

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 1121

H.P. 804

House of Representatives, March 30, 1995

**An Act to Establish Standards for Preadmission Assessments for  
Long-term Care Services.**

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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 TREAT of Gardiner.

Cosponsored by Representatives: BERRY of Livermore, BRENNAN of Portland, FITZPATRICK of Durham, GREEN of Monmouth, HEESCHEN of Wilton, JOHNSON of South Portland, LUTHER of Mexico, MADORE of Augusta, MITCHELL of Portland, SHIAH of Bowdoinham, VOLENIK of Sedgwick, Senators: PARADIS of Aroostook, RAND of Cumberland.

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

2

Sec. 1. 22 MRSA §1822-A, as enacted by PL 1993, c. 410, Pt. FF, §8, is amended to read:

4

6

**§1822-A. Notice to nursing facility applicants**

8 If an applicant to a nursing facility has not received a  
10 preadmission assessment in accordance with section 3174-I, the  
nursing facility shall provide to the applicant and any relative  
or friend assisting the applicant a notice prepared by the  
12 department regarding ~~the availability of~~ preadmission  
assessment. The notice must indicate that preadmission  
14 assessment is available, ~~that all applicants are urged to have a~~  
~~preadmission assessment, that prospective Medicaid recipients are~~  
16 ~~required to have a preadmission assessment~~ required and that, if  
the applicant depletes the applicant's resources and applies for  
18 Medicaid in the future, the applicant may need to leave the  
nursing facility if an assessment conducted at that time finds  
20 that the applicant is not medically eligible for nursing facility  
services.

22

Sec. 2. 22 MRSA §3174-I, sub-§1, as amended by PL 1993, c.  
24 410, Pt. FF, §10 and affected by §19, is further amended to read:

26

**1. Needs assessment.** In order to determine the most  
28 cost-effective and clinically appropriate level of long-term care  
services, the department or its designee shall assess the medical  
and social needs of each applicant to a nursing facility ~~who is~~  
30 ~~reasonably expected to become financially eligible for Medicaid~~  
~~benefits within 180 days of admission to the nursing facility.~~  
32 If the department chooses a designee to carry out assessments  
under this section, it shall ensure that the ~~designee does not~~  
34 ~~have a pecuniary interest in the outcome of the assessment~~  
assessments are comprehensive and objective.

36

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

40

B. The department shall determine whether the services  
42 provided by the facility are medically and socially  
necessary and appropriate for the applicant and, if not,  
44 what other services, such as home and community-based  
services, would be more clinically appropriate and cost  
46 effective.

48

C. The department shall inform both the applicant and the  
48 administrator of the nursing facility of the department's  
50 determination of the services needed by the applicant and

2 shall provide information and assistance to the applicant in  
accordance with subsection 1-A.

4 ~~D. -- Until such time as the applicant becomes financially~~  
5 ~~eligible to receive Medicaid benefits, the department's~~  
6 ~~determination is advisory only. -- If the advisory~~  
7 ~~determination is that the applicant is not medically~~  
8 ~~eligible for Medicaid reimbursement for nursing facility~~  
9 ~~services, the applicant must be advised that the applicant~~  
10 ~~may be required to leave the nursing facility when the~~  
11 ~~applicant no longer has the resources to pay for the~~  
12 ~~services and an appropriate placement has been identified.~~

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

18 (1) If the individual, at both the admission  
19 assessment and any reassessment ~~within 180 days of~~  
20 ~~admission~~, is determined not to be medically eligible  
21 for the services provided by the nursing facility, and  
22 is determined not to be medically eligible at the time  
23 of the determination of financial eligibility, the  
24 nursing facility is responsible for providing services  
25 at no cost to the individual until such time as a  
26 placement at the appropriate level of care becomes  
27 available. After a placement becomes available at an  
28 appropriate level of care, the nursing facility may  
29 resume billing the individual for the cost of services.

30 (2) If the individual is initially assessed as needing  
31 the nursing facility's services, but reassessed as not  
32 needing them at the time the individual is found  
33 financially eligible, then Medicaid shall reimburse the  
34 nursing facility for services it provides to the  
35 individual in accordance with the Maine Medical  
36 Assistance Manual, chapter II, section 50 67.

38 F. Prior to performing assessments under this section, the  
39 department shall develop and disseminate to all nursing  
40 facilities and the public the specific standards the  
41 department will use to determine the medical eligibility of  
42 an applicant for admission to the nursing facility. A copy  
43 of the standards must be provided to each person for whom an  
44 assessment is conducted. In designing and phasing in the  
45 preadmission assessment under this section, the department  
46 shall collaborate with interested parties, including but not  
47 limited to consumers, nursing facility operators, hospital  
48 operators and home and community-based care providers.

50

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

5 **Sec. 3. 22 MRSA §3174-I, sub-§§1-A and 1-B,** as enacted by PL  
6 1993, c. 410, Pt. FF, §11 and affected by §19, are amended to  
7 read:

8 **1-A. Information and assistance.** If the assessment  
9 performed pursuant to subsection 1 finds the level of nursing  
10 facility care clinically appropriate, the department shall  
11 determine whether the applicant also could live appropriately and  
12 cost-effectively at home or in some other community-based setting  
13 if home-based or community-based services were available to the  
14 applicant. If the department determines that a home or other  
15 community-based setting is clinically appropriate and  
16 cost-effective, the department shall:

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

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

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

29 The department may provide the services described in this  
30 subsection directly or through private agencies.

31 **1-B. Notification by hospitals.** Whenever a hospital  
32 determines that a patient will require long-term care services  
33 upon discharge from the hospital, the hospital shall notify the  
34 department prior to discharge that long-term care services are  
35 indicated and that a preadmission assessment ~~may--be--required~~  
36 should be performed under this section.

37 **Sec. 4. 22 MRSA §3174-I, sub-§2,** as amended by PL 1993, c.  
38 410, Pt. FF, §12, is further amended to read:

39 **2. Assessment for mental illness, impairment or**  
40 **retardation.** The department shall assess every applicant to a  
41 nursing facility to screen for mental retardation and mental  
42 illness in accordance with the Federal Omnibus Budget

2 Reconciliation Act of 1987, Public Law 100-203, Section 4211.  
3 Such assessments are intended to increase the probability that  
4 any individual who is mentally retarded or mentally ill will  
5 receive active treatment for that individual's mental condition.

6 When doing preadmission assessments for clients with dementia,  
7 Alzheimer's disease or any other mental impairment, the  
8 department shall utilize an assessment tool that takes into  
9 account the safety and health needs of both the client and the  
10 current caregiver. That assessment must include, but is not  
11 limited to:

12 A. The physical safety of both the client and the current  
13 caregiver;

14 B. The ability of the client to recognize the client's  
15 surroundings;

16 C. The sleep and wake patterns of the client and their  
17 impact on the caregiver;

18 D. The physical strength of both the caregiver and the  
19 client; and

20 E. The availability of boarding home and respite services  
21 in the community of the client and caregiver.

22 **Sec. 5. Reports.**

23 1. By January 1, 1996, the Department of Human Services  
24 shall submit a progress report to the Joint Standing Committee on  
25 Human Resources regarding the nursing facility preassessment  
26 program as amended in this Act. The report must include, but is  
27 not limited to, the number of applicants diverted from nursing  
28 facilities and the resulting cost savings, the relative merits of  
29 providing services directly by the department, through a  
30 request-for-proposal system or through negotiated agreements with  
31 existing services providers, the experience regarding case  
32 management along with the department's recommendations as to  
33 whether case management should be provided by the department, by  
34 contract agencies, by agencies that provide no other services or  
35 by some combination of those, the number of people who opt for  
36 family-based care and the degree to which family members serve as  
37 caretakers and the degree to which preadmission assessments  
38 affect the decisions of applicants with private resources.

39 2. The Department of Human Services, Bureau of Elder and  
40 Adult Services shall examine the licensing and certification laws  
41 and rules for residential facilities to determine whether they  
42 adequately provide the continuum of care, particularly for  
43 low-income and middle-income elderly. In reviewing the laws and  
44

2 rules the bureau shall work with providers and consumers in doing  
a comprehensive review with an eye towards access, quality and  
4 many states of care. The bureau shall submit its report and any  
necessary implementing legislation to the Second Regular Session  
of the 117th Legislature by January 1, 1996.

6  
3. The Department of Human Services, Bureau of Elder and  
8 Adult Services shall develop a 7-year implementation plan for a  
long-term care system in the State. In developing the plan, the  
10 bureau shall consult with consumers and providers of long-term  
care services. The plan must include recommendations for  
12 legislation, rules and funding sources and must address issues of  
accessibility, noninstitutional care, maximization of ability to  
14 age in place and cost-effectiveness. The bureau shall submit its  
report and any necessary implementing legislation to the Second  
16 Regular Session of the 117th Legislature by January 1, 1996.

### 18 **STATEMENT OF FACT**

20  
The purpose of this bill is to ensure that there is an  
22 adequate system of long-term care in the State.

24 The bill amends current law to require that every person  
entering a nursing home gets preadmission screening to determine  
26 eligibility and requires the Department of Human Services to  
submit a progress report on the preassessment program. The bill  
28 further amends current law to eliminate the pecuniary interest  
provision.

30  
The bill requires the Department of Human Services, Bureau  
32 of Elder and Adult Services to amend the so-called "Med-94"  
screening tool to more accurately take into account people's  
34 mental capabilities and the impact of the caregiver and the  
environment on those capabilities.

36  
The bill requires the bureau to examine the licensing and  
38 certification rules for residential facilities to see if they  
adequately provide the continuum of care, particularly for  
40 low-income and middle-income elderly. In reviewing rules they  
should work with providers and consumers in doing a comprehensive  
42 review with an eye towards access, quality and many stages of  
care.

44  
The bill requires the bureau, in conjunction with consumer  
46 groups and providers, to develop a 7-year implementation plan for  
a long-term care system in the State. This plan must include  
48 recommendations for legislation, rules and funding sources and  
must address issues of accessibility, noninstitutional care,  
50 maximization of ability to age in place and cost-effectiveness.