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No. 1822

H.P. 1299

House of Representatives, June 3, 2019

An Act To Protect Access to Services for Adults with Serious and Persistent Mental Illness

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative GATTINE of Westbrook.

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

2 **Sec. 1. 34-B MRSA §3613** is enacted to read:

3 **§3613. Access to services**

4 **1. Mental health services.** For purposes of this section, "mental health service"
5 includes only the following services, as described in the department's MaineCare rules or
6 in the provider's contract with the department:

7 A. Assertive community treatment;

8 B. Behavioral health homes;

9 C. Community integration;

10 D. Community rehabilitation;

11 E. Crisis services, including any crisis stabilization unit;

12 F. Daily living support;

13 G. Skills development;

14 H. Day support;

15 I. Medication management; and

16 J. Residential treatment.

17 **2. Department review and dispute resolution.** An adult with serious and persistent
18 mental illness, as defined in rules adopted by the department pursuant to this section, who
19 is receiving or is eligible to receive any mental health service from a provider pursuant to
20 a contract with the department to provide such a service may obtain upon request, with
21 prior notice to the provider, an informal review by the department of the provider's
22 actions under the following circumstances:

23 A. When a hospital's treatment or discharge planning team has determined that a
24 mental health service is necessary for the adult with serious and persistent mental
25 illness to transition from a hospital into the community and has made a referral to a
26 provider under contract with the department to provide the service and the provider
27 has refused to accept the referral in violation of the terms of the provider's contract;

28 B. When the adult with serious and persistent mental illness is not hospitalized and
29 has applied for or been referred to a provider under contract with the department to
30 provide community integration services or assertive community treatment and the
31 provider has refused to accept the referral or application in violation of the terms of
32 the provider's contract; or

33 C. When the adult with serious and persistent mental illness is receiving a mental
34 health service and has that service terminated or suspended by a provider in violation
35 of the terms of the provider's contract with the department to provide that service.

1 An adult with serious and persistent mental illness may not obtain department review of a
2 provider's refusal to provide residential treatment if there was no vacancy or if the
3 department did not authorize the service.

4 The informal review process must include an opportunity for the provider and the person
5 requesting the review to provide relevant information to the department and for informal
6 dispute resolution by the department to facilitate access to the service.

7 **3. Department findings.** At the conclusion of the informal review and dispute
8 resolution process provided for in subsection 2, if access to the service has not been
9 provided, the department shall issue written findings regarding whether the provider's
10 action is in violation of the provider's contract with the department. These findings do
11 not constitute final agency action as defined in Title 5, section 8002, subsection 4 and are
12 not appealable.

13 **4. Private right of action.** An adult with serious and persistent mental illness who
14 is aggrieved by the action of a provider as described in subsection 2 and who has not been
15 provided access to the mental health service by the provider within a reasonable period of
16 time in response to department review may bring a private civil action in Superior Court
17 for declaratory and injunctive relief to enforce by restraining order or injunction,
18 temporarily or permanently, the terms of the provider's contract with the department. The
19 department must be notified of the action in writing prior to filing.

20 A. To be accepted for filing, an action filed under this subsection must be
21 accompanied by true and accurate copies of the department's findings issued pursuant
22 to subsection 3 and the provider's contract, both of which are admissible as evidence
23 in the proceeding.

24 B. Nothing in this section may be construed to create a cause of action by the
25 provider or the individual plaintiff against the department. The department may not
26 be named by the provider or the individual plaintiff as a defendant, 3rd-party
27 defendant or party in interest in an action filed under this section, but the department
28 is not precluded from bringing an action to enforce the provider's contract with the
29 department or moving to intervene in a private right of action under this section.

30 C. An individual bringing an action under this subsection is not required to allege or
31 prove that the refusal, termination or suspension of services would cause irreparable
32 injury or harm to that individual, but to obtain injunctive relief the individual must
33 prove by a preponderance of the evidence that the provider's action violates the terms
34 of the provider's contract with the department.

35 D. An individual bringing an action under this subsection is not required to post a
36 bond.

37 E. The remedies available in an action under this subsection include both mandatory
38 and prohibitory injunctive relief.

39 F. An individual who obtains injunctive relief in an action under this subsection may
40 recover reasonable attorney's fees and costs, not to exceed \$1,000, from the provider
41 against whom judgment was entered.

1 G. An individual who brings an action under this subsection is not liable to the
2 provider for damages resulting from bringing or pursuing the action unless the action
3 was brought in bad faith or without a reasonable belief that the provider was not
4 acting in compliance with its obligations under its contract with the department.

5 H. The members of an individual's hospital treatment or discharge planning team
6 may not be compelled by subpoena to appear in person to testify in an action brought
7 under this subsection but may submit sworn testimony by affidavit unless otherwise
8 ordered by the court upon a showing of good cause.

9 I. There may be no discovery in any action filed pursuant to this subsection unless
10 agreed to by the parties or ordered by the court upon a showing of good cause.

11 J. Court proceedings in any action filed pursuant to this subsection must be closed to
12 the public unless the individual plaintiff has requested a public hearing, and the
13 court's case file must be kept confidential and may not be released except to the
14 department, subject to confidentiality protections, without the written permission of
15 the individual plaintiff.

16 **5. Rulemaking.** The department shall adopt routine technical rules pursuant to Title
17 5, chapter 375, subchapter 2-A governing the process for informal department review
18 described in this section, which must include a definition of "adult with serious and
19 persistent mental illness."

20

SUMMARY

21 This bill establishes the right of an adult with serious and persistent mental illness
22 who is denied access to certain services by a provider contrary to the terms of the
23 provider's contract with the Department of Health and Human Services to seek informal
24 department review of the provider's action and informal dispute resolution by the
25 department to facilitate access to the service. If the adult continues to be denied access to
26 the mental health service following department review, the adult may bring a private civil
27 action in Superior Court for injunctive relief to enforce the terms of the provider's
28 contract with the department. The bill requires the department to adopt routine technical
29 rules governing the process for informal department review, which must include a
30 definition of "adult with serious and persistent mental illness."