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## HEALTH AND HUMAN SERVICES

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### STATE OF MAINE

### SENATE

### 132ND LEGISLATURE

### FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “ ” to S.P. 327, L.D. 769, “An Act Regarding Access to Behavioral Health Supports for Adults with Certain Disabilities”

Amend the bill by striking out all of section 3 and inserting the following:

**'Sec. 3. 34-B MRSA §5605, sub-§13-A** is enacted to read:

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

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

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

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

C. A modifying behavioral health support plan designed to modify or redirect the adult's behavior may include a waiver of rights with informed consent of the adult subject to the plan and must be approved by the department for approval prior to implementation. The plan must be reviewed and approved by a licensed clinical social worker or psychologist who is employed by or under contract with the department.

D. The following practices are prohibited as elements of positive behavioral health support plans and modifying behavioral health support plans for adults:

(1) Seclusion;

(2) Corporal punishment;

- (3) Actions or language intended to humble, dehumanize or degrade the person;
- (4) Planned use of restraints;
- (5) Totally enclosed cribs or beds; and
- (6) Painful stimuli.

The department shall convene a support and safety committee, at least quarterly, to review data on the number and types of plans implemented for adults under this subsection. The department shall provide to the committee deidentified copies of positive behavioral health support plans for all individuals transitioning from a modifying behavioral health support plan to a positive behavioral health support plan. The committee must include, at a minimum, a self-advocate, a family member of the individual receiving services, a representative of the advocacy agency designated pursuant to Title 5, section 19502, a member of the Maine Developmental Services Oversight and Advisory Board established pursuant to Title 5, section 12004-J, subsection 15 and the licensed clinical social worker or psychologist employed by or under contract with the department under paragraph C.

For the purposes of this subsection, "adult" means a person 18 years of age or older; "modifying behavioral health support plan" means a support plan that outlines strategies to encourage positive behavior and address challenges, incorporating both proactive and corrective interventions; and "positive behavioral health support plan" means a behavioral health support plan that emphasizes using positive reinforcement and proactive strategies to address behaviors that negatively impact the health, safety and well-being of the person.

For the purposes of this subsection, "restraint" does not include blocking or physical redirection. Blocking is a momentary deflection of a person's movement without holding when that movement would be destructive or harmful. Physical redirection is steering a person without holding or coercion.'

Amend the bill in section 4 in subsection 13-B in paragraph A in the last line (page 3, line 17 in L.D.) by inserting after the following: "adult." the following: "Safety device" does not include anything used as a means of behavior modification.'

Amend the bill in section 6 in subsection 14-E in the 3rd line (page 4, line 16 in L.D.) by striking out the following: "The" and inserting the following: 'Each'

Amend the bill in section 6 in subsection 14-E in the last line (page 4, line 17 in L.D.) by inserting after the following: "requirements." the following: 'For the purposes of this subsection, "restraint" does not include blocking or physical redirection. Blocking is a momentary deflection of a person's movement without holding when that movement would be destructive or harmful. Physical redirection is steering a person without holding or coercion.'

Amend the bill by inserting after section 6 the following:

**'Sec. 7. Children with intellectual disabilities or autism; department study.**  
The Department of Health and Human Services shall study the law related to behavioral health supports for children with intellectual disabilities or autism and consult with interested parties on potential revisions to the law to reflect current best practices in the field. The study must include, but is not limited to, the use of restraints in nonemergency situations and the process by which plans for behavioral modification and management are developed, reviewed and approved. Interested parties must include but are not limited to

1 youth self-advocates, adult self-advocates, a representative of a disability rights advocacy  
2 organization, a representative of an academic organization with relevant expertise and a  
3 provider of services. No later than December 1, 2026, the department shall make  
4 recommendations to the joint standing committee of the Legislature having jurisdiction  
5 over health and human services matters. The committee is authorized to report out  
6 legislation related to the study to any session of the 133rd Legislature in 2027.

7 **Sec. 8. Transition.** Notwithstanding the Maine Revised Statutes, Title 34-B, section  
8 5605, subsection 13-A, paragraph D, behavior modification plans in effect on April 1, 2026  
9 that include restraints may continue to include planned restraints until April 1, 2027 if  
10 necessary and approved by the Department of Health and Human Services.

11 **Sec. 9. Adults with intellectual disabilities or autism; advice.** Prior to  
12 adopting or amending rules to implement this Act, the Department of Health and Human  
13 Services shall reconvene the interested parties group on adult behavioral regulations that  
14 was convened in 2024 and solicit further advice from that group on amendments to the  
15 rules to implement this Act.

16 **Sec. 10. Effective date.** Those sections of this Act that amend the Maine Revised  
17 Statutes, Title 34-B, section 5605, subsections 13 and 14-A and that enact Title 34-B,  
18 section 5605, subsections 13-A, 13-B and 14-E and that repeal Title 34-B, section 5605,  
19 subsection 12, paragraph E take effect April 1, 2026.'

20 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
21 number to read consecutively.

## 22 SUMMARY

23 This amendment makes the following changes to the bill.

24 1. It clarifies that blocking and redirection are not considered restraints and are not  
25 prohibited from inclusion in a modifying behavioral health support plan.

26 2. It clarifies that the Department of Health and Human Services may use either a  
27 licensed clinical social worker or a psychologist to review behavioral health support plans.

28 3. It adds members to the support and safety committee and requires the department  
29 to provide deidentified copies of behavioral health support plans to the committee.

30 4. It clarifies the distinctions between positive behavioral health support plans,  
31 modifying behavioral health support plans and the use of safety devices and the processes  
32 for reviewing and approving each plan and use. It also clarifies that safety devices may not  
33 be used to modify behavior.

34 5. It requires the department to conduct a children's behavioral health supports study  
35 to study best practices and consider removing planned restraints for children. The study  
36 must be submitted to the joint standing committee of the Legislature having jurisdiction  
37 over health and human services matters no later than December 1, 2026, and the committee  
38 is authorized to report out legislation related to the study.

39 6. It requires the department to reconvene the interested parties group on adult  
40 behavioral regulations that was convened in 2024 prior to rulemaking in order to solicit  
41 advice on rules to implement the provisions in the bill.

1           7. It makes the statutory changes effective April 1, 2026. It allows plans that are  
2 approved prior to April 1, 2026 that include planned restraints to continue the use of those  
3 restraints for one year if considered necessary and approved by the department.

4                                   **FISCAL NOTE REQUIRED**

5                                   **(See attached)**