

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1507

H.P. 1056

House of Representatives, December 10, 2009

**An Act To Ensure Fairness in Penalties for Administrative Errors in
the Long-term Care Assessment Process**

(EMERGENCY)

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

Received by the Clerk of the House on December 8, 2009. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PERRY of Calais.
Cosponsored by Senator BRANNIGAN of Cumberland and
Representatives: CAMPBELL of Newfield, JONES of Mount Vernon, SANBORN of Gorham.

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

3 **Whereas,** the rules of the Department of Health and Human Services currently
4 provide for the outright denial of all payment for services in a nursing facility when a
5 provider unintentionally misses the administrative deadline for requesting and obtaining a
6 reassessment of coverage of an existing resident based on the resident's need for services;
7 and

8 **Whereas,** historically the department had mitigated the effects of this penalty by
9 exercising administrative discretion to waive the penalty in certain circumstances; and

10 **Whereas,** the department has now determined that under its existing rules such
11 waivers are impermissible and therefore will now uniformly apply this penalty,
12 potentially depriving a nursing facility of any reimbursement for substantial services
13 actually delivered to a Medicaid-covered person actually in need of those services; and

14 **Whereas,** the department is developing a similar set of rules to regulate coverage of
15 residential services in private, nonmedical and board and care institutions; and

16 **Whereas,** in fairness to and to ensure the financial stability of long-term care
17 providers, these penalties should be limited to an amount that will provide an incentive to
18 administrative accuracy without denying all payment for care and services actually
19 rendered; and

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

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

25 **Sec. 1. 22 MRSA §3174-I, sub-§3,** as enacted by PL 1989, c. 498 and amended
26 by PL 2003, c. 689, Pt. B, §6, is further amended to read:

27 **3. Rules.** ~~The Department of Health and Human Services~~ department shall adopt
28 rules in accordance with the Maine Administrative Procedure Act, ~~Title 5, chapter 375,~~
29 to implement this section. Notwithstanding any other provision of law, the department may
30 not impose a penalty that exceeds 20% of the reimbursement otherwise payable for the
31 services rendered to a resident nor deny reimbursement as a consequence of the failure of
32 a nursing facility to timely request or obtain an assessment of a resident required under
33 this chapter after the deadline for such an assessment and until an assessment is obtained,
34 unless the department proves by a preponderance of the evidence that the services
35 provided by the nursing facility were not medically and socially necessary and
36 appropriate for the resident.

37 **Sec. 2. 22 MRSA §3174-Z,** as enacted by PL 2001, c. 404, §1, is amended to
38 read:

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§3174-Z. Private, nonmedical and board and care institutions

Rules concerning the principles for reimbursement for private, nonmedical and board and care institutions must be major substantive rules as defined in Title 5, chapter 375, subchapter H-A 2-A. Notwithstanding any other provision of law, the department may not impose a penalty that exceeds 20% of the reimbursement otherwise payable for the services rendered to a resident nor deny reimbursement as a consequence of the failure of a private, nonmedical and board and care institution to timely request or obtain an assessment of a resident required under this chapter after the deadline for such an assessment and until an assessment is obtained, unless the department proves by a preponderance of the evidence that the services provided by the institution were not medically and socially necessary and appropriate for the resident.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill amends the laws governing the rules of the Department of Health and Human Services for medical eligibility for coverage in nursing facilities and for private, nonmedical and board and care institutions, which provide, among other services, residential care services for the aged and disabled. It requires that for both types of facilities, to the extent the department establishes penalties or denies reimbursement when a facility is late or misses a deadline for obtaining an assessment of a resident's need for services, the department may not deny reimbursement and may not impose a penalty greater than 20% of total reimbursement unless it is proven that the resident, if timely assessed, would not have been eligible for continuing services.