Joint Standing Committee on Health & Human Services

Report Pursuant to

Chapter 61

Resolve, To Ensure Proper Levels of Care for the Elderly and the Disabled

Enacted by 123rd Legislature First Regular Session S.P. 112 - L.D. 339

Background

Chapter 61, Resolve to Ensure Proper Levels of Care for the Elderly and Disabled, is the result of two legislative initiatives. The intent of one bill was to amend the rules for licensing long term care facilities to prevent the inappropriate transfer of a resident to a hospital as a way of discharging the resident. The second initiative sought to accomplish the broader goal to bring adults living in facilities out-of-state back to Maine, and develop a system that would better plan for individuals who are in Maine facilities who are in higher levels of care than needed.

One person in particular, was the impetus for the legislative consideration of adults receiving care out-of-state. Consequently, the Study Group would like to acknowledge and dedicate the development of this review process to Chris, a Maine resident who had been cared for in an out-of-state facility and whose family, along with Departmental staff, worked tirelessly to bring him back to Maine for his care. While challenging our entire care system to consider and support creative options, his return to Maine helps pave the way for others to follow.

As specified in Sections 4 and 5 in Chapter 61, the Department of Health and Human Services (DHHS) created a Study Group to address the issues outlined in the Resolve. The Office of Elder Services was given the responsibility of chairing and staffing the study group. Thirty-two individuals have participated, including representatives of hospitals, nursing and residential care facilities, advocacy organizations, associations, providers, and DHHS (including the Office of Elder Services, MaineCare Services, Adult Mental Health, Adults with Cognitive and Physical Disabilities, and Regional Integration.)

It is important to emphasize that issues identified in this resolve cut across various Departmental Offices. There is a need to look at functionality, not just diagnosis, and make needed systemic changes not only to benefit currently identified people but to change how we approach these difficult placement issues in the future.

Two individuals also need to be recognized for providing a significant amount of data to the Study Group which helped to guide our discussion and recommendations. Catherine McGuire, Institute for Health Policy, Muskie School of Public Service, USM, provided a detailed analysis of the characteristics of Maine's nursing home residents, with a focus on residents under the age of sixty. Donna Deletetsky, Manager of Social Work and Pastoral Care, Southern Maine Medical Center, provided information on Hospitals Patients Awaiting Discharge on a point in time.

The Resolve directs the Department of Health and Human Services to focus on the following issues and tasks:

Issues Identified in Resolve 61

I. **"**Certain disabled persons are living in inappropriate institutional settings, often at significant emotional costs to them and their families and at significant financial cost to the State

II. the Legislature believes that suitable alternative living arrangements are available or can be made reasonably available within existing resources; and

III. the Legislature believes that other individuals who could be maintained in their current living arrangements if appropriate supports and education were provided are unnecessarily transferred to more restrictive settings.**"**

Tasks, Findings, and Recommendations

Task I. Establish, within available resources, an ongoing process to assess the medically necessary physical, cognitive and behavioral needs of adult MaineCare members living in out-of-state facilities or living in state nursing or hospital facilities, including psychiatric hospitals and units, who could benefit from a less restrictive level of care in state.

Task II. Plan for appropriate and medically necessary physical, cognitive and behavioral services within available resources…so that individuals who are residing at in state facilities…may live in the least restrictive setting that meets their needs.

Finding 1. The Department of Health and Human Services asked the consulting firm of Schaller Anderson Medical Administrators to assess each of 45 people living out-of-state. Based on these visits, they reported the following:

- 90% of these individuals with Traumatic Brain Injuries (TBI), and the others with dementia or Huntington's Disease
- Out of the 45 individuals, 24 reside at Lakeview NeuroRehabilitation Center in Effingham, New Hampshire. This is considered an in-state facility by Office of MaineCare Services due to its proximity to the border.
- Three individuals with Huntington's Diseases reside at Lowell General Hospital, which specializes in this disease.
- 20 individuals could be considered for community placement within the State of Maine in either a group home or assisted living setting
- 12 individuals could be considered for a nursing facility in Maine
- The needs of 12 individuals are indeterminate from the information available and would need further evaluation.
- Contrary to earlier assertions, Schaller-Anderson did not find evidence of complex medical needs requiring continued out of state placement.

Recommendation 1.1 The Maine Department of Health & Human Services should contract with an agency, like Schaller-Anderson, to identify out-of-state residents who could be served in an in-state facility or with community supports in Maine for the same or less cost as out-of-state.

Finding 2. Schaller-Anderson also found that the initial reason Maine citizens are placed out-of-state is due to behavioral issues. The Study Group notes that these behaviors cannot currently be managed safely in Maine's existing facilities, generally due to Maine's lack of secured units and specialty trained staff who have the skills to manage these difficult behaviors. Ultimately, out-of-state placement becomes the only option.

Recommendation 2.1 Because many of these behaviors could be treated at an earlier stage, Maine's current care system needs to redirect its services to focus on earlier intervention.

Recommendation 2.2 The care system should Identify individuals for earliest possible intervention and provide support and training to nursing facility staff in regard to managing the challenging behaviors of these individuals.

Recommendation 2.3 DHHS should provide support and training to nursing facilities who accept residents returning to Maine.

Finding 3. Cost-related findings:

- Out-of-state services are reimbursed at a higher rate than they would be if provided in-state.
- Schaller-Anderson reports that out-of-state facilities have little incentive to return residents to Maine since MaineCare reimburses at a rate greater than these facilities would receive for their own residents.
- Schaller-Anderson reports that some of the therapies, such as speech and occupational, for which the facilities are reimbursed, are provided at a questionable therapeutic level.
- Since passage of the Resolve, one resident has been returned to an in-state placement which will result in a cost savings of roughly $40,000/year from the cost of his out-of-state placement, which had been $260,000/year.

Finding 4. Even though people out-of-state are reviewed each year, Maine has no capacity to actively provide ongoing care management to people in out-of-state placements or to attempt to bring these residents back to Maine for care.

Recommendation 4.1 The Maine Department of Health & Human Services should convene an Integrated Team to develop a means to prevent people from having to be placed out-of-state and to assist in developing appropriate placements for individuals in in-state facilities that are more restrictive than necessary. As part of its work, the Team will:

- identify an effective behavioral assessment tool;
- conduct a functional assessment of each person;
- develop a care plan using a multi-disciplinary team;
- determine the expected cost of the plan;
- negotiate with administrators of Maine nursing facilities, or of agencies that provide residential and support services, to accept individuals deemed safe for in-state placement;
- continue discussion on how to use funds that would have been spent on an out-of-state placement to support an in-state placement;

Recommendation 4.2 The DHHS Integrated Team will review each out-of-state placement annually to assess that person's functional and behavioral status to determine if that person may be returned safely to an in-state facility.

Finding 5. Chapter 61 encompasses individuals who don't meet criteria to receive mental health or mental retardation services, and who demonstrate complex and/or challenging behaviors. Many of these individuals may have a dementia and or a brain injury and are not eligible to receive services under mental health criteria, because they don't have a primary diagnosis of mental illness. Furthermore, Maine is not fully complying with Preadmission Screening and Resident Review (PASRR), which is a federal requirement.

Recommendation 5.1 In order to identify people with mental illness or mental retardation, preserve placement, prevent inappropriate placements, and reduce hospitalizations, DHHS must:

a. amend Maine's Preadmission Screening and Resident Review (PASRR) program1, to comply with federal regulations to include *suspected* mental illness as a criteria for services.

b. amend the MaineCare definition of "Specialized Services for People with Mental Illness" to clarify the therapies and activities that constitute "specialized services."2

c. reassess individuals in nursing facilities to document Change-In-Condition in order to identify ongoing needs.

d. If the PASRR screen or assessment indicates that the individuals do not have mental illness or mental retardation, but do have challenging behaviors associated with other conditions such as TBI or dementia, the department shall refer the individuals for earliest possible intervention, to include training and consultative support.

Finding 6. On any given day, a number of people in Maine hospitals no longer meet the criteria for acute level of care, but less-restrictive placements are not available. Many of these individuals are in the hospital to address behavioral issues which require more than ten days to treat and stabilize, resulting in the loss of their nursing home bed. The current MaineCare nursing facility bed-hold period of 10 days is not an adequate time frame to stabilize and monitor the medications of a nursing home resident who has been transferred to a hospital for behavioral treatment. Consequently, nursing homes are reluctant, or may not be able to re-admit a non-stable person back to his or her bed because they cannot provide safe and adequate care, thereby extending the person's stay in the higher-cost hospital. After considerable time and effort to find less-restrictive settings, hospitals seek authorization to discharge people to an out-of-state facility as the only option available.

Recommendation 6.1 MaineCare rules should be amended to extend the bed-hold reimbursement length of time from 10 days to 14 days, which is the average length of time physicians state is necessary to safely stabilize an individual. The longer bed-hold will allow the nursing facility to hold a bed and feel confident that the individual can be safely returned and cared for in the facility. The minimal cost of this extension will be more than off-set by a decrease in hospital expenditures.

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[1] The Preadmission Screening and Resident Review (PASRR) program seeks to ensure that persons with mental illness or mental retardation are not inappropriately admitted to nursing level of care. For those who are otherwise eligible for care in a nursing facility (NF) and who also have a mental illness or mental retardation, PASRR seeks to ensure that they receive the additional care necessary to meet their needs. Persons whose needs for services due to mental illness or mental retardation are too great for NFs to provide within their resources will be provided specialized services or referred to alternative, more appropriate services.

[2] Recommended language: "The prescribed therapies and activities in the individual plan may include, but are not limited to, the services of a psychiatrist, nurse practitioner, psychologist, or other qualified mental health professional, psychological testing or evaluation, occupational therapy testing or evaluation psychotherapy, medication treatment, management of psychiatric medications, medication education, crises planning and intervention services, day hospitalization, or acute care hospitalization, and case management necessary to coordinate the services described in the plan."

Recommendation 6.2 The Maine Department of Health and Human Services should educate nursing facilities to the facilities' obligations under licensing regulations governing transfer and discharge requirements.

Recommendation 6.3 Review current contract and practices regarding the Gero/psych Units to determine if they are being properly utilized.

Task III. Determine specific additions to the curriculum for positive behavioral support for all long term care settings as developed by the department and the Joint Advisory Committee on Select Services for Older Persons and to determine how this training can be delivered within available resources.

Recommendation III.1 We support the Maine Board of Nursing incorporating the geriatric mental health module into the curriculum for Certified Nursing Assistants. This has already been recommended by the DHHS' Division of Licensing & Regulatory Services.

Recommendation III.2 The Best Practices subcommittee and a subcommittee of the Stakeholders' Group are editing a behavioral management manual for use in all residential and nursing facility (NF) settings along with the development of a Crisis Intervention Protocol. Development of a standardized protocol for transfers into hospitals from NF's is underway. We recommend continuing this work to address the immediate needs for behavioral management in nursing facilities and bring all recommendations to the Best Practices Committee and the Stakeholders' group.

Task IV. Facilitate discussions about creating useable procedures for transferring individuals between hospitals and non-hospital settings; an improved process for mutual clinical assistance and support; and review and modify rules regarding written notices provided to residents to ensure that they are adequately informed about the reasons for transfer, discharge, or denial of admission or readmission.

The Best Practices subcommittee is a vehicle to continue examining the existing hospital discharge planning and nursing home discharge planning rules. Both the issue of bed-hold days and enforcing discharge planning rules are addressed earlier in this report. Existing rules regarding written notices provided to residents to ensure that residents are adequately informed about the reasons for transfer, discharge, or denial of admission or readmission appear to be sufficient but should be enforced.

Task V. The Department of Health and Human Services shall establish or collaborate with an appropriate working group that includes advocates and providers to ensure that the activities in sections 1 to 4 take place in a timely manner.

Stakeholders (see list attached) have met as a group and in smaller subcommittees since June 2007, and have met almost every other week since September.

Recommendation V.1 Given the complexity of the issues, the need to address the issues of younger people, the need to explore capital investment plans, residents with complex medical needs and the array of changes that will be needed, we recommend that the Legislature extend our charge for one year, so that we may report back to the committee in the next legislative session.

List of Participants

Resolve

123rd Legislature

First Regular Session

Chapter 61

S.P. 112 - L.D. 339

Resolve, To Ensure Proper Levels of Care for the Elderly and the Disabled

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, certain disabled persons are living in inappropriate institutional settings, often at significant emotional costs to them and their families and at significant financial cost to the State; and

Whereas, the Legislature believes that suitable alternative living arrangements are available or can be made reasonably available within existing resources; and

Whereas, the Legislature believes that other individuals who could be maintained in their current living arrangements if appropriate supports and education were provided are unnecessarily transferred to more restrictive settings; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1 Assessment process. Resolved: That, within available resources, the Department of Health and Human Services shall establish an ongoing process to assess the medically necessary physical, cognitive and behavioral needs of adult MaineCare members living in out-of-state facilities or living in state nursing or hospital facilities, including psychiatric hospitals and units, who could benefit from a less restrictive level of care but who have been unable to locate appropriate services because they have complex medical needs such as ventilator care or complex behavioral health needs; and be it further

Sec. 2 Planning for services. Resolved: That the Department of Health and Human Services shall plan for appropriate and medically necessary physical, cognitive and behavioral services within available resources, including residential and supportive services, so that individuals who are inappropriately placed, if they choose, may live in the least restrictive setting that meets their medical, physical, cognitive and behavioral needs. This planning must include a process for individualized planning that includes the hospital patient or nursing home resident, a guardian or other representative, representatives of the hospital or nursing facility, the assigned case manager and an appropriate representative of the Department of Health and Human Services; and be it further

Sec. 3 Positive behavioral support training. Resolved: That the Department of Health and Human Services shall work with interested parties to determine specific additions to the curriculum for positive behavioral support training for all long-term care settings as developed by the department and the Joint Advisory Committee on Select Services for Older Persons and to determine how this training can be delivered within available resources; and be it further

Sec. 4 Discussions among stakeholders. Resolved: That the Department of Health and Human Services shall facilitate discussions among the stakeholders with the following goals:

1. Creating useable procedures for transferring individuals between hospitals and nonhospital settings;

2. Developing an improved process for mutual clinical assistance and support when necessary; and

3. Reviewing and modifying, if necessary, the rules regarding the written notices provided to residents to ensure that they are adequately informed about the reasons for transfer, discharge or denial of admission or readmission; and be it further

Sec. 5 Process. Resolved: That the Department of Health and Human Services shall establish or collaborate with an appropriate working group that includes advocates and providers to ensure that the activities in sections 1 to 4 take place in a timely manner. The Department of Health and Human Services shall share with the working group data and information that is not personally identifiable collected through the planning process. The Department of Health and Human Services shall complete the assessment and planning process for individuals who currently meet the criteria in section 1 no later than October 1, 2007; and be it further

Sec. 6 Report. Resolved: That, by November 1, 2007, the Department of Health and Human Services shall report to the Joint Standing Committee on Health and Human Services on the progress made to implement this resolve. This report must recount the activities to date and identify any needs to be addressed. The joint standing committee is authorized to submit legislation that it determines necessary to further the intent of this resolve to the Second Regular Session of the 123rd Legislature.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 6, 2007.