

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)

**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.**

---

---

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

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

Effective March 30, 2012.

**CHAPTER 144**

**S.P. 546 - L.D. 1647**

**Resolve, To Require Rulemaking Regarding Standing To Appeal in Proceedings before the Board of Environmental Protection and the Maine Land Use Regulation Commission**

**Sec. 1. Standing governing administrative appeals to the Maine Land Use Regulation Commission. Resolved:** That the Maine Land Use Regulation Commission shall adopt rules to conform the standards for standing to appeal a decision to the commission to the judicial standards for standing to appeal a decision of the commission to court. Rules adopted pursuant to this section are major substantive rules under the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A and are subject to legislative review by the joint standing committee of the Legislature having jurisdiction over judiciary matters; and be further

**Sec. 2. Standing governing administrative appeals to the Board of Environmental Protection. Resolved:** That the Board of Environmental Protection shall adopt rules to conform the standards for standing to appeal a decision to the board to the judicial standards for standing to appeal a decision of the board to court. Notwithstanding the Maine Revised Statutes, Title 38, section 341-H, rules adopted by the board pursuant to this section are major substantive rules under Title 5, chapter 375, subchapter 2-A and are subject to legislative review by the joint standing committee of the Legislature having jurisdiction over judiciary matters.

See title page for effective date.

**CHAPTER 145**

**H.P. 739 - L.D. 1003**

**Resolve, To Assist Maine Schools To Obtain Federal Funds for Medically Necessary Services**

**Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until

90 days after adjournment unless enacted as emergency; and

**Whereas,** this resolve is intended to provide guidance regarding those portions of the Department of Health and Human Services' MaineCare rules that relate to implementation of special education and related services provided through the Child Development Services System and school administrative units to eligible children served in these settings; and

**Whereas,** it is critical that the Department of Education and the Department of Health and Human Services work together with key stakeholders to develop refinements to existing MaineCare policies or develop new policies and guidance on billing procedures as soon as possible to ensure the provision of medically necessary services to students in school-based settings; and

**Whereas,** the Department of Education and the Department of Health and Human Services must begin the process of refining current MaineCare policies, developing guidance on billing procedures and preparing any necessary revisions to the state plan to submit to the Federal Government for review and approval prior to the adoption of rules governing Medicaid payment for medically necessary services to eligible children in school-based settings that qualify for reimbursement; and

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

**Sec. 1. Refinement of MaineCare policies.**

**Resolved:** That the Department of Education and the Department of Health and Human Services, referred to in this section as "the departments," shall work together to refine existing policies, develop new policies or prepare nonregulatory guidance on billing procedures, as appropriate, to ensure the provision of medically necessary services to students in school-based settings. The refinements to MaineCare policies must:

1. Be in compliance with federal law;
2. Provide local school districts with options and give them the authority to choose the best option with regard to local needs and capacities;
3. Take into consideration the input of stakeholders, including representatives of the Department of Education, the Department of Health and Human Services, the Child Development Services System, the Maine School Management Association, the Maine Administrators of Services for Children with Disabilities and special purpose private schools and agencies that are approved to provide early intervention or special education programs pursuant to the Maine Re-

vised Statutes, Title 20-A, section 7252-B. In order to gather input from stakeholders, the departments shall establish work groups to explore problems with current Medicaid policies and to consider possible solutions to both policies and billing processes. The work groups must include stakeholders and representatives of the following groups, who participate as nonvoting members:

A. Two representatives of parents of children with developmental delays or disabilities, one who is appointed by the Disability Rights Center and one who is appointed by the Maine Developmental Disabilities Council; and

B. Two representatives of directly affected local school administrative units with expertise in this area, one who is appointed by the President of the Senate and one who is appointed by the Speaker of the House;

4. Include provisions for training and support for school staff, including the development of policy and billing manuals and other resources written with school-based providers in mind; and

5. Set up an interagency stakeholder body, including representatives of the Department of Education, the Department of Health and Human Services, the Child Development Services System, the Maine School Management Association, the Maine Administrators of Services for Children with Disabilities and special purpose private schools and agencies that are approved to provide early intervention or special education programs pursuant to the Maine Revised Statutes, Title 20-A, section 7252-B, to coordinate the implementation of the program refinements. The interagency stakeholder body must also include representatives of the following groups, who participate as nonvoting members:

A. Two representatives of parents of children with developmental delays or disabilities, one who is appointed by the Disability Rights Center and one who is appointed by the Maine Developmental Disabilities Council; and

B. Two representatives of directly affected local school administrative units with expertise in this area, one who is appointed by the President of the Senate and one who is appointed by the Speaker of the House; and be it further

**Sec. 2. State plan amendment. Resolved:**

That, after due consideration of the input of the stakeholders and relevant work groups established pursuant to section 1, if determined to be appropriate by the Department of Education and the Department of Health and Human Services, the Department of Health and Human Services shall propose changes to the state

plan for Medicaid services provided pursuant to the Maine Revised Statutes, Title 22, chapter 855 to permit reimbursement for school-based services by July 1, 2012; and be it further

**Sec. 3. Report to Legislature. Resolved:**

That the Department of Education and the Department of Health and Human Services shall report to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters on March 30, 2012 on the status of the work undertaken to that date pursuant to this resolve. The report must include, but is not limited to, a timeline that establishes specific dates for each of the following initiatives:

1. Proposed policy changes, including refinements to existing policies, new policies to be developed or the preparation of nonregulatory guidance on billing procedures;

2. A communication plan to provide details on the implementation of proposed policy changes to the field;

3. A plan to provide the training required to school administrative units and the Child Development Services System;

4. A detailed budget, including the amount and sources of funding and other resources needed to implement proposed policy changes;

5. If determined to be appropriate by the Department of Education and the Department of Health and Human Services, a plan to make any necessary changes to rules; and

6. If determined to be appropriate by the Department of Education and the Department of Health and Human Services, a timeline for the preparation, submission and anticipated approval of amendments to the state plan for Medicaid services provided pursuant to the Maine Revised Statutes, Title 22, chapter 855 related to the provision of medically necessary services to eligible children in school-based settings.

In addition, the Department of Education and the Department of Health and Human Services shall jointly submit a status report on a monthly basis through June 2012 on the work completed by the Department of Education and the Department of Health and Human Services and the interagency stakeholder body pursuant to this resolve; and be it further

**Sec. 4. Goal. Resolved:** That the goal of this resolve is to make sure eligible children get the services they need in the settings they need them in and to ensure those services that qualify as medically necessary services are reimbursed.

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

Effective April 4, 2012.

---



---

**CHAPTER 146**

**H.P. 1360 - L.D. 1838**

**Resolve, Regarding  
Legislative Review of Chapter  
33: Regulations Governing  
Timeout Rooms, Therapeutic  
Restraints and Aversives in  
Public Schools and Approved  
Private Schools, a Major  
Substantive Rule of the  
Department of Education**

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

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

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

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

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

**Sec. 1. Adoption. Resolved:** That final adoption of Chapter 33: Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools, a provisionally adopted major substantive rule of the Department of Education that has been submitted to the Legislature for review pursuant to the Maine Revised

Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the following changes are made:

1. The rule must be amended in section 2 to provide that public charter schools are covered entities;

2. The rule must be amended in section 2 to clarify that physical restraint does not include:

A. Physical contact when the purpose of the contact is to comfort a student and the student voluntarily accepts the contact; or

B. Momentarily deflecting the movement of a child when the child's movements would be destructive, harmful or dangerous to the child or to others;

3. The rule must be amended in section 6 to clarify that when a staff person who is not certified in a state-approved training program initiates physical restraint, trained personnel must be summoned to the scene only if the emergency situation continues;

4. The rule must be amended in section 7 to clarify that a staff person who initiates physical restraint or seclusion that involves a student who has been placed in an out-of-district placement must report the incident to the entity responsible for the student's education within 24 hours or by the next business day;

5. The rule must be amended in section 8 to clarify that the incident report documenting the use of physical restraint or seclusion must indicate if any of the personnel involved in the incident were certified in a state-approved training program; and

6. The rule must be amended in section 12 to clarify that the state-approved training programs may include regional training programs and regional "train the trainer" program models to provide the required training for personnel in the covered entities; and be it further

**Sec. 2. Department of Education; non-regulatory guidance. Resolved:** That, no later than September 1, 2012, the Department of Education shall provide nonregulatory guidance to school administrative units, public charter schools, private schools and other covered entities that are subject to the requirements of Chapter 33: Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools. The guidance provided by the department to the covered entities must include, but is not limited to, examples of what is and is not considered to be physical restraint or seclusion. The guidance must be disseminated to all covered entities in writing, and the department shall post the guidance on the department's publicly accessible website.