

**§5605. Rights and basic protections of a person with an intellectual disability, autism or an acquired brain injury**

A person with an intellectual disability or autism is entitled to the following rights and basic protections. A person with an acquired brain injury is entitled to the rights and basic protections outlined in subsections 1 to 11. [PL 2021, c. 284, Pt. A, §11 (AMD).]

**1. Humane treatment.** A person with an intellectual disability, autism or an acquired brain injury is entitled to dignity, privacy and humane treatment. [PL 2021, c. 284, Pt. A, §12 (AMD).]

**2. Practice of religion.** A person with an intellectual disability, autism or an acquired brain injury is entitled to religious freedom and practice without any restriction or forced infringement on that person's right to religious preference and practice. [PL 2021, c. 284, Pt. A, §13 (AMD).]

**3. Communications.** A person with an intellectual disability, autism or an acquired brain injury is entitled to private communications.

A. A person with an intellectual disability, autism or an acquired brain injury is entitled to receive, send and mail sealed, unopened correspondence. A person who is a provider may not delay, hold or censor any incoming or outgoing correspondence of any person with an intellectual disability, autism or an acquired brain injury, nor may any such correspondence be opened without the consent of the person or the person's legal guardian. [PL 2021, c. 284, Pt. A, §14 (AMD).]

B. A person with an intellectual disability, autism or an acquired brain injury is entitled to reasonable opportunities for telephone and Internet communication. [PL 2021, c. 284, Pt. A, §14 (AMD).]

C. A person with an intellectual disability, autism or an acquired brain injury is entitled to an unrestricted right to visitations during reasonable hours unless this right has been restricted pursuant to rules adopted pursuant to section 5604. [PL 2021, c. 284, Pt. A, §14 (AMD).]  
[PL 2021, c. 284, Pt. A, §14 (AMD).]

**4. Work.** A person with an intellectual disability, autism or an acquired brain injury engaged in work programs that require compliance with state and federal wage and hour laws is entitled to fair compensation for labor in compliance with regulations of the United States Department of Labor. [PL 2021, c. 284, Pt. A, §15 (AMD).]

**5. Vote.** A person with an intellectual disability, autism or an acquired brain injury may not be denied the right to vote. [PL 2021, c. 284, Pt. A, §16 (AMD).]

**6. Personal property.** A person with an intellectual disability, autism or an acquired brain injury is entitled to the possession and use of that person's own clothing, personal effects and money, except when temporary custody of clothing or personal effects by a provider is necessary to protect the person or others from imminent injury or unless this right has been restricted pursuant to rules adopted pursuant to section 5604. [PL 2021, c. 284, Pt. A, §17 (AMD).]

**7. Nutrition.** A person with an intellectual disability, autism or an acquired brain injury is entitled to nutritious food in adequate quantities and meals may not be withheld for disciplinary reasons. [PL 2021, c. 284, Pt. A, §18 (AMD).]

**8. Medical care.** A person with an intellectual disability, autism or an acquired brain injury is entitled to receive prompt and appropriate medical and dental treatment and care for physical and mental ailments and for the prevention of any illness or disability, and medical treatment must be

consistent with the accepted standards of medical practice in the community, unless the religion of the person with an intellectual disability, autism or an acquired brain injury so prohibits.

A. Medication may be administered only at the written order of a physician. [PL 1983, c. 459, §7 (NEW).]

B. Medication may not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan or in unnecessary or excessive quantities. [PL 1983, c. 459, §7 (NEW).]

C. Daily notation of medication received by each person with an intellectual disability, autism or an acquired brain injury must be kept in the records of the person with an intellectual disability, autism or an acquired brain injury. [PL 2021, c. 284, Pt. A, §19 (AMD).]

D. Periodically, but no less frequently than every 6 months, the drug regimen of each person with an intellectual disability, autism or an acquired brain injury must be reviewed by a physician or other appropriate monitoring body, consistent with appropriate standards of medical practice. [PL 2021, c. 284, Pt. A, §19 (AMD).]

E. All prescriptions must have a termination date. [PL 1993, c. 326, §9 (AMD).]

F. [PL 2011, c. 186, Pt. A, §24 (RP).]

G. Prior to instituting a plan of experimental medical treatment or carrying out any surgical procedure, express and informed consent must be obtained from the person with an intellectual disability, autism or an acquired brain injury, unless the person has been found to be legally incompetent, in which case the person's guardian may consent.

(1) Before making a treatment or surgical decision, the person must be given information, including, but not limited to, the nature and consequences of the procedures, the risks, benefits and purposes of the procedures and the availability of alternate procedures.

(2) The person or, if legally incompetent, that person's guardian may withdraw express and informed consent at any time, with or without cause, before treatment or surgery. [PL 2021, c. 284, Pt. A, §19 (AMD).]

H. Notwithstanding the absence of express and informed consent, emergency medical care or treatment may be provided to any person with an intellectual disability, autism or an acquired brain injury who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency medical care or treatment would endanger the health of the person. [PL 2021, c. 284, Pt. A, §19 (AMD).]

I. Notwithstanding the absence of express and informed consent, emergency surgical procedures may be provided to any person with an intellectual disability, autism or an acquired brain injury who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency surgery would substantially endanger the health of the person. [PL 2021, c. 284, Pt. A, §19 (AMD).]

[PL 2021, c. 284, Pt. A, §19 (AMD).]

**9. Sterilization.** A person with an intellectual disability, autism or an acquired brain injury may not be sterilized, except in accordance with chapter 7.

[PL 2021, c. 284, Pt. A, §20 (AMD).]

**10. Social activity.** A person with an intellectual disability, autism or an acquired brain injury is entitled to opportunities for behavioral and leisure time activities that include social interaction in the community, as set out in section 5610. This right may be waived or restricted only under the rules adopted pursuant to section 5604 or pursuant to a treatment plan approved pursuant to section 5603, subsection 1.

[PL 2021, c. 284, Pt. A, §21 (AMD).]

**11. Physical exercise.** A person with an intellectual disability, autism or an acquired brain injury is entitled to opportunities for appropriate physical exercise, including the use of available indoor and outdoor facilities and equipment.

[PL 2021, c. 284, Pt. A, §22 (AMD).]

**12. Discipline.** Discipline of persons with intellectual disabilities or autism is governed as follows.

A. [PL 2011, c. 186, Pt. A, §26 (RP).]

B. Corporal punishment or any form of inhumane discipline is not permitted. [PL 1983, c. 459, §7 (NEW).]

C. Seclusion as a form of discipline is not permitted. [PL 2011, c. 186, Pt. A, §26 (AMD).]

D. [PL 1993, c. 326, §9 (RP).]

E. A provider of residential services may establish house rules in a residential unit owned or operated by the provider. A person receiving services who resides in the unit is entitled to participate, as appropriate, in the formulation of the house rules. A house rule must be uniformly applied to all residents of the residential unit where the rules apply. A copy of the house rules must be posted in a residential unit where the rules apply and a copy of the rules must be given to all residents who receive services and, if any resident is under guardianship, to the guardian of the person receiving services. [PL 2011, c. 186, Pt. A, §26 (NEW).]

[PL 2011, c. 542, Pt. A, §129 (AMD).]

**13. Behavioral support, modification and management.** Behavior modification and behavior management of and supports for a person 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. A person 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. [PL 2011, c. 542, Pt. A, §129 (AMD).]

A-1. Support programs may contain both behavior modification and behavior management components. [PL 2011, c. 186, Pt. A, §27 (AMD).]

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. [PL 2011, c. 186, Pt. A, §27 (NEW).]

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;
- (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 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 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. [PL 2013, c. 310, §7 (AMD).]

C. [PL 2011, c. 186, Pt. A, §27 (RP).]  
[PL 2013, c. 500, §1 (AMD).]

#### **14. Physical restraints.**

[PL 2007, c. 573, §1 (RP).]

**14-A. Restraints.** A person 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 [PL 2011, c. 186, Pt. A, §28 (AMD).]
- B. The restraint has been approved as a behavior management program in accordance with this section. [PL 2011, c. 186, Pt. A, §28 (AMD).]

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.

[PL 2011, c. 657, Pt. EE, §10 (AMD).]

#### **14-B. Mechanical supports.**

[PL 2011, c. 186, Pt. A, §29 (RP).]

#### **14-C. Safety devices.**

[PL 2011, c. 186, Pt. A, §30 (RP).]

**14-D. Reimbursement provided.** Notwithstanding any other provision of law, the department shall provide reimbursement within available resources for durable medical equipment that provides a safe sleeping environment for individuals under 16 years of age if:

- A. The durable medical equipment is necessary to correct or ameliorate a behavioral health condition; [PL 2009, c. 100, §1 (NEW).]
- B. The durable medical equipment is the least restrictive alternative for the treatment of the behavioral health condition; [PL 2009, c. 100, §1 (NEW).]
- C. The durable medical equipment is approved on a case-by-case basis by a review team composed of the same representatives as the team conducting children's behavioral treatment reviews under subsection 13, paragraph B, subparagraph (3); and [PL 2009, c. 100, §1 (NEW).]
- D. The department determines that the durable medical equipment is cost-effective in comparison to the provision of other covered services or equipment that can sufficiently correct or ameliorate the behavioral health condition. [PL 2009, c. 100, §1 (NEW).]

The department may adopt rules as necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2009, c. 100, §1 (NEW).]

**15. Records.** All records of persons receiving services must remain confidential as provided in section 1207.

- A. The person with an intellectual disability or autism or, if the person is incompetent, a parent or guardian is entitled to have access to the records upon request. [PL 2011, c. 542, Pt. A, §129 (AMD).]
- B. The commissioner is entitled to have access to the records of a provider if necessary to carry out the statutory functions of the commissioner's office. [PL 2011, c. 186, Pt. A, §31 (AMD).]

[PL 2011, c. 542, Pt. A, §129 (AMD).]

**16. Therapeutic devices or interventions.** Therapeutic devices or interventions must be prescriptively designed by a qualified professional and applied with concern for principles of good body alignment and circulation and allowance for change of position. The department may adopt rules concerning the use of therapeutic devices or interventions. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2011, c. 186, Pt. A, §32 (NEW).]

**17. Safety devices and practices.** A safety device or practice must be prescribed by a physician. A safety device must be designed and applied with concern for principles of good body alignment and circulation and allowance for change of position. The department may adopt rules concerning the use and approval of safety devices or practices. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2011, c. 186, Pt. A, §33 (NEW).]

The department may adopt rules as necessary to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 186, Pt. A, §34 (NEW).]

#### SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1987, c. 769, §A129 (AMD). PL 1993, c. 326, §9 (AMD). PL 2001, c. 245, §§1-4 (AMD). PL 2003, c. 368, §§1,2 (AMD). PL 2003, c. 564, §§1-3 (AMD). PL 2007, c. 356, §25 (AMD). PL 2007, c. 356, §31 (AFF). PL 2007, c. 573, §§1-4 (AMD). PL 2007, c. 695, Pt. D, §3 (AFF). PL 2009, c. 100, §1 (AMD). PL 2011, c. 186, Pt. A, §§18-34

(AMD). PL 2011, c. 542, Pt. A, §129 (AMD). PL 2011, c. 657, Pt. EE, §§9, 10 (AMD). PL 2013, c. 310, §7 (AMD). PL 2013, c. 500, §1 (AMD). PL 2021, c. 284, Pt. A, §§10-22 (AMD).

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