

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS
OF THE
STATE OF MAINE

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1989

(4) The subdivision is not located wholly or in part in the shoreland zone;

(5) The municipality in which the subdivision is located has adopted a subdivision ordinance, or its municipal reviewing authority has adopted subdivision regulations, pursuant to Title 30, section 4956;

C. Lots of 40 or more acres but not more than 500 acres shall not be counted as lots except where:

(1) The proposed subdivision is located wholly or partly within the shoreland area as defined in Title 38, section 435;

C-1. Lots of more than 500 acres in size shall not be counted as lots;

D. Five years after a subdivider establishes a single-family residence for that subdivider's own use on a lot and actually uses the lot for that purpose during that period, that lot shall not be counted as a lot;

E. Unless intended to circumvent this article, the following transactions shall not be considered lots offered for sale or lease to the general public:

(1) Sale or lease of lots to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer; or

(2) Personal, nonprofit transactions, such as the transfer of lots by gift or devise; and

F. In those subdivisions which would otherwise not require site location approval, unless intended to circumvent this article, the following transactions shall not, except as provided, be considered lots offered for sale or lease to the general public:

(1) Sale or lease of common lots created with a conservation easement as defined in Title 33, section 476, provided that the Department of Environmental Protection is made a party.

The exception described in paragraph F does not apply, and the subdivision requires site location approval whenever the use of a lot described in paragraph F changes or the lot is offered for sale or lease to the general public without the limitations set forth in paragraph F. For the purposes of this subsection only, a parcel of land is defined as all contiguous land in the same ownership provided that lands located on opposite sides of a public or private road shall be considered each a separate parcel of land unless that road was established by the owner of land on both sides of the road subsequent to January 1, 1970.

Sec. 13. 38 MRSA §489-A, first ¶, as enacted by PL 1989, c. 207, §2, is amended to read:

The Department of Environmental Protection may register municipalities ~~to grant for authority to substitute permits issued pursuant to Title 30-A, chapter 187, subchapter IV, for permits required by section 483 under the following conditions.~~

Sec. 14. 38 MRSA §489-A, sub-§8, ¶C, as enacted by PL 1989, c. 207, §2, is amended to read:

C. If the department does not act within the 45-day period, this inaction constitutes ~~its waiver of state jurisdiction~~ approval by the department and the municipal permits shall be effective as issued as the municipal permit and board permit.

Sec. 15. Application. Section 13 shall be applied retroactively to April 21, 1988.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 29, 1989.

CHAPTER 498

H.P. 1012 - L.D. 1410

An Act to Increase the Authority of the Department of Human Services to Assess the Medical and Active Treatment Needs of Individuals Applying for Admission to Nursing Homes

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

22 MRSA §3174-I is enacted to read:

§3174-I. Medicaid eligibility determinations for applicants to nursing homes

1. Needs assessment. The Department of Human Services may assess the medical needs of each applicant to a nursing home who is reasonably expected to become financially eligible for Medicaid benefits within 180 days of admission to the nursing home.

A. The assessment shall be completed prior to admission or, if necessary for reasons of the person's health or safety, as soon after admission as possible.

B. The department shall determine whether the services provided by the facility are medically necessary and appropriate for the applicant and, if not, what other services, such as home and community-based services, would more appropriately address the applicant's medical needs.

C. The department shall inform both the applicant and the administrator of the nursing home of the department's determination of the services needed by the applicant.

D. Until such time as the applicant becomes financially eligible to receive Medicaid benefits, the department's determination shall be advisory only.

E. The department shall perform a reassessment of the individual's medical needs when the individual becomes financially eligible for Medicaid benefits.

(1) If the individual, at both the admission assessment and any reassessment within 180 days of admission, is determined not to be medically eligible for the services provided by the nursing home, and is determined not to be medically eligible at the time of the determination of financial eligibility, the nursing home shall be responsible for providing services at no cost to the individual until such time as a placement at the appropriate level of care becomes available. After a placement becomes available at an appropriate level of care, the nursing home may resume billing the individual for the cost of services.

(2) If the individual is initially assessed as needing the nursing home's services, but reassessed as not needing them at the time the individual is found financially eligible, then Medicaid shall reimburse the nursing home for services it provides to the individual in accordance with the Maine Medical Assistance Manual, chapter II, section 50.

F. Prior to performing assessments under this section, the department shall develop and disseminate to all nursing homes and the public the specific standards the department will use to determine the medical eligibility of an applicant for admission to the nursing home. A copy of the standards shall be provided to each person for whom an assessment is conducted.

G. A determination of medical eligibility under this section is final agency action for purposes of the Maine Administrative Procedure Act, Title 5, chapter 375.

2. Assessment for mental illness or retardation. The Department of Human Services shall assess every applicant to a nursing home to screen for mental retardation and mental illness in accordance with the Federal Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, Section 4211. Such assessments are intended to increase the probability that any individual who is mentally retarded or mentally ill will receive active treatment for that individual's mental condition.

3. Rules. The Department of Human Services shall adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to implement this section.

See title page for effective date.

CHAPTER 499

S.P. 509 - L.D. 1397

An Act to Amend and Clarify the Laws Relating to Services to Infants and Young Children, Ages 0 through 5, Who Are Handicapped or At-risk for Developmental Delay

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

Sec. 1. 20-A MRSA §7701, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

§7701. Purpose

The purpose of this chapter is to maintain coordinated delivery systems for ~~preschool handicapped children~~ infants and children, ages 0 through 5, who are handicapped or at-risk for developmental delay, based on the models developed through pilot projects. This chapter establishes local sites to provide statewide coverage for the purpose of ensuring services for infants and children, ages 0 through 5, who are handicapped or at-risk for developmental delay as defined in this chapter.

Sec. 2. 20-A MRSA §7702, as enacted by PL 1981, c. 693, §§5 and 8, is repealed and the following enacted in its place:

§7702. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Allocation. "Allocation" means state and federal funds designated for coordination of service functions at local sites.

2. At-risk for developmental delay. "At-risk for developmental delay" means infants and children, ages 0 through 5, who are at-risk under at least one of 3 categories: identified, biological or environmental.

3. Child Development Services System. "Child Development Services System" or "system" means the overall governance, management and personnel structure established in section 7707 for the provision and coordination of services for infants and children, ages 0 through 5, who are handicapped or at-risk for developmental delay.

4. Commissioner. "Commissioner" means the Commissioner of Educational and Cultural Services.

5. Commissioners. "Commissioners" means the Commissioner of Educational and Cultural Services, the Commissioner of Human Services, the Commissioner of Mental Health and Mental Retardation and the Commissioner of Corrections.

6. Coordination plans. "Coordination plans" means the documents submitted by the local coordinating commit-