MaineHealth

Testimony of Katie Fullam Harris, MaineHealth
In Strong Support of LD 1785, "Resolve, to Establish the Blue Ribbon Commission to Make Recommendations to Update Laws Governing the Continuum of Long-term Care Options"
Wednesday, May 10, 2023

Senator Baldacci, Representative Meyer and distinguished members of the Joint Standing Committee on Health and Human Services, I am Katie Fullam Harris, Chief Government Affairs Officer at MaineHealth, and I am here to strongly support LD 1785, "Resolve, to Establish the Blue Ribbon Commission to Make Recommendations to Update Laws Governing the Continuum of Long-term Care Options "

MaineHealth is an integrated non-profit health care system that provides a continuum of health care services to communities throughout Maine and New Hampshire Every day, our over 22,000 care team members support our vision of "Working Together so Our Communities are the Healthiest in America" by providing a range of services from primary and specialty physician services to a continuum of behavioral health care services, community and tertiary hospital care, home health care and a lab We also operate several nursing facilities that provide long-term care to our communities

Thank you to Speaker Talbot Ross for recognizing the crisis that Maine is experiencing related to access to long term care and her leadership in proposing two bills to address it Our elderly residents who no longer have the ability to live safely on their own and do not have the resources to pay for care have few, if any, options for supported residential care Neither assisted living nor nursing facilities have sufficient available capacity to meet the need This is, in part, due to staffing shortages However, it is also a result of a convoluted, complex and antiquated set of laws and regulations that govern residential care for Maine's elderly Yesterday, MaineHealth hospitals had 76 patients who were ready for discharge but for whom there is no safe discharge disposition Of those, 57 needed nursing facility beds

The legislation before you today forms a Blue Ribbon Commission to review the laws and regulations governing long-term care and assisted living facilities, many of which have not been reviewed or changed in over a decade Designed solely to protect the State's budget by setting a permanent and static MaineCare budget ceiling in 2007, the law has evolved to prevent the maintenance of sufficient capacity needed to meet the demands of our oldest population in the nation

The current law and regulations provide at least two regulatory barriers to maintaining and expanding access to nursing facility services in Maine The first is oversight over total bed capacity through a Certificate of Need process On its own, this can be a reasonable regulatory check on oversupply of services

The second, however, is the so-called "MaineCare budget neutrality test" that the CON process imposes on nursing facilities seeking to add new beds -- or build a new or replacement facility that adds beds to the overall statewide total. The MaineCare neutrality test requires them to show that the resulting MaineCare reimbursable costs following implementation of the project will not exceed the MaineCare costs that are reimbursed under their existing bed configuration This provision is found at Subsection 1-A of Section 334-A of the CON law

This seemingly impossible test can only be met by showing that the increased MaineCare costs -- and reimbursement revenues flowing from the additional beds -- will be fully offset or "neutralized" by MaineCare savings from other steps they may take—through changes in the bed configuration or services of the facility under review Or at other facilities under common ownership Or from allocating a sufficient amount of MaineCare savings that DHHS has recognized in the form of so-called "bed rights"

In practice, these offsetting MaineCare savings have been achieved in one of following ways

- By reducing or delicensing beds in another part of the facility they are seeking to expand
- By reducing or delicensing beds at another facility under common ownership
- By drawing down on previously reserved "bed rights" resulting from prior closures or bed reductions at their other affiliated facilities, or
- By purchasing "bed rights" from another nursing facility or chain that is willing to sell them

This MaineCare neutrality test, which is a required element of the CON process for nursing facilities, most certainly does not take into account inflationary labor and construction costs and, as a result, has caused a downward spiral in the number of long-term care beds available to meet the needs of our population It has further created a gray market in which "bed rights" – the ability to bill MaineCare for services - are bought and sold, and unused licensed bed capacity horded for a rainy day It is a system that puts finances, not patient needs, at is core I have attached a graph that illustrates the reduction in nursing facility patients over time Hospitals are required to hold patients pending a safe discharge Given the number of patients stuck in hospitals, this illustrates the very real problem of lack of adequate capacity to meet the needs of our population as it jeopardizes the health of those who no longer belong in an inpatient setting

MaineHealth owns several nursing facilities, including St Joseph's Manor in Portland We expanded capacity through an emergency CON during the pandemic When it became clear that we needed to maintain the additional capacity after the PHE expires to meet the needs of our community, we had to purchase – for millions of dollars – "bed rights" to do so

The Certificate of Need process, bed banking, and reimbursement mechanisms should be reviewed to better understand the impact these policies have on the lack of access to long-term care It is clear that the status quo is not working Just recently, yet another long-term care facility announced its closure, adding to the 288 long-term care beds that permanently closed in the past year, and the nearly 1,300 more that are licensed but unstaffed

Not only are these outdated policies failing to meet the needs of our most vulnerable, but the crisis in long-term care is also significantly impacting the ability of hospitals to continue to meet the acute

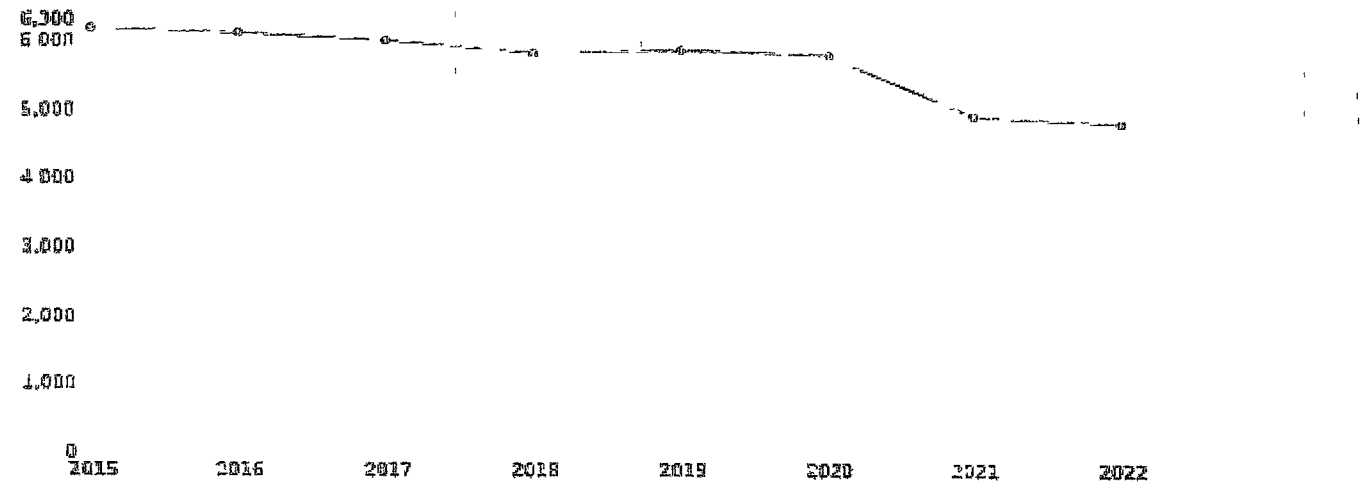
care needs of our patients Without timely access to residential care, our local health systems' census and average length of stay have steadily increased since the start of the pandemic Until Fiscal Year 2021, Maine Medical Center's average length of stay for patients hovered around 5 days That figure has now spiked to almost 7 5 days Included in my testimony are graphs that show the increased length of stay at Maine Medical Center and Southern Maine Health Care

To further illustrate the crisis, Maine Medical Center's discharges to long-term care facilities have decreased by 69% since 2019 In fact, in an effort to provide safe, high-quality, and appropriate care to our patients awaiting a long-term care bed, Maine Medical Center has started a program called "Transitional Care Communities," which cohorts these patients in the hospital and offers an activities coordinator who helps the patient maintain cognitive, physical, and emotional well-being while awaiting appropriate placement This is simply not acceptable Maine Medical Center is being forced to bear the financial burden of caring for these patients, including providing support services that should be provided in the community, but our post-acute care providers cannot afford to provide them

As a state, we must immediately invest in the services needed to address the crisis we face today We cannot continue to let outdated policies remain in place that are preventing the development of a sustainable system of care that will meet both the immediate and projected needs of our communities I urge you to support the formation of this Blue Ribbon Commission so that a thoughtful and comprehensive review of the policies governing long-term care can begin, and meaningful change can occur

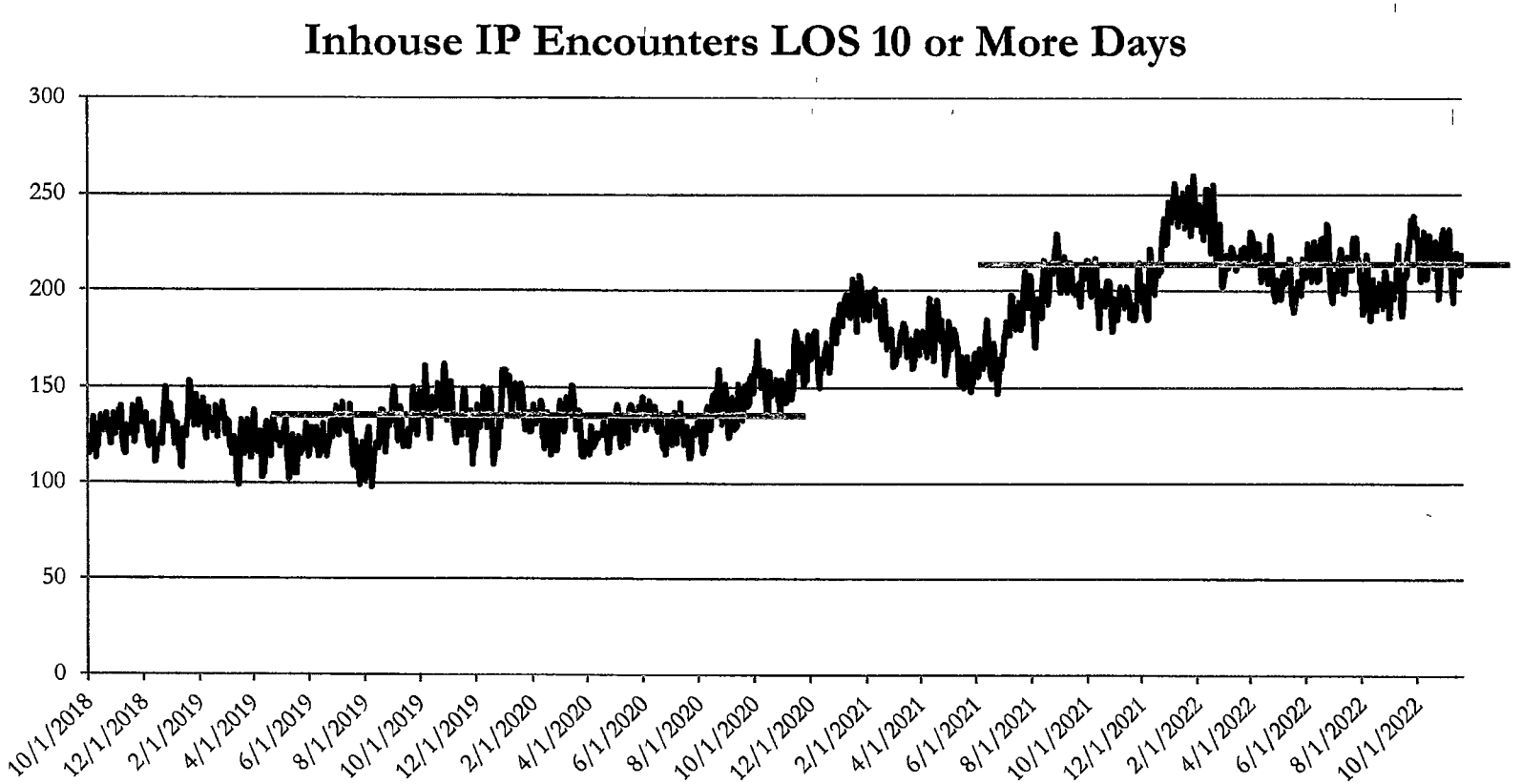
Thank you and I would be happy to answer any questions you may have

Total Number of Residents in Certified Nursing Facilities: 2015 - 2022

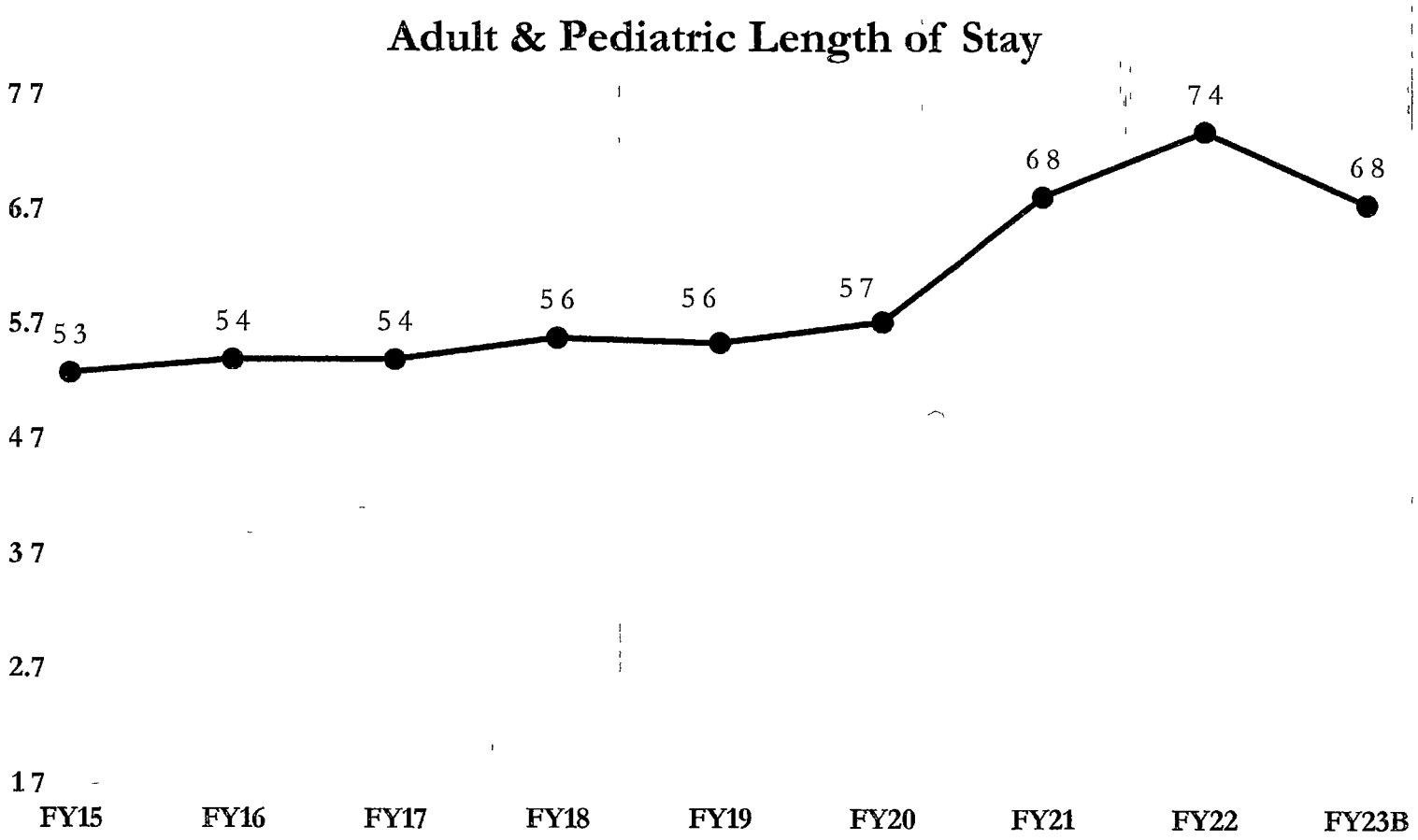


SOURCE: Kaiser Family Foundation & State Health Facts

Inpatient Length of Stay 10+ days at MMC



Average Length of Stay at MMC



Inpatient Length of Stay 10+ days at SMHC