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An Act To Preserve Access to Nursing Home Care by Correcting Chronic Shortfalls in MaineCare Reimbursement

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, nursing homes rely primarily on reimbursement by the MaineCare program to cover their costs of operation, because most nursing home residents are MaineCare recipients; and

Whereas, for many years, the allowable operating costs of services provided to MaineCare recipients by nursing homes as determined by the Department of Health and Human Services through the review of cost reports have greatly exceeded the amount paid by the MaineCare program for the services provided by those nursing homes, resulting in massive, cumulative shortfalls in funding; and

Whereas, these funding shortfalls are having a severe impact on the ability of nursing homes to continue delivering services, especially in rural areas where MaineCare utilization is especially high; and

Whereas, it is essential to remedy immediately the continued annual shortfall of MaineCare payments below MaineCare allowable costs in order to preserve access to high-quality nursing home care for those extremely frail, vulnerable individuals who need such care; 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 H-A.~~

F. For nursing home fiscal years beginning on or after July 1, 2014, provide for an increase in rates of reimbursement sufficient to ensure that statewide payments for MaineCare-covered nursing home services are equal to the MaineCare portion of aggregate allowable costs of all nursing homes enrolled as MaineCare providers, as determined in audited cost reports for each nursing home's fiscal year ending in 2012;

G. For nursing home fiscal years beginning on or after July 1, 2014, implement a pay-for-performance program, developed in accordance with this paragraph, to encourage and reward strong performance by nursing homes.

(1) Criteria for incentive payments must include both improvement in performance and high levels of performance in specified areas, including, but not limited to, resident and family satisfaction, resident choices available, clinical measures and staffing levels.

(2) Payments pursuant to this paragraph in excess of \$1,000,000 annually must be in addition to the aggregate amount specified in paragraph F as adjusted for annual inflation pursuant to paragraph E, and the program must be implemented in a manner that does not result in any reduction of the amount that would have been paid to any nursing home in the absence of a pay-for-performance program, prior to implementation of the increase provided in paragraph F.

(3) Payments pursuant to this paragraph are not subject to cost report audit and may not be recouped by the MaineCare program on the ground that such payments, when added to other MaineCare payments, cause total MaineCare reimbursement to exceed MaineCare allowable costs; and

H. For nursing home fiscal years beginning on or after July 1, 2014, provide for a supplemental payment under the MaineCare program in the amount of 20¢ per MaineCare patient day to a nursing home for each 1% increment that the nursing home's annual MaineCare patient days exceed 70% of its total patient days.

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

Sec. 2. Emergency rules. Notwithstanding the Maine Revised Statutes, Title 5, section 8054, the Department of Health and Human Services may adopt emergency rules to implement Title 22, section 1708, subsection 3, paragraphs F and H without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health or safety or the general welfare, if notice is given through a MaineCare provider list and 5 days or more are allowed for comment prior to adoption of the rules. The emergency rules and subsequent permanent rules must be made to apply retroactively to July 1, 2014.

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)

Nursing Facilities 0148

Initiative: Appropriates state funds and allocates matching federal funds for an increase for MaineCare reimbursement to nursing facilities sufficient to cause statewide reimbursement to equal aggregate MaineCare allowable costs of all nursing facilities as determined by the cost reports of those facilities for their fiscal years ending in 2012.

FEDERAL EXPENDITURES FUND	2013-14	2014-15
All Other	\$0	\$20,000,000
FEDERAL EXPENDITURES FUND TOTAL	\$0	\$20,000,000

GENERAL FUND	2013-14	2014-15
All Other	\$0	\$10,000,000
GENERAL FUND TOTAL	\$0	\$10,000,000

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

SUMMARY

This bill provides for an increase in MaineCare payments to nursing homes to address a chronic shortfall between audited MaineCare allowable costs and payments for those costs; implements a pay-for-performance program to reward strong performance by nursing homes; and provides for a supplemental payment for facilities at which a high percentage of patients are MaineCare patients.

This bill authorizes the Department of Health and Human Services to adopt emergency rules to take effect retroactively to July 1, 2014 for the establishment of the supplemental MaineCare payments to nursing homes that serve a high percentage of MaineCare residents.

The bill also appropriates state funds and allocates matching federal funds for this increase in MaineCare reimbursement to nursing facilities in the 2014-2015 biennium.