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Legislative Document

No. 928

H.P. 652

House of Representatives, March 7, 2013

**An Act To Improve MaineCare Nursing Home Reimbursement To
Preserve Access and Promote Quality**

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MALABY of Hancock.
Cosponsored by Representatives: DUNPHY of Embden, SANDERSON of Chelsea, SIROCKI
of Scarborough, STUCKEY of Portland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §1708, sub-§3**, as corrected by PL 2001, c. 2, Pt. A, §33 and
3 amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

4 **3. Compensation for nursing homes.** A nursing home, as defined under section
5 1812-A, or any portion of a hospital or institution operated as a nursing home, when the
6 State is liable for payment for care, must be reimbursed at a rate established by the
7 Department of Health and Human Services pursuant to this subsection. The department
8 may not establish a so-called "flat rate." This subsection applies to all funds, including
9 federal funds, paid by any agency of the State to a nursing home for patient care. The
10 department shall establish rules concerning reimbursement that:

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

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

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

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

27 E. Contain an annual inflation adjustment that:

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

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

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

36 F. For nursing home fiscal years beginning on and after July 1, 2013, provide for a
37 supplemental payment under the MaineCare program to nursing homes that provide
38 services to a high percentage of MaineCare residents as follows:

39 (1) Nursing homes whose MaineCare patient days exceed 70% of total patient
40 days, determined on an annual basis, must receive this supplemental MaineCare
41 payment; and

1 (2) For each one percent increment above 70%, eligible nursing homes must
2 receive a supplemental MaineCare payment of \$0.20 per MaineCare patient day;
3 and

4 G. For nursing home fiscal years beginning on and after July 1, 2014, implement a
5 pay-for-performance program to encourage and reward strong performance by
6 nursing homes.

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

11 (2) Payments pursuant to this paragraph must be in addition to amounts
12 otherwise provided in accordance with applicable principles of reimbursement,
13 and the program must be implemented in a manner that does not result in any
14 reduction of the amount that would be paid to any home in the absence of a
15 pay-for-performance program.

16 (3) Payments pursuant to this paragraph may not be required to be returned to
17 the State if they remain in the possession of a nursing home at the time of a state
18 audit.

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

21 **Sec. 2. Emergency rules.** Notwithstanding the Maine Revised Statutes, Title 5,
22 section 8054, the Department of Health and Human Services may adopt emergency rules
23 to implement Title 22, section 1708, subsection 3, paragraph F without the necessity of
24 demonstrating that immediate adoption is necessary to avoid a threat to public health or
25 safety or the general welfare, if notice is given through a MaineCare provider list and 5
26 days or more are allowed for comment prior to adoption of the rules. The emergency
27 rules and subsequent permanent rules must be made effective retroactively to July 1,
28 2013.

29 **Sec. 3. Appropriations and allocations.** The following appropriations and
30 allocations are made.

31 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**
32 **Nursing Facilities 0148**

33 Initiative: Appropriates state funds and allocates matching federal funds for cost-of-
34 living increases for MaineCare reimbursement to nursing facilities in the 2014-2015
35 biennium.

36			
37	FEDERAL EXPENDITURES FUND	2013-14	2014-15
38	All Other	\$2,835,000	\$2,948,400
39			
40	FEDERAL EXPENDITURES FUND TOTAL	<u>\$2,835,000</u>	<u>\$2,948,400</u>

1			
2	GENERAL FUND	2013-14	2014-15
3	All Other	\$1,665,000	\$1,731,600
4			
5	GENERAL FUND TOTAL	<u>\$1,665,000</u>	<u>\$1,731,600</u>

6 **SUMMARY**

7 This bill provides supplemental MaineCare payments to nursing homes that serve a
8 high percentage of MaineCare residents and establishes a pay-for-performance program
9 in nursing homes.

10 The Department of Health and Human Services is authorized to adopt emergency
11 rules to take effect retroactively to July 1, 2013 for the establishment of the supplemental
12 MaineCare payments to nursing homes that serve a high percentage of MaineCare
13 residents.

14 The bill also appropriates state funds and allocates matching federal funds for cost-
15 of-living increases for MaineCare reimbursement to nursing facilities in the 2014-2015
16 biennium.