

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1539

H.P. 1122

House of Representatives, April 11, 2019

An Act To Provide Maine Children Access to Affordable Health Care

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative CARNEY of Cape Elizabeth.
Cosponsored by Senator MILLETT of Cumberland and
Representatives: CUDDY of Winterport, FARNSWORTH of Portland, GATTINE of
Westbrook, HANINGTON of Lincoln, MILLETT of Waterford, Senators: BREEN of
Cumberland, CLAXTON of Androscoggin, SANBORN, L. of Cumberland.

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

2 **Sec. 1. 22 MRSA §3174-G, sub-§1, ¶B**, as repealed and replaced by PL 2007, c.
3 695, Pt. C, §9, is amended to read:

4 B. An infant under one year of age when the infant's family income is equal to or
5 below 200% of the nonfarm income official poverty line, except that the department
6 may adopt a rule that provides that infants in families with income over 185% and
7 equal to or below ~~200%~~ 325% of the nonfarm income official poverty line who meet
8 the eligibility requirements of the Cub Care program established under section
9 3174-T are eligible to participate in the Cub Care program instead of Medicaid. Rules
10 adopted pursuant to this paragraph are routine technical rules as defined in Title 5,
11 chapter 375, subchapter 2-A;

12 **Sec. 2. 22 MRSA §3174-G, sub-§1, ¶D**, as repealed and replaced by PL 2007, c.
13 695, Pt. C, §10, is amended to read:

14 D. A child one year of age or older and under 19 years of age when the child's family
15 income is equal to or below 200% of the nonfarm income official poverty line, except
16 that the department may adopt a rule that provides that children described in this
17 paragraph in families with income over 150% and equal to or below ~~200%~~ 325% of
18 the nonfarm income official poverty line who meet the eligibility requirements of the
19 Cub Care program established under section 3174-T are eligible to participate in the
20 Cub Care program instead of Medicaid. Rules adopted pursuant to this paragraph are
21 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A;

22 **Sec. 3. 22 MRSA §3174-T**, as amended by PL 2017, c. 284, Pt. SSSSSS, §1, is
23 further amended to read:

24 **§3174-T. Cub Care program**

25 **1. Program established.** The Cub Care program is established to provide health
26 coverage for low-income children who are ineligible for benefits under the Medicaid
27 program and who meet the requirements of subsection ~~2, 2-A or 2-B~~. The purpose of the
28 Cub Care program is to provide health coverage to as many children as possible within
29 the fiscal constraints of the program budget and without forfeiting any federal funding
30 that is available to the State for the State Children's Health Insurance Program through the
31 federal Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251, referred to in
32 this section as the Balanced Budget Act of 1997.

33 **2. Eligibility; enrollment.** Health coverage under the Cub Care program is
34 available to children under 19 years of age whose family income is above the eligibility
35 level for Medicaid under section 3174-G and below the maximum eligibility level
36 established under paragraphs A and B, and who meet the requirements set forth in
37 paragraph C ~~and for whom premiums are paid under subsection 5~~.

38 A. The maximum eligibility level, subject to adjustment by the commissioner under
39 paragraph B, is ~~200%~~ 325% of the nonfarm income official poverty line.

1 B. If the commissioner has determined the fiscal status of the Cub Care program
2 under subsection 8 and has determined that an adjustment in the maximum eligibility
3 level is required under this paragraph, the commissioner shall adjust the maximum
4 eligibility level in accordance with the requirements of this paragraph.

5 (1) The adjustment must accomplish the purposes of the Cub Care program set
6 forth in subsection 1.

7 ~~(2) If Cub Care program expenditures are reasonably anticipated to exceed the~~
8 ~~program budget, the commissioner shall lower the maximum eligibility level set~~
9 ~~in paragraph A to the extent necessary to bring the program within the program~~
10 ~~budget.~~

11 (3) If Cub Care program expenditures are reasonably anticipated to fall below
12 the program budget, the commissioner shall raise the maximum eligibility level
13 set in paragraph A to the extent necessary to provide coverage to as many
14 children as possible within the fiscal constraints of the program budget. If Cub
15 Care program expenditures are reasonably anticipated to exceed the program
16 budget after raising the maximum eligibility level pursuant to this subparagraph,
17 the commissioner may lower the maximum eligibility level to the level
18 established in paragraph A.

19 (4) The commissioner shall give at least 30 days' notice of the proposed change
20 in maximum eligibility level to the joint standing committee of the Legislature
21 having jurisdiction over appropriations and financial affairs and the joint standing
22 committee of the Legislature having jurisdiction over health and human services
23 matters.

24 C. All children resident in the State are eligible except a child who:

25 (1) Is eligible for coverage under the Medicaid program;

26 (2) Is covered under a group health insurance plan or under health insurance, as
27 defined in Section 2791 of the federal Public Health Service Act, 42 United
28 States Code, Section 300gg(c) (Supp. 1997); or

29 (4) Is an inmate in a public institution or a patient in an institution for mental
30 diseases; ~~or.~~

31 ~~(5) Within the 3 months prior to application for coverage under the Cub Care~~
32 ~~program, was insured or otherwise provided coverage under an employer-based~~
33 ~~health plan for which the employer paid 50% or more of the cost for the child's~~
34 ~~coverage, except that this subparagraph does not apply if:~~

35 ~~(a) The cost to the employee of coverage for the family exceeds 10% of the~~
36 ~~family's income;~~

37 ~~(b) The parent lost coverage for the child because of a change in~~
38 ~~employment, termination of coverage under the Consolidated Omnibus~~
39 ~~Budget Reconciliation Act of 1985, COBRA, of the Employee Retirement~~
40 ~~Income Security Act of 1974, as amended, 29 United States Code, Sections~~
41 ~~1161 to 1168 (Supp. 1997) or termination for a reason not in the control of~~
42 ~~the employee; or~~

1 ~~(e) The department has determined that grounds exist for a good-cause~~
2 ~~exception.~~

3 D. Notwithstanding changes in the maximum eligibility level determined under
4 paragraph B, the following requirements apply to enrollment and eligibility:

5 (1) Children must be enrolled for 12-month enrollment periods. Prior to the end
6 of each 12-month enrollment period the department shall redetermine eligibility
7 for continuing coverage; and

8 (2) Children of higher family income may not be covered unless children of
9 lower family income are also covered. This subparagraph may not be applied to
10 disqualify a child during the 12-month enrollment period. Children of higher
11 income may be disqualified at the end of the 12-month enrollment period if the
12 commissioner has lowered the maximum eligibility level under paragraph B.

13 E. Coverage under the Cub Care program may be purchased for children described in
14 subparagraphs (1) and (2) for a period of up to 18 months as provided in this
15 paragraph at a premium level that is revenue neutral and that covers the cost of the
16 benefit and a contribution toward administrative costs no greater than the maximum
17 level allowable under COBRA. The department shall adopt rules to implement this
18 paragraph. The following children are eligible to enroll under this paragraph:

19 (1) A child who is enrolled under paragraph A or B and whose family income at
20 the end of the child's 12-month enrollment term exceeds the maximum allowable
21 income set in that paragraph; and

22 (2) A child who is enrolled in the Medicaid program and whose family income
23 exceeds the limits of that program. The department shall terminate Medicaid
24 coverage for a child who enrolls in the Cub Care program under this
25 subparagraph.

26 F. The department may not apply an asset test to a child or child's family when the
27 child is otherwise eligible for the Cub Care program under this section.

28 **2-A. Persons 19 and 20 years of age.** Health coverage under the Cub Care program
29 is available to a person 19 or 20 years of age whose family income is above the eligibility
30 level for Medicaid under section 3174-G and below the maximum eligibility level
31 established under subsection 2, paragraphs A and B and who meets the requirements set
32 forth in subsection 2, paragraph C. All the requirements of eligibility, program
33 administration, benefit delivery and outreach established in this section apply to persons
34 19 and 20 years of age.

35 **2-B. Noncitizens.** Health coverage under the Cub Care program is available to a
36 person under 21 years of age who is not a citizen of the United States and whose family
37 income is above the eligibility level for Medicaid under section 3174-G and below the
38 maximum eligibility level established under subsection 2, paragraphs A and B and who
39 meets the requirements set forth in subsection 2, paragraph C. All the requirements of
40 eligibility, program administration, benefit delivery and outreach established in this
41 section apply to a person under 21 years of age who is not a citizen of the United States.

1 **3. Program administration; benefit design.** With the exception of premium
2 ~~payments under subsection 5 and any other requirements imposed under this section,~~ the
3 Cub Care program must be integrated with the Medicaid program and administered with
4 it in one administrative structure within the department, with the same enrollment and
5 eligibility processes, benefit package and outreach and in compliance with the same laws
6 and policies as the Medicaid program, except when those laws and policies are
7 inconsistent with this section and the Balanced Budget Act of 1997. The department
8 shall adopt and promote a simplified eligibility form and eligibility process.

9 **4. Benefit delivery.** The Cub Care program must use, but is not limited to, the same
10 benefit delivery system as the Medicaid program, providing benefits through the same
11 health plans, contracting process and providers. Copayments and deductibles may not be
12 charged for benefits provided under the program.

13 ~~**5. Premium payments.** Premiums must be paid in accordance with this subsection.~~

14 ~~A. Premiums must be paid at the beginning of each month for coverage for that~~
15 ~~month according to the following scale:~~

16 ~~(1) Families with incomes between 150% and 160% of the federal nonfarm~~
17 ~~income official poverty line pay premiums of 5% of the benefit cost per child, but~~
18 ~~not more than 5% of the cost for 2 children;~~

19 ~~(2) Families with incomes between 160% and 170% of the federal nonfarm~~
20 ~~income official poverty line pay premiums of 10% of the benefit cost per child,~~
21 ~~but not more than 10% of the cost for 2 children;~~

22 ~~(3) Families with incomes between 170% and 185% of the federal nonfarm~~
23 ~~income official poverty line must pay premiums of 15% of the benefit cost per~~
24 ~~child, but not more than 15% of the cost for 2 children; and~~

25 ~~(4) Families with incomes between 185% and 200% of the federal nonfarm~~
26 ~~income official poverty line must pay premiums of 20% of the benefit cost per~~
27 ~~child, but not more than 20% of the cost for 2 children.~~

28 ~~B. When a premium is not paid at the beginning of a month, the department shall~~
29 ~~give notice of nonpayment at that time and again at the beginning of the 6th month of~~
30 ~~the 6-month enrollment period if the premium is still unpaid, and the department shall~~
31 ~~provide an opportunity for a hearing and a grace period in which the premium may be~~
32 ~~paid and no penalty will apply for the late payment. If a premium is not paid by the~~
33 ~~end of the grace period, coverage must be terminated unless the department has~~
34 ~~determined that waiver of premium is appropriate under paragraph D. The grace~~
35 ~~period is determined according to this paragraph.~~

36 ~~(1) If nonpayment is for the first, 2nd, 3rd, 4th or 5th month of the 6-month~~
37 ~~enrollment period, the grace period is equal to the remainder of the 6-month~~
38 ~~enrollment period.~~

39 ~~(2) If nonpayment is for the 6th month of the 6-month enrollment period, the~~
40 ~~grace period is equal to 6 weeks.~~

41 ~~C. A child whose coverage under the Cub Care program has been terminated for~~
42 ~~nonpayment of premium and who has received coverage for a month or longer~~

1 without premium payment may not reenroll until after a waiting period that equals the
2 number of months of coverage under the Cub Care program without premium
3 payment, not to exceed 3 months.

4 ~~D. The department shall adopt rules allowing waiver of premiums for good cause.~~

5 **6. Incentives.** In the contracting process for the Cub Care program and the Medicaid
6 program, the department shall create incentives to reward health plans that contract with
7 school-based clinics, community health centers and other community-based programs.

8 **7. Administrative costs.** The department shall budget 2% of the costs of the Cub
9 Care program for outreach activities. After the first 6 months of the program and to the
10 extent that the program budget allows, the department may expend up to 3% of the
11 program budget on activities to increase access to health care. ~~Administrative costs must~~
12 ~~include the cost of staff with experience in health policy administration equal to one full-~~
13 ~~time equivalent position.~~ In addition, the department shall apply for additional federal
14 funds available for Medicaid outreach activities. The goal of outreach activities under
15 this subsection is to enroll 100% of children eligible for the Cub Care program or the
16 MaineCare program. The department shall contract with one or more organizations with
17 experience in providing health care information and services to the public on a statewide
18 basis for the outreach activities pursuant to this subsection.

19 **8. Quarterly determination of fiscal status; reports.** On a quarterly basis, the
20 commissioner shall determine the fiscal status of the Cub Care program, determine
21 whether an adjustment in maximum eligibility level is required under subsection 2,
22 paragraph B and report to the joint standing committee of the Legislature having
23 jurisdiction over appropriations and financial affairs and the joint standing committee of
24 the Legislature having jurisdiction over health and human services matters on the
25 following matters:

26 A. Enrollment approvals, denials, terminations, reenrollments, levels and projections.
27 With regard to denials, the department shall gather data from a statistically significant
28 sample and provide information on the income levels of children who are denied
29 eligibility due to family income level;

30 B. Cub Care program expenditures, expenditure projections and fiscal status;

31 C. Proposals for increasing or decreasing enrollment consistent with subsection 2,
32 paragraph B;

33 D. Proposals for enhancing the Cub Care program;

34 E. Any information the department has from the Cub Care program or from the
35 Bureau of Insurance or the Department of Labor on employer health coverage and
36 insurance coverage for low-income children;

37 F. The use of and experience with the purchase option under subsection 2, paragraph
38 ~~D~~ E; and

39 G. Cub Care program administrative costs.

40 **9. Provisions applicable to federally recognized Indian tribes.** After consultation
41 with federally recognized Indian nations, tribes or bands of Indians in the State, the

1 commissioner shall adopt rules regarding eligibility and participation of children who are
2 members of a nation, tribe or band, consistent with Title 30, section 6211, in order to best
3 achieve the goal of providing access to health care for all qualifying children within
4 program requirements, while using all available federal funds.

5 **10. Rulemaking.** The department shall adopt rules in accordance with Title 5,
6 chapter 375 as required to implement this section. Rules adopted pursuant to this
7 subsection are routine technical rules as defined by Title 5, chapter 375, subchapter ~~H-A~~
8 2-A.

9 **11. Cub Care drug rebate program.** Effective October 1, 1999, the department
10 shall enter into a drug rebate agreement with each manufacturer of prescription drugs that
11 results in a rebate equal to that which would be achieved under the federal Social Security
12 Act, Section 1927.

13 ~~**12. Premium rate review; adjustment.** Effective July 1, 2004, the department shall~~
14 ~~periodically evaluate the amount of premiums charged under this section to ensure that~~
15 ~~the premiums charged reflect the most current benefit cost per child. The commissioner~~
16 ~~shall adjust the premiums by rule. Rules adopted pursuant to this subsection are routine~~
17 ~~technical rules as defined in Title 5, chapter 375, subchapter 2-A.~~

18 **Sec. 4. Federal Medicaid waivers or state plan amendments; funding.**
19 The Department of Health and Human Services shall establish coverage under the Maine
20 Revised Statutes, Title 22, section 3174-T, subsections 2-A and 2-B as of the effective
21 date of this Act using state funds. The department may seek to acquire matching federal
22 funds under the Medicaid program by submitting any waivers or state plan amendments
23 to the United States Department of Health and Human Services, Centers for Medicare and
24 Medicaid Services determined necessary.

25 **Sec. 5. Contracts required.** The Department of Health and Human Services
26 shall contract for outreach activities, as required in the Maine Revised Statutes, Title 22,
27 section 3174-T, subsection 7, beginning no later than January 1, 2020. The department
28 shall apply for federal grant funds available for use for outreach activities, including those
29 established under the federal Helping Ensure Access for Little Ones, Toddlers, and
30 Hopeful Youth by Keeping Insurance Delivery Stable Act, Public Law 115-120, and any
31 subsequent amended versions, and the federal Advancing Chronic Care, Extenders and
32 Social Services (ACCESS) Act, Public Law 115-123, and any subsequent amended
33 versions. These funds must be used to supplement the 2% funding and may not supplant
34 that funding.

35 **Sec. 6. Express lane eligibility; state plan amendment; report.** The
36 Department of Health and Human Services shall, no later than January 1, 2020, submit a
37 state plan amendment to the United States Department of Health and Human Services,
38 Centers for Medicare and Medicaid Services to implement the use of the express lane
39 eligibility option available under the federal Children's Health Insurance Program
40 Reauthorization Act of 2009, Public Law 111-3, and any subsequent amended versions,
41 and to implement the option no later than 6 months after receiving approval for the state
42 plan amendment. The department shall implement a model of express lane eligibility that
43 determines eligibility for children under the MaineCare program and the Cub Care

1 program, including the state-funded Cub Care program serving persons 19 and 20 years
2 of age and noncitizens under 21 years of age established under the Maine Revised
3 Statutes, Title 22, section 3174-T, subsections 2-A and 2-B. The department shall report
4 its progress on submitting the state plan amendment and implementing the express lane
5 eligibility option to the joint standing committee of the Legislature having jurisdiction
6 over health and human services matters no later than January 1, 2021.

7 **SUMMARY**

8 This bill makes the following changes to the Cub Care program.

9 1. It changes the maximum eligibility level for family income from 200% of the
10 federal poverty level to 325% of the federal poverty level.

11 2. It removes the 3-month waiting period for enrollment in the Cub Care program
12 following the loss of health insurance or coverage under an employer-based plan.

13 3. It establishes that eligibility is not subject to an asset test.

14 4. It provides coverage to persons 19 and 20 years of age and to noncitizens under 21
15 years of age. The Department of Health and Human Services is required to use state
16 funds to fund the program but may apply for waivers or state plan amendments to the
17 United States Department of Health and Human Services, Centers for Medicare and
18 Medicaid Services to receive federal matching funds.

19 5. It repeals the provisions regarding premium payments for the Cub Care program.

20 6. It requires the department to contract for outreach activities rather than providing
21 them directly. The department must have a contract or contracts in place no later than
22 January 1, 2020. The department is also required to seek federal grant funds for
23 additional outreach activities under the federal Helping Ensure Access for Little Ones,
24 Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act, Public Law
25 115-120 and the federal Advancing Chronic Care, Extenders and Social Services
26 (ACCESS) Act, Public Law 115-123.

27 7. It requires the department to submit a state plan amendment to the United States
28 Department of Health and Human Services, Centers for Medicare and Medicaid Services
29 to implement the use of the express lane eligibility option no later than January 1, 2020
30 and to implement it no later than 6 months after receiving approval.