

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)

**STATE OF MAINE
119th LEGISLATURE
SECOND REGULAR SESSION**

**Long-term Care in Maine
A Progress Report**

**Joint Standing Committee on
Health and Human Services
January 2000**

**Senator Judy A. Paradis, Senate Chair
Senator Georgette B. Berube
Senator Betty Lou Mitchell**

**Representative Thomas J. Kane, House Chair
Representative Joseph E. Brooks
Representative Elaine Fuller
Representative Michael W. Quint
Representative Edward R. Dugay
Representative Daniel B. Williams
Representative Glenys R. Lovett
Representative Tarren R. Bragdon
Representative Lois Snowe-Mello
Representative Thomas F. Shields**

Staff:

**Jane Orbeton, Senior Analyst
Office of Policy and Legal Analysis, Maine Legislature**

**Paul Saucier, Senior Policy Analyst
Muskie School of Public Service, University of Southern Maine**

Contents

Section	Page
Executive Summary	i
I. Introduction	1
II. Backdrop	2
III. Guiding Principles	6
IV. Recommendations	7
V. Implementation.....	13

Appendices:

Appendix A
List of Members of
Joint Standing Committee on Health and Human Services

Appendix B
Timetable for Action

Appendix C
Proposed Legislation

Executive Summary

The Joint Standing Committee on Health and Human Services met during the fall and winter of 1999-2000 to develop guiding principles and recommended action on long-term care. The committee studied the delivery of long-term care services, the existence of waiting lists for certain services and the financing of long-term care services and facilities. The committee reviewed the report of the Commission to Study Rate Setting and the Financing of Maine's Long-term Care Facilities, which was presented to the committee during the First Regular Session of the 119th Legislature.

In this progress report the committee presents the following guiding principles, recommendations and proposals for immediate action:

Guiding principle 1

Maine's long-term care system should be comprehensive and flexible and should be designed to meet the needs and preferences of consumers.

Recommendation

1.1. Maine should continue to expand the long-term care infrastructure to provide a comprehensive range of service options in every region of the State.

Proposals for immediate action

- Resources should be appropriated and allocated sufficient to fund services for all 1031 persons on waiting lists as of January 1, 2000, for home care for elders and adults with disabilities, Alzheimer's respite care, homemaker services and adult day services.
- The Department of Human Services, the Maine State Housing Authority and the Department of Public Safety should develop joint proposals for long-term care services and residential options. The agencies should report to the Health and Human Services Committee by January 1, 2001, on the development of new and expanded services and residential options.

Recommendation

1.2. The Department of Human Services, working with consumers, providers and other interested parties, should identify steps that can be taken to enhance service flexibility for consumers without jeopardizing receipt of federal funds.

Proposals for immediate action

- The Department of Human Services should review and amend its rules regarding Medicaid long-term care policy in order to enhance the flexibility of Medicaid benefits to the extent possible under federal law. The review should include but not be limited to the feasibility of amending Medicaid rules to ensure that consumers do not lose critical benefits when they make a transition from the State-funded home care program to the Medicaid program. If the Medicaid program does not offer sufficient flexibility to guarantee a consumer who is on the home care program and who then becomes eligible for Medicaid continued access to a critical service, such as

an emergency response system or homemaker service, the department should amend its rules for the home care program to provide for continuing eligibility for the critical service.

- The Department of Human Services should amend nursing home eligibility criteria to allow greater flexibility for consumers who experience multiple moves across care settings, for example a consumer whose chronic condition changes could need nursing facility care for a month, residential level care for a month and then nursing facility care for a month.
- The Department of Human Services should initiate multiple "aging in place" demonstrations that allow consumers to receive increasing levels of service in their existing residential settings over time, whether those settings be home, elderly housing complexes, multi-level residential facilities, or other settings unique to particular communities, with increased reimbursement levels for increased consumer needs.
- The Department of Human Services, in consultation with consumers, providers and other interested parties, should review the long-term care assessment process and identify ways that the process can be made more flexible without undermining its objectivity and predictability. The review should include, but not be limited to, amending the process to allow the nurse assessor to utilize professional skills and to consider input from the consumer's family and physician. The review should include the establishment of guidelines to provide to the nurse assessor standards with regard to consumer need and care plan development. Amended rules should eliminate the need for automatic annual assessment of consumers whose conditions are unlikely to improve sufficiently to cause a change in their eligibility for services.
- The Department of Human Services should undertake the development of consumer directed long-term care pilot projects in which consumers qualify for a voucher or other flexible funding, rather than qualifying for particular service types.

Recommendation

1.3. The Department of Human Services and the Board of Nursing should propose rule changes and other actions that promote the expeditious expansion and career development of the long-term care work force.

Proposal for immediate action

- In consultation with consumers, providers and other interested parties, the Department of Human Services and the Board of Nursing should complete its ongoing work regarding the long-term care labor force and propose rule changes and other actions necessary to promote a career ladder in long-term care. Special attention should be paid to the appropriateness of training, certification and recertification requirements for direct care staff. The department and board are requested to focus on requirements for recertification of CNAs on the CNA Registry, considering alternative methods of qualifying for recertification. The department and board should amend their rules to foster professionalism while avoiding unreasonably strict regulation unrelated to the provision of high quality care.

Guiding principle 2

Maine's long-term care system should enhance the lives and safety of consumers.

Recommendation

2.1. *Maine's long-term care quality system should focus more heavily on consumer outcomes.*

Proposal for immediate action

- The Department of Human Services should convene quality outcome panels comprised of consumers, providers, clinicians and researchers who volunteer to develop and implement quality improvement strategies in the long-term care system. Panels should consider currently available outcome and performance indicator research and should be convened for all types of long-term care. Notice of meetings should be provided to members of the Health and Human Services Committee. The panels should begin their work by October 1, 2000 and should complete it by October 1, 2002.

Recommendation

2.2. *The State should provide adequate and comparable consumer appeal processes across its various long-term care programs, without regard to funding source.*

Proposal for immediate action

- The Department of Human Services should amend its home care program rules to ensure that consumers enjoy appeal rights that are comparable to Medicaid appeal rights and to provide for the right to appeal from the provisions of an initial care plan.

Recommendation

2.3. *All long-term care services should be adequately and appropriately staffed.*

Proposals for immediate action

- The Department of Human Services, in consultation with consumers, providers and other interested parties, should develop minimum staffing ratios for residential care facilities and should revise its ratios for nursing facilities.
- The Department of Human Services should participate in a series of best practices forums to provide educational workshops and opportunities for providers of long-term care services. The workshops and forums may be co-sponsored by entities other than the department.

Guiding principle 3

Maine's long-term care system should provide high-quality, cost-effective, affordable care through partnerships between providers of care and the State.

Recommendation

3.1. *The Department of Human Services should enhance its efforts to provide technical assistance to long-term care providers in the spirit of continuous quality*

improvement. While the Department should not abandon its oversight role regarding providers, it should offer positive and constructive consultation to providers whenever possible.

Proposals for immediate action

- The Department of Human Services should develop standardized contracts for use between the provider and consumer in long-term care settings when appropriate to the service and setting.
- The Department of Human Services and the Department of Public Safety should implement default licensing policies that automatically issue long-term care service licenses within 90 days when a new applicant has filed a completed application and when necessary action has not been taken by state agencies. The Department of Human Services and the Department of Public Safety should notify an applicant whether the application is complete within 2 weeks of filing and should provide required services and inspections within 90 days of the filing of the completed application.
- The Department of Human Services, the Department of Public Safety and local fire officials should devise ways to expand the delegation of Life Safety Code inspections to local officials.
- The Department of Human Services should review its rules on licensing periods and licensing surveys and, to the extent not inconsistent with federal law, amend those rules to allow for the reasonable lengthening of licensing periods and some relaxation of survey requirements for providers of services with a documented record of consistently providing high quality care. The department should consider performance standards, recognized standards of practice, desired and measurable outcomes and satisfaction surveys of consumers and their families.

Recommendation

3.2. The reimbursement methodology for long-term care providers should be revised to ensure adequate reimbursement and to simplify the principles of reimbursement.

Proposals for immediate action

- The Department of Human Services should amend the principles of reimbursement for nursing facilities under the Medicaid program to ensure that reimbursement reflects the current cost of doing business efficiently. Amendments should include, but are not limited to: merging indirect and routine components into a single routine component; moving medical supplies into the direct care component; incorporating the most recent time study information available; re-basing rates to the most recent complete audited year; establishing different cost caps for facilities based on size; including an annual inflation adjustment appropriate to the industry and recognizing regional variations in labor costs.
- The Department of Human Services should review its rules on reimbursement for long-term care services and should report to the Health and Human Services Committee by January 1, 2001, its recommendations for including in the

reimbursement formulas a factor for acuity of consumer condition and level of need for services.

Recommendation

3.3 The State should investigate strategies to expand long-term care financing mechanisms.

Proposals for immediate action

- The Maine State Retirement System, the Office of State Employee Health and the Department of Human Services should examine the feasibility of offering a group long-term care policy to retirees, employees and family members, studying the program offered by the California Public Employees Retirement System (CalPERS) programs offered by other states and the possible benefits of regional cooperation.
- The Department of Human Services should develop a public awareness campaign that focuses on the long-term benefits of a healthy lifestyle and the need to plan for long-term care needs. The campaign should include information on the toll-free telephone line maintained by the area agencies on aging and long-term care services and resources.

Proposal to provide implementation oversight

The committee recommends the formation of a Long-term Care Implementation Committee comprised of legislators, department officials, public members and consumers. The committee would be charged with monitoring progress toward accomplishment of the recommendations contained in this report, could meet up to 9 times per year, would be reimbursed for necessary expenses for attending meetings, would be staffed by the Department of Human Services and would have responsibility for forwarding suggested legislation to the Health and Human Services Committee. The committee would review rules and the quality of care in the long-term care system. The committee would report annually to the Health and Human Services Committee. The committee would begin work after January 1, 2001, and would cease to exist on January 1, 2003.

I. Introduction

At the conclusion of the First Regular Session of the 119th Legislature the members of the Joint Standing Committee on Health and Human Services received permission from the Legislative Council to meet during the interim to discuss long-term care. The Legislative Council granted permission for 6 meetings. Committee members met on September 8 and 28, October 26, November 9 and 30 and December 14, 1999 and January 10, 2000. The members of the committee are listed in Appendix A.

Many persons generously provided information and assistance to the committee. The committee wishes to thank the following organizations for their help: the Long-term Care Steering Committee, the Long-term Care Ombudsman Program, the Maine Health Care Association, the Department of Human Services Bureau of Elder and Adult Services and Bureau of Medical Services, the Maine Home Care Alliance, the Maine Hospital Association, Legal Services for the Elderly, the Area Agencies on Aging, the Alzheimer's Association, Alpha One, the Maine State Housing Authority, the Maine Hospice Council, Maine Independent Living Services, the Maine Council of Senior Citizens, the American Association of Retired Persons and the Joint Advisory Committee on Select Services for Older Persons. The committee offers special thanks to Paul Saucier, Senior Policy Analyst at the Muskie School of Public Service at the University of Southern Maine, who provided consultation services throughout the work of the committee.

The committee embarked on its work on long-term care determined to study the many facets of the issue and adopt guiding principles to serve as guideposts for public policy decisions now and in the future. The committee studied the delivery of long-term care services, the existence of waiting lists for certain services and the financing of long-term care services. The committee reviewed the report of the Commission to Study Rate Setting and the Financing of Maine's Long-term Care Facilities, which was presented to the committee during the First Regular Session of the 119th Legislature.

In this progress report the committee presents its guiding principles and the recommendations it has developed under each principle. During the Second Regular Session, the committee will introduce a committee bill that incorporates these recommendations for public hearing and committee work sessions. A timetable for the action proposed by the committee is included as Appendix B. A copy of the legislation proposed by the committee appears at Appendix C.

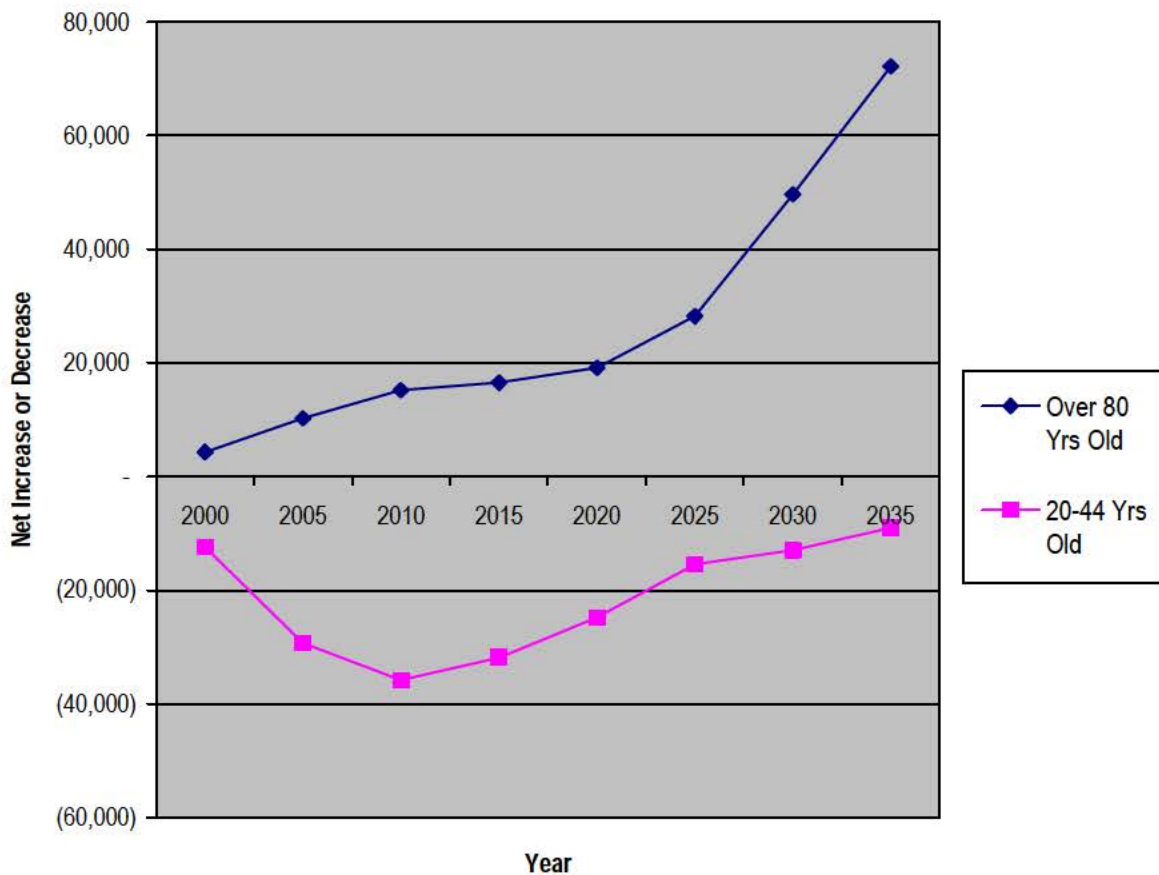
II. Backdrop

An Aging Population

Demand for long-term care has been growing both in Maine and nationally and is expected to grow faster in the coming decades. Although it is difficult to predict who specifically among us will need long-term care in the future, need correlates strongly to age, and the Maine population is aging significantly.

As the top line in Chart 1 indicates, forecasters expect Maine to have 72,000 more citizens over 80 years of age in 2035 than it had in 1995, representing an increase of 164% in the age group that is most likely to need long-term care. Maine's population is already aging at a moderate and steady rate, with the ranks of citizens over 80 years old

Chart 1. Change from 1995 in Size of Selected Maine Population Groups



Source: Derived from population estimates produced by the Center for Business and Economic Research, University of Southern Maine.

expected to grow by about 1,200 in the year 2000. Absent major changes in migration or other unanticipated demographic factors, Maine can expect steady growth of this kind for about 20 years, followed by rapid growth as baby boomers enter their eighties in the 2020s.

If older people use publicly-financed long-term care in the future to the same extent that they use it currently, Maine can expect significantly higher demand for services in the future. In 1999, Maine had 47,166 residents over the age of 80 and spent \$278 million in publicly-financed long-term care, or \$5,894 per resident over 80 years of age.¹ If Maine is spending a similar amount per person in 2035 when an estimated 116,215 residents will be over 80 years of age, public expenditures will be \$685 million. This projection is oversimplified, of course, since many factors will influence the public cost of long-term care in the future, including changing medical technology, lifestyles, availability of family to provide informal care, extent of long-term care insurance coverage, educational attainment and income levels in the population. Nonetheless, the increasing age of the population is so significant by itself that, absent major impact from other factors, the State should expect the demand for publicly-funded long-term care to increase significantly in the future.

A Diminishing Pool of Care Givers

The expected increase in demand for services is particularly alarming when contrasted to the shrinking pool of working-aged people available to provide care. This is illustrated by the lower graph line in Chart 1. Though future birth rates and in-migration are difficult to predict, forecasters estimate that Maine will have 9,000 fewer citizens between the ages of 20 and 44 in 2035 than it had in 1995. The trend in that direction has already begun, and if it continues as expected, the labor shortage, already a serious problem for long-term care providers today, promises to be among the most significant barriers to providing long-term care in the future.

The increasing competition among employers for a shrinking pool of workers is also likely to affect informal care, a significant component of long-term care. In 1999, 17% of adults surveyed in Maine answered “yes” when asked, “Are you helping to care for an older family member?”² If the survey sample is truly representative of informal care giving in Maine, nearly 160,000 Maine citizens provided some help to an older family member in 1999. In the future, informal caregivers are likely to face increasingly difficult choices between providing informal care and responding to increasing pressure to participate more in the paid labor force.

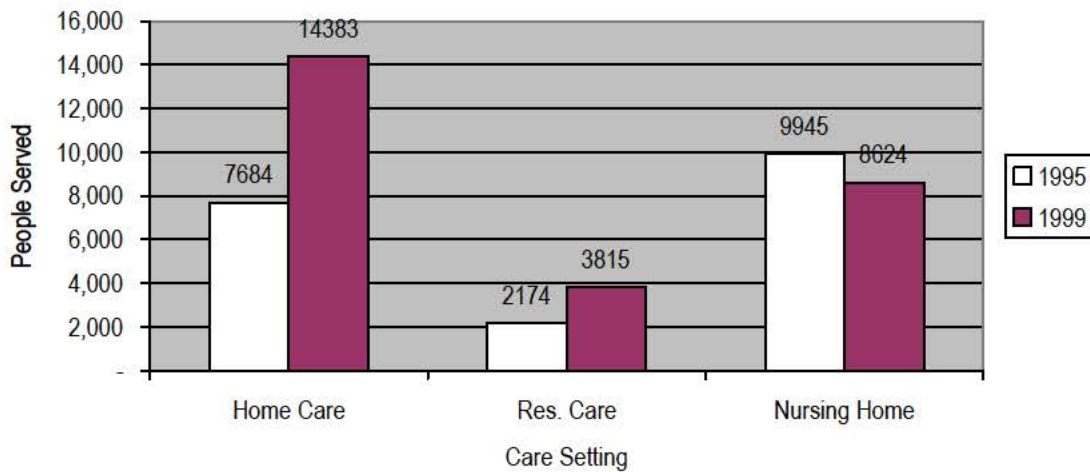
¹ Number of residents over 80 estimated by the Center for Business and Economic Research, University of Southern Maine. Public expenditures on long-term care provided by the Maine Department of Human Services. Public expenditures includes State and federal Medicaid long-term care expenditures plus State General Fund long-term care expenditures.

² Annual Citizen Survey, Maine Development Foundation

Settings of Care and Expenditures

Maine has altered dramatically the mix of long-term care services offered since 1995, spending significantly less on nursing facility care and significantly more on lower cost options. According to the Department of Human Services, the number of people receiving home care has more than doubled, the number receiving care in residential care facilities has nearly doubled, and the number receiving care in nursing facilities has decreased by about 13%. Chart 2 shows a comparison of long-term care spending in 1995 and 1999.

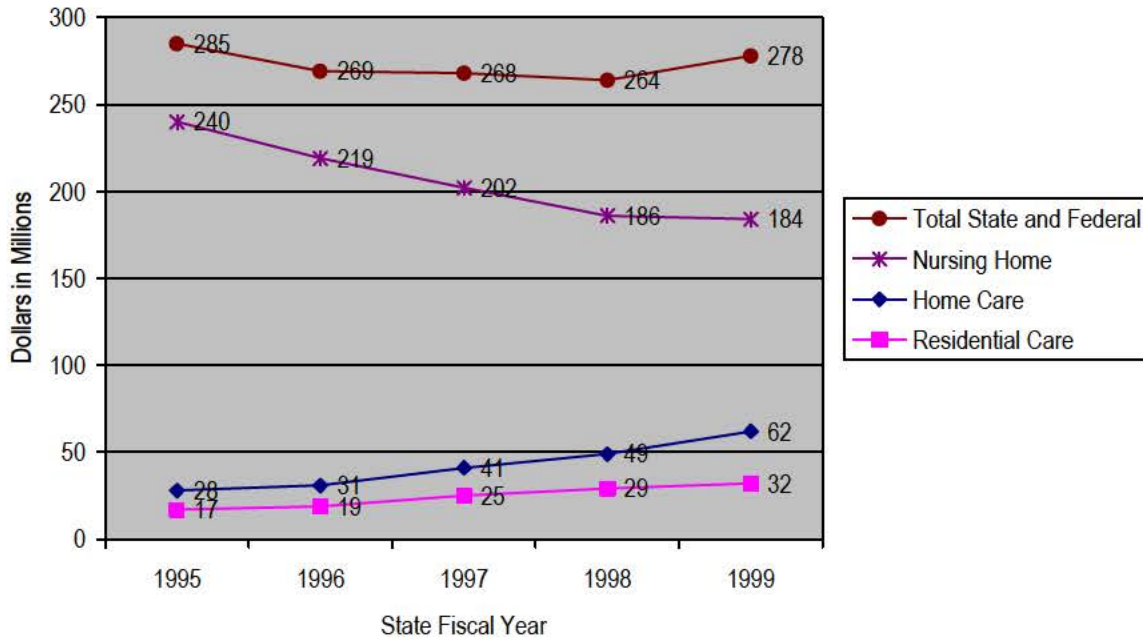
Chart 2. People Served in Selected Maine Long Term Care Settings, 1995 and 1999



Source: Maine Department of Human Services

Maine spent about 2% less on long-term care in 1999 than it did in 1995, including both State and federal Medicaid funds and State General Funds. This was achieved despite the dramatic increase in people served because of the significant shift away from nursing facility use and toward less expensive care settings over the time period. Very recent cost trends suggest that the system may have reached the limits of savings available from this shift. Though still lower than 1995 costs, total State and federal spending in 1999 was 5% higher than in 1998, suggesting that the system has maximized nursing facility savings and will face increasing total expenditures as it responds to future demand. See Chart 3.

Chart 3. Combined Medicaid and General Fund Expenditures on Maine Long Term Care for Selected Years



Source: Maine Department of Human Services

The State has greatly expanded the number of people served over the past 5 years by using savings generated from declining use of nursing facilities, which cost much more than other types of long-term care services. Nursing facility expenditures now appear to be leveling out, and the state fiscal year 1999 costs to the long-term care system rose from 1998, both in terms of total dollars and of State dollars. In other words, the impressive system expansions of the past several years have been financed largely with savings internal to the overall long-term care system, but future expansions are likely to require new dollars.

III. Guiding Principles

Keeping up with today's growing demand is challenging in and of itself, but planning for tomorrow's growth requires clear public policy direction that will guide successive policy makers. To that end, the Health and Human Services Committee began its work by adopting guiding principles for the State's long-term care system.

1. Maine's long-term care system should be comprehensive and flexible and should be designed to meet the needs and preferences of consumers.

This principle defines three fundamental goals for the long-term care system:

- that it be comprehensive, offering a broad range of services from prevention through nursing facility care;
- that it be flexible and able to respond to the changing needs of consumers over time; and
- that it be responsive to consumer needs and preferences.

2. Maine's long-term care system should enhance the lives and safety of consumers.

This principle underscores government's fundamental responsibility to ensure that Maine citizens are safe and enjoy the highest quality services possible. This principle will be critical as continual growth and worsening staff shortages bring pressure to bear on the quality of care provided in the system.

3. Maine's long-term care system should provide high-quality, cost-effective, affordable care through partnerships between providers of care and the State.

This principle addresses two important concepts:

- That Maine should continue to rely predominately on private sector providers to deliver long-term care. State agencies and the providers should view their relationships as long-term partnerships to be fostered together, rather than as antagonistic unproductive; and
- Providers should be paid adequately for their services, but affordability will be increasingly important to all payers over time (long-term care consumers and their families, government, insurers and taxpayers), requiring constant attention to value (the ratio of outcomes to cost) and encouragement of new financing options.

The Committee has developed recommendations under each of these guiding principles.

IV. Recommendations

1. Maine's long-term care system should be comprehensive and flexible and should be designed to meet the needs and preferences of consumers.

1.1. Maine should continue to expand the long-term care infrastructure to provide a comprehensive range of service options in every region of the State.

Every region of the State should have an adequate infrastructure of services. Although there appears to be a reasonable base of services overall, regional differences exist, particularly in regard to service type. As of January 1, 2000, waiting lists for services included 1031 persons: 153 persons awaiting home based care for elders and adults with disabilities, 110 persons awaiting Alzheimer's respite care, 733 persons awaiting homemaker services and 35 persons awaiting adult day services. Also, demand for services will continue to increase steadily, requiring constant infrastructure development to keep up with growing need.

Immediately:

- Resources should be appropriated and allocated sufficient to fund services for all 1031 persons on waiting lists as of January 1, 2000, for home care for elders and adults with disabilities, Alzheimer's respite care, homemaker services and adult day services.
- The Department of Human Services, the Maine State Housing Authority and the Department of Public Safety should develop joint proposals for long-term care services and residential options. The agencies should report to the Health and Human Services Committee by January 1, 2001, on the development of new and expanded services and residential options.

Moving Forward:

- The Department of Human Services should enhance its long-term care planning process by incorporating regional demographic data and working with the regional area agencies on aging, local consumers, providers and other interested parties to identify region-specific needs and innovations. The department should include in its annual report to the Legislature information on waiting lists for long-term care services, compiled by region or county, and information on providing cost-of-living increases to its home and community based long-term care providers.
- The State should plan to make new investments in long-term care annually to meet needs that are projected to grow steadily in the foreseeable future. The State should review 2000 Census and other updated demographic data as they become available to ensure that projections remain as up-to-date as possible.

1.2. *The Department of Human Services, working with consumers, providers and other interested parties, should identify steps that can be taken to enhance service flexibility for consumers without jeopardizing receipt of federal funds.*

In order to maximize available federal funding, Maine has developed a number of Medicaid-funded long-term care programs, including the Home- and Community-Based Services Waiver Program (HCBS Waiver), Private Non-Medical Institutions (PNMI), and the Private Duty Nursing at Risk Program (PDN at Risk). These federally-matched options enable the State to deliver nearly \$300 million worth of long-term care services a year funded by state and federal dollars, but they are somewhat rigid in their requirements and limitations, especially when compared to the extensive flexibility of the State-funded home care program. Each Medicaid option has specific financial and clinical criteria, and transitions from one funding source to another can be disruptive.

Immediately:

- The Department of Human Services should review and amend its rules regarding Medicaid long-term care policy in order to enhance the flexibility of Medicaid benefits to the extent possible under federal law. The review should include but not be limited to the feasibility of amending Medicaid rules to ensure that consumers do not lose critical benefits when they make a transition from the State-funded home care program to the Medicaid program. If the Medicaid program does not offer sufficient flexibility to guarantee a consumer who is on the home care program and who then becomes eligible for Medicaid continued access to a critical service, such as an emergency response system or homemaker service, the department should amend its rules for the home care program to provide for continuing eligibility for the critical service.
- The Department of Human Services should amend nursing home eligibility criteria to allow greater flexibility for consumers who experience multiple moves across care settings, for example a consumer whose chronic condition changes could need nursing facility care for a month, residential level care for a month and then nursing facility care for a month.
- The Department of Human Services should initiate multiple "aging in place" demonstrations that allow consumers to receive increasing levels of service in their existing residential settings over time, whether those settings be home, elderly housing complexes, multi-level residential facilities, or other settings unique to particular communities, with increased reimbursement levels for increased consumer needs.
- The Department of Human Services, in consultation with consumers, providers and other interested parties, should review the long-term care assessment process and identify ways that the process can be made more flexible without undermining its objectivity and predictability. The review should include, but not be limited to, amending the process to allow the nurse assessor to utilize professional skills and to consider input from the consumer's family and physician. The review should include

the establishment of guidelines to provide to the nurse assessor standards with regard to consumer need and care plan development. Amended rules should eliminate the need for automatic annual assessment of consumers whose conditions are unlikely to improve sufficiently to cause a change in their eligibility for services.

- The Department of Human Services should undertake the development of consumer directed long-term care pilot projects in which consumers qualify for a voucher or other flexible funding, rather than qualifying for particular service types.

Moving Forward:

- The Department of Human Services should continue development of MaineNET and other initiatives designed to better coordinate acute and long-term care services.

1.3. The Department of Human Services and the Board of Nursing should propose rule changes and other actions that promote the expeditious expansion and career development of the long-term care work force.

The shortage of long-term care workers will worsen as growth in services collides with a shrinking pool of working age adults. Increasingly, the long-term care industry will need to compete with other sectors of the economy for scarce workers. This will require a combination of short- and long-term strategies

Immediately:

- In consultation with consumers, providers and other interested parties, the Department of Human Services and the Board of Nursing should complete its ongoing work regarding the long-term care labor force and propose rule changes and other actions necessary to promote a career ladder in long-term care. Special attention should be paid to the appropriateness of training, certification and recertification requirements for direct care staff. The department and board are requested to focus on requirements for recertification of CNAs on the CNA Registry, considering alternative methods of qualifying for recertification. The department and board should amend their rules to foster professionalism while avoiding unreasonably strict regulation unrelated to the provision of high quality care.

Moving Forward:

- The Department of Human Services should convene interested parties, including consumers, providers, regulators, legislators, educators, productivity experts and demographers to develop a long-term strategy to ensure an adequate long-term care workforce. A starting point for the discussions could be the report prepared by the Labor Task Force convened by the Maine Health Care Association entitled, “The Shortage of CNAs and PCAs in Maine, Short and Long-term Solutions.” Consideration should be given to strategies for improving productivity, improving pay and benefits, enhancing educational opportunities, and otherwise elevating the status and attractiveness of the occupation.

2. Maine's long-term care system should enhance the lives and safety of consumers.

2.1. Maine's long-term care quality system should focus more heavily on consumer outcomes.

Nationally and in Maine, the quality of long-term care services is monitored largely through the licensing and certification process, which focuses mostly on structures, such as patient records and staff credentials, and processes, such as how a facility responds to a serious incident. Maine should provide national leadership by developing consumer outcome measures for all long-term care settings.

Immediately:

- The Department of Human Services should convene quality outcome panels comprised of consumers, providers, clinicians and researchers who volunteer to develop and implement quality improvement strategies in the long-term care system. Panels should consider currently available outcome and performance indicator research and should be convened for all types of long-term care. Notice of meetings should be provided to members of the Health and Human Services Committee. The panels should begin their work by October 1, 2000 and should complete it by October 1, 2002.

2.2. The State should provide adequate and comparable consumer appeal processes across its various long-term care programs, without regard to funding source.

Currently, opportunities for consumer appeal are less extensive in the State's home care program than they are under Medicaid-funded long-term care programs.

Immediately:

- The Department of Human Services should amend its home care program rules to ensure that consumers enjoy appeal rights that are comparable to Medicaid appeal rights and to provide for the right to appeal from the provisions of an initial care plan.

Moving Forward:

- The Department of Human Services should develop a universal appeal process that applies across all long-term care settings.

2.3. All long-term care services should be adequately and appropriately staffed.

A critical element of quality is having enough well-trained staff. This will become increasingly challenging as general labor shortages impact the long-term care sector.

Immediately:

- The Department of Human Services, in consultation with consumers, providers and other interested parties, should develop minimum staffing ratios for residential care facilities and should revise its ratios for nursing facilities.

- The Department of Human Services should participate in a series of best practices forums to provide educational workshops and opportunities for providers of long-term care services. The workshops and forums may be co-sponsored by entities other than the department.

3. Maine’s long-term care system should provide high-quality, cost-effective, affordable care through partnerships between providers of care and the State.

3.1. The Maine Department of Human Services should enhance its efforts to provide technical assistance to long-term care providers in the spirit of continuous quality improvement. While the Department should not abandon its oversight role regarding providers, it should offer positive and constructive consultation to providers whenever possible.

In order to meet growing demand, Maine's long-term care system must expand steadily over the coming decades. Significant growth over time will require constructive relationships between the State and providers. Technical assistance provided directly by the Department of Human Services or as an allowable cost should be a central component of that relationship.

Immediately:

- The Department of Human Services should develop standardized contracts for use between the provider and consumer in long-term care settings when appropriate to the service and setting.
- The Department of Human Services and the Department of Public Safety should implement default licensing policies that automatically issue long-term care service licenses within 90 days when a new applicant has filed a completed application and when necessary action has not been taken by state agencies. The Department of Human Services and the Department of Public Safety should notify an applicant whether the application is complete within 2 weeks of filing and should provide required services and inspections within 90 days of the filing of the completed application.
- The Department of Human Services, the Department of Public Safety and local fire officials should devise ways to expand the delegation of Life Safety Code inspections to local officials.
- The Department of Human Services should review its rules on licensing periods and licensing surveys and, to the extent not inconsistent with federal law, amend those rules to allow for the reasonable lengthening of licensing periods and some relaxation of survey requirements for providers of services with a documented record of consistently providing high quality care. The department should consider performance standards, recognized standards of practice, desired and measurable outcomes and satisfaction surveys of consumers and their families.

Moving Forward:

- The Department of Human Services should computerize the process for issuing provider licenses.
- The Department of Human Services should work with providers to identify priority areas for technical assistance.

3.2. *The reimbursement methodology for long-term care providers should be revised to ensure adequate reimbursement and to simplify the principles of reimbursement.*

Immediately:

- The Department of Human Services should amend the principles of reimbursement for nursing facilities under the Medicaid program to ensure that reimbursement reflects the current cost of doing business efficiently. Amendments should include, but are not limited to: merging indirect and routine components into a single routine component; moving medical supplies into the direct care component; incorporating the most recent time study information available; re-basing rates to the most recent complete audited year; establishing different cost caps for facilities based on size; including an annual inflation adjustment appropriate to the industry and recognizing regional variations in labor costs.
- The Department of Human Services should review its rules on reimbursement for long-term care services and should report to the Health and Human Services Committee by January 1, 2001, its recommendations for including in the reimbursement formulas a factor for acuity of consumer condition and level of need for services.

3.3 *The State should investigate strategies to expand long-term care financing mechanisms.*

The moderate growth in demand for long-term care that is expected over the next 20 years will challenge the public financing system. When the baby boomers reach their 80s in the 2020s, the growth in demand will explode, and the current financing mechanisms may not be adequate. Maine should use this 20-year window to foster alternative financing mechanisms.

Immediately:

- The Maine State Retirement System, the Office of State Employee Health and the Department of Human Services should examine the feasibility of offering a group long-term care policy to retirees, employees and family members, studying the program offered by the California Public Employees Retirement System (CalPERS) programs offered by other states and the possible benefits of regional cooperation.

- The Department of Human Services should develop a public awareness campaign that focuses on the long-term benefits of a healthy lifestyle and the need to plan for long-term care needs. The campaign should include information on the toll-free telephone line maintained by the area agencies on aging and long-term care services and resources.

Moving Forward:

- The State should begin a public discussion about alternative financing for long-term care, including examination of social insurance models in other countries.
- The Bureau of Revenue Services should evaluate the effectiveness of existing tax incentives for private long-term care insurance and develop strategies for increasing the use of those incentives.

V. Implementation

The recommendations included in this report include some that can be immediately implemented and others that will take longer. They also include some that are very specific and others that need to be refined with further input from providers, consumers and their families and other interested parties. A timetable for action is included in Appendix B.

If Maine is to be prepared for the coming unprecedented demand for long-term care, it is critical that implementation occur over a sustained period of time. Therefore, the committee recommends the formation of a Long-term Care Implementation Committee comprised of legislators, department officials, public members and consumers. The committee would be charged with monitoring progress toward accomplishment of the recommendations contained in this report, could meet up to 9 times per year, would be reimbursed for necessary expenses for attending meetings, would be staffed by the Department of Human Services and would have responsibility for forwarding suggested legislation to the Health and Human Services Committee. The committee would review rules and the quality of care in the long-term care system. The committee would report annually to the Health and Human Services Committee. The committee would begin work after January 1, 2001, and would cease to exist on January 1, 2003.

Appendix A

Membership of Health and Human Services Committee

Senator Judy A. Paradis, Senate Chair

Senator Georgette B. Berube

Senator Betty Lou Mitchell

Representative Thomas J. Kane, House Chair

Representative Joseph E. Brooks

Representative Elaine Fuller

Representative Michael W. Quint

Representative Edward R. Dugay

Representative Daniel B. Williams

Representative Glenys R. Lovett

Representative Tarren R. Bragdon

Representative Lois Snowe-Mello

Representative Thomas F. Shields

Appendix B

Timetable for Action

July 1, 2000

Rule amendment re: principles of reimbursement (direct care costs, re-basing, etc.).

October 1, 2000

DHS convene quality outcome panels.

Rule amendment re: consumers whose chronic conditions change cyclically.

Rule amendment re: appeal rights.

Rule amendment re: determining medical and financial eligibility for Medicaid reimbursement for long-term care services.

January 1, 2001

Report from DHS and MSHA work on development of service and residential options.

Report from DHS and Board of Nursing on labor force initiatives.

Report from DHS on acuity based reimbursement methods.

Report from DHS and Department of Public Safety on Life Safety Code inspections.

Report from DHS on healthy lifestyle and long-term care planning campaign.

Rule amendment re: standardized contracts in long-term care.

Rule amendment re: flexibility between Medicaid and home care program concerning critical services.

Rule amendment re: default licensing.

Rule amendment re: voucher and flexible funding pilot projects.

Appointment of members to the Long-term Care Implementation Committee.

April 1, 2001

Report from Office of State Employee Health on long-term care insurance.

July 1, 2001

Rule amendment re: license duration and surveys.

Rule adoption and amendment re: minimum staffing ratios.

Rule adoption re: aging in place pilot projects.

Appendix C

Long-term Care Legislation Proposed by the Health and Human Services Committee January 2000

Sec. 1. Appropriation and allocation. The following amounts are appropriated and allocated for the purpose of providing services to the 153 persons on waiting lists for home based care for elders and adults with disabilities, 110 persons awaiting Alzheimer's respite care, 733 persons awaiting homemaker services and 35 persons awaiting adult day services:

Appropriation To be drafted by OFPR

Sec. 2. Service and residential option development. The Department of Human Services, the Maine State Housing Authority and the Department of Public Safety shall work with providers and potential providers of services and residential options to develop new long-term care services and residential options. The first focus must be on underserved areas of the State and services and options in short supply, including but not limited to small residential facilities, adult family care homes, adult day services, assisted living for elders with lower income, specialized dementia care facilities and services for persons living in senior housing sites. The department shall report to the Joint Standing Committee on Health and Human Services by January 1, 2001, on the development of new and expanded services and residential options.

Sec. 3. Rule amendment regarding Medicaid long-term care policy and the home care program. The Department of Human Services shall review and amend its rules regarding Medicaid long-term care policy in order to enhance the flexibility of Medicaid benefits to the extent possible under federal law. The review must include but is not limited to the feasibility of amending Medicaid rules to ensure that consumers do not lose critical benefits when they make a transition from the State-funded home care program to the Medicaid program. If the Medicaid program does not offer sufficient flexibility to provide a consumer who is on the home care program and who then becomes eligible for Medicaid continued access to a critical service, such as an emergency response system or homemaker service, the department shall amend its rules for the home care program to provide for continuing eligibility for the critical service. Rules adopted pursuant to this section must be adopted by January 1, 2001. Rules adopted pursuant to this section are routine technical rules as defined in 5 MRSA, chapter 375, subchapter II-A.

Sec. 4. Rule amendment regarding consumers with chronic conditions that change. The Department of Human Services shall amend its rules regarding eligibility for nursing facility services to allow for continuing eligibility for consumers with chronic

conditions that change enough to qualify and disqualify them for services on a cyclical basis. Rules adopted pursuant to this section must take effect by October 1, 2000. Rules adopted pursuant to this section are routine technical rules as defined in 5 MRSA, chapter 375, subchapter II-A.

Sec. 5. Labor force initiatives. The Department of Human Services and the Maine State Board of Nursing, in consultation with consumers, providers and other interested parties, shall complete a review of the long-term care labor force and shall adopt or amend rules and propose such legislation as may be required to create career ladders and address labor shortage issues. Attention must be paid to the appropriateness of training, certification and recertification requirements for direct care long-term care staff and to appropriate alternative methods for CNAs in varied long-term care settings to qualify for recertification. The department and the board shall amend their rules to foster professionalism while avoiding unreasonably strict regulation unrelated to the provision of high-quality care. The department and the Maine State Board of Nursing shall report to the Health and Human Services Committee by January 1, 2001, on their progress in addressing these issues.

Sec. 6. Quality outcome panels. The Department of Human Services shall convene quality outcome panels consisting of persons who volunteer to assist in the development and implementation of quality improvement strategies in long-term care. The quality outcome panels must include consumers, providers, clinicians and researchers. The department shall send notices to members of the Health and Human Services Committee inviting them to the meetings. The panels must be convened by October 1, 2000 and must complete their work by October 1, 2002.

Sec. 7. Rule amendment regarding appeal rights. The Department of Human Services shall amend its rules regarding the appeal rights of consumers in the department's home care programs to provide for the same appeal rights as in the Medicaid program and the right to appeal the provisions of an initial care plan. Rules adopted pursuant to this section must take effect by October 1, 2000. Rules adopted pursuant to this section are routine technical rules as defined in 5 MRSA, chapter 375, subchapter II-A.

Sec. 8. Provision of best practices forums. The Department of Human Services shall participate in a series of best practices forums to provide educational workshops and opportunities to providers of long-term care services. Workshops and forums may be co-sponsored by entities other than the department.

Sec. 9. Development of standardized contracts and rule adoption. The Department of Human Services shall develop and adopt rules to require the use of standardized contracts to be used for long-term care services between the service provider and the consumer when appropriate to the service and setting. Rules adopted pursuant to this section must take effect by January 1, 2001. Rules adopted or amended pursuant to this section are routine technical rules as defined in 5 MRSA, chapter 375, subchapter II-A.

Sec. 10. Rule amendment regarding default licensing. The Department of Human Services and the Department of Public Safety shall amend their rules regarding licensing for long-term care facilities and services to provide for default licensing for new applicants. The rules must provide that default licensing takes effect when a new applicant has filed a completed application, has not been provided the necessary notifications, inspections or services from state agencies and more than 90 days has elapsed since completion of the application. The Department of Human Services and the Department of Public Safety and persons or entities performing functions for those departments shall notify a new applicant within 2 weeks of filing by the applicant whether the application is complete. The Department of Human Services and the Department of Public Safety shall provide necessary services and inspections within 90 days of the filing of the completed application. Rules adopted pursuant to this section must take effect by January 1, 2001. Rules adopted pursuant to this section are routine technical rules as defined in 5 MRSA, chapter 375, subchapter II-A.

Sec. 11. Expansion of Life Safety Code inspection capacity. The Department of Human Services, the Department of Public Safety and municipal fire officials shall work together to devise ways to expand the delegation of Life Safety Code inspections. The Department of Human Services and the Department of Public Safety shall report to the Health and Human Services Committee by January 1, 2001 on their progress under this section.

Sec. 12. Rule amendment regarding the principles of reimbursement for nursing facilities. The Department of Human Services shall amend the principles of reimbursement for nursing facilities to ensure that reimbursement reflects the current cost of providing services in an efficient manner. The revised principles of reimbursement must merge routine and indirect cost components into a single routine cost component category; must include medical supplies as a direct cost component; must incorporate the most recent time study information; must re-base to the most recent audited year; must contain an annual inflation adjustment appropriate to the industry; must establish cost caps for facilities based on size; and must recognize regional variations in labor costs. Rules adopted pursuant to this section must take effect by July 1, 2000. Rules adopted or amended pursuant to this section are routine technical rules as defined in 5 MRSA, chapter 375, subchapter II-A.

Sec. 13. Report on long-term care insurance. The Department of Human Services, the Maine State Retirement System and the Office of State Employee Health shall work together to study the provision of group long-term care insurance to employees of the State and other public sector employees and retirees and to their family members and to the citizens of the State. The study must consider the CalPERS system operating in California, other models used in other states and the feasibility of regional cooperation among states. The Office of State Employee Health is the lead agency in the study and shall report to the Joint Standing Committee on Health and Human Services by April 1, 2001, regarding the study and any recommendations.

Sec. 14. Development of a public awareness campaign. The Department of Human Services shall develop and implement a public awareness campaign that focuses on the benefits of a healthy lifestyle and the need to plan for long-term care. The campaign must include information about the toll-free telephone number being maintained by the area agencies on aging and long-term care services and resources. The department shall report to the Joint Standing Committee on Health and Human Services by January 1, 2001, on its progress on the campaign.

Sec. 15. Rule adoption and amendment regarding minimum staffing ratios. The Department of Human Services shall adopt rules regarding minimum staffing ratios in residential care facilities and shall review its minimum staffing ratios for nursing facilities and shall amend the rules regarding those ratios if it determines that amendment is appropriate. Rules adopted pursuant to this section must take effect by July 1, 2001 and, if necessary for the reimbursement of long-term care services, must be accompanied by changes in the principles of reimbursement for long-term care services under the Medicaid program. Rules adopted or amended pursuant to this section are major substantive rules as defined in 5 MRSA, chapter 375, subchapter II-A.

Sec. 16. Rule amendment regarding licensing and surveys of providers of long-term care services. Consistent with the requirements of the federal Medicaid and Medicare programs, the Department of Human Services shall amend its rules regarding the duration of licenses for providers of long-term care services and the surveys required of those providers. In preparing the amendments the department shall consider performance standards, recognized standards of best practice, desired and measurable outcomes and satisfaction surveys of consumers and their families. To the extent not in conflict with the requirements of applicable federal programs, the rules must provide for the reasonable lengthening of license periods and some relaxation of survey requirements for providers of services with a documented track record of consistently high quality service delivery as measured by performance standards and other appropriate criteria. Rules adopted pursuant to this section must take effect by July 1, 2001. Rules adopted or amended pursuant to this section are major substantive rules as defined in 5 MRSA, chapter 375, subchapter II-A.

Sec. 17. Rule amendment regarding assessment for eligibility for reimbursement under the Medicaid program for long-term care services. The Department of Human Services shall review its rules for determining eligibility for reimbursement under the Medicaid program for long-term care. The review process must include consumers, providers and other interested persons. It must identify ways to make the process of medical assessment more flexible without undermining its objectivity. The review must include, but is not limited to, providing to the nurse assessor authority to utilize professional skills and to consider input from the consumer's family and physician. The review should include the establishment of guidelines to provide to the nurse assessor standards with regard to consumer need and care plan development. The rules must eliminate the requirement of automatic annual assessments of the medical condition of consumers whose medical conditions are unlikely to improve sufficiently to cause a change in their eligibility for services. The review process must also include

verification of financial information in the process of determining financial eligibility for reimbursement under the Medicaid program. Rules adopted pursuant to this section must take effect by October 1, 2000. Rules adopted or amended pursuant to this section are routine technical rules as defined in 5 MRSA, chapter 375, subchapter II-A.

Sec. 18. Development of aging in place pilot projects. The Department of Human Services shall undertake aging in place pilot projects that allow consumers to receive increasing levels of services as their needs for care increase over time without their having to change residential settings. The projects must provide for increased reimbursement for services as the need for those services increases. Rules adopted pursuant to this section must take effect by July 1, 2001. Rules adopted or amended pursuant to this section are routine technical rules as defined in 5 MRSA, chapter 375, subchapter II-A.

Sec. 19. Development of voucher or flexible funding pilot projects in long-term care. The Department of Human Services shall undertake pilot projects that provide vouchers or flexible funding in which consumers qualify for long-term care services and may choose the manner in which they are delivered and the service provider. The pilot projects may be provided under the Medicaid program or under state-funded long-term care programs. Rules adopted pursuant to this section must take effect by January 1, 2001. Rules adopted or amended pursuant to this section are routine technical rules as defined in 5 MRSA, chapter 375, subchapter II-A.

Sec. 20. Review of acuity based reimbursement under the Medicaid program. The Department of Human Services shall review its rules on reimbursement for long-term care services and shall report to the Joint Standing Committee on Health and Human Services by January 1, 2001, its recommendations for including in the reimbursement formulas for long-term care services a factor for acuity of consumer condition and level of need for services.

Sec. 21. Establishment of the Long-term Care Implementation Committee. There is established the Long-term Care Implementation Committee, hereinafter referred to as "the committee," to monitor the progress of State departments and offices in implementing the provisions of this legislation. The committee shall review the adoption and amendment of rules performed in response to this Act and may make recommendations to the Department of Human Services and to the Health and Human Services Committee for amendments to those rules. The committee shall review the quality of care in the long-term care system.

The committee shall consist of 13 members. The President of the Senate shall appoint 5 members as follows: one person representing providers; one person representing the Long-term Care Steering Committee; one person representing consumers of long-term care services; and 2 legislators, one representing the Joint Standing Committee on Health and Human Services and one representing the Joint Standing Committee on Appropriations and Financial Affairs. One legislator must represent the majority party and one must represent the minority party. The Speaker of the House of

Representatives shall appoint 5 members as follows: one person representing providers; one person representing the Long-term Care Steering Committee; one person representing consumers of long-term care services; and 2 legislators, one representing the Joint Standing Committee on Health and Human Services and one representing the Joint Standing Committee on Appropriations and Financial Affairs. One legislator must represent the majority party and one must represent the minority party. The Commissioner of Human Services or the Commissioner's designee and 2 other persons representing the Department of Human Services, appointed by the Commissioner, are ex officio members of the committee. All appointments must be complete by January 1, 2001.

The committee may meet up to nine times per year. The committee members shall select 2 persons from among the members to serve as co-chairs. Persons serving as co-chairs may serve in that capacity for a maximum of 12 months time. The department shall provide staff and support services. Committee members not otherwise reimbursed for expenses of attending meetings are entitled to reimbursement.

The committee shall report annually by February 1, 2001, February 1, 2002, and December 31, 2002, to the Joint Standing Committee on Health and Human Services Committee. The report must include activities of the committee in the prior year, the opinion of the committee on the progress being made to implement this legislation and any recommendations for action, including recommending necessary legislation. This section is repealed January 1, 2003.

SUMMARY

This bill represents the recommendations for action from the Joint Standing Committee on Health and Human Services as a result of their study of long-term care during the fall of 1999 and January, 2000. The bill contains recommendations for action that the committee considers to be necessary for the maintenance of a long-term care system that provides Maine elders and adults with disabilities access to long-term care services that are of high quality and that are reasonably priced. This bill includes the following recommendations.

1. It appropriates funding for the 1031 persons on the waiting list for home and community based long-term care services.
2. It directs the Department of Human Services, the Maine State Housing Authority and the Department of Public Safety to work with providers and potential providers of long-term care services and residential options to develop new services and options.
3. It directs the Department of Human Services to review and amend its rules regarding Medicaid long-term care policy and the home care programs in order to enhance the

flexibility of Medicaid benefits to the extent possible under federal law and to provide continued access to critical services when a consumer on a home care program becomes eligible for Medicaid.

4. It directs the Department of Human Services to amend its rules regarding eligibility for long-term care services to provide for continuing eligibility for consumers with chronic conditions that change enough to qualify and disqualify them on a cyclical basis.
5. It directs the Department of Human Services and the Maine State Board of Nursing to work with consumers, providers and other interested parties to review the long-term care labor force and to adopt or amend rules and to propose legislation to create career ladders and to address labor shortage issues.
6. It directs the Department of Human Services to convene quality outcome panels to assist in the development and implementation of quality improvement strategies for long-term care.
7. It directs the Department of Human Services to amend its rules regarding the appeal rights of consumers in home care programs and the right to appeal the initial care plan.
8. It directs the Department of Human Services to participate in best practices forums and educational workshops.
9. It directs the Department of Human Services to develop and adopt rules to require the use of standardized contracts in long-term care when appropriate between the provider and the consumer.
10. It directs the Department of Human Services and the Department of Public Safety to amend their rules regarding licensing to provide for default licensing for new applicants for long-term care facilities and services when the application is complete and 90 days has elapsed since filing the completed application.
11. It directs the Department of Human Services, the Department of Public Safety and municipal fire officials to work together to devise ways to expand the delegation of Life Safety Code inspections.
12. It directs the Department of Human Services to amend its principles of reimbursement for the Medicaid program to ensure that reimbursement reflects the current cost of providing services in an efficient manner.
13. It directs the Department of Human Services, the Maine State Retirement System and the Office of State Employee Health to work together to study the provision of long-term care insurance to state and public sector employees and retirees and their families and to other citizens of the State.

14. It directs the Department of Human Services to undertake a public awareness campaign regarding a healthy lifestyle and long-term care.
15. It directs the Department of Human Services to adopt rules regarding minimum staffing ratios in residential care facilities and to review and possibly amend its rules regarding minimum staffing ratios in nursing facilities.
16. It directs the Department of Human Services to review and possibly amend its rules regarding the duration of licenses for long-term care and the surveys required of long-term care providers.
17. It directs the Department of Human Services to review its rules for determining eligibility for Medicaid reimbursement for long-term care services, both medical and financial eligibility.
18. It directs the Department of Human Services to undertake pilot projects allowing recipients of long-term care services to remain in their homes and receive increased reimbursement for increased levels of services as their needs increase.
19. It directs the Department of Human Services to undertake pilot projects to provide vouchers or flexible funding for consumers of long-term care services.
20. It directs the Department of Human Services to review its rules on reimbursement of long-term care services and to report its recommendations for including an acuity factor in the formulas.
21. It establishes the Long-term Care Implementation Committee to monitor the progress of the various departments and offices in implementing this legislation. The committee, composed of 13 members, would review quality of care and the adoption of rules required by this legislation and would submit annual reports to the Joint Standing Committee on Health and Human Services. The committee would cease to exist on January 1, 2003.