

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1655

H.P. 1191

House of Representatives, April 30, 2019

An Act To Improve and Modernize Home-based Care

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

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MEYER of Eliot.
Cosponsored by Senator MOORE of Washington and
Representatives: MADIGAN of Waterville, PERRY of Calais, STOVER of Boothbay.

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

2 **Sec. 1. 5 MRSA §12004-I, sub-§39-A** is enacted to read:

3 **39-A.**

4 Human Services Social Determinants Not Authorized 22 MRSA §3173-J
5 of Health
6 Stakeholder
7 Advisory Group

8 **Sec. 2. 22 MRSA §3173-H, sub-§5, ¶¶C and D**, as enacted by PL 2017, c. 307,
9 §2, are amended to read:

10 C. Must provide that group therapy for behavioral health or addiction services
11 covered by the MaineCare program may be delivered through telehealth; ~~and~~

12 D. Must include requirements for individual providers and the facility or
13 organization in which the provider works for providing telehealth and telemonitoring
14 services; ~~and~~

15 **Sec. 3. 22 MRSA §3173-H, sub-§5, ¶E** is enacted to read:

16 E. Must require that the department provide reimbursement for telehealth or
17 telemonitoring private duty nursing, home health services and personal care services
18 for an adult MaineCare member with a physical disability or an adult who is elderly
19 who is receiving MaineCare services under a waiver granted by the federal
20 Department of Health and Human Services, Centers for Medicare and Medicaid
21 Services for home-based and community-based services or state-funded home-based
22 and community-based support services. The services to be reimbursed must include
23 the following:

24 (1) Services that support a member's ability to remain in the member's home,
25 including, but not limited to, telehealth and telemonitoring services that support a
26 member's safety, mobility or medication compliance, or that support virtual home
27 visits and clinical consultation; and

28 (2) Services of a pharmacist to provide medication evaluation or consultation to
29 a member.

30 **Sec. 4. 22 MRSA §3173-I, sub-§3**, as enacted by PL 2017, c. 307, §3, is
31 amended to read:

32 **3. Duties.** The advisory group shall:

33 A. Evaluate technical difficulties related to telehealth and telemonitoring services;
34 ~~and~~

35 B. Make recommendations to the department to improve telehealth and
36 telemonitoring services statewide; ~~and~~

1 C. Make recommendations to the department on the use of technologies that can be
2 used in a home.

3 **Sec. 5. 22 MRSA §3173-J** is enacted to read:

4 **§3173-J. Social Determinants of Health Stakeholder Advisory Group**

5 The Social Determinants of Health Stakeholder Advisory Group, as established by
6 Title 5, section 12004-I, subsection 39-A and referred to in this section as "the advisory
7 group," is created within the department.

8 **1. Membership.** The advisory group consists of the commissioner or the
9 commissioner's designee and 5 other members appointed by the commissioner as follows:

10 A. A representative of an organization that provides home health care services as
11 defined in section 3172;

12 B. A representative of an organization that works to reduce food insecurity;

13 C. A representative of an organization that provides housing assistance;

14 D. A representative of an organization that promotes public health; and

15 E. A representative of an organization that supports the aging process.

16 **2. Terms; quorum.** The appointed members serve for 3-year terms and may be
17 reappointed. Four members constitute a quorum.

18 **3. Meetings.** The advisory group shall hold at least one regular meeting and no
19 more than 4 meetings each year.

20 **4. Duties.** The advisory group shall:

21 A. Collaborate with providers of home health care services and other services
22 relating to the social determinants of health; and

23 B. Make recommendations to the department to increase collaboration and sharing of
24 resources among service providers to improve MaineCare members' health and
25 reduce unnecessary use of health care services.

26 For the purposes of this section, "social determinants of health" means a person's
27 social, economic and physical environments that affect the person's health.

28 **Sec. 6. 22 MRSA §3174-BBB** is enacted to read:

29 **§3174-BBB. Compensation for care provided to the elderly or persons with physical**
30 **disabilities**

31 **1. Reimbursement.** The department shall provide for the reimbursement under the
32 MaineCare program for private duty nursing, home health services and personal care
33 services provided to adult MaineCare members with physical disabilities or who are
34 elderly and receiving services under a waiver granted by the federal Department of
35 Health and Human Services, Centers for Medicare and Medicaid Services or state-funded

1 home-based and community-based support services for home-based and community-
2 based care on the basis of rates and a methodology established by rule under subsection 3.
3 The department shall, beginning in 2020 and at least every 2 years thereafter and
4 whenever legislation is enacted that affects the costs of providing private duty nursing,
5 home health services and personal care services, conduct a substantive review of the rates
6 set under this section. The review must provide for public comment.

7 **2. Minimum rate.** A review conducted pursuant to subsection 1 may not result in a
8 reimbursement rate received by a provider that is lower than the rate in effect on
9 December 31, 2018.

10 **3. Rulemaking.** The department shall adopt rules to establish reimbursement rates
11 under this section that take into account the costs of providing care and services in
12 conformity with applicable state and federal laws, rules and regulations; quality and
13 safety standards; and local competitive wage markets. Rules adopted pursuant to this
14 subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

15 This section applies to all funds, including federal funds, paid by any agency of the
16 State to a provider for care covered by the waiver under subsection 1.

17 **Sec. 7. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 22,
18 section 3173-J, subsection 2, of the initial appointments of the Social Determinants of
19 Health Stakeholder Advisory Group, the Commissioner of Health and Human Services
20 shall designate the first appointment for a one-year term, the next 2 appointments for 2-
21 year terms and any other appointments for 3-year terms. An initial term of one or 2 years
22 may not be considered a full term for purposes of limiting the number of terms for which
23 a member may serve.

24 **Sec. 8. Department of Health and Human Services to amend rules.** The
25 Department of Health and Human Services shall amend its rules for services provided
26 under rule Chapter 101: MaineCare Benefits Manual, Chapter II, Sections 19, 40 and 96
27 and rule Chapter 5, Office of Elder Services Policy Manual, Section 63 so that:

28 1. A certified nurse practitioner licensed under the Maine Revised Statutes, Title 32,
29 chapter 31 and a physician assistant licensed under Title 32, chapter 36 or 48 may
30 authorize or amend a plan of care; and

31 2. Reimbursement is provided for activities performed outside of the home by a
32 registered nurse licensed under Title 32, chapter 31 that are directly related to a member's
33 care and are part of the member's plan of care.

34 **Sec. 9. Department of Health and Human Services to convene work**
35 **group.** The Department of Health and Human Services shall convene a work group to
36 review options for adjusting reimbursement rates, including, but not limited to, the
37 feasibility and cost of adjusting rates, in order to provide health care coverage and paid
38 sick leave to home-based and community-based care providers providing services under
39 rule Chapter 101: MaineCare Benefits Manual, Chapter III, Sections 19, 40 and 96 and
40 rule Chapter 5, Office of Elder Services Policy Manual, Section 63. The work group
41 must include home-based and community-based care providers, including personal

1 support services workers and direct care workers; worker advocates; and stakeholders
2 affected by rate changes. By December 15, 2019, the Department of Health and Human
3 Services shall submit a report to the Joint Standing Committee on Health and Human
4 Services on the work group's review and recommendations regarding adjusting
5 reimbursement rates to provide health care coverage and paid sick leave to home-based
6 and community-based care providers. The joint standing committee may report out a bill
7 concerning the report to the Second Regular Session of the 129th Legislature.

8 **Sec. 10. Department of Health and Human Services to review and amend**
9 **its supervisory requirements.** The Department of Health and Human Services shall
10 review the current requirement for in-person supervision as required under rule Chapter
11 101: MaineCare Benefits Manual, Chapter II, Sections 19, 40 and 96 and rule Chapter 5,
12 Office of Elder Services Policy Manual, Section 63. In its review, the department shall
13 determine whether this requirement is clinically necessary or the best use of financial
14 resources given the availability of technology for interactive, real-time communication
15 and in light of the federal 21st Century Cures Act, Public Law 114-255, Section
16 12006(a). In its review, the department shall consider the use of technology in meeting
17 compliance requirements and making supervisory requirements consistent for all
18 providers. By December 15, 2019, the department shall submit a report to the Joint
19 Standing Committee on Health and Human Services on the department's review and
20 recommendations regarding in-person supervision requirements under rule Chapter 101:
21 MaineCare Benefits Manual, Chapter II, Sections 19, 40 and 96 and rule Chapter 5,
22 Office of Elder Services Policy Manual, Section 63 for all providers and regarding
23 meeting compliance requirements. The joint standing committee may report out a bill
24 concerning the report to the Second Regular Session of the 129th Legislature.

25 SUMMARY

26 This bill:

27 1. Establishes the Social Determinants of Health Stakeholder Advisory Group to
28 collaborate with providers of home health care services and other services relating to the
29 social determinants of health and make recommendations to the Department of Health
30 and Human Services;

31 2. Provides for reimbursement for telehealth or telemonitoring private duty nursing,
32 home health services and personal care services for an adult MaineCare member with a
33 physical disability or an adult who is elderly who is receiving MaineCare services under a
34 waiver granted by the federal Department of Health and Human Services, Centers for
35 Medicare and Medicaid Services for home-based and community-based services or state-
36 funded home-based and community-based support services. The services must include:

37 A. Services that support a member's ability to remain in the member's home,
38 including, but not limited to, telehealth and telemonitoring services that support a
39 member's safety, mobility or medication compliance, or that support virtual home
40 visits and clinical consultation; and

41 B. Services of a pharmacist to provide medication evaluation or consultation to a
42 member;

1 3. Expands the duties of the Maine Telehealth and Telemonitoring Advisory Group
2 to include making recommendations about home technology to the Department of Health
3 and Human Services;

4 4. Directs the Department of Health and Human Services, beginning in 2020 and at
5 least every 2 years thereafter and whenever legislation is enacted that affects the costs of
6 providing private duty nursing, home health services and personal care services, to review
7 the rates for providers of services under a waiver granted by the federal Department of
8 Health and Human Services, Centers for Medicare and Medicaid Services for home-based
9 and community-based services or state-funded home-based and community-based support
10 services;

11 5. Directs the Department of Health and Human Services to amend its rules for
12 services provided under rule Chapter 101: MaineCare Benefits Manual, Chapter II,
13 Sections 19, 40 and 96 and rule Chapter 5, Office of Elder Services Policy Manual,
14 Section 63 so that:

15 A. A certified nurse practitioner licensed under the Maine Revised Statutes, Title 32,
16 chapter 31 and a physician assistant licensed under Title 32, chapter 36 or 48 may
17 authorize or amend a plan of care; and

18 B. Reimbursement is provided for activities performed outside of the home by a
19 registered nurse licensed under Title 32, chapter 31 that are directly related to a
20 member's care and are part of the member's plan of care;

21 6. Directs the Department of Health and Human Services to convene a work group to
22 review options for adjusting rates in order to provide health care coverage and paid sick
23 leave to home-based and community-based care providers and to report the
24 recommendations of the work group to the Joint Standing Committee on Health and
25 Human Services; and

26 7. Directs the Department of Health and Human Services to review its in-person
27 supervisory requirement for home-based and community-based care providers to
28 determine whether the use of technology that provides interactive, real-time
29 communication is feasible and practical and to report its recommendations to the Joint
30 Standing Committee on Health and Human Services.