

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Ensure Fairness in Penalties for Administrative Errors in the Long-term Care Assessment Process

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the rules of the Department of Health and Human Services currently provide for the outright denial of all payment for services in a nursing facility when a provider unintentionally misses the administrative deadline for requesting and obtaining a reassessment of coverage of an existing resident based on the resident's need for services; and

Whereas, historically the department had mitigated the effects of this penalty by exercising administrative discretion to waive the penalty in certain circumstances; and

Whereas, the department has now determined that under its existing rules such waivers are impermissible and therefore will now uniformly apply this penalty, potentially depriving a nursing facility of any reimbursement for substantial services actually delivered to a Medicaid-covered person actually in need of those services; and

Whereas, the department is developing a similar set of rules to regulate coverage of residential services in private, nonmedical and board and care institutions; and

Whereas, in fairness to and to ensure the financial stability of long-term care providers, these penalties should be limited to an amount that will provide an incentive to administrative accuracy without denying all payment for care and services actually rendered; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §3174-I, sub-§3, as enacted by PL 1989, c. 498 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

3. Rules. ~~The Department of Health and Human Services~~department shall adopt rules in accordance with the Maine Administrative Procedure Act, ~~Title 5, chapter 375,~~ to implement this section. Notwithstanding any other provision of law, the department may not impose a penalty that exceeds 20% of the reimbursement otherwise payable for the services rendered to a resident nor deny reimbursement as a consequence of the failure of a nursing facility to timely request or obtain an assessment of a resident required under this chapter after the deadline for such an assessment and until an assessment is obtained, unless the department proves by a preponderance of the evidence that the services provided by the nursing facility were not medically and socially necessary and appropriate for the resident.

Sec. 2. 22 MRSA §3174-Z, as enacted by PL 2001, c. 404, §1, is amended to read:

§ 3174-Z.Private, nonmedical and board and care institutions

Rules concerning the principles for reimbursement for private, nonmedical and board and care institutions must be major substantive rules as defined in Title 5, chapter 375, subchapter H-A2-A. Notwithstanding any other provision of law, the department may not impose a penalty that exceeds 20% of the reimbursement otherwise payable for the services rendered to a resident nor deny reimbursement as a consequence of the failure of a private, nonmedical and board and care institution to timely request or obtain an assessment of a resident required under this chapter after the deadline for such an assessment and until an assessment is obtained, unless the department proves by a preponderance of the evidence that the services provided by the institution were not medically and socially necessary and appropriate for the resident.

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

SUMMARY

This bill amends the laws governing the rules of the Department of Health and Human Services for medical eligibility for coverage in nursing facilities and for private, nonmedical and board and care institutions, which provide, among other services, residential care services for the aged and disabled. It requires that for both types of facilities, to the extent the department establishes penalties or denies reimbursement when a facility is late or misses a deadline for obtaining an assessment of a resident's need for services, the department may not deny reimbursement and may not impose a penalty greater than 20% of total reimbursement unless it is proven that the resident, if timely assessed, would not have been eligible for continuing services.