

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



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May 6, 2022

Senator Ned Claxton, Chair
Representative Michelle Meyer, Chair
Members, Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, ME 04333-0100

Re: LD 652 – *An Act To Include an Emergency Reimbursement Rate Review Process in Rate Setting by the Department of Health and Human Services*

Senator Claxton, Representative Meyer, and Members of the Joint Standing Committee on Health and Human Services:

This letter is to provide information on LD 652, *An Act To Include an Emergency Reimbursement Rate Review Process in Rate Setting by the Department of Health and Human Services*. The Committee voted unanimously Ought Not to Pass on LD 651 and asked that the Department, as part of its Comprehensive Rate Review effort, establish an appeal process so that providers can request a rate review or appeal new rates and report back to you on progress.

Establishing such a process would raise legal and operational challenges for the Department. MaineCare reimbursement rates are established by rule through the Administrative Procedures Act (APA). Creating an administrative appeals process to challenge legally adopted rules likely violates the APA. Additionally, any appeals process cannot provide any meaningful relief for a provider as the Department would need to obtain legislative and executive approval for a fiscal appropriation to increase a reimbursement rate. The outcome of an appeals process for reimbursement rates could potentially place the Department out of compliance with its state plan approved by CMS.

There would also be significant administrative burdens in establishing such an appeal process, likely resulting in the need for new positions to handle these appeals. Moreover, the Department does not believe that an adversarial appeals process is the proper way to determine the appropriateness of reimbursement rates. Finally, the Department maintains that granting providers the right to have a rate review conducted upon request would result in unforeseen costs to the Department and would inhibit the Department's ability to perform its normal duties as well as plan and arrange for orderly rate reviews and rulemakings.

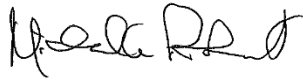
We believe a better approach is embodied in LD 1867, *An Act To Codify MaineCare Rate System Reform*, which was supported unanimously by this Committee and the Legislature, and is now law. The law establishes the process and structure needed to ensure reimbursement rates for all MaineCare services are consistent with efficiency, economy and quality of care, are equitable and

data-driven, and are adjusted and/or re-evaluated on a regular schedule to ensure they keep pace with changes to service costs and any changes to models of service.

As you know, the process requires public notice and stakeholder engagement, as well as the establishment of a Rate Reform Expert Technical Advisory Panel and consultation with the MaineCare Advisory Committee. The Technical Advisory Panel will advise the Commissioner by providing technical, nonpartisan, third-party expertise to inform the Department's planned schedule and actions on rate assumptions, payment models, and other related technical matters.

Taken together, we believe these changes will address the concerns that gave rise to LD 652. If you have any further questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Probert". The signature is fluid and cursive, with the first name "Michelle" written in a larger, more prominent script than the last name "Probert".

Michelle S. Probert
MaineCare Director

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JOSEPH BALDACCI, DISTRICT 9
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ERIN DOOLING, LEGISLATIVE ANALYST
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STATE OF MAINE ONE HUNDRED AND THIRTIETH LEGISLATURE COMMITTEE ON HEALTH AND HUMAN SERVICES

June 14, 2021

Michelle Probert, Director
Office of MaineCare Services
Department of Health and Human Services
11 State House Station
Augusta, ME 04333-0011

Dear Director Probert,

The Health and Human Services Committee recently considered [LD 652](#), An Act To Include an Emergency Reimbursement Rate Review Process in Rate Setting by the Department of Health and Human Services. This bill would have established a process for emergency reimbursement rate review to be used at times of extraordinary circumstances. The Committee heard testimony from MaineCare providers that there is no process for making their case for a rate review when rates do not account for minimum wage, local minimum wage or labor requirements or other issues. We agree that there is no real avenue for providers to appeal in the current system. The Committee voted Ought Not To Pass on this bill – the existing extraordinary circumstance allowance does not translate well from cost-settled methodologies to other payment methodologies and there needs to be a way to request appropriations from the Legislature.

We are writing to request that the Department, as part of its Comprehensive Rate Review, establish an appeals process so that providers can request a rate review or appeal new rates. We understand that such a process would also need to include a way for the Department to make the outcome of such appeals contingent on funding requests to the Legislature. We respectfully request that the Department reports back to us by January 15, 2022, with a report on the Comprehensive Rate Review that includes progress report on establishing an appeals process for providers. Thank you for your attention to this important matter.

Sincerely,

Sen. Ned Claxton
Senate Chair

Rep. Michele Meyer
House Chair

cc: Members, Joint Standing Committee on Health and Human Services
Commissioner Jeanne M. Lambrew, Department of Health and Human Services
Molly Bogart, Government Relations Director, Department of Health and Human Services
Representative Melanie Sachs, LD 652 sponsor