

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)

**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 3, 2008 to June 13, 2009**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 12, 2009**

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

---

---

**Augusta, Maine**  
**2009**

**§778. Reports**

A person registered under section 774 or 775 shall, within 45 days of the date the services are provided, notify the department in writing of the street address and zip code of the client and the results of any tests performed. The department may, by rule, specify an alternative notification procedure and notification period and any additional data required in the report.

See title page for effective date.

**CHAPTER 279****H.P. 745 - L.D. 1078**

**An Act To Strengthen  
Sustainable Long-term  
Supportive Services for  
Maine Citizens**

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

**Sec. 1. 22 MRSA §50** is enacted to read:

**§50. Planning for long-term care services**

By January 15, 2012 and every 4 years thereafter the department, after input from interested parties, shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the current allocation of resources for long-term care and the goals for allocation of those resources during the next 4 years. The report must be based on current and projected demographic data, current and projected consumer needs and recent or anticipated changes in methods of delivery of long-term care services and must include any action taken by the department to further these goals and any recommendations for action by the Legislature.

**Sec. 2. 22 MRSA §7301**, as enacted by PL 1981, c. 511, §1, is amended to read:

**§7301. Legislative intent**

**1. Findings.** The Legislature finds that:

A. In-home and community support services have not been sufficiently available to many adults with long-term care needs;

B. Many adults with long-term care needs are at risk of being or already have been placed in institutional settings, because in-home and community support services or funds to pay for these services have not been available to them;

C. In some instances placement of adults with long-term care needs in institutional settings can result in emotional and social problems for these adults and their families; ~~and~~

D. For many adults with long-term care needs, it is less costly for the State to provide in-home and community support services than it is to provide care in institutional settings;

E. The majority of adults with long-term care needs have indicated a preference to remain in their own homes and in community settings rather than having their needs met in institutional settings;

F. For many adults with long-term care needs and their families, the process to identify and secure appropriate services may be confusing and difficult to navigate; and

G. A sustainable system of long-term care to meet the needs of citizens must emphasize in-home and community support services that capitalize upon personal and family responsibility.

**2. Policy.** The Legislature declares that it is the policy of this State, with regard to in-home and community support services:

A. To increase the availability of ~~in-home and community support services~~ long-term care services that are consumer-driven, optimize individual choice and autonomy and maximize physical health, mental health, functional well-being and independence for adults with long-term care needs through high-quality services and supports in settings that reflect the needs and choices of consumers and that are delivered in the most flexible, innovative and cost-effective manner;

B. That the priority recipients of in-home and community support services, pursuant to this subtitle, ~~shall must be the elderly and disabled~~ adults with long-term care needs who are at the greatest risk of being, or who already have been, placed ~~inappropriately in an institutional setting~~ without needed in-home and community support services; ~~and~~

C. That a variety of agencies, facilities and individuals ~~shall must~~ be encouraged to provide in-home and community support services and to increase the percentages of adults with long-term care needs receiving in-home and community support services;

D. To promote and encourage public and private partnerships among a variety of agencies, facilities and individuals;

E. To support the roles of family caregivers and a qualified workforce in the effort to streamline and facilitate access to high-quality services in the least restrictive and most integrated settings; and

F. To establish the most efficient and cost-effective system for delivering a broad array of long-term care services.

**Sec. 3. 22 MRSA §7302**, as amended by PL 2001, c. 596, Pt. B, §10 and affected by §25 and amended by PL 2003, c. 689, Pt. B, §§6 and 7, is further amended to read:

**§7302. Definitions**

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

**1. Adults with long-term care needs.** "Adults with long-term care needs" means adults who have physical or mental limitations which restrict their ability to carry out activities of daily living and impede their ability to live independently, or who are at risk of being, or who already have been, placed inappropriately in an institutional setting.

**1-A. Activities of daily living.** "Activities of daily living" means activities as defined in federal and state rules including those essential to a person's daily living including: eating and drinking; bathing and hygiene; dressing, including putting on and removing prostheses and clothing; toileting, including toilet or bedpan use, ostomy or catheter care, clothing changes and cleaning related to toileting; locomotion or moving between locations within a room or other areas, including with the use of a walker or wheelchair; transfers or moving to and from a bed, chair, couch, wheelchair or standing position; and bed mobility or positioning a person's body while in bed, including turning from side to side.

**2. Agreement.** "Agreement" means a contract, grant or other method of payment.

**3. Commissioner.** "Commissioner" means the Commissioner of Health and Human Services.

**3-A. Consumer.** "Consumer" means a person eligible for services under this subtitle.

**3-B. Consumer assessment.** "Consumer assessment" means an evaluation of the functional capacity of an individual to live independently given appropriate supports with activities of daily living and instrumental activities of daily living or through the provision of information about service options that are available to meet the individual's needs.

**4. Department.** "Department" means the Department of Health and Human Services.

**5. In-home and community support services.** "In-home and community support services" means health and social services and other assistance required to enable adults with long-term care needs to remain in their places of residence. These services include, but are not limited to, self-directed care services; medical and diagnostic services; professional nursing; physical, occupational and speech therapy; dietary and nutrition services; home health aide services; personal care assistance services; companion and attendant services;

handyman, chore and homemaker services; respite care; counseling services; transportation; small rent subsidies; various devices which that lessen the effects of disabilities; and other appropriate and necessary social services.

**6. Institutional settings.** "Institutional settings" means residential care facilities, licensed pursuant to chapter 1664; intermediate care and skilled nursing facilities and units and hospitals, licensed pursuant to chapter 405; and state institutions for individuals who are mentally ill or mentally retarded or who have related conditions.

**6-A. Instrumental activities of daily living.** "Instrumental activities of daily living" means the activities as defined in federal and state rules including those essential, nonmedical tasks that enable the consumer to live independently in the community, including light housework, preparing meals, taking medications, shopping for groceries or clothes, using the telephone, managing money and other similar activities.

**7. Personal care assistance services.** "Personal care assistance services" means services which are required by an adult with long-term care needs to achieve greater physical independence, which may be consumer-directed self-directed and which include, but are not limited to:

- A. Routine bodily functions, such as bowel or bladder care;
- B. Dressing;
- C. Preparation and consumption of food;
- D. Moving in and out of bed;
- E. Routine bathing;
- F. Ambulation; and
- G. ~~Any other similar activity~~ Activities of daily living and instrumental activities of daily living.

**8. Personal care assistant.** "Personal care assistant" means an individual who has completed a training course of at least 40 hours, which includes, but is not limited to, instruction in basic personal care procedures, such as those listed in subsection 7, first aid and handling of emergencies; or an individual who meets competency requirements, as determined by the department or its designee; or, if providing service to a consumer receiving self-directed attendant services under chapter 1622, a person approved by the consumer or the consumer's surrogate as being able to competently assist in the fulfillment of the personal care assistance services outlined in the consumer's plan of care. Nothing in Title 32, chapter 31, may be interpreted to require that a personal care assistant be licensed under that chapter or supervised by a person licensed under that chapter.

**9. Provider.** "Provider" means any entity, agency, facility or individual who offers or plans to offer any in-home or community support services or institutionally based long-term care services.

**9-A. Qualified providers.** "Qualified providers" means community-based agencies or a network of agencies with the organizational and administrative capacity to administer and monitor an array of in-home and community support services that will promote choice and portability with an emphasis on coordinating and implementing the services in the consumer's plan of care.

**9-B. Self-directed care services.** "Self-directed care services" means services procured and directed by the consumer or the consumer's surrogate that allow the consumer to reenter or remain in the community and to maximize independent living opportunities. "Self-directed care services" includes the hiring, firing, training and supervision of personal care assistants to assist with activities of daily living and instrumental activities of daily living.

**10. Severe disability.** "Severe disability" means a disability ~~which that~~ results in persons having severe, chronic physical, sensory or cognitive limitations ~~which that~~ restrict their ability to carry out ~~the normal~~ activities of daily living and to live independently.

**11. Surrogate.** "Surrogate" means an unpaid agent of a consumer designated to assist with the management of the tasks associated with in-home and community support services.

**Sec. 4. 22 MRSA c. 1622** is enacted to read:

#### **CHAPTER 1622**

#### **COORDINATED IN-HOME AND COMMUNITY SUPPORT SERVICES FOR THE ELDERLY AND ADULTS WITH DISABILITIES**

##### **§7311. Program established**

By July 1, 2010, the department shall establish a coordinated program, referred to in this chapter as "the program," of in-home and community support services that are available under state-funded and MaineCare-funded programs for adults with long-term care needs who are eligible for services from qualified providers pursuant to this subtitle. The program must have a unified system for intake and eligibility determination for all consumers, regardless of diagnosis, type of disability or demographic factors, including age, using the multidisciplinary teams pursuant to section 7323, consumer assessment and the development of plans of care that take into consideration the consumer's living arrangement, informal supports and services provided by other public or private funding sources to ensure nonduplication of services for consumers.

##### **§7312. Rules**

The department shall adopt rules as necessary for the effective administration of the program pursuant to this chapter, in accordance with the Maine Administrative Procedure Act. In the development of such rules, the department shall consult with consumers, representatives of consumers and providers. Rules adopted pursuant to this section are major substantive rules as defined by Title 5, chapter 375, subchapter 2-A.

**Sec. 5. Plan for consolidated services.** The Commissioner of Health and Human Services shall convene a work group of persons representing all of the significant parties, including consumers, interested in the issue of efficient and effective long-term care in the State. The purpose of the work group is to analyze the long-term care service system and to make recommendations that will assist the commissioner in designing the system that promotes consumer choice, transparency, portability and flexibility. The work group shall employ a disciplined improvement analysis and implementation approach and methodology in its work. In this process, personal care services will be reviewed to determine the extent to which the following principles are currently being met:

1. Consumers know about and have access to a full range of personal care service options;
2. Access to personal care services is expeditious;
3. Personal care services are delivered efficiently and in a manner that promotes maximum consumer choice;
4. Personal care services are transparent so that the services are easily understood by consumers and their families;
5. Personal care services are portable from one provider to another;
6. Personal care services are flexible to meet the needs of the consumer; and
7. Provider rates and worker wages are standardized to promote overall efficiency and ensure a sufficient number and quality of direct-care workers.

The work group must meet at least 3 times and provide a report to the Joint Standing Committee on Health and Human Services by January 15, 2010. The report must contain the work group's recommendations for improvements in the long-term care system in the State. These recommendations must address intake and eligibility determination, consumer assessment, development of plans of care, the definition of qualified providers and the means to standardize rates and wages within the system.

**Sec. 6. State plan amendment or waivers.** The Department of Health and Human Services shall submit to the federal Department of Health and Human Services, Centers for Medicare and Medicaid

Services any amendments or waivers needed to establish any part of a consolidated program, including a program of consumer-directed care described in the Maine Revised Statutes, Title 22, chapter 1622.

See title page for effective date.

## CHAPTER 280

### H.P. 649 - L.D. 946

#### **An Act To Reverse the Effects of Grant v. Central Maine Power, Inc. on Workers' Compensation**

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

**Sec. 1. 39-A MRSA §205, sub-§9, ¶B**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

B. In all circumstances other than the return to work or increase in pay of the employee under paragraph A, if the employer, insurer or group self-insurer determines that the employee is not eligible for compensation under this Act, the employer, insurer or group self-insurer may discontinue or reduce benefits only in accordance with this paragraph.

(1) If no order or award of compensation or compensation scheme has been entered, the employer, insurer or group self-insurer may discontinue or reduce benefits by sending a certificate by certified mail to the employee and to the board, together with any information on which the employer, insurer or group self-insurer relied to support the discontinuance or reduction. The employer may discontinue or reduce benefits no earlier than 21 days from the date the certificate was mailed to the employee, except that benefits paid pursuant to section 212, subsection 1 or section 213, subsection 1 may be discontinued or reduced based on the amount of actual documented earnings paid to the employee during the 21-day period if the employer files with the board the documentation or evidence that substantiates the earnings and the employer only reduces or discontinues benefits for any week for which it possesses evidence of such earning. The certificate must advise the employee of the date when the employee's benefits will be discontinued or reduced, as well as other information as prescribed by the board, including the employee's appeal rights.

(2) If an order or award of compensation or compensation scheme has been entered, the

employer, insurer or group self-insurer shall petition the board for an order to reduce or discontinue benefits and may not reduce or discontinue benefits until the matter has been finally resolved through the dispute resolution procedures of this Act, any appeal proceedings have been completed and an order of reduction or discontinuance has been entered by the board. Upon the filing of a petition, the employer may discontinue or reduce the weekly benefits being paid pursuant to section 212, subsection 1 or section 213, subsection 1 based on the amount of actual documented earnings paid to the employee after filing the petition. The employer shall file with the board the documentation or evidence that substantiates the earnings and the employer may discontinue or reduce weekly benefits only for weeks for which the employer possesses evidence of such earnings.

**Sec. 2. Retroactivity.** This Act applies retroactively to all injuries including pending cases and cases on appeal.

See title page for effective date.

## CHAPTER 281

### S.P. 224 - L.D. 609

#### **An Act To Amend the Laws Governing Involuntary Hospitalization Procedures**

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

**Sec. 1. 15 MRSA §2211-A, sub-§3-A** is enacted to read:

**3-A. Authorization of hospitalization.** When a person who is hospitalized in a psychiatric hospital under the provisions of Title 34-B, chapter 3 is sentenced to serve a straight term of imprisonment or a split sentence in a county jail, the person must remain hospitalized as long as continued hospitalization is appropriate under Title 34-B, chapter 3. The sheriff shall promptly process the person to initiate execution of the sentence in a manner that disrupts the person's hospitalization as little as possible. The provisions of this section apply as if the person had been transferred to the hospital after beginning serving the sentence at the county jail.

**Sec. 2. 34-B MRSA §3861-A** is enacted to read:

#### **§3861-A. Notification of hospitalization**

When a person who is hospitalized in a psychiatric hospital under the provisions of this chapter is sen-