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Resolve, Authorizing the Estate of Mitchell A. Kessler To Bring Suit against the Department of Health and Human Services

Sec. 1 Authorization to sue State. Resolved: That, notwithstanding any statute or common law to the contrary, the estate of Mitchell A. Kessler is authorized to bring a civil action against the Department of Health and Human Services for damages claimed to have been suffered in connection with actions taken by the Riverview Psychiatric Center. This resolve is a waiver of the State's defense of immunity under the Maine Revised Statutes, Title 14, chapter 741.

Notwithstanding the application of any statute of limitations barring this action, this action must be brought in the Cumberland County Superior Court within one year from the date this resolve takes effect. Liability and damages, including punitive damages, must be determined according to state law as in litigation between individuals. This action may be heard by a Justice of the Superior Court or by a jury. The Maine Rules of Civil Procedure govern the conduct of the action. The Attorney General shall appear, answer and defend the action. To the extent possible, the Attorney General shall conduct negotiations in good faith to resolve this action by settlement.

The Treasurer of State shall pay any settlement determined by agreement of the parties or any judgment, including costs and interest, on final process issued by the Superior Court or, if applicable, the Supreme Judicial Court. Recovery may not exceed \$400,000 including costs, interest and punitive damages.

SUMMARY

This resolve authorizes the estate of Mitchell A. Kessler to bring suit against the Department of Health and Human Services for damages in connection with actions taken by the Riverview Psychiatric Center and constitutes a waiver of the State's defense of sovereign immunity. The resolve provides that the maximum amount of any recovery is \$400,000, pursuant to the limits of the Maine Tort Claims Act.