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March 7, 2024

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

Re: LD 2243 – *Resolve, Directing the Department of Health and Human Services to Amend MaineCare Rules Governing Certain Types of Behavioral and Mental Health Services and to Form a Stakeholder Group to Study Methods for Improving Those Services*

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

Thank you for the opportunity to provide information in opposition of LD 2243, *Resolve, Directing the Department of Health and Human Services to Amend MaineCare Rules Governing Certain Types of Behavioral and Mental Health Services and to Form a Stakeholder Group to Study Methods for Improving Those Services*.

This resolve directs the Department to amend the MaineCare rules governing reimbursement for outpatient behavioral health services provided in public schools under the MaineCare Benefits Manual, Section 65, Behavioral Health Services, and for services provided in residential treatment facilities for persons with mental illness and in specialized or scattered residential treatment facilities as described in the Section 97, Private Non-Medical Institution Services (PNMI), Appendices E and F. The Department must initiate the rule-making process immediately after the resolve goes into effect to make these amendments to the reimbursement, and the rules must remain in effect until the department completes a full rate determination. Finally, the resolve requires the department to form a stakeholder group to study how to develop more sustainable models of outpatient and residential mental and behavioral health treatment services and how to increase access to those services within the State.

The Department recognizes that there are numerous challenges with current reimbursement for PNMI E and F services, which is why it had initially listed these services on its rate determination schedule for calendar year 2023, to undergo the process set forth by MaineCare's rate reform statute under 3173-J. However, upon further conversations with providers and within the Department, it became clear that there is very significant variation within these different services in terms of target populations and service models, and that there is a need to devote resources to understanding and better defining the service model in order to ensure adequate reimbursement and quality outcomes for residents. The Department therefore is delaying its rate determination work on these services until it is able to conduct stakeholder engagement on service model definition, which it has committed to initiating this current calendar year.

In the meantime, the Department has taken interim measures to improve reimbursement for these services. For Appendix F, the Department inflated the routine cost component and the cost cap up to 24.93% beginning 7/1/2022 and another 4.69% for fiscal years beginning 7/1/2023. For Appendix E facilities, the Department provided substantial reimbursement increases during SFY24 in accordance with current reimbursement policy, based on providers' own prospective budget submissions, in order to enable providers to cover costs. Appendix E providers have the ability to submit revised budgets on an as-needed basis to request rate adjustments under current policy, providing them with significant flexibility to increase reimbursement.

This bill attempts to go around the requirements set forth in 3173-J by mandating changes to reimbursement that must go into effect immediately and remain until a rate determination study in alignment with 3173-J has been conducted. This approach is at odds with the intent of MaineCare's rate reform law, putting in place adjustments that do not reflect good economic policy or a fully data-driven approach with broad-based provider involvement. Removing the cap for these providers could lead to unnecessary, excessive overhead, and further disincentivize cost efficiency. In addition, the Department's current process already provides for interim relief to providers through the provision of cost-of-living adjustments described above.

The requirement in Section 5 of this bill to create a stakeholder group is duplicative of the Department's existing work to engage with interested parties to better define the service models and objectives of these facilities, and the existing process under 3173-J to determine adequate, reasonable, and value-driven reimbursement.

Section 1 of the bill would increase costs for services under Section 97, Appendix E and F. The Department interprets this section as removing direct care and routine cost caps for Appendix F providers and allowing more costs for Appendix E providers by removing the current structure of determining eligible treatment costs by allowing the lesser of the approved cost cap, their direct service costs and program allowance, or their total program expenses.

Section 2 would accelerate Department timeliness of payments to Appendix E & F providers to reimburse at least 75% of their as-filed settlement pursuant to the facility's cost reports within 90 days of receipt of those cost reports. This is similar to the changes mandated by LD 1474, *Resolve, Directing the Department of Health and Human Services to Expedite Reimbursement of Nursing Facilities*, which made this change for Section 67 and 97, Appendix C. Combined with the proposed removal of the cost caps, the Department is concerned that this change may create cash flow challenges.

Section 3 would amend Section 65 to allow behavioral health services provided in a school setting to be classified and reimbursed as community-based services. Schools are not subject to the Service Provider Tax (SPT) and thus have lower rates that do not account for the cost of the SPT. Community-based providers are subject to the SPT and have the cost built into their rates. The Department is repealing the SPT effective January 1, 2025 per P.L. 2023, Ch. 412. At that time, the Department, per agreement with the Centers for Medicare & Medicaid Services (CMS) will be removing the SPT component from rates for services currently subject to the SPT, resulting in rate decreases. The proposed change in this legislation would allow schools to

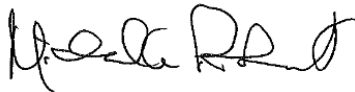
receive a higher rate of reimbursement for these services even though they do not face the cost of the service provider tax. Once the SPT is repealed, the rates for school- and community-based services under Section 65 will be consistent.

The Department appreciates the intent behind this bill and recognizes that there have been provider challenges, but improvements have been made for these sections and the Department has committed initiating the necessary work to better define these services this year and, subsequently, determine improved reimbursement models. Interim changes such as those proposed here do not comply with the process set forth in the rate reform statute and risk further exacerbating current outdated and administratively burdensome models of reimbursement in the interim.

Lastly, Section 5 is at odds with the Legislature's approved repeal of the Service Provider Tax on certain PNMI's, and requires an increase to rates to reflect a cost that providers do not face.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Probert". The signature is fluid and cursive, with the first name "Michelle" written in a larger, more prominent script than the last name "Probert".

Michelle Probert
Director
Office of MaineCare Services
Maine Department of Health and Human Services