

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1839

H.P. 1278

House of Representatives, March 11, 1999

An Act to Maintain High-quality Services in Long-term Care in Maine.

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative FULLER of Manchester.
Cosponsored by Senator BENNETT of Oxford and
Representatives: BRAGDON of Bangor, COWGER of Hallowell, KNEELAND of Easton,
Senator: PARADIS of Aroostook.

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

2 **Sec. 1. 22 MRSA §1708, sub-§3, ¶¶A-2 to A-6 are enacted to read:**

4 A-2. Starting with the fiscal year beginning on or after
6 October 1, 1999, use data from the year 1997 as the basis
8 for calculating reimbursement rates and cost components
 required under this subsection;

10 A-3. Calculate the case mix of a nursing facility on the
12 basis of the facility's total population, regardless of
 source of payment;

14 A-4. Treat the following nursing facility costs as direct
 costs:

16 (1) Costs attributable to the position of Director of
18 Nursing;

20 (2) Costs of medical supplies and consultants,
22 including, but not limited to, dietary consultants, and
 social services and pharmacy costs;

24 (3) Salaries paid to social services personnel; and

26 (4) Fringe benefits;

28 A-5. Recognize as an allowable nursing facility fixed cost
30 the cost to the nursing facility of its allocated share of
32 debt service, including principal, interest and amortization
34 of any issuance costs and discount, incurred pursuant to
 section 1813-A, or the cost to the nursing facility of its
 allocated share of outstanding debt incurred pursuant to
 section 1813-B;

36 A-6. Establish, on an annual basis, the maximum amount of
38 reimbursable direct and indirect costs for facilities with
40 more than 60 beds and facilities with 60 beds or fewer. The
42 maximum amount of reimbursable direct and indirect costs
 must be greater for facilities with 60 or fewer beds. In
 determining the maximum reimbursable direct and indirect
 costs, the department shall use the most current year-end
 data;

44 **Sec. 2. 22 MRSA §1812-H, as amended by PL 1993, c. 410, Pt.**
46 **FF, §§4 to 7, is repealed.**

48 **Sec. 3. 22 MRSA §1812-I is enacted to read:**

50 **§1812-I. Medicaid Automation Grant Fund**

2 1. Established. There is established the Medicaid
3 Automation Grant Fund, referred to in this section as the
4 "fund." The assets of this fund are derived from the Medicare -
5 Payments to Providers account.

6
7 2. Disbursements from fund. A nursing facility may apply
8 to the department to receive disbursements from the fund. The
9 department shall establish criteria, in consultation with
10 representatives of nursing facilities, governing approval of
11 disbursements from the fund that at a minimum require a finding
12 by the department that the proposed use of funds will result in a
13 significant improvement in the efficiency of the management or
14 operation of the nursing facility.

15 **Sec. 4. 22 MRSA §1813, 3rd ¶, as enacted by PL 1997, c. 488,**
16 **§1, is amended to read:**

17
18 For nursing facilities providing both nursing home and
19 assisted living services, the department shall issue one license
20 reflecting both levels of care. The commissioner shall adopt
21 rules to implement this paragraph. Rules adopted pursuant to
22 this paragraph are routine technical rules as defined by Title 5,
23 chapter 375, subchapter II-A. Notwithstanding any other
24 provision of this Title, a nursing facility may provide assisted
25 living services in nursing facility beds without obtaining
26 approval under either chapter 103 or this chapter if there are no
27 residential care beds available within 25 miles of that facility
28 or if necessary to meet the care needs of an existing resident,
29 as long as the number of nursing facility beds that are used to
30 provide assisted living services do not exceed 10% of the total
31 number of beds licensed in such facility.

32
33 **Sec. 5. 22 MRSA §§1813-A and 1813-B are enacted to read:**

34
35 **§1813-A. Single nursing facility bed license purchasing program**

36
37 Upon petition by a nursing facility other than a
38 multi-facility operation, or at the department's own initiative,
39 the department shall identify geographic areas within the State
40 that have an excess capacity of nursing facility beds and shall
41 issue one or more requests for proposals to purchase rights to
42 existing nursing facility bed licenses. The purchase price is
43 subject to competitive bid through the request for proposal
44 process and must be funded through loans made available by the
45 Maine Health and Higher Educational Facilities Authority pursuant
46 to chapter 413 in the amount certified by the department to the
47 authority. The annual debt service, including principal,
48 interest and amortization of any issuance costs and discount,
49 must be allocated to remaining nursing facilities in the State in
50

2 proportion to the number of beds licensed to each facility. The
3 department shall provide to the authority subsidy adequate to pay
4 the debt service on any loan made by the authority pursuant to
5 this section and chapter 413.

6 **§1813-B. Debt recognition of multi-facility operator**
7 **voluntary bed license termination**

8
9
10 Upon agreement by a multi-facility operator to close one or
11 more nursing facilities, the total outstanding debt at the time
12 of closure, including the amount of any unpaid mortgage debt and
13 any deficiency in working capital, must be allocated to remaining
14 nursing facilities located within that multi-facility operator's
15 system in proportion to the total remaining nursing facility and
16 assisted living beds licensed to each remaining facility. The
17 allocated share of outstanding mortgage debt assumed by each
18 remaining nursing facility must be amortized over the remaining
19 term of unpaid mortgage debt or such other period as may be
20 required by the lender. The allocated share of any working
21 capital deficiency incurred by the remaining nursing facilities
22 must be amortized over a one-year period.

23
24 **Sec. 6. 22 MRSA §2053, sub-§6, ¶A, as amended by PL 1995, c.**
25 **179, §3, is further amended to read:**

26 A. In the case of a participating health care facility or a
27 participating community health or social service facility,
28 the acquisition, construction, improvement, reconstruction
29 or equipping of, or construction of an addition or additions
30 to, a structure designed for use as a health care facility,
31 community health or social service facility, congregate
32 housing facility, laboratory, laundry, nurses or interns
33 residence or other multi-unit housing facility for staff,
34 employees, patients or relatives of patients admitted for
35 treatment in the health care facility, community health or
36 social service facility, doctors office building,
37 administration building, research facility, maintenance,
38 storage or utility facility or other structures or
39 facilities related to any of the foregoing or required or
40 useful for the operation of the project, or the refinancing
41 of existing indebtedness in connection with any of the
42 foregoing, including parking and other facilities or
43 structures essential or convenient for the orderly conduct
44 of the health care facility or community health or social
45 service facility. "Project" also includes all real and
46 personal property, lands, improvements, driveways, roads,
47 approaches, pedestrian access roads, rights-of-way,
48 utilities, easements and other interests in land, parking
49 lots, machinery and equipment, and all other appurtenances
50 and facilities either on, above or under the ground that are

2 used or usable in connection with the structures mentioned
in this paragraph, and includes landscaping, site
4 preparation, furniture, machinery and equipment and other
similar items necessary or convenient for the operation of a
6 particular facility or structure in the manner for which its
use is intended, but does not include such items as food,
8 fuel, supplies or other items that are customarily
considered as a current operating charge. "Project" also
10 includes the payment of any purchase price in the amount
certified by the department to the authority pursuant to
12 section 1813-A. In the case of a hospital, as defined in
subsection 4, paragraph B, a community health center or a
14 community health or social service facility, "project" does
not include any facilities, structures or appurtenances, the
16 use of which is not directly related to the provision of
patient care by its members; and

18 **Sec. 7. 22 MRSA §2061, sub-§2,** as amended by PL 1993, c. 390,
§24, is further amended to read:

20
22 **2. Review.** Each project for a health care facility has
been reviewed and approved to the extent required by the agency
of the State that serves as the Designated Planning Agency of the
24 State or by the Department of Human Services in accordance with
the provisions of either the Maine Certificate of Need Act of
26 1978, as amended, or section 1813-A or, in the case of a project
for a hospital, has been reviewed and approved by the Maine
28 Health Care Finance Commission to the extent required by chapter
107;

30
32 **Sec. 8. 22 MRSA §2147, sub-§10,** as amended by PL 1987, c. 486,
§2, is further amended to read:

34 **10. Facilities licensed pursuant to chapter 405.** Hospitals,
intermediate care facilities, skilled nursing facilities or other
36 facilities licensed pursuant to chapter 405 when the services are
provided to clients residing in those facilities, or to 6 or
38 fewer clients at any one time in their homes under a plan of care
~~approved by the department or its designee when it is~~ and it has
40 been documented in the patient's record that the licensed home
health care agency or agencies serving the patient's area have
42 been notified.

44 ~~A.---Have indicated that they are unable to provide these~~
~~services, or~~

46 ~~B.---Agree that the plan of care is an acceptable plan.~~

48
50 The plan of care must meet standards for staff qualifications and
supervision consistent with the standards required of licensed

2 home health care providers. Patient records must be maintained
3 in a manner consistent with standards required of licensed home
4 health care providers;

6 **Sec. 9. 22 MRSA §2149, sub-§3** is enacted to read:

8 3. Rules to reduce funds prohibited. The department is
9 prohibited from adopting rules to reduce the amount of funds
10 allocated from the Medicaid program to home health care services.

12 **Sec. 10. 22 MRSA §3174-I, sub-§1, ¶E-1** is enacted to read:

14 E-1. If the department, in implementing periodic
15 reassessments of residents under this section, imposes on
16 nursing facilities the obligation to request reassessment of
17 a resident on a due date set by the department, penalties
18 for failure or delay in meeting that obligation must be
19 limited in accordance with this paragraph. The department
20 may not impose penalties for failure or delay in requesting
21 reassessments that exceed 10% of the reimbursement that
22 would otherwise be paid for the services rendered to the
23 resident for whom a reassessment is overdue during the
24 period between the due date set by the department and the
25 date on which the reassessment request is made. If, upon
26 reassessment, the resident is determined no longer medically
27 eligible under the standards duly adopted in the
28 department's rules, then the reimbursement otherwise payable
29 by the department for the services provided after the
30 reassessment due date may be reduced to the rate provided in
31 the department's rules for days awaiting placement to a
32 residential care facility. When a resident is determined
33 medically eligible upon reassessment, the resident is
34 presumed to have been medically eligible during the period
35 between the due date for the reassessment and the date on
36 which the reassessment was actually conducted, unless the
37 department establishes by clear and convincing evidence that
38 the nursing facility intentionally deferred its request for
39 reassessment of the resident for the purpose of avoiding a
40 determination of medical ineligibility.

42 **Sec. 11. 22 MRSA §7902-A, sub-§4**, as enacted by PL 1995, c.
43 670, Pt. A, §8 and affected by Pt. D, §5, is amended to read:

44 **4. Residential care rules.** The commissioner shall adopt
45 rules for the various levels of residential care facilities. In
46 addition to the subject matter of the rules listed in subsection
47 2, the rules must include criteria for placement of residents who
48 are 17 years of age or older and under 18 years of age and must
49 provide for the calculation of the maximum amount of reimbursable
50 routine costs based on data from the year 1997. In establishing

2 the maximum amount of reimbursement for the cost categories for
3 residential care facilities, the department shall establish the
4 maximum amount of reimbursable costs for facilities with 30 or
5 more beds and for facilities with fewer than 30 beds.

6 **Sec. 12. 22 MRSA §7902-B** is enacted to read:

8 **§7902-B. Approval of staffing**

10 The department shall approve residential care facilities'
11 requests for additional staffing in a manner consistent with the
12 department's approval of such requests prior to June of 1998.

14 **Sec. 13. Commission to Study Job Training and Career Advancement**
15 **for Long-term Care Health Professionals and Personnel.**

16 **1. Commission established; purpose.** The Commission to
17 Study Job Training and Career Advancement for Long-term Care
18 Health Professionals and Personnel, referred to in this section
19 as the "commission," is established for the purpose of reviewing
20 the training requirements, job responsibilities, overlap of job
21 responsibilities, career advancement opportunities and pay scales
22 among the various categories of health care workers, including,
23 but not limited to:

- 26 A. Personal care attendants;
- 28 B. Certified nursing assistants;
- 30 C. Certified medication assistants;
- 32 D. Home health aides;
- 34 E. CNA medical technicians; and
- 36 F. Mental health assistants.

38 **2. Membership of commission.** The members of the commission
39 are appointed as follows:

- 40 A. One person who serves as chair, appointed by the
41 President of the Senate;
- 42 B. One member representing the Department of Human
43 Services, Bureau of Elder and Adult Services, to be
44 appointed by the President of the Senate;
- 45 C. One member representing the Department of Human
46 Services, Bureau of Medical Services, to be appointed by the
47 President of the Senate;
- 48
- 50

- 2 D. One member representing the Maine Health Care
 Association, to be appointed by the President of the Senate;
 4
 6 E. One member representing the Maine Hospital Association,
 to be appointed by the President of the Senate;
 8
 10 F. One member representing the State Board of Nursing, to
 be appointed by the Speaker of the House;
 12
 14 G. One member representing the Department of Education, to
 be appointed by the Speaker of the House; and
 16
 18 H. One member representing the Department of Mental Health,
 Mental Retardation and Substance Abuse Services, to be
 appointed by the Speaker of the House.

18 **3. Commission meetings.** The commission is authorized to
 20 conduct up to 5 meetings, the first of which must be called by
 the chair no later than November 1, 1999.

22 **4. Report to Legislature.** The commission shall report its
 24 findings and recommendations to the joint standing committee of
 the Legislature having jurisdiction over health and human
 26 services matters on or before January 15, 2001.

28 **Sec. 14. Appropriation.** The following funds are appropriated
 from the General Fund to carry out the purposes of this Act.

30 **1999-00**

32 **HUMAN SERVICES, DEPARTMENT OF**

34 **Bureau of Elder and Adult Services**

36 All Other \$500,000

38 To provide funds for
 40 additional respite and
 homemaker services to
 42 individuals awaiting
 placement for these services.

44 **Long Term Care - Human Services**

46 All Other \$500,000

48 To provide funds for
 additional home-based care

2 services to individuals
awaiting placement for these
services.

4

6 **DEPARTMENT OF HUMAN SERVICES**
TOTAL

\$1,000,000

8

SUMMARY

10

12 This bill makes modifications to the reimbursement system to
14 more accurately reflect the actual cost of services in all
16 segments of the continuum of long-term care. The bill requires
18 the Department of Human Services to utilize 1997 data, rather
20 than 1993 data as is currently the standard, for calculating
22 reimbursement rates and cost components; provides for calculation
24 of a facility's case mix based on the facility's total
26 population, regardless of source of payment; reclassifies certain
cost components as direct costs; and directs the department to
establish annually the maximum reimbursement rates by taking into
account the size of the facility and by utilizing current
year-end data. It also directs the department to recognize as an
allowable fixed cost the nursing facility's allocated share of
debt service or outstanding debt resulting from either the sale
of licensed beds by a facility or the closure of a nursing
facility.

28

30 The bill also establishes the Medicaid Automation Grant Fund
32 for the purpose of facilitating the improved efficiency of
facility operations. The bill authorizes the department to
establish criteria for approving disbursements from the fund to
facilities.

34

36 The bill repeals the requirement that a nursing facility
that participates in the Medicaid program also must participate
in the Medicare program as a skilled nursing facility.

38

40 The bill provides facilities with a limited opportunity to
42 utilize nursing facility beds for the provision of residential
care services if there are no residential care beds available
within 25 miles of that facility or if necessary to meet the care
needs of an existing resident.

44

46 The bill addresses the problem of an existing over-supply of
48 nursing facility beds, estimated by the department to be
approximately 1,200. The department is authorized to entertain
proposals from nursing facilities to sell some or all of their
licensed beds back to the department. The bill provides funding
for this purpose through loans from Maine Health and Higher
50 Educational Facilities Authority, the debt service on which will

2 be paid by all facilities on a proportional basis. The debt
3 service is allocated to remaining nursing facility providers in
4 proportion to their number of licensed beds.

5 The bill provides for the allocation of the total net
6 outstanding debt among remaining facilities within a
7 multi-facility operator's system in proportion to the number of
8 licensed beds owned by each remaining nursing facility.

9 Under current law, hospitals, intermediate care facilities,
10 skilled nursing facilities and other facilities licensed under
11 chapter 405 may provide home health care services to clients
12 residing in those facilities, or at any one time, to 6 or fewer
13 clients residing in their homes under a department-approved care
14 plan. In either case, the licensed home health care agencies
15 serving the patient's area must either have indicated that they
16 are unable to provide those services or have agreed that the plan
17 of care is an acceptable plan. The bill eliminates the
18 requirement for obtaining approval of the care plan by the
19 department or by the home health care agency; eliminates the
20 condition that the home health care agencies in the area indicate
21 that they are unable to provide the services in question; and
22 adds the requirement that the facilities must notify the home
23 health agencies of the fact that the facilities will be providing
24 those services.

25 The bill revises the medical eligibility provisions
26 applicable to the Medicaid program to require the department to
27 discontinue its current practice of denying all reimbursement to
28 a nursing facility that inadvertently misses the established
29 deadline for asking the department to reassess a resident's
30 eligibility. Instead, the department would be allowed to apply 2
31 sanctions. First, it could penalize the facility up to 10% of
32 its regular reimbursement rate for the days between the due date
33 for the assessment and the date the facility actually requested
34 reassessment. Second, the department could reduce the rate to
35 the much lower residential care rate, if the reassessment, when
36 performed, showed that the resident no longer required a nursing
37 facility level of care.

38 The bill requires the department to utilize 1997 data for
39 calculating the maximum allowable reimbursement for facilities'
40 routine costs. The bill also requires that the department
41 distinguish between facilities with 30 or more beds and those
42 with fewer than 30 beds in establishing the maximum amount of
43 reimbursable costs for the various cost categories established
44 for residential care.

45 The bill directs the department to resume its approval of
46 staffing requests by residential care facilities as had been the
47 department's practice prior to June of 1998.

2 The bill prohibits the department from reducing the Medicaid
home health benefit.

4

6 The bill establishes the Commission to Study Job Training
and Career Advancement for Long-term Care Health Professionals
and Personnel. The commission consists of representatives of the
8 affected agencies and health workers for the purpose of
establishing a set of health practitioner job descriptions and
10 training requirements that are simple, are logically sequential
and build up into a career ladder for individuals in the field.

12

14 Finally, the bill provides for a \$1,000,000 appropriation
from the General Fund to provide additional respite, homemaker
and home-based care services to individuals who have been placed
16 on the department's waiting list for these services.