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Commissioner



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April 13, 2023

Senator Baldacci, Co-Chair  
Representative Meyer, Co-Chair  
Members, Joint Standing Committee on Health and Human Services  
100 State House Station  
Augusta, ME 04333-0100

Re: LD 744, *Resolve, To Direct the Department of Health and Human Services to Perform Rate Studies and Rate Determinations for Providers of Certain Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder*

Senator Baldacci, Representative Meyer, and Members of the Joint Standing Committee on Health and Human Services:

This letter is written to provide the Committee with information as it relates to LD 744 - *Resolve, to Direct the Department of the Health and Human Services to Perform Rate Studies and Rate Determinations for Providers of Certain Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder*. The Department is opposed to this bill and the proposed amendment. LD 744 directs the Department to conduct rate studies and rate determinations for Maine's home and community based services waiver programs under the MaineCare Benefits Manual, Sections 21 and 29. The Resolve cites [Title 22, Section 3173-J](#) to define rate studies and rate determinations.

This citation is part of statute, proposed by the Department, that codifies a comprehensive, streamlined, and coherent system to set MaineCare rates (P.L. 2021, c. 639). As part of the system, the Department publishes draft and final rate study schedules each year, most recently on December 09, 2022 for Calendar Year 2023. In that process, the Department did receive and consider comments asking that Sections 21 and 29 be scheduled for rate studies, and it determined that, given recent increases and competing needs, other services were in greater need of rate studies. This bill requires rate studies contrary to the selection process specified in Section 3176-J.

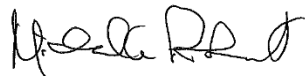
Although Sections 21 and 29 have not had rate reviews recently that fully meet all requirements of chapter 639, they have had multiple rate increases in recent years, informed by recent Home and Community Based Services (HCBS) waiver provider survey and utilization data, as well as by current state wage data and other sources. Those increases resulted in meaningful increases to many services, including increases to ensure that the labor components equal at least 125% of minimum wage, and that all rate components be adjusted for cost-of-living increases. Other services have gone much longer without substantive, data-driven adjustments, and therefore are

higher priority. In addition, HCBS nursing and clinical services, which include services in Section 21, are on the rate determination schedule to initiate in this calendar year.

The proposed amendment adds an additional section requiring the Department to maintain a minimum staffing threshold in Section 21 of 85% of approved staffing levels until rate studies are completed. Normal policy in Section 21 requires providers to maintain at least 92.5% of approved staffing. This policy protects Members from under-staffing their needs and ensures that MaineCare payments are reasonable relative to services delivered. During the pandemic, using emergency authority under Appendix K of the waivers, the Department allowed staffing to drop initially to 50% of approved staffing, and has been gradually raising the staffing level back toward normal policy. Currently, the Department requires at least 80% staffing through November 11, 2023, when Appendix K authority will end. The Department has communicated to providers that the normal staffing threshold of 92.5% must be met by November 12, 2023.

Finally, the rate studies envisioned in this bill may be redundant with work planned for a new Lifespan waiver program. We intend to conduct studies of Section 21 and 29 as the basis for Lifespan rates. The Department is interested in developing a daily rate for agency home supports as part of that work. We would be happy to share more information about this at the work session.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Probert", written in a cursive style.

Michelle Probert  
Director  
Office of MaineCare Services