

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND FOURTEEN

—
S.P. 704 - L.D. 1776

**An Act To Implement the Recommendations of the Commission To Study
Long-term Care Facilities**

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 people of the State of Maine need and deserve a variety of well-planned and financially stable long-term care services in home-based and community-based care settings and in nursing facilities in their communities; and

Whereas, in order to provide high-quality care to Maine's elderly and disabled persons in a dignified and professional manner that is sustainable into the future through a spectrum of long-term care services, prompt action is needed to correct chronic underfunding and to complete a thoughtful and thorough planning process; 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 §1708, sub-§3, as corrected by RR 2001, c. 2, Pt. A, §33 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

3. Compensation for nursing homes. A nursing home, as defined under section 1812-A, or any portion of a hospital or institution operated as a nursing home, when the State is liable for payment for care, must be reimbursed at a rate established by the Department of Health and Human Services pursuant to this subsection. The department may not establish a so-called "flat rate." This subsection applies to all funds, including federal funds, paid by any agency of the State to a nursing home for patient care. The department shall establish rules concerning reimbursement that:

A. Take into account the costs of providing care and services in conformity with applicable state and federal laws, rules, regulations and quality and safety standards;

B. Are reasonable and adequate to meet the costs incurred by efficiently and economically operated facilities;

C. Are consistent with federal requirements relative to limits on reimbursement under the federal Social Security Act, Title XIX;

D. Ensure that any calculation of an occupancy percentage or other basis for adjusting the rate of reimbursement for nursing facility services to reduce the amount paid in response to a decrease in the number of residents in the facility or the percentage of the facility's occupied beds excludes all beds that the facility has removed from service for all or part of the relevant fiscal period in accordance with section 333. If the excluded beds are converted to residential care beds or another program for which the department provides reimbursement, nothing in this paragraph precludes the department from including those beds for purposes of any occupancy standard applicable to the residential care or other program pursuant to duly adopted rules of the department; ~~and~~

E. Contain an annual inflation adjustment that:

(1) Recognizes regional variations in labor costs and the rates of increase in labor costs determined pursuant to the principles of reimbursement and establishes at least 4 regions for purposes of annual inflation adjustments; and

(2) Uses the applicable regional inflation factor as established by a national economic research organization selected by the department to adjust costs other than labor costs or fixed costs; ~~and~~

~~Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II A.~~

F. Establish a nursing facility's base year every 2 years and increase the rate of reimbursement beginning July 1, 2014 and every year thereafter.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 22 MRSA §1714-A, sub-§9 is enacted to read:

9. Cost-of-care overpayments. On or before June 30, 2015, the department shall collect the total amount of debt arising from cost-of-care overpayments that exceeds by \$4,000,000 the amount of that debt that had been budgeted for fiscal year 2014-15 as of April 15, 2014. To the extent necessary to meet this requirement, the department may establish payment terms, modify as otherwise permitted by law existing payment agreements to accelerate payment terms and offset current payments in accordance with subsection 5. If 7 days' notice and opportunity to comment are provided, the department may adopt rules on an emergency basis to modify its implementation of subsection 5 on an emergency basis for purposes of collecting cost-of-care overpayments without making the emergency findings otherwise required by Title 5, section 8054, subsection 2.

Sec. 3. Amendment of Principles of Reimbursement for Nursing Facilities. The Department of Health and Human Services shall amend Rule Chapter

101, MaineCare Benefits Manual, Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities as follows.

1. The rule must be amended in order to establish a nursing facility's base year every 2 years and to increase the rate of reimbursement beginning July 1, 2014 and every year thereafter as follows:

A. In the direct care cost component in Section 80.3 and all other applicable divisions of Section 80.3 in which case mix data, regional wage indices or data required for rebasing calculations are referenced by date, the rule must be amended to establish a nursing facility's base year by reference to the facility's 2011 audited cost report or, if the 2011 audited cost report is not available, by reference to the facility's 2011 as-filed cost report; to refer to other required rebasing data no older than 2011 data; and to update a nursing facility's base year every 2 years thereafter; and

B. In the routine cost component in Section 80.4 and all other applicable divisions of Section 80.4 in which case mix data, regional wage indices or data required for rebasing calculations are referenced by date, the rule must be amended to establish a nursing facility's base year by reference to the facility's 2011 audited cost report or, if the 2011 audited cost report is not available, by reference to the facility's 2011 as-filed cost report; to refer to other required rebasing data no older than 2011 data; and to update a nursing facility's base year every 2 years thereafter.

2. The rule must be amended to increase the peer group upper limit on the base year case mix and regionally adjusted cost per day for a nursing facility beginning July 1, 2014 as follows:

A. In the direct care cost component in Section 80.3.3(4)(b), the peer group upper limit must be increased to 110% of the median; and

B. In the routine cost component in Section 80.5.4, the peer group upper limit must be increased to 110% of the median.

3. The rule must be amended in the routine cost component in Section 43.4.2(A) to eliminate the nursing facility administrative and management cost ceiling, thereby allowing all allowable administrative and management costs to be included in allowable routine costs for the purposes of rebasing, rate setting and future cost settlements beginning July 1, 2014.

4. The rule must be amended in Sections 91 and 91.1 to provide for ongoing, annual rate changes beginning July 1, 2014 to adjust for inflation and to set the inflation adjustment cost-of-living percentage change in nursing facility reimbursement each year in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index.

5. The rule must be amended to provide, beginning July 1, 2014, a supplemental payment, subject to cost settlement, to a nursing facility whose MaineCare residents constitute more than 70% of the nursing facility's total number of residents. The supplemental payment must provide an additional reimbursement of 40¢ per resident per day for each 1% this percentage of MaineCare residents is above 70%, except that the total supplemental payment must be calculated to avoid to the extent possible paying an

amount in excess of allowable costs that would be an overpayment upon settlement of the facility's cost report.

6. The rule must be amended in Section 80.3.2 to increase the specific resident classification group case mix weight that is attributable to a nursing facility resident who is diagnosed with dementia.

The rate of reimbursement for nursing facilities that results from amending the rules to reflect rebasing the nursing facility's base year pursuant to this section may not result for any nursing facility in a rate of reimbursement that is lower than the rate in effect on April 1, 2014. The department may implement this section by adopting emergency rules. If the department provides at least 7 days' notice and opportunity to comment before adopting these rules, it is not required to make the findings otherwise required by the Maine Revised Statutes, Title 5, section 8054, subsection 2.

Sec. 4. Savings arising from recoveries in excess of projections; transitional cap on rate increases.

1. The Department of Health and Human Services shall continue its best efforts to collect all remaining cost-of-care overpayments to nursing facilities and private nonmedical institutions that were paid when the department's computer systems, when providing reimbursement owed by the department, failed to take into account the financial contributions paid by residents in the nursing facilities and private nonmedical institutions and miscalculated the amounts payable under the MaineCare program. Cost-of-care overpayments collected in excess of amounts projected in developing and reporting budget information to the Legislature or the Governor must be used to fund the implementation of section 3 to the extent of funding provided in this Act.

2. If the total amount of debt arising from cost-of-care overpayments that the department collects in fiscal year 2014-15 exceeds \$13,000,000, the excess must be carried over to fiscal year 2015-16 to be expended to provide additional funding for implementation of section 3. In fiscal years 2014-15, 2015-16 and 2016-17, the Department of Health and Human Services, subject to state plan approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, shall limit the actual rate increase provided to the total amount available as a result of the state funds appropriated for nursing home rate increases, including without limitation the dollar amount specified in any appropriation provision plus any net amount available as a result of increased nursing facility provider tax revenue and available federal funds, minus the amount necessary to fund the supplemental payment provided in section 3, subsection 5. In establishing this limit in any year in which it applies, the department first shall calculate and publish the rate increases that would result from increasing rates pursuant to all of section 3 except for subsection 5 and then grant to all facilities a pro rata portion of that increase that does not exceed the limit established in this subsection and also grant supplemental payments pursuant to section 3, subsection 5. The pro rata methodology must be applied uniformly to all facilities so that each facility receives the same percentage of the initially published rate increases, plus the supplemental payment if applicable.

Sec. 5. Cost-of-care overpayment correction. The Department of Health and Human Services shall immediately require that the department's contractor Molina Medicaid Solutions make adjustments to the Maine Integrated Health Management Solution computer system to correct and discontinue overpayments in the calculation and deduction of cost of care in the payment of nursing facilities and private nonmedical institutions.

Sec. 6. Commission To Continue the Study of Long-term Care Facilities. Notwithstanding Joint Rule 353, the Commission To Continue the Study of Long-term Care Facilities, referred to in this section as "the commission," is established. The membership, duties and functioning of the commission are subject to the following requirements.

1. The commission consists of 11 members appointed as follows:

A. Two members of the Senate appointed by the President of the Senate, including members from each of the 2 parties holding the largest number of seats in the Legislature;

B. Three members of the House of Representatives appointed by the Speaker of the House, including members from each of the 2 parties holding the largest number of seats in the Legislature; and

C. Six members appointed by the Governor who possess expertise in the subject matter of the study, as follows:

(1) The director of a long-term care ombudsman program described under the Maine Revised Statutes, Title 22, section 5106, subsection 11-C;

(2) The director of a statewide association representing long-term care facilities and one representative of a 2nd association of owners of long-term care facilities;

(3) A person who serves as a city manager of a municipality in the State;

(4) A person who serves as a director or who is an owner or administrator of a nursing facility in the State; and

(5) A representative of the Governor's office or the Governor's administration.

2. The first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission. The chairs of the commission are authorized to establish subcommittees to work on the duties listed in subsection 4 and to assist the commission. The subcommittees must be composed of members of the commission and interested persons who are not members of the commission and who volunteer to serve on the subcommittees without reimbursement. Interested persons may include individuals with expertise in acuity-based reimbursement systems, a representative of an agency that provides services to the elderly and any other persons with experience in nursing facility care.

3. All appointments must be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all

members and after adjournment of the Second Regular Session of the 126th Legislature, the chairs shall call and convene the first meeting of the commission. If 30 days or more after the effective date of this Act a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business.

4. The commission shall study the following issues and the feasibility of making policy changes to the long-term care system:

- A. Funding for long-term care facilities, payment methods and the development of a pay-for-performance program to encourage and reward strong performance by nursing facilities;
- B. Regulatory requirements other than staffing requirements and ratios;
- C. Collaborative agreements with critical access hospitals for the purpose of sharing resources;
- D. The viability of privately owned facilities in rural communities;
- E. The impact on rural populations of nursing home closures; and
- F. Access to nursing facility services statewide.

5. The Legislative Council shall provide necessary staffing services to the commission.

6. The Commissioner of Health and Human Services, the State Auditor and the State Budget Officer shall provide information and assistance to the commission as required for its duties.

7. No later than October 15, 2014, the commission shall submit a report that includes its findings and recommendations, including suggested legislation, to the Joint Standing Committee on Health and Human Services. The joint standing committee of the Legislature having jurisdiction over health and human services matters may report out a bill regarding the subject matter of the report to the First Regular Session of the 127th Legislature.

Sec. 7. Bimonthly report. Beginning in July 2014 and ending in June 2016, the Department of Health and Human Services shall report bimonthly to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs on the department's efforts to establish and collect the debt arising from cost-of-care overpayments pursuant to the Maine Revised Statutes, Title 22, section 1714-A, subsection 9.

Sec. 8. Appropriations and allocations. The following appropriations and allocations are made.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)

Medical Care - Payments to Providers 0147

Initiative: Deappropriates funds for recovery of overpayments to providers that are in excess of the amounts currently budgeted for in the MaineCare program for fiscal year 2014-15.

GENERAL FUND	2013-14	2014-15
All Other	\$0	(\$4,000,000)
GENERAL FUND TOTAL	<u>\$0</u>	<u>(\$4,000,000)</u>

Nursing Facilities 0148

Initiative: Provides one-time funding for increased reimbursements under the MaineCare program for nursing facilities.

GENERAL FUND	2013-14	2014-15
All Other	\$0	\$4,520,000
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$4,520,000</u>

FEDERAL EXPENDITURES FUND	2013-14	2014-15
All Other	\$0	\$7,311,686
FEDERAL EXPENDITURES FUND TOTAL	<u>\$0</u>	<u>\$7,311,686</u>

Nursing Facilities 0148

Initiative: Provides one-time funds for increased nursing home costs.

GENERAL FUND	2013-14	2014-15
All Other	\$0	\$189,840
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$189,840</u>

FEDERAL EXPENDITURES FUND	2013-14	2014-15
All Other	\$0	\$307,091
FEDERAL EXPENDITURES FUND TOTAL	<u>\$0</u>	<u>\$307,091</u>

Nursing Facilities 0148

Initiative: Adjusts funds to reflect additional nursing home provider tax revenue.

GENERAL FUND	2013-14	2014-15
All Other	\$0	(\$709,901)
GENERAL FUND TOTAL	<u>\$0</u>	<u>(\$709,901)</u>

OTHER SPECIAL REVENUE FUNDS	2013-14	2014-15
All Other	\$0	\$709,901
OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$0</u>	<u>\$709,901</u>

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS) DEPARTMENT TOTALS	2013-14	2014-15
GENERAL FUND	\$0	(\$61)
FEDERAL EXPENDITURES FUND	\$0	\$7,618,777
OTHER SPECIAL REVENUE FUNDS	\$0	\$709,901
DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$8,328,617</u>

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