

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

S.P. 327 - L.D. 769

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

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

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 A, §26, is repealed.

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

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

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

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

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

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

- (1) On the recommendation of the person's personal planning team; and
- ~~(2) For an adult 18 years of age or older, with the approval, following a case-by-case review, of a review team composed of a representative from the department, a representative from the advocacy agency designated pursuant to Title 5, section 19502 and a representative designated by the Maine Developmental Services Oversight and Advisory Board. The advocacy agency representative serves as a nonvoting member of the review team and shall be present to advocate on behalf of the person. The department shall provide sufficient advance notice of all scheduled review team meetings to the advocacy agency and provide the advocacy agency with any plans for which approval is sought along with any supporting documentation; and~~
- (3) ~~For a child under 18 years of age, with~~ With the approval, following a case-by-case review, of a review team composed of a representative from the advocacy agency designated pursuant to Title 5, section 19502, a team leader of the department's children's services division and the children's services medical director or the director's designee. The advocacy agency representative serves as a nonvoting member of the review team and shall be present to advocate on behalf of the person. The department shall provide sufficient advance notice of all scheduled review team meetings to the advocacy agency and provide the advocacy agency with any plans for which approval is sought along with any supporting documentation. Until rules are adopted by the department to govern behavioral treatment reviews for children, the team may not approve techniques any more aversive or intrusive than are permitted in rules adopted by the United States Secretary of the United States Department of Health and Human Services regarding treatment of children and youth in nonmedical community-based facilities funded under the Medicaid program.

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.

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

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

A. For the purposes of this subsection, "safety device" means an implement, garment, gate, barrier, lock or locking apparatus, video monitoring or video recording device, helmet, mask, glove, strap, belt or protective glove, the effect of which is to reduce or inhibit the adult's movement with the sole purpose of maintaining the safety of the adult. "Safety device" does not include anything used as a means of behavior modification.

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

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

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

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

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

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

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

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

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

A restraint may not be used as punishment, for the convenience of the staff or as a substitute for habilitative services. A restraint may impose only the least possible restriction consistent with its purpose and must be removed as soon as the threat of imminent injury ends. A restraint may not cause physical injury to the person receiving services and must be designed to allow the greatest possible comfort and safety.

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

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

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

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

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

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

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

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