

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1620

S. P. 614

In Senate, May 18, 1981

Reported by Senator Gill of Cumberland from the Committee on Health and Institutional Services Pursuant to Joint Order S. P. 600. Printed under Joint Rules No. 2.

Reported from the Joint Standing Committee on Health and Institutional Services pursuant to Joint Order S. P. 600.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Require the Department of Human Services to Provide Home-based Care as an Alternative to Nursing Home Care.

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

Sec. 1. 22 MRSA Subtitle 5 is enacted to read:

SUBTITLE 5

**IN-HOME AND COMMUNITY SUPPORT SERVICES
FOR ADULTS WITH LONG-TERM CARE NEEDS**

CHAPTER 1621

GENERAL PROVISIONS

§ 7301. Legislative intent

1. Findings. The Legislature finds that:

A. In-home and community support services have not been sufficiently available to many adults with long-term care needs;

B. Many adults with long-term care needs are at risk of being or already have been placed in institutional settings, because in-home and community support services or funds to pay for these services have not been available to them;

C. In some instances placement of adults with long-term care needs in institutional settings can result in emotional and social problems for these adults and their families; and

D. For many adults with long-term care needs, it is less costly for the State to provide in-home and community support services than it is to provide care in institutional settings.

2. Policy. The Legislature declares that it is the policy of this State:

A. To increase the availability of in-home and community support services for adults with long-term care needs;

B. That the priority recipients of in-home and community support services, pursuant to this subtitle, shall be the elderly and disabled adults who are at the greatest risk of being, or who already have been, placed inappropriately in an institutional setting; and

C. That a variety of agencies, facilities and individuals shall be encouraged to provide in-home and community support services.

§ 7302. Definitions

As used in this subtitle, unless the context otherwise indicates, the following terms have the following meanings.

1. Adults with long-term care needs. "Adults with long-term care needs" means adults who have physical or mental limitations which restrict their ability to carry out activities of daily living and impede their ability to live independently, or who are at risk of being, or who already have been, placed inappropriately in an institutional setting.

2. Agreement. "Agreement" means a contract, grant or other method of payment.

3. Commissioner. "Commissioner" means the Commissioner of Human Services.

4. Department. "Department" means the Department of Human Services.

5. In-home and community support services. "In-home and community support services" means health and social services and other assistance required to enable adults with long-term care needs to remain in their places of residence. These services include, but are not limited to, medical and diagnostic services; professional nursing; physical, occupational and speech therapy; dietary and nutrition services; home health aide services; personal care assistance services; companion and attendant services; handyman, chore and homemaker services; respite care; counseling services; transportation; small rent subsidies; various devices which lessen the effects of disabilities; and other appropriate and necessary social services.

6. **Institutional settings.** "Institutional settings" means boarding care facilities, licensed pursuant to chapter 1665; intermediate care and skilled nursing facilities and units and hospitals, licensed pursuant to chapter 405; and state institutions for individuals who are mentally ill or mentally retarded or who have related conditions.

7. **Personal care assistance services.** "Personal care assistance services" means services which are required by an adult with long-term care needs to achieve greater physical independence, which may be consumer directed and which include, but are not limited to:

- A. Routine bodily functions, such as bowel or bladder care;
- B. Dressing;
- C. Preparation and consumption of food;
- D. Moving in and out of bed;
- E. Routine bathing;
- F. Ambulation; and
- G. Any other similar activity of daily living.

8. **Personal care assistant.** "Personal care assistant" means an individual who has completed a training course of at least 40 hours, which includes, but is not limited to, instruction in basic personal care procedures, such as those listed in subsection 7, first aid and handling of emergencies; or an individual who meets competency requirements, as determined by the department or its designee.

9. **Provider.** "Provider" means any entity, agency, facility or individual who offers or plans to offer any in-home or community support services.

10. **Severe physical disability.** "Severe physical disability" means a permanent or temporary, recurring functional loss of the arms and legs.

§ 7303. Programs; rules

1. **Programs required.** The department shall establish and administer, pursuant to this subtitle, programs of in-home and community support services for adults with long-term care needs, by itself or in cooperation with the Federal Government.

An adult with long-term care needs, who applies for services under any such program, is entitled to receive the services, provided that the department has determined that the adult is eligible and provided that sufficient funds are available pursuant to this subtitle to pay for the services.

2. **Rules.** The department shall promulgate such rules, including rules that specify the criteria to be used in ranking proposals, as may be necessary for the effective administration of any programs of in-home and community support services pursuant to this subtitle, in accordance with the Maine Administrative

Procedure Act, Title 5, chapter 375. In the development of such rules, the department shall consult with consumers, representatives of consumers or providers of in-home and community support services.

§ 7304. Delivery of services

1. **Staff; providers.** In order to provide in-home and community support services, the department may use its own staff and its designees and enter into agreements with providers.

2. **Agreement.** Each agreement shall specify, among other things, the types of in-home community support services to be provided, the cost of the services, the method of payment and the criteria to be used for evaluating the provisions of services.

3. **Proposals.** The department shall solicit proposals from providers who would like to provide in-home and community support services, pursuant to this subtitle. Providers shall submit proposals in such form and manner as may be required by the department. The department shall select proposals according to rankings based on the criteria developed pursuant to section 7303, subsection 2.

§ 7305. Funds

1. **Federal and private funds.** The department may apply for and use any federal or private funds and other support which become available to carry out any program of in-home and community support services.

2. **Fee scale.** The department shall develop, wherever practicable, sliding fee scales for in-home and community services provided pursuant to this subtitle.

3. **Vouchers.** The department may, through the use of vouchers, make payments directly to adults with long-term care needs to enable them to purchase in-home and community support services pursuant to this subtitle.

4. **Distribution.** The department shall disburse funds, pursuant to this subtitle, in a manner that ensures, to the extent practicable, equitable distribution of services among adults with long-term care needs and among the various regions of the State.

§ 7306. Demonstration projects

The department may initiate demonstration projects to test new ways of providing in-home and community support services, including, but not limited to, projects which test the ability of hospitals, skilled nursing facilities or intermediate care facilities to provide these services.

CHAPTER 1623

**IN-HOME AND COMMUNITY SUPPORT SERVICES
FOR THE ELDERLY AND OTHER ADULTS AT RISK OF
INAPPROPRIATE PLACEMENT IN INSTITUTIONAL SETTINGS**

§ 7321. Program established

The department shall establish and administer a program of in-home and community support services for adults with long-term care needs who are eligible for these services pursuant to section 7322.

§ 7322. Eligibility

An adult with long-term care needs is eligible for in-home and community support services under this chapter if the department or its designee determines that the adult:

1. **Inappropriate placement.** Is at risk of being or already has been placed inappropriately in an institutional setting;
2. **Need for services.** Has a need for in-home and community support services; and
3. **Income and support.** Has no or insufficient personal income or other support from public services, family members and neighbors.

§ 7323. Multidisciplinary teams

1. **Team designation.** The commissioner shall designate several multidisciplinary teams throughout the State to assist the department with evaluations of adults with long-term care needs.

2. **Membersip.** Each multidisciplinary team shall include at least one social services' professional, one health care professional and, whenever possible, the adult with long-term care needs and a family or designated representative.

3. **Duties.** For each adult with long-term care needs evaluated by a multidisciplinary team, the team shall assist the department to:

- A. Determine the eligibility of the adult for in-home and community support services;
- B. Develop a plan of services for the adult, in cooperation with the probable providers of the services, whenever such providers are not members of the team;
- C. Arrange for the provision of the needed services;
- D. Reevaluate the adult periodically to determine his continuing need for the services; and
- E. Consult when possible with the adult's attending physician, if any.

CHAPTER 1625**PERSONAL CARE ASSISTANCE SERVICES
FOR SEVERELY PHYSICALLY DISABLED ADULTS****§ 7341. Program established**

The department shall establish a program of personal care assistance services, including consumer directed personal care assistance services, for adults with long-term care needs who are eligible under section 7342.

§ 7342. Eligibility

An adult with long-term care needs is eligible for personal care assistance services under this chapter, if the department or its designee determines that the adult:

1. Severe physical disability. Has a severe physical disability;
2. Need for services. Has a need for not less than 14 nor more than 35 hours a week of personal care assistance services or for an attendant at night, which services are necessary to prevent or remove the adult from inappropriate placement in an institutional setting; and
3. Income and support. Has no or insufficient personal income or other support from public services, family members and neighbors.

§ 7343. Evaluation teams

1. Team designation. The commissioner shall designate one or more evaluation teams in the State to assist the department with evaluations of adults with long-term care needs who apply for personal care assistance services pursuant to this chapter.

2. Membership. Each evaluation team shall include at least one registered nurse, one registered occupational therapist and the adult with long-term care needs.

3. Duties. For each adult with long-term care needs evaluated by an evaluation team, the team shall assist the department to:

- A. Determine the eligibility of the adult for personal care assistance services;
 - B. Determine the capability of the adult, at the time of evaluation or after skills training, provided pursuant to subsection 4, to hire and direct a personal care assistant;
 - C. Reevaluate the adult periodically to determine his continuing need for the services; and
 - D. Consult when possible with the adult's attending physician, if any.
4. Skills training. The commissioner may authorize any evaluation team to arrange for skills training for an adult with long-term care needs who applies for consumer-directed personal care assistance services pursuant to this chapter. Skills training may be provided in the following areas by the following individuals:

- A. Personal health management to maximum personal well-being in relation to the adult's disability, provided by a registered nurse or other qualified person

experienced in the rehabilitation of the severely physically disabled, including all aspects of prevention, maintenance and treatment techniques;

B. Personal care assistant management, provided by a registered nurse experienced in the rehabilitation of the severely physically disabled, including training in recruiting, hiring and managing a personal care assistant; scheduling; potential problems; and

C. Functional skills required to maximize the adult's abilities in activities of daily living, provided by a registered occupational therapist experienced in the rehabilitation of the severely physically disabled.

Sec. 2. Report. Prior to January 31, 1983, the commissioner shall submit a report to the legislative committee having jurisdiction over appropriations and financial affairs and the legislative committee having jurisdiction over health and institutional services. This report shall include at least the following information regarding long-term care:

1. An overview of the types, cost and clients of in-home and community support services and residential services in Maine;

2. A summary of the types, cost and clients of the in-home and community support services pursuant to this Act;

3. A comparative analysis of the costs of in-home and community support services, on one hand, and of services provided in institutional settings, on the other hand; and

4. Recommendations regarding the direction of and funding priorities for in-home and community support services for adults with long-term care needs in fiscal years 1983-84 and 1984-85.

Sec. 3. Study of federal funds. Prior to January 31, 1982, the department shall study and report to the committees named in section 2 on the feasibility and desirability of using funds under the United States Social Security Act, Title XIX, or its successors, and under other federal programs for personal care assistance services and other in-home and community support services. In conducting this study, the department shall consult with consumers, representatives of consumers or providers of in-home and community support services.

Sec. 4. Allocation of funds. The allocation among client groups of any funds made available pursuant to this Act in fiscal years 1981-82 and 1982-83 shall approximate 75% for elderly persons with long-term care needs, 20% for nonelderly severely physically disabled adults and 5% for adult protective services' clients of the Department of Human Services.

It is not the intent of this Act during the fiscal years 1981-82 and 1982-83 to serve as a source of funds for in-home and community support services for adults whose primary disability is that they are mentally retarded, mentally ill or have related conditions.

FISCAL NOTE

The purposes of this Act are consistent with the Governor's Part II budget request for \$1,250,000 for in-home services for elderly and disabled citizens. This Act should be funded by the \$1,250,000.

STATEMENT OF FACT

The purpose of this bill is to combine the provisions of several legislative proposals regarding in-home and community support services for Maine's elderly and disabled citizens. The bill addresses the goal of increasing the availability of these services, which underlies:

1. The Governor's \$1,250,000 request in the Part II budget;
2. Legislative Document 933, "AN ACT to Require Home-based Care as an Alternative to Nursing Home Care;"
3. Legislative Document 1319, "AN ACT Requiring the Department of Human Services to Implement a Consumer-directed Personal Care Assistance Program for Severely Physically Disabled Persons;" and
4. Legislative Document 1361, "AN ACT Concerning Alternative to Institutionalized Care."

The Governor's Task Force on Long-term Care for Adults, the Blaine House Conference on Aging and the Blaine House Conference on Families all found that many adults with long-term care needs are at risk of being or already have been placed inappropriately in institutional settings, because in-home and community support services or funds to pay for these services have not been available to them. This is a widely held perception not only in Maine, but throughout the entire Nation.