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

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

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

§ 7301. Legislative intent

1. Findings. The Legislature finds that:

- A. In-home and community support services have not been sufficiently available to many adults with long-term care needs;
- B. Many adults with long-term care needs are at risk of being or already have been placed in institutional settings, because in-home and community support services or funds to pay for these services have not been available to them;
- C. In some instances placement of adults with long-term care needs in institutional settings can result in emotional and social problems for these adults and their families; and
- D. For many adults with long-term care needs, it is less costly for the State to provide in-home and community support services than it is to provide care in institutional settings; and
- E. The majority of adults with long-term care needs have indicated a preference to remain in their own homes and in community settings rather than having their needs met in institutional settings;
- F. For many adults with long-term care needs and their families, the process to identify and secure appropriate services is confusing and difficult to navigate; and
- G. A sustainable system of long-term care to meet the needs of citizens must emphasize in-home and community support services that capitalize upon personal and family responsibility.

2. Policy. The Legislature declares that it is the policy of this State:

- A. To increase the availability of in-home and community support services for adults with long-term care needs;
- B. That the priority recipients of in-home and community support services, pursuant to this subtitle, ~~shall be~~ the elderly and disabled adults who are at the greatest risk of being, or who already have been, placed inappropriately in an institutional setting; and
- C. That a variety of agencies, facilities and individuals ~~shall~~must be encouraged to provide in-home and community support services; and

D. That the overall design of the long-term care system and the allocation of long-term care resources promote the goal of at least 50% of the elderly and disabled adults receiving in-home and community support services and no more than 50% of those being served receiving such services in institutional settings.

Sec. 2. 22 MRSA §7302, as amended by PL 2001, c. 596, Pt. B, §10 and affected by §25 and amended by PL 2003, c. 689, Pt. B, §§6 and 7, is further amended to read:

§ 7302. Definitions

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

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

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

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

2-A. Assessment. "Assessment" means an evaluation of the functional capacity of an individual to live independently given appropriate supports with activities of daily living and instrumental activities of daily living.

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

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

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

5. In-home and community support services. "In-home and community support services" means health and social services and other assistance required to enable adults with long-term care needs to remain in their places of residence. These services include, but are not limited to, self-directed care services; medical and diagnostic services; professional nursing; physical, occupational and speech therapy; dietary and nutrition services; home health aide services; personal care assistance services; companion and attendant services; handyman, chore and homemaker services; respite care; counseling services; transportation; small rent subsidies; various devices ~~which~~that lessen the effects of disabilities; and other appropriate and necessary social services.

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

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

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

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

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

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

9-A. Qualified provider agency. "Qualified provider agency" means a community-based agency with the organizational and administrative capacity to administer and monitor a complete range of in-home and community support services including: serving as a resource for consumers and their surrogates to identify available service options; coordinating and implementing the services in the consumer's authorized plan of care; insuring that authorized services are delivered according to the

authorized plan of care; providing skills training; answering questions; assisting with problem resolution; administrative functions, including maintaining consumer records and processing payroll, reimbursement or claims; overseeing and assuring compliance with policy requirements; and conducting required utilization review activities.

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

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

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

Sec. 3. 22 MRSA c. 1622 is enacted to read:

CHAPTER 1622

COORDINATED IN-HOME AND COMMUNITY SUPPORT SERVICES FOR THE ELDERLY AND DISABLED ADULTS

§ 7311. Program established

By July 1, 2010, the department shall establish a coordinated program, referred to in this chapter as "the program," of in-home and community support services for adults with long-term care needs who are eligible for services pursuant to this subtitle and Title 34-B, chapter 5, subchapter 3, article 2. The program must have a unified system for intake and eligibility determination, consumer assessment and the development of authorized plans of care for consumers. The program must seek proposals from qualified provider agencies and must provide standardized provider rates and wages.

§ 7312. Program administration

The department shall administer the program to ensure that services are delivered in the most comprehensive and equitable manner possible while minimizing administrative costs.

1. Intake and eligibility determination. 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 demographic factors, including age, using the multidisciplinary teams pursuant to section 7323. The intake process, application and forms must be standardized despite any differences in eligibility criteria for the regular Medicaid program, Medicaid disabilities waiver programs and the consumer-directed care program pursuant to Title 34-B.

2. Assessment. The department shall complete an assessment of the consumer's needs for in-home and community support services that includes a medical evaluation to be conducted by the consumer's primary care physician or specialist and an evaluation by the department of the requirements for the personal care assistant services and personal care assistant hours to maintain the consumer in a home or community-based setting.

3. Authorized plan of care. The department shall develop an authorized plan of care for each consumer determined to be eligible for self-directed care services under this chapter or Title 34-B, chapter 5, subchapter 3, article 2. The authorized plan of care must be based upon the assessment under subsection 2 conducted by the department. The authorized plan of care must be designed to meet the needs identified by the assessment, giving consideration to the consumer's living arrangement, informal supports and services provided by other public or private funding sources to ensure nonduplication of services.

4. Proposals from qualified provider agencies. The department shall solicit proposals from qualified provider agencies to provide coordinated in-home and community support services. Qualified provider agencies shall submit proposals in such form and manner as required by the department. The department shall establish in rules adopted pursuant to section 7313 the criteria for selecting proposals.

5. Standardized rates and wages. The department shall standardize provider rates, qualified provider agency rates and personal care assistant wages in rules adopted pursuant to section 7313.

§ 7313. Rules

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

Sec. 4. Plan for consolidated services. The Department of Health and Human Services shall develop a plan, including any necessary legislation, for consolidating in-home and community support services as described in the Maine Revised Statutes, Title 22, chapter 1622.

1. Self-directed models. The plan must evaluate a variety of self-directed program models, including the use of those authorized in the federal Deficit Reduction Act of 2005, Public Law 109-171, Sections 6086 and 6087 in combination with existing programs or as a replacement as long as the benefits consumers receive from current programs are not diminished.

2. Process. The plan must identify the process for consolidating the in-home and community support services including any reorganization or staffing needs for developing the consolidated intake, eligibility and assessment system. It must describe the assessment methodology and the components of the authorized plan of care.

3. Setting rates and worker wages. The plan must include a description of the process and methodology for achieving standardized rates and worker wages.

4. Submission of plan. The Commissioner of Health and Human Services shall submit the plan to the Joint Standing Committee on Health and Human Services no later than January 15, 2010. Following receipt and review of the plan, the committee may report out to the Second Regular Session of the 124th Legislature legislation necessary to implement the plan.

Sec. 5. State plan amendment or waivers. The Department of Health and Human Services shall submit to the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services any amendments or waivers needed to establish the consolidated program for consumer-directed care described in the Maine Revised Statutes, Title 22, chapter 1622.

SUMMARY

This bill requires the Department of Health and Human Services to develop a unified system of in-home and community support services, including self-directed care, for adults with long-term care needs who are eligible for services under the Maine Revised Statutes, Title 22, subtitle 5 and Title 34-B, chapter 5, subchapter 3, article 2. The bill does the following.

1. It includes findings and policies related to legislative intent.
2. It adds to Title 22, subtitle 5 definitions for "activities of daily living," "assessment," "consumer," "instrumental activities of daily living," "qualified provider agency," "self-directed care services" and "surrogate."
3. It adds a new chapter for a program of coordinated in-home and community support services for the elderly and disabled adults. The program must be established by July 1, 2010 and include:
 - A. A unified system for intake and eligibility determination, consumer assessment and the development of authorized plans of care for eligible consumers. The program must seek proposals from qualified provider agencies and must provide standardized provider rates and worker wages;
 - B. A single system for the intake and eligibility determination functions of existing programs for in-home and community support services;
 - C. An assessment to be completed by the department with the consumer's physician determining medical eligibility and the department determining the requirements for support services as well as personal care assistant hours needed to maintain the consumer in a home or community-based setting;
 - D. An authorized plan of care for each consumer to be developed by the department; and
 - E. Proposals from qualified provider agencies to provide or coordinate services for the authorized plan of care solicited by the department.
4. It requires the department to adopt major substantive rules.
5. By January 15, 2010, prior to the implementation of the new program, the bill requires the department to develop a plan, including any necessary legislation for consolidating in-home and community support services that includes:

- A. An evaluation of self-directed care models authorized in the federal Deficit Reduction Act to examine the possible use of these models in combination or instead of existing programs without diminishing the benefits consumers currently receive;
 - B. A description of the process proposed for consolidating the in-home and community support services including any reorganization or staffing needs for developing the consolidated intake, eligibility and assessment system as well as the assessment methodology and the components of the authorized plan of care; and
 - C. The process and methodology for achieving standardized rates and worker wages.
6. The bill authorizes the Joint Standing Committee on Health and Human Services to report out to the Second Regular Session of the 124th Legislature a bill to implement the plan, if necessary.