

MAINE STATE LEGISLATURE

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2 Date: 4-1-22

(Filing No. H-908)

3 MINORITY
HEALTH AND HUMAN SERVICES

4 Reproduced and distributed under the direction of the Clerk of the House.

5 STATE OF MAINE
6 HOUSE OF REPRESENTATIVES
7 130TH LEGISLATURE
8 SECOND REGULAR SESSION

9 COMMITTEE AMENDMENT "A" to H.P. 1324, L.D. 1773, "An Act To Make
10 MaineCare Rules Pertaining to Global Home and Community-based Services Waiver
11 Programs and Person-centered Planning and Settings Major Substantive Rules"

12 Amend the bill in the 3rd paragraph after the title in the first line (page 1, line 7 in L.D.)
13 by striking out the following: "physical"

14 Amend the bill by striking out all of sections 1 and 2 and inserting the following:

15 'Sec. 1. 22 MRS §3197 is enacted to read:

16 §3197. Rulemaking relating to certain federal requirements for home and
17 community-based services

18 The department shall adopt rules governing home and community-based services for
19 an adult MaineCare member with a disability or an adult who is elderly and who is
20 receiving MaineCare services under a waiver granted by the federal Department of Health
21 and Human Services, Centers for Medicare and Medicaid Services to implement the federal
22 requirements of Section 1915(c) of the United States Social Security Act relating to person-
23 centered planning, requirements to facilitate an individual's dignity and individual choice,
24 requirements for provider-owned or provider-controlled residential settings, provider
25 qualifications and department oversight and enforcement. Notwithstanding sections 42 and
26 3173 and any other provision of law to the contrary, rules adopted pursuant to this section
27 after January 19, 2022 are major substantive rules as defined in Title 5, chapter 375,
28 subchapter 2-A.

29 **Sec. 2. Department of Health and Human Services may not enforce routine**
30 **technical rules adopted to implement Section 1915(c) of the United States**
31 **Social Security Act.** The Department of Health and Human Services may not enforce
32 the routine technical rules adopted and legally effective on January 19, 2022 as the
33 department's rule Chapter 101: MaineCare Benefits Manual, Chapter I, Section 6, Global
34 HCBS Waiver Person-Centered Planning and Settings Rule, until January 1, 2023.

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Sec. 3. Stakeholder group. No later than May 31, 2022, the Department of Health and Human Services shall convene a stakeholder group consisting of the following: 3 or more providers of home and community-based services including those provided under the department's rule Chapter 101: MaineCare Benefits Manual, Chapter II, Sections 21 and 29; a representative from an association representing organizations that provide services for people with intellectual disabilities, autism and brain injury; a consumer who receives home and community-based services; a direct care worker who provides home and community-based services; a family member of a consumer who receives home and community-based services; and representatives from the Office of Aging and Disability Services, the Office of MaineCare Services, the division of licensing and certification and the program integrity unit within the Department of Health and Human Services. The department shall provide staffing to the stakeholder group. The purpose of this stakeholder group is to simplify the process and documentation of evidence requirements providers use to demonstrate compliance with the department's rule Chapter 101: MaineCare Benefits Manual, Chapter I, Section 6. The stakeholder group shall review the compliance process, documentation requirements and auditing standards following the federal deadline for full state compliance. The stakeholder group shall also assess the need for additional funding for the department's home and community-based services settings rule grant program that is part of the State's approved spending plan under the federal American Rescue Plan Act of 2021, Section 9817. The stakeholder group shall meet monthly from June 2022 to September 2023. The department shall submit 2 reports on behalf of the stakeholder group to the joint standing committee of the Legislature having jurisdiction over health and human services matters, the first no later than October 30, 2022 and the 2nd no later than October 30, 2023. The committee is authorized to report out legislation in response to the reports to the First Regular Session and the Second Regular Session of the 131st Legislature.'

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Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

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SUMMARY

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This amendment is the minority report of the committee. It removes the requirement that rules adopted prior to January 1, 2023 be major substantive rules and replaces it with a requirement that any rules adopted after January 19, 2022 be major substantive rules. It prohibits the Department of Health and Human Services from enforcing the routine technical rule that was adopted on January 19, 2022 until January 1, 2023. It requires the department to convene a stakeholder group to simplify the process and documentation of evidence requirements needed to comply with the department's global settings rule, Chapter 101: MaineCare Benefits Manual, Chapter I, Section 6. The department is directed to submit 2 reports to the joint standing committee of the Legislature having jurisdiction over health and human services matters. The committee is authorized to report out legislation in response to the reports. The amendment also clarifies that the rules governing home and community-based services are not limited in application to individuals with physical disabilities.

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FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



130th MAINE LEGISLATURE

LD 1773

LR 2429(02)

An Act To Make MaineCare Rules Pertaining to Global Home and Community-based Services Waiver Programs and Person-centered Planning and Settings Major Substantive Rules

Fiscal Note for Bill as Amended by Committee Amendment *A(H-908)*

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Potential current biennium revenue decrease - Federal Expenditures Fund

Potential current biennium cost increase - General Fund

Fiscal Detail and Notes

This bill prohibits the Department of Health and Human Services from enforcing the routine technical rules adopted on January 19, 2022 relating to an adult MaineCare member with a disability or an adult who is elderly who is receiving MaineCare services under a waiver granted by the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services, until January 1, 2023. There is a federal requirement that the department must be in compliance with the federal Home and Community Based Services settings rule, by March 17, 2023. Delaying the enforcement of the department's rule could impact its ability to show compliance by March 17, 2023. If the department is not in compliance by this date, federal funds of around \$100 million annually would be at risk. Any federal funds lost would need to be replaced by General Fund appropriations, as the related expenses would still be incurred.