

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-THREE

—
H.P. 278 - L.D. 449

An Act to Authorize the Department of Health and Human Services to License Home-based and Community-based Services for Persons with an Intellectual Disability, Autism Spectrum Disorder or a Related Condition or an Acquired Brain Injury and Define Autism Spectrum Disorder

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

Sec. 1. 22 MRSA §3089, sub-§2-A is enacted to read:

2-A. Licensing. As provided in Title 34-B, section 1203-B, the department shall license agencies, as defined in that section, that serve or provide support for an adult with an acquired brain injury.

Sec. 2. 22 MRSA §7801, sub-§3, as amended by PL 1993, c. 661, §3, is further amended to read:

3. Residential care facilities. A residential care facility providing care to no more than 2 residents is not required to obtain a license under subsection 1, unless the license is required for the residential care facilities to receive payment from available state funds, including the State's share of MaineCare reimbursements. The department may issue 2-year licenses and conduct modified surveys for compliance of those facilities as long as the facilities have relatively deficiency-free surveys with no history of health or safety violations.

Sec. 3. 22 MRSA §7801, sub-§3-A is enacted to read:

3-A. Residential care facilities serving adults with certain conditions. This subsection applies to a residential care facility that provides a setting for an adult with an intellectual disability, autism spectrum disorder, as defined in Title 34-B, section 6002, subsection 1, a related condition, as defined in Title 34-B, section 5001, subsection 5-A, or an acquired brain injury.

A. A residential care facility to which this subsection applies must obtain a license as provided by Title 34-B, section 1203-B.

B. A license issued under this chapter before July 1, 2024 to a residential care facility that provides a setting for an adult with an intellectual disability, autism spectrum

disorder, a related condition or an acquired brain injury continues in effect until the license's expiration date, unless subject to the disciplinary authority of the department.

This paragraph is repealed July 1, 2026.

Sec. 4. 22 MRSA §7862, first ¶, as enacted by PL 2003, c. 546, §1, is amended to read:

All Except as provided by subsection 2-A, all contracts or agreements executed by providers of assisted living services under this chapter and a consumer or the legal representative of the consumer are subject to the requirements of this section.

Sec. 5. 22 MRSA §7862, sub-§2-A is enacted to read:

2-A. Exception. This section does not apply to a contract for the provision of services in a setting for an adult with an acquired brain injury, an intellectual disability, autism spectrum disorder, as defined in Title 34-B, section 6002, subsection 1, a related condition, as defined in Title 34-B, section 5001, subsection 5-A.

Sec. 6. 34-B MRSA §1203-A, as amended by PL 2019, c. 113, Pt. C, §108, is further amended by amending the section headnote to read:

§1203-A. Licenses for the provision of mental health services

Sec. 7. 34-B MRSA §1203-B is enacted to read:

§1203-B. Licenses for agencies that provide services to adults with certain conditions

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agency" means a firm, association, corporation or nonprofit organization.

B. "Related condition" means a condition that meets the definition of 42 Code of Federal Regulations, Section 435.1010 in effect January 1, 2023.

2. License required. An agency that provides a service, if the service provided is funded in whole or in part by the department, to an adult with an intellectual disability, autism spectrum disorder, a related condition or an acquired brain injury, including a service provided under Title 22, section 3089, may not provide that service without a license issued by the department as provided by this section. This section applies to:

A. A provider of services regarding case management or care coordination, home support, community support, employment support, personal support and residential services; and

B. A residential care facility that provides a setting for an adult with an intellectual disability, autism spectrum disorder, a related condition or an acquired brain injury.

3. Full license. Full licenses under this section are governed as follows.

A. The department may issue a full license to or renew a full license for an applicant that the department determines has complied with all applicable laws and rules.

B. A full license has a term not to exceed 2 years.

4. Conditional license. Conditional licenses under this section are governed as follows.

A. The department may issue a conditional license to an agency applying for or renewing a full license if:

- (1) The applicant fails to comply with applicable laws and rules; and
- (2) In the judgment of the department, the best interests of the public would be served by issuance of a conditional license.

B. A conditional license has a term for a specified period of time not to exceed one year or the remaining period of the full license, if the applicant has a full license and has applied for renewal, as determined by the department. The department shall determine the period of the license based on the severity of the laws or rules violated by the conditional licensee. The department shall specify the conditions imposed by the department and when the conditional licensee must comply with those conditions.

C. If a conditional licensee fails to comply with conditions imposed by the department, the department may initiate proceedings to revoke, suspend or refuse to renew the conditional license in accordance with Title 5, chapter 375.

5. Provisional license. Provisional licenses under this section are governed as follows.

A. The department may issue a provisional license to an agency that:

- (1) Has not previously operated as an agency serving an individual with an intellectual disability, autism spectrum disorder, a related condition or an acquired brain injury;
- (2) Complies with all applicable laws and rules, except those that can be complied with only once the applicant serves clients; and
- (3) Demonstrates the ability to comply with all applicable laws and rules by the end of the provisional license term.

B. A provisional license has a term for a specified period of time of at least 3 months but no longer than 12 months, as determined by the department.

6. Qualifications for license. The department shall establish qualifications for a license issued under this section, including qualifications regarding:

- A. General requirements;
- B. Professional personnel;
- C. Paraprofessional personnel;
- D. Treatment, services and the coordination of treatment and services;
- E. Supervision of professional and nonprofessional personnel;
- F. Organizational structure, including lines of authority;
- G. Clinical records;
- H. Business records; and
- I. Other aspects of providing a service to an individual with an intellectual disability, autism spectrum disorder, a related condition or an acquired brain injury that may be necessary to protect the public.

7. License not assignable or transferable. A license issued under this section is not assignable or transferable. A license is immediately void if ownership or control of the agency changes.

8. Quality assurance and technical assistance. The department may perform programmatic review of a licensee, monitor, audit and provide technical assistance to a licensee and otherwise ensure that a licensee is compliant with standards of operation set forth by the department. The department may:

A. Issue a notice of deficiency for failure to comply with applicable state statutes or rules or federal regulations; and

B. Require licensees to submit and comply with acceptable plans of corrective action to remedy the deficiency for which notice was issued under paragraph A.

The department shall monitor each licensee for continued compliance with applicable laws and rules at least every 2 years.

9. Confidentiality of records. A department record that contains personally identifiable information or health information and that is created or obtained in connection with the department's licensing or quality assurance powers under this section is confidential, with the exceptions of a notice of deficiency, a plan of corrective action and a final action with respect to a license or a quality assurance activity.

10. Right of entry; investigation. The department has the right to enter and inspect the premises of an agency licensed by the department under this section, an agency requesting a license from the department under this section or an agency the department determines is operating without a license required by this section.

A. The department has the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of an agency's compliance with applicable laws and rules.

B. The department must enter the premises at a reasonable time.

C. To inspect an agency that the department knows or believes to be operating without a license, the department may enter only with the permission of the owner or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. An owner or operator of an agency that is unlicensed may not interfere with, impede or obstruct an investigation by the department.

11. Enforcement. The following provisions govern enforcement of this section.

A. When an applicant or licensee fails to comply with applicable laws and rules or a plan of corrective action, the department may refuse to issue or renew the license or may impose one or more of the following sanctions if the department determines that a sanction is necessary and appropriate to ensure compliance with applicable laws or rules or to protect an individual served by an agency. The department may direct the licensee or applicant to:

(1) Stop all new admissions or intake of new clients, regardless of payment source, until the department determines that corrective action has been taken; and

(2) Correct any deficiencies in a manner and within a time frame that the department determines is appropriate to ensure compliance with applicable laws or rules or to protect a client of the licensee or applicant.

B. If, at the expiration of a full or provisional license or during the term of a full license, a licensee fails to comply with applicable laws and rules and, in the judgment of the department, the best interest of the public would be served by the issuance of a conditional license, the department may issue a conditional license or change a full license to a conditional license.

C. A license issued under this section may be suspended or revoked for violation of applicable laws and rules; committing, permitting, aiding or abetting any illegal practices in the operation of the agency; or conduct or practices detrimental to the welfare of persons living in or attending a facility operated by the agency.

D. When the department determines that a license should be suspended or revoked, the department shall file a complaint with the District Court as provided in Title 5, chapter 375.

E. The department may petition the Superior Court to appoint a receiver to operate an agency in the same manner as for a long-term care facility under Title 22, chapter 1666-A.

F. The department may impose a penalty on a licensee for a violation of this section. The department shall establish a schedule of penalties according to the nature of the violation. Each day of violation constitutes a separate offense.

G. The department may impose a penalty on an agency required to be licensed under this section that is operating without the required license. The minimum penalty for operating without a license is \$500 per day but not more than \$10,000 in total.

12. Appeals. A person aggrieved by a final action of the department under this section may obtain judicial review in accordance with Title 5, chapter 375. A final action for purposes of this subsection includes:

A. Issuing a conditional license;

B. Amending or modifying a license;

C. Refusing to issue or renew a full license;

D. Refusing to issue a provisional license; and

E. Imposing a sanction.

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

14. Transitional provisions. An agency that is otherwise required to obtain a license under this section or a residential care facility that provides a setting for an adult with an intellectual disability, autism spectrum disorder, a related condition or an acquired brain injury that is otherwise required to obtain a license under this section is not required to obtain the license before July 1, 2024.

This subsection is repealed July 2, 2024.

Sec. 8. 34-B MRSA §5001, sub-§5-A is enacted to read:

5-A. Related condition. "Related condition" means a condition that meets the definition in 42 Code of Federal Regulations, Section 435.1010 in effect January 1, 2023.

Sec. 9. 34-B MRSA §5433, sub-§2, as amended by PL 2011, c. 542, Pt. A, §96, is further amended to read:

2. Services and programs. Provide and help finance adult developmental services and programs throughout the State for persons with intellectual disabilities or autism spectrum disorder or related conditions residing in the community and residing in privately owned residential care facilities;

Sec. 10. 34-B MRSA §6002, as repealed and replaced by PL 2007, c. 309, §1, is repealed and the following enacted in its place:

§6002. Autism spectrum disorder and autism defined

1. Generally. "Autism spectrum disorder" or "autism" means a neurodevelopmental disorder characterized by symptoms that typically present in the early developmental period and result in clinically significant impairment in social, occupational or other important areas of functioning, including:

- A. Deficits in social communication and social interaction; and
- B. Restricted repetitive behaviors, interests and activities.

2. Adult with autism spectrum disorder; adult with autism. "Adult with autism spectrum disorder" or "adult with autism" means an adult who has received a diagnosis that meets the diagnostic criteria of autism spectrum disorder, as set forth in department rules.