

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

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

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Augusta, Maine
2002

or sexually violent predator would be supervising visits;

(2) Ensure that contact does not damage the relationship with the parent with whom the child has primary physical residence;

(3) Ensure the safety and well-being of the child; and

(4) Require that supervision be provided by a person who is physically and mentally capable of supervising a visit and who does not have a criminal history or history of abuse or neglect.

Sec. 5. 19-A MRSA §1803, sub-§3, ¶¶I and J, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

I. Methods of assisting cooperation and resolving disputes and each person's willingness to use those methods; ~~and~~

J. Any other factor having a reasonable bearing on the physical and psychological well-being of the child; and

Sec. 6. 19-A MRSA §1803, sub-§3, ¶K is enacted to read:

K. The existence of a grandparent's conviction for a sex offense or a sexually violent offense as those terms are defined in Title 34-A, section 11203.

Sec. 7. 19-A MRSA §1803, sub-§7 is enacted to read:

7. Supervision required; convictions for sexual offenses. Notwithstanding any other provision of this chapter, the court may award a grandparent who is convicted of a child-related sexual offense visitation with a minor grandchild only if the court finds that contact between the grandparent and the child is in the best interest of the child and that adequate provision for the safety of the child can be made. For purposes of this section, "child-related sexual offense" has the same meaning as in section 1653, subsection 6-A.

The court may require that visitation may occur only if there is another person or agency present to supervise visitation. If the court allows a family or household member to supervise grandparent-child contact, the court shall establish conditions to be followed during that contact. Conditions include, but are not limited to, those that:

A. Minimize circumstances when the family of the grandparent who is a sex offender or sexually violent predator would be supervising visits;

B. Ensure the safety and well-being of the child; and

C. Require that supervision be provided by a person who is physically and mentally capable of supervising a visit and who does not have a criminal history or history of abuse or neglect.

See title page for effective date.

CHAPTER 666

S.P. 722 - L.D. 1924

An Act to Support a Continuum of Quality Long-term Care Services

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

Whereas, this legislation must be enacted as an emergency measure to ensure ongoing, continual access to nursing facilities with fully qualified personnel; 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 §1708, sub-§3, as amended by PL 1995, c. 696, Pt. A, §§32 and 33, is further amended to read:

3. Compensation for nursing homes. A nursing home, as defined under section 1812-A, or any portion of a hospital or institution operated as a nursing home, when the State is liable for payment for care, must be reimbursed at a rate established by the Department of Human Services pursuant to this subsection. The department may not establish a so-called "flat rate." This subsection applies to all funds, including federal funds, paid by any agency of the State to a nursing home for patient care. The department shall establish rules concerning reimbursement that:

A. Take into account the costs of providing care and services in conformity with applicable state and federal laws, rules, regulations and quality and safety standards;

A. 1. ~~Include a specific increment to take into account the increased cost of any excise, gross receipts or similar tax that is first imposed by the State on or after January 1, 1993;~~

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

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

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; ~~and~~

E. Contain an annual inflation adjustment that:

(1) Recognizes regional variations in labor costs and the rates of increase in labor costs determined pursuant to the principles of reimbursement and establishes at least 4 regions for purposes of annual inflation adjustments; and

(2) Uses the applicable regional inflation factor as established by a national economic research organization selected by the department to adjust costs other than labor costs or fixed costs.

Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. A-2. 22 MRSA §1812-A, as enacted by PL 1965, c. 403, is amended to read:

§1812-A. Nursing home defined

A nursing home or nursing facility shall be defined as a facility which is operated in connection with a hospital, or in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in the State, for the accommoda-

tion of convalescent or other persons who are not acutely ill and not in need of hospital care, but who do require skilled nursing care and related medical services. The term "nursing home" ~~shall be or~~ "nursing facility" is restricted to those facilities, the purpose of which is to provide skilled nursing care and related medical services for a period of not less than 24 hours per day to individuals admitted because of illness, disease or physical or mental infirmity and which provides a community service.

Sec. A-3. Treatment of costs in principles of reimbursement for nursing facilities. The Department of Human Services shall amend the rules regarding principles of reimbursement for nursing facilities. The rules must:

1. Adjustment of interim payments. Upon request of a facility and a showing that there has been a dramatic market change in particular elements in the fixed cost component, adjust that facility's interim payments. This provision applies to fixed cost component elements. The rules for adjustment of interim payments for nursing facilities must apply to reimbursement rates beginning July 1, 2002; and

2. Retention of savings. Allow each nursing facility to retain the amount, if any, by which incurred allowable per diem costs classified within the routine component are less than the prospective per diem payment rate for allowable routine costs for the same costs reporting period as long as any retained savings are used for direct care costs. The rules for retention of savings must take effect for nursing facility fiscal years beginning on or after October 1, 2001.

Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

PART B

Sec. B-1. Rules regarding penalties for occupancy declines for nursing facilities. The Department of Human Services shall amend the rules regarding the principles of reimbursement for nursing facilities regarding fixed costs to apply the existing occupancy adjustment when the occupancy for nursing facilities greater than 60 beds falls below 85% and when the occupancy for facilities of 60 beds or fewer falls below 80%. The rules amended pursuant to this section must apply to reimbursement rates for services provided beginning January 1, 2003. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

PART C

Sec. C-1. 22 MRSA §42, sub-§7 is enacted to read:

7. Appeal process. The department shall amend the rules governing appeals of informal review decisions of Medicaid payment and cost report audit issues filed by providers of nursing facility services and medical and remedial private nonmedical institution services as provided in this subsection.

A. The department shall give to the provider involved in an informal review decision written notice of the appeal process and the time period for filing a notice of appeal.

B. The department shall contract with a person or persons who are not employees of the department for independent, impartial hearing officer services.

C. Compensation under the contract may reflect the number of appeals on which recommendations are made by the hearing officer and may not reflect the substance of the recommendations made by the hearing officer.

D. The hearing officer shall conduct a hearing de novo on issues raised in the notice of appeal filed by the provider and shall in a timely manner render a written recommendation based on the record and in accordance with applicable state and federal law, rule and regulation. The hearing officer shall provide a copy of the recommendation to the department and to the provider along with notice of the opportunity to submit written comments to the commissioner.

E. The recommendation of the hearing officer must be forwarded to the commissioner for a final decision, based on the record, which must include any written comment submitted in a timely manner by the provider and the department. The commissioner may adopt, adopt with modification or reject the recommendation of the hearing officer. The commissioner shall issue a final decision in writing, which must include the reasons for any departure from the recommendation of the hearing officer and notice of the process for appeal pursuant to Title 5, chapter 375, subchapter VII.

The department shall provide funding for contractual services under this subsection from within existing resources.

Sec. C-2. Amendment of rules. The Department of Human Services shall by October 1, 2002 amend the rules governing appeals of informal review decisions of Medicaid payment and cost report audit

issues to comply with the Maine Revised Statutes, Title 22, section 42, subsection 7.

PART D

Sec. D-1. 22 MRSA §41-A is enacted to read:

§41-A. Biennial funding comparison report

By January 31, 2003, and every 2 years thereafter, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs the amounts of appropriations and allocations that would be required to fully fund all reimbursable costs for nursing facilities and medical and remedial private nonmedical institutions covered by the department, determined pursuant to the department's principles of reimbursement and the amounts of appropriations and allocations that would be necessary to raise the reimbursement rates for all providers of services reimbursed under the Medicaid program on a fee-for-service basis who are reimbursed below 70% of usual and customary rates to a level equal to 70% of usual customary rates, as long as the rate does not exceed the rate allowed by federal law or regulation. The information in the report regarding nursing facilities and private nonmedical institutions must be presented in a manner that compares the amounts that would be required to fully fund the 2 types of facilities, the amounts that are requested in the Governor's budget bill and the amounts that were appropriated and allocated for each of the 2 years of the biennium in which the report is made.

Sec. D-2. Report on fiscal health of long-term care system. By January 15, 2003, the Department of Human Services, the Maine Health Care Association and providers of home health and other long-term care services shall work together and shall present a report to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs regarding the fiscal health of the State's long-term care system. The report must include:

1. An analysis of costs and reimbursement in long-term care, including a 5-year retrospective and a projection of costs and reimbursement in the future if the existing principles of reimbursement and the rate setting system are utilized;

2. An analysis of the strengths and weaknesses of the principles of reimbursement and other mechanisms used for setting rates and reimbursement, including analysis of mechanisms used in other states

to ensure fair payment to providers, including inflation factors and adjustments for regional variations in labor costs; and

3. An analysis of reimbursement for nursing facilities, including reimbursement for the direct care component, the routine cost component and the fixed cost component, including inflation factors and limitations on expenditures imposed by category of cost or comparison with other facilities.

PART E

Sec. E-1. Effective date. Those sections of this Act that amend the Maine Revised Statutes, Title 22, section 1708, subsection 3 and enact Title 22, section 7902-A, subsection 2-A take effect July 1, 2003.

PART F

Sec. F-1. Transfer of funds. Notwithstanding any provision of law, the State Controller shall transfer \$66,142 from the Nursing Facilities Other Special Revenue program within the Department of Human Services to the General Fund unappropriated surplus no later than June 30, 2003.

Sec. F-2. Appropriations and allocations. The following appropriations and allocations are made.

**HUMAN SERVICES, DEPARTMENT OF
Nursing Facilities 0148**

Initiative: Provides funding to decrease the threshold at which the department makes occupancy adjustments to nursing facility reimbursement rates for services provided beginning January 1, 2003 to 85% for facilities with more than 60 beds and to 80% for facilities of 60 beds or fewer.

General Fund	2001-02	2002-03
All Other	\$0	\$66,142
Total	\$0	\$66,142
Federal Expenditures Fund	2001-02	2002-03
All Other	\$0	\$130,483
Total	\$0	\$130,483

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

Effective April 11, 2002, unless otherwise indicated.

CHAPTER 667

H.P. 1577 - L.D. 2083

An Act to Correct Errors and Inconsistencies in the Laws of Maine

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

Whereas, Acts of this and previous Legislatures have resulted in certain technical errors and inconsistencies in the laws of Maine; and

Whereas, these errors and inconsistencies create uncertainties and confusion in interpreting legislative intent; and

Whereas, it is vitally necessary that these uncertainties and this confusion be resolved in order to prevent any injustice or hardship to the citizens of Maine; 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. 4 MRSA §157, sub-§1, ¶A, as amended by PL 1999, c. 547, Pt. A, §2 and Pt. B, §7 and affected by §80, is repealed and the following enacted in its place:

A. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and to confirmation by the Legislature, shall appoint to the District Court 33 judges. At least one judge must be appointed from each district who is a resident of a county in which the district lies, except that in District 3 there must be 2 judges appointed who are residents of a county in which the district lies; in District 6 there must be 2 judges appointed who are residents of a county in which the district lies; and in District 9 there must be 2 judges appointed who are residents of a county in which the district lies. Each District Court Judge has a term of office of 7 years.

To be eligible for appointment as a District Judge, a person must be a member of the bar of