



126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document

No. 1598

H.P. 1169

House of Representatives, December 30, 2013

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

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 23, 2013. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland

MILLICENT M. MacFARLAND

Clerk

Presented by Representative FARNSWORTH of Portland.
Cosponsored by Senator BOYLE of Cumberland and
Representatives: BRIGGS of Mexico, CHIPMAN of Portland, GATTINE of Westbrook,
GRAHAM of North Yarmouth, MORRISON of South Portland, PRINGLE of Windham,
VEROW of Brewer.

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

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

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

8 A. A person with an intellectual disability or autism may not be subjected to a
9 behavior modification or behavior management program to eliminate dangerous or
10 maladaptive behavior without first being assessed by a physician to determine if the
11 proposed program is medically contraindicated and that the dangerous or maladaptive
12 behavior could not be better treated medically.

13 A-1. Support programs may contain both behavior modification and behavior
14 management components.

15 A-2. The following practices are prohibited as elements of behavior modification or
16 behavior management programs:

- 17 (1) Seclusion;
- 18 (2) Corporal punishment;
- 19 (3) Actions or language intended to humble, dehumanize or degrade the person;
- 20 (4) Restraints that do not conform to rules adopted pursuant to this section;
- 21 (5) Totally enclosed cribs or beds; and
- 22 (6) Painful stimuli.

23 B. Behavior modification and behavior management programs may be used only to
24 correct behavior more harmful to the person than the program and only:

- 25 (1) On the recommendation of the person's personal planning team;
- 26 (2) For an adult 18 years of age or older, with the approval, following a case-by-
27 case review, of a review team composed of a representative from the department,
28 a representative from the advocacy agency designated pursuant to Title 5, section
29 19502 ~~and~~, a representative designated by the Maine Developmental Services
30 Oversight and Advisory Board and a licensed psychologist who has training and
31 experience in the development of behavioral support plans. The advocacy agency
32 representative serves as a nonvoting member of the review team and shall be
33 present to advocate on behalf of the person. The department shall provide
34 sufficient advance notice of all scheduled review team meetings to the advocacy
35 agency and provide the advocacy agency with any plans for which approval is
36 sought along with any supporting documentation; and
- 37 (3) For a child under 18 years of age, with the approval, following a case-by-
38 case review, of a review team composed of a representative from the advocacy
39 agency designated pursuant to Title 5, section 19502, a team leader of the

1 department's children's services division and the children's services medical
2 director or the director's designee. The advocacy agency representative serves as
3 a nonvoting member of the review team and shall be present to advocate on
4 behalf of the person. The department shall provide sufficient advance notice of
5 all scheduled review team meetings to the advocacy agency and provide the
6 advocacy agency with any plans for which approval is sought along with any
7 supporting documentation. Until rules are adopted by the department to govern
8 behavioral treatment reviews for children, the team may not approve techniques
9 any more aversive or intrusive than are permitted in rules adopted by the
10 Secretary of the United States Department of Health and Human Services
11 regarding treatment of children and youth in nonmedical community-based
12 facilities funded under the Medicaid program.

13 **SUMMARY**

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

16 1. It clarifies that the provisions governing behavioral support, modification and
17 management do not apply to a person who is a patient in an acute psychiatric unit of a
18 hospital.

19 2. It adds to the team of persons who must review behavior modification and
20 behavior management programs a licensed psychologist who has training and experience
21 in the development of behavioral support plans.