



126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document

No. 1776

S.P. 704

In Senate, February 13, 2014

**An Act To Implement the Recommendations of the Commission To
Study Long-term Care Facilities**

(EMERGENCY)

Reported by Senator CRAVEN of Androscoggin for the Joint Standing Committee on Health and Human Services pursuant to Joint Rule 353.

Reference to the Committee on Health and Human Services suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

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,** the people of the State of Maine need and deserve a variety of well-
4 planned and financially stable long-term care services in home-based and community-
5 based care settings and in nursing facilities in their communities; and

6 **Whereas,** in order to provide high-quality care to Maine's elderly and disabled
7 persons in a dignified and professional manner that is sustainable into the future through a
8 spectrum of long-term care services, prompt action is needed to correct chronic
9 underfunding and to complete a thoughtful and thorough planning process; and

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

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

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

17 **3. Compensation for nursing homes.** A nursing home, as defined under section
18 1812-A, or any portion of a hospital or institution operated as a nursing home, when the
19 State is liable for payment for care, must be reimbursed at a rate established by the
20 Department of Health and Human Services pursuant to this subsection. The department
21 may not establish a so-called "flat rate." This subsection applies to all funds, including
22 federal funds, paid by any agency of the State to a nursing home for patient care. The
23 department shall establish rules concerning reimbursement that:

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

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

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

30 D. Ensure that any calculation of an occupancy percentage or other basis for
31 adjusting the rate of reimbursement for nursing facility services to reduce the amount
32 paid in response to a decrease in the number of residents in the facility or the
33 percentage of the facility's occupied beds excludes all beds that the facility has
34 removed from service for all or part of the relevant fiscal period in accordance with
35 section 333. If the excluded beds are converted to residential care beds or another
36 program for which the department provides reimbursement, nothing in this paragraph
37 precludes the department from including those beds for purposes of any occupancy
38 standard applicable to the residential care or other program pursuant to duly adopted
39 rules of the department; ~~and~~

- 1 E. Contain an annual inflation adjustment that:
- 2 (1) Recognizes regional variations in labor costs and the rates of increase in
- 3 labor costs determined pursuant to the principles of reimbursement and
- 4 establishes at least 4 regions for purposes of annual inflation adjustments; and
- 5 (2) Uses the applicable regional inflation factor as established by a national
- 6 economic research organization selected by the department to adjust costs other
- 7 than labor costs or fixed costs; and

8 ~~Rules adopted pursuant to this paragraph are routine technical rules as defined in~~

9 ~~Title 5, chapter 375, subchapter II-A.~~

10 F. Establish a nursing facility's base year and increase the rate of reimbursement

11 beginning July 1, 2014 and every 2 years thereafter.

12 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,

13 chapter 375, subchapter 2-A.

14 **Sec. 2. Amendment of Principles of Reimbursement for Nursing**

15 **Facilities.** The Department of Health and Human Services shall amend Rule Chapter

16 101, MaineCare Benefits Manual, Chapter III, Section 67, Principles of Reimbursement

17 for Nursing Facilities as follows.

18 1. The rule must be amended in order to establish a nursing facility's base year and to

19 increase the rate of reimbursement beginning July 1, 2014 and every 2 years thereafter as

20 follows:

21 A. In the direct care cost component in Section 80.3 and all other applicable

22 divisions of Section 80.3 in which case mix data, regional wage indices or data

23 required for rebasing calculations are referenced by date, the rule must be amended to

24 establish a nursing facility's base year by reference to the facility's 2011 audited cost

25 report or, if the 2011 audited cost report is not available, by reference to the facility's

26 2011 as-filed cost report; to refer to other required rebasing data no older than 2011

27 data; and to update a nursing facility's base year every 2 years thereafter; and

28 B. In the routine cost component in Section 80.4 and all other applicable divisions of

29 Section 80.4 in which case mix data, regional wage indices or data required for

30 rebasing calculations are referenced by date, the rule must be amended to establish a

31 nursing facility's base year by reference to the facility's 2011 audited cost report or, if

32 the 2011 audited cost report is not available, by reference to the facility's 2011

33 as-filed cost report; to refer to other required rebasing data no older than 2011 data;

34 and to update a nursing facility's base year every 2 years thereafter.

35 2. The rule must be amended to increase the peer group upper limit on the base year

36 case mix and regionally adjusted cost per day for a nursing facility beginning July 1, 2014

37 as follows:

38 A. In the direct care cost component in Section 80.3.3.(4)(b), the peer group upper

39 limit must be increased to 110% of the median; and

40 B. In the routine cost component in Section 80.5.4, the peer group upper limit must

41 be increased to 110% of the median.

1 3. The rule must be amended in the routine cost component in Section 43.4.2(A) to
2 eliminate the nursing facility administrative and management cost ceiling, thereby
3 allowing all allowable administrative and management costs to be included in allowable
4 routine costs for the purposes of rebasing, rate setting and future cost settlements
5 beginning July 1, 2014.

6 4. The rule must be amended to include the costs of health insurance for nursing
7 facility personnel beginning July 1, 2014 as follows:

8 A. The costs of health insurance for those personnel currently included in the direct
9 care cost component in Section 41.1.7(3) must be included in the fixed cost
10 component in Section 44 and removed from the direct care cost component for the
11 purposes of rebasing and future cost settlements; and

12 B. The costs of health insurance for those personnel currently included in the routine
13 cost component in Section 43.4.1(16)(c) must be included in the fixed cost
14 component in Section 44 and removed from the routine cost component for the
15 purposes of rebasing and future cost settlements.

16 5. The rule must be amended in Section 91.1 to set the inflation adjustment
17 cost-of-living percentage change in nursing facility reimbursement on an annual basis in
18 accordance with the United States Department of Labor, Bureau of Labor Statistics
19 Consumer Price Index medical care services index to be included in budget proposals
20 submitted to the Governor and the Legislature beginning with the biennial budget for
21 state fiscal years 2015 and 2016.

22 6. The rule must be amended to provide, beginning July 1, 2014, a supplemental
23 payment, subject to cost settlement, to a nursing facility whose MaineCare residents
24 constitute more than 70% of the nursing facility's total number of residents. The
25 supplemental payment must provide an additional reimbursement of 40¢ per resident per
26 day for each 1% this percentage of MaineCare residents is above 70%.

27 7. The rule must be amended in Section 80.3.2 to increase the specific resident
28 classification group case mix weight that is attributable to a nursing facility resident who
29 is diagnosed with dementia.

30 **Sec. 3. Cost-of-care overpayment recoupment.** The Department of Health
31 and Human Services shall immediately take all necessary actions to collect cost-of-care
32 overpayments to nursing facilities and private nonmedical institutions that were paid
33 when the department's computer systems, when providing reimbursement owed by the
34 department, failed to take into account the financial contributions paid by residents in the
35 nursing facilities and private nonmedical institutions and miscalculated the amounts
36 payable under the MaineCare program. The first \$10,000,000 of revenue collected under
37 this section in each year of the 2014-2015 biennium must be used to provide funding for
38 nursing facility reimbursement under Rule Chapter 101, MaineCare Benefits Manual,
39 Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities as amended
40 pursuant to this Act.

41 **Sec. 4. Cost-of-care overpayment correction.** The Department of Health and
42 Human Services shall immediately require that the department's contractor Molina

1 Medicaid Solutions make adjustments to the Maine Integrated Health Management
2 Solution computer system to correct and discontinue overpayments in the calculation and
3 deduction of cost of care in the payment of nursing facilities and private nonmedical
4 institutions.

5 **Sec. 5. Commission To Continue the Study of Long-term Care Facilities.**
6 Notwithstanding Joint Rule 353, the Commission To Continue the Study of Long-term
7 Care Facilities, referred to in this section as "the commission," is established. The
8 membership, duties and functioning of the commission are subject to the following
9 requirements.

10 1. The commission consists of 11 members appointed as follows:

11 A. Two members of the Senate appointed by the President of the Senate, including
12 members from each of the 2 parties holding the largest number of seats in the
13 Legislature;

14 B. Three members of the House of Representatives appointed by the Speaker of the
15 House, including members from each of the 2 parties holding the largest number of
16 seats in the Legislature; and

17 C. Six members appointed by the Governor who possess expertise in the subject
18 matter of the study, as follows:

19 (1) The director of a long-term care ombudsman program described under the
20 Maine Revised Statutes, Title 22, section 5106, subsection 11-C;

21 (2) The director of a statewide association representing long-term care facilities
22 and one representative of a 2nd association of owners of long-term care facilities;

23 (3) A person who serves as a city manager of a municipality in the State;

24 (4) A person who serves as a director or who is an owner or administrator of a
25 nursing facility in the State; and

26 (5) A representative of the Governor's office or the Governor's administration.

27 2. The first-named Senate member is the Senate chair and the first-named House of
28 Representatives member is the House chair of the commission. The chairs of the
29 commission are authorized to establish subcommittees to work on the duties listed in
30 subsection 4 and to assist the commission. The subcommittees must be composed of
31 members of the commission and interested persons who are not members of the
32 commission and who volunteer to serve on the subcommittees without reimbursement.
33 Interested persons may include individuals with expertise in acuity-based reimbursement
34 systems, a representative of an agency that provides services to the elderly and any other
35 persons with experience in nursing facility care.

36 3. All appointments must be made no later than 30 days following the effective date
37 of this Act. The appointing authorities shall notify the Executive Director of the
38 Legislative Council once all appointments have been completed. After appointment of all
39 members and after adjournment of the Second Regular Session of the 126th Legislature,
40 the chairs shall call and convene the first meeting of the commission. If 30 days or more
41 after the effective date of this Act a majority of but not all appointments have been made,

1 the chairs may request authority and the Legislative Council may grant authority for the
2 commission to meet and conduct its business.

3 4. The commission shall study the following issues and the feasibility of making
4 policy changes to the long-term care system:

5 A. Funding for long-term care facilities, payment methods and the development of a
6 pay-for-performance program to encourage and reward strong performance by
7 nursing facilities;

8 B. Regulatory requirements other than staffing requirements and ratios;

9 C. Collaborative agreements with critical access hospitals for the purpose of sharing
10 resources;

11 D. The viability of privately owned facilities in rural communities;

12 E. The impact on rural populations of nursing home closures; and

13 F. Access to nursing facility services statewide.

14 5. The Legislative Council shall provide necessary staffing services to the
15 commission.

16 6. The Commissioner of Health and Human Services, the State Auditor and the State
17 Budget Officer shall provide information and assistance to the commission as required for
18 its duties.

19 7. No later than October 15, 2014, the commission shall submit a report that includes
20 its findings and recommendations, including suggested legislation, to the Blue Ribbon
21 Commission on Long-term Care established in this Act and to the Joint Standing
22 Committee on Health and Human Services. The joint standing committee of the
23 Legislature having jurisdiction over health and human services matters may report out a
24 bill regarding the subject matter of the report to the First Regular Session of the 127th
25 Legislature.

26 **Sec. 6. Blue Ribbon Commission on Long-term Care.** The Blue Ribbon
27 Commission on Long-term Care, referred to in this section as "the commission," is
28 established to review the State's plan for long-term care and the provision of long-term
29 care services in the community and in facilities.

30 1. The commission consists of 13 members appointed as follows:

31 A. Three members of the Senate appointed by the President of the Senate, including
32 members from each of the 2 parties holding the largest number of seats in the
33 Legislature;

34 B. Four members of the House of Representatives appointed by the Speaker of the
35 House, including members from each of the 2 parties holding the largest number of
36 seats in the Legislature; and

37 C. Six members appointed by the Governor who possess expertise in the subject
38 matter of the study, as follows:

- 1 (1) The director of a long-term care ombudsman program described under the
2 Maine Revised Statutes, Title 22, section 5106, subsection 11-C;
- 3 (2) The director of a statewide association representing long-term care facilities;
- 4 (3) A representative of a statewide organization representing consumer-directed
5 long-term care services;
- 6 (4) A representative of a statewide association representing area agencies on
7 aging;
- 8 (5) A representative of a statewide association providing legal services for the
9 elderly; and
- 10 (6) A representative of the Governor's office or the Governor's administration.
- 11 2. The first-named Senate member is the Senate chair and the first-named House of
12 Representatives member is the House chair of the commission.
- 13 3. All appointments must be made no later than 30 days following the effective date
14 of this Act. The appointing authorities shall notify the Executive Director of the
15 Legislative Council once all appointments have been completed. After appointment of all
16 members, the chairs shall call and convene the first meeting of the commission. If 30
17 days or more after the effective date of this Act a majority of but not all appointments
18 have been made, the chairs may request authority and the Legislative Council may grant
19 authority for the commission to meet and conduct its business.
- 20 4. The commission shall study the feasibility of developing or amending a state plan
21 for the provision of long-term care in the community and in facilities and shall:
- 22 A. Review the existing plans and programs within the Department of Health and
23 Human Services for providing long-term care services in home-based and
24 community-based care settings and in nursing and residential care facilities;
- 25 B. Develop a state plan for providing long-term care services in home-based and
26 community-based care settings and in nursing and residential care facilities in a
27 manner that provides dignity for clients and residents and is financially sustainable
28 for individuals and the MaineCare program; and
- 29 C. Receive and consider recommendations from the Commission To Continue the
30 Study of Long-term Care Facilities established in this Act.
- 31 5. The Legislative Council shall provide necessary staffing services to the
32 commission, except as provided in subsection 7.
- 33 6. No later than November 5, 2014, the commission shall submit a report that
34 includes its findings and recommendations, including suggested legislation, to the Joint
35 Standing Committee on Health and Human Services. The joint standing committee of the
36 Legislature having jurisdiction over health and human services matters may report out a
37 bill regarding the subject matter of the report to the First Regular Session of the 127th
38 Legislature.

1 7. The commission may contract for staff and expert consultant services. The
 2 commission shall seek funding contributions to fully fund the costs of contracted staff
 3 and expert consultant services. All funding is subject to approval by the Legislative
 4 Council in accordance with its policies. The commission may not meet unless outside
 5 funding has been obtained and approval has been granted by the Legislative Council.

6 **Sec. 7. Appropriations and allocations.** The following appropriations and
 7 allocations are made.

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

9 **Medical Care - Payments to Providers 0147**

10 Initiative: Deappropriates funds for recovery of overpayments to providers due to errors
 11 in calculating cost of care and for continued proper application of cost-of-care rules.

12			
13	GENERAL FUND	2013-14	2014-15
14	All Other	\$0	(\$10,000,000)
15			
16	GENERAL FUND TOTAL	\$0	(\$10,000,000)

17 **Nursing Facilities 0148**

18 Initiative: Provides funding for increased reimbursements under the MaineCare program
 19 for nursing facilities.

20			
21	GENERAL FUND	2013-14	2014-15
22	All Other	\$0	\$10,000,000
23			
24	GENERAL FUND TOTAL	\$0	\$10,000,000

25			
26	FEDERAL EXPENDITURES FUND	2013-14	2014-15
27	All Other	\$0	\$16,176,296
28			
29	FEDERAL EXPENDITURES FUND TOTAL	\$0	\$16,176,296

30			
31	HEALTH AND HUMAN SERVICES,		
32	DEPARTMENT OF (FORMERLY DHS)		
33	DEPARTMENT TOTALS	2013-14	2014-15
34			
35	GENERAL FUND	\$0	\$0
36	FEDERAL EXPENDITURES FUND	\$0	\$16,176,296
37			
38	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$16,176,296

