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No. 372

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In Senate, February 10, 2021

An Act To Provide Maine Children Access to Affordable Health Care

Received by the Secretary of the Senate on February 8, 2021. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CARNEY of Cumberland.
Cosponsored by Representative MILLETT of Waterford and
Senators: BREEN of Cumberland, CLAXTON of Androscoggin, Representatives: MEYER of
Eliot, MILLETT of Cape Elizabeth.

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

2 **Sec. 1. 22 MRSA §3174-G, sub-§1, ¶B**, as repealed and replaced by PL 2007, c.
3 695, Pt. C, §9, is amended to read:

4 B. An infant under one year of age when the infant's family income is equal to or
5 below 200% of the nonfarm income official poverty line, except that the department
6 may adopt a rule that provides that infants in families with income over 185% and
7 equal to or below ~~200%~~ 300% of the nonfarm income official poverty line who meet
8 the eligibility requirements of the Cub Care program established under section 3174-T
9 are eligible to participate in the Cub Care program instead of Medicaid. Rules adopted
10 pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375,
11 subchapter 2-A;

12 **Sec. 2. 22 MRSA §3174-G, sub-§1, ¶D**, as repealed and replaced by PL 2007, c.
13 695, Pt. C, §10, is amended to read:

14 D. A child one year of age or older and under 19 years of age when the child's family
15 income is equal to or below 200% of the nonfarm income official poverty line, except
16 that the department may adopt a rule that provides that children described in this
17 paragraph in families with income over 150% and equal to or below ~~200%~~ 300%
18 of the nonfarm income official poverty line who meet the eligibility requirements of the
19 Cub Care program established under section 3174-T are eligible to participate in the
20 Cub Care program instead of Medicaid. Rules adopted pursuant to this paragraph are
21 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A;

22 **Sec. 3. 22 MRSA §3174-T**, as amended by PL 2017, c. 284, Pt. SSSSSS, §1, is
23 further amended to read:

24 **§3174-T. Cub Care program**

25 **1. Program established.** The Cub Care program is established to provide health
26 coverage for low-income children who are ineligible for benefits under the Medicaid
27 program and who meet the requirements of subsection 2, 2-A or 2-B. The purpose of the
28 Cub Care program is to provide health coverage to as many children as possible within the
29 fiscal constraints of the program budget and without forfeiting any federal funding that is
30 available to the State for the State Children's Health Insurance Program through the federal
31 Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251, referred to in this section
32 as the Balanced Budget Act of 1997.

33 **2. Eligibility; enrollment.** Health coverage under the Cub Care program is available
34 to children under 19 years of age whose family income is above the eligibility level for
35 Medicaid under section 3174-G and below the maximum eligibility level established under
36 paragraphs A and B; and who meet the requirements set forth in paragraph C ~~and for whom~~
37 ~~premiums are paid under subsection 5.~~

38 A. The maximum eligibility level, subject to adjustment by the commissioner under
39 paragraph B, is ~~200%~~ 300% of the nonfarm income official poverty line.

40 B. If the commissioner has determined the fiscal status of the Cub Care program under
41 subsection 8 and has determined that an adjustment in the maximum eligibility level is
42 required under this paragraph, the commissioner shall adjust the maximum eligibility
43 level in accordance with the requirements of this paragraph.

- 1 (1) The adjustment must accomplish the purposes of the Cub Care program set
2 forth in subsection 1.
- 3 ~~(2) If Cub Care program expenditures are reasonably anticipated to exceed the~~
4 ~~program budget, the commissioner shall lower the maximum eligibility level set in~~
5 ~~paragraph A to the extent necessary to bring the program within the program~~
6 ~~budget.~~
- 7 (3) If Cub Care program expenditures are reasonably anticipated to fall below the
8 program budget, the commissioner shall raise the maximum eligibility level set in
9 paragraph A to the extent necessary to provide coverage to as many children as
10 possible within the fiscal constraints of the program budget. If Cub Care program
11 expenditures are reasonably anticipated to exceed the program budget after raising
12 the maximum eligibility level pursuant to this subparagraph, the commissioner
13 may lower the maximum eligibility level to the level established in paragraph A.
- 14 (4) The commissioner shall give at least 30 days' notice of the proposed change in
15 maximum eligibility level to the joint standing committee of the Legislature having
16 jurisdiction over appropriations and financial affairs and the joint standing
17 committee of the Legislature having jurisdiction over health and human services
18 matters.
- 19 C. All children resident in the State are eligible except a child who:
- 20 (1) Is eligible for coverage under the Medicaid program;
- 21 (2) Is covered under a group health insurance plan or under health insurance, as
22 defined in Section 2791 of the federal Public Health Service Act, 42 United States
23 Code, Section 300gg(c) (Supp. 1997); or
- 24 (4) Is an inmate in a public institution or a patient in an institution for mental
25 diseases; ~~or,~~
- 26 ~~(5) Within the 3 months prior to application for coverage under the Cub Care~~
27 ~~program, was insured or otherwise provided coverage under an employer-based~~
28 ~~health plan for which the employer paid 50% or more of the cost for the child's~~
29 ~~coverage, except that this subparagraph does not apply if:~~
- 30 ~~(a) The cost to the employee of coverage for the family exceeds 10% of the~~
31 ~~family's income;~~
- 32 ~~(b) The parent lost coverage for the child because of a change in employment,~~
33 ~~termination of coverage under the Consolidated Omnibus Budget~~
34 ~~Reconciliation Act of 1985, COBRA, of the Employee Retirement Income~~
35 ~~Security Act of 1974, as amended, 29 United States Code, Sections 1161 to~~
36 ~~1168 (Supp. 1997) or termination for a reason not in the control of the~~
37 ~~employee; or~~
- 38 ~~(c) The department has determined that grounds exist for a good cause~~
39 ~~exception.~~
- 40 D. Notwithstanding changes in the maximum eligibility level determined under
41 paragraph B, the following requirements apply to enrollment and eligibility:

1 (1) Children must be enrolled for 12-month enrollment periods. Prior to the end
2 of each 12-month enrollment period the department shall redetermine eligibility
3 for continuing coverage; and

4 (2) Children of higher family income may not be covered unless children of lower
5 family income are also covered. This subparagraph may not be applied to
6 disqualify a child during the 12-month enrollment period. Children of higher
7 income may be disqualified at the end of the 12-month enrollment period if the
8 commissioner has lowered the maximum eligibility level under paragraph B.

9 E. Coverage under the Cub Care program may be purchased for children described in
10 subparagraphs (1) and (2) for a period of up to 18 months as provided in this paragraph
11 at a premium level that is revenue neutral and that covers the cost of the benefit and a
12 contribution toward administrative costs no greater than the maximum level allowable
13 under COBRA. The department shall adopt rules to implement this paragraph. The
14 following children are eligible to enroll under this paragraph:

15 (1) A child who is enrolled under paragraph A or B and whose family income at
16 the end of the child's 12-month enrollment term exceeds the maximum allowable
17 income set in that paragraph; and

18 (2) A child who is enrolled in the Medicaid program and whose family income
19 exceeds the limits of that program. The department shall terminate Medicaid
20 coverage for a child who enrolls in the Cub Care program under this subparagraph.

21 F. The department may not apply an asset test to a child or child's family when the
22 child is otherwise eligible for the Cub Care program under this section.

23 **2-A. Persons 19 and 20 years of age.** Health coverage under the Cub Care program
24 is available to a person 19 or 20 years of age whose family income is above the eligibility
25 level for Medicaid under section 3174-G and below the maximum eligibility level
26 established under subsection 2, paragraphs A and B and who meets the requirements set
27 forth in subsection 2, paragraph C. All the requirements of eligibility, program
28 administration, benefit delivery and outreach established in this section apply to persons
29 19 and 20 years of age.

30 **2-B. Noncitizens.** Health coverage under the Cub Care program is available to a
31 person under 21 years of age who is not a citizen of the United States and whose family
32 income is above the eligibility level for Medicaid under section 3174-G and below the
33 maximum eligibility level established under subsection 2, paragraphs A and B and who
34 meets the requirements set forth in subsection 2, paragraph C. All the requirements of
35 eligibility, program administration, benefit delivery and outreach established in this section
36 apply to a person under 21 years of age who is not a citizen of the United States.

37 **3. Program administration; benefit design.** With the exception of ~~premium~~
38 ~~payments under subsection 5~~ and any other requirements imposed under this section, the
39 Cub Care program must be integrated with the Medicaid program and administered with it
40 in one administrative structure within the department, with the same enrollment and
41 eligibility processes, benefit package and outreach and in compliance with the same laws
42 and policies as the Medicaid program, except when those laws and policies are inconsistent
43 with this section and the Balanced Budget Act of 1997. The department shall adopt and
44 promote a simplified eligibility form and eligibility process.

1 **4. Benefit delivery.** The Cub Care program must use, but is not limited to, the same
2 benefit delivery system as the Medicaid program, providing benefits through the same
3 health plans, contracting process and providers. Copayments and deductibles may not be
4 charged for benefits provided under the program.

5 ~~**5. Premium payments.** Premiums must be paid in accordance with this subsection.~~

6 ~~A. Premiums must be paid at the beginning of each month for coverage for that month~~
7 ~~according to the following scale:~~

8 ~~(1) Families with incomes between 150% and 160% of the federal nonfarm income~~
9 ~~official poverty line pay premiums of 5% of the benefit cost per child, but not more~~
10 ~~than 5% of the cost for 2 children;~~

11 ~~(2) Families with incomes between 160% and 170% of the federal nonfarm income~~
12 ~~official poverty line pay premiums of 10% of the benefit cost per child, but not~~
13 ~~more than 10% of the cost for 2 children;~~

14 ~~(3) Families with incomes between 170% and 185% of the federal nonfarm income~~
15 ~~official poverty line must pay premiums of 15% of the benefit cost per child, but~~
16 ~~not more than 15% of the cost for 2 children; and~~

17 ~~(4) Families with incomes between 185% and 200% of the federal nonfarm income~~
18 ~~official poverty line must pay premiums of 20% of the benefit cost per child, but~~
19 ~~not more than 20% of the cost for 2 children.~~

20 ~~B. When a premium is not paid at the beginning of a month, the department shall give~~
21 ~~notice of nonpayment at that time and again at the beginning of the 6th month of the 6-~~
22 ~~month enrollment period if the premium is still unpaid, and the department shall~~
23 ~~provide an opportunity for a hearing and a grace period in which the premium may be~~
24 ~~paid and no penalty will apply for the late payment. If a premium is not paid by the~~
25 ~~end of the grace period, coverage must be terminated unless the department has~~
26 ~~determined that waiver of premium is appropriate under paragraph D. The grace period~~
27 ~~is determined according to this paragraph.~~

28 ~~(1) If nonpayment is for the first, 2nd, 3rd, 4th or 5th month of the 6-month~~
29 ~~enrollment period, the grace period is equal to the remainder of the 6-month~~
30 ~~enrollment period.~~

31 ~~(2) If nonpayment is for the 6th month of the 6-month enrollment period, the grace~~
32 ~~period is equal to 6 weeks.~~

33 ~~C. A child whose coverage under the Cub Care program has been terminated for~~
34 ~~nonpayment of premium and who has received coverage for a month or longer without~~
35 ~~premium payment may not reenroll until after a waiting period that equals the number~~
36 ~~of months of coverage under the Cub Care program without premium payment, not to~~
37 ~~exceed 3 months.~~

38 ~~D. The department shall adopt rules allowing waiver of premiums for good cause.~~

39 **6. Incentives.** In the contracting process for the Cub Care program and the Medicaid
40 program, the department shall create incentives to reward health plans that contract with
41 school-based clinics, community health centers and other community-based programs.

1 **7. Administrative costs.** The department shall budget 2% of the costs of the Cub Care
2 program for outreach activities. After the first 6 months of the program and to the extent
3 that the program budget allows, the department may expend up to 3% of the program
4 budget on activities to increase access to health care. ~~Administrative costs must include~~
5 ~~the cost of staff with experience in health policy administration equal to one full-time~~
6 ~~equivalent position.~~ In addition, the department shall apply for additional federal funds
7 available for Medicaid outreach activities. The goal of outreach activities under this
8 subsection is to enroll 100% of children eligible for the Cub Care program or the
9 MaineCare program.

10 **8. Quarterly determination of fiscal status; reports.** On a quarterly basis, the
11 commissioner shall determine the fiscal status of the Cub Care program, determine whether
12 an adjustment in maximum eligibility level is required under subsection 2, paragraph B and
13 report to the joint standing committee of the Legislature having jurisdiction over
14 appropriations and financial affairs and the joint standing committee of the Legislature
15 having jurisdiction over health and human services matters on the following matters:

16 A. Enrollment approvals, denials, terminations, reenrollments, levels and projections.
17 With regard to denials, the department shall gather data from a statistically significant
18 sample and provide information on the income levels of children who are denied
19 eligibility due to family income level;

20 B. Cub Care program expenditures, expenditure projections and fiscal status;

21 C. Proposals for increasing or decreasing enrollment consistent with subsection 2,
22 paragraph B;

23 D. Proposals for enhancing the Cub Care program;

24 E. Any information the department has from the Cub Care program or from the Bureau
25 of Insurance or the Department of Labor on employer health coverage and insurance
26 coverage for low-income children;

27 F. The use of and experience with the purchase option under subsection 2, paragraph
28 ~~D~~ E; and

29 G. Cub Care program administrative costs.

30 **9. Provisions applicable to federally recognized Indian tribes.** After consultation
31 with federally recognized Indian nations, tribes or bands of Indians in the State, the
32 commissioner shall adopt rules regarding eligibility and participation of children who are
33 members of a nation, tribe or band, consistent with Title 30, section 6211, in order to best
34 achieve the goal of providing access to health care for all qualifying children within
35 program requirements, while using all available federal funds.

36 **10. Rulemaking.** The department shall adopt rules in accordance with Title 5, chapter
37 375 as required to implement this section. Rules adopted pursuant to this subsection are
38 routine technical rules as defined by Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

39 **11. Cub Care drug rebate program.** Effective October 1, 1999, the department shall
40 enter into a drug rebate agreement with each manufacturer of prescription drugs that results
41 in a rebate equal to that which would be achieved under the federal Social Security Act,
42 Section 1927.

1 ~~**12. Premium rate review; adjustment.** Effective July 1, 2004, the department shall~~
2 ~~periodically evaluate the amount of premiums charged under this section to ensure that the~~
3 ~~premiums charged reflect the most current benefit cost per child. The commissioner shall~~
4 ~~adjust the premiums by rule. Rules adopted pursuant to this subsection are routine technical~~
5 ~~rules as defined in Title 5, chapter 375, subchapter 2-A.~~

6 **Sec. 4. Federal Medicaid waivers or state plan amendments; funding.** The
7 Department of Health and Human Services shall establish coverage under the Maine
8 Revised Statutes, Title 22, section 3174-T, subsections 2-A and 2-B as of the effective date
9 of this Act using state funds. The department may seek to acquire matching federal funds
10 under the Medicaid program by submitting to the United States Department of Health and
11 Human Services, Centers for Medicare and Medicaid Services any waivers or state plan
12 amendments determined necessary.

13 **Sec. 5. Federal funding for outreach activities.** The Department of Health and
14 Human Services shall apply for federal grant funds available for use for outreach activities
15 as required in the Maine Revised Statutes, Title 22, section 3174-T, subsection 7. These
16 funds must be used to supplement the 2% funding and may not supplant that funding.

17 **Sec. 6. Federal Medicaid waivers or state plan amendments; eligibility.** The
18 Department of Health and Human Services shall submit to the United States Department
19 of Health and Human Services, Centers for Medicare and Medicaid Services any waivers
20 or state plan amendments determined necessary in order to accomplish the purposes of this
21 Act, including but not limited to removing the requirement that premiums be paid and
22 removing the requirement that children be subject to the 3-month waiting period for
23 enrollment in the Cub Care program following the loss of health insurance or coverage
24 under an employer-based plan.

25 **Sec. 7. Contingent repeal.** The repeal of the Maine Revised Statutes, Title 22,
26 section 3174-T, subsection 2, paragraph C, subparagraph (5) and section 3174-T,
27 subsections 5 and 12 take effect only if the Department of Health and Human Services
28 receives approval from the United States Department of Health and Human Services,
29 Centers for Medicare and Medicaid Services to remove premium and waiting period
30 requirements for health coverage for low-income children under the Cub Care program
31 established in Title 22, section 3174-T, subsection 1. The Commissioner of Health and
32 Human Services, upon receipt of approval, shall notify the Secretary of State, the President
33 of the Senate, the Speaker of the House of Representatives and the Revisor of Statutes that
34 such approval has been received.

35 SUMMARY

36 This bill makes the following changes to the Cub Care program.

37 1. It changes the maximum eligibility level for family income from 200% of the federal
38 poverty level to 300% of the federal poverty level.

39 2. It removes the 3-month waiting period for enrollment in the Cub Care program
40 following the loss of health insurance or coverage under an employer-based plan.

41 3. It establishes that eligibility is not subject to an asset test.

42 4. It provides coverage to persons 19 and 20 years of age and to noncitizens under 21
43 years of age. The Department of Health and Human Services is required to use state funds

1 to fund the program but may apply for waivers or state plan amendments to the United
2 States Department of Health and Human Services, Centers for Medicare and Medicaid
3 Services to receive federal matching funds.

4 5. It repeals the provisions regarding premium payments for the Cub Care program.

5 6. It directs the Department of Health and Human Services to submit any waivers or
6 state plan amendments to accomplish the eligibility criteria established in this legislation,
7 including but not limited to removing the 3-month waiting period for enrollment in the Cub
8 Care program following the loss of health insurance or coverage under an employer-based
9 plan.

10 7. It makes the repeal of the waiting period and premium payment requirements under
11 the Cub Care program contingent on the approval of a waiver of those requirements by the
12 United States Department of Health and Human Services, Centers for Medicare and
13 Medicaid Services.