

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 497

6  
7 S.P. 179

In Senate, February 8, 1985

8 Referred to the Committee on Human Resources and ordered printed.  
9 Sent down for concurrence. Ordered sent forthwith.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Berube of Androscoggin.

Cosponsored by Senator Najarian of Cumberland, Senator Gill and  
Representative Melendy of Rockland.

11  
12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FIVE  
16

17 AN ACT Prohibiting Discrimination Against  
18 Medicaid Eligible Persons who Apply  
19 for Admission to Nursing Homes.  
20

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

23 22 MRSA §1826 is enacted to read:

24 §1826. Discrimination against Medicaid eligible per-  
25 sons applying for admission to nursing homes

26 1. Nondiscrimination. A nursing home which re-  
27 ceives payment from the State for rendering care to  
28 Medicaid eligible persons may not refuse to admit an  
29 eligible medical assistance recipient if a bed is  
30 available at the level of care required by the appli-  
31 cant. Except as otherwise provided by law, all ap-  
32 plicants for admission shall be admitted in the order  
33 in which application is made. Medical assistance re-  
34 ipients and applicants eligible for medical assist-  
35 ance shall be placed on any waiting list for admis-

1 sion to a facility and shall be admitted to a facili-  
2 ty as vacancies become available, in the same manner  
3 as self-pay applicants.

4 2. Waiting list; records; access. Each nursing  
5 home shall:

6 A. Provide a receipt to each applicant, for ad-  
7 mission to its facility, who requests placement  
8 on a waiting list, stating the date and time of  
9 that request; and

10 B. Maintain a dated list of these applications,  
11 which shall be available at all times to any ap-  
12 plicant, his representative, authorized personnel  
13 from the Department of Human Services, the Nurs-  
14 ing Home Ombudsman Program administered through  
15 the Maine Committee on Aging or any other agency  
16 of the State whose statutory duties necessitate  
17 access to these lists.

18 STATEMENT OF FACT

19 There are approximately 190 licensed nursing  
20 homes in the State. This corresponds to approximat-  
21 ely 10,260 licensed beds. All of these facilities  
22 participate in the Medicaid program and have con-  
23 tracted with the State to provide care to Medicaid  
24 recipients. Yet Medicaid recipients who want and  
25 need nursing home care often have difficulty getting  
26 and keeping a bed in a long-term care facility.

27 Discrimination by nursing home providers occurs,  
28 in large part, because facilities are able to charge  
29 private pay residents higher rates than those paid by  
30 Medicaid for identical services. Many providers feel  
31 that it is always to their financial advantage to  
32 fill a bed with a private pay rather than a publicly  
33 assisted resident if a private pay resident is avail-  
34 able.

35 Provider discrimination against poor people takes  
36 many forms. Admission presents the first barrier to  
37 access to care. All of Maine's nursing homes partic-  
38 ipate in the Medicaid program, in the sense that they

1 sign Medicaid provider agreements and are eligible  
2 for reimbursement. They engage in a variety of prac-  
3 tices that limit the extent of their participation  
4 and results in discrimination against program recipi-  
5 ents.

6 One practice is requiring applicants for admis-  
7 sion to sign private pay duration of stay contracts.  
8 These contracts obligate residents to remain private  
9 pay for specified periods, usually ranging from sever-  
10 eral months to several years, before the facility  
11 will "accept" Medicaid payments on the resident's be-  
12 half.

13 Some facilities in Maine have utilized contracts  
14 which condition admittance upon the resident's agree-  
15 ment that he will pay the higher private rate for a  
16 specified period of time before switching to Medicaid  
17 coverage. An Assistant Attorney General has stated  
18 in a memorandum that such a requirement violates fed-  
19 eral law, but this type of provision is not explicit-  
20 ly forbidden.

21 A number of Maine nursing homes demand substan-  
22 tial cash deposits before agreeing to admit persons  
23 whose eligibility for Medicaid has not yet been de-  
24 termined, to guard against the possibility that  
25 Medicaid will be denied and the resident will have no  
26 other source of money. This appears to arise because  
27 of substantial delays in obtaining medical assess-  
28 ments of people applying for nursing home assistance,  
29 as well as verifying the financial information given  
30 on the applications. This practice creates a hard-  
31 ship for Medicaid eligible persons and their families  
32 who must raise funds to make such a deposit. In ad-  
33 dition, families have experienced a great deal of  
34 difficulty in obtaining reimbursement of these depos-  
35 its once Medicaid eligibility has been determined.

36 A 3rd practice requires applicants to have a co-  
37 signer, often called a "responsible party," who is  
38 required to accept legal and financial responsibility  
39 for paying for nursing home care. The contract lan-  
40 guage which implements this policy often requires  
41 that the "responsible party" specifically agree to  
42 cover any charges for care not covered by the  
43 Medicaid program. Although the nursing home is not

1 likely to be successful should it attempt to legally  
2 force such a "responsible party" to pay outstanding  
3 bills for resident care, most well-meaning family  
4 members will honor such bills without challenge.  
5 This practice creates an almost insurmountable hard-  
6 ship for individuals in need of care who do not have  
7 a 3rd party willing to take on this role of responsi-  
8 ble party.

9 Nursing homes also often tell applicants that  
10 there is a waiting list for a Medicaid bed. These  
11 so-called lists are almost never reduced to writing  
12 and made available to the potential residents in a  
13 form through which one's progress from number 16 to  
14 number 2 may be monitored. The invisible waiting  
15 list is frequently a ruse for delaying the admission  
16 of a Medicaid eligible resident while giving priority  
17 to potential private pay residents.

18 Simply stated, these practices and others allow  
19 Medicaid certified nursing homes to accept Medicaid  
20 residents only when and to the extent that they can-  
21 not fill a vacancy with a private pay resident.  
22 Thus, facilities can use Medicaid residents as a kind  
23 of insurance - accepting only the number of Medicaid  
24 residents they need to ensure that an optimal number  
25 of their beds are always full.

26 The purpose of this bill is to remove some of the  
27 threshold barriers to access for Medicaid eligible  
28 applicants for care by requiring that admissions be  
29 made on a "first come-first served" basis with the  
30 additional requirement that a single waiting list for  
31 all applicants be maintained without regard to source  
32 of payment.

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