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House of Representatives, March 27, 2013

Resolve, Directing the Department of Health and Human Services To Create a More Equitable, Transparent Resource Allocation System for Nursing Facilities Based on Residents' Needs

(EMERGENCY)

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

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Clerk

Presented by Representative STUCKEY of Portland. Cosponsored by Senator CRAVEN of Androscoggin and Representatives: FARNSWORTH of Portland, SANBORN of Gorham. Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, residents' acuity in Maine's nursing facilities has increased significantly since the State tightened its MaineCare eligibility rules in the mid-1990s, making Maine's acuity and costs of care among the highest in the country; and

Whereas, Maine's nursing facility reimbursement rates annually lag behind the actual costs of caring for Maine's high-acuity patients by approximately \$30,000,000 due to rate limits derived from 2005 data and arbitrary peer group averages that do not adequately take into account resident need; and

Whereas, state funding for Maine's nursing facilities is disproportionately and unsustainably reliant upon private pay, Medicare and provider tax revenues, which is causing a growing number of high-acuity, high-cost nursing facilities to need changes in reimbursement to take place as soon as possible; and

Whereas, all nursing facilities currently collect and report MaineCare acuity based on a resource utilization group scale; and

Whereas, a growing number of nursing facilities are facing critical and unsustainable financial challenges and need changes in reimbursement to take place as soon as possible; 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

- Sec. 1. Department of Health and Human Services to amend rules on reimbursement of nursing facilities. Resolved: That the Department of Health and Human Services shall amend its rules in the MaineCare Benefits Manual, Chapter III, Section 67 to eliminate the current peer grouping method of establishing upper limits for reimbursement and establish a rate-setting method that:
- 1. Determines patient acuity using the existing measures of acuity, resource utilization groups and data already collected and reported to the Department of Health and Human Services for all MaineCare patients and sets rates as a uniform percentage of Medicare resource utilization group rates adjusted for urban and rural markets but based on General Fund appropriations available for MaineCare;
 - 2. Determines standards for exceptions for qualified providers with:
 - A. Demonstrated atypical nursing services and other operating costs related to high acuity and high turnover and high medical costs; and
- B. Specialized or atypical service delivery in areas where access to care is in jeopardy;

- 3. Does not limit or allocate reimbursement for any provider based on the availability of the provider's non-MaineCare revenues; and
 - 4. Publishes on a publicly accessible website the reimbursement rates and any related exception adjustments of all providers; and be it further
 - Sec. 2. General Fund; appropriation for exceptions and quality outcomes. Resolved: That the Department of Health and Human Services shall establish a pool of up to 10% of the available General Fund appropriations for payment to nursing facilities serving MaineCare patients to reward qualified providers that meet the standards pursuant to section 1, subsection 2.

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

12 SUMMARY

This resolve instructs the Department of Health and Human Services to eliminate the current nursing home reimbursement peer group limits and establish a capitated system that treats all facilities equally by setting MaineCare rates as a percentage of the existing Medicare acuity-based resource utilization group rates. It also requires the department to publish on a publicly accessible website its reimbursement rates and any related exception adjustments of all providers. Availability of MaineCare funds will be used to determine the base percentage and a pool available for exceptions and rewards. Up to 10% of available funds are allowed in the pool.