

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1569

H.P. 1169

House of Representatives, March 13, 2001

An Act to Support a Continuum of Quality Long-term Care Services.

(EMERGENCY)

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative KANE of Saco. (By Request)
Cosponsored by Senator PENDLETON of Cumberland and
Representatives: COLWELL of Gardiner, DUDLEY of Portland, FULLER of Manchester,
LOVETT of Scarborough, Speaker SAXL of Portland, SCHNEIDER of Durham, Senator:
CARPENTER of York.

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

4
6 **Whereas,** there is a shortfall between budgeted nursing
facility payments and the allowable costs of nursing facilities
of approximately \$5,600,000; and

8
10 **Whereas,** it is imperative to the health and well-being of
Maine's elderly and disabled that this revenue deficiency be
corrected as soon as possible; and

12
14 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
16 necessary for the preservation of the public peace, health and
safety; now, therefore,

18
20 **Be it enacted by the People of the State of Maine as follows:**

22 **Sec. 1. 22 MRSA §1812-G, sub-§6** is enacted to read:

24 6. Accessibility; duties of registry. The Maine Registry
of Certified Nursing Assistants, referred to in this subsection
as the "registry," must be accessible by telephone for no fewer
than 9 hours per day on each business day of the year and during
those hours shall provide information upon request of any
residential care facility, nursing facility, nurse aid staffing
agency or a nurse aid registry maintained by another state, as
follows.

32 A. Within 30 minutes of a telephone inquiry, the registry
shall provide orally, by telephone:

34 (1) Verification that an individual is a certified
nursing assistant; and

38 (2) A statement of any findings of resident abuse,
mistreatment or neglect or criminal conviction by a
nursing assistant pertinent to care or treatment of
residents or protection of resident property that are
on file with the registry.

44 B. The registry shall provide the following information in
writing within 3 days of a written request or telephone
inquiry:

48 (1) Verification that an individual is a certified
nursing assistant, the individual's certification
number and date of certification or recertification;

2 (2) Copies of final findings of resident abuse,
4 mistreatment or neglect by a nursing assistant and any
6 statement from the nursing assistant disputing the
8 findings, together with any other written records on
 file with the registry concerning resident abuse or
 treatment or protection of resident property related to
 the nursing assistant who is the subject of the
 inquiry; and

10 (3) A report of any criminal conviction of a nursing
12 assistant for resident abuse, mistreatment or neglect
14 or misappropriation of resident property, with the date
 of the conviction.

16 C. The department shall ensure that sufficient staff is
18 assigned to the registry and that appropriate systems are in
20 place in order that the information provided in response to
22 any telephone inquiry contains all information currently
24 available to the registry about the individual named in the
26 request and that the information provided by telephone is a
28 complete and accurate summary of all written records
 available with respect to the individual. The department
 shall maintain systems with respect to the operation of the
 registry that ensure that any inquiry regarding an
 individual is answered, with current and complete
 information, no more than 30 minutes following the initial
 telephone inquiry.

30 **Sec. 2. Treatment of costs and inflation in the principles of**
32 **reimbursement for residential care facilities rules.** By September 1,
34 2001, the Department of Human Services shall amend its rules
36 regarding principles of reimbursement for residential care
 facilities to ensure that reimbursement reflects the current cost
 of providing services in an efficient manner. The revised
 principles of reimbursement must:

38 1. Provide for base reimbursement rates on percentages from
40 the most recent audited year; and

42 2. Contain an annual inflation adjustment that reflects the
44 actual increases in operating costs incurred by state residential
 care facilities and recognizes regional variations in labor costs.

46 Rules adopted pursuant to this section are routine technical
48 rules as defined in the Maine Revised Statutes, Title 5, chapter
50 375, subchapter II-A.

 Rules amended pursuant to this section must take effect no
 later than September 1, 2001.

2 **Sec. 3. Treatment of cost components and inflation in the principles of**
3 **reimbursement for nursing facilities rules.** By September 1, 2001, the
4 Department of Human Services shall amend its rules regarding
5 principles of reimbursement for nursing facilities to ensure that
6 reimbursement reflects the current cost of providing services in
7 an efficient manner. The revised principles of reimbursement must:

8 1. Provide for base reimbursement rates on percentages from
9 the most recent audited year; and

10 2. Contain an annual inflation adjustment that reflects the
11 actual increases in operating costs incurred by state nursing
12 facilities and recognizes regional variations in labor costs; and

13 3. Allow each nursing facility to retain the entire amount,
14 if any, by which the interim per diem payment rate for the
15 "routine component" exceeds the actual allowable per diem costs
16 classified within the "routine component" for any cost-reporting
17 period.

18 The rules must be designed to ensure that aggregate Medicaid
19 payments for nursing facility services are sufficient to cover
20 the total allowable costs of providing the Medicaid covered
21 portion of those services. Allowable costs must be determined
22 without any constraint based on any preestablished budget or
23 appropriation amount.

24 Rules adopted pursuant to this section are routine technical
25 rules as defined in the Maine Revised Statutes, Title 5, chapter
26 375, subchapter II-A.

27 **Sec. 4. Principles of reimbursement for home health care services**
28 **rules.** By September 1, 2001, the Department of Human Services
29 shall amend its rules governing payment for home health care
30 services to ensure that those payments reflect the current costs
31 of providing services in an efficient manner. The revised rules
32 must:

33 1. Provide for periodic recalculation of payment rates at
34 least once every 3 years to reflect current operating costs;

35 2. Provide sufficient reimbursement for wage and salary
36 costs to ensure the availability of an adequate number of skilled
37 professional personnel to provide needed home health care
38 services;

39 3. Contain an annual inflation adjustment that reflects the
40 actual increases in operating costs experienced by the home

2 health care providers in the State and recognizes regional
variations in labor costs; and

4 4. Provide for payment of the costs of social worker
services on the basis of the average cost per social worker visit
6 for state home health care agencies.

8 Rules adopted pursuant to this section are routine technical
rules as defined in the Maine Revised Statutes, Title 5, chapter
10 375, subchapter II-A.

12 **Sec. 5. Validation of quality measurements project to be used in
connection with reimbursement.**

14 The Department of Human Services shall commission and fund, based on a fair and competitive
process of requesting proposals, a project to develop
16 statistically valid quality standards and processes for
evaluating long-term care provider performance in relation to
18 those standards. The objectives of the project must include
measurement methods that are cost effective to use in nursing
20 facilities throughout the State and that quantify consumer
satisfaction and other variables that are demonstrated to have a
22 significant impact on the quality of care. By July 1, 2001, the
department shall convene a conference that includes
24 representatives of the long-term care industry to further discuss
the specific objectives of this project. The department may not
26 implement incentive provisions in the principles of reimbursement
pertaining to quality of care until statistically valid
28 measurements are determined and specified by rule after the
completion of the project. If quality-of-care incentive
30 provisions are incorporated into the principles of reimbursement,
those provisions must provide for the measurement of the
32 variables that affect the quality of care on a fair and objective
basis by a party that is neither controlled nor owned by either a
34 provider or the department. The department may not implement
incentive provisions pertaining to quality of care except to the
36 extent that sufficient appropriations are available to fund
reimbursement of the current cost of providing services without
38 regard to such incentives.

40 **Sec. 6. Transfer of assets and spousal impoverishment rules.** By
September 1, 2001, the Department of Human Services shall amend
42 its rules governing eligibility for coverage for residential care
services to require that:

44 1. Resources available from a resident's assets be used to
46 cover the cost of care to the same extent that such assets must
be used prior to coverage for nursing facility services;

48 2. The restrictions and presumptions with respect to
50 transfers of assets applicable to eligibility and coverage for

2 nursing facility services be applied in the same manner to
2 eligibility and coverage of residential care services; and

4 3. The provisions governing spousal impoverishment
4 applicable to nursing facility coverage are also applied to
6 Medicaid coverage of services provided in a residential care
6 facility.

8
10 Rules adopted pursuant to this section are routine technical
10 rules as defined in the Maine Revised Statutes, Title 5, chapter
12 375, subchapter II-A.

12 **Sec. 7. Homebound requirement rules.** By September 1, 2001,
14 the Department of Human Services shall amend its rules governing
14 eligibility and coverage of home health care services to remove
16 the homebound requirement that properly applies solely to
16 Medicare-covered home health care services so that Medicaid home
18 health coverage, in accordance with applicable federal law, is
20 not subject to a homebound requirement.

20 Rules adopted pursuant to this section are routine technical
22 rules as defined in the Maine Revised Statutes, Title 5, chapter
24 375, subchapter II-A.

24 **Sec. 8. Aging in place.** The Joint Standing Committee on Health
26 and Human Services shall conduct a study and propose changes to
26 existing law to facilitate and properly compensate providers for
28 the delivery of services that allow consumers to choose to remain
28 in a facility while aging without compromising the quality of
30 care, the safety of consumers or the financial, administrative,
32 and resident care capabilities of the providers of long-term care
32 services.

34 Specifically, the committee shall consider means of ensuring
36 that providers have the discretion to discharge consumers who
36 require services that are currently unavailable in the facility
38 where the consumer would prefer to remain when delivery of those
38 services at the facility preferred by the consumer would impose
40 costs that will not be fully reimbursed or will disrupt the
40 character or effectiveness of the residential environment and the
42 plan for delivery of services in the facility. The committee
42 also shall consider allowing nursing facilities to provide
44 reduced levels of care when consumers residing in those
44 facilities but no longer requiring a nursing facility level of
46 care prefer to remain, if costs can be adjusted appropriately so
46 as to be fully recovered at reimbursement rates applicable for a
48 reduced level of care and the adjusted services can be delivered
48 without disrupting the effective delivery of services to other
50 residents of the facility.

2 The committee shall report its findings and recommendations,
3 including necessary implementing legislation amending the laws
4 governing nursing facility and residential care facility
5 licensing and reimbursement, to the Second Regular Session of the
6 120th Legislature by January 15, 2002.

7 **Sec. 9. Rule amendments to remove penalties for occupancy**
8 **declines.** By September 1, 2001, the Department of Human Services
9 shall amend its rules regarding the principles of reimbursement
10 for nursing facilities and the principles of reimbursement for
11 residential care facilities to remove any provision of those
12 principles that reduces the total reimbursement of fixed costs
13 when the facility's occupancy percentage, number of residents
14 served or other measures of utilization relative to capacity
15 falls below a specified percentage or threshold.

16 Rules adopted pursuant to this section are routine technical
17 rules as defined in the Maine Revised Statutes, Title 5, chapter
18 375, subchapter II-A.

19 **Emergency clause.** In view of the emergency cited in the
20 preamble, this Act takes effect when approved.

24 SUMMARY

25 This bill amends the Maine Registry of Certified Nursing
26 Assistants laws to ensure adequate staffing and coverage in order
27 to allow long-term care providers to obtain timely and accurate
28 information about the certification status of potential nursing
29 assistant employees and any record of past abuse or neglect that
30 would preclude hiring of those individuals.

31 This bill also requires the Department of Human Services to
32 make several improvements in the system of payment for long-term
33 care, including nursing facility services, residential care
34 facility services and home health care services, in order to
35 fairly reflect the current cost of providing those services
36 efficiently. These improvements include an overall requirement
37 that the payment system reflect the current costs of efficiently
38 providing necessary long-term care services, base reimbursement
39 rates on the most recently available audited cost figures at
40 least once every 3 years, adjust for inflation using factors that
41 reflect actual increases in operating costs incurred in the State
42 and allow nursing facilities to retain, as an efficiency
43 incentive, savings that they may produce in routine component
44 costs.

45 This bill also requires that the principles of reimbursement
46 provide payment rates that cover total Medicaid allowable costs,
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2 without adjusting the definition of such costs to conform to a
predetermined budget or appropriation amount.

4 This bill requires the Department of Human Services to
develop and fund a project to develop statistically valid
6 measurements of long-term care quality and requires that these
statistically valid measurements be applied in a fair and
8 independent manner in implementing any quality incentives as part
of the payment system for long-term care. The bill precludes the
10 department from implementing quality incentives at the expense of
full reimbursement of the current costs of providing service.

12
14 The bill requires recipients of long-term care coverage to
exhaust their own available assets before obtaining public
support, unless there is a spouse continuing to live in the
16 community, in which case that spouse is protected from the loss
of assets to the point of impoverishment.

18
20 The department is required to remove the homebound
requirement that currently applies to Medicaid home health
22 coverage in recognition of the fact that federal law imposes the
homebound standard only with respect to Medicare coverage of home
health services and does not provide for such a restriction on
24 Medicaid coverage.

26 The bill requires the Joint Standing Committee on Health and
Human Services to study the current statutory obstacles to
28 allowing a consumer to chose to remain in a single, long-term
care setting when changes occur in the level of services needed.
30 The committee is required to identify changes in the existing
statutory scheme that should be made in order to properly
32 compensate providers and remove regulatory obstacles to the
provision of a continuum of services without needless disruption
34 of residents' lives.

36 Finally, the bill requires the Department of Human Services
to amend its principles of reimbursement rules for both nursing
38 facilities and residential care facilities to remove any
provision that reduces the total reimbursement of fixed costs
40 when a facility's occupancy percentage, number of residents
served or other measurement of utilization relative to capacity
42 falls below a specified percentage or threshold.