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STATE OF MAINE  
ONE HUNDRED AND THIRTY-SECOND LEGISLATURE  
COMMITTEE ON HEALTH AND HUMAN SERVICES

TO: Senator Margaret Rotundo, Senate Chair  
Representative Drew Gattine, House Chair  
Joint Standing Committee on Appropriations and Financial Affairs

FROM: Senator Henry Ingwersen, Senate Chair  
Representative Michele Meyer, House Chair  
Joint Standing Committee on Health and Human Services

DATE: March 12, 2025

SUBJECT: LD 210, An Act Making Unified Appropriations and Allocations from the General Fund and Other Funds for the Expenditures of State Government and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2025, June 30, 2026 and June 30, 2027

The Health and Human Services Committee is pleased to provide its recommendations on the Governor’s proposed biennial budget, LD 210. Pursuant to Joint Rule 304, the Joint Standing Committee on Health and Human Services met to review the Governor’s proposed budget initiatives and language pertaining to the agencies under our jurisdiction.

All members were present for the votes or registered their votes in a timely fashion.

Committee votes on the initiatives proposed in the budget are included in the attached Green Sheet and votes on the language sections are included in the attached Purple Sheet. Summaries of votes are included below, organized following the order of initiatives in the Green Sheet. The committee voted unanimously to submit an additional initiative for consideration, which is also described below. Finally, the committee’s Democratic and Republican members have included separate recommendations regarding certain topics.

**Adult behavioral health and substance use (lines 38-68 on Green Sheet)**

Committee members voted unanimously in favor of all initiatives in this section.

**Children’s services (lines 98-129 on Green Sheet)**

Committee members voted unanimously in favor of all initiatives on lines 98-113, lines 118-123 and lines 125-129.

Democratic members of the committee voted in favor of the initiatives on lines 114-117, which relate to establishing positions within the Office of Child and Family Services. Republican members opposed these initiatives.

Democratic members of the committee voted in favor of the initiative on lines 124, which relates to establishing a position within the Office of Behavioral Health. Republican members opposed this initiative.

**Child Care and Head Start (Lines 130-132 on Green Sheet)**

The committee voted 10-3 in opposition to the Governor's proposed reductions in funding for the child care worker monthly wage supplement, Head Start services, and the child care employment award under the Child Care Affordability Program. Members voting in support of these initiatives were Representatives Lemelin, Javner and Griffin.

Members voting in opposition to these initiatives recognize that the cost of these programs is substantial. As an alternative to the proposed reductions, these members suggest that AFA consider reviewing the eligibility criteria for the Child Care Affordability Program. Public Law 2023, chapter 412 (the 2024-2025 biennial budget) increased program eligibility from 85% to 125% of the state median income beginning January 2024. Given the current fiscal environment, members suggest that the AFA members reevaluate the upper limit of income eligibility for the program to prioritize funding for families with the greatest needs.

**Developmental Services (lines 147-172 on Green Sheet)**

Democratic members of the committee voted in favor of the initiatives on lines 147-151, which relate to establishing positions within the Office of Aging and Disability Services (OADS) and lines 154-155, which relates to continuing a contracted position within OADS. Republican members opposed these initiatives.

Committee members voted unanimously in favor of all initiatives on lines 152-153 and 156-172.

**DHHS Management (lines 191-232 on Green Sheet)**

Committee members voted unanimously in favor of all initiatives on lines 191-221 and on lines 228-232.

Committee members voted 7-6 in favor of the initiatives on lines 222-227, which relate to establishing positions within the Division of Licensing and Certification and the Office of Aging and Disability Services. All Democratic members with the exception of Senator Nangle voted in favor of the initiatives. All Republican members, and Senator Nangle, voted in opposition to the initiatives.

**Elder Services (lines 249-251 on Green Sheet)**

Committee members voted unanimously in favor of all initiatives in this section.

**Fund for a Healthy Maine (lines 252-265 on Green Sheet)**

Committee members voted unanimously against the proposed initiative on lines 252-265. This initiative proposes to reduce Fund for a Healthy Maine allocations and increase General Fund appropriations, in order to continue to support public health services currently funded by the Fund for a Healthy Maine in light of the decline in Fund for a Healthy Maine revenue due to reductions in tobacco settlement funds. Committee members propose, as an alternative, that additional revenue be provided to the Fund for a Healthy Maine from the General Fund so that the Fund has sufficient funding to deliver the current programs. They suggest that the AFA committee consider directing a portion of General Fund revenue from cigarette tax and tobacco products taxes to the Fund for a Healthy Maine.

**Maine Developmental Disability Council (line 276 on Green Sheet)**

Committee members voted unanimously in favor of the one initiative in this section.

**Nursing Facilities (lines 280-283 on Green Sheet)**

Committee members voted unanimously in favor of the initiatives in this section.

**MaineCare Administration (lines 294-303 on Green Sheet)**

Committee members voted unanimously in favor of the initiatives in this section.

**FMAP (lines 322-343 on Green Sheet)**

Committee members voted unanimously in favor of the initiatives in this section.

**Hospitals (lines 344-350 on Green Sheet and Part WW)**

Committee members voted unanimously in favor of the initiative on lines 344-345.

Democratic committee members voted in favor of the initiative on lines 346-347, and language Part WW, which provides for a new annual assessment on inpatient hospital beds to support the health information exchange (HealthInfoNet). Republican members opposed the initiative.

Committee members voted unanimously to amend the initiative on line 348-350. The Governor's proposal would have reduced MaineCare reimbursement for hospital professional costs at hospital based practices from 170% of Medicare reimbursement rates to 160% in the next biennium, and then to 109% over a 5 year period. The committee voted unanimously to approve the reduction of MaineCare reimbursement of hospital professional costs at hospital-based practices to 160% of Medicare reimbursement rates on the time schedule set by the department but with no future reduction in rates. Please see *attachment A* for the committee's proposed amended initiative language.

**Account Consolidation (lines 351-358 on Green Sheet)**

Committee members voted unanimously against inclusion of the initiative on lines 351-358, at the request of the Department.

**MaineCare Shortfall (lines 359-366 on Green Sheet)**

Democratic members of the committee voted in favor of the initiative on lines 359-366, which provides funding to increase MaineCare appropriations and allocations to reflect increases in cost and enrollment. Republican members opposed the initiative and urged the AFA Committee to consider reforms of MaineCare eligibility and benefits.

**Rate changes (line 367 on Green Sheet)**

Committee members voted 7-6 in favor of the initiative on line 367, which reduces funding for MaineCare rate changes for hospice services and laboratory services. Republican members and Representative Graham opposed the initiative because of the rate reduction proposed for hospice services.

**Ambulance Services (lines 368-372 on Green Sheet and Part TT)**

Committee members voted unanimously against inclusion of the initiatives in this section and language Part TT that relates to a proposed ambulance service provider tax and associated adjustments in reimbursement rates for ambulance services.

**Prescription Drugs (lines 374-383 on Green Sheet and Part SS)**

Committee members voted unanimously in favor of the initiative on lines 374-377.

Committee members voted unanimously to oppose the initiative on lines 378-383 and part SS that relate to a proposed assessment for each prescription at in-state pharmacies and an increase in MaineCare dispensing fees.

**Public Assistance (lines 402-414 on Green Sheet and Part VV)**

Committee members voted unanimously in favor of the initiatives on lines 402-409 and line 411.

Committee members voted unanimously against inclusion of the initiative on line 410 at the request of the department.

Democratic members of the committee voted in favor of the initiative on lines 412-413, which relates to establishing limited period positions within the Office for Family Independence. Republican members opposed the initiative.

Democratic members of the committee voted against the initiative at line 414, which reduces funding for the state-funded Supplemental Nutrition Assistance Program for noncitizens. Related, Democratic members of the committee voted against including language Part VV (removing the SNAP and TANF hardship exception). Republican members voted in favor of including the language.

**Public Health (lines 452-473 on Green Sheet and Part RR)**

Committee members voted 10-3 in favor of the initiative at line 452, which relates to establishing a position at the Health and Environmental Testing Laboratory. Representatives Javner, Griffin and Lemelin opposed the initiative.

Committee members voted 9-4 in favor of the initiative at line 453, which relates to positions at the Health and Environmental Testing Laboratory. Senator Moore and Representatives Javner, Griffin and Lemelin opposed the initiative.

Democratic members of the committee voted in favor of the initiative at line 454, which relates to making permanent 8 limited period positions at the Maine CDC related to environmental lead investigations. Republican members opposed the initiative.

Committee members voted unanimously in favor of all initiatives on line 455-457, line 459, lines 462-467, and line 469.

Democratic members of the committee voted in favor of the initiative at line 458, which relates to establishing a position within the Office of Population Health Equity. Republican members opposed the initiative.

Democratic members of the committee voted in favor of the initiative at lines 460-461, which relates to establishing a position at the Health and Environmental Testing Laboratory. Republican members opposed the initiative.

Democratic members of the committee voted in favor of the initiative at line 468, which relates to funding for the Universal Childhood Immunization Program. Republican members opposed the initiative.

All members of the committee, with the exception of Senator Nangle, voted in favor of the initiative at line 471, which reduces funding for annual grants within the Office of Violence Prevention. Senator Nangle opposed the initiative.

Democratic members of the committee voted in favor of the initiative at lines 472-473, along with Part RR, which relates to increased funding by increasing fees on manufacturers and wholesalers of paint for the Lead Poisoning Prevention Fund to reduce reliance on the Fund for a Health Maine. Republican members opposed the initiative.

**Social Services (lines 480-481 on Green Sheet)**

Committee members voted unanimously in favor of the proposed initiative on line 480.

Committee members voted 9-4 in favor of amending the proposed initiative at line 481 that provides funding to offset reductions in federal VOCA funding. Democratic members of the committee and Senator Moore voted to amend the initiative to add \$3 million annually to the proposed General Fund appropriation for a total of \$6 million annually. Please see *attachment A* for proposed amended initiative language. Republican members voted in favor of the initiative as proposed (\$3 million annually in VOCA funding).

## **New Initiative to provide COLAs and Part UU**

Committee members unanimously voted to support adding an initiative to the FY26-FY27 biennial budget to provide cost of living adjustments for essential support workers for the period July 1, 2025 through June 30, 2027. Cost of living adjustments for these workers were scheduled to go into effect on January 1, 2025, but were not implemented by the Department of Health and Human Services. In the HHS report back to AFA on the supplemental budget, LD 209, the committee unanimously recommended an initiative to implement the January 1, 2025, cost of living adjustments as soon as possible for the remainder of FY25. For the biennial budget, the committee unanimously recommends adding a new initiative to appropriate funds for these cost of living adjustments beginning at the start of the biennium (July 1, 2025). The department estimates this will cost up to \$84 million over the biennium.

In addition to supporting COLAs for essential support workers, the committee agrees in principle on including language in the biennial budget that ensures that these cost of living increases are then passed on to workers. The department has been applying COLAs to the whole reimbursement rate; it is the portion of the rate related to wages, and taxes and benefits associated with wages, that should be passed on to workers. To achieve this requirement, Democratic members of the committee voted in favor of accepting language Part UU but with an amendment to add the requirement for providers to pass on COLA increases to workers in the Maine Revised Statutes. Please see **attachment B** for the majority's proposed amendment language. Republican members of the committee voted against language Part UU altogether but propose unallocated language to add the same requirement. Please see **attachment C** for the minority's proposed language.

## **Remaining Language Parts not addressed above**

Language parts RR, SS, TT, UU, VV and WW are addressed above. All other language proposals, Parts XX through JJJ were approved unanimously by the committee to be included.

## **OTHER COMMENTARY**

### **General assistance**

Part S of the Governor's proposed supplemental budget (LD 209) proposed a change to the General Assistance statute to limit housing assistance under the program to a maximum of 3 months in a 12 month period, with the exception of assistance for temporary housing and emergency shelters. It also proposed to limit municipalities from exceeding the maximum levels of assistance for all assistance categories for no more than 30 days in a 12-month period per household. The Committee voted Part S "out" in the supplemental budget with the understanding that the issue would be considered in the biennial budget.

Democratic members of the committee are opposed to including this language in the biennial budget. However, Democratic members recognize the fiscal pressures on municipalities in administering general assistance and are invested in continuing conversations regarding reforms to the program. They also urge the AFA committee to support other, related housing solutions, including the Eviction Protection Program administered by Maine State Housing. Republican members of the committee support adding language identical to the Governor's proposed supplemental budget Part S to the biennial budget.

**FQHC pharmacy services**

Part K of the Governor’s proposed FY25 supplemental budget (LD 209) proposed a repeal of the language approved in Public Law 2023, chapter 643, Pt. QQ, §3 and §4 to support federally qualified health centers in developing and expanding pharmacy services and access to affordably priced prescription drugs for the patients of such health centers. While there are no related provisions in LD 209 as amended by the AFA committee (and on the floor), and there are no related provisions included in the proposed biennial budget, LD 210, given that final action has not been taken by the Legislature on LD 209, the Republican members of the committee wish to reiterate their support of this funding, and urge the AFA committee to retain the program and to extend funding for the program through the biennial.

**Tax initiatives (separate vote sheet)**

During its budget work session, the Taxation Committee chose to defer to the Health and Human Services committee on two initiatives (appearing on Page A-46 of the Governor’s budget) to provide one-time funding for computer programming costs to implement the ambulance services provider tax and the prescription pharmacy assessment. Because the HHS committee unanimously voted both of these proposals (including Part SS and Part TT) “out” of the biennial budget, they also voted unanimously against the associated computer programming funding initiatives. Please see *attachment D* for these initiatives.

Thank you for your consideration of our proposals. We are happy to further discuss this report at any time.

- cc: Health and Human Services Committee members  
Commissioner Sara Gagné-Holmes, Department of Health and Human Services  
Deputy Commissioner Benjamin Mann, Department of Health and Human Services  
Deputy Commissioner Molly Bogart, Department of Health and Human Services  
Abby Stivers, Government Relations Director, Department of Health and Human Services  
Maureen Dawson, OFPR  
Lucia Nixon, OFPR  
Anna Broome, OPLA  
Samuel Senft, OPLA





**ATTACHMENT A to HHS LD 210 Biennial Budget Report Back to AFA**

**C-A-1731 [Ref #: 1801]**

**Purchased Social Services 0228**

Initiative: Provides funding to replace current and anticipated reductions in grants to the department under the federal victim assistance formula grant program administered by the United States Department of Justice, Office of Justice Programs, Office for Victims of Crime pursuant to the federal Victims of Crime Act of 1984.

<b>GENERAL FUND</b>	<b>2025-26</b>	<b>2026-27</b>
All Other	\$3,000,000	\$3,000,000
	<b>\$6,000,000</b>	<b>\$6,000,000</b>
<b>GENERAL FUND TOTAL</b>	<b>\$3,000,000</b>	<b>\$3,000,000</b>
	<b>\$6,000,000</b>	<b>\$6,000,000</b>

**C-A-7133 [Ref#: 1759, 1760, 1761]**

**Medical Care - Payments to Providers 0147**

Initiative: Reduces funding to transition reimbursement of hospital professional costs at hospital-based practices related to the department's rule Chapter 101: MaineCare Benefits Manual, Chapter III, Section 45, Hospital Services, to ~~109%~~ **160%** of Medicare rates ~~over a 5-year period~~.

<b>GENERAL FUND</b>	<b>2025-26</b>	<b>2026-27</b>
All Other	\$0	(\$6,876,577)
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>(\$6,876,577)</b>
<b>FEDERAL EXPENDITURES FUND</b>	<b>2025-26</b>	<b>2026-27</b>
All Other	\$0	(\$16,966,294)
<b>FEDERAL EXPENDITURES FUND TOTAL</b>	<b>\$0</b>	<b>(\$16,966,294)</b>
<b>FEDERAL BLOCK GRANT FUND</b>	<b>2025-26</b>	<b>2026-27</b>
All Other	\$0	(\$266,356)
<b>FEDERAL BLOCK GRANT FUND TOTAL</b>	<b>\$0</b>	<b>(\$266,356)</b>

**ATTACHMENT B to HHS LD 210 Biennial Budget Report Back to AFA**

**PART UU**

**Sec. UU-1. 22 MRSA §1708, sub-§3**, as enacted by PL 1975, c. 365, §1 is 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;

A-1. [PL 2001, c. 666, Pt. A, §1 (RP); PL 2001, c. 666, Pt. E, §1 (AFF).]

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;

~~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~~

~~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 until June 30, 2018. For the state fiscal year beginning July 1, 2018, the base year for each facility is its fiscal year that ended in the calendar year 2016. For state fiscal years beginning on or after July 1, 2019, subsequent rebasing must be based on the most recent cost report filings available. The department may provide a mechanism for subsequent adjustments to base year costs to reflect any material difference between as-filed cost reports used in rebasing and subsequent determinations of audited, allowable costs for the same fiscal period. The department's rules must provide that, beginning in the state fiscal year beginning July 1, 2018, the rates set for each rebasing year must include an inflation adjustment for a 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 nursing homes and adult day care services index.—~~

~~Any rebasing done pursuant to this paragraph may not result in a nursing facility receiving a reimbursement rate that is lower than the rate in effect on June 30, 2018.~~

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

**Sec. UU-2. 22 MRSA §7402 and §7403**, as enacted by PL 2021, c. 398, Pt. AAAA, §1, is amended to read:

Services provided by essential support workers that are reimbursed by the department under the MaineCare program or another state-funded program must include in the reimbursement rate the following:

**1. At least 125% of the minimum wage.** An amount equal to at least 125% of the minimum wage established in Title 26, section 664, subsection 1 for the labor portion of the reimbursement rate as determined under the process set forth in 22 MRSA §3173-J, sub-§2, ¶C-5 and subject to sufficient appropriations ~~An increase to the minimum wage must be applied to the reimbursement rate at the time the increase takes place; and~~ **. Beginning on July 1, 2025, increases in reimbursement rates to providers provided pursuant to this section must result in increases to wages in an amount that is equal to the amount of the increased reimbursement related to wages and taxes and benefits associated with wages. The increase must be granted or paid out retroactively from the date the department begins reimbursing at the increased rates.**

~~**2. Taxes and benefits.** An amount necessary to reimburse the provider for taxes and benefits paid or costs incurred by the provider that are directly related to the reimbursed wage increase in subsection 1. This amount must be adjusted whenever an increase to the minimum wage is applied to the reimbursement rate under subsection 1.—~~

**3. Effective date.** This section takes effect January 1, 2022.

**§7403. Rebasing**

~~Except as otherwise provided, the department shall rebase reimbursement rates for the MaineCare program and other state-funded program reimbursement rates described in section 7402 at least every 5 years. Rebasing must be based on the most recent cost report filings available or provider cost surveys or other market data when cost reports are not available. The department may provide a mechanism for subsequent adjustments to base year costs to reflect any differences it determines are material between as-filed cost reports used in rebasing and subsequent determinations of audited, allowable costs for the same fiscal period.~~

**Sec. UU-3. 22 MRSA §3173-J**, as enacted by PL 2021, c. 639, §2 and amended by PL 2023, c. 238, §1, is further amended to read:

**§3173-J. Rate-setting system for development and maintenance of sustainable, efficient and value-oriented MaineCare payment models and rates**

This section establishes a rate-setting system for the development and maintenance of MaineCare payment models and rates that comply with the requirement in 42 United States Code, Section 1396a that rates be consistent with efficiency, economy and quality of care; that are adequate to support MaineCare member access to services; and that are equitable and data-driven.

- 1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
  - A. "Alternative payment model" means a health care payment model that uses financial incentives to promote or leverage greater value for patients, purchasers, payers or providers and that connects at least a portion of reimbursement to performance on defined quality measures.
  - B. "MaineCare section of policy" means a set of MaineCare-covered services, as categorized by the department through the adoption of rules that specify the parameters for coverage.
  - C. "Rate determination" means a process conducted by the department to establish the reimbursement rate methodology, base rate amount or payment model for a MaineCare section of policy or for a specific covered service, whether through adoption or adaptation of a benchmark rate from another payer or development through a rate study.
  - D. "Rate study" means an analysis conducted by the department or its contracted vendor to develop a recommended rate methodology and resulting base rate amount and

payment model based on the service model and cost components for the service.

**2. Rate-setting system principles and processes.** The department shall establish MaineCare provider reimbursement rates, including those paid through fee-for-service and alternative payment models. The rates must be established in accordance with the following principles and processes and adopted through rulemaking as described in subsection 3; provided that changes in rates required by the federal government, one-time payments authorized by the federal government to assist with emergency or extraordinary circumstances, or rate reductions for the purpose of responding to projected MaineCare budget shortfalls shall not be subject to this section. The department shall:

- A. Develop annually a schedule of rate determination by MaineCare section of policy in consultation with the MaineCare Rate Reform Expert Technical Advisory Panel established under subsection 5 as follows:
  - (1) Post the rate determination schedule on its publicly accessible website;
  - (2) Provide an opportunity for the public to review and comment on the rate determination schedule and make available a summary of these comments on its publicly accessible website; and
  - (3) Conduct off-schedule rate determinations as the department finds appropriate;
- B. Conduct or contract for, every 4 years, a comprehensive benchmarking report to compare MaineCare rates for all services to those paid by Medicare, at least 5 comparison Medicaid states and any appropriate Maine commercial payers; provided that the department may ensure that completion of such benchmarking report occurs on a schedule compatible and in alignment with any federally required comparative analysis of Medicaid fee-for-service payment rates. The department shall provide public notice of the initiation of the comprehensive benchmarking process, provide an opportunity for the public to review and comment on the draft report and make available a summary of these comments alongside the final report;
- C. No less frequently than once every 5 years, conduct a rate determination process for each MaineCare section of policy or for a specific covered service, in accordance with the following procedures:
  - (1) Provide public notice of initiation of the rate determination for a MaineCare section of policy or for a specific covered service;
  - (2) Consider and, when appropriate, adopt alternative payment models that use financial incentives to promote or leverage greater value for the MaineCare program. This consideration must include a review of research on any available

national models or best practices regarding payment models for the service;

(3) Determine whether a Medicare rate is available for the service and whether the Medicare rate represents the most appropriate benchmark and payment model;

(4) In the absence of a Medicare rate, determine whether a rate from a non-Medicare payer source, including, but not limited to, commercial health care rates in the State or other states' Medicaid rates, is available for the service and whether this alternate payer rate represents the most appropriate benchmark and payment model. The department shall determine an appropriate percentage of the benchmark rate for the service, taking into consideration the findings of the benchmarking report conducted in accordance with paragraph B;

(5) Conduct a rate study for every service for which a benchmark rate or payment model in accordance with subparagraph (3) or (4) either is unavailable or is inconsistent with the goals of efficiency, economy and quality of care to support member access. Each rate study must include the following:

(a) A review of data, which must include:

(i) An assessment as to whether the delivery of service and associated requirements have changed since the previous rate study, if available, to determine if the rate methodology needs to be revised;

(ii) The collection of data on provider costs and cost-related aspects of the delivery of service and associated requirements through existing cost reports, provider surveys and other available data sources; and

(iii) Research on any available national models or best practices regarding cost-related aspects of the delivery of service and associated requirements; and

(b) Developing or updating rates by considering the following:

(i) The appropriateness of adoption of a change in payment model consistent with the purposes of this section;

(ii) The current rate assumptions and their appropriateness given current provider costs, best practices or changes in the delivery of service and associated requirements;

(iii) The findings for related services of any comprehensive

benchmarking report under paragraph B; and

(iv) The degree to which services are dependent on MaineCare reimbursement, including, but not limited to, cost factors, such as average wage, that may be reflective of restraints of MaineCare reimbursement versus costs of the broader marketplace; and

(6) Upon completion of the rate determination process, present the department's rationale and recommendations for rate methodology, resulting base rate amount and payment model for public comment prior to the rule-making process; convene a meeting of interested providers and other interested members of the public to discuss the recommendations and hear comments; and respond in writing to comments with an explanation of whether and how feedback was incorporated into the final rate determination; and

D. Ensure that base rate amounts developed under paragraph C are updated to keep pace with changes in the costs of delivering the service by:

(1) For rates benchmarked to Medicare rates according to paragraph C, subparagraph (3), referencing Medicare rates for the most current year available, updated at least annually, and reviewing the current established percentage benchmark, as appropriate, taking into consideration the findings of the most recent benchmarking report conducted in accordance with paragraph B;

(2) For rates benchmarked to an alternate payer source in accordance with paragraph C, subparagraph (4), updating rates to the most current year of data for that payer source at least once every 2 years and reviewing the current established percentage benchmark, as appropriate, taking into consideration the findings of the benchmarking report conducted in accordance with paragraph B; and

(3) For base rates determined through a rate study in accordance with paragraph C, subparagraph (5), subject to available funds as set forth in section 4 below, providing an annual cost-of-living adjustment effective on a consistent date to be established by the department for each service that has not received a rate adjustment within the 12 months prior to the effective date of the cost-of-living adjustment and for which the department determines benchmarking in accordance with paragraph C, subparagraph (3) or (4) is not appropriate or advisable. In establishing and implementing cost-of-living adjustments, the department shall:

(a) Use inflation indices determined through rulemaking to reflect a reasonable cost of providing services for different categories of services; rather than reflecting other factors, such as private sector price increases or

cost-shifting from different payers; and

(b) Maximize use of a single, consistent and general cost-of-living adjustment index for services where the cost of direct care staffing is the primary driver of overall cost increases, consistent with the cost-of-living adjustment applied to the minimum wage as set forth in title 26, section 664, subsection 1. ~~laws, in order to ensure that the cost of living adjustment reflects increases to provider costs for delivering the service rather than other factors, such as private sector price increases or cost-shifting from different payers.~~ The Department shall:

(i) Apply this adjustment to services provided by essential support workers as defined in title 22, section 7401. The amount of the cost-of-living adjustment received must be provided to essential support workers as an increase in wages in the amount that equals the amount of increased reimbursement for wages, and taxes and benefits associated with wages. The increase must be granted or paid out retroactively from the date the department begins reimbursing at the increased rates. The agency providing the services that receives the increase in reimbursement must demonstrate, to the satisfaction of the department, compliance with this subdivision. The department shall submit a report annually to the joint standing committee of the Legislature having jurisdiction over health and human services matters demonstrating compliance with this division; and

(ii) For any services to which the department applies this adjustment equal to the increase in minimum wage, apply this adjustment to the reimbursement rate between 6 and 12 months after the minimum wage increase goes into effect.

**3. Rulemaking for establishment of rate methodology.** ~~In addition to the requirements of Title 5, chapter 375, r~~Rulemaking for MaineCare provider reimbursement rate methodologies must comply with the following.

A. Establishment of a rate methodology for a new MaineCare section of policy or specific new service or changes to an existing rate methodology must be adopted through rulemaking in accordance with the Maine Administrative Procedure Act. Rulemaking is not required for the addition of new billing codes or to specify rates for specific billing codes if there is no change in the overall methodology and rates are posted in accordance with this section.

B. For services the department benchmarks to Medicare or other available payer rates for



reimbursement, the department shall adopt a rule specifying the percentage, frequency of benchmark updates for alternate payer sources and other aspects of the benchmark methodology. Additional rulemaking is not required for rate changes tied to the adopted benchmark methodology, or for the addition of new billing codes, unless the department changes the benchmarking percentage or methodology.

~~C. No later than July 1, 2023, the department shall adopt a rule specifying the appropriate cost-of-living adjustment methodology for different types of services in accordance with subsection 2, paragraph D, subparagraph (3). Additional rulemaking is not required for rate increases adjustments tied to annual cost-of-living adjustments increases unless the department changes the cost-of-living adjustment methodology.~~

D. In addition to the authority provided by Title 5, chapter 375 subchapter 2 section 8056(1)(B)(1), rules established under this Section may incorporate by reference any part of a code, standard, rule, regulation, schedule or any other source deemed appropriate by the department. In addition, notwithstanding anything in statute, rules established under this Section shall not be subject to Title 5, Chapter 375, subchapter 2 section 8056(1)(B)(2)-(4); provided that such rules identify the incorporated matter by title or source, as appropriate.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A unless rules to adopt MaineCare reimbursement rates are designated as major substantive rules in another section of law.

#### **4. Funding.**

A. Reimbursement adjustments are subject to the availability of appropriations. The department may reduce otherwise specified cost of living adjustment amounts or rates in proportion to available funding, including elimination of a scheduled adjustment as necessary.

B. The department may use funds from the MaineCare Stabilization Fund established in section 3174-KK in order to fund the rate adjustments made in accordance with this section when funding may be needed in addition to any appropriations associated with separate initiatives. Use of the Stabilization Fund is a one-time use and must be followed by an ongoing appropriation in order to ensure the resulting reimbursement continues at the adjusted level;

C. If sufficient funds are not appropriated for reimbursement adjustments in accordance with this section and there are not sufficient funds available in the MaineCare Stabilization Fund for this purpose, the department shall, proportional to any funding for reimbursement adjustments that may be available, prioritize:

- (1) Reimbursement adjustments resulting from any rate determinations for sections of policy or services that do not yet have reimbursement established through a rate determination under this section;

- (2) Rate adjustments for services where there is evidence of member access issues.

**5. MaineCare Rate Reform Expert Technical Advisory Panel.** The MaineCare Rate Reform Expert Technical Advisory Panel, referred to in this subsection as "the panel," is established for the purpose of advising the commissioner by providing technical, nonpartisan, 3rd-party expertise to inform the department's planned schedule and actions on rate assumptions, payment models and other related technical matters. The panel may not propose rates or methodologies. The commissioner or the commissioner's designee shall serve as chair.

A. The panel includes the following members:

- (1) A representative from the Maine Health Data Organization;
- (2) A representative from the Department of Professional and Financial Regulation, Bureau of Insurance;
- (3) ~~A representative from the Department of Professional and Financial Regulation;~~
- (4) A representative from the department's division of licensing and certification;
- (5) A representative from the Office of Affordable Health Care;
- (6) A representative from the Department of Labor; and
- (7) A representative from the Department of Administrative and Financial

B. The panel shall:

- (1) Review annual schedules of MaineCare sections of policy scheduled for rate determinations under subsection 2, paragraph A;
- (2) Review common assumptions and recommendations from across rate determinations under subsection 2, paragraph C;
- (3) Review findings from benchmarking reports to inform the appropriateness of MaineCare rate levels across services; and
- (4) Advise on other related technical matters, as appropriate.

C. The panel shall meet at least ~~twice~~ once per year and as otherwise convened by the commissioner. Meetings of the panel are public, and the panel shall provide public notice of each meeting and an opportunity for public comment.

**6. MaineCare Advisory Committee.** The MaineCare Advisory Committee, required by 42 Code of Federal Regulations, Section 431.12 and further described in department rules, and referred to in this subsection as "the committee," shall participate in the department's rate-setting system in accordance with this subsection.

A. The committee must include a permanent rate system subcommittee that allows broad participation by the full spectrum of types of MaineCare providers. Participation in the rate system subcommittee may not be limited by number or type of stakeholder in order to allow for participation by any stakeholder affected by MaineCare reimbursement policy and interested in participating in the work of the subcommittee.

B. At each meeting of the committee or rate system subcommittee, if requested by the chair of the committee or rate system subcommittee, the department shall provide updates on the department's planned and completed activities under this section for discussion and advisement, including, but not limited to, the following:

- (1) Schedule and status of rate determination, planned and in progress, by MaineCare section of policy;
- (2) Status of and plans for comprehensive benchmarking studies; and
- (3) Contemplated rulemaking to establish rate methodology resulting from rate determination processes.

C. The rate system subcommittee may formulate and present recommendations to the committee pertaining to the department's activities under this section.

**7. Index of MaineCare rates by service code; publicly accessible website.** The department shall maintain and annually update a centralized master index of rates by service code and post this index on its publicly accessible website. The index ~~must~~ may contain the following, as applicable:

A. The service code, including any modifiers that affect reimbursement;

B. The current year rate;

C. The source for the rate, including, but not limited to, Medicare or alternate payer benchmark, rate study or other source, and the year and the author of the review, study or report that justified the rate;

D. The year the base rate was last updated prior to the application of any subsequent cost-of-living adjustments;

E. Whether the rate is subject to cost-of-living adjustments and, if so, the identity of the benchmark index;

F. The section of MaineCare policy pursuant to which the rate was adopted; and

G. The target date for the next rate review.

In addition to the index, the department shall post on its publicly accessible website all rate studies, benchmark reports and other materials used by the department to develop the rates and payment models.

**8. Notice prior to implementation.** For planned rate changes that do not require rulemaking as described in subsection 3, the department shall provide notice prior to implementation, of no less than 30 calendar days for cost-of-living adjustments and no less than 7 calendar days for Medicare fee schedule changes or the addition of new service codes, to stakeholders who request to receive such notice.

## **PART UU SUMMARY**

This Part simplifies and consolidates statutory language that relates to the adjustment of MaineCare reimbursement into the MaineCare rate reform statute under 22 M.R.S.A. 3173-J, and stipulates that such adjustments are subject to available appropriations. This includes repeal of the requirement for including a regional inflation adjustment in the calculation of nursing facility rates and the requirement for rebasing of nursing facility rates every two years. It also clarifies reimbursement adjustment and rebasing for essential worker reimbursement to be under and consistent with 22 M.R.S.A. 3173-J. It establishes exceptions to the rate setting process for rate adjustments required by law, payments authorized by the federal government in urgent circumstances, or rate reductions resulting from budget short falls. It permits comparative benchmarking to occur on a schedule consistent with that required by federal law and regulation. It also defines how inflation and cost of living indices should be used when establishing and implementing cost-of-living adjustments in order to provide for greater budget predictability. This Part also repeals the requirement that the department must adopt a rule specifying a cost-of-living adjustment methodology, and allows the department to establish rules under this section that incorporate by reference sources in addition to those permitted by Title 5, chapter 375, subchapter 2, section 8056(1)(B)(1), and exempting these rules from the requirements of Title 5, chapter 375, subchapter 2, section 8056(1)(B)(2)-(4). It also defines a process for prioritizing rate adjustments when funds are limited. It removes a second representative of the Department of Professional and Financial Regulation from the MaineCare Rate Reform Expert Technical Advisory Panel, further defines the scope of the panel's review, and reduces the minimum frequency of meetings to once annually.

## **ATTACHMENT C to HHS LD 210 Biennial Budget Report Back to AFA**

Minority unallocated language for COLAs:

Sec. . Increase to employee wages. To qualify for the rate increase from cost-of-living increases pursuant to section \_\_ of this Part, an agency providing services must demonstrate, to the satisfaction of Department of Health and Human Services, that an increase in and wages and benefits for employees providing direct services has been granted that equals the amount of increase received for wages, and taxes and benefits associated with wages, as a result of the increased reimbursement. The increase must be granted or paid out retroactively from the date the department begins reimbursing at the increased rates. The department shall submit a report annually to the joint standing committee of the Legislature having jurisdiction over health and human services matters demonstrating compliance with this section.

