

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

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Chapters 1 - 502

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PUBLIC LAWS
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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-

tees to the Interdepartmental Coordinating Committee for Preschool Handicapped Children, detailing the comprehensive plan for the provision, expansion and coordination of services under this chapter.

7. Department. "Department" means the Department of Educational and Cultural Services.

8. Departments. "Departments" means 2 or more of the participating state agencies, the Department of Educational and Cultural Services, the Department of Human Services, the Department of Mental Health and Mental Retardation and the Department of Corrections.

9. Grants. "Grants" means state or federal funds designated for resource development or provision of direct services at local sites.

10. Handicapped. "Handicapped" means a condition of infants and children, ages 0 through 5, who need early intervention services because they:

A. Are experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

- (1) Cognitive development;
- (2) Physical development;
- (3) Language and speech development;
- (4) Psychosocial development; or
- (5) Self-help skills; or

B. Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

11. Interdepartmental Coordinating Committee for Preschool Handicapped Children. "Interdepartmental Coordinating Committee for Preschool Handicapped Children" means the committee established in section 7704 for the purposes of ensuring interdepartmental coordination at the state level for programs and services provided under this chapter.

12. Intermediate educational unit. "Intermediate Educational Unit" as defined in United States Public Law 94-142, means any public authority, other than a local educational agency, under the general supervision of a state educational agency, that is established by state law for the purpose of providing free public education on a regional basis and that provides special education and related services to handicapped children within the State.

13. Local coordinating committee. "Local coordinating committee" means the committee established pursuant to section 7703 at each of the local sites to ensure interdepartmental coordination at the local level and provide governance for the local site operations.

14. Services. "Services" means those services which are designed to meet the developmental needs of infants and children, ages 0 through 5, who are handicapped or at-risk for developmental delay, as defined in this chapter. These services may include, but are not limited to:

- (1) Family training, counseling or home-based services;
- (2) Special instruction;
- (3) Speech pathology and audiology;
- (4) Occupational therapy;
- (5) Psychological services;
- (6) Case management services;
- (7) Medical services for diagnostic or evaluation purposes only;
- (8) Early identification, screening and assessment services;
- (9) Health services necessary to enable the child to benefit from the other early intervention services;
- (10) Respite care services; and
- (11) Transportation.

15. Site. "Site" means a local coordination program for services to infants and children under this chapter and previously referred to as "pilot project" or "preschool coordination project."

Sec. 3. 20-A MRSA §7703, as amended by PL 1983, c. 624, §2, is repealed and the following enacted in its place:

§7703. Authorization for expenditure of funds

The commissioner may authorize the Interdepartmental Coordinating Committee for Preschool Handicapped Children to make grants and allocations, from funds authorized to the department, to local coordinating committees established in accordance with subsection 4 and to agencies and school administrative units to establish local coordinated delivery systems to serve infants and young children, ages 0 through 5, who are handicapped or at-risk for developmental delay.

1. Allocations and grants. First-time and renewal coordination allocations to local coordinating committees may be made on a noncompetitive basis, according to rules adopted by the commissioner. First-time direct services grants shall be made on a competitive basis, according to rules adopted by the commissioner. Renewal grants may be made on a noncompetitive basis, according to rules adopted by the commissioner.

2. Rules. The rules shall assure participation at the local level by agencies currently serving infants and children, ages 0 through 5, who are handicapped or at-risk for developmental delay. They shall require that existing resources for providing services to infants and children, ages 0 through 5, who are handicapped or at-risk for developmental delay be exhausted prior to using grant funds to provide services. The rules shall be adopted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

3. Fiscal services. The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall ensure the provision of fiscal services for each local site receiving a grant or allocation under this chapter as described in rules promulgated by the commissioner for regulating the administration of the sites.

4. Local coordinating committee. The local coordinating committee, organized prior to application for receipt of a grant or allocation, shall be responsible for governance of each local site. Membership shall include representatives of preschool programs in the region to be served by the grant or allocation, representatives of the regional offices of the Department of Human Services and the Department of Mental Health and Mental Retardation, representatives of participating school administrative units, parents of infants and children who are handicapped or at-risk for developmental delay, and other community members as determined appropriate. Terms of membership and methods of appointment for election shall be determined by local coordinating committee by-laws, subject to approval of the Interdepartmental Coordinating Committee for Preschool Handicapped Children. Responsibilities of local coordinating committees shall be defined in rules promulgated by the commissioner.

Sec. 4. 20-A MRSA §7704, as amended by PL 1985, c. 295, §31, is repealed and the following enacted in its place:

§7704. Interdepartmental coordination

The Interdepartmental Coordinating Committee for Preschool Handicapped Children established in Title 5, section 12004-I, subsection 10, representing the department, the Department of Human Services, the Department of Mental Health and Mental Retardation, the Department of Corrections and the public shall be appointed to work with the departments to monitor allocations and grants, to evaluate the performance of programs developed through the applications and to establish guidelines and rules.

The Interdepartmental Coordinating Committee for Preschool Handicapped Children is established as an intermediate educational unit for the purposes of carrying out the duties and obligations of this chapter.

The Committee for the Interdepartmental Coordination of Services to Children and Families, established pursuant to Title 34-B, section 1214, shall encourage the coordination of policies and programs for Maine's families and children by providing advice to the Interdepartmental Coordinating Committee for Preschool Handicapped Chil-

dren and to the department in the implementation of United States Public Law 99-457.

1. Membership. Membership of the Interdepartmental Coordinating Committee for Preschool Handicapped Children shall not exceed 30 members at any time with representation as follows:

A. At least 16 of the members shall represent the public, including a minimum of 3 consumer representatives. Consumer representatives may include parents of infants and children who are handicapped or at-risk for developmental delay, or individuals with disabilities. In accordance with procedures established by the Interdepartmental Coordinating Committee for Preschool Handicapped Children, each local coordinating committee may nominate 3 persons for one of the public member slots. One of the 3 nominees by each local coordinating committee shall be selected by the Interdepartmental Coordinating Committee for Preschool Handicapped Children as a public member.

Selection of public members shall be consistent to ensure balanced representation of professional disciplines, provider and consumer perspectives and geographic distribution.

The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall select a slate of members from those nominated to serve as follows: Beginning with the school year 1990-91, 1/3 of the public members shall be appointed for one year, 1/3 for 2 years and 1/3 for 3 years. In subsequent years, public members shall serve 3-year terms.

B. State agency members, appointed by the commissioners, shall make up the rest of the membership. An equal number of members shall be maintained by the Department of Human Services, the Department of Educational and Cultural Services and the Department of Mental Health and Mental Retardation. Additional members may be appointed from other state agencies as appropriate and timely.

An agency member appointed may serve for a term of up to 3 years expiring July 1, or until the person terminates employment or membership with the agency or group represented.

The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall develop rules describing the composition, selection process and responsibilities of the members.

2. Chair. The members of the Interdepartmental Coordinating Committee for Preschool Handicapped Children shall annually elect one member to serve as chair.

3. Compensation. The members of the Interdepartmental Coordinating Committee for Preschool Handicapped Children shall be compensated in accordance with Title 5, chapter 379, section 12004-I. Agency representa-

tives on the committee are entitled to reimbursement for expenses incurred in the performance of their committee duties by the appointing agencies in accordance with the provisions for state employees. Consumer members are entitled to reimbursement from the Interdepartmental Coordinating Committee for Preschool Handicapped Children for actual and necessary expenses incurred in the performance of their duties.

4. Executive director. The department shall provide an Executive Director of the Interdepartmental Coordinating Committee for Preschool Handicapped Children. Members of the Interdepartmental Coordinating Committee for Preschool Handicapped Children may participate in the selection of the executive director and may make recommendations to the department to employ that person.

5. Meetings. The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall meet at least bimonthly and shall adopt rules for the conduct of its meetings.

6. Consensus. Any action taken by the Interdepartmental Coordinating Committee for Preschool Handicapped Children must be approved by a majority vote of the members present and voting.

7. Policies. The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall establish policies for carrying out its duties under this chapter.

8. Allocation of resources. The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall direct the departments to allocate funds appropriated to the departments under this chapter to each local coordinating committee that assumes implementation responsibilities.

9. Complaint resolution. The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall develop a method for local coordinating committees funded under this chapter to respond to individual complaints regarding services provided by or through the interdepartmental service delivery system.

10. Conflict resolution. The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall identify areas of conflict for resolution by the Committee for the Interdepartmental Coordination of Services to Children and Families.

11. Subcommittee and advisory activities. The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall establish subcommittees and advisory groups composed of parents, professionals, advocacy group representatives, local coordinating committee representatives and local site employees and shall establish rules governing the operation of those groups.

12. Use of system name. The Interdepartmental Coordinating Committee for Preschool Handicapped Children is authorized to utilize the name of the Child Development Services System established in section 7707 in any

method it sees fit, including as payor on payroll and other checks. The Interdepartmental Coordinating Committee for Preschool Handicapped Children is responsible for all obligations and actions taken under the name of the Child Development Services System.

Sec. 5. 20-A MRSA §7705, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

§7705. Early childhood consultant

The position of early childhood consultant to within the Division of Special Education shall be established continued to direct ensure the department's participation in the coordinated service delivery system for preschool-handicapped children infants and children, ages 0 through 5, who are handicapped or at-risk for developmental delay.

Additional consultant positions may be established in each of the participating departments to provide joint staffing and administrative support and ensure the departments' participation in the coordinated service delivery system for infants and children, ages 0 through 5, who are handicapped or at-risk for developmental delay.

Sec. 6. 20-A MRSA §7707, as enacted by PL 1985, c. 721, §3, is amended as follows:

§7707. Child Development Services System

The ~~Preschool Handicapped Coordination Services Council~~ Child Development Services System is established as a body corporate and politic and public instrumentality of the State and the exercise of the powers conferred by this section shall be deemed and held to be the performance of essential governmental functions. The system shall consist of the Interdepartmental Coordinating Committee for Preschool Handicapped Children, the local coordinating committees and employees at the local sites.

1. Employees. The professional and other staff of the ~~preschool coordination projects~~ local sites funded under section 7703 shall be employees of the ~~council~~ system.

2. Hiring. The ~~council~~ may system shall delegate the authority to hire, fire and supervise the staff of their projects the local sites to the local coordinating committees established under section 7703, subsection 4.

3. Collective bargaining. The system is a public employer within the meaning of Title 26, section 962, subsection 7. Employees of the system are public employees within the meaning of Title 26, section 962, subsection 6. If system employees choose to be represented by a collective bargaining agent under Title 26, it is the intent of the Legislature that, in order to foster meaningful collective bargaining, bargaining units shall be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, bargaining units shall be structured on a system-wide basis with one unit for each of the following occupational groups:

A. Supervisory staff;

B. Professional and technical staff; and

C. Clerical and support staff.

Sec. 7. 20-A MRSA §7708, as enacted by PL 1985, c. 721, §3, is repealed and the following enacted in its place:

§7708. Governance of the Child Development Services System

The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall be the governing body of the Child Development Services System. This authority shall not override the authority assigned to the local coordinating committees in section 7703, subsection 4.

1. Executive director. The Executive Director of the Interdepartmental Coordinating Committee for Preschool Handicapped Children shall serve as executive director of the system and shall be responsible for administering and coordinating the daily administrative responsibilities of the system.

Sec. 8. 20-A MRSA §7709, as enacted by PL 1985, c. 721, §3, is repealed.

Sec. 9. 20-A MRSA §7710 is enacted to read:

§7710. System duties, powers and obligations

The Interdepartmental Coordinating Committee for Preschool Handicapped Children as governing body of the system shall:

1. Address issues. Address, with the advice of the local coordinating committees, contemporary issues affecting intervention services in the State, including, but not limited to, the following:

A. Successful early intervention strategies;

B. Personnel preparation and continuing education;

C. Child find activities and methods as required by United States Public Law 94-142;

D. Public awareness as required by United States Public Law 99-457; and

E. Contemporary research;

2. Recommendations. Recommend to the departments, with the advice of the local coordinating committees, legislation that is needed to develop further and to maintain a statewide system of quality intervention services;

3. By-laws; seal. To develop and adopt by-laws for the regulation of the system's affairs and conduct of its business and develop and adopt an official seal;

4. Assist. Assist in the development and implementation of rules, through the department, as may be necessary to carry out the duties and purposes of this chapter. Any

regulation adopted by the departments shall be promulgated in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375;

5. Fiscal management. Receive, expend, allocate and transfer funds within the system, as necessary to fulfill the purpose of this chapter, in accordance with all other applicable federal and state statutes and rules, and in accordance with the budget, as submitted by each participating department and approved by the Legislature. The Interdepartmental Coordinating Committee for Preschool Handicapped Children may receive and accept, from any source, loans, aid or contributions of money, property, labor or other things of value to be held, used or applied to carry out the purposes of this chapter, subject to the conditions upon which the loans, grants and contributions may be made, including, but not limited to, loans, grants or gifts from any federal agency or governmental subdivision or the State or its agencies. The Interdepartmental Coordinating Committee for Preschool Handicapped Children may also accept grants and gifts on behalf of the local sites and pay such funds directly to the sites or hold or dispose of the grants or gifts on behalf of the local site as the Interdepartmental Coordinating Committee for Preschool Handicapped Children determines. Except as otherwise provided for in this chapter or other applicable federal or State statutes or rules, the Interdepartmental Coordinating Committee for Preschool Handicapped Children may invest any funds not needed for immediate use, including any funds held in reserve, in property and securities in which fiduciaries in the State may legally invest funds;

6. Personnel policies. Develop and adopt personnel policies for the system. The provisions of Title 5, chapter 71, of the personnel laws do not apply to the system;

7. Fringe benefits. Determine which fringe benefits shall be offered to employees, dependent on cost, ease of administration and competitiveness in recruiting and retaining qualified personnel;

8. Retirement plan. Select a nondiscriminatory employee retirement plan option which meets all applicable federal and state requirements;

9. Contracts. Subject to the approval of the department, enter into contracts, leases and agreements and any other instruments and arrangements that are necessary, incidental or convenient to the performance of the system's duties and the execution of its powers under this chapter. The Interdepartmental Coordinating Committee for Preschool Handicapped Children may authorize the local coordinating committees to enter into legal agreements on behalf of the Child Development Services System, subject to rules promulgated by the commissioner;

10. Suits. Sue and be sued in its own name. Service of process in any action shall be made by service upon the executive director, either in hand or by leaving a copy of the process at the Child Development Services System office;

11. Liability. All system employees, local coordinating committee members and members of the Interdepart-

mental Coordinating Committee for Preschool Handicapped Children shall be covered by the Maine Tort Claims Act, Title 14, chapter 741. Liability insurance shall be secured by the Interdepartmental Coordinating Committee for Preschool Handicapped Children for any employees, local coordinating committee members or members of the Interdepartmental Coordinating Committee for Preschool Handicapped Children who are determined not to be covered under the Maine Tort Claims Act by an opinion from the Attorney General;

12. Acquire supplies. Acquire supplies, materials and incidental services, through cash purchases, sole-source purchase orders, bids or contracts, as necessary or convenient to fulfill the purposes of this chapter;

13. Acquire property. Acquire by purchase, gift, lease or rent any property, lands, buildings, structures, facilities or equipment necessary to fulfill the purposes of this chapter; and

14. Other duties. Fulfill other duties assigned by the Legislature, and to delegate duties and authority, but not responsibility, as necessary for the efficient operation of this chapter, and to do any other acts or things necessary or convenient to carry out the powers expressly granted or reasonably implied in this chapter.

Sec. 10. 20-A MRSA §7721, as enacted by PL 1985, c. 487, §3, is amended as follows:

In addition to the programs authorized in this chapter, the commissioner may authorize expenditures to institutions and organizations for the speech and language education of for children who are hearing and or language impaired children who have not reached compulsory school age.

Sec. 11. 20-A MRSA §7722, as enacted by PL 1985, c. 487, §3, is amended to read:

§7722. Preschool services to handicapped children

In addition to the programs authorized in subchapter I, the commissioner may authorize expenditures to school administrative units for services to preschool handicapped students for infants and children, ages 0 through 5, who are handicapped or at-risk for developmental delay.

1. School year 1985-86. For the school year 1985-86, allowable special education expenditures as defined in section 15603, subsection 22, paragraph D, subparagraph (1), will be made directly to school administrative units based on costs for the base year 1983-84 updated to 1984-85 expenditures.

2. School year 1986-87 and subsequent years. Starting in 1986-87 for base year costs in 1984-85 expenditures will be made through the school subsidy formula.

3. Federal and state funds. Federal and state grants awarded to school administrative units to initiate these services shall be considered local funds in computing the

~~units units'~~ educational costs in chapter 606. For the base year 1984-85 only, federal money passed through to the local units under the federal Public Law 94-142 legislation and used to fund preschool classrooms for handicapped students may be considered local funds in computing the units educational costs under chapter 606.

4. Governance and financial responsibility. The school board responsible for operating the preschool service shall assume the financial responsibility for the program. It shall receive the state subsidy for the program and may charge tuition for costs which exceed expenditures made for those programs in the base year.

5. Dedication of funds. Funds generated under the school subsidy formula through expenditures for programs for infants and children, ages 0 through 5, who are handicapped or at-risk for developmental delay shall be committed to continue to fund programs and services for the target population at the local level.

6. Coordination of services and resource development activities. School administrative units shall coordinate their program and service activities for infants and children, ages 0 through 5, who are handicapped or at-risk for developmental delay with their local site to avoid duplication, maximize the use of available funds and resources, and to ensure compliance with rules as promulgated by the Interdepartmental Coordinating Committee for Preschool Handicapped Children.

Sec. 12. 26 MRSA §962, sub-§7, as amended by PL 1981, c. 137, §1, is further amended to read as follows:

7. Public employer. "Public employer" means any officer, board, commission, council, committee or other persons or body acting on behalf of any municipality or town or any subdivision thereof, or of any school, water, sewer or other district, or of the Maine Turnpike Authority, or of the Child Development Services System, or of any county or any subdivisions thereof.

Sec. 13. Report on implementation. The Interdepartmental Coordinating Committee for Preschool Handicapped Children and representatives of the local coordinating committees shall report to the Joint Standing Committee on Education on the implementation of this Act. The report shall be in person and shall be made by February 15, 1990. The committee may introduce legislation to the Second Regular Session of the 114th Legislature to address problems encountered during implementation.

See title page for effective date.

CHAPTER 500

S.P. 645 - L.D. 1738

An Act to Amend the Maine Coastal and Inland Surface Oil Clean-up Fund to Provide for Adequate Resources to Respond to a Major Coastal Oil Spill