

### **§3174-I. Medicaid eligibility determinations for applicants to nursing homes**

**1. Needs assessment.** In order to determine the most cost-effective and clinically appropriate level of long-term care services, the department or its designee shall assess the medical and social needs of each applicant to a nursing facility. If the department chooses a designee to carry out assessments under this section, it shall ensure that the assessments are comprehensive and objective.

A. The assessment must be completed prior to admission or, if necessary for reasons of the person's health or safety, as soon after admission as possible. [PL 1993, c. 410, Pt. FF, §10 (AMD); PL 1993, c. 410, Pt. FF, §19 (AFF).]

B. The department shall determine whether the services provided by the facility are medically and socially necessary and appropriate for the applicant and, if not, what other services, such as home and community-based services, would be more clinically appropriate and cost effective. [PL 1993, c. 410, Pt. FF, §10 (AMD); PL 1993, c. 410, Pt. FF, §19 (AFF).]

B-1. For persons with severe cognitive impairments who have been assessed and found ineligible for nursing facility level care, the department, through its community options unit, shall review the assessment and provide case management to assist consumers and caregivers to receive appropriate services. [PL 2011, c. 657, Pt. BB, §2 (AMD).]

B-2. The department shall establish additional assessment practices and related policies for persons with Alzheimer's disease and other dementias as follows.

(1) For persons who have been assessed using the department's primary assessment instrument and found to have cognitive or behavioral difficulties but who do not require nursing intervention with the frequency necessary to qualify for nursing facility level of care, the department shall administer a supplemental dementia assessment for those persons with cognitive and behavioral impairments. By May 1, 1996, the criteria reflected in this supplemental dementia assessment and the scoring mechanism must be incorporated into rules adopted by the department in consultation with consumers, providers and other interested parties. The assessment criteria proposed in the rulemaking must consider, but are not limited to, the following: orientation, memory, receptive communication, expressive communication, wandering, behavioral demands on others, danger to self or others and awareness of needs.

(2) The department shall reimburse a nursing facility for individuals who are eligible for care based on the supplemental dementia assessment only if the nursing facility demonstrates a program of training in the care of persons with Alzheimer's disease and other dementias for all staff responsible for the care of persons with these conditions. The department, in consultation with consumers, providers and interested parties, shall develop the requirements for training and adopt rules containing those requirements. By July 1, 1997, the department, in consultation with consumers, providers and interested parties, shall adopt rules establishing the standards for treatments, services and settings to meet the needs of individuals who have Alzheimer's disease and other dementias. These standards must apply to all levels of care available to such individuals.

(3) No later than January 15, 1997, the department shall report to the joint standing committee of the Legislature having jurisdiction over health and human service matters on the extent to which the use of the supplemental dementia assessment has expanded medical eligibility for nursing facility care to include persons with Alzheimer's disease or other dementias.

(4) Rules adopted pursuant to this subsection are major substantive rules as defined by Title 5, chapter 375, subchapter II-A. [PL 1995, c. 687, §1 (NEW).]

C. The department shall inform both the applicant and the administrator of the nursing facility of the department's determination of the services needed by the applicant and shall provide

information and assistance to the applicant in accordance with subsection 1-A. [PL 1993, c. 410, Pt. FF, §10 (AMD); PL 1993, c. 410, Pt. FF, §19 (AFF).]

D. [PL 1995, c. 170, §2 (RP).]

E. The department shall perform a reassessment of the individual's medical needs when the individual becomes financially eligible for Medicaid benefits.

(1) If the individual, at both the admission assessment and any reassessment, is determined not to be medically eligible for the services provided by the nursing facility, and is determined not to be medically eligible at the time of the determination of financial eligibility, the nursing facility is responsible for providing services at no cost to the individual until such time as a placement at the appropriate level of care becomes available. After a placement becomes available at an appropriate level of care, the nursing facility may resume billing the individual for the cost of services.

(2) If the individual is initially assessed as needing the nursing facility's services under the assessment criteria and process in effect at the time of admission or is admitted as covered by Medicare for nursing facility services, but is reassessed as not needing those services at the time the individual is found financially eligible, then the department shall reimburse the nursing facility for services it provides to the individual in accordance with the principles of reimbursement for residential care facilities adopted by the department pursuant to section 3173. In calculating the fixed-cost component of per diem rates for nursing facility services, the department shall exclude days of service for which reimbursement is provided under this subparagraph. [PL 1995, c. 696, Pt. B, §1 (AMD).]

F. Prior to performing assessments under this section, the department shall develop and disseminate to all nursing facilities and the public the specific standards the department will use to determine the medical eligibility of an applicant for admission to the nursing facility. A copy of the standards must be provided to each person for whom an assessment is conducted. In designing and phasing in the preadmission assessment under this section, the department shall collaborate with interested parties, including but not limited to consumers, nursing facility operators, hospital operators and home and community-based care providers. [PL 1995, c. 170, §2 (AMD).]

G. A determination of medical eligibility under this section is final agency action for purposes of the Maine Administrative Procedure Act, Title 5, chapter 375. [PL 1989, c. 498 (NEW).]  
[PL 2011, c. 657, Pt. BB, §2 (AMD).]

**1-A. Information and assistance.** If the assessment performed pursuant to subsection 1 finds the level of nursing facility care clinically appropriate, the department shall determine whether the applicant also could live appropriately and cost-effectively at home or in some other community-based setting if home-based or community-based services were available to the applicant. If the department determines that a home or other community-based setting is clinically appropriate and cost-effective, the department shall:

A. Advise the applicant that a home or other community-based setting is appropriate; [PL 1993, c. 410, Pt. FF, §11 (NEW); PL 1993, c. 410, Pt. FF, §19 (AFF).]

B. Provide a proposed care plan and inform the applicant regarding the degree to which the services in the care plan are available at home or in some other community-based setting and explain the relative cost to the applicant of choosing community-based care rather than nursing facility care; and [PL 1993, c. 410, Pt. FF, §11 (NEW); PL 1993, c. 410, Pt. FF, §19 (AFF).]

C. Offer a care plan and case management services to the applicant on a sliding scale basis if the applicant chooses a home-based or community-based alternative to nursing facility care. [PL 1993, c. 410, Pt. FF, §11 (NEW); PL 1993, c. 410, Pt. FF, §19 (AFF).]

The department may provide the services described in this subsection directly or through private agencies.

[PL 1995, c. 170, §3 (AMD).]

**1-B. Notification by hospitals.** Whenever a hospital determines that a patient will require long-term care services upon discharge from the hospital, the hospital shall notify the department prior to discharge that long-term care services are indicated and that a preadmission assessment must be performed under this section.

[PL 1995, c. 170, §3 (AMD).]

**2. Assessment for mental illness, intellectual disability, autism or related conditions.** The department shall assess every applicant to a nursing facility to screen for mental illness, intellectual disability, autism or other related conditions in accordance with the federal Nursing Home Reform Act, Public Law 100-203, Section 4211, 42 United States Code, Section 1396r. Such assessments are intended to increase the probability that any individual who has an intellectual disability, autism or other related condition or a mental illness will receive active treatment for that individual's condition.

[PL 2011, c. 542, Pt. A, §33 (AMD).]

**3. Rules.** The Department of Health and Human Services shall adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to implement this section.

[PL 1989, c. 498 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

#### SECTION HISTORY

PL 1989, c. 498 (NEW). PL 1993, c. 410, §§FF10-12 (AMD). PL 1993, c. 410, §FF19 (AFF). PL 1995, c. 170, §§2,3 (AMD). PL 1995, c. 687, §1 (AMD). PL 1995, c. 696, §B1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2011, c. 542, Pt. A, §33 (AMD). PL 2011, c. 657, Pt. BB, §2 (AMD).

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