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March 24, 2025

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

Re: LD 791 – *An Act Regarding Children with Behavioral Health Needs Awaiting Placement in Residential Care Facilities (Emergency)*

Senator Ingwersen, Representative Meyer and members of the Joint Standing Committee on Health and Human Services, thank you for the opportunity to provide information in opposition to LD 791, *An Act Regarding Children with Behavioral Health Needs Awaiting Placement in Residential Care Facilities (Emergency).*

This bill requires the Department of Health and Human Services (the "Department") to reimburse hospitals for children who are eligible under the MaineCare program and who are in hospital emergency rooms (EDs) awaiting placement in a children's residential care facility at the same rate as would be provided to a children's residential care facility. The bill requires the department to develop 3 crisis centers for children and adolescents with high levels of behavioral health needs and awaiting placement in a residential facility or community service. The bill requires the Department to enter into an agreement with a vendor to provide a psychiatric residential treatment facility by April 1, 2025, or develop a facility owned and operated directly by the Department. The bill requires the department to provide monthly data to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the number of children who are in a hospital emergency room awaiting placement. The report must also include the number of children under 12 years of age, the number of children who have come from another residential setting or hospital, the number of children who are experiencing homelessness and the services the children are waiting for. The bill also requires the Department to provide to the joint standing committee of the Legislature having jurisdiction over health and human services matters the de-identified data provided to the independent reviewer to settle the lawsuit filed by the United States Department of Justice no later than 30 days after that data is provided to the reviewer.

LD 791 appears to be intended to address the number of children with behavioral health needs in EDs awaiting the appropriate level of care. While we appreciate the importance of addressing this issue, we do not believe that this bill will affect any meaningful change; the root of the problem is a lack of behavioral health care service providers and available appropriate placements. Department staff are already working directly with hospitals and providers to move children out of EDs as expeditiously as possible and are exploring avenues to improve the process of securing placements at children's residential care facilities, also known as "Private Non-Medical Institution: Appendix D (PNMI D) providers.

The Department's comments on specific provisions of the bill are detailed below.

**Section 1 – Reimbursement for hospitals other than critical access hospitals for days awaiting placement (DAP):**

The Department recently reinstated a days awaiting placement (DAP) payment policy for individuals in hospitals awaiting Nursing Facility placement and introduced a new DAP policy for members eligible for and awaiting placement in PNMI Es. For both situations, hospitals receive a payment at 75% of the NF daily rate, up to a capped pool amount across all hospitals. It is not appropriate to pay the full NF amount because members are not receiving the same level of care in a hospital that they would in a residential facility or NF—we would similarly anticipate that paying a percentage of CRCF rates for any DAP payment for children in hospital Eds would be more appropriate than the proposed full payment amount In addition, current DAP payments are capped at an aggregate pool amount. Determination of a proposed methodology would need to be determined in accordance with the rate determination process set forth in 22 M.R.S. § 3173-J.

In addition, ED services are billed as outpatient services; however, currently, DAP reimbursement is claimed as inpatient services. Implementing DAP for youth in the ED would require establishing a new process for the Department and require substantial systems work to implement. The Department would be required to request the necessary state plan amendments from the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services, adopt routine technical rules upon federal approval, and enhance systems to operationalize any new reimbursement methodology at significant expense to the Department. These expenses would be in addition to the actual cost of reimbursing DAP for youth in the ED. Furthermore, completing and obtaining approval of the required state plan amendment, establishing new rates, and completing required rulemaking is not possible within the timeline proposed in LD 791.

LD 791 also requires the Department to reimburse all hospitals other than Critical Access Hospitals (CAHs) prospectively at the average daily rate for a MaineCare member at a PNMI D. Federal regulations (42 CFR 447.45(d)(1)) require providers to submit claims after services are delivered, not before. Accordingly, MaineCare would need to reimburse hospitals on a retrospective basis when they bill DAP, after a member has transitioned out of the ED.

**Section 4 – Crisis Centers:**

The timeline set forth in this section for issuing a Request for Proposal (RFP) for development of crisis centers is not feasible for the Department to meet. The Department currently has an open RFP (202501011) to establish Crisis Receiving Centers in Androscoggin and Penobscot Counties; this RFP builds on the Department's experience in supporting a Crisis Receiving Center in Cumberland County. Further, services previously provided under the Pediatric Urgent Care model in the Bangor model are being wrapped into Certified Community Behavioral Health Clinic (CCBHC) implementation led by Community Health and Counseling Services. The Pediatric Urgent Care Center is a pilot started under American Rescue Plan Section 9817 Home and Community Based Services funding to provide walk-in access to behavioral health services for youth 0-17 in need of immediate mental health support. The walk-in supports youth experiencing anxiety, depression, suicidality, and other behavioral health needs. Services include assessment, follow-up support, coordination of services, connection to community-based services, and supporting direct admission to higher levels of care (i.e. inpatient hospital admission).

The bill is not clear about whether the proposed "crisis centers" are intended to be crisis residential facilities or some other type of facility. It's also not clear if the Department would be required to reimburse the winning vendor(s) for startup costs, and whether these facilities could serve adults in addition to children and adolescents. The Department appreciates the effort to create more treatment placement options for children held in EDs for behavioral health issues and, as noted above, has several related initiatives underway in addition to those noted above, including the development of mobile crisis providers intended to divert people from hospitals when appropriate, and therapeutic intensive homes for children with behavioral health diagnoses that require a residential level of care. The Department believes its focus at this time should be on successful implementation of these efforts.

**Section 5 – Psychiatric Residential Treatment Facilities (PRTFs):**

The Department is already working on improving access to PRTFs. The Office of Behavioral Health is currently scoring proposals received from Request for Application (RFA) 202410190, intended to establish one PRTF in Maine based on funding made available this past legislative session. The Department previously submitted and received appropriations for PRTF services. This session the Department has put forward a budget initiative to provides funding to annualize these funds. In alignment with these initiatives, the Department recently presented new, proposed rates for PRTF to ensure adequate and reasonable reimbursement levels. The Department believes its efforts should remain focused on these current initiatives and that the additional facility development contemplated by this bill is unnecessary at this time, as well as infeasible in the proposed timeframe.

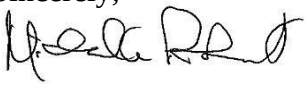
**Section 6 – Settlement Data:**

The Department currently maintains an open RFP (202502024) that will retain an Independent Reviewer as required by the referenced settlement agreement. As this is still in the competitive procurement phase, the Department does not know what specific data and other information will be shared with the Independent Reviewer; the Department can provide regular updates to the Legislature regarding its progress toward compliance with the Settlement Agreement.

The Department agrees the proposal set forth in Section 4 of the bill requiring a report to the Committee by March 1, 2027, with an updated plan for how the Department will meet the crisis needs of children and adolescents with high levels of behavioral health needs could be an appropriate action. For all other components of the bill, the Department has multiple similar and related efforts underway and requests the Committee support the Department's continuation of those efforts as described above.

Please feel free to contact me if you have any questions during your deliberation of this bill.

Sincerely,



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