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J.S. McCarthy Company
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CHAPTER 696

S.P. 707 - L.D. 1806

An Act to Promote Choice and Quality in Long-term Care

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, current law requiring completion of the certificate of need process causes delays in the development of community-based resources for long-term care; and

Whereas, prompt development of community-based long-term care resources is necessary for the comfort and safety of the elderly and disabled population of this State; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. A-1. 22 MRSA §303, sub-§5, as amended by PL 1981, c. 705, Pt. V, §3, is further amended to read:

5. Department. "Department" means the Department of Human Services, but does not include the Certificate of Need Advisory Committee ~~within the department~~.

Sec. A-2. 22 MRSA §303, sub-§7, as amended by PL 1981, c. 705, Pt. V, §5, is further amended to read:

7. Health care facility. "Health care facility" means ~~any facility, whether public or private, proprietary or not for profit, required to obtain a certificate of need in accordance with federal laws and regulations under the National Health Planning and Resources Development Act of 1974, or any amendment, and shall include~~ hospitals, psychiatric hospitals, ~~tuberculosis hospitals, skilled~~ nursing facilities, kidney disease treatment centers including ~~free standing~~ free-standing hemodialysis ~~units, intermediate care~~ facilities, rehabilitation facilities~~,~~ and ambulatory surgical facilities~~, home health care providers and health maintenance organizations~~. ~~The term shall not apply to any facility operated by religious groups relying solely on spiritual means through prayer for healing.~~

Sec. A-3. 22 MRSA §303, sub-§11-A, as amended by PL 1987, c. 486, §1, is repealed.

Sec. A-4. 22 MRSA §303, sub-§11-C is enacted to read:

11-C. Hospital swing bed. "Hospital swing bed" means acute care beds licensed by the Division of Licensure and Certification, Bureau of Medical Services for use also as nursing care beds. Swing beds may be established only in rural hospitals with fewer than 100 licensed acute care beds.

Sec. A-5. 22 MRSA §303, sub-§12, as enacted by PL 1977, c. 687, §1, is repealed.

Sec. A-6. 22 MRSA §303, sub-§12-B is enacted to read:

12-B. Nursing facility. "Nursing facility" means any facility defined under section 1812-A.

Sec. A-7. 22 MRSA §303, sub-§§19 and 20, as enacted by PL 1977, c. 687, §1, are repealed.

Sec. A-8. 22 MRSA §303, sub-§21, as enacted by PL 1985, c. 418, §3, is repealed.

Sec. A-9. 22 MRSA §304-A, sub-§3, as amended by PL 1989, c. 919, §5 and affected by §18, is further amended to read:

3. Capital expenditures. The obligation by or on behalf of a health care facility, except a ~~skilled or intermediate care facility or~~ hospital, of any capital expenditure of ~~$350,000 or more. Intermediate care and skilled nursing care facilities have a threshold of~~ $500,000 or more, except that any transfer of ownership is reviewable;

Sec. A-10. 22 MRSA §304-A, sub-§3-A, as repealed and replaced by PL 1991, c. 485, §1 and affected by §10, is amended to read:

3-A. Hospital capital expenditures. The obligation, by or on behalf of a hospital, of any capital expenditure of ~~$1,000,000~~ $2,000,000 or more, except that:

A. A capital expenditure for the purpose of acquiring major medical equipment is reviewable only to the extent provided in subsection 2; and

B. Any transfer of ownership of a hospital is reviewable.

Sec. A-11. 22 MRSA §304-A, sub-§4, as enacted by PL 1981, c. 705, Pt. V, §16, is amended to read:

4. New health services. The offering or development of any new health service. For purposes of this section, "new health services" ~~shall~~ includes only the following:

A. The obligation of any capital expenditures by or on behalf of a health care facility ~~which~~ that is associated with the addition of a health service ~~which~~ that was not offered on a regular basis by or on behalf of the facility within the 12-month period prior to the time the services would be offered;

B. The addition of a health service ~~which~~ that is to be offered by or on behalf of a health care facility ~~which~~ that was not offered on a regular basis by or on behalf of the facility within the 12-month period prior to the time the services would be offered, and ~~which~~ that, for the 3rd fiscal year of operation, including a partial first year, following addition of that service, absent any adjustment for inflation, is projected to entail annual operating costs of at least the expenditure minimum for annual operating costs; or

C. The addition of a health service ~~which~~ that falls within a category of health services ~~which~~ that are subject to review regardless of capital expenditure or operating cost and which category the department has defined through regulations promulgated pursuant to section 312~~, based on recommendations from the State Health Coordinating Council;~~.

This subsection does not prohibit a nursing facility from converting beds used for the provision of nursing services to beds to be used for the provision of residential care services. If such a conversion occurs, public funds are not obligated for payment of services provided in the converted beds;

Sec. A-12. 22 MRSA §304-A, sub-§5, as amended by PL 1989, c. 919, §7 and affected by §18, is further amended to read:

5. Termination of a health service. The obligation of any capital expenditure by or on behalf of a health care facility other than a hospital that is associated with the termination of a health service that was previously offered by or on behalf of the health care facility; except, neither the conversion of licensed nursing facility beds to residential care beds nor a decrease in the licensed or certified bed capacity of a nursing facility may be considered a termination of a health service;

Sec. A-13. 22 MRSA §304-A, sub-§6, as amended by PL 1993, c. 410, Pt. FF, §1, is further amended to read:

6. Changes in bed complement. Any change in the existing bed complement of a health care facility other than a hospital; except that a decrease in the licensed or certified bed capacity of a nursing facility is not subject to review so long as any capital expenditure incurred in the decrease does not trigger review under subsection 3;

Sec. A-14. 22 MRSA §304-A, sub-§8, as amended by PL 1993, c. 283, §1, is further amended to read:

8. New health care facilities. The construction, development or other establishment of a new health care facility~~, subject to the following limitations.~~; and

~~A. Except as provided in paragraph B, the department shall review certificate of need applications, including business plans, for home health care providers only to determine whether the provider is fit, willing and able to provide the proposed services at the proper standard of care as provided in section 309, subsection 1, paragraph A. The department shall establish a reduced filing fee for home health care providers whose applications are reviewed under this paragraph.~~

~~B. The department shall review an application for a home health care provider to determine its compliance with all the requirements of section 309, subsection 1 if the application involves:~~

~~(1) A business plan that forecasts 3rd year operating costs exceeding $500,000; or~~

~~(2) A transfer of ownership of an existing home health care provider; and~~

Sec. A-15. 22 MRSA §304-D, as amended by PL 1991, c. 485, §2, is further amended by repealing and replacing the headnote to read:

§304-D. Waiver of certificate of need for certain minor projects

Sec. A-16. 22 MRSA §304-D, sub-§§2 and 5, as enacted by PL 1985, c. 661, §2, are repealed.

Sec. A-17. 22 MRSA §304-F is enacted to read:

§304-F. Procedures after voluntary nursing facility reductions

1. Procedures. A nursing home that voluntarily reduces the number of its licensed beds for any reason except to create private rooms may convert the beds back and thereby increase the number of nursing facility beds to no more than the previously licensed number of nursing facility beds, after obtaining a certificate of need in accordance with this section,

provided the facility has been in continuous operation and has not been purchased or leased. To convert beds back to nursing facility beds under this subsection, the nursing facility must:

A. Give notice of its intent to preserve conversion options to the department no later than 30 days after the effective date of the license reduction; and

B. Obtain a certificate of need to convert beds back under section 309, except that if no construction is required for the conversion of beds back, the application must be processed in accordance with subsection 2.

2. Expedited review. Except as provided in subsection 1, paragraph B, an application for a certificate of need to reopen beds reserved in accordance with this section must be processed on an expedited basis in accordance with rules adopted by the department providing for shortened review time and for a public hearing if requested by a directly affected person. The department shall consider and decide upon these applications as follows:

A. Review of applications that meet the requirements of this section must be based on the requirements of section 309, subsection 1, except that the determinations required by section 309, subsection 1, paragraph B must be based on the historical costs of operating the beds and must consider whether the projected costs are consistent with the costs of the beds prior to closure, adjusted for inflation; and

B. Conversion of beds back under this section must be requested within 4 years of the effective date of the license reduction. For good cause shown, the department may extend the 4-year period for conversion for one additional 4-year period.

3. Effect on other review proceedings. Nursing facility beds that have been voluntarily reduced under this section must be counted as available nursing facility beds for the purpose of evaluating need under section 309 so long as the facility retains the ability to convert them back to nursing facility use under the terms of this section, unless the facility indicates, in response to an inquiry from the department in connection with an ongoing project review, that it is unwilling to convert them to meet a need identified in that project review.

4. Rulemaking. Rules adopted pursuant to this section are major substantive rules as defined by Title 5, chapter 375, subchapter II-A.

Sec. A-18. 22 MRSA §306-A, sub-§6, as enacted by PL 1981, c. 705, Pt. V, §19, is amended to read:

6. Automatic withdrawal. Any incomplete application ~~shall be deemed~~ is considered withdrawn if the applicant fails to respond to a request for additional required information within ~~one year~~ 180 days of the date ~~such~~ the request was forwarded by the department.

Sec. A-19. 22 MRSA §306-A, sub-§§7 and 8 are enacted to read:

7. Voluntary withdrawal of application. During the review period, prior to the date that staff submit a final report to the commissioner, an applicant may withdraw an application without prejudice. Written notice of the withdrawal must be submitted to the department. A withdrawn application may be resubmitted at a later date, as a new application, requiring a new letter of intent and new filing fees, docketing and review.

8. Filing fee. A nonrefundable filing fee must be paid at the time an application is filed with the department.

A. The department shall establish minimum and maximum filing fees, pursuant to section 312, to be paid per application.

B. If the approved capital expenditure is higher than the initially proposed capital expenditure, then the filing fee must be recalculated and the difference in fees, if any, must be paid before the certificate of need may be issued.

C. Rules adopted pursuant to this subsection are major substantive rules as defined by Title 5, chapter 375, subchapter II-A.

Sec. A-20. 22 MRSA §307, sub-§2-A, ¶A, as repealed and replaced by PL 1985, c. 737, Pt. A, §48, is amended to read:

A. The committee ~~shall be~~ is composed of 10 members, 9 of whom ~~shall be~~ are appointed by the Governor. The Commissioner of Human Services shall name a designee to serve as an ex officio, nonvoting member of the committee. The 9 members appointed by the Governor ~~shall~~ must be selected in accordance with the following requirements.

(1) Four members ~~shall~~ must be appointed to represent the following.

(a) One member ~~shall~~ must represent the hospitals.

(b) One member ~~shall~~ must represent the ~~nursing home~~ long-term care industry.

(c) One member ~~shall~~ must represent major 3rd-party payors.

(d) One member ~~shall~~ must represent ~~physicians~~ providers.

In appointing these representatives, the Governor shall consider recommendations made by the Maine Hospital Association, the Maine Health Care Association, the Maine Medical Association, the Maine Osteopathic Association and other representative organizations.

(2) Five public members ~~shall~~ must be appointed as consumers of health care. One of these members ~~shall~~ must be designated on an annual basis by the Governor as chair of the committee. Neither the public members nor their spouses or children may, within 12 months preceding the appointment, have been affiliated with, employed by, or have had any professional affiliation with any health care facility or institution, health product manufacturer or corporation or insurer providing coverage for hospital or medical care~~, and provided that~~; however neither membership in or subscription to a service plan maintained by a nonprofit hospital and medical service organization, nor enrollment in a health maintenance organization, nor membership as a policyholder in a mutual insurer or coverage under such a policy, nor the purchase of or coverage under a policy issued by a stock insurer may disqualify a person from serving as a public member.

Sec. A-21. 22 MRSA §307, sub-§2-B, ¶D, as amended by PL 1983, c. 722, is further amended to read:

D. The ~~chairman shall serve~~ chair serves as a voting presiding officer and, in consultation with the members of the committee, shall rule on the relevance of argument and evidence and make determinations as to reasonable questioning. The department's administrative hearing unit shall provide technical support to the committee for the conducting of hearings as necessary. Members of the committee may conduct reasonable questioning in the course of a hearing.

Sec. A-22. 22 MRSA §307, sub-§2-B, ¶H, as enacted by PL 1981, c. 705, Pt. V, §25, is amended to read:

H. At its next meeting following the receipt of comments pursuant to paragraph F or G, or in the case of a public hearing pursuant to paragraph G, the committee shall make a recommendation of approval ~~or,~~ disapproval or approval with conditions with respect to the application or applications under consideration. This meeting is open to the public; however, during the committee's deliberations, participation is limited to committee members. The recommendation ~~shall~~ must be determined by majority vote of the appointed members present and voting. Members of the committee may make additional oral comments or submit written comments, as they ~~deem~~ consider appropriate, with respect to the basis for their recommendations or their individual views. The committee recommendation and any accompanying comments ~~shall~~ must be forwarded to the commissioner. If the committee is unable to obtain a majority on a recommendation, the committee shall report to the commissioner the result of any vote taken.

Sec. A-23. 22 MRSA §307, sub-§5-A, ¶B, as amended by PL 1985, c. 418, §9, is further amended to read:

B. After reviewing each application, the commissioner shall make a decision either to issue a certificate of need or to deny the application for a certificate of need. The decision of the commissioner ~~shall~~ must be based on the informational record developed in the course of review as specified in paragraph C. The commissioner may issue a certificate of need with specific conditions. Notice of the decision ~~shall~~ must be sent to the applicant and the committee. This notice ~~shall~~ must incorporate written findings ~~which~~ that state the basis of the decision, including the findings required by section 309, subsection 1. If the decision is not consistent with the recommendations of the Certificate of Need Advisory Committee, the commissioner shall provide a detailed statement of the reasons for the inconsistency.

Sec. A-24. 22 MRSA §307, sub-§6-A, as amended by PL 1993, c. 410, Pt. FF, §2, is further amended to read:

6-A. Review cycles. The department shall establish review cycles for the review of applications. There must be at least one review cycle for each type or category of project each calendar year, the dates for which must be published at least 3 months in advance. An application must be reviewed during the next scheduled review cycle following the date on which the application is either declared complete or submitted for review pursuant to section 306-A, subsection 4, paragraph B. ~~Hospital projects that must be considered~~

~~within the constraints established by the Certificate of Need Development Account established pursuant to section 396-K may be grouped for competitive review purposes at least once each year; provided that, for minor projects, as defined by the department through rules adopted pursuant to section 312, the department shall allocate a portion of the Certificate of Need Development Account for the approval of those projects and shall establish at least 6 review cycles each year for the review of those projects.~~ Nursing home projects that propose to add new nursing home beds to the inventory of nursing home beds within the State may be grouped for competitive review purposes consistent with appropriations made available for that purpose by the Legislature. A nursing home project that proposes renovation, replacement or other actions that will increase Medicaid costs ~~and for which an application is filed after March 1, 1993~~ may be approved only if appropriations have been made by the Legislature expressly for the purpose of meeting those costs, except that the department may approve, without a prior appropriation for the express purpose, projects to reopen beds previously reserved by a nursing facility through a voluntary reduction pursuant to section 304-F, provided that the annual total of reopened beds approved does not exceed 100. The department may hold an application for up to 90 days following the commencement of the next scheduled review cycle if, on the basis of one or more letters of intent on file at the time the application is either declared complete or submitted for review pursuant to section 306-A, subsection 4, paragraph B, the department expects to receive within the additional 90 days one or more other applications pertaining to similar types of services, facilities or equipment affecting the same health service area. Pertinent health service areas must be defined in rules adopted by the department pursuant to section 312~~, based on recommendations by the State Health Coordinating Council~~.

Sec. A-25. 22 MRSA §309, sub-§1, ¶D, as amended by PL 1995, c. 462, Pt. A, §41, is further amended to read:

D. That the proposed services are consistent with the orderly and economic development of health facilities and health resources for the State, that the citizens of the State have the ability to underwrite the additional costs of the proposed services and that the proposed services are in accordance with standards, criteria or plans adopted and approved pursuant to the state health plan developed by the department ~~and the findings of the Maine Health Care Finance Commission under section 396-K with respect to the ability of the citizens of the State to pay for the proposed services~~.

Sec. A-26. 22 MRSA §309, sub-§2, as amended by PL 1985, c. 661, §§4 and 5, is repealed.

Sec. A-27. 22 MRSA §309, sub-§2-A is enacted to read:

2-A. Criteria for certificate of need. In determining whether to issue or deny a certificate of need under subsection 1, the department shall, among other criteria, consider the following:

A. Whether the project will substantially address specific problems or unmet needs in the area to be served by the project;

B. Whether the project will have a positive impact on the health status indicators of the population to be served;

C. Whether the services affected by the project will be accessible to all residents of the area proposed to be served. Accessibility is determined through analysis of the area including population, topography and availability of transportation and health services;

D. Whether there are less costly or more effective alternate methods of reasonably meeting identified health service needs of the project;

E. Whether the project is financially feasible in both an intermediate and long-term time frame;

F. Whether the project would produce a cost benefit in the existing health care system of the State and the area in which the project is proposed;

G. Whether the quality of any health care provided by the applicant in the past meets industry standards; and

H. Whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project.

Sec. A-28. 22 MRSA §309, sub-§3, as enacted by PL 1981, c. 705, Pt. V, §33, is repealed.

Sec. A-29. 22 MRSA §309, sub-§6, as amended by PL 1989, c. 502, Pt. A, §65, is further amended to read:

6. Hospital projects. ~~Notwithstanding subsections 1, 4 and 5, the department may not issue a certificate of need for a project which is subject to the provisions of section 396-D, subsection 5, and section 396-K, if the associated costs exceed the amount which the commission has determined will have been credited to the Certificate of Need Development Account pursuant to section 396-K, after accounting~~

~~for previously approved projects. A project shall not be denied solely on the basis of exceeding the amount remaining in the Certificate of Need Development Account or Hospital Development Account in a particular payment year and shall be held for further consideration by the department in the first appropriate review cycle beginning after the Certificate of Need Development Account or Hospital Development Account is credited with additional amounts.~~ Projects ~~which~~ that are carried forward shall compete equally with newly proposed projects. For the purposes of this subsection, a project may be held for a final decision beyond the time frames set forth in section 307, subsection 3.

Sec. A-30. 22 MRSA §309, sub-§7, as enacted by PL 1989, c. 501, Pt. P, §24, is repealed.

Sec. A-31. 22 MRSA §324, as enacted by PL 1981, c. 705, is repealed and the following enacted in its place:

§324. Review

The department shall report to the legislative joint standing committee having jurisdiction over health and institutional services not later than January 31, 1999 on the continuing feasibility of this chapter.

Sec. A-32. 22 MRSA §1708, sub-§3, ¶¶B and C, as enacted by PL 1991, c. 591, Pt. E, §21 and affected by §22, are amended to read:

B. Are reasonable and adequate to meet the costs incurred by efficiently and economically operated facilities; ~~and~~

C. Are consistent with federal requirements relative to limits on reimbursement under the federal Social Security Act, Title XIX~~.~~; and

Sec. A-33. 22 MRSA §1708, sub-§3, ¶D is enacted to read:

D. Ensure that any calculation of an occupancy percentage or other basis for adjusting the rate of reimbursement for nursing facility services to reduce the amount paid in response to a decrease in the number of residents in the facility or the percentage of the facility's occupied beds excludes all beds that the facility has removed from service for all or part of the relevant fiscal period in accordance with section 304-F. If the excluded beds are converted to residential care beds or another program for which the department provides reimbursement, nothing in this paragraph precludes the department from including those beds for purposes of any occupancy standard applicable to the residential care or other program pursuant to duly adopted rules of the department.

Sec. A-34. 22 MRSA §1715, sub-§1, as enacted by PL 1989, c. 919, §15 and affected by §18, is amended by amending the first paragraph to read:

1. Access requirements. Any person, including, but not limited to an affiliated interest as defined in section 396-L, that is subject to the requirements of this subsection, shall provide the services listed in paragraph C to individuals who are eligible for charity care in accordance with a charity care policy adopted by the affiliate or provider that is consistent with rules applicable to hospitals under section ~~396-F~~ 1716. A person is subject to this subsection if that person:

Sec. A-35. 22 MRSA §1715, sub-§2, ¶¶A and B, as enacted by PL 1989, c. 919, §15 and affected by §18, are amended to read:

A. Any person who knowingly violates any provision of this section or any valid order or rule made or adopted pursuant to section ~~396-F~~ 1716, or who willfully fails, neglects or refuses to perform any of the duties imposed under this section, commits a civil violation for which a forfeiture of not less than $200 and not more than $500 per patient may be adjudged with respect to each patient denied access unless specific penalties are elsewhere provided. Any forfeiture imposed under this section may not exceed $5,000 in the case of the first judgment under this section against the provider, $7,500 in the case of a 2nd judgment against the provider or $10,000 in the case of the 3rd or subsequent judgment against the provider. The Attorney General is authorized to prosecute the civil violations.

B. Upon application of the Attorney General or any affected patient, the Superior Court or District Court has full jurisdiction to enforce the performance by providers of health care of all duties imposed upon them by this section and any valid rules adopted pursuant to section ~~396-F~~ 1716.

Sec. A-36. 22 MRSA §1716 is enacted to read:

§1716. Charity care guidelines

The department shall adopt reasonable guidelines for policies to be adopted and implemented by hospitals with respect to the provision of health care services to patients who are determined unable to pay for the services received. The department shall adopt income guidelines that are consistent with the guidelines applicable to the Hill-Burton Program established under 42 United States Code, Section 291, et seq. (1995). The guidelines and policies must include the requirement that upon admission or, in cases of emergency admission, before discharge of a

patient, hospitals must investigate the coverage of the patient by any insurance or state or federal programs of medical assistance. The guidelines must include provisions for notice to the public and the opportunity for a fair hearing regarding eligibility for charity care.

Sec. A-37. 22 MRSA §3189, sub-§4, as amended by PL 1993, c. 410, Pt. FFF, §§7 and 8, is repealed.

Sec. A-38. 22 MRSA §3472, sub-§5, as amended by PL 1989, c. 858, §4, is further amended to read:

5. Department. "Department" means either the Department of Human Services ~~through its Bureau of Elder and Adult Services~~ or, in the case of mentally retarded adults, the Department of Mental Health and Mental Retardation.

Sec. A-39. 22 MRSA §4311, sub-§1-A, as enacted by PL 1983, c. 824, Pt. X, §4, is amended to read:

1-A. Municipalities reimbursed. When a municipality pays for expenses approved pursuant to section 4313 for hospital inpatient or outpatient care at any hospital ~~during the time preceding the hospital's first payment year, as defined in section 396-C, subsection 1,~~ on behalf of any person who is otherwise eligible and who would have been entitled to receive payments for hospital care if that care had been rendered prior to May 1, 1984, for services under the Catastrophic Illness Program, section 3185, the department shall reimburse the municipality for 100% of those payments.

Sec. A-40. 22 MRSA §4313, sub-§1, as repealed and replaced by PL 1987, c. 347, §§4 and 7 and c. 542, Pt. H, §§4 and 8, is amended to read:

1. Emergency care. In the event of an admission of an eligible person to the hospital, the hospital shall notify the overseer of the liable municipality within 5 business days of the person's admission. In no event may hospital services to a person who meets the financial eligibility guidelines~~,~~ adopted pursuant to section ~~396-F, subsection 1,~~ 1716 be billed to the patient or to a municipality.

PART B

Sec. B-1. 22 MRSA §3174-I, ¶E, as amended by PL 1995, c. 170, §2, is further amended to read:

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, 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 under the assessment criteria and process in effect at the time of admission or is admitted as covered by Medicare for nursing facility services, but is reassessed as not needing ~~them~~ those services at the time the individual is found financially eligible, then ~~Medicaid~~ the department shall reimburse the nursing facility for services it provides to the individual in accordance with the ~~Maine Medical Assistance Manual, chapter II, section 67~~ principles of reimbursement for residential care facilities adopted by the department pursuant to section 3173. In calculating the fixed-cost component of per diem rates for nursing facility services, the department shall exclude days of service for which reimbursement is provided under this subparagraph.

Sec. B-2. 22 MRSA §3174-Q is enacted to read:

§3174-Q. Medicaid stability

Beginning August 1, 1996, the department shall obtain authorization from the Legislature before implementing changes in benefit structures and eligibility levels in the Medicaid program that could cause the following changes:

1. Percentages of enrollment. Changes in excess of 10% in the percentages of enrollment among different groups that are categorically eligible for Medicaid; and

2. Services covered. Elimination of services covered under the program on August 1, 1996.

Sec. B-3. 22 MRSA §3477, sub-§1, as amended by PL 1989, c. 858, §11, is further amended to read:

1. Reasonable cause to suspect. When, while acting in a professional capacity, an allopathic or osteopathic physician, medical intern, medical examiner, physician's assistant, dentist, chiropractor, podiatrist, registered or licensed practical nurse, certified nursing assistant, Christian Science practitioner, social worker, psychologist, pharmacist, physical therapist, speech therapist, occupational therapist, mental health professional, law enforcement official, coroner, emergency room personnel, ambulance attendant or emergency medical technician suspects that an adult has been abused, neglected or exploited, and has reasonable cause to suspect that the adult is incapacitated, then the professional shall immediately report or cause a report to be made to the department.

Whenever a person is required to report ~~in the capacity~~ as a member of the staff of a medical, public or private institution, agency or facility, the staff person shall immediately ~~notify the person in charge of the institution, agency or facility, or the designated agent of the person in charge, who shall then cause a report to be made. The staff person shall also~~ make a report directly to the department.

Sec. B-4. 22 MRSA §3480, sub-§3 is enacted to read:

3. Right of entry and access to records of licensed facilities. The department and any duly designated officer or employee of the department have the right to enter upon and into the premises of any facility licensed under sections 1817 and 7801 in order to obtain information necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to a subsequent adult protective proceeding. The department has access to all records in the facility's possession that are relevant to the investigation of a report of suspected abuse, neglect or exploitation and any subsequent adult protective proceeding and is not required to issue a subpoena to the facility before obtaining access to the records.

Sec. B-5. 22 MRSA §5107-B is enacted to read:

§5107-B. Long-term Care Steering Committee

There is established the Long-term Care Steering Committee, referred to in this section as the "committee," to provide input to the commissioner on all policy initiatives, laws and rules concerning long-term care and assisted living in order to ensure that long-term care and assisted living programs reflect the needs and preferences of the elderly and individuals with disabilities.

1. Membership; terms. The committee consists of 9 members appointed by the Governor.

A. Two members must be adults with disabilities who are consumers of independent living services. Two members must be family members of individuals who are consumers of long-term care services, one of whom must represent persons with Alzheimer's disease or other dementia. Five members must be individuals over 65 years of age.

B. A member of the committee may not have any financial or governance interest in the provision of long-term care services.

2. Appointments. Statewide organizations representing the interests of the elderly and adults with disabilities, an association concerned with Alzheimer's disease and related disorders, a statewide independent living council, veterans' organizations, area agencies on aging and the long-term care ombudsman program may submit recommendations for members of the committee to the Governor, who shall make appointments to the committee with regard to the geographic and economic diversity of consumers of long-term care and assisted living services. By June 1, 1996, the Governor shall appoint 3 members to initial one-year terms on the committee, 3 members to initial 2-year terms and 3 members to initial 3-year terms. After the initial appointments, all members serve terms of 3 years.

3. Meetings. By July 1, 1996, the Governor shall convene the first meeting of the committee, at which the members shall elect a chair from among themselves. The committee shall meet at least once each month.

4. Reimbursement. Members of the committee are entitled to receive reimbursement for travel to meetings upon application to the Department of Human Services.

PART C

Sec. C-1. Report on criminal law enforcement. The Commissioner of the Department of Human Services shall convene a study group to review the department's case histories of reported crimes against the elderly and to identify the potential barriers to successful prosecution of crimes against the elderly, including a review of the Maine Criminal Code. The study group must include at least one representative from the Maine Prosecutors Association, one member from the Office of the Attorney General and one member from any other law enforcement agency. The study group may also include any other persons the department determines appropriate. The department shall provide the public at least 2 weeks' notice prior to each meeting. The study group shall report its findings and any proposed legislation to the joint standing committee of the

Legislature having jurisdiction over criminal justice matters no later than November 1, 1996.

Sec. C-2. Development limitation; report from Commissioner of Human Services. Development of family care homes by the Department of Human Services is limited to 20 homes in which the cost of resident housing and care is reimbursed by the department and 20 homes in which the cost of resident housing and care is paid for with private funds. By January 1, 1997 the Commissioner of Human Services shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the experience and progress of the department in developing adult family care homes.

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

Effective April 11, 1996.

CHAPTER 697

H.P. 1284 - L.D. 1764

An Act to Ensure the Proper and Humane Care of Persons Requiring Mental Health Services

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the discussion concerning closure of state mental health institutions is ongoing; and

Whereas, unless this legislation is enacted as an emergency measure, the continuation of or access to necessary mental health services for those persons requiring such services is in jeopardy; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 34-B MRSA §3009 is enacted to read:

§3009. Access to mental health services

Any money that is identified as net General Fund savings through legislative actions or through departmental administrative actions due to the closure of or diminution of services at a state mental health institution or to lowered administrative costs within the department must be used to provide mental health services to persons in need of those services in other appropriate settings and programs, including, but not limited to, community-based mental health programs. For the purposes of this section, "net General Fund savings" means total savings in the General Fund projected to be available due to a series of specific actions less any cost or liability resulting from implementing those actions.

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

Effective April 11, 1996.

CHAPTER 698

S.P. 704 - L.D. 1793

An Act to Extend the Electric Rate Stabilization Projects

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, pursuant to current legislation, certificates of approval for electric rate stabilization projects may not be issued after February 1, 1996; and

Whereas, there continues to be a need for the approval of electric rate stabilization projects; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 35-A MRSA §3156, last ¶, as amended by PL 1995, c. 120, §2 and affected by §5, is further amended to read:

A certificate may not be issued under this section after February 1, ~~1996~~ 1997.

Sec. 2. PL 1993, c. 712, §8, as amended by PL 1995, c. 120, §3 and affected by §5, is further amended to read:

Sec. 8. Loans authorized. The Finance Authority of Maine may make loans to electric utilities for electric rate stabilization projects, as defined in the Maine Revised Statutes, Title 10, section 963-A from up to $220,000,000 of the proceeds of revenue