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An Act To Improve Hospital-based Behavioral Health Treatment for Persons with Intellectual Disabilities or Autism

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

Sec. 1. 34-B MRSA §5605, sub-§13, as amended by PL 2013, c. 310, §7, is further amended to read:

13. Behavioral support, modification and management. Behavior modification and behavior management of and supports for a person with an intellectual disability or autism who is not a patient in an acute psychiatric unit of a hospital are governed as follows.

A. A person with 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 a representative from the department, a representative from the advocacy agency designated pursuant to Title 5, section 19502 ~~and~~, a representative designated by the Maine Developmental Services Oversight and Advisory Board and a licensed psychologist who has training and experience in the development of behavioral support plans. The advocacy agency representative serves as a nonvoting member of the review team and shall be present to advocate on behalf of the person. The department shall provide sufficient advance notice of all scheduled review team meetings to the advocacy agency and provide the advocacy agency with any plans for which approval is sought along with any supporting documentation; 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 a representative from the advocacy agency designated pursuant to Title 5, section 19502, a team leader of the department's children's services division and the children's services medical director or the director's designee. The advocacy agency representative serves as a nonvoting member of the review team and shall be present to advocate on behalf of the person. The department shall provide sufficient advance notice of all scheduled review team meetings to the advocacy agency and provide the advocacy agency with any plans for which approval is sought along with any supporting documentation. 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.

SUMMARY

This bill amends the laws concerning the rights and basic protections of a person with an intellectual disability or autism.

1. It clarifies that the provisions governing behavioral support, modification and management do not apply to a person who is a patient in an acute psychiatric unit of a hospital.
2. It adds to the team of persons who must review behavior modification and behavior management programs a licensed psychologist who has training and experience in the development of behavioral support plans.