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STATE OF MAINE
ONE HUNDRED AND THIRTIETH LEGISLATURE
COMMITTEE ON HEALTH AND HUMAN SERVICES

TO: Senator Catherine Breen, Senate Chair
Representative Teresa S. Pierce, House Chair
Joint Standing Committee on Appropriations and Financial Affairs

FROM: Senator Ned Claxton, Senate Chair NC (ATB)
Representative Michele Meyer, House Chair MM (ATB)
Joint Standing Committee on Health and Human Services

DATE: May 26, 2021

SUBJECT: Change package to the budget

The Health and Human Services Committee is pleased to provide its recommendations on the change package to the budget. Committee votes on the initiatives proposed in the budget are contained in the attached documents. We have included our votes on the two documents – one contains the initiatives and the other contains the language.

Please note that if the administration was proposing to "delete" an initiative and the committee agreed, our document shows that we agreed and voted it "out."

The administration amended its proposal, on pp97-98, relating to establishing a reimbursement methodology that reimburses 340B providers at the approximate cost of 340B drugs by removing the first year of savings. The Committee continues to oppose the initiative altogether and unanimously voted that initiative out.

The Committee voted to amend the language in Part OOO and that language is attached. We also recommend that if the amended language in Part OOO is adopted by the Legislature, that the blippies that relate to the cost of living adjustments and the Medicare benchmarking from the Comprehensive Rate System Evaluation be amended in the budget to cite the Evaluation to make it clear which initiatives the amended language applies to:

> On pp 90 and 101: Provides funding to ensure MaineCare services receive a cost of living adjustment <u>from the Office of MaineCare Services' Comprehensive Rate System Evaluation</u>.

On p 103: Provides funding to standardize Medicare benchmark used for rate setting across numerous sections of MaineCare policy from the Office of MaineCare Services' Comprehensive Rate System Evaluation.

We would like to make clear that all divided votes were on party lines of those members who were present.

Committee members are prepared to discuss this report with you. Thank you for your consideration.

cc: Health and Human Services Committee members
Commissioner Jeanne M. Lambrew, Department of Health and Human Services
Benjamin Mann, Deputy Commissioner of Finance, Department of Health and Human Services
Molly Bogart, Government Relations Director, Department of Health and Human Services
Michelle Probert, Director, Office of MaineCare Services
Maureen Dawson, OFPR
Luke Lazure, OFPR
Anna Broome, OPLA
Erin Dooling, OPLA

Part OOO – as amended by HHS 5/25

Sec. OOO-1. 22 MRSA, §3173, as amended by PL 1997, c. 676, §1 is further amended as follows:

§3173. Powers and duties of department

The department is authorized to administer programs of aid, medical or remedial care and services for medically indigent persons. It is empowered to employ, subject to the Civil Service Law, such assistants as may be necessary to carry out this program and to coordinate their work with that of the other work of the department.

The department is authorized and empowered to make all necessary rules and regulations consistent with the laws of the State for the administration of these programs including, but not limited to, establishing conditions of eligibility and types and amounts of aid to be provided, and defining the term "medically indigent," and the type of medical care to be provided. In administering programs of aid, the department shall, among other services, emphasize developing and providing financial support for preventive health care and home health care in order to assure that a comprehensive range of health care services is available to Maine citizens. Preventive health services shall include, but need not be limited to, programs such as early periodic screening, diagnosis and treatment; public school nursing services; child and maternal health services; and dental health education services. To meet the expenses of emphasizing preventive health care and home health care, the department is authorized to expend for each type of care no less than 1.5% of the total sum of all funds available to administer medical or remedial care and services eligible for participation under the United States Social Security Act, Title XIX and amendments and successors to it.

The department shall provide all applicants for aid under this chapter with information in written form, and verbally as appropriate or if requested, about coverage, conditions of eligibility, scope of programs, existence of related services and the rights and responsibilities of applicants for and recipients of assistance under this chapter.

All applications for aid under this chapter shall be acted upon and a decision made as soon as possible, but in no case shall the department fail to notify the applicant of its decision within 45 days after receipt of his application. Failure of the department to meet the requirements of this 45-day time standard, except where there is documented noncooperation by the applicant or the source of his medical information, shall lead to the immediate and automatic issuance of a temporary medical card which shall be valid only until such time as the applicant receives actual notice of a departmental denial of his application or he receives a replacement medical card. Notwithstanding an applicant's appeal of a denial of his application, the validity of the temporary medical card shall cease immediately upon receipt of the notice of denial. Any benefits received by the applicant during the interim period when he has actual use of a valid, temporary medical card shall not be recoverable by the department in any legal or administrative proceeding against the applicant.

Whenever an applicant is determined by the department to be ineligible for a program for which he has applied, he shall be immediately so notified in writing. Any notification of denial shall contain a statement of the denial action, the reasons for denial, the specific regulations supporting the denial, an explanation of the applicant's right to request a hearing and a recommendation to the applicant of any other program administered by the department for which he may be eligible. Whenever an individual's application for Temporary Assistance

for Needy Families is denied by the department, the notice of this denial shall also include, in a clear and conspicuous manner, a statement that the applicant is likely to be eligible for medical assistance and shall include information about the availability of applications for the program upon request to the department either in writing or through a toll-free telephone number.

Any applicant for benefits under the medically needy program whose countable income exceeds the applicable state protected income level maximum shall be eligible for the program when his incurred medical expenses are found to exceed the difference between his countable income and the applicable state maximum. Whenever the applicant incurs sufficient medical expenses to be eligible for the medically needy program and provides reasonable proof thereof to the department, a medical card shall be issued within 10 days of the presentation of proof that eligibility has been met. Failure of the department to meet the requirements of this 10-day time standard, except where there is documented noncooperation by the applicant or the source of his medical information, shall lead to the immediate and automatic issuance of a temporary medical card which shall be valid only until such time as the applicant receives actual notice of a departmental denial of his application or he receives a replacement medical card. Any benefits received by the applicant during the interim period when he has actual use of a valid temporary medical card shall not be recoverable by the department in any legal or administrative proceeding against the applicant.

In all situations where prior authorization of the department is required before a particular medical service can be provided, the department shall authorize or deny the request for treatment within 30 days of the completion and presentation of the request to the department. The department's response to such a request shall be supplied to both the provider and the recipient. Whenever the provider is unable or unwilling to provide the service requested within a reasonable time after approval of the request by the department, the recipient shall have the right to locate another approved provider whose sole duty shall be to notify the department of his intention to provide the service subject to the original approval. It shall be the duty of the department to vigorously assist any recipient in his search for an approved provider of a necessary medical service where, through reasonable effort, the recipient has been unable to locate a provider on his own.

No time standard established by this section shall be used as a waiting period before granting aid, or as a basis for denial of an application or for terminating assistance.

The department shall make and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the department. The use of those records, papers, files and communications by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished and by the law under which they may be furnished.

The department shall initiate and monitor ongoing efforts performed cooperatively with other public and private agencies, religious, business and civic groups, pharmacists and other medical providers, professional associations, community organizations, unions, news media and other groups, organizations and associations to inform low-income households eligible for programs under this chapter of the availability and benefits of these programs and to insure the participation of eligible households which wish to participate by providing those households with reasonable and convenient access to the programs.

All moneys made available to fund programs authorized by this chapter shall be expended under the direction of the department, and the department is empowered to direct

the expenditures therefrom of those sums which may be necessary for purposes of administration.

Relating to the determination of eligibility for medical care to be provided to a beneficiary of state or federal supplemental income for the blind, disabled and elderly, the department may enter into an agreement with the Secretary of the United States Department of Health and Human Services, whereby the secretary shall determine eligibility on behalf of the department.

The Department of Health and Human Services may establish fee schedules governing reimbursement for services provided under this chapter. In establishing the fee schedules, the department shall consult with individual providers and their representative associations. The fee schedules shall be subject to ~~annual~~ department review on a regular schedule set by the department.

During the ~~annual~~ review of fee schedules required by this section, the department shall consult with individual providers participating in the Medical Assistance Program and their representative associations to consider, among other factors, the cost of providing specific services, the effect of inflation or other economic factors on the adequacy of the existing fee schedule and its obligation under the federal Medicaid program to ensure sufficient provider participation in the program and member access to services. Except as otherwise provided, the department may apply annual cost of living increases, as appropriate, to MaineCare reimbursement rates. The department shall post any change to fee schedules from cost of living increases on the department’s publicly accessible website at the time the change goes into effect.

~~The annual review of fee schedules shall be incorporated into the annual Medicaid report established by section 3174-B.~~

The department may enter into contracts with health care servicing entities for the provision, financing, management and oversight of the delivery of health care services in order to carry out these programs. For the purposes of this section, "health care servicing entity" means a partnership, association, corporation, limited liability company or other legal entity that enters into a contract to provide or arrange for the provision of a defined set of health care services; to assume responsibility for some aspects of quality assurance, utilization review, provider credentialing and provider relations or other related network management functions; and to assume financial risk for provision of such services to recipients through capitation reimbursement or other risk-sharing arrangements. "Health care servicing entity" does not include insurers or health maintenance organizations. In all contracts with health care servicing entities, the department shall include standards, developed in consultation with the Superintendent of Insurance, to be met by the contracting entity in the areas of financial solvency, quality assurance, utilization review, network sufficiency, access to services, network performance, complaint and grievance procedures and records maintenance. Prior to contracting with any health care servicing entity, the department must have in place a memorandum of understanding with the Superintendent of Insurance for the provision of technical assistance, which must provide for the sharing of information between the department and the superintendent and the analysis of that information by the superintendent as it relates to the fiscal integrity of the contracting entity. The department may require periodic reporting by the health care servicing entity as to activities and operations of the entity, including the entity's activities undertaken pursuant to commercial contracts with licensed insurers and health maintenance organizations. The

department may share with the Superintendent of Insurance all documents filed by the health care servicing entity, including documents subject to confidential treatment if that information is treated with the same degree of confidentiality as is required of the department.

Sec. OOO-2. Comprehensive Rate System Evaluation; implementation. The Department of Health and Human Services shall modify its MaineCare rate schedule by providing cost of living adjustments and standardizing Medicare benchmarks in accordance with those portions of the Office of MaineCare Services Comprehensive Rate System Evaluation that are expressly funded or that the department is expressly directed to implement by this Act. Notwithstanding Title 5, chapter 375, subchapter 2, the department is not required to provide notice, accept comments or otherwise comply with the requirements of Title 5, chapter 375, subchapter 2 when changing the rate schedule in accordance with this section and applicable provisions of this Act if and only to the extent those changes are made prior to July 1, 2022. The changes in the rate schedule pursuant to this section take effect when posted on the department's publicly accessible website.

Sec. OOO-3. Report. The department shall submit a report to the Health and Human Services Committee no later than January 2, 2022 describing the changes to the MaineCare rate schedule pursuant to Section OOO-2.

SUMMARY

This part amends the existing authority of the Department of Health and Human Services to establish regular fee schedules rather than annual fee schedules. It allows the department to apply cost of living increases to MaineCare rates and publish those rates on the department's publicly accessible website.

This part also allows the Department of Health and Human Services to implement the provisions of this Act that provide cost of living adjustments and Medicare benchmarking as a result of the Comprehensive Rate System Evaluation without going through formal rulemaking. This part applies only until July 1, 2022.

This part also requires the Department of Health and Human Services to submit a report, no later than January 2, 2022, describing the changes to the MaineCare rate schedule.