LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

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
1995

minimum fine ~~is $500 and~~ of $1,000 that may not be suspended.

See title page for effective date.

CHAPTER 170

H.P. 804 - L.D. 1121

An Act to Establish Standards for Preadmission Assessments for Long-term Care Services

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

Sec. 1. 22 MRSA §1822-A, as enacted by PL 1993, c. 410, Pt. FF, §8, is amended to read:

§1822-A. Notice to nursing facility applicants

If an applicant to a nursing facility has not received a preadmission assessment in accordance with section 3174-I, the nursing facility shall provide to the applicant and any relative or friend assisting the applicant a notice prepared by the department regarding ~~the availability of~~ preadmission assessment. The notice must indicate that preadmission assessment is ~~available, that all applicants are urged to have a preadmission assessment, that prospective Medicaid recipients are required to have a preadmission assessment~~ required and that, if the applicant depletes the applicant's resources and applies for Medicaid in the future, the applicant may need to leave the nursing facility if an assessment conducted at that time finds that the applicant is not medically eligible for nursing facility services.

Sec. 2. 22 MRSA §3174-I, sub-§1, as amended by PL 1993, c. 410, Pt. FF, §10 and affected by §19, is further amended to read:

1. Needs assessment. In order to determine the most cost-effective and clinically appropriate level of long-term care services, the department or its designee shall assess the medical and social needs of each applicant to a nursing facility ~~who is reasonably expected to become financially eligible for Medicaid benefits within 180 days of admission to the nursing facility~~. If the department chooses a designee to carry out assessments under this section, it shall ensure that the ~~designee does not have a pecuniary interest in the outcome of the assessment~~ assessments are comprehensive and objective.

A. The assessment must 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 and socially necessary and appropriate for the applicant and, if not, what other services, such as home and community-based services, would be more clinically appropriate and cost effective.

B-1. For persons with severe cognitive impairments who have been assessed and found ineligible for nursing facility level care, the department, through the Bureau of Elder and Adult Services, community options unit, shall review the assessment and provide case management to assist consumers and caregivers to receive appropriate services.

C. The department shall inform both the applicant and the administrator of the nursing facility of the department's determination of the services needed by the applicant and shall provide information and assistance to the applicant in accordance with subsection 1-A.

~~D. Until such time as the applicant becomes financially eligible to receive Medicaid benefits, the department's determination is advisory only. If the advisory determination is that the applicant is not medically eligible for Medicaid reimbursement for nursing facility services, the applicant must be advised that the applicant may be required to leave the nursing facility when the applicant no longer has the resources to pay for the services and an appropriate placement has been identified.~~

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 facility, and is determined not to be medically eligible at the time of the determination of financial eligibility, the nursing facility is 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 facility may resume billing the individual for the cost of services.

(2) If the individual is initially assessed as needing the nursing facility's services, but reassessed as not needing them at the time the individual is found financially eligible, then Medicaid shall reimburse the nursing

facility for services it provides to the individual in accordance with the Maine Medical Assistance Manual, chapter II, section ~~50~~ 67.

F. Prior to performing assessments under this section, the department shall develop and disseminate to all nursing facilities and the public the specific standards the department will use to determine the medical eligibility of an applicant for admission to the nursing facility. A copy of the standards must be provided to each person for whom an assessment is conducted. In designing and phasing in the preadmission assessment under this section, the department shall collaborate with interested parties, including but not limited to consumers, nursing facility operators, hospital operators and home and community-based care providers.

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.

Sec. 3. 22 MRSA §3174-I, sub-§§1-A and 1-B, as enacted by PL 1993, c. 410, Pt. FF, §11 and affected by §19, are amended to read:

1-A. Information and assistance. If the assessment performed pursuant to subsection 1 finds the level of nursing facility care clinically appropriate, the department shall determine whether the applicant also could live appropriately and cost-effectively at home or in some other community-based setting if home-based or community-based services were available to the applicant. If the department determines that a home or other community-based setting is clinically appropriate and cost-effective, the department shall:

A. Advise the applicant that a home or other community-based setting is appropriate;

B. Provide a proposed care plan and inform the applicant regarding the degree to which the services in the care plan are available at home or in some other community-based setting and explain the relative cost to the applicant of choosing community-based care rather than nursing facility care; and

C. Offer a care plan and case management services to the applicant on a sliding scale basis if the applicant chooses a home-based or community-based alternative to nursing facility care.

The department may provide the services described in this subsection directly or through private agencies.

1-B. Notification by hospitals. Whenever a hospital determines that a patient will require long-term care services upon discharge from the hospital, the hospital shall notify the department prior to discharge that long-term care services are indicated and that a preadmission assessment ~~may be required~~ must be performed under this section.

Sec. 4. Reports.

1. By January 1, 1996, the Department of Human Services shall submit a progress report to the Joint Standing Committee on Human Resources regarding the nursing facility preassessment program as amended in this Act. The report must include, but is not limited to, the number of applicants diverted from nursing facilities and the resulting cost savings, the relative merits of providing services directly by the department, through a request-for-proposal system or through negotiated agreements with existing services providers, the experience regarding case management along with the department's recommendations as to whether case management should be provided by the department, by contract agencies, by agencies that provide no other services or by some combination of those, the number of people who opt for family-based care and the degree to which family members serve as caretakers and the degree to which preadmission assessments affect the decisions of applicants with private resources.

2. The Department of Human Services, Bureau of Elder and Adult Services shall examine the licensing and certification laws and rules for residential facilities to determine whether they adequately provide the continuum of care, particularly for low-income and middle-income elderly. In reviewing the laws and rules the bureau shall work with providers and consumers in doing a comprehensive review with an eye towards access, quality and many states of care. The bureau shall submit its report and any necessary implementing legislation to the Second Regular Session of the 117th Legislature by January 1, 1996.

3. The Department of Human Services, Bureau of Elder and Adult Services shall develop an implementation plan for a long-term care system in the State. In developing the plan, the bureau shall consult with consumers and providers of long-term care services. The plan must include recommendations for legislation, rules and funding sources and must address issues of accessibility, noninstitutional care, maximization of ability to age in place and cost-effectiveness. The bureau shall submit its report and any necessary implementing legislation to the Second Regular Session of the 117th Legislature by January 1, 1996.

See title page for effective date.