

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1496

S.P. 488

In Senate, March 12, 1997

An Act to Streamline the Long-term Care Regulatory System.

(EMERGENCY)

Reference to the Committee on Health and Human Services 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 BENNETT of Oxford.
Cosponsored by Representative GAGNE of Buckfield and
Representative: WINSOR of Norway.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 Whereas, under current Medicaid regulations, a person who
6 remains at home after that person's spouse is admitted to a
nursing facility receives a monthly support allowance; and

8 Whereas, current regulations do not extend such protection
10 to spouses of residents of cost-reimbursed residential care
facilities; and

12 Whereas, absent the spousal support protections, a person
14 may be in drastically reduced financial circumstances as a result
of the institutionalization of the spouse, a condition known as
16 "spousal impoverishment"; and

18 Whereas, this inequity in the system creates disincentives
for people to use less restrictive alternatives to nursing
20 facility care; and

22 Whereas, this legislation requires the Department of Human
Services to amend its rules to redress this inequity no later
24 than July 1, 1997; and

26 Whereas, a comprehensive study of the long-term care
delivery and financing system in this State is necessary and must
28 be completed in time for action by the Second Regular Session of
the 118th Legislature; and

30 Whereas, without emergency legislation this task can not be
32 completed in a thorough and timely manner; and

34 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
36 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
38 safety; now, therefore,

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

42 **Sec. 1. 22 MRSA §1708, sub-§3, ¶C,** as amended by PL 1995, c.
696, Pt. A, §32, is further amended to read:

44 C. Are consistent with federal requirements relative to
46 limits on reimbursement under the federal Social Security
Act, Title XIX; and

48 **Sec. 2. 22 MRSA §1708, sub-§3, ¶D,** as enacted by PL 1995, c.
50 696, Pt. A, §33, is repealed.

2 **Sec. 3. 22 MRSA §1708, sub-§3, ¶¶E and F** are enacted to read:

4 E. Ensure that the rate of reimbursement per day of service
6 provided or the amount otherwise reimbursed for any service
8 rendered may not be reduced by the application of any
10 occupancy standard or adjustment that decreases the amount
12 paid in response to a decrease in the number of patients
14 residing in the facility or the percentage of the facility's
 beds that is occupied during a given period. Any existing
 rules that reduce the rate of reimbursement based on an
 occupancy standard or a decrease in the number of residents
 do not apply on or after the effective date of this
 paragraph; and

16 F. Do not impose or incorporate any reduction in
18 reimbursement as a sanction for errors or inaccuracies in
20 the facility's records of assessments of residents'
22 functional capacities. Any existing provisions of the
24 department's rules that provide for decreases in
 reimbursement due to specified error rates in assessment
 records, including the "Minimum Data Set Plus," do not apply
 on or after the effective date of this paragraph.

26 **Sec. 4. 22 MRSA §1711-C** is enacted to read:

28 **§1711-C. Facility access to resident assessment information**

30 1. Definitions. As used in this section, unless the
32 context otherwise indicates, the following terms have the
34 following meanings.

36 A. "Aggregate data" means information derived from resident
38 assessment information that is organized to protect
40 information about individual residents in a manner that
42 protects identification of the resident and specific
44 information concerning that resident's functional capacity
46 or medical condition.

48 B. "Resident assessment information" means all of the
 information that nursing facilities are required by rules of
 the department to submit to the department or its designee
 to provide assessments of the functional capacity of each
 resident and to group residents into classes based on
 assessed conditions and resources required to provide care.
 "Resident assessment information" includes all elements of
 information in the "Minimum Data Set Plus" required by the
 department in its principles of reimbursement for nursing

2 facilities and any similar data sets or information
3 requirements that the department may adopt.

4 2. Access. No later than October 1, 1997, the department
5 shall adopt rules and, by appropriate arrangements with any
6 designee or contractor of the department responsible for
7 accepting submissions of resident assessment information from
8 facilities, provide for any facility or association of facilities
9 to obtain aggregate data containing all elements of resident
10 assessment information for all facilities submitting such
11 information, organized and presented in a manner that permits
12 assessments of levels and trends in quality, resource use, case
13 mix and other factors that can be determined from the elements of
14 information collected by the department. The department may
15 provide for such safeguards as are necessary to prevent
16 identification of individual residents and, in the case of
17 requests by a facility or association for information about more
18 than one facility, to prevent identification of individual
19 facilities. Rules adopted pursuant to this subsection are major
20 substantive rules as defined by Title 5, chapter 375, subchapter
21 II-A.

22 **Sec. 5. 22 MRSA §3174-I, sub-§1, ¶E,** as amended by PL 1995, c.
23 696, Pt. B, §1, is further amended to read:

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

27 (1) If the individual, at both the admission
28 assessment and any reassessment, is determined not to
29 be medically eligible for the services provided by the
30 nursing facility, and is determined not to be medically
31 eligible at the time of the determination of financial
32 eligibility, the nursing facility is responsible for
33 providing services at no cost to the individual until
34 such time as a placement at the appropriate level of
35 care becomes available. After a placement becomes
36 available at an appropriate level of care, the nursing
37 facility may resume billing the individual for the cost
38 of services.

39 (2) If the individual is initially assessed as needing
40 the nursing facility's services under the assessment
41 criteria and process in effect at the time of admission
42 or is admitted as covered by Medicare for nursing
43 facility services, but is reassessed as not needing
44 those services at the time the individual is found
45 financially eligible, then the department shall
46 reimburse the nursing facility for services it provides
47 for services it provides

2 to the individual in accordance with the principles of
3 reimbursement for residential care facilities adopted
4 by the department pursuant to section 3173. The
5 department may not adopt or construe its rules for
6 reimbursement under this subparagraph to deny payment
7 for services actually rendered on the ground that the
8 bill or request for reimbursement was submitted to the
9 department after the individual was discharged from the
10 facility. In calculating the fixed-cost component of
11 per diem rates for nursing facility services, the
12 department shall exclude days of service for which
13 reimbursement is provided under this subparagraph.

14 **Sec. 6. 22 MRSA §3174-I, sub-§4** is enacted to read:

16 4. **Assessment period.** Assessments under this section for
17 medical eligibility of an applicant for admission to a nursing
18 facility must include review of the applicant's entire medical
19 and social condition for the 30 days prior to the review. The
20 applicant must be considered to be in need of any service that is
21 required to be delivered by or under the supervision of
22 registered professional nursing personnel on any 3 consecutive
23 days during the 30-day review period.

24 **Sec. 7. Task Force to Study the Delivery of Long-term Care in**
25 **Maine.** There is established the Task Force to Study the
26 Delivery of Long-term Care in Maine, referred to in this section
27 as the "task force."

28 **1. Membership.** The task force consists of 12 members.

29 **A.** Two members of the Senate must be appointed by the
30 President of the Senate and 2 members of the House of
31 Representatives must be appointed by the Speaker of the
32 House.

33 **B.** The following 8 members must be appointed by the
34 Governor:

35 (1) Three long-term care providers, one representing
36 nursing facilities not owned by a residential care
37 facility, one representing residential care facilities
38 not owned by a nursing facility and one representing
39 home health care providers not owned by a residential
40 care or nursing facility;

41 (2) The Long-term Care Ombudsman;

42 (3) One representative of the Department of Human
43 Services;

- 2 (4) One representative of the elderly;
- 4 (5) One representative of persons with disabilities;
and
- 6 (6) One representative of the public.
- 8

10 **2. Appointments.** All appointments must be made no later
than 30 days following the effective date of this Act. The
12 appointing authorities shall notify the Executive Director of the
Legislative Council upon making their appointments. When the
14 appointment of all members is complete, the chair of the
Legislative Council shall call and convene the first meeting of
the task force no later than August 1, 1997. The task force
16 shall select a chair from among its legislative members.

18 **3. Duties.** The task force shall study the delivery and
financing of long-term care in Maine. Particular attention must
20 be paid to the availability of long-term care options across the
State, the need for services that are not now available and how
22 to encourage their development, services that are available now
but not needed and options for transforming these services into
24 other appropriate and needed services, medical and financial
eligibility screening for consumers, reimbursement sources and
26 options, affordability for consumers and other payors and
financial stability within the long-term care system.

28 **4. Staffing.** The task force may request staffing and
30 clerical assistance from the Legislative Council.

32 **5. Voluntary service.** All task force members serve
voluntarily, without pay or reimbursement for expenses.

34 **6. Report.** The task force shall submit its report with any
36 accompanying legislation to the joint standing committee of the
Legislature having jurisdiction over health and human services
38 matters by December 1, 1997.

40 **Sec. 8. Amend spousal protection and asset protection rules.** The
Department of Human Services, Bureau of Family Independence shall
42 amend its rules governing Medicaid financial eligibility no later
than July 1, 1997 and extend resource and income protection
44 equivalent to that presently available to the spouses of
individuals residing in nursing facilities to the spouses of
46 residents of cost-reimbursed residential care facilities and
shall also amend its rules regarding asset protection and asset
48 transfer to achieve parity among the types of facilities in which
long-term care is provided.

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