

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1481

S.P. 483

In Senate, May 10, 1993

An Act to Provide Relief to Families Facing Nursing Home Expenses.

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator SUMMERS of Cumberland.

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

Sec. 1. 22 MRSA c. 854 is enacted to read:

CHAPTER 854

FAMILY AND COMMUNITY CARE
ASSISTANCE PROGRAM

§3151. Family and Community Care Assistance Program established

There is established within the department the Family and Community Care Assistance Program. The department shall provide services and financial support to families who provide care for persons who would be eligible for Medicaid services if they were in nursing facilities. The department shall provide assistance to community providers of services for those persons in accordance with this chapter.

§3152. Service priorities

In administering this chapter and chapter 855, the department shall give preference to, and take actions to encourage, the provision of care to persons who would be eligible for Medicaid services if they were in a nursing facility in accordance with the following.

1. Family-based care. If family-based care is medically appropriate and a family is willing and able to provide care, family-based care must be given first priority.

2. Community care. If community-based care is medically appropriate and there is a congregate housing facility or other community care provider willing and able to provide care, community-based care must be given 2nd priority.

3. Nursing facility care. Nursing facility care must be given lowest priority.

§3153. Service delivery plans

The department shall develop a service delivery plan for each person diverted from a nursing facility by participation in the Family and Community Care Assistance Program. The plan must provide for adequate medical consultation and care, housing, nutrition and medication for each participant. The department shall fund the plan by utilizing all available federal and state programs for which the participant is eligible and, if additional resources are necessary, by applying to the plan the savings generated by diversion from nursing facility care. The department shall contract with a local or regional nonprofit

organization that provides services to older persons to
administer the plan. Any payments made by an administering
organization must be by voucher for needed goods and services
rather than by cash payments to a participant, a family or a
community care provider.

Sec. 2. 22 MRSA §3174-I, sub-§1, as enacted by PL 1989, c.
498, is amended to read:

1. **Needs assessment.** ~~The Department of Human Services may~~
department shall assess the medical and social needs of each
applicant to a nursing home facility who is reasonably expected
to become financially eligible for Medicaid benefits within 180
days of admission to the nursing home facility.

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

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

C. The department shall inform both the applicant and the
administrator of the nursing home facility of the
department's determination of the services needed by the
applicant and shall provide information and assistance to
the applicant in accordance with subsection 1-A.

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

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

(1) 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 facility,
and is determined not ~~to be~~ medically eligible at the
time of the determination of financial eligibility, the
nursing home ~~shall be~~ facility is responsible for
providing services at no cost to the individual until
~~such time as~~ a placement at the appropriate level of
care becomes available. After a placement becomes
available at an appropriate level of care, the nursing

home facility may resume billing the individual for the cost of services.

(2) If the individual is initially assessed as needing the nursing home's facility's services, but reassessed as not needing them at the time the individual is found financially eligible, then Medicaid shall reimburse the nursing home facility for services it provides to the individual in accordance with the Maine Medical Assistance Manual, chapter II, section 50.

F. Prior to performing assessments under this section, the department shall develop and disseminate to all nursing homes facilities and the public the specific standards the department will use to determine the medical eligibility of an applicant for admission to the nursing home facility. A copy of the standards shall must be provided to each person for whom an assessment is conducted.

G. A determination of medical eligibility under this section is final agency action for purposes of the Maine Administrative Procedure Act, Title 5, chapter 375.

Sec. 3. 22 MRSA §3174-I, sub-§1-A is enacted to read:

1-A. Nursing facility diversion. After completing an assessment pursuant to subsection 1, regardless of whether the assessment has found nursing facility care appropriate, the department shall determine whether the applicant could live more appropriately at home or in some other community-based setting if certain home-based or community-based services were available to the applicant. If the department determines that a home or other community-based setting is more appropriate, the department shall:

A. Advise the applicant that a home or other community-based setting is appropriate;

B. Inform the applicant regarding the services that are available at home or in some other community-based setting, including but not limited to the Family and Community Care Assistance Program established in chapter 854; and

C. Provide case management services and family assistance benefits or both to the applicant if the applicant chooses a home-based or community-based alternative to nursing facility care.

Sec. 4. 22 MRSA §3174-I, sub-§2, as enacted by PL 1989, c. 498, is amended to read:

2. **Assessment for mental illness or retardation.** The Department--of--Human--Services department shall assess every applicant to a nursing home facility to screen for mental retardation and mental illness 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.

STATEMENT OF FACT

This bill establishes the Family and Community Care Assistance Program, which provides financial incentives to families who are able and willing to provide home-based care for persons who would otherwise be eligible for Medicaid benefits in long-term nursing facilities. The program makes available state funds, which would have been spent towards the cost of the institutional care, to be used for certain expenditures in a family, congregate housing or other setting for community-based care.

This bill also strengthens the State's current nursing home preadmission screening process by making it mandatory for prospective Medicaid recipients and by adding a nursing home diversion component. In addition to evaluating the appropriateness of nursing home care, the diversion component requires the Department of Human Services to inform nursing home applicants if appropriate home or community-based care could be arranged.

The bill also replaces references to "nursing home" with the term "nursing facility" to make the law consistent with federal Medicaid regulations.