

**Maine Developmental Services Oversight and Advisory Board (MDSOAB)**

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**Testimony – L.D. 769 – An Act Regarding Access to Behavioral Supports for Adults with Certain Disabilities**

**Senator Ingwerson, Representative Meyer and esteemed members of the Health and Human Services Committee. We are grateful for the opportunity to testify on L.D. 769.**

**I am Bonnie-Jean Brooks, Interim Executive Director of the MDSOAB. The MDSOAB is an independent entity whose sole responsibility is to monitor Maine's system of support for adults with intellectual disabilities (ID) and autism spectrum disorders (ASD). It was established by Title 5, section 12004-J, subsection 15.**

**The Board meets monthly to review the initiatives of the department, identify systemic issues, receive updates from O.A.D.S., make recommendations for change and request further information that will assist in carrying out its mission. The MDSOAB relationship with O.A.D.S. has been positive.**

**The Board has spent a considerable amount of time discussing this Bill. It had representatives on the O.A.D.S. Stakeholder Group that met several times over the course of a year to make recommendations to O.A.D.S. for changes to Maine's Behavior Regulations. The group did not reach a consensus on many issues although many promising ideas were generated.**

**The group was reconvened a few months ago. We were told then that O.A.D.S. would incorporate feedback in a further draft and the group would reconvene.**

**We had no warning that this Bill was being submitted to the Legislature.**

**We agree that the Behavior Regulations need to be revised which will require authorization through a Bill like L.D. 769. However, our Board is recommending that this Bill, as written, "ought not to pass."**

**We have several concerns about this Bill. This testimony will list some of those concerns which we hope could be helpful to the department.**

**There are two elements of this Bill that moved the Board from a NFNA to an ONTP.**

- 1) Restraints are not spelled out enough in this Bill to make it clear whether transition to “behavioral health support plans” and the elimination of behavior management plans and planned restraints would be a progressive procedure or not.**

**We recognize that many people with disabilities have been hurt, terrorized, humiliated, and traumatized by being restrained. Some victims are in this room today. We believe that if restraints of any kind are allowed, they must have extreme oversight.**

- 2) Secondly and most importantly, this Bill eliminates Regional Review Committees and the role of the only independent oversight and advisory board in Maine created by state statute, the MDSOAB.**

**There are three members on each of the 6 statewide review committees. They meet monthly to review and approve behavior management and safety plans. The only Independent member of each Review Committee is a representative of the MDSOAB. This Bill would eliminate this independent oversight.**

**The Bill proposes to convene a “support and safety committee” that would meet quarterly to “review data regarding the number and type of plans” which would be called “behavioral health support plans.” The MDSOAB would be a member of this committee. There is no further explanation of what “data” would be reviewed, what is meant by “number and type of plans” or what will be done with observations and recommendations coming from this group.**

**It is unclear whether a “licensed clinical psychologist” would be part of that committee which we think is essential. The Bill at Section 3 - 13. C. says one will be present to review and approve the plan but on**

at 13.D. we see that person would be a member of the committee “if any is designated by the department.”

Board members also have some of the following recommendations and concerns:

➤ General Concerns:

1. Capacity - The MDSOAB is concerned about the capacity of community agencies to adequately train staff on Positive Support Plans, Emergency Restraints and other reporting requirements in a timely fashion in view of the statewide staffing crisis, vacancies in staff positions, in the face of significant turnover and in the tough fiscal environment that has agencies and services closing, merging, and downsizing.
2. Use of Restraints – There is not a consensus of the MDSOAB members about the use of restraints. Most think that the elimination of planned restraints is aspirational. Any such policy must be thoughtfully developed and a move away from restraints should be described in a Transition Plan. Board members point out that ‘planned restraint’ is more likely to be executed correctly as opposed to ‘Emergency Restraint’ which stands a high chance of inconsistent application.
3. Clinical Psychologists – Providers and some members of the Review Committees report a statewide shortage of licensed clinical psychologists – particularly individuals with experience in supporting people with intellectual disability or autism.
4. Other
  - On pp. 23 – 26, we see “prohibit behavior plans from violating any rights if an adult is meaningfully participating in community life.” This is confusing because current plans across the state define both blocking and redirection and planned restraints as rights violations and planned restraints. This policy could leave individuals without necessary support, effectively restricting their right to community access, including employment, if safety cannot be ensured.

- **Conflict of Interest – To reiterate testimony above, it is critical and statutorily required that the MDSOAB serve as an independent oversight agency with no conflict of interest. One of the important ways of identifying systemic issues is by having a seat on the Regional Review Committees across the state.**
- **We recommend the removal of the children’s sections found in this Bill. It results in confusion.**
- **‘Restraints need to be defined. Restraints are not defined in the Bill, but Safety Plans are. The MDSOAB recommends that the definition of restraint not consider ‘blocking’ as a restraint. Putting one’s arm out to stop someone from running into the street would be considered ‘blocking,’ for example.**
- **On page 2. on Lines 18. and 19. in 13. A., we see the term “positive behavioral health support plan.” On line 23. in 13. B. and Line 27 C., we see the term “behavioral support plan.” Are they the same thing? Is there such a thing as a ‘negative’ support plan?**
- **How is “Positive Reinforcement” defined?**
- **On page 2. on Line 19. on 13. A., we see “person-centered support team.” On Line 26. on 13. B., we see “personal planning team.” Is this the same or could it be two separate teams?**
- **On page 2 on Line 30 in 13. C., we see that the licensed clinical psychologist must review and approve certain waivers of rights. Must that individual have face-to-face contact with the individual served?**
- **What is the definition of “redirect” in Line 27. 13. C.?**
- **How will the data on the use of Emergency Restraints be collected, analyzed, and made available for review and by whom?**
- **Who chairs the Quarterly Committee meeting? Will minutes be kept and disseminated? Who will choose the members? Will there be terms and, if so, will they be time-limited? What will the qualifications of the licensed clinical psychologist mentioned in 2**

separate places in the Bill be? We expect that they will have experience working for people with IDD/ASD.

- The use of “Functional Assessments” should be defined and included in the Bill. This was a significant topic of discussion in the Stakeholder Group.
- **As this Bill is currently worded, it would seem to preclude an individual from developing or participating in their own behavioral support plan. Further, there needs to be clarification about whether the individual is authorized to develop their own psychiatric advance directives which could include a self-described need for restraint. For example, although seclusion is prohibited, can a person develop a plan where they can choose to ‘self seclude’?**

**We appreciate the chance to be with you today and stand ready to answer questions that you may have. We are also pleased to help the department in any way requested should this Bill need to be revised.**

**Respectfully submitted:**

**Bonnie-Jean Brooks, Interim Executive Director, MDSOAB**

**Title 34-B: BEHAVIORAL AND DEVELOPMENTAL  
SERVICES**

**Chapter 1: GENERAL PROVISIONS**

Subchapter 2: DEPARTMENT

**§1223. Maine Developmental Services Oversight and Advisory Board**

1. **Composition.** The Maine Developmental Services Oversight and Advisory Board, as established by Title 5, section 12004-J, subsection 15 ([./5/title5sec12004-J.html](#)) and referred to in this section as "the board," consists of 15 members appointed by the Governor from a list of nominees proposed by the board pursuant to procedures established in the rules of the board.

A. The board shall submit nominees to the Governor at least 90 days prior to the expected date of each vacancy. [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF) .]

B. In making nominations, the board shall endeavor to ensure adequate representation at all times from different service regions of the State and from interested stakeholder groups, including but not limited to:

(1) The protection and advocacy agency designated pursuant to Title 5, section 19502 ([./5/title5sec19502.html](#));

(2) A statewide coalition that works to support and facilitate the ability of local and statewide self-advocacy organizations to network with each other and with national organizations;

(3) A nonprofit organization that serves teens and young adults in the State with emotional and intellectual disabilities;

(4) A statewide coalition that works to support and facilitate the ability of local and statewide self-advocacy organizations to network with each other and with

national organizations; and

**(5) The Maine Developmental Disabilities Council.** [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

C. In making the nominations and appointments, the board and the Governor shall endeavor to ensure that at least 8 of the members of the board are persons with intellectual disabilities or autism or family members, guardians or allies of persons with intellectual disabilities or autism who receive services funded by the Department of Health and Human Services. Of these members, at least 4 must be persons with intellectual disabilities or autism, referred to in this section as "self-advocates." [PL 2011, c. 542, Pt. A, §66 (AMD).]

Members of the board must include stakeholders involved in services and supports for persons with intellectual disabilities or autism in the State and other individuals interested in issues affecting persons with intellectual disabilities or autism. Employees of the Department of Health and Human Services may not be appointed as members of the board.

[PL 2011, c. 542, Pt. A, §66 (AMD).]

**2. Terms.** Members of the board serve 3-year terms. A member serves until a successor is appointed. A vacancy must be filled as soon as practicable by appointment for the unexpired term.

[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**3. Chair.** The board shall elect a chair from among its members.

[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**4. Compensation.** Members of the board are entitled to reimbursement of reasonable expenses incurred in order to serve on the board as provided in Title 5, section 12004-J, subsection 15 ([./5/title5sec12004-J.html](#)). Members not otherwise compensated by their employers or other entities whom they represent are entitled to receive a per diem as established by rule or policy adopted by the board for their attendance at authorized meetings of the board.

[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**5. Staff.** The board may hire an executive director and clerical support staff.

[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**6. Budget.** The Department of Administrative and Financial Services shall administer the budget of the board. The board shall provide to the Commissioner of Administrative and Financial Services a proposed budget in accordance with a schedule agreed to by the chair and the Commissioner of Administrative and Financial Services. The Department of Administrative and Financial Services shall include in its estimate of expenditure and appropriation requirements filed pursuant to Title 5, section 1665 ([../5/title5sec1665.html](http://5/title5sec1665.html)) sufficient funds, listed in a separate account as a separate line item, to enable the board to perform its duties.

[PL 2021, c. 686, §4 (AMD).]

**7. Maine Tort Claims Act.** The board members and staff act as employees of the State, as defined in Title 14, section 8102, subsection 1 ([../14/title14sec8102.html](http://14/title14sec8102.html)), when engaged in official duties specified in this section or assigned by the board.

[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**8. Oversight and advisory functions.** The board shall:

A. Provide independent oversight over programs and services for adults with intellectual disabilities or autism that are provided, authorized, funded or supported by the department or any other agency or department of State Government. The board shall focus on systemic concerns affecting the rights of persons with intellectual disabilities or autism, including but not limited to issues surrounding health and safety, inclusion, identification of needs and desires of persons eligible for services by the department, the timely meeting of the identified needs and effective and efficient delivery of services and supports; and [PL 2011, c. 542, Pt. A, §66 (AMD).]

B. Provide advice and systemic recommendations to the commissioner, the Governor and the Legislature regarding policies, priorities, budgets and legislation affecting the rights and interests of persons with intellectual disabilities or autism. [PL 2011, c. 542, Pt. A, §66 (AMD).]

[PL 2011, c. 542, Pt. A, §66 (AMD).]

**9. Powers and duties of the board.** In order to carry out its oversight and advisory functions, the board has the following powers and duties.

A. The board shall hold at least one hearing or other forum each year that is open to the public in order to gather information about the availability, accessibility and



quality of services available to persons with intellectual disabilities or autism and their families. [PL 2011, c. 542, Pt. A, §67 (AMD).]

**B. The board may accept funds from the Federal Government, the State, a political subdivision of the State, individuals, foundations and corporations and may expend those funds for purposes consistent with the board's functions, powers and duties.**

[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**C. The board shall establish priorities for its oversight and systems advocacy work. In establishing priorities, the board shall consider the results of its work in addressing the priorities established in previous years.**

[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**D. The board shall report at least annually to the Governor and the Legislature on its activities and recommendations regarding policies, priorities, budgets and legislation affecting the rights and interests of persons with intellectual disabilities or autism. The board's annual report must include the board's assessment of its operations and progress in addressing the priorities established pursuant to paragraph C (./34-B/title34-Bsec1223.html). The board's annual report must be made public and widely disseminated in a manner designed to inform interested stakeholders.**

[PL 2011, c. 542, Pt. A, §67 (AMD).]

**E. The board may provide reports and recommendations to the commissioner on matters of systemic concern arising from the board's oversight role. The board may recommend that the department undertake the study of specific systemic issues as part of the department's annual quality assurance activities and strategies, and the board may collaborate and cooperate with the department in the conduct of any such studies, if feasible. The commissioner shall provide a written response no later than 30 days following receipt of the recommendations from the board.**

[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**F. The board may refer individual cases that require investigation or action to the department, the protection and advocacy agency designated pursuant to Title 5, section 19502 (./5/title5sec19502.html) or other appropriate agency.**

[PL 2011, c. 657, Pt. EE, §2 (AMD).]

[PL 2011, c. 542, Pt. A, §67 (AMD); PL 2011, c. 657, Pt. EE, §2 (AMD).]

**10. Access to information.** The board is entitled to access to information from the department necessary to carry out its functions. Except as provided in paragraphs D (../34-B/title34-Bsec1223.html) and E (../34-B/title34-Bsec1223.html), information provided pursuant to this subsection may not contain personally identifying information about a person with intellectual disabilities or autism.

**A.** Within existing resources, the department shall provide the board, on a schedule to be agreed upon between the board and the department, reports on case management, reportable events, adult protective and rights investigations, unmet needs, crisis services, quality assurance, quality improvement, budgets and other reports that contain data about or report on the delivery of services to or for the benefit of persons with intellectual disabilities or autism, including reports developed by or on behalf of the department and reports prepared by others about the department. [PL 2021, c. 686, §5 (AMD).]

**B.** Within existing resources, the department, when requested by the board or pursuant to a written agreement with the board, shall release to the board information pertaining to alleged abuse, exploitation or neglect or an alleged dehumanizing practice or violation of rights of a person with intellectual disabilities or autism. [PL 2021, c. 686, §5 (AMD).]

**C.** [PL 2013, c. 310, §1 (RP).]

**D.** The board may examine confidential information in individual records with written permission of the person or that person's guardian. If the person or that person's guardian provides the board with written permission to examine confidential information, the board must maintain the confidentiality of the information as required by section 1207 (../34-B/title34-Bsec1207.html). [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**E.** A member of the board or the board's staff may receive and examine confidential information when otherwise authorized to do so by law, including but not limited to when serving on a committee established by the department or other entity for which access to such information is necessary to perform the function of the committee. [PL 2021, c. 686, §5 (AMD).]

[PL 2021, c. 686, §5 (AMD).]

**11. Rulemaking.** The board shall adopt rules governing its operations, including rules establishing its bylaws. Rules adopted pursuant to this subsection must address:

**A. Procedures for nominating persons to fill vacancies on the board;** [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**B. Procedures for holding annual hearings or other alternative means of receiving input from citizens throughout the State pursuant to subsection 9 (./34-B/title34-Bsec1223.html);** [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**C. Procedures for exercising its powers pursuant to subsection 10, paragraph D (./34-B/title34-Bsec1223.html) in a manner that is respectful of the rights, interests and opinions of persons whose records are at issue;** [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**D. Procedures concerning the hiring of an executive director, including the method for selection and the role of the executive director and procedures concerning the supervision, compensation and evaluation of the executive director; and** [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

**E. The provision of per diem stipends for members not otherwise compensated by their employers or other entities whom they represent for their attendance at authorized meetings of the board.** [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A (./5/title5ch375sec0.html).

[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

#### SECTION HISTORY

PL 2007, c. 356, §7 (NEW). PL 2007, c. 356, §31 (AFF). PL 2007, c. 695, Pt. D, §3 (AFF). PL 2011, c. 542, Pt. A, §§66-68 (AMD). PL 2011, c. 657, Pt. EE, §§2, 3 (AMD). PL 2013, c. 310, §1 (AMD). PL 2021, c. 686, §§4, 5 (AMD).

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