

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 2010 to June 29, 2011

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 28, 2011

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

Augusta, Maine
2011

OTHER SPECIAL REVENUE FUNDS	2010-11	2011-12	2012-13
Personal Services	(\$76,882)	\$0	\$0
All Other	(\$85,434)	(\$55,433)	(\$55,433)
OTHER SPECIAL REVENUE FUNDS TOTAL	(\$162,316)	(\$55,433)	(\$55,433)

Office of the Commissioner 0258

Initiative: Provides an allocation for supplies related to printing registrations received by the department.

OTHER SPECIAL REVENUE FUNDS	2010-11	2011-12	2012-13
All Other	\$400	\$500	\$500
OTHER SPECIAL REVENUE FUNDS TOTAL	\$400	\$500	\$500

MARINE RESOURCES, DEPARTMENT OF

DEPARTMENT TOTALS	2010-11	2011-12	2012-13
OTHER SPECIAL REVENUE FUNDS	(\$161,916)	(\$54,933)	(\$54,933)
DEPARTMENT TOTAL - ALL FUNDS	(\$161,916)	(\$54,933)	(\$54,933)

SECTION TOTALS	2010-11	2011-12	2012-13
GENERAL FUND	\$0	\$0	\$6,365
OTHER SPECIAL REVENUE FUNDS	(\$161,916)	(\$54,933)	(\$54,933)
SECTION TOTAL - ALL FUNDS	(\$161,916)	(\$54,933)	(\$48,568)

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

Effective July 6, 2011.

**CHAPTER 422
H.P. 510 - L.D. 683**

An Act To Enhance Long-term Care Services for Maine Citizens

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

Sec. 1. 22 MRSA c. 1622-A is enacted to read:

CHAPTER 1622-A

CONSOLIDATION OF LONG-TERM CARE SERVICES

§7316. Consolidation of long-term care services

Beginning July 1, 2012, all long-term care services provided directly or indirectly under the MaineCare program or other state-funded programs by the department under this Title must be combined into one program, referred to in this chapter as "the program," with a single set of rules, coordinated criteria for assessment and qualifications and a single budget.

§7317. In-home and community support services; nursing facility services

In-home and community support services and nursing facility services must be provided under the program, giving priority to expenditures that serve first those consumers with the greatest needs and the lowest service costs in accordance with the provisions of this section.

1. Intake and eligibility assessment. The department shall develop for the program a single system for intake and eligibility determination for all consumers, regardless of diagnosis, type of disability or age or other demographic factors, using the multidisciplinary teams designated by the commissioner pursuant to section 7323. The intake process, application and forms must be standardized despite differences in the criteria for eligibility for services under different provisions of the MaineCare program state plan or federally approved waiver under Medicaid or under state-funded services.

2. Needs assessment. The department shall assess a consumer for benefits determination periodically, as appropriate to the consumer, based on assessments of functional, health care and financial needs performed by an agency that is available to the consumer for case management services but that does not directly or indirectly provide in-home and community support services or nursing facility services. The assessment of the consumer's functional, health care and financial needs for in-home and community support services and nursing facility services must

include a medical evaluation conducted by the consumer's primary care provider or health care specialist, as appropriate, and an evaluation by the department of the requirements for personal care assistant services and the hours of service necessary to maintain the consumer in a home-based or community-based setting.

3. Benefits determination; service delivery model selection. Once the needs assessment under subsection 2 has been completed for a consumer, the department shall determine the benefits that are available for the consumer and the consumer may choose which services to purchase. The consumer may select service delivery through the following models: the model in which the consumer directs the consumer's care and employs the persons who provide care, with or without a surrogate or unpaid representative to assist the consumer; the agency model in which an agency directs the consumer's care and employs the persons who provide care; and the residential care model or nursing facility care model. If a consumer does not indicate a preference of service delivery model, the department shall assign the consumer to a self-directed model of in-home and community support services unless self-direction is determined to be inappropriate for the consumer.

4. Plan of care. The department shall develop and authorize a plan of care for each consumer determined to be eligible under this chapter or Title 34-B, chapter 5, subchapter 3, article 2. The plan of care must be based on the needs assessment under subsection 2 and must be designed to meet the needs of the consumer identified in the assessment, giving consideration to the consumer's living arrangement and informal supports and, to avoid duplication of services, services provided by other private and public funding sources.

5. Transitional facilities and services. The program must provide a consumer with transitional facilities and services to assist with changing functional needs and health care status.

6. Nursing facility diversion. The program must include a nursing facility diversion component to encourage the use of facilities and services consistent with the consumer's needs assessment under subsection 2 and as chosen by the consumer under subsection 3.

7. Reimbursement. The program must provide reimbursement for skilled nursing care and in-home and community support services based on a uniform rate-setting process that is consistent across types of care and services, that reduces administrative costs and that is realistic regarding access to care and services. The process must set aside a fixed percentage of the rate for wages and benefits of the direct-care workers.

8. Implementation. In implementing the program the department shall:

A. Establish best practices training standards in a common module-based format with standard designations for direct-care workers;

B. Create structures for service delivery that apply to all types of payors;

C. Promote the use of assistive technology;

D. Integrate the delivery of skilled nursing care and personal care and services;

E. Establish a system to designate qualified providers who must:

(1) Provide the full range of services in the self-directed and agency models under subsection 3;

(2) Have the organizational and administrative capacity to administer and monitor a complete range of in-home and community support services, including, but not limited to, serving as a resource regarding service options, coordinating and implementing consumer services, ensuring the services are delivered, providing skills training, responding to questions and problems, performing administrative services, ensuring compliance with policies and performing utilization review functions; and

(3) Submit proposals for coordinated in-home and community support services in response to a solicitation for proposals to qualified provider agencies from the department, in the form and manner required by the department as specified in rules. Rules adopted pursuant to this subparagraph are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A;

F. Promote consumer choice by investing in needed care and services that consumers choose; and

G. Develop expanded financing options to encourage private investment in residential care and nursing facilities.

Sec. 2. Integrate accounts. The Department of Health and Human Services shall combine long-term care accounts to implement the consolidation of long-term care services under the Maine Revised Statutes, Title 22, chapter 1622-A for fiscal years 2011-12 and 2012-13. The accounts that must be integrated into a single budget include the Office of Elder Services - Central Office account, the Long-term Care - Human Services account, the Nursing Facilities account and the Independent Housing with Services account.

Sec. 3. Report on progress. By January 5, 2012 and by November 1, 2012, the Department of Health and Human Services shall report to the joint

standing committee of the Legislature having jurisdiction over health and human services matters regarding the progress in implementing consolidation of long-term care services under the Maine Revised Statutes, Title 22, chapter 1622-A.

Sec. 4. Report regarding feasibility of inclusion of services for persons with mental health needs and intellectual disabilities needs.

By January 5, 2012, the Department of Health and Human Services shall report to the Joint Standing Committee on Health and Human Services regarding the feasibility of the inclusion of services for persons with mental health needs and intellectual disabilities needs in the consolidation of long-term care services under the Maine Revised Statutes, Title 22, chapter 1622-A in fiscal years 2013-14 and 2014-15.

See title page for effective date.

CHAPTER 423

S.P. 205 - L.D. 624

An Act To Require a Person Who Commits a Sex Offense against a Dependent or Incapacitated Adult To Register under the Sex Offender Registration and Notification Act of 1999

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

Sec. 1. 17-A MRSA §253, sub-§2, ¶I, as amended by PL 2001, c. 383, §16 and affected by §156, is further amended to read:

I. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a patient or client for mental health therapy of the actor. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment modalities intended to change behavior, emotions or attitudes, which therapy is based upon an intimate relationship involving trust and dependency with a substantial potential for vulnerability and abuse. Violation of this paragraph is a Class C crime; ~~or~~

Sec. 2. 17-A MRSA §253, sub-§2, ¶J, as corrected by RR 2003, c. 2, §25, is amended to read:

J. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or resi-

dence and the organization, program or residence recognizes the other person as a person with mental retardation. It is an affirmative defense to prosecution under this paragraph that the actor receives services for mental retardation or is a person with mental retardation as defined in Title 34-B, section 5001, subsection 3. Violation of this paragraph is a Class C crime; ~~or~~

Sec. 3. 17-A MRSA §253, sub-§2, ¶¶K and L are enacted to read:

K. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class C crime; or

L. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect. For the purposes of this paragraph, "domestic partners" means 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other's welfare. Violation of this paragraph is a Class C crime.

Sec. 4. 17-A MRSA §255-A, sub-§1, ¶¶R-1 and R-2 are enacted to read:

R-1. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class D crime;

R-2. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

Sec. 5. 17-A MRSA §255-A, sub-§1, ¶¶U and V, as enacted by PL 2005, c. 450, §2, are amended to read: