SENATE

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STATE OF MAINE ONE HUNDRED AND TWENTY-NINTH LEGISLATURE COMMITTEE ON HEALTH AND HUMAN SERVICES

June 18, 2019

Commissioner Jeanne M. Lambrew Department of Health and Human Services 11 State House Station Augusta, ME 04333-0011

Dear Commissioner Lambrew,

This session, the Health and Human Services Committee spent a considerable amount of time hearing and working bills that propose increases to reimbursement rates for various services under MaineCare and receiving briefings from the Department related to rate setting and the upper payment limit. In addition, the Committee considered bills establishing a process for regular review of MaineCare reimbursement rates with independent commissions to advise the Department of Health and Human Services. It is critical to the Committee that MaineCare reimbursement rates are adequate to ensure a robust provider network, are regularly reviewed, and comply with federal requirements including accurate upper payment limits. It is also essential that MaineCare members receive the services they need and that the system remains financially sustainable.

The bills establishing regular review processes were LD 1052, An Act To Require Regular and Transparent Review of MaineCare Reimbursement Rates and LD 1288, An Act To Establish a MaineCare Reimbursement Rate Review Process and the MaineCare Independent Rate Commission. The Committee voted Ought Not To Pass on LD 1288 and voted to carry over LD 1052 to the next session. LD 1052 establishes a schedule for reviewing MaineCare rates on a three year rotation along with a MaineCare Reimbursement Rate Review Advisory Committee made up of stakeholders and providers to make recommendations to the Department. In addition, LD 1838, Resolve, Requiring the Department of Health and Human Services To Examine Options for Upper Payment Limit Adjustments for MaineCare Services, if finally enacted, will direct the Department to examine options and methodologies to increase the federally approved upper payment limits for services provided under MaineCare.

It is our understanding that the Department is working on establishing a regular review process for MaineCare rates. We request that, no later than January 15, 2020, you provide us with a report that informs the Committee of the Department's plans for making the rates system a more rational and transparent process as well as any recommendations for legislation. We also request that the Department review the methodologies for increasing the upper payment limits in order to

maximize the receipt of federal funds. We look forward to hearing from you and we thank you for your attention to this important issue.

Sincerely,

Sen. Geoffrey M. Gratwick

Senate Chair

Rep. Patricia Hymanson

House Chair

cc: Health and Human Services Committee members

Molly Bogart, Director of Government Relations, DHHS

Michelle Probert, Director of the Office of MaineCare Services, DHHS

Senator Heather Sanborn, Sponsor of LD 1052

Representative Richard Farnsworth, Sponsor of LD 1288



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1052

S.P. 312

In Senate, February 28, 2019

An Act To Require Regular and Transparent Review of MaineCare Reimbursement Rates

Reference to the Committee on Health and Human Services suggested and ordered printed.

DAREK M. GRANT Secretary of the Senate

Presented by Senator SANBORN, H. of Cumberland.
Cosponsored by Representative FARNSWORTH of Portland and
Senators: CLAXTON of Androscoggin, MOORE of Washington, TIMBERLAKE of
Androscoggin, Representatives: BICKFORD of Auburn, CRAVEN of Lewiston, GATTINE of
Westbrook, GRIFFIN of Levant, MADIGAN of Waterville.

| Be it enacted by the | People of the State | of Maine as follows: | |
|------------------------------------|---|--|---------------------------|
| Sec. 1. 5 MRS | A §12004-I, sub-§3 | 86-F is enacted to read: | |
| <u>36-F.</u> | | | |
| Human Services | <u>MaineCare</u> | Expenses Only | 22 MRSA §3122 |
| | Reimbursement | | |
| | Rates Review | | |
| | Advisory Committe | <u>ee</u> | |
| Sec. 2. 22 MR | SA c. 852 is enacted | to read: | |
| | <u>CHA</u> | PTER 852 | |
| <u>MAI</u> | NECARE REIMBU | <u>RSEMENT RATES R</u> | <u>EVIEW</u> |
| §3121. Review of M | IaineCare reimburs | ement rates | · |
| | | anuary 1, 2020, the depa | |
| | | rsement rates under M | |
| | | every 3 years. The re | |
| | | es of the Legislature h | |
| | | propriations and financial dations by the advisory | |
| under section 3122 o | | dations by the advisory | commuce established |
| 2. Exclusion fr | om review. The de | partment shall review u | nder subsection 1 each |
| service reimbursed | by MaineCare, e | xcept that it may e | |
| reimbursement levels | s that are: | | |
| A. Reviewed or | updated on a regular | basis according to a pro | cess established in state |
| or federal rule or | law; | - | |
| B. Based on cos | <u>t;</u> | | |
| C. Contracted th | rough a managed care | e or capitated rate; or | |
| D. Based on reg | ularly updated Medica | are rates. | |
| | | t standing committees p | oursuant to subsection 1 |
| must include a list of | those rates not subject | et to regular review. | |
| 3. Review. Easubsection 2 must inc | | ice undertaken by the | department pursuant to |
| | | quality and utilization | fthe coming |
| - | | quality and utilization o | |
| | son of rates with ot nce or private pay rate | <u>her available reimburs</u> es; | ement rates, including |
| C. Provider reter | ntion of employees; | | |

| 2 | E. Participation and survey of current provider costs; |
|--|--|
| 3 | F. Consideration of service access and cost in rural areas; |
| 4 | G. Consideration of needs and costs for specific population groups; and |
| 5 | H. Input from the advisory committee. |
| 6 7 | The department shall work with the advisory committee and the providers of the service being reviewed to determine responses and strategies to the review findings. |
| 8 9 10 11 12 13 14 15 | 4. Annual report. The department shall provide an annual report, no later than December 1st of each year, beginning in 2020, that includes the results of the review of each service reviewed pursuant to subsection 2 in the most recent year, including the analysis under subsection 3 and any actions taken in response to the review, and any changes to rates reviewed by the department pursuant to this chapter, to the joint standing committees of the Legislature having jurisdiction over health and human services matters and appropriations and financial affairs. The department shall also submit the report to the Governor together with recommendations for rate increases for consideration for inclusion in the biennial budget. |
| 17 | §3122. Advisory committee |
| 18 19 20 21 | The MaineCare Reimbursement Rates Review Advisory Committee, referred to in this chapter as "the advisory committee," is established as provided in Title 5, section 12004-I, subsection 36-F to make recommendations to the department regarding review of MaineCare reimbursement rates pursuant to section 3121. |
| 22 23 | 1. Membership. The advisory committee has the following 21 voting members and one ex officio, nonvoting member: |
| 24 | A. Six members appointed by the President of the Senate: |
| 25 26 27 | (1) A representative of providers of community behavioral health services recommended by a statewide association of providers of behavioral health care services; |
| 28 29 | (2) A representative of hospitals providing services to MaineCare members recommended by a statewide association representing hospitals: |
| 30 31 | (3) A representative of providers of nonemergency medical transportation services to MaineCare members; |
| 32 | (4) A representative of a rural health clinic; |
| 33 34 | (5) A representative of home health care providers recommended by a statewide association representing home health care providers; and |
| 35 36 | (6) A representative of providers of durable medical equipment recommended by a statewide association of durable medical equipment providers; |
| 37 | B. Six members appointed by the leader of the largest minority party in the Senate: |

D. Acceptable industry productivity standards;

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| 1 2 | (1) A representative of primary care physicians serving MaineCare members recommended by a statewide association representing physicians; |
|----------------|---|
| 3 4 | (2) A representative of dentists serving MaineCare members recommended by a statewide association representing dentists; |
| 5 6 | (3) A representative of federally qualified health centers recommended by a statewide association of federally qualified health centers; |
| 7 | (4) A representative of nonmedical home and community-based services; |
| 8 9 10 | (5) A representative of providers serving MaineCare members with intellectual disabilities or autism recommended by a statewide association of providers of services to individuals with intellectual disabilities or autism; and |
| 11 12 13 | (6) A MaineCare member living with a chronic behavioral health condition or a family member or guardian of a MaineCare member living with a chronic behavioral health condition; |
| 14 | C. Five members appointed by the Speaker of the House of Representatives: |
| 15 16 | (1) A representative of providers of substance use disorder services recommended by a statewide association representing behavioral health services; |
| 17 18 | (2) A representative of psychiatric physicians recommended by a statewide association representing psychiatric physicians; |
| 19 | (3) A representative of ambulatory surgical centers; |
| 20 21 | (4) A representative of hospice providers recommended by the Maine Hospice Council established in section 8611; and |
| 22 23 | (5) A representative of long-term care facilities recommended by a statewide association representing nursing facilities or assisted living facilities; |
| 24 25 | D. Four members appointed by the leader of the largest minority party in the House of Representatives: |
| 26 | (1) A family member of a child with disabilities receiving MaineCare services; |
| 27 28 | (2) A representative of pharmacists serving MaineCare members recommended by a statewide association representing pharmacists; |
| 29 30 | (3) A representative of nurses recommended by a statewide association representing nurses; and |
| 31 32 33 | (4) A representative of physical therapists or occupational therapists recommended by a statewide association representing physical therapists or occupational therapists; and |
| 34 35 | E. The commissioner or the commissioner's designee, who is an ex officio, nonvoting member of the advisory committee and shall attend meetings. |
| 36 37 38 | 2. Terms of office. Each appointed member of the advisory committee serves a 4-year term and may be reappointed. A member is no longer qualified to serve if that member no longer meets the qualifications of appointment. |

- 3. Meetings; chair. The advisory committee must meet at least once every calendar quarter and may meet more often and as necessary to fulfill its statutory duties. Members shall elect a chair and vice-chair from among its members annually. Chairs and vice-chairs may be reelected. Meetings are public proceedings in accordance with Title 1, chapter 13.
 - 4. Duties. The advisory committee has the following duties:

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- A. Review the 3-year schedule developed by the department and recommend, by majority vote of the advisory committee, any changes to the review schedule under section 3121, subsection 1;
- B. Provide advice and input to the department concerning reviews of rates;
- C. Hold public hearings, as considered necessary, to receive public testimony from providers of MaineCare services and other interested parties, including members of the public; and
 - D. Review the department's reports and schedules and submit an annual report no later than December 1st of each year beginning in 2020 describing the advisory committee's activities, with recommendations to the joint standing committees of the Legislature having jurisdiction over health and human services matters and appropriations and financial affairs.
 - 5. Staffing. The department shall provide staffing to the advisory committee including administrative services, report writing, publishing and organizing meetings and arranging meeting locations.
 - Sec. 3. Staggered terms; appointments. Notwithstanding the Maine Revised Statutes, Title 22, section 3114, subsection 2, the appointing authorities for the original appointments of members to the MaineCare Reimbursement Rates Review Advisory Committee shall each designate their first 2 appointments to 2-year terms, their 2nd 2 appointments to 3-year terms and any other appointments to 4-year terms. The appointing authorities shall make appointments no later than 60 days after the effective date of this Act.

29 SUMMARY

This bill establishes a regular review process for MaineCare reimbursement rates. The Department of Health and Human Services shall review all rates over a 3-year period except those that are already subject to regular review, based on cost, reimbursed at a capitated rate, or tied to Medicare or some other rates. The 3-year schedule and the reviews are required to be submitted to the joint standing committees of the Legislature having jurisdiction over health and human services matters and appropriations and financial affairs. The results of reviews are also submitted to the Governor for consideration for inclusion in the biennial budget. The bill also establishes the MaineCare Reimbursement Rates Review Advisory Committee made up of stakeholders appointed by the Presiding Officers and the minority leaders in the Legislature to provide advice and input to the department on rate reviews. The advisory committee also submits an annual review of its activities to the joint standing committees of the Legislature

- having jurisdiction over health and human services matters and appropriations and financial affairs. The advisory committee is staffed by the Department of Health and 1
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- 3 Human Services.