

**§3003. Rules**

**1. Promulgation.** The commissioner shall adopt rules, subject to the Maine Administrative Procedure Act, Title 5, chapter 375, for the enhancement and protection of the rights of clients receiving services from the department, from any hospital pursuant to subchapter IV or from any program or facility administered or licensed by the department under section 1203-A.

[PL 1993, c. 410, Pt. CCC, §17 (AMD).]

**2. Requirements.** The rules shall include, but are not limited to:

A. Establishment of the right to provision of treatment and related services in the least restrictive appropriate setting; [PL 1983, c. 459, §7 (NEW).]

B. Establishment of the right to an individualized treatment or service plan, to be developed with the participation of the client; [PL 1983, c. 459, §7 (NEW).]

C. Standards for informed consent to treatment, including reasonable standards and procedural mechanisms for determining when to treat a client absent informed consent, consistent with applicable law, except that involuntary treatment of involuntarily hospitalized incapacitated persons who are unwilling or unable to comply with treatment is allowed solely in accordance with the provisions of section 3861, subsection 3 or section 3864, subsection 1-A; [PL 2007, c. 580, §1 (AMD).]

D. Standards for participation in experimentation and research; [PL 1983, c. 459, §7 (NEW).]

E. Standards pertaining to the use of seclusion and restraint; [PL 1983, c. 459, §7 (NEW).]

F. Establishment of the right to appropriate privacy and to a humane treatment environment; [PL 1983, c. 459, §7 (NEW).]

G. Establishment of the right to confidentiality of records and procedures pertaining to a person's right to access to that person's mental health care records; [RR 2019, c. 2, Pt. B, §93 (COR).]

H. Establishment of the right to receive visitors and to communicate by telephone and mail; [PL 1983, c. 459, §7 (NEW).]

I. Procedures to ensure that clients are notified of their rights; [PL 1983, c. 459, §7 (NEW).]

J. The right to assistance in protecting a right or advocacy service in the exercise or protection of a right; [PL 1987, c. 246, §1 (AMD).]

K. Provisions for a fair, timely and impartial grievance procedure for the purpose of ensuring appropriate administrative resolution of grievances with respect to infringement of rights; and [PL 1987, c. 246, §1 (AMD).]

L. To the extent that state and community resources are available, establishment of the rights of long-term mentally ill clients containing the following requirements:

(1) The right to a service system which employs culturally normative and valued methods and settings;

(2) The right to coordination of the disparate components of the community service system;

(3) The right to individualized developmental programming which recognizes that each long-term mentally ill individual is capable of growth or slowing of deterioration;

(4) The right to a continuum of community services allowing a gradual transition from a more intense level of service; and

(5) The right to the maintenance of natural support systems, such as family and friends of the long-term mentally ill individual and formal and informal networks of mutual and self-help.

[PL 1987, c. 246, §2 (NEW).]

[RR 2019, c. 2, Pt. B, §93 (COR).]

**3. Public hearing.** The commissioner shall hold a public hearing before adopting these rules and shall give notice of the public hearing pursuant to the Maine Administrative Procedure Act, Title 5, section 8053.

[PL 1995, c. 560, Pt. K, §32 (AMD).]

**4. Legislative review.** When a rule is proposed or adopted under this section, a copy of the proposed or adopted rule shall be sent to the legislative committee having jurisdiction over health and institutional services.

A. The committee may review the rule and, if it determines that an adopted rule should be stricken or amended, the committee may prepare legislation to accomplish that purpose and submit the legislation to the full Legislature in accordance with legislative rules. [PL 1983, c. 459, §7 (NEW).]

B. The adopted rule shall remain in effect unless the full Legislature acts to strike or amend it, or it is repealed or amended by the director in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. [PL 1983, c. 459, §7 (NEW).]

[PL 1983, c. 459, §7 (NEW).]

#### SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1985, c. 645, §4 (AMD). PL 1987, c. 246, §§1,2 (AMD). PL 1993, c. 410, §CCC17 (AMD). PL 1995, c. 560, §K32 (AMD). PL 2007, c. 446, §1 (AMD). PL 2007, c. 446, §7 (AFF). PL 2007, c. 580, §1 (AMD). RR 2019, c. 2, Pt. B, §93 (COR).

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**§15002. Children's Mental Health Program established**

The Children's Mental Health Program is established to identify children with mental health needs and to improve the provision of mental health care to children and supportive services to their families. The program must track the provision of care and services, the progress of the departments in providing care and services, the development of new resources for care and services and the use of all types of funds used for the purposes of this chapter, including funds from the departments' own budgets or through blended, pooled or flexible funding. The program is child and family-centered, focusing on the strengths and needs of the child and the child's family and providing care to meet those needs. The program is intended to create a structure for coordination of children's mental health care provided by the departments. The program does not create any new entitlements to care or services and does not diminish any entitlements granted by state or federal law, rule or regulation. The program is under the supervision of the commissioner and a director of children's mental health services, who has lead responsibility for implementation, monitoring and oversight of the program. [PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

**1. Individualized treatment planning process.** The individualized treatment planning process is based on the needs of the child and includes the participation of the child's family with the child, the department and the other departments. The individualized treatment planning process considers short-term and long-term objectives and all aspects of the child's life. Decisions in the individualized treatment planning process first address the need for safety for the child and then address the child's mental health and emotional, social, educational and physical needs in the least restrictive, most normative environment.

[PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

**2. Principles of care delivery and management.** Decisions about the delivery of care to a child are made and care is managed at the local level in accordance with the following principles.

A. Care is clinically appropriate and is provided in the least restrictive manner possible. [PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

B. Care is provided as close to a child's residence as possible. [PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

C. The program promotes prevention, early identification and intervention for children in need of care and at risk of developing emotional problems. [PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

D. Each child has access to the same choices for care, regardless of residence, through a case management system that coordinates multiple services in a therapeutic manner and adjusts to changing needs, including the provision of adult mental health services when appropriate. [PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

E. Planning for the delivery of care takes into account the advice of the community service networks established under section 3608. [PL 2013, c. 132, §4 (AMD).]

[PL 2013, c. 132, §4 (AMD).]

**3. Care delivery and management practices.** Care delivery and management practices must adhere to the principles stated in subsection 2 and are subject to the requirements of this subsection.

A. Using the resources of the departments, the program must provide the child and family with a central location for obtaining information, applying and being assessed for care and supportive services, maintaining contact with case managers and department staff and, to the extent possible, obtaining care and supportive services. [PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

B. The delivery of care must be determined in accordance with subsections 1 and 2 using uniform intake and assessment protocols. Waiting lists may not be maintained if prohibited by law. The departments shall maintain records of all entries onto waiting lists with information about care that is needed and alternate or partial care that is provided. When the department releases waiting list information, that information may not identify the child or family by name or address. [PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

C. The system of providing care must be a functionally integrated, network-based system with the department as the single point of accountability. [PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

[PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

**4. Grievance; appeal.** The provisions of this subsection govern the right to grievance and appeal. The department shall provide notice to children and their families and guardians about the right to an informal grievance process and a formal appeal under this section for the review of care for the child, including clinical diagnosis and care, and departmental decisions.

A. The departments shall adopt rules providing for an informal grievance process that may be initiated at the request of a child or the child's family. The informal grievance process, which may utilize mediation, must include a written decision with findings of fact by an impartial hearing officer within one week of the filing of the grievance if mediation is not requested by the child or the child's family and, if mediation is requested, within 2 weeks of the filing of the grievance. Providers of care and advocates for the child may be heard at the request of the child or the child's family. The informal grievance process is provided in addition to any rights of appeal that may be available under law, rule or regulation. If the right to appeal is limited to a certain time period, that time period begins to run on the date of issuance of a decision under this paragraph. [PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

B. The child or the child's family may exercise any rights of appeal available by law, rule or regulation. The departments shall adopt rules providing for an appeal process that must include alternative dispute resolution and, notwithstanding any provision of state law or rule to the contrary, must provide that the commissioner or the commissioner's designee act as the decision maker in any hearing and issue a written decision with findings of fact. This paragraph does not supersede federal law. [PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

C. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

[PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

**5. Public education program.** The departments shall conduct a public education campaign about mental health, the need for mental health care and the availability of care through the program. The campaign must include written materials; media presentations; and a toll-free telephone number for information, referral and access to the program. Public information must include a resource guide that contains information about departmental responsibilities, community-based and residential-based resources for care and services and grievance and appeals procedures. If the department maintains waiting lists for any care or services, information must be provided about the use of the waiting lists and what options are available for care and services.

[PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

**6. Rights protections; cultural sensitivity.** The program must protect the rights of children to receive care without regard to race, religion, ancestry or national origin, gender, physical or mental disability or sexual orientation.

[PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

**7. Rulemaking.** The departments shall adopt rules to implement this chapter. Rules in effect for care under the authority of the departments, prior to the adoption of rules pursuant to this subsection, remain in effect until the effective date of the new rules. In addition to the rule-making procedures required under Title 5, chapter 375, prior to adoption of a proposed rule, the department shall provide notice of the content of the proposed rule to the joint standing committee of the Legislature having jurisdiction over health and human services matters. When a rule is adopted, the department shall provide copies of the adopted rule to the joint standing committee of the Legislature having jurisdiction over health and human services matters. Unless otherwise specifically designated, rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.  
[RR 2019, c. 2, Pt. A, §33 (COR).]

**8. Spiritual treatment.** Nothing in this chapter may replace or limit the right of any child to care in accordance with a recognized religious method of healing, if the care is requested by the child or by the child's family.  
[PL 1997, c. 790, Pt. A, §1 (NEW); PL 1997, c. 790, Pt. A, §3 (AFF).]

#### SECTION HISTORY

RR 1997, c. 2, §57 (COR). PL 1997, c. 790, §A1 (NEW). PL 1997, c. 790, §A3 (AFF). PL 2007, c. 286, §11 (AMD). PL 2013, c. 132, §4 (AMD). PL 2019, c. 343, Pt. DDD, §3 (AMD). RR 2019, c. 2, Pt. A, §33 (COR).

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