

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1078

H.P. 745

House of Representatives, March 17, 2009

**An Act To Strengthen Sustainable Long-term Supportive Services
for Maine Citizens**

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PETERSON of Rumford.
Cosponsored by Senator MILLS of Somerset and
Representatives: BERRY of Bowdoinham, CONNOR of Kennebunk, LEWIN of Eliot,
PERRY of Calais, ROTUNDO of Lewiston, SANBORN of Gorham, STRANG BURGESS of
Cumberland, Senator: RAYE of Washington.

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

2 **Sec. 1. 22 MRSA §7301**, as enacted by PL 1981, c. 511, §1, is amended to read:

3 **§7301. Legislative intent**

4 **1. Findings.** The Legislature finds that:

5 A. In-home and community support services have not been sufficiently available to
6 many adults with long-term care needs;

7 B. Many adults with long-term care needs are at risk of being or already have been
8 placed in institutional settings, because in-home and community support services or
9 funds to pay for these services have not been available to them;

10 C. In some instances placement of adults with long-term care needs in institutional
11 settings can result in emotional and social problems for these adults and their
12 families; ~~and~~

13 D. For many adults with long-term care needs, it is less costly for the State to
14 provide in-home and community support services than it is to provide care in
15 institutional settings;

16 E. The majority of adults with long-term care needs have indicated a preference to
17 remain in their own homes and in community settings rather than having their needs
18 met in institutional settings;

19 F. For many adults with long-term care needs and their families, the process to
20 identify and secure appropriate services is confusing and difficult to navigate; and

21 G. A sustainable system of long-term care to meet the needs of citizens must
22 emphasize in-home and community support services that capitalize upon personal
23 and family responsibility.

24 **2. Policy.** The Legislature declares that it is the policy of this State:

25 A. To increase the availability of in-home and community support services for
26 adults with long-term care needs;

27 B. That the priority recipients of in-home and community support services,
28 pursuant to this subtitle, ~~shall be~~ are the elderly and disabled adults who are at the
29 greatest risk of being, or who already have been, placed inappropriately in an
30 institutional setting; ~~and~~

31 C. That a variety of agencies, facilities and individuals ~~shall~~ must be encouraged to
32 provide in-home and community support services; ~~and~~

33 D. That the overall design of the long-term care system and the allocation of long-
34 term care resources promote the goal of at least 50% of the elderly and disabled
35 adults receiving in-home and community support services and no more than 50% of
36 those being served receiving such services in institutional settings.

37 **Sec. 2. 22 MRSA §7302**, as amended by PL 2001, c. 596, Pt. B, §10 and affected
38 by §25 and amended by PL 2003, c. 689, Pt. B, §§6 and 7, is further amended to read:

1 **§7302. Definitions**

2 As used in this subtitle, unless the context otherwise indicates, the following terms
3 have the following meanings.

4 **1. Adults with long-term care needs.** "Adults with long-term care needs" means
5 adults who have physical or mental limitations which restrict their ability to carry out
6 activities of daily living and impede their ability to live independently, or who are at risk
7 of being, or who already have been, placed inappropriately in an institutional setting.

8 **1-A. Activities of daily living.** "Activities of daily living" means activities essential
9 to a person's daily living including: eating and drinking; bathing and hygiene; dressing,
10 including putting on and removing prostheses and clothing; toileting, including toilet or
11 bedpan use, ostomy or catheter care, clothing changes and cleaning related to toileting;
12 locomotion or moving between locations within a room or other areas, including with the
13 use of a walker or wheelchair; transfers or moving to and from a bed, chair, couch,
14 wheelchair or standing position; and bed mobility or positioning a person's body while in
15 bed, including turning from side to side.

16 **2. Agreement.** "Agreement" means a contract, grant or other method of payment.

17 **2-A. Assessment.** "Assessment" means an evaluation of the functional capacity of an
18 individual to live independently given appropriate supports with activities of daily living
19 and instrumental activities of daily living.

20 **3. Commissioner.** "Commissioner" means the Commissioner of Health and Human
21 Services.

22 **3-A. Consumer.** "Consumer" means a person eligible for services under this subtitle.

23 **4. Department.** "Department" means the Department of Health and Human
24 Services.

25 **5. In-home and community support services.** "In-home and community support
26 services" means health and social services and other assistance required to enable adults
27 with long-term care needs to remain in their places of residence. These services include,
28 but are not limited to, self-directed care services; medical and diagnostic services;
29 professional nursing; physical, occupational and speech therapy; dietary and nutrition
30 services; home health aide services; personal care assistance services; companion and
31 attendant services; handyman, chore and homemaker services; respite care; counseling
32 services; transportation; small rent subsidies; various devices ~~which~~ that lessen the effects
33 of disabilities; and other appropriate and necessary social services.

34 **6. Institutional settings.** "Institutional settings" means residential care facilities,
35 licensed pursuant to chapter 1664; intermediate care and skilled nursing facilities and
36 units and hospitals, licensed pursuant to chapter 405; and state institutions for individuals
37 who are mentally ill or mentally retarded or who have related conditions.

38 **6-A. Instrumental activities of daily living.** "Instrumental activities of daily living"
39 means the essential, nonmedical tasks that enable the consumer to live independently in

1 the community, including light housework, preparing meals, taking medications,
2 shopping for groceries or clothes, using the telephone, managing money and other similar
3 activities.

4 **7. Personal care assistance services.** "Personal care assistance services" means
5 services ~~which are~~ required by an adult with long-term care needs to achieve greater
6 physical independence, which may be ~~consumer-directed~~ self-directed and which include,
7 but are not limited to:

- 8 A. Routine bodily functions, such as bowel or bladder care;
- 9 B. Dressing;
- 10 C. Preparation and consumption of food;
- 11 D. Moving in and out of bed;
- 12 E. Routine bathing;
- 13 F. Ambulation; and
- 14 G. ~~Any other similar activity~~ Activities of daily living and instrumental activities of
15 daily living.

16 **8. Personal care assistant.** "Personal care assistant" means an individual who has
17 completed a training course of at least 40 hours, which includes, but is not limited to,
18 instruction in basic personal care procedures, such as those listed in subsection 7, first aid
19 and handling of emergencies; or an individual who meets competency requirements, as
20 determined by the department or its designee; or, if providing service to a consumer
21 receiving self-directed attendant services under chapter 1622, a person approved by the
22 consumer or the consumer's surrogate as being able to competently assist in the
23 fulfillment of the personal care assistance services outlined in the consumer's authorized
24 plan of care. Nothing in Title 32, chapter 31, may be interpreted to require that a personal
25 care assistant be licensed under that chapter or supervised by a person licensed under that
26 chapter.

27 **9. Provider.** "Provider" means any entity, agency, facility or individual who offers
28 or plans to offer any in-home or community support services or institutionally based
29 long-term care services.

30 **9-A. Qualified provider agency.** "Qualified provider agency" means a community-
31 based agency with the organizational and administrative capacity to administer and
32 monitor a complete range of in-home and community support services including: serving
33 as a resource for consumers and their surrogates to identify available service options;
34 coordinating and implementing the services in the consumer's authorized plan of care;
35 insuring that authorized services are delivered according to the authorized plan of care;
36 providing skills training; answering questions; assisting with problem resolution;
37 administrative functions, including maintaining consumer records and processing payroll,
38 reimbursement or claims; overseeing and assuring compliance with policy requirements;
39 and conducting required utilization review activities.

1 the department of the requirements for the personal care assistant services and personal
2 care assistant hours to maintain the consumer in a home or community-based setting.

3 **3. Authorized plan of care.** The department shall develop an authorized plan of care
4 for each consumer determined to be eligible for self-directed care services under this
5 chapter or Title 34-B, chapter 5, subchapter 3, article 2. The authorized plan of care must
6 be based upon the assessment under subsection 2 conducted by the department. The
7 authorized plan of care must be designed to meet the needs identified by the assessment,
8 giving consideration to the consumer's living arrangement, informal supports and services
9 provided by other public or private funding sources to ensure nonduplication of services.

10 **4. Proposals from qualified provider agencies.** The department shall solicit
11 proposals from qualified provider agencies to provide coordinated in-home and
12 community support services. Qualified provider agencies shall submit proposals in such
13 form and manner as required by the department. The department shall establish in rules
14 adopted pursuant to section 7313 the criteria for selecting proposals.

15 **5. Standardized rates and wages.** The department shall standardize provider rates,
16 qualified provider agency rates and personal care assistant wages in rules adopted
17 pursuant to section 7313.

18 **§7313. Rules**

19 The department shall adopt rules as necessary for the effective administration of the
20 program pursuant to this chapter, in accordance with the Maine Administrative Procedure
21 Act. In the development of such rules, the department shall consult with consumers,
22 representatives of consumers and providers. Rules adopted pursuant to this section are
23 major substantive rules as defined by Title 5, chapter 375, subchapter 2-A.

24 **Sec. 4. Plan for consolidated services.** The Department of Health and Human
25 Services shall develop a plan, including any necessary legislation, for consolidating in-
26 home and community support services as described in the Maine Revised Statutes, Title
27 22, chapter 1622.

28 **1. Self-directed models.** The plan must evaluate a variety of self-directed program
29 models, including the use of those authorized in the federal Deficit Reduction Act of
30 2005, Public Law 109-171, Sections 6086 and 6087 in combination with existing
31 programs or as a replacement as long as the benefits consumers receive from current
32 programs are not diminished.

33 **2. Process.** The plan must identify the process for consolidating the in-home and
34 community support services including any reorganization or staffing needs for developing
35 the consolidated intake, eligibility and assessment system. It must describe the
36 assessment methodology and the components of the authorized plan of care.

37 **3. Setting rates and worker wages.** The plan must include a description of the
38 process and methodology for achieving standardized rates and worker wages.

39 **4. Submission of plan.** The Commissioner of Health and Human Services shall
40 submit the plan to the Joint Standing Committee on Health and Human Services no later

1 than January 15, 2010. Following receipt and review of the plan, the committee may
2 report out to the Second Regular Session of the 124th Legislature legislation necessary to
3 implement the plan.

4 **Sec. 5. State plan amendment or waivers.** The Department of Health and
5 Human Services shall submit to the federal Department of Health and Human Services,
6 Centers for Medicare and Medicaid Services any amendments or waivers needed to
7 establish the consolidated program for consumer-directed care described in the Maine
8 Revised Statutes, Title 22, chapter 1622.

9 SUMMARY

10 This bill requires the Department of Health and Human Services to develop a unified
11 system of in-home and community support services, including self-directed care, for
12 adults with long-term care needs who are eligible for services under the Maine Revised
13 Statutes, Title 22, subtitle 5 and Title 34-B, chapter 5, subchapter 3, article 2. The bill
14 does the following.

15 1. It includes findings and policies related to legislative intent.

16 2. It adds to Title 22, subtitle 5 definitions for "activities of daily living,"
17 "assessment," "consumer," "instrumental activities of daily living," "qualified provider
18 agency," "self-directed care services" and "surrogate."

19 3. It adds a new chapter for a program of coordinated in-home and community
20 support services for the elderly and disabled adults. The program must be established by
21 July 1, 2010 and include:

22 A. A unified system for intake and eligibility determination, consumer assessment
23 and the development of authorized plans of care for eligible consumers. The program
24 must seek proposals from qualified provider agencies and must provide standardized
25 provider rates and worker wages;

26 B. A single system for the intake and eligibility determination functions of existing
27 programs for in-home and community support services;

28 C. An assessment to be completed by the department with the consumer's physician
29 determining medical eligibility and the department determining the requirements for
30 support services as well as personal care assistant hours needed to maintain the
31 consumer in a home or community-based setting;

32 D. An authorized plan of care for each consumer to be developed by the department;
33 and

34 E. Proposals from qualified provider agencies to provide or coordinate services for
35 the authorized plan of care solicited by the department.

36 4. It requires the department to adopt major substantive rules.

1 5. By January 15, 2010, prior to the implementation of the new program, the bill
2 requires the department to develop a plan, including any necessary legislation for
3 consolidating in-home and community support services that includes:

4 A. An evaluation of self-directed care models authorized in the federal Deficit
5 Reduction Act to examine the possible use of these models in combination or instead
6 of existing programs without diminishing the benefits consumers currently receive;

7 B. A description of the process proposed for consolidating the in-home and
8 community support services including any reorganization or staffing needs for
9 developing the consolidated intake, eligibility and assessment system as well as the
10 assessment methodology and the components of the authorized plan of care; and

11 C. The process and methodology for achieving standardized rates and worker
12 wages.

13 6. The bill authorizes the Joint Standing Committee on Health and Human Services to
14 report out to the Second Regular Session of the 124th Legislature a bill to implement the
15 plan, if necessary.