

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1955

H.P. 1430

House of Representatives, March 1, 1994

**An Act to Promote a Continuum of Quality and Affordable Long-term
Care and to Promote Consumer Choice.**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative KERR of Old Orchard Beach.
Cosponsored by Representatives: CHONKO of Topsham, GEAN of Alfred, MARTIN of Eagle
Lake, MICHAUD of East Millinocket, RYDELL of Brunswick, Senators: BALDACCI of
Penobscot, DUTREMBLE of York, HARRIMAN of Cumberland, PARADIS of Aroostook.

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

PART A

Sec. A-1. 22 MRSA §3174-I, sub-§1-A, ¶¶B and C, as enacted by PL 1993, c. 410, Pt. FF, §11 and affected by §19, are amended to read:

B. Provide a proposed care plan and inform the applicant regarding the degree to which the services in the care plan are available at home or in some other community-based setting and explain the relative cost to the applicant of choosing community-based care rather than nursing facility care; and

C. Offer a care plan and case management services to the applicant on a sliding scale basis if the applicant chooses a home-based or community-based alternative to nursing facility care; and

Sec. A-2. 22 MRSA §3174-I, sub-§1-A, ¶D is enacted to read:

D. To the extent permissible under federal law, implement a system using vouchers for those individuals who choose a home-based or community-based alternative to nursing facility care.

(1) The department, through the use of vouchers, shall make payments directly to adults with long-term care needs to enable them to purchase in-home and community support services.

(2) When a qualified Medicaid recipient applies for in-home care, the department or its designee shall assess the amount and types of services required and, based upon that determination, provide the recipient with the appropriate vouchers. The department shall also provide the recipient with lists of qualified entities in the area that provide those services. When a guardian has been appointed for the recipient, the vouchers must be turned over to the guardian. Nothing in this subparagraph prevents the department from being appointed as a guardian.

(3) The department shall adopt rules to carry out this paragraph, to establish the vouchers and to provide the systems by which providers may submit vouchers to the department or its designee for payment. These rules must provide for reimbursement to qualified Medicaid recipients.

2 Sec. A-3. 22 MRSA §5152, sub-§1, as enacted by PL 1983, c.
4 695, §2, is amended to read:

6 1. **Congregate housing.** "Congregate housing" means
8 residential housing consisting of private apartments and central
10 dining facilities and within which a certified congregate housing
12 supportive services program serves functionally impaired elderly
14 ~~occupants~~ residents who are ~~unable to live independently yet need~~
16 and want services but who do not require the constant supervision
18 or intensive health care available at ~~intermediate--care--or~~
20 skilled residential care facilities, nursing facilities or
22 assisted living facilities.

24 Sec. A-4. 22 MRSA §7305, sub-§3, as enacted by PL 1981, c.
26 511, §1, is repealed and the following enacted in its place:

28 3. **Vouchers.** To the extent permissible under federal law,
30 the department shall implement a system using vouchers for
32 in-home and community support services in accordance with this
34 subsection.

36 A. The department, through the use of vouchers, shall make
38 payments directly to adults with long-term care needs to
40 enable them to purchase in-home and community support
42 services pursuant to this subtitle.

44 B. When a qualified Medicaid recipient applies for in-home
46 care, the department or its designee shall assess the amount
48 and types of services required and, based upon that
50 determination, provide the recipient with the appropriate
52 vouchers. The department shall also provide the recipient
54 with lists of qualified entities in the area that provide
56 those services. When a guardian has been appointed for the
58 recipient, the vouchers must be turned over to the
60 guardian. Nothing in this paragraph prevents the department
62 from being appointed as a guardian.

64 C. The department shall adopt rules to carry out this
66 subsection, to establish the vouchers and to provide the
68 systems by which providers may submit vouchers to the
70 department or its designee for payment. These rules must
72 provide for reimbursement to qualified Medicaid recipients.

74 Sec. A-5. 22 MRSA §7801, sub-§1, ¶A, as amended by PL 1985, c.
76 770, §4, is further amended to read:

78 A. A boarding residential care facility;

2 Sec. A-6. 22 MRSA c. 1665, first 2 lines, are repealed and the
following enacted in their place:

4 **CHAPTER 1665**

6 **RESIDENTIAL CARE FACILITIES**

8 Sec. A-7. 22 MRSA §7901-A, as amended by PL 1987, c. 769,
Pt. A, §80, is further amended to read:

10 **§7901-A. Definitions**

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

16 1. **Adult foster home.** "Adult foster home" means a boarding
residential care facility having less than 5 residents.

18 2. ~~Boarding care.~~ "Boarding care" means care which is
20 greater than that necessarily attendant upon mere eating and
lodging services, but which is less than that attendant upon
22 nursing home care or hospital care. "Boarding care" may include
personal supervision, protection from environmental hazards, diet
24 care, care concerning grooming, hand and foot care, skin care,
mouth and teeth care, shampooing, bathing, assistance in
26 ambulation, supervision and assistance in the administration of
medications, diversional or motivational activities, and
28 stimulation of, or assistance in, activities of daily living or
physical exercise.

30 3. ~~Boarding care facility.~~ "Boarding care facility" means
32 a house or other place classified as either an adult foster home
or a boarding home which, for consideration, is maintained wholly
34 or partly for the purposes of providing residents with boarding
care as defined in subsection 2. A "boarding care facility" does
36 not include a licensed nursing home or certified elderly
congregate housing.

38 4. **Boarding home.** "Boarding home" means a boarding
40 residential care facility having 5 or more residents and those
facilities of less than 5 certified by the department as being
42 eligible for cost reimbursement pursuant to section 7906.

44 5. **Mobile nonambulatory.** "Mobile nonambulatory," as
46 applied to a resident of a boarding residential care facility,
means being able to transfer independently and able to evacuate a
facility in less than 2 1/2 minutes with the assistance of
48 another person throughout the evacuation procedure.

2 **8. Resident.** "Resident" means any aged, blind, mentally
4 ill, mentally retarded or other person 18 years of age or older
6 who is not related by blood or marriage to the owner or person in
 charge of the boarding residential care facility in which the
 resident lives.

8 **9. Residential care facility.** "Residential care facility"
10 means residential housing and a package of included support
12 services that provide for personal care and planning services,
14 housing support services and limited nursing services when those
 nursing services are less than those provided by a nursing home
 or hospital care. A "residential care facility" does not include
 a nursing facility, certified elderly housing or an assisted
 living facility as defined in section 7961.

16 **Sec. A-8. 22 MRSA §7902, sub-§1,** as amended by PL 1989, c.
18 355, §2, is further amended to read:

20 **1. Rules promulgated.** The commissioner shall promulgate
22 rules for boarding residential care facilities, which shall
24 include but need not be limited to rules pertaining to
26 administration, staffing, the number of residents, the quality of
28 care, the quality of treatment, if applicable, the health and
 safety of staff and residents, the rights of residents, community
 relations, the administration of medication, criteria for
 placement of residents who are 17 years of age or older and under
 18 years and licensing procedures. There shall be separate rules
 promulgated for boarding homes and foster homes.

30 In establishing the rules for the administration of medication,
32 the commissioner shall consider, among other factors, the general
34 health of the persons likely to receive medication, the number of
36 persons served by the facility and the number of persons employed
38 by the facility. In the rules for the administration of
40 medication established for boarding homes, the Department of
 Human Services shall require unlicensed personnel to have
 successfully completed a program of training and instruction
 approved by the department for the administration of medication
 which is not limited to in-service training.

42 **Sec. A-9. 22 MRSA §7904-A, sub-§§1, 3, 4 and 7,** as enacted by PL
 1985, c. 770, §10, are amended to read:

44 **1. Inspection required.** No license may be issued by the
46 department to a boarding residential care facility until the
48 department has received from the State Fire Marshal a written
50 statement signed by one of the officials designated under Title
 25, section 2360, 2391 or 2392, to make fire safety inspections.
 This statement, which shall indicate that the boarding
 residential care facility has complied with applicable fire

safety provisions referred to in Title 25, section 2452, shall be furnished annually by the State Fire Marshal to the department.

3. Requirements for facilities with 17 or more beds. Any boarding residential care facility which has a capacity of 17 or more beds shall comply with the Life Safety Code, chapter 21, the residential board and care occupancies section for large facilities, adopted by the State Fire Marshal. In addition, the following requirement must be met.

A. Any building of 2 or more stories shall be equipped with an approved automatic sprinkler system, unless the building is of fire resistive or protected noncombustible construction as defined in the current edition of the National Fire Protection Association's Standard Types of Building Construction.

4. Requirements for facilities with more than 6 but fewer than 17 beds. Any boarding residential care facility which has a capacity of more than 6 but fewer than 17 beds shall comply with the Life Safety Code, chapter 21, the residential board and care occupancies section for small facilities, adopted by the State Fire Marshal. In addition, the following requirements must be met.

A. Any building of 2 or more stories shall be equipped with an approved automatic sprinkler system, unless the building is of fire resistive or protected noncombustible construction as defined in the current edition of the National Fire Protection Association's Standard Types of Building Construction.

B. Automatic emergency lights shall be provided in such number and location as required by the State Fire Marshal.

7. Local regulations. Any local regulations which affect the life-safety requirements of any boarding residential care facility and which are more stringent than those referred to in this section shall take precedence.

Sec. A-10. 22 MRSA §7905, as amended by PL 1991, c. 69, §§2 and 3, is further amended to read:

§7905. Personal funds of residents

1. Permission to manage personal funds. No operator or agent of any boarding residential care facility may manage, hold or deposit in a financial institution the personal funds of any resident of the facility, unless the operator or agent has received written permission therefor from:

2 A. The resident, if the resident has no guardian, trustee
or conservator;

4 B. The resident's guardian, trustee or conservator, if that
6 person exists and can be reached; or

8 C. The department, if a guardian, trustee or conservator
exists, but can not be reached.

10
12 2. **Itemized accounting.** Any operator or agent who, after
14 receiving written permission pursuant to subsection 1, manages or
16 holds the personal funds of any resident, shall maintain an
18 account for these funds, which shall include for each resident a
separate, itemized accounting for the use of the resident's
personal funds, with supporting documentation for every
expenditure in excess of \$2 \$10.

20 3. **Depositing personal funds.** The department may require
22 an operator or agent of a boarding residential care facility to
24 deposit in a financial institution the personal funds of a
resident, if the resident has a guardian, trustee or conservator
who can not be reached.

26 4. **Use of personal funds by operator prohibited.** Under no
28 circumstances shall any operator or agent of a boarding
30 residential care facility use the personal funds of any resident
32 for the operating costs of the facility or for services or items
34 which are reimbursable on a reasonable cost basis. The personal
funds of any resident shall not be commingled with the business
funds of the facility or with the personal funds or accounts of
the owner, any member of the owner's family or any employee of
the facility.

36 **Sec. A-11. 22 MRSA §7907, sub-§2,** as amended by PL 1991, c.
622, Pt. M, §29, is further amended to read:

38 2. **Residential care facilities.** Reimburse all boarding
40 residential care facilities of 6 or fewer beds, except as
provided in section 7906-A, on a flat rate basis.

42 **Sec. A-12. 22 MRSA §7909, first ¶,** as enacted by PL 1981, c.
196, §4, is amended to read:

44
46 Whenever there are pertinent and available health and other
48 records about a person who seeks admission as a resident to a
50 boarding residential care facility, those records shall be
provided to the administrator of the facility at least 7 days
prior to the date of admission, unless there are compelling
reasons which make this impossible or impractical. If there are

compelling reasons, including, but not limited to, emergency situations, the administrator shall receive, by not later than the date of admission, a written note which:

Sec. A-13. 22 MRSA §7911, first ¶, as enacted by PL 1985, c. 770, §15, is amended to read:

Residents of boarding residential care facilities who become nonambulatory or mobile nonambulatory may remain in the facility provided that:

Sec. A-14. 22 MRSA §7911, sub-§2, as enacted by PL 1985, c. 770, §15, is amended to read:

2. Physician approved. Their attending physicians have approved the appropriateness of the residents' continued stay in the boarding residential care facility.

Sec. A-15. 22 MRSA §7912-A, first ¶, as enacted by PL 1989, c. 19, §2, is amended to read:

Except as provided in section 7911, a boarding residential care facility which has 8 or fewer beds may not have residents who are nonambulatory or mobile nonambulatory except as follows:

Sec. A-16. 22 MRSA §7912-A, sub-§2, as enacted by PL 1989, c. 19, §2, is amended to read:

2. Requirements when number of nonambulatory or mobile nonambulatory residents exceed limits. Boarding Residential care facilities may provide services to more residents who are nonambulatory or mobile nonambulatory than allowed under subsection 1 if, in addition to those requirements:

A. The structure meets all the requirements of the residential board and care occupancy section for small facilities of the National Fire Protection Association Life Safety Code, chapter 21. The structure shall be of protected wood frame construction unless it is provided with either a National Fire Protection Association Standard No. 13 or a Life Safety sprinkler system. Additional staff may be required at the direction of the Office of the State Fire Marshal; and

B. A physician certifies that the nonambulatory resident does not require nursing care. This certification is required at least annually.

Sec. A-17. 22 MRSA §7913, as enacted by PL 1985, c. 770, §15, is amended to read:

2 **§7913. Conflict of intent prohibited**

4 No physician or psychologist who certifies or recertifies a
6 resident may be in the regular employ of or may have a financial
 interest in the boarding residential care facility in which the
 resident resides.

8 **Sec. A-18. 22 MRSA c. 1666-C** is enacted to read:

10 **CHAPTER 1666-C**

12 **ASSISTED LIVING**

14 **§7961. Assisted living regulations**

16 The department shall adopt rules governing assisted living
18 services. These rules must maximize consumer options and be
20 based on the principles of informed choice. It is the intent of
 the Legislature that these rules not be patterned after current
22 rules. These rules must include the following provisions.

24 1. Definitions. As used in this chapter, unless the
 context otherwise indicates, the following terms have the
26 following meanings.

28 A. "Assisted living" means residential housing with a
30 program of optional services, including meals, where
32 personal care planning and management services are offered
34 to those individuals who need help with activities of daily
36 living and where supportive services are available 24 hours
 a day to meet scheduled and unscheduled needs in a way that
 promotes maximum dignity and independence, including but not
 limited to providing or arranging for housing support
 services and nursing care, which must be provided by a
 licensed home-based care provider.

38 B. "Assisted living facility" is a residential setting in
40 which assisted living services are offered to the
42 residents. An assisted living facility is not a nursing
 home as defined in section 1812-A or a residential care
 facility as defined in chapter 1665.

44 2. Admittance. There may be no restrictions on eligibility
46 of consumers except as applies generally to housing in the State
48 and except as provided by the policy of the assisted living
50 provider. Every policy of the provider must be made available to
 the consumer before admission and the consumer must be informed
 of the care choices available in the State and the different
 requirements and levels of care and protection provided by each.

2 **3. Discharge.** There must be written discharge policies
4 provided to the consumer before admission, with timely
6 notification of any changes in policy. The discharge policy must
 make clear any restrictions related to severity of medical need
 that by terms of the policy or policies of the assisted living
 program may result in mandatory discharge of the consumer.

8
10 **4. Planning and managing care.** Assisted living programs
12 must offer personal care planning and management services as an
14 option to their consumers at the time of admittance or any
 subsequent time. These services include functional assessment
 and arranging for and coordinating care. All supportive services
 may be provided by the assisted living facility.

16 **5. Nursing services.** Assisted living programs must offer
18 consumers a choice of qualified home health-care providers to
20 provide nursing care. The programs may offer to provide the care
22 through their own home-based care provider or an affiliate, or
 through their own licensed nursing facility, but the consumer
 must be offered information concerning other qualified nursing
 care providers in the area.

24 **6. Collection of information.** The rules may allow the
26 Bureau of Elder and Adult Services to collect appropriate and
28 needed information about consumers who receive services paid all
30 or in part by programs conducted by the department or its
 designee. Private-pay individuals may not be subject to any loss
 of confidentiality because of their participation in an assisted
 living program.

32 **7. Building safety standards for assisted living**
34 **facilities.** The same fire, safety, handicapped accessibility and
36 fair housing rules and regulations that apply to elderly
 congregate housing apply to private apartments in an assisted
 living facility.

38 **8. Food safety.** Requirements for meal preparation in an
40 assisted living facility are the same as for any commercial
 facility offering comparable services.

42 **9. Records.** The rules may provide for reasonable record
44 keeping for consumers receiving nursing services through an
46 assisted living program and for those individuals whose assisted
 living services are paid all or in part by the department or the
 department's designee.

48 Sec. A-19. 34-B MRSA §5001, sub-§1-B is enacted to read:

1-B. Adequate standards of professional services.

"Adequate standards of professional services" means those standards that have been developed by national accrediting organizations for organizations serving persons with disabilities, such as commissions on accreditation of rehabilitation facilities, accreditation councils for developmentally disabled and joint councils for accreditation of health care organizations, or other standards approved by the Legislature.

Sec. A-20. Development of long-term care development account.

The Department of Human Services shall review the law governing certificates of need, Maine Revised Statutes, Title 22, chapter 103, and develop a proposal to establish a long-term care certificate of need development account. The department shall submit its proposal along with any necessary implementing legislation to the Joint Standing Committee on Human Resources on or before November 1, 1994.

PART B

Sec. B-1. Commission established.

The Commission to Provide for a Continuum of Long-term Care is established and referred to in this Part as the "commission."

Sec. B-2. Commission membership.

The commission is composed of the following 12 members:

1. One representative from the Department of Human Services or its successor agency, appointed by the Governor;

2. One representative from the Department of Mental Health and Mental Retardation or its successor agency, appointed by the Governor;

3. Four representatives of long-term care providers, 2 appointed by the Governor and 2 appointed jointly by the President of the Senate and the Speaker of the House of Representatives;

4. One representative of the area agencies on aging, appointed by the Governor;

5. One representative of Legal Services for the Elderly, appointed by the Governor;

6. Two members of the Legislature, appointed jointly by the President of the Senate and the Speaker of the House of Representatives; and

2 7. Two representatives of consumers, appointed jointly by
the President of the Senate and the Speaker of the House of
4 Representatives.

6 **Sec. B-3. Appointments; meetings; chair.** All appointments must
be made no later than 30 days after the effective date of this
8 Act. When all the members of the commission have been appointed,
the Chair of the Legislative Council shall call the first
10 meeting. The commission shall select a chair from among its
members.

12 **Sec. B-4. Duties.** The commission shall examine the current
14 systems for delivery of long-term care in the State and explore
means to establish a more consistent and rational continuum of
16 long-term care. In examining this issue, the commission shall:

18 1. Examine existing requirements for nurses, certified
nursing assistants and other persons who provide direct long-term
20 care services;

22 2. Recommend changes to make consistent the requirements
for persons providing long-term care services, so that the same
24 level of professional accomplishment is required to perform
specified tasks regardless of the physical setting in which the
26 task is being performed; and

28 3. Propose any other measures it considers appropriate to
ensure a consistent continuum of long-term care.

30 **Sec. B-5. Report.** The commission shall submit its report,
32 together with any necessary implementing legislation, to the
First Regular Session of the 117th Legislature and to the Office
34 of the Executive Director of the Legislative Council by December
1, 1994.

36 **Sec. B-6. Staff assistance.** The commission may contract with a
38 consultant to provide professional services in carrying out its
duties subject to the approval of the Executive Director of the
40 Legislative Council in accordance with guidelines adopted by the
Legislative Council. The consultant shall provide clerical
42 assistance to the commission and prepare any legislation
recommended by the commission. The chair of the commission shall
44 manage the consultant's work.

46 **Sec. B-7. Reimbursement.** The members of the commission who
are Legislators are entitled to the legislative per diem, as
48 defined in the Maine Revised Statutes, Title 3, section 2, for
days of attendance at commission meetings. All members of the
50 commission who are not state employees are entitled to receive

2 expenses, as defined in the Title 5, section 12002, upon
4 application to the Executive Director of the Legislative Council
6 for those expenses.

8 STATEMENT OF FACT

10 The purpose of this bill is to give more choices and power
12 to the State's elderly and other users of long-term care and to
14 make the long-term care system more efficient by removing
16 unneeded regulations and providing for consistent levels of
18 requirements and payments along the long-term care continuum.
20 The bill defines assisted living and assisted living facilities
and ensures that rules that govern assisted living allow for
flexibility in order to provide maximum consumer choice. The
bill creates the Commission to Provide for a Continuum of
Long-term Care and authorizes the Department of Human Services to
develop a proposal to create a long-term care development account
to give the State more control over development costs.

22
24
26 This document has not yet been reviewed to determine the
28 need for cross-reference, stylistic and other technical
amendments to conform existing law to current drafting standards.