

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 1924

S.P. 722

In Senate, December 17, 2001

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

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 17, 2001. Referred to the Committee on Health and Human Services and ordered printed pursuant to Joint Rule 308.2

A handwritten signature in cursive script that reads "Pamela L. Cahill".

PAMELA L. CAHILL
Secretary of the Senate

Presented by Senator MARTIN of Aroostook.
Cosponsored by Representative BROOKS of Winterport and
President BENNETT of Oxford, Senators: LONGLEY of Waldo, TURNER of Cumberland,
Representatives: KANE of Saco, DUDLEY of Portland, DUGAY of Cherryfield, NASS of
Acton, SCHNEIDER of Durham.

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

4 Whereas, this legislation must be enacted as an emergency
6 measure to ensure ongoing, continual access to nursing facilities
with fully qualified personnel; and

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

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

16 **Sec. 1. 32 MRSA §7053, sub-§3,** as amended by PL 2001, c. 316,
18 §2, is further amended to read:

20 **3. Requirements to be a licensed social worker on or before**
22 **June 30, 2002.** On or before June 30, 2002, the board may issue a
license to an applicant who meets at least one of the
requirements set out in this subsection:

24 A. The applicant must have received a bachelor's degree in
26 social work or social welfare from an accredited educational
institution; demonstrated to the satisfaction of the board
28 adherence to the ethics of the social worker profession; and
successfully completed the examination prescribed by the
board; or

32 B. The applicant must have received a bachelor's degree in
a related field from an institution that, at the time the
34 degree was received, did not have a program accredited by
the Council on Social Work Education but subsequently
36 offered such a program; demonstrated to the satisfaction of
the board adherence to the ethics of the social worker
38 profession; and successfully completed the examination
prescribed by the board.

40 The board shall issue rules, in accordance with the Maine
42 Administrative Procedure Act, Title 5, chapter 375, by which an
individual who has a bachelor's degree that does not qualify
44 under paragraph A or B may be eligible for a license.

46 The board may not issue a licensed social worker conditional
48 license under this subsection after June 30, 2002, except in the
case of individuals who are employed or who seek employment in
licensed nursing facilities. Individuals who have met the
50 requirements of this subsection and have a licensed social worker

2 conditional license issued prior to June 30, 2002, may continue
to work towards full licensure as a licensed social worker under
this subsection.

4
6 The board may issue a licensed social worker conditional license
8 under this subsection after June 30, 2002 to an individual who is
10 employed or who seeks employment in a licensed nursing facility
12 for an extended time frame if the Commissioner of Human Services
14 certifies to the board that the license is necessary to permit
16 nursing facilities to continue to attract and retain qualified
18 personnel and fulfill applicable licensure requirements.

20 **Sec. 2. Treatment of costs and inflation in the principles of**
22 **reimbursement for residential care facilities rules.** By July 1, 2002,
24 the Department of Human Services shall amend its rules regarding
26 principles of reimbursement for residential care facilities to
28 ensure that reimbursement reflects the current cost of providing
30 services in an efficient manner. The revised principles of
32 reimbursement must:

34 1. Provide for a rebasing of reimbursement rates based on
36 data from the most recent audited year and provide for future
38 rebasing no less frequently than every 3 years;

40 2. Contain an annual inflation adjustment that reflects the
42 actual increases in operating costs incurred by state residential
44 care facilities;

46 3. Recognize regional variations in labor costs and
48 establish at least 4 regions for purposes of quarterly
adjustments;

50 4. Recognize and reimburse as fixed costs all necessary and
52 proper expenditures for liability insurance and malpractice
54 costs, along with other types of insurance;

56 5. Recognize and reimburse as fixed costs all necessary and
58 proper expenditures that increase the pool of qualified health
60 care workers or that are related to achieving compliance with the
62 rules and regulations associated with the federal Health
64 Insurance Portability and Accountability Act of 1996, including,
66 but not limited to, consulting costs, employee education and
68 training, tuition reimbursement and education loan forgiveness;

70 6. Allow each residential care facility to retain the
72 entire amount, if any, by which the interim per diem payment rate
74 for the "routine component" exceeds the actual allowable per diem
76 costs classified within the "routine component" for any
78 cost-reporting period; and

2 7. Determine allowable costs for particular categories of
4 costs without imposing any peer group upper limits and remove
6 those limits that are prescribed by the principles of
8 reimbursement for residential care facilities. The principles of
10 reimbursement may continue to impose any upper limits that are
12 required by federal law or regulation. The rules must be
14 designed to ensure that aggregate Medicaid payments for nursing
16 facility services are sufficient to cover the total allowable
18 costs of providing the Medicaid covered portion of those services.

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. Rules amended pursuant to this section
26 take effect no later than July 1, 2002.

28 **Sec. 3. Treatment of costs and inflation in the principles of**
30 **reimbursement for nursing facilities rules.** By July 1, 2002, the
32 Department of Human Services shall amend its rules regarding
34 principles of reimbursement for nursing facilities to ensure that
36 reimbursement reflects the current cost of providing services in
38 an efficient manner. The revised principles of reimbursement
40 must:

42 1. Provide for a rebasing of reimbursement rates based on
44 data from the most recent audited year and provide for future
46 rebasing no less frequently than every 3 years;

48 2. Contain an annual inflation adjustment that reflects the
50 actual increases in operating costs incurred by state nursing
facilities;

 3. Recognize regional variations in labor costs and
establish at least 4 regions for purposes of quarterly
adjustments;

 4. Allow each nursing facility to retain the entire amount,
if any, by which the interim per diem payment rate for the
so-called "routine component" exceeds the actual allowable per
diem costs classified within the routine component for any
cost-reporting period;

 5. Recognize and reimburse as fixed costs all necessary and
proper expenditures that increase the pool of qualified health
care workers or that are related to achieving compliance with the
rules and regulations associated with the federal Health
Insurance Portability and Accountability Act of 1996, including,
but not limited to, consulting costs, employee education and
training, tuition reimbursement and education loan forgiveness;
and

2 6. Determine allowable costs for particular categories of
4 costs without imposing any peer group upper limits and remove
6 those limits that are prescribed by the rules of the Department
8 of Human Services, Chapter 101, Maine Medical Assistance Manual,
10 Chapter III, Section 67 in Section 80.3.3.5 for the direct care
cost component and in Section 80.5.4 for the routine cost
component. The principles of reimbursement may continue to
impose any upper limits that are required by federal law or
regulation.

12 The rules must be designed to ensure that aggregate Medicaid
14 payments for nursing facility services are sufficient to cover
16 the total allowable costs of providing the Medicaid-covered
18 portion of those services. Rules adopted pursuant to this
20 section are routine technical rules as defined in the Maine
Revised Statutes, Title 5, chapter 375, subchapter II-A. Rules
amended pursuant to this section take effect no later than July
1, 2002.

22 **Sec. 4. Rule amendments to remove penalties for occupancy
declines.** By July 1, 2002, the Department of Human Services shall
24 amend its rules regarding the principles of reimbursement for
26 nursing facilities and the principles of reimbursement for
28 residential care facilities to remove any provision of those
principles that reduces the total reimbursement of fixed costs
when a facility's occupancy percentage, number of residents
served or other measure of utilization relative to capacity falls
below a specified percentage or threshold.

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

34 **Sec. 5. Fair hearing proceedings and hearing officers.** By October
36 1, 2002, the Department of Human Services shall amend the rules
38 governing fair hearing proceedings for appeals by providers of
40 Medicaid payment rates to require that the hearing officer for
42 these proceedings be an individual who is not employed by the
department and to vest in the hearing officer final authority to
issue appropriate rulings that are not subject to modification by
the Commissioner of Human Services.

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

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

2

SUMMARY

4 The bill amends the law administered by the State Board of
6 Social Worker Licensure to permit issuance of conditional
8 licenses following June 30, 2002 to individuals who seek
10 employment in licensed nursing facilities, where the Commissioner
of Human Services has certified that this option is necessary to
permit nursing facilities to continue to attract and obtain
qualified personnel.

12 The bill also requires the Department of Human Services to
14 make several improvements in the system of payment for long-term
16 care, including nursing facility services, residential care
18 facility services and home health services, in order to fairly
20 reflect the current cost of providing those services
22 efficiently. These improvements include an overall requirement
24 that the payment system reflect the current costs of efficiently
26 providing necessary long-term care services, rebasing to the most
28 recently available audited cost figures, rebasing every 3 years,
30 relying on regional wage adjustments applied quarterly, adjusting
for inflation using factors that reflect actual increases in
operating costs experienced in Maine and allowing nursing
facilities to retain, as an efficiency incentive, savings that
they may produce in routine component costs. The bill includes
language requiring recognition and payment as fixed costs of
certain expenditures that increase the pool of qualified health
care workers, including, but not limited to, employee education
and training, tuition reimbursement and education loan
forgiveness.

32 The bill further requires that residential care
34 reimbursement rules be changed to include recognition and payment
36 as fixed costs of liability insurance and malpractice costs along
38 with other types of insurance. The current reimbursement rules
recognize fire insurance. The bill also requires recognition of
allowable costs without imposition of peer review caps.

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

48 Under the current version of the principles of reimbursement
50 for nursing facilities, the Department of Human Services rules,
Chapter 101, Chapter II, Section 67, Section 44.10, facilities
are subject to a negative adjustment in their fixed cost

2 component if their annual adjusted level of occupancy falls below
3 90% in the case of a facility with more than 60 beds or below 85%
4 in the case of a facility with 60 beds or fewer. Under the
5 current versions of the principles of reimbursement for
6 residential care facilities, facilities are subject to a negative
7 adjustment in their so-called "fixed component" if their annual
8 adjusted level of occupancy falls below 90% in the case of a
9 facility with more than 60 beds or below 85% in the case of a
10 facility with 60 beds or fewer.

11
12 The bill also modifies fair hearing proceedings on Medicaid
13 payment issues. By October 1, 2002, the Department of Human
14 Services shall amend the rules governing fair hearing proceedings
15 for appeals by providers of Medicaid payment rates to require
16 that the hearing officer for these proceedings be an individual
17 who is not employed by the department and to vest in the hearing
18 officer final authority to issue appropriate rulings that are not
subject to modification by the Commissioner of Human Services.