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Legislative Document

No. 1595

H.P. 1166

House of Representatives, December 30, 2013

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

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 23, 2013. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FARNSWORTH of Portland.
Cosponsored by Senator PATRICK of Oxford and
Representatives: CHIPMAN of Portland, GRAHAM of North Yarmouth, GRANT of Gardiner,
KUSIAK of Fairfield, MORIARTY of Cumberland, PRINGLE of Windham, VEROW of
Brewer, Senator: CRAVEN of Androscoggin.

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

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

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

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

14 **Whereas,** it is essential to remedy immediately the continued annual shortfall of
15 MaineCare payments below MaineCare allowable costs in order to preserve access to
16 high-quality nursing home care for those extremely frail, vulnerable individuals who need
17 such care; and

18 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
19 the meaning of the Constitution of Maine and require the following legislation as
20 immediately necessary for the preservation of the public peace, health and safety; now,
21 therefore,

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

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

25 **3. Compensation for nursing homes.** A nursing home, as defined under section
26 1812-A, or any portion of a hospital or institution operated as a nursing home, when the
27 State is liable for payment for care, must be reimbursed at a rate established by the
28 Department of Health and Human Services pursuant to this subsection. The department
29 may not establish a so-called "flat rate." This subsection applies to all funds, including
30 federal funds, paid by any agency of the State to a nursing home for patient care. The
31 department shall establish rules concerning reimbursement that:

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

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

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

1 D. Ensure that any calculation of an occupancy percentage or other basis for
2 adjusting the rate of reimbursement for nursing facility services to reduce the amount
3 paid in response to a decrease in the number of residents in the facility or the
4 percentage of the facility's occupied beds excludes all beds that the facility has
5 removed from service for all or part of the relevant fiscal period in accordance with
6 section 333. If the excluded beds are converted to residential care beds or another
7 program for which the department provides reimbursement, nothing in this paragraph
8 precludes the department from including those beds for purposes of any occupancy
9 standard applicable to the residential care or other program pursuant to duly adopted
10 rules of the department; ~~and~~

11 E. Contain an annual inflation adjustment that:

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

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

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

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

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

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

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

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

42 H. For nursing home fiscal years beginning on or after July 1, 2014, provide for a
43 supplemental payment under the MaineCare program in the amount of 20¢ per

1 MaineCare patient day to a nursing home for each 1% increment that the nursing
2 home's annual MaineCare patient days exceed 70% of its total patient days.

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

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

13 **Sec. 3. Appropriations and allocations.** The following appropriations and
14 allocations are made.

15 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)**

16 **Nursing Facilities 0148**

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

21

22	FEDERAL EXPENDITURES FUND	2013-14	2014-15
23	All Other	\$0	\$20,000,000
24		<hr/>	<hr/>
25	FEDERAL EXPENDITURES FUND TOTAL	\$0	\$20,000,000

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27	GENERAL FUND	2013-14	2014-15
28	All Other	\$0	\$10,000,000
29		<hr/>	<hr/>
30	GENERAL FUND TOTAL	\$0	\$10,000,000

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

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SUMMARY

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

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

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