ~~his~~ the client's next of kin or an advocate.

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

**5. 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 this section, the court shall forthwith cause the client to be examined by 2 examiners.

(1) Each examiner ~~shall~~ 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 client or by ~~his~~ the client's counsel, if the chosen physician or psychologist is reasonably available.

(3) Neither examiner appointed by the court may be the certifying examiner under subsection 3, paragraph B or C.

B. The examination ~~shall~~ must be held at the facility or at any other suitable place not likely to have a harmful effect on the well-being of the client.

C. If the unanimous reports of the examiners are to the effect that the client ~~is not mentally retarded~~ does not have an intellectual disability or autism or does not pose a likelihood of serious harm, the application ~~shall~~ must be dismissed and the client ~~shall~~ be ordered discharged forthwith.

D. If the report of either or both of the examiners is to the effect that the client ~~is mentally retarded~~ has an intellectual disability or autism and poses a likelihood of serious harm, the hearing ~~shall~~ must be held on the date, or on the continued date, ~~which~~ that the court has set for the hearing.

**6. Hearing.** Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application not later than 15 days from the date of the application.

(1) On a motion by any party, the hearing may be continued for cause for a period not to exceed 10 additional days.

(2) If the hearing is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the client discharged forthwith.

(3) In computing the time periods set forth in this paragraph, the District Court Rules of Civil Procedure ~~shall~~ apply.

B. The hearing ~~shall~~ must be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the well-being of the person.

C. The court shall receive all relevant and material evidence ~~which~~ that may be offered in accor-

dance with accepted rules of evidence and accepted judicial dispositions.

- (1) The client, the applicant and all other persons to whom notice is required to be sent ~~shall~~ must be afforded an opportunity to appear at the hearing to testify.
- (2) The client and the applicant ~~shall~~ must be afforded the opportunity to cross-examine witnesses.
- (3) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness.

D. The client ~~shall~~ must be afforded an opportunity to be represented by counsel and, if neither the client nor others provide counsel, the court shall appoint counsel for the client.

E. In addition to proving that the client ~~is mentally retarded~~ has an intellectual disability or autism, the applicant shall show:

- (1) By evidence of the client's actions and behavior, that the client poses a likelihood of serious harm; and
- (2) That after full consideration of less restrictive treatment settings and modalities, judicial commitment to a ~~mental retardation~~ facility that provides services for persons with intellectual disabilities or autism is the ~~best~~ least restrictive available means for the treatment or security of the client.

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony indicating the individual treatment plan to be followed by the facility's staff, if the client is committed under this section, and shall bear any expense for this purpose.

G. A stenographic or electronic record ~~shall~~ must be made of the proceedings in all judicial commitment hearings.

- (1) The record, all notes, exhibits and other evidence ~~shall be~~ are confidential.
- (2) The record, all notes, exhibits and other evidence ~~shall~~ must be retained as part of the District Court records for a period of 2 years from the date of the hearing.

H. The hearing ~~shall be~~ is confidential. No report of the proceedings may be released to the public or press, except by permission of the client, or ~~his~~ the client's counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the client or ~~his~~ the client's counsel.

**7. Court findings.** Procedures dealing with the District Court's findings under this section are as follows.

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

- (1) Clear and convincing evidence that the client ~~is mentally retarded~~ has an intellectual disability and that ~~his~~ the client's recent actions and behavior demonstrate that ~~he~~ the client poses a likelihood of serious harm;
- (2) That judicial commitment to the facility is the best available means for treatment or security of the client; and
- (3) That it is satisfied with the individual treatment plan offered by the facility.

B. If the District Court makes the findings described in paragraph A, subparagraphs 1 and 2, but is not satisfied with the individual treatment plan offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the facility.

**8. Commitment.** Upon making the findings described in subsection 7, the court may order commitment of the client to the facility for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing or it may take the matter under advisement and issue an order within 24 hours of the hearing.

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and shall order the person discharged forthwith.

**9. Continued judicial commitment.** If the chief administrative officer of the facility determines that continued judicial commitment is necessary for a person who has been ordered by the District Court to be committed, ~~he~~ the officer shall, not later than 30 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court ~~which~~ that has territorial jurisdiction over the facility for a hearing to be held under this section.

**10. Transportation.** Unless otherwise directed by the court, the sheriff of the county in which the District Court has jurisdiction and in which the hearing takes place shall provide transportation to any facility to which the court has committed the person.

**11. Expenses.** With the exception of expenses incurred by the applicant pursuant to subsection 6, paragraph F, the District Court ~~shall be~~ is responsible for

any expenses incurred under this section, including fees of appointed counsel, witness and notice fees and expenses of transportation for the person.

**12. Appeals.** A person ordered by the District Court to be committed to the facility may appeal from that order to the Superior Court.

A. The appeal ~~shall~~ must be on questions of law only.

B. Any findings of fact of the District Court may not be set aside unless clearly erroneous.

C. The order of the District Court ~~shall remain~~ remains in effect pending the appeal.

D. The District Court Rules of Civil Procedure and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection.

**13. Rules.** If necessary, the commissioner shall ~~promulgate~~ adopt rules for the effective implementation of this section.

**Sec. A-118. 34-B MRSA §5477, sub-§1,** as amended by PL 1983, c. 580, §24, is further amended to read:

**1. Protective custody.** If a law enforcement officer has reasonable grounds to believe, based upon his personal observation, that a person may ~~be mentally retarded~~ have an intellectual disability, that ~~he~~ the person presents a threat of imminent and substantial physical ~~harm to himself~~ self-harm or harm to other persons and that an emergency exists requiring immediate residential placement:

A. The officer may take the person into protective custody; and

B. If the officer does take the person into protective custody, the officer shall deliver the person forthwith, within 18 hours, for examination by an available licensed physician or licensed psychologist as provided in subsection 4.

**Sec. A-119. 34-B MRSA §5477, sub-§4,** ~~¶B~~, as enacted by PL 1983, c. 459, §7, is amended to read:

B. The written application ~~shall~~ must be accompanied by a dated certificate, signed by a licensed physician or a licensed clinical psychologist, stating:

(1) ~~He~~ The physician or 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 facility; and

(2) ~~He~~ The physician or psychologist is of the opinion that the person ~~is a mentally retarded person~~ has an intellectual disability

and is in need of institutional protective services.

**Sec. A-120. 34-B MRSA §5478, sub-§1,** as repealed and replaced by PL 1983, c. 580, §26, is amended to read:

**1. Authority to continue treatment.** A client who has been admitted to a facility by judicial certification, or who has been retained in a facility pursuant to this section, may continue extended care and treatment in that facility for an additional period, not to exceed 2 years, only after judicial certification under section 5474 or after waiver of that process as provided in this section, except that waiver of the judicial certification process is not permitted for any ~~mentally retarded~~ person with an intellectual disability under public guardianship.

**Sec. A-121. 34-B MRSA §5601, sub-§5,** as amended by PL 1993, c. 326, §3, is further amended to read:

**5. Normalization principle.** "Normalization principle" means the principle of assisting the person with ~~mental retardation~~ an intellectual disability or autism to obtain an existence as close to normal as possible and making available to that person patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

**Sec. A-122. 34-B MRSA §5601, sub-§5-A,** as amended by PL 2011, c. 186, Pt. A, §5, is further amended to read:

**5-A. Person receiving services.** "Person receiving services" means a person with ~~mental retardation~~ an intellectual disability or autism receiving services from the department or from an agency or facility licensed or funded to provide services to persons with ~~mental retardation~~ intellectual disabilities or autism except those presently serving sentences for crime.

**Sec. A-123. 34-B MRSA §5601, sub-§5-B,** as enacted by PL 2011, c. 186, Pt. A, §6, is amended to read:

**5-B. Provider.** "Provider" means an entity, organization or individual providing services to an adult with ~~mental retardation~~ an intellectual disability or autism, funded in whole or in part or licensed or certified by the department.

**Sec. A-124. 34-B MRSA §5601, sub-§7-A,** as amended by PL 2011, c. 186, Pt. A, §11, is further amended to read:

**7-A. Supports.** "Supports" means actions or assistance that empowers a person with ~~mental retardation~~ an intellectual disability or autism to carry out life activities, build relationships and learn the skills necessary to meet the person's needs and desires.

**Sec. A-125. 34-B MRSA §5602**, as amended by PL 1993, c. 326, §8, is further amended to read:

**§5602. Purpose**

It is the intent of the Legislature to guarantee individual dignity, liberty, pursuit of happiness and the protection of the civil and legal rights of persons with ~~mental retardation~~ intellectual disabilities or autism and to articulate rights of persons with ~~mental retardation~~ intellectual disabilities or autism, so that these rights may be exercised and protected.

**Sec. A-126. 34-B MRSA §5603**, as amended by PL 2011, c. 186, Pt. A, §14, is further amended to read:

**§5603. Entitlement**

Each person with ~~mental retardation~~ an intellectual disability or autism is entitled to the rights enjoyed by citizens of the State and of the United States, unless some of these rights have been limited or suspended by a court of competent jurisdiction.

**1. Person committed to the commissioner.** The rights and basic protections set out in section 5605 of a person with ~~mental retardation~~ an intellectual disability or autism who is committed to the commissioner as not criminally responsible pursuant to Title 15, section 103 or as incompetent to stand trial pursuant to Title 15, section 101-D may be limited or suspended only if the commissioner submits to the applicable court a written treatment plan that specifies each limitation of a right or basic protection and the treatment plan has been approved by the court.

**Sec. A-127. 34-B MRSA §5604**, as amended by PL 2011, c. 186, Pt. A, §§15 to 17, is further amended to read:

**§5604. Protection**

The Legislature finds and declares that the rights of persons with ~~mental retardation~~ intellectual disabilities or autism can be protected best under a system of services that operates according to the principles of normalization and full inclusion and that the State's system of services must operate according to these principles with the goals of:

**1. Community-based services.** Continuing the development of community-based services that provide reasonable alternatives to institutionalization in settings that are least restrictive to the person receiving services;

**2. Independence and productivity.** Providing habilitation, education and other training to persons with ~~mental retardation~~ intellectual disabilities or autism that will maximize each person's potential to lead an independent and productive life and that will afford opportunities for full inclusion into the community where each person lives; and

**3. Grievance right.** Providing a person with ~~mental retardation~~ an intellectual disability or autism with the right to appeal a decision regarding actions or inactions by the department that affects the person's life. The department shall establish in rule a process for hearing such grievances pursuant to Title 22-A, section 206, subsection 4. The rules must contain strict time frames for the resolution of grievances. The rules may provide for resolution of grievances through mediation.

A. The department shall provide easily accessible and regular notice of the grievance process to persons with ~~mental retardation~~ intellectual disabilities or autism served by the department. This notice must be included in informational materials provided to such persons, as well as to guardians, families, correspondents and allies. Notice of the right to appeal must be prominently displayed in regional offices and on the department's publicly accessible website and must be readily available from provider agencies. Notice of the right to appeal must be included in all substantive correspondence regarding personal planning. Written notice of the right to appeal must also be provided when there is a denial or reduction of services or supports to persons served by the department. All notices and information regarding the grievance process must be written in language that is plain and understandable and must include the address and telephone number of the Office of Advocacy and the protection and advocacy agency designated pursuant to Title 5, section 19502.

B. The department must make available a one-page form that enables a person with ~~mental retardation~~ an intellectual disability or autism to file a grievance. A grievance may also be filed through an oral request. If a grievance is filed through an oral request, the person receiving the grievance shall reduce the grievance to writing using a one-page form made available by the department.

C. The department shall offer regular training in the grievance process for persons served by the department, their families, guardians and allies and department and service provider staff.

D. If an appeal proceeds to a hearing, the hearing officer's decision constitutes final agency action for the purposes of Rule 80C of the Maine Rules of Civil Procedure unless final decision-making authority has been reserved by the commissioner. If the commissioner makes the final decision and modifies or rejects the hearing officer's recommended decision, the commissioner must state in writing the basis for the commissioner's decision. When the commissioner rejects or modifies a hearing officer's factual findings or makes additional factual findings, the commissioner shall ar-

ticulate the evidentiary basis for such rejection or modification with appropriate references to the record. The commissioner shall give substantial deference to a hearing officer's determinations on matters of credibility relating to testimony that was heard by the hearing officer, and when rejecting or modifying such determinations of credibility, the commissioner shall state with particularity the reasons with appropriate references to evidence in the record. In the event the commissioner fails to issue a written final decision within 30 days of the date of the recommended decision, the recommended decision of the hearing officer is deemed the final decision of the commissioner.

The rights and basic protections of a person with ~~mental retardation~~ an intellectual disability or autism under section 5605 may not be restricted or waived by that person's guardian, except as permitted by rules adopted pursuant to this section.

The department has authority to adopt rules to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. A-128. 34-B MRSA §5604-A, sub-§§2 and 3,** as enacted by PL 2007, c. 356, §24 and amended by §31, are amended to read:

**2. Maintain reporting system.** The department shall maintain a reportable event and adult protective services system that provides for receiving reports of alleged incidents, prioritizing such reports, assigning reports for investigation by qualified investigators, reviewing the adequacy of the investigations, making recommendations for preventive and corrective actions as appropriate and substantiating allegations against individuals who have been found under the Adult Protective Services Act to have abused, neglected or exploited persons with ~~mental retardation~~ intellectual disabilities or autism. The department shall fully establish the reportable event and adult protective services system through rulemaking.

**3. Violation.** All persons with knowledge of an alleged violation of the rights of an individual with ~~mental retardation~~ an intellectual disability or autism as set out in section 5605 shall promptly report the details of the alleged violation to the Office of Advocacy as set forth in department rules.

**Sec. A-129. 34-B MRSA §5605,** as amended by PL 2011, c. 186, Pt. A, §§18 to 34, is further amended to read:

**§5605. Rights and basic protections of a person with an intellectual disability or autism**

A person with ~~mental retardation~~ an intellectual disability or autism is entitled to the following rights and basic protections.

**1. Humane treatment.** A person with ~~mental retardation~~ an intellectual disability or autism is entitled to dignity, privacy and humane treatment.

**2. Practice of religion.** A person with ~~mental retardation~~ an intellectual disability or autism is entitled to religious freedom and practice without any restriction or forced infringement on that person's right to religious preference and practice.

**3. Communications.** A person with ~~mental retardation~~ an intellectual disability or autism is entitled to private communications.

A. A person with ~~mental retardation~~ an intellectual disability or autism is entitled to receive, send and mail sealed, unopened correspondence. A person who is a provider may not delay, hold or censor any incoming or outgoing correspondence of any person with ~~mental retardation~~ an intellectual disability or autism, nor may any such correspondence be opened without the consent of the person or the person's legal guardian.

B. A person with ~~mental retardation~~ an intellectual disability or autism is entitled to reasonable opportunities for telephone and Internet communication.

C. A person with ~~mental retardation~~ an intellectual disability or autism is entitled to an unrestricted right to visitations during reasonable hours unless this right has been restricted pursuant to rules adopted pursuant to section 5604.

**4. Work.** A person with ~~mental retardation~~ an intellectual disability or autism engaged in work programs that require compliance with state and federal wage and hour laws is entitled to fair compensation for labor in compliance with regulations of the United States Department of Labor.

**5. Vote.** A person with ~~mental retardation~~ an intellectual disability or autism may not be denied the right to vote.

**6. Personal property.** A person with ~~mental retardation~~ an intellectual disability or autism is entitled to the possession and use of that person's own clothing, personal effects and money, except when temporary custody of clothing or personal effects by a provider is necessary to protect the person or others from imminent injury or unless this right has been restricted pursuant to rules adopted pursuant to section 5604.

**7. Nutrition.** A person with ~~mental retardation~~ an intellectual disability or autism is entitled to nutritious food in adequate quantities and meals may not be withheld for disciplinary reasons.

**8. Medical care.** A person with ~~mental retardation~~ an intellectual disability or autism is entitled to receive prompt and appropriate medical and dental treatment and care for physical and mental ailments

and for the prevention of any illness or disability, and medical treatment must be consistent with the accepted standards of medical practice in the community, unless the religion of the person with ~~mental retardation~~ an intellectual disability or autism so prohibits.

A. Medication may be administered only at the written order of a physician.

B. Medication may not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan or in unnecessary or excessive quantities.

C. Daily notation of medication received by each person with ~~mental retardation~~ an intellectual disability or autism must be kept in the records of the person with ~~mental retardation~~ an intellectual disability or autism.

D. Periodically, but no less frequently than every 6 months, the drug regimen of each person with ~~mental retardation~~ an intellectual disability or autism must be reviewed by a physician or other appropriate monitoring body, consistent with appropriate standards of medical practice.

E. All prescriptions must have a termination date.

G. Prior to instituting a plan of experimental medical treatment or carrying out any surgical procedure, express and informed consent must be obtained from the person with ~~mental retardation~~ an intellectual disability or autism, unless the person has been found to be legally incompetent, in which case the person's guardian may consent.

(1) Before making a treatment or surgical decision, the person must be given information, including, but not limited to, the nature and consequences of the procedures, the risks, benefits and purposes of the procedures and the availability of alternate procedures.

(2) The person or, if legally incompetent, that person's guardian may withdraw express and informed consent at any time, with or without cause, before treatment or surgery.

H. Notwithstanding the absence of express and informed consent, emergency medical care or treatment may be provided to any person with ~~mental retardation~~ an intellectual disability or autism who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency medical care or treatment would endanger the health of the person.

I. Notwithstanding the absence of express and informed consent, emergency surgical procedures may be provided to any person with ~~mental retardation~~ an intellectual disability or autism who has been injured or who is suffering from an acute ill-

ness, disease or condition if delay in initiation of emergency surgery would substantially endanger the health of the person.

**9. Sterilization.** A person with ~~mental retardation~~ an intellectual disability or autism may not be sterilized, except in accordance with chapter 7.

**10. Social activity.** A person with ~~mental retardation~~ an intellectual disability or autism is entitled to opportunities for behavioral and leisure time activities that include social interaction in the community, as set out in section 5610. This right may be waived or restricted only under the rules adopted pursuant to section 5604 or pursuant to a treatment plan approved pursuant to section 5603, subsection 1.

**11. Physical exercise.** A person with ~~mental retardation~~ an intellectual disability or autism is entitled to opportunities for appropriate physical exercise, including the use of available indoor and outdoor facilities and equipment.

**12. Discipline.** Discipline of persons with ~~mental retardation~~ intellectual disabilities or autism is governed as follows.

B. Corporal punishment or any form of inhumane discipline is not permitted.

C. Seclusion as a form of discipline is not permitted.

E. A provider of residential services may establish house rules in a residential unit owned or operated by the provider. A person receiving services who resides in the unit is entitled to participate, as appropriate, in the formulation of the house rules. A house rule must be uniformly applied to all residents of the residential unit where the rules apply. A copy of the house rules must be posted in a residential unit where the rules apply and a copy of the rules must be given to all residents who receive services and, if any resident is under guardianship, to the guardian of the person receiving services.

**13. Behavioral support, modification and management.** Behavior modification and behavior management of and supports for a person with ~~mental retardation~~ an intellectual disability or autism are governed as follows.

A. A person with ~~mental retardation~~ an intellectual disability or autism may not be subjected to a behavior modification or behavior management program to eliminate dangerous or maladaptive behavior without first being assessed by a physician to determine if the proposed program is medically contraindicated and that the dangerous or maladaptive behavior could not be better treated medically.



A-1. Support programs may contain both behavior modification and behavior management components.

A-2. The following practices are prohibited as elements of behavior modification or behavior management programs:

- (1) Seclusion;
- (2) Corporal punishment;
- (3) Actions or language intended to humble, dehumanize or degrade the person;
- (4) Restraints that do not conform to rules adopted pursuant to this section;
- (5) Totally enclosed cribs or beds; and
- (6) Painful stimuli.

B. Behavior modification and behavior management programs may be used only to correct behavior more harmful to the person than the program and only:

- (1) On the recommendation of the person's personal planning team;
- (2) For an adult 18 years of age or older, with the approval, following a case-by-case review, of a review team composed of an advocate from the Office of Advocacy; a representative designated by the Office of Adults with Cognitive and Physical Disability Services; and a representative designated by the Maine Developmental Services Oversight and Advisory Board; and
- (3) For a child under 18 years of age, with the approval, following a case-by-case review, of a review team composed of an advocate from the Office of Advocacy, a team leader of the department's children's services division and the children's services medical director or the director's designee. Until rules are adopted by the department to govern behavioral treatment reviews for children, the team may not approve techniques any more aversive or intrusive than are permitted in rules adopted by the Secretary of the United States Department of Health and Human Services regarding treatment of children and youth in nonmedical community-based facilities funded under the Medicaid program.

**14-A. Restraints.** A person with ~~mental retardation~~ an intellectual disability or autism is entitled to be free from restraint unless:

A. The restraint is a short-term step to protect the person from imminent injury to that person or others; or

B. The restraint has been approved as a behavior management program in accordance with this section.

A restraint may not be used as punishment, for the convenience of the staff or as a substitute for habilitative services. A restraint may impose only the least possible restriction consistent with its purpose and must be removed as soon as the threat of imminent injury ends. A restraint may not cause physical injury to the person receiving services and must be designed to allow the greatest possible comfort and safety.

Daily records of the use of restraints identified in paragraph A must be kept, which may be accomplished by meeting reportable event requirements.

Daily records of the use of restraints identified in paragraph B must be kept, and a summary of the daily records pertaining to the person must be made available for review by the person's planning team, as defined in section 5461, subsection 8-C, on a schedule determined by the team. The review by the personal planning team may occur no less frequently than quarterly. The summary of the daily records must state the type of restraint used, the duration of the use and the reasons for the use. A monthly summary of all daily records pertaining to all persons must be relayed to the Office of Advocacy.

**14-D. Reimbursement provided.** Notwithstanding any other provision of law, the department shall provide reimbursement within available resources for durable medical equipment that provides a safe sleeping environment for individuals under 16 years of age if:

- A. The durable medical equipment is necessary to correct or ameliorate a behavioral health condition;
- B. The durable medical equipment is the least restrictive alternative for the treatment of the behavioral health condition;
- C. The durable medical equipment is approved on a case-by-case basis by a review team composed of the same representatives as the team conducting children's behavioral treatment reviews under subsection 13, paragraph B, subparagraph (3); and
- D. The department determines that the durable medical equipment is cost-effective in comparison to the provision of other covered services or equipment that can sufficiently correct or ameliorate the behavioral health condition.

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.

**15. Records.** All records of persons receiving services must remain confidential as provided in section 1207.

A. The person with ~~mental retardation~~ an intellectual disability or autism or, if the person is incompetent, a parent or guardian is entitled to have access to the records upon request.

B. The commissioner is entitled to have access to the records of a provider if necessary to carry out the statutory functions of the commissioner's office.

**16. Therapeutic devices or interventions.** Therapeutic devices or interventions must be prescriptively designed by a qualified professional and applied with concern for principles of good body alignment and circulation and allowance for change of position. The department may adopt rules concerning the use of therapeutic devices or interventions. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**17. Safety devices and practices.** A safety device or practice must be prescribed by a physician. A safety device must be designed and applied with concern for principles of good body alignment and circulation and allowance for change of position. The department may adopt rules concerning the use and approval of safety devices or practices. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

The department may adopt rules as necessary to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. A-130. 34-B MRSA §5606, sub-§3,** as amended by PL 1993, c. 326, §10, is further amended to read:

**3. Prohibited acts; penalty; defense.** A person is guilty of violation of the rights of a person with ~~mental retardation~~ an intellectual disability or autism who is receiving services if that person intentionally violates or abuses any rights or privileges of persons receiving services granted by this subchapter.

A. Violation of the rights of a person with ~~mental retardation~~ an intellectual disability or autism who is receiving services is a Class E crime.

B. Good-faith compliance with the provisions of this subchapter in connection with evaluation, admission, habilitation programming, education, treatment or discharge of a person receiving services is a defense to prosecution under this subchapter.

**Sec. A-131. 34-B MRSA §5610, sub-§1,** as enacted by PL 2007, c. 356, §27 and affected by §31, is amended to read:

**1. Guiding service delivery.** The delivery of services by providers of services and the department to persons with ~~mental retardation~~ intellectual disabilities and autism is guided by the following.

A. Persons with ~~mental retardation~~ intellectual disabilities or autism have the same rights as all citizens, including the rights to live, work and participate in the life of the community.

B. Community inclusion is achieved by connecting persons and their families, whenever possible, to local and generic supports within the community and by the use of residential services that are small and integrated into the community.

C. Real work for real pay for persons in integrated settings in the community is the cornerstone of all vocational and employment services.

D. Service delivery to persons with ~~mental retardation~~ intellectual disabilities and autism is based on the following fundamentals:

- (1) Maximizing the growth and development of the person and inclusion in the community;
- (2) Maximizing the person's control over that person's life;
- (3) Supporting the person in that person's own home;
- (4) Acknowledging and enhancing the role of the family, as appropriate, as the primary and most natural caregiver; and
- (5) Planning for the delivery of community services that:

(a) Promotes a high quality of life;

(b) Is based on ongoing individualized assessment of the strengths, needs and preferences of the person and the strengths of that person's family; and

(c) Identifies and considers connections in other areas of the person's life, including but not limited to family, allies, friends, work, recreation and spirituality.

**Sec. A-132. 34-B MRSA §6001,** as amended by PL 2001, c. 354, §3 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

**§6001. Legislative intent**

It is the intent of the Legislature that social and habilitative services directed at persons who have been diagnosed as ~~being autistic~~ having autism or ~~having~~ other pervasive developmental disorders be developed and planned for, to the extent that resources permit, by the Department of Health and Human Services ~~through the Division of Mental Retardation.~~

**Sec. A-133. 34-B MRSA §6201, sub-§2**, as amended by PL 1995, c. 560, Pt. K, §67, is further amended to read:

**2. Child in need of treatment.** "Child in need of treatment" means:

B. A child 17 years of age or younger who has treatment needs related to mental illness, ~~mental retardation~~ an intellectual disability, autism, ~~other~~ developmental disabilities or emotional or behavioral needs that are not under current statutory authority of other state agencies; or

C. A person 18 years of age or older and under 21 years of age who has treatment needs related to mental illness, ~~mental retardation~~ an intellectual disability, autism, ~~other~~ developmental disabilities or emotional or behavioral needs if the department has determined that it is in the interest of that person to receive treatment through the department.

**Sec. A-134. 34-B MRSA §6205**, as amended by PL 2003, c. 706, Pt. A, §14, is further amended to read:

**§6205. Services for juveniles committed to the youth development centers**

**1. Department authority.** The department may provide consultation services to any juvenile with ~~mental retardation~~ an intellectual disability or autism committed to the Long Creek Youth Development Center or the Mountain View Youth Development Center if those services are requested by the Commissioner of Corrections or the commissioner's designee. Consultation services may include participation by appropriate department professionals on the Classification Committee of the Long Creek Youth Development Center or the Classification Committee of the Mountain View Youth Development Center in order to assist in the design of individual treatment plans to provide habilitation, education and skill training to juveniles with ~~mental retardation~~ an intellectual disability or autism in residence at the Long Creek Youth Development Center or the Mountain View Youth Development Center.

**2. Support services.** Whenever a program has been designed for a juvenile with ~~mental retardation~~ an intellectual disability or autism by the Classification Committee of the Long Creek Youth Development Center or the Classification Committee of the Mountain View Youth Development Center and the classification committee has included participation by the department professionals, the department shall provide, insofar as possible, support services to implement that program.

**3. Case management.** The department may provide case management services to juveniles with ~~mental retardation~~ intellectual disabilities or autism who are released from the Long Creek Youth Development

Center or the Mountain View Youth Development Center.

**Sec. A-135. 36 MRSA §1760, sub-§28**, as amended by PL 1999, c. 708, §28; PL 2001, c. 354, §3; and PL 2003, c. 689, Pt. B, §6, is further amended to read:

**28. Community mental health facilities, community adult developmental services facilities and community substance abuse facilities.** Sales to mental health facilities, ~~mental retardation~~ adult developmental services facilities or substance abuse facilities that are:

A. Contractors under or receiving support under the Federal Community Mental Health Centers Act, or its successors; or

B. Receiving support from the Department of Health and Human Services pursuant to Title 5, section 20005 or Title 34-B, section 3604, 5433 or 6204.

**Sec. A-136. 36 MRSA §2551, sub-§1-B**, as amended by PL 2007, c. 539, Pt. DDD, §2, is further amended to read:

**1-B. Community support services for persons with intellectual disabilities or autism.** "Community support services for persons with ~~mental retardation~~ intellectual disabilities or autism" means services:

A. That are provided by community-based agencies to children or adults with ~~mental retardation~~ intellectual disabilities or autism and include assistance with the acquisition, retention or improvement of self-help, socialization and adaptive living skills; and

B. That take place in a nonresidential setting separate from the home or facility in which the child or adult resides, except when a physician has ordered that such services be provided in the child's or adult's home, and focus on enabling the child or adult to attain or maintain maximum functional levels.

"Community support services for persons with ~~mental retardation~~ intellectual disabilities or autism" includes only those services provided by designated agencies under a contract with the Department of Health and Human Services.

**Sec. A-137. 36 MRSA §2551, sub-§1-G** is enacted to read:

**1-G. Adult developmental services facility.** "Adult developmental services facility" means a facility that provides to an adult with an intellectual disability or autism any support or assistance that is provided, licensed or funded in whole or in part by the Department of Health and Human Services pursuant to Title 34-B, chapter 5 or 6.

**Sec. A-138. 36 MRSA §2551, sub-§7-B**, as amended by PL 2007, c. 539, Pt. DDD, §3, is further amended to read:

**7-B. Home support services.** "Home support services" means services provided to adults with ~~mental retardation~~ intellectual disabilities or autism, including direct assistance with eating, bathing, dressing, personal hygiene and other activities of daily living. These services include only those services provided by designated agencies under a contract with the Department of Health and Human Services and:

A. May include assistance with instrumental activities of daily living such as assistance with the preparation of meals, but does not include the cost of the meals themselves;

B. If specified in the adult's care plan, may include such housekeeping chores as bed making, dusting and vacuuming that are incidental to the care furnished, or are essential to the health and welfare of the adult; and

C. May be provided by a provider unrelated to the adult or by an adult relative other than an adult recipient's spouse, but may not be provided in the same setting where residential training is provided.

**Sec. A-139. 36 MRSA §2552, sub-§1, ¶I**, as amended by PL 2009, c. 434, §29, is further amended to read:

I. Community support services for persons with ~~mental retardation~~ intellectual disabilities or autism;

**Sec. A-140. 36 MRSA §2557, sub-§6**, as amended by PL 2007, c. 438, §60, is further amended to read:

**6. Community mental health facilities, community adult developmental services facilities and community substance abuse facilities.** Sales to mental health facilities, ~~mental retardation~~ adult developmental services facilities or substance abuse facilities that are:

A. Contractors under or receiving support under the federal Community Mental Health Centers Act, or its successors; or

B. Receiving support from the Department of Health and Human Services pursuant to Title 5, section 20005 or Title 34-B, section 3604, 5433 or 6204;

**Sec. A-141. 36 MRSA §2559**, as amended by PL 2009, c. 213, Pt. S, §13 and affected by §16, is further amended to read:

**§2559. Application of revenues**

Revenues derived by the tax imposed by this chapter must be credited to a General Fund suspense

account. On or before the last day of each month, the State Controller shall transfer a percentage of the revenues received by the State Tax Assessor during the preceding month pursuant to the tax imposed by section 2552, subsection 1, paragraphs A to F and L to the Local Government Fund as provided by Title 30-A, section 5681, subsection 5. The balance remaining in the General Fund suspense account must be transferred to service provider tax General Fund revenue. On or before the 15th day of each month, the State Controller shall transfer all revenues received by the assessor during the preceding month pursuant to the tax imposed by section 2552, subsection 1, paragraphs G to J to the Medical Care Services Other Special Revenue Funds account, the Other Special Revenue Funds Mental Health Services - Community Medicaid program, the Medicaid Services - ~~Mental Retardation~~ Adult Developmental Services program and the Office of Substance Abuse - Medicaid Seed program within the Department of Health and Human Services.

**Sec. A-142. 36 MRSA §2871, sub-§3-B** is enacted to read:

**3-B. Intermediate care facility for persons with intellectual disabilities.** "Intermediate care facility for persons with intellectual disabilities" has the same meaning as in Title 34-B, section 1001, subsection 4-B.

**Sec. A-143. 36 MRSA §2871, sub-§6**, as amended by PL 2003, c. 2, Pt. GG, §1 and affected by §3, is further amended to read:

**6. Residential treatment facility.** "Residential treatment facility" means an intermediate care facility for ~~the mentally retarded~~ persons with intellectual disabilities, or a level I assisted living facility for ~~the mentally retarded~~ persons with intellectual disabilities or autism, that falls within the definitions provided by the United States Social Security Act, 42 United States Code, Section 1396(d) and that provides services to individuals with developmental disabilities. "Residential treatment facility" also means a community-based facility that provides similar services to the developmentally disabled under a waiver granted pursuant to the United States Social Security Act, 42 United States Code, Section 1396n(c) to the extent permitted by federal law and regulations.

**Sec. A-144. Maine Revised Statutes headnote amended; revision clause.** In the Maine Revised Statutes, Title 34-B, chapter 5, in the chapter headnote, the words "mental retardation" are amended to read "intellectual disabilities and autism" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

**Sec. A-145. Maine Revised Statutes headnote amended; revision clause.** In the Maine Revised Statutes, Title 34-B, chapter 5, subchapter 2, in

the subchapter headnote, the words "mental retardation services" are amended to read "services for persons with intellectual disabilities or autism" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

**Sec. A-146. Maine Revised Statutes headnote amended; revision clause.** In the Maine Revised Statutes, Title 34-B, chapter 5, subchapter 3, in the subchapter headnote, the words "services for mentally retarded persons" are amended to read "services for persons with intellectual disabilities or autism" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

**Sec. A-147. Maine Revised Statutes headnote amended; revision clause.** In the Maine Revised Statutes, Title 34-B, chapter 5, subchapter 4, in the subchapter headnote, the words "rights of persons with mental retardation or autism" are amended to read "rights of persons with intellectual disabilities or autism" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

**PART B**

**Sec. B-1. Rename Consent Decree Reinvestment Fund - BDS-MR program.** Notwithstanding any other provision of law, the Consent Decree Reinvestment Fund - BDS-MR program within the Department of Health and Human Services is renamed the Consent Decree Reinvestment Fund - Intellectual Disabilities Services program.

**Sec. B-2. Rename Community Development Fund - Mental Retardation program.** Notwithstanding any other provision of law, the Community Development Fund - Mental Retardation program within the Department of Health and Human Services is renamed the Community Development Fund - Intellectual Disabilities Services program.

**Sec. B-3. Rename Community Development - Mental Retardation program.** Notwithstanding any other provision of law, the Community Development - Mental Retardation program within the Department of Health and Human Services is renamed the Community Development - Intellectual Disabilities Services program.

**Sec. B-4. Rename MR/Elderly PNMI Room and Board program.** Notwithstanding any other provision of law, the MR/Elderly PNMI Room and Board program within the Department of Health and Human Services is renamed the PNMI Room and Board program.

**Sec. B-5. Rules, forms, policies and publications.** When adopting or amending its rules and developing, publishing and issuing forms, policies and publications, the Department of Health and Human Services, as appropriate, shall replace references to

"mental retardation" and "mentally retarded" with references to "intellectual disability" and "person with an intellectual disability" and shall ensure that language referring to persons with disabilities is consistent with the recommendations of the respectful language working group contained in the report submitted by the Maine Developmental Disabilities Council to the Joint Standing Committee on Health and Human Services pursuant to Resolve 2007, chapter 62.

**Sec. B-6. Intent; effect.** This Act is not intended to and does not change the eligibility requirements for services or benefits or result in an expansion of services or benefits provided by the Department of Health and Human Services.

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

Effective March 20, 2012.

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**CHAPTER 543**

**H.P. 522 - L.D. 693**

**An Act Concerning Solid Waste Facility Citizen Advisory Committees**

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

**Sec. 1. 38 MRSA §1310-N, sub-§12** is enacted to read:

**12. Citizen advisory committee notification.**  
Except for applications for minor alterations, the department may not issue a license or an amendment to a license to a solid waste disposal facility owned by the State unless the provisions of this subsection are satisfied.

A. For purposes of this subsection, the following terms have the following meanings.

(1) "Appointing authority" means an entity authorized pursuant to law or resolve to appoint a member to a citizen advisory committee.

(2) "License" means a license, permit, order or approval issued by the department pursuant to this chapter.

(3) "Minor alteration" means an alteration that in the department's judgment does not have a potential to impact the environment or public health or welfare or to create a nuisance.

B. The owner or operator of a solid waste disposal facility shall: