

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 1410

H.P. 1012

House of Representatives, May 1, 1989

Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PENDLETON of Scarborough.

Cosponsored by Senator PERKINS of Hancock, Senator BERUBE of Androscoggin and Representative BURKE of Vassalboro.

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STATE OF MAINE

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

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**An Act to Increase the Authority of the Department of Human Services to Assess the Medical and Active Treatment Needs of Individuals Applying for Admission to Nursing Homes.**

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

3 Sec. 1. 22 MRSA §3174-D, as enacted by PL 1987, c. 395, Pt.  
5 B, §2, and c. 834, §2, is repealed and the following enacted in  
its place:

7 §3174-D. Medicaid coverage for services provided by the Governor  
9 Baxter School for the Deaf

11 The Department of Human Services may administer a program of  
13 Medicaid coverage for speech and hearing services, psychological  
15 services, occupational therapy and any other services provided by  
17 the Governor Baxter School for the Deaf which qualify for  
19 reimbursement under the United States Social Security Act, Title  
21 XIX. The Department of Educational and Cultural Services shall  
have fiscal responsibility for providing the State's match for  
federal revenues acquired under this section. An amount equal to  
the Medicaid reimbursement shall be deposited into the General  
Fund undedicated revenue from the Governor Baxter School for the  
Deaf General Fund appropriation.

23 Sec. 2. 22 MRSA §3174-E, as enacted by PL 1987, c. 831, §1,  
25 c. 836, §§1 and 4, and c. 847, §4, is repealed and the following  
enacted in its place:

27 §3174-E. Interim assistance agreement

29 The department, with the approval of the Governor and on  
31 behalf of the State, may enter into an agreement with the United  
33 States Social Security Administration for the purpose of  
receiving reimbursement for interim assistance payments as  
provided by the United States Social Security Act.

35 Sec. 3. 22 MRSA §§3174-F, 3174-G, 3174-H and 3174-I are enacted  
to read:

37 §3174-F. Coverage for adult dental services

39 1. Coverage provided. The Department of Human Services  
41 shall provide dental services, reimbursed under the United States  
43 Social Security Act, Title XIX, or successors to it, to  
individuals 21 years of age and over, limited to:

45 A. Acute surgical care directly related to an accident  
47 where traumatic injury has occurred. This coverage will  
only be provided for the first 3 months after the accident;

49 B. Oral surgical and related medical procedures not  
involving the dentition and gingiva;

51 C. Extraction of teeth which are severely decayed and which  
pose a serious threat of infection during a major surgical

1 procedure of the cardiovascular system, the skeletal system  
2 or during radiation therapy for a malignant tumor;

3 D. Treatment necessary to relieve pain, eliminate  
4 infection, prevent imminent tooth loss; and

5 E. The provision of total dentures when necessary to  
6 correct masticatory deficiencies likely to impair general  
7 health, including necessary adjustments, relines, repairs  
8 and replacements.

9  
10  
11 2. Report and study. The Bureau of Medical Services shall,  
12 prior to January 30, 1990:

13  
14 A. Report to the joint standing committee of the  
15 Legislature having jurisdiction over human resources on the  
16 experience of this program, including:

17  
18 (1) The number of individuals assisted by the program;

19  
20 (2) The services provided to those individuals;

21  
22 (3) The cost of services provided;

23  
24 (4) Any significant limitations that have become  
25 apparent in the scope of service provided; and

26  
27 (5) Recommendations and rationale for any expansion of  
28 service that appears necessary; and

29  
30  
31 B. Study the feasibility of contracting with a prepaid  
32 dental plan, health maintenance organization, or other  
33 entity for the provision of Medicaid dental services to  
34 individuals 21 years of age and over and submit the results  
35 of that study, together with any recommendations, to the  
36 joint standing committee of the Legislature having  
37 jurisdiction over human resources.

38  
39 §3174-G. Medicaid coverage of certain elderly and disabled  
40 individuals, children and pregnant women

41  
42 1. Delivery of services. The department shall provide for  
43 the delivery of federally approved Medicaid services to any  
44 qualified pregnant woman up to 60 days following delivery and any  
45 infant up to one year of age when the woman's or child's family  
46 income is below 185% of the nonfarm income official poverty line  
47 and children under 5 years of age and qualified elderly and  
48 disabled persons, when the child's or person's family income is  
49 below 100% of the nonfarm income official poverty line. The  
50 official poverty line shall be that applicable to a family of the  
51 size involved, as defined by the Federal Office of Management and  
Budget and revised annually in accordance with the United States

1 Omnibus Budget Reconciliation Act of 1981, Section 673,  
2 Subsection 2. These services shall be effective October 1, 1988.

3  
4 2. Resource test. The department may not apply a resource  
5 test to those children and pregnant women who are made eligible  
6 under this section, unless these persons also receive Aid to  
7 Families with Dependent Children or United States Supplemental  
8 Security Income benefits.

9  
10 3. Benefits authorized. The scope of medical assistance to  
11 be provided within this section shall be that authorized by the  
12 Federal Sixth Omnibus Budget Reconciliation Act, Public Law  
13 99-509.

14 §3174-H. Availability of income between married couples in  
15 determination of eligibility

16  
17 Notwithstanding this chapter, for the purpose of determining  
18 medical indigency and eligibility for assistance for an  
19 individual residing or about to reside in an institution eligible  
20 for Medicaid participation under this section, there shall be a  
21 presumption, rebuttable by either spouse, that each spouse has a  
22 marital property interest in 1/2 of the total monthly income of  
23 both spouses at the time of application for medical assistance.  
24 Only the 1/2 interest of the applicant spouse shall be considered  
25 available to the spouse in determining eligibility for medical  
26 indigency and eligibility for assistance.

27  
28 The marital property interest of the applicant spouse in the  
29 income of both spouses may be rebutted upon a showing of one of  
30 the following:

31  
32 1. Court order. A court order allocating marital income  
33 pursuant to alimony, spousal support, equitable division of  
34 marital property or disposition of marital property;

35  
36 2. Individual ownership. The establishing of sole  
37 individual ownership of income from current active employment; or

38  
39 3. Supplementary allocation of spousal income. By applying  
40 to the Department of Human Services for a supplementary  
41 allocation of spousal income pursuant to this section.

42  
43 The Department of Human Services shall establish standards  
44 for the reasonable and adequate support of the community spouse  
45 and the community residence of the couple. The standards shall  
46 consider the cost of housing payments, property taxes, property  
47 insurance, utilities, food, medical expenses, transportation,  
48 other personal necessities and the presence of other dependent  
49 persons in the home.

50  
51

1           The community spouse may apply to the Department of Human  
3           Services for a determination pursuant to the standards that the  
5           community spouse requires a larger portion of the marital income.  
7           Therefore, a smaller portion of the marital income will be  
9           available to the applicant spouse in determining medical  
11           indigency and eligibility for assistance.

13           As soon as authorized by federal law, the department shall  
15           implement this section.

17           §3174-I. Medicaid eligibility determinations for applicants to  
19           nursing homes

21           1. Needs assessment. The Department of Human Services may  
23           assess the medical needs of each applicant to a nursing home who  
25           is reasonably expected to become financially eligible for  
27           Medicaid benefits within 180 days of admission to the nursing  
29           home.

31           A. The assessment shall be completed prior to admission or,  
33           if necessary for reasons of the person's health or safety,  
35           as soon after admission as is possible.

37           B. The department shall determine whether the services  
39           provided by the facility are medically necessary and  
41           appropriate for the applicant, and, if not, what other  
43           services, such as home and community-based services, would  
45           more appropriately address the applicant's medical needs.

47           C. The department shall inform both the applicant and the  
49           administrator of the nursing home of the department's  
51           determination of the services needed by the applicant.

D. Until such time as the applicant becomes financially  
          eligible to receive Medicaid benefits, the department's  
          determination shall be advisory only.

E. The department shall perform a reassessment of the  
          individual's medical needs if and when the individual  
          becomes financially eligible for Medicaid benefits.

(a) If the individual, at both the admission  
          assessment and any reassessment within 180 days of  
          admission, is determined not to be medically eligible  
          for the services provided by the nursing home, the  
          nursing home will be responsible for providing those  
          services at no cost to the individual until such time  
          as an appropriate placement of the individual can be  
          made.

(b) If the individual is initially assessed as needing  
          the nursing home's services, but reassessed as not

1 needing them at the time the individual is found  
3 financially eligible, then Medicaid shall reimburse the  
5 nursing home for services it provides to the individual  
in accordance with the Maine Medical Assistance Manual,  
chapter II, section 50.

7 2. Assessment for mental illness or retardation. The  
9 Department of Human Services shall assess every applicant to a  
11 nursing home to screen for mental retardation and mental illness  
13 in accordance with the Federal Omnibus Budget Reconciliation Act  
of 1987, Public Law 100-203, Section 4211. Such assessments are  
intended to increase the probability that any individual who is  
mentally retarded or mentally ill will receive active treatment  
for that individual's mental condition.

15 3. Rules. When the Department of Human Services implements  
17 this assessment program, it shall adopt and promulgate rules  
19 according to the Maine Administrative Procedure Act, Title 5,  
chapter 375, to implement the provisions of this section.

21  
23 **STATEMENT OF FACT**

25 This bill repeals and replaces certain sections of the Maine  
27 Revised Statutes, Title 22, to correct conflicts arising from  
earlier enactments.

29 This bill enables the Department of Human Services to work  
31 with health care providers and community agencies to determine  
33 the medical eligibility of nursing home applicants who will be  
35 financially eligible for medical assistance within 180 days of  
37 admission to a facility. Approximately 66% of nursing home  
39 applicants pay for their care with their own financial resources  
at admission; yet, it is estimated that close to 50% of those  
admitted become financially eligible for Medicaid within 6 months  
of admission. This bill ensures that applicants are assessed to  
determine their need for intermediate or skilled care and that  
they are then referred to an appropriate level of care, either at  
home or in a facility.

41 This bill assists the department in reducing inappropriate  
43 expenditures of public long-term care funds by deterring  
45 inappropriate admissions to long-term care facilities by persons  
47 needing only home and community-based services. Regulations to  
49 be developed with the assistance of community agencies and  
providers will ensure that all individuals who will be eligible  
for Medicaid payment for community or institutional long-term  
care services will be evaluated to determine their need for  
intermediate or skilled levels of service.

51

1           Section 3 also enables the department to comply with the  
2 requirements of the Federal Omnibus Budget Reconciliation Act of  
3 1987, Public Law 100-203, Section 4211.

5           Section 3 gives the department authority to promulgate rules  
6 to enforce and implement the provisions of Title 22, section  
7 3174-I.