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House of Representatives, May 5, 2021

**An Act To Improve Access to Medical Care for and Expand the
Rights of Adult Clients of State Correctional Facilities**

Received by the Clerk of the House on May 3, 2021. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TALBOT ROSS of Portland.
Cosponsored by Senator LAWRENCE of York and
Representatives: CRAVEN of Lewiston, EVANS of Dover-Foxcroft, Speaker FECTEAU of Biddeford, MADIGAN of Waterville, PLUECKER of Warren, SHARPE of Durham, WARREN of Hallowell, Senator: CLAXTON of Androscoggin.

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

2 **Sec. 1. 34-A MRSA §3001-B** is enacted to read:

3 **§3001-B. Resident health care committee**

4 **1. Establishment.** A resident health care committee is established within each
5 correctional facility housing adult clients under the department.

6 **2. Membership.** A resident health care committee must consist of an odd number of
7 members but must have at least 9 members. Members of the resident health care committee
8 must be selected as follows:

9 **A.** The chief administrative officer and adult clients of a correctional facility shall, in
10 accordance with this subsection, select an equal number of members of the resident
11 health care committee except that the adult clients of the correctional facility shall also
12 select one additional member of the resident health care committee in accordance with
13 this subsection;

14 **B.** The department shall establish a process by which adult clients of a correctional
15 facility may nominate and select adult clients of the correctional facility to serve as
16 members of the resident health care committee and fill any vacancy that may arise from
17 a member's conditional release or discharge within 30 days of the vacancy; and

18 **C.** The chief administrative officer shall ensure to the extent possible that the resident
19 health care committee:

20 **(1)** Includes at least one person licensed by this State to provide medical or mental
21 health services and who is not affiliated with a medical service provider contracting
22 with the department;

23 **(2)** Represents the racial and ethnic diversity of the correctional facility's adult
24 clients, staff and medical services personnel; and

25 **(3)** Represents the age range, security classification and sentence term of adult
26 clients of the correctional facility.

27 **3. Terms.** The term of a member of a resident health care committee is 2 years.

28 **4. Duties.** A resident health care committee has the following duties:

29 **A.** To meet at least quarterly;

30 **B.** To provide input to the department during the selection and award of contracts for
31 medical and mental health service providers for a correctional facility and ongoing
32 assessments of the performance of medical and mental health service providers
33 contracting with the department;

34 **C.** To review, at least quarterly, information compiled by the department on the time
35 between adult clients' initial requests for medical or mental health services and the
36 treatment received based on those requests; and

37 **D.** To collaborate with the department on the annual report described in subsection 5.

38 **5. Report.** The department shall maintain records within each correctional facility of
39 the time between a client's request for medical or mental health services and the treatment
40 received based on that request or other appropriate care and, at least quarterly, shall provide

1 the records to the resident health care committee of each correctional facility. Annually,
2 by February 1st, the department shall, in collaboration with the resident health care
3 committee of each correctional facility, issue a report to the joint standing committee of the
4 Legislature having jurisdiction over criminal justice and public safety matters that assesses
5 the adequacy of medical and mental health services provided to adult clients of correctional
6 facilities and makes recommendations, including suggested legislation, to improve the
7 quality of such services.

8 **6. Rulemaking.** The department shall adopt rules necessary to implement this section
9 and shall solicit input and comment in accordance with the Maine Administrative
10 Procedures Act from adult clients of correctional facilities when adopting rules to provide
11 a process for the nomination and selection of resident health care committee members.
12 Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter
13 375, subchapter 2-A.

14 **Sec. 2. 34-A MRSA §3031, sub-§2,** as amended by PL 2015, c. 291, §5, is further
15 amended to read:

16 **2. Medical care.** Adequate professional medical care and adequate professional
17 mental health care, which do not include medical treatment or mental health treatment
18 requested by the client that the facility's treating physician or treating psychiatrist or
19 psychologist determines unnecessary. The commissioner may establish medical and dental
20 fees not to exceed \$5 for the medical and dental services that are provided pursuant to this
21 subsection and a fee not to exceed \$5 for prescriptions, medication or prosthetic devices.
22 No client may be charged a fee for requesting or otherwise obtaining records of medical,
23 dental or mental health care provided to the client pursuant to this subsection. Except as
24 provided in paragraph A, every client may be charged a medical or dental services fee for
25 each medical or dental visit, prescription, medication or prosthetic device. The facility
26 shall collect the fee. All money received by the department under this subsection is retained
27 by the facility to offset the cost of medical and dental services, prescriptions, medication
28 and prosthetic devices.

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

- 31 (1) Receives treatment initiated by facility staff;
32 (2) Is a juvenile;
33 (3) Is pregnant;
34 (4) Is a person with a serious mental illness or developmental disability. For the
35 purposes of this paragraph, "a person with a serious mental illness or
36 developmental disability" means a client who, as a result of a mental disorder or
37 developmental disability, exhibits emotional or behavioral functioning that is so
38 impaired as to interfere substantially with the client's capacity to remain in the
39 general prison population without supportive treatment or services of a long-term
40 or indefinite duration, as determined by the facility's psychiatrist or psychologist.
41 The exemption under this paragraph applies only to supportive treatment or
42 services being provided to improve the client's emotional or behavioral
43 functioning;

- 1 (5) Is an inpatient at a state-funded mental health facility or is a resident at a state-
2 funded facility for individuals with adult developmental disabilities;
- 3 (6) Is undergoing follow-up treatment;
- 4 (7) Receives emergency treatment as determined by the facility's medical or dental
5 staff; ~~or~~
- 6 (8) Has less than \$15 in the client's facility account and did not receive additional
7 money from any source for 6 months following the medical or dental service or
8 provision of the prescription, medication or prosthetic device; ~~or~~
- 9 (9) Is indigent or does not have sufficient funds in the client's facility account to
10 pay the fee.

11 B. Notwithstanding paragraph A, the State may bring a civil action in a court of
12 competent jurisdiction to recover the cost of medical, dental, psychiatric or
13 psychological expenses incurred by the State on behalf of a client incarcerated in a
14 facility. The following assets are not subject to judgment under this paragraph:

- 15 (1) Joint ownership, if any, that the client may have in real property;
- 16 (2) Joint ownership, if any, that the client may have in any assets, earnings or other
17 sources of income; and
- 18 (3) The income, assets, earnings or other property, both real and personal, owned
19 by the client's spouse or family;

20 **Sec. 3. 34-A MRSA §3031, sub-§8**, as amended by PL 2019, c. 139, §2, is further
21 amended to read:

22 **8. Visitation.** A reasonable opportunity to visit with relatives and friends, in
23 accordance with departmental policies and institutional procedures, ~~provided~~ except that
24 the department may restrict or prohibit visits when the restriction or prohibition is necessary
25 for the security of the institution; ~~and~~

26 **Sec. 4. 34-A MRSA §3031, sub-§9**, as enacted by PL 2019, c. 139, §3, is amended
27 to read:

28 **9. Menstrual products.** Comprehensive access to menstrual products, including, but
29 not limited to, sanitary pads and tampons, provided and available at all times and without
30 inconvenience or charge to a person who menstruates who resides in a correctional or
31 detention facility;

32 **Sec. 5. 34-A MRSA §3031, sub-§10** is enacted to read:

33 **10. Appropriate corrections officer.** Transportation and accompaniment to and from
34 medical and mental health service providers by corrections officers of the same gender as
35 the client or of an appropriate gender based on the client's gender identity and expression;
36 and

37 **Sec. 6. 34-A MRSA §3031, sub-§11** is enacted to read:

38 **11. Privacy of medical services.** Receive medical and mental health services,
39 including medical examinations and consultations, in private and without the presence of a
40 corrections officer unless the medical or mental health service provider requests a
41 corrections officer's presence or the department has determined that the absence of a

1 corrections officer would pose a serious risk to the safety and security of the client or
2 provider.

3 **Sec. 7. Property, strip and body cavity searches.** The Department of Corrections
4 shall adopt rules delineating between searches of a client's cell or living space and physical
5 property and searches of a client's person, including strip searches and body cavity
6 searches, and establishing processes for conducting strip searches and body cavity searches
7 in a trauma-informed and gender-responsive manner. Rules adopted under this section are
8 routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375,
9 subchapter 2-A.

10 SUMMARY

11 This bill establishes resident health care committees in all adult correctional facilities
12 operated by the Department of Corrections. The bill describes the membership
13 requirements for resident health care committees, the process for selecting members and
14 the duties of the resident health care committees. The bill requires the department to adopt
15 routine technical rules to implement those provisions. The bill requires the department to
16 collaborate with resident health care committees to annually report to the joint standing
17 committee of the Legislature having jurisdiction over criminal justice and public safety
18 matters on the adequacy of medical and mental health services in correctional facilities.

19 The bill prohibits the department from charging a client a fee to access the client's
20 medical records, from charging indigent clients fees for medical services and from charging
21 fees for medical services when the client does not have sufficient funds. The bill provides
22 a client with the right to be transported and accompanied to medical and mental health
23 service providers by corrections officers of the client's gender or of an appropriate gender
24 and to receive medical and mental health services without the presence of a corrections
25 officer under certain circumstances. The bill also requires the department to adopt routine
26 technical rules to delineate between searches of property and strip and body cavity searches
27 and to establish processes for conducting searches in a trauma-informed and gender-
28 responsive manner.