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Legislative Document

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S.P. 327

In Senate, February 25, 2025

**An Act Regarding Access to Behavioral Health Supports for Adults
with Certain Disabilities**

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 black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator INGWERSEN of York.

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

2 **Sec. 1. 34-B MRSA §5605, sub-§12, ¶E,** as enacted by PL 2011, c. 186, Pt. A,
3 §26, is repealed.

4 **Sec. 2. 34-B MRSA §5605, sub-§13,** as amended by PL 2013, c. 500, §1, is further
5 amended to read:

6 **13. Behavioral health support, modification and management for children.**
7 Behavior modification and behavior management of and supports for a person who has not
8 attained 18 years of age with an intellectual disability or autism and who is not a patient in
9 a psychiatric unit of an acute hospital or a psychiatric hospital as defined in section 3801,
10 subsection 7-B are governed as follows.

11 A. A person who has not attained 18 years of age with an intellectual disability or
12 autism may not be subjected to a behavior modification or behavior management
13 program to eliminate dangerous or maladaptive behavior without first being assessed
14 by a physician to determine if the proposed program is medically contraindicated and
15 that the dangerous or maladaptive behavior could not be better treated medically.

16 A-1. Support programs may contain both behavior modification and behavior
17 management components.

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

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

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

- 28 (1) On the recommendation of the person's personal planning team; and
- 29 ~~(2) For an adult 18 years of age or older, with the approval, following a case-by-~~
30 ~~case review, of a review team composed of a representative from the department,~~
31 ~~a representative from the advocacy agency designated pursuant to Title 5, section~~
32 ~~19502 and a representative designated by the Maine Developmental Services~~
33 ~~Oversight and Advisory Board. The advocacy agency representative serves as a~~
34 ~~nonvoting member of the review team and shall be present to advocate on behalf~~
35 ~~of the person. The department shall provide sufficient advance notice of all~~
36 ~~scheduled review team meetings to the advocacy agency and provide the advocacy~~
37 ~~agency with any plans for which approval is sought along with any supporting~~
38 ~~documentation; and~~
- 39 (3) ~~For a child under 18 years of age, with~~ With the approval, following a case-
40 by-case review, of a review team composed of a representative from the advocacy
41 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 behalf
4 of the person. The department shall provide sufficient advance notice of all
5 scheduled review team meetings to the advocacy agency and provide the advocacy
6 agency with any plans for which approval is sought along with any supporting
7 documentation. Until rules are adopted by the department to govern behavioral
8 treatment reviews for children, the team may not approve techniques any more
9 aversive or intrusive than are permitted in rules adopted by the United States
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 **Sec. 3. 34-B MRSA §5605, sub-§13-A** is enacted to read:

14 **13-A. Behavioral health support, modification and management for adults.**

15 Behavioral supports for an adult with an intellectual disability or autism who is not a patient
16 in a psychiatric unit of an acute hospital or a psychiatric hospital as defined in section 3801,
17 subsection 7-B are governed as follows.

18 A. An adult with an intellectual disability or autism may have a positive behavioral
19 health support plan if recommended by the individual's person-centered support team.
20 If the positive support plan is to address dangerous or maladaptive behavior, it must be
21 preceded by an assessment by a medical practitioner, as defined in section 3801,
22 subsection 4-B, to rule out medical reasons for the behavior.

23 B. A behavioral health support plan designed to support the adult to participate
24 meaningfully in that adult's community life cannot include a waiver of any rights
25 provided in this section and may be implemented upon recommendation of the adult's
26 personal planning team.

27 C. A behavioral health support plan designed to modify or redirect the adult's behavior
28 may include a waiver of rights and must be submitted to the department for approval
29 prior to implementation. The plan must be reviewed and approved by a licensed clinical
30 psychologist designated by the department.

31 D. The following practices are prohibited as elements of positive behavioral health
32 support plans, behavior modification or behavior management programs for adults:

33 (1) Seclusion;

34 (2) Corporal punishment;

35 (3) Actions or language intended to humble, dehumanize or degrade the person;

36 (4) Planned use of restraints;

37 (5) Totally enclosed cribs or beds; and

38 (6) Painful stimuli.

39 The department shall convene a support and safety committee on a quarterly basis to review
40 data regarding the number and type of plans implemented for adults under this subsection.
41 The committee must include, but is not limited to, a self-advocate, a representative of the
42 advocacy agency designated pursuant to Title 5, section 19502, a member of the Maine

1 Developmental Services Oversight and Advisory Board established pursuant to Title 5,
2 section 12004-J, subsection 15 and the licensed clinical psychologist, if any, designated by
3 the department under paragraph C.

4 For the purposes of this subsection, "adult" means a person 18 years of age or older;
5 "behavioral health support plan" means a support plan that outlines strategies to manage
6 behavior concerns and may include both positive and negative interventions; and "positive
7 behavioral health support plan" means a behavioral health support plan that emphasizes
8 using positive reinforcement and proactive strategies to address behaviors that negatively
9 impact the health, safety and well-being of the person.

10 **Sec. 4. 34-B MRSA §5605, sub-§13-B** is enacted to read:

11 **13-B. Safety devices for adults.** The use of a safety device for an adult with an
12 intellectual disability or autism is governed as follows.

13 A. For the purposes of this subsection, "safety device" means an implement, garment,
14 gate, barrier, lock or locking apparatus, video monitoring or video recording device,
15 helmet, mask, glove, strap, belt or protective glove, the effect of which is to reduce or
16 inhibit the adult's movement with the sole purpose of maintaining the safety of the
17 adult.

18 B. The use of a safety device must be pursuant to a written recommendation from a
19 licensed physician, certified nurse practitioner or licensed physician assistant.

20 C. The use of a safety device must be approved by the adult's personal planning team,
21 and that approval must be recorded in a document that is part of the adult's planning
22 record.

23 D. The adult or the adult's guardian must consent to the use of the safety device.

24 E. When a safety device is in use and that safety device may affect other adults residing
25 in the home or participating in the program by restricting their rights, accommodations
26 must be identified and implemented to minimize the effect on the other adults. The
27 personal plan of each adult affected by the use of the safety device must indicate how
28 that adult will be supported to minimize the negative effect of the restriction.

29 F. When a video monitoring device or video recording device is in use and other adults
30 residing in the home or participating in the program may trigger or appear on the video
31 monitoring device or video recording device, the consent of that adult must be obtained.

32 **Sec. 5. 34-B MRSA §5605, sub-§14-A,** as amended by PL 2011, c. 657, Pt. EE,
33 §10, is further amended to read:

34 **14-A. Restraints for children.** A person who has not attained 18 years of age with
35 an intellectual disability or autism is entitled to be free from restraint unless:

36 A. The restraint is a short-term step to protect the person from imminent injury to that
37 person or others; or

38 B. The restraint has been approved as a behavior management program in accordance
39 with this section.

40 A restraint may not be used as punishment, for the convenience of the staff or as a substitute
41 for habilitative services. A restraint may impose only the least possible restriction
42 consistent with its purpose and must be removed as soon as the threat of imminent injury

1 ends. A restraint may not cause physical injury to the person receiving services and must
2 be designed to allow the greatest possible comfort and safety.

3 Daily records of the use of restraints identified in paragraph A must be kept, which may be
4 accomplished by meeting reportable event requirements.

5 Daily records of the use of restraints identified in paragraph B must be kept, and a summary
6 of the daily records pertaining to the person must be made available for review by the
7 person's planning team, as defined in section 5461, subsection 8-C, on a schedule
8 determined by the team. The review by the personal planning team may occur no less
9 frequently than quarterly. The summary of the daily records must state the type of restraint
10 used, the duration of the use and the reasons for the use. A monthly summary of all daily
11 records pertaining to all persons must be relayed to the advocacy agency designated
12 pursuant to Title 5, section 19502.

13 **Sec. 6. 34-B MRSA §5605, sub-§14-E** is enacted to read:

14 **14-E. Restraints for adults.** An adult with an intellectual disability or autism is
15 entitled to be free from restraint unless the restraint is an emergency short-term step to
16 protect the adult from imminent injury to that adult or others. The use of restraint must be
17 documented in accordance with the department's reportable event requirements.

18 **SUMMARY**

19 This bill amends the law governing access to behavioral health supports for adults with
20 an intellectual disability or autism by replacing a complex multiparty review process with
21 a clinical review requirement. It also removes the authority to use restraints on adults except
22 as an emergency short-term step to protect the adult from imminent injury to that adult or
23 others. It also codifies existing rules on safety devices, making it clear that such devices
24 are not considered positive behavioral health support plans and therefore do not require the
25 same level of review as positive behavioral health support plans. Also, to conform with
26 current practice, the bill repeals a provision of law regarding the authority of providers of
27 residential services to establish house rules in residential units owned or operated by the
28 provider.