

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1512

S.P. 459

In Senate, March 8, 2001

An Act to Increase Long-term Care Options for Low-income Citizens of the State.

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 EDMONDS of Cumberland.
Cosponsored by Representative ETNIER of Harpswell and
Senators: SAVAGE of Knox, SMALL of Sagadahoc, Representatives: BELANGER of
Caribou, GERZOFKY of Brunswick, KANE of Saco, MAYO of Bath, McNEIL of
Rockland, Speaker SAXL of Portland.

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

Sec. 1. 22 MRSA c. 1689 is enacted to read:

CHAPTER 1689

LONG-TERM CARE

§9001. Definitions

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

1. Activities of daily living. "Activities of daily living" means eating, dressing, bathing, bathroom use, personal hygiene, moving between locations and transferring between surfaces such as a wheelchair or a standing position.

2. Assessing services agency. "Assessing services agency" means an organization authorized through a written agreement with the department to conduct face-to-face assessments, using the department's medical eligibility determination form, to determine the functional eligibility for covered services of prospective residents of assisted living facilities. The assessing services agency is the department's authorized agent for functional eligibility determinations.

3. Assisted living. "Assisted living" means an apartment community:

A. Designed specifically to meet the needs of persons who require assistance with some activities of daily living or instrumental activities of daily living or both;

B. With staff on site 24 hours per day and that provides meals, personal care assistance, monitoring and administering of medications, housekeeping, laundry, transportation and social and recreational activities;

C. With lockable doors, individual temperature controls, and a living room, bedroom, private bathroom and kitchen or kitchenette; or

D. That emphasizes privacy, independence, choice, dignity and individuality.

4. Consumer. "Consumer" means a resident of an assisted living facility who uses supportive services such as meals, personal care assistance and monitoring of medications.

2 **5. Facility.** "Facility" means an assisted living facility
3 serving low-income citizens of the State that is licensed as Type
4 III or Type IV congregate housing services programs in accordance
5 with the rules of the department.

6 **6. Instrumental activities of daily living.** "Instrumental
7 activities of daily living" means meal preparation, taking
8 medication, using the telephone, handling finances, shopping,
9 light housekeeping, heavy housekeeping and traveling to
10 appointments.

11 **7. Low income.** "Low income" means having a household
12 income that does not exceed 80% of the median household income,
13 adjusted for family size, for the county in which the facility is
14 located.

15 **8. Nursing facility.** "Nursing facility" means a facility
16 in which nursing care and medical services are prescribed by or
17 performed under the general direction of person licensed to
18 practice medicine or surgery in the State for the accommodation
19 of convalescent or other persons who are not acutely ill and not
20 in need of care in a hospital but who require skilled nursing
21 care and related medical services 24 hours per day because of
22 illness, disease or physical or mental infirmity.

23 **9. Residential care facility.** "Residential care facility"
24 means a facility licensed pursuant to section 7801, including
25 entities formerly known as adult foster homes and boarding homes
26 but excluding adult family care homes. Level I residential care
27 facilities are licensed for 6 or fewer residents and Level II
28 residential care facilities are licensed for 7 or more residents.

29 **10. Supportive services.** "Supportive services" means
30 meals, personal care assistance, monitoring and administering of
31 medications, housekeeping, laundry, transportation and social and
32 recreational activities including activities designed to reduce
33 isolation and sustain a resident's mental and physical health.

34 **11. Unit.** "Unit" means a single apartment unit with a
35 living and dining area, separate bedroom, private bathroom and
36 kitchen or kitchenette.

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39 **§9002. New units**

40 The department shall subsidize the services in 120 new
41 assisted living units for low-income citizens of the State in
42 each biennium until the total number of such assisted living
43 units in the State reaches 3% of the number of citizens of the
44 State who are 80 years of age or older and whose household income
45 is below 80% of the state median household income. For purposes
46

of this section, "new units" means new construction or conversion of existing structures.

§9003. Funding level

The department shall reimburse a provider of supportive services at a facility for actual costs incurred by that provider in providing the supportive services, less the aggregate revenue from the services copays pursuant to section 9004 and any additional copay revenue pursuant to section 9005, up to a maximum of \$35 per day, multiplied by the number of units in the facility rented by residents eligible for reimbursement by the department. The department shall index the maximum daily reimbursement of \$35 per day for inflation in the long-term care industry by use of a nationally recognized and utilized measure of such inflation.

§9004. Services copay

A resident of a facility may pay not less than 65% and not more than 80% of the resident's household income toward the combination of rent, utilities and the cost of the supportive services, including meals and personal care that are not covered by the State's contribution.

§9005. Additional copay based on resident assets

1. Resident assets. A resident with liquid assets over \$10,000 in constant 2001 dollars or a couple with liquid assets over \$15,000 in constant 2001 dollars shall pay an additional monthly copay equal to the lesser of:

A. Three percent of the amount of assets that exceed \$10,000 for a resident or \$15,000 for a couple in constant 2001 dollars; or

B. The full monthly cost of supportive services.

2. Indexing. The department shall index the \$10,000 and \$15,000 thresholds in subsection 1 to inflation using the Consumer Price Index.

3. Rules. The department shall adopt rules designed to prevent the transfer of assets within the prior 3 years by a consumer or prospective consumer of assisted living services to avoid the copay described in subsection 1.

§9006. Resident functional eligibility

1. Persons who are eligible. Eligibility for subsidies from the department toward the cost of supportive services for a resident entering an assisted living facility is limited to a consumer who needs the following amount and type of support:

A. Limited assistance plus a one-person physical assist with at least 2 activities of daily living one to 2 times for each activity in the past 7 days;

B. Limited assistance plus a one-person physical assist with one activity of daily living and assistance, including physical assistance, with at least 2 instrumental activities of daily living; or

C. Assistance with at least 5 instrumental activities of daily living.

2. Persons who are not eligible. A person with the following characteristics is not eligible for initial admission to a facility:

A. Is unable to be alone for significant periods of time, including overnight;

B. Requires a 2-person physical assist with at least one activity of daily living on an ongoing basis; or

C. Is eligible for admission to a nursing facility.

3. Requirements. The department may establish requirements as to the income of a resident of a facility whose supportive services are subsidized by the department, provided that such requirements do not conflict with the resident income limitations of public and private sources of capital to the facility. The department may not establish requirements as to the income of a resident of a facility whose supportive services are not subsidized by the department.

4. Assessment. A provider of services may conduct its own assessments of the functional eligibility of a prospective resident of an assisted living facility using an eligibility determination form prescribed by the department. Alternatively, the department may employ an assessing services agency to assess the functional eligibility for covered services of prospective residents of assisted living facilities, provided that the cost of the assessment conducted by the assessing services agency may not affect the amount of reimbursement available to the provider of supportive services in the facility. An assessing services agency may not prescribe which resident may enter the facility.

The assessing services agency may prescribe which resident is eligible for reimbursement of covered services by the department.

5. Determinations of eligibility. A determination of resident income eligibility for the housing portion of assisted living is carried out by the owner of the facility or its designated management agent and may not be carried out by an assisted services agency.

§9007. Distribution of funds

Funds appropriated pursuant to this chapter are available through the department to new assisted living facilities by means of a competitive request for proposal process. The department shall consider the following 2 criteria exclusively in selecting proposals to fund:

1. Qualifications. The qualifications of an applicant to provide services; and

2. Unmet need. The unmet need for assisted living units affordable to low-income citizens in the area of the State in which the project is proposed. In assessing this need, the department shall analyze the number of assisted living units in the area affordable to low-income persons, relative to the number of low-income persons in the area 80 years of age or older. The department may not use data describing the availability of beds in residential care facilities or other forms of long-term care that are not assisted living.

\$9008. Coverage of all assisted living facilities in State

Notwithstanding any other provision of this Title, this chapter covers all assisted living facilities serving low-income citizens of the State with support from the department, including those developed prior to the effective date of this Act.

§9009. Rules

Rules adopted by the department pursuant to this chapter are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2001-02

2002-03

HUMAN SERVICES, DEPARTMENT OF

2 Congregate Housing Services Program

4	All Other	\$0	\$1,533,000
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6 Provides funds to subsidize
long-term assisted living
8 facilities in the State.

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SUMMARY

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14 This bill provides a comprehensive system by which the
Department of Human Services subsidizes assisted living
arrangements for low-income citizens of the State.