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March 28, 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 772 – *An Act to Assist Nursing Facilities in the Management of Facility Beds*

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 772, *An Act to Assist Nursing Facilities in the Management of Facility Beds*.

This bill would allow a practice, currently prohibited, called bed-banking. DHHS opposes this proposal, in its current form, that seeks to modify the procedures for reinstating beds voluntarily removed from nursing facilities. As written, this will lead to negative consequences for both nursing facility operations and the MaineCare program, ultimately burdening taxpayers and undermining regulatory standards.

For example, the provisions of this bill would impose an unnecessary and cumbersome administrative burden on nursing facilities. By allowing the reinstatement of beds without clear restrictions on how often beds can be added or removed, the bill opens the door for facilities to constantly adjust their bed counts. This introduces unnecessary complexity in facility operations, making it harder to maintain consistent care levels and complicating the budgeting process. The requirement to seek new MaineCare rates for beds that are added or removed could result in constant administrative work, diverting resources away from patient care.

In addition, the bill's provisions could lead to inflated MaineCare costs without providing any guarantees of value in return. By allowing facilities to reinstate beds and qualify for increased reimbursement rates without demonstrating cost neutrality or savings elsewhere in the system, this bill risks unnecessarily increasing the financial burden on the MaineCare program. Providers could strategically remove beds to obtain higher rates for the beds that remain, ultimately leading to higher overall costs. This creates an incentive for gaming the system, rather than ensuring that MaineCare funds are used effectively to provide care for those who need it most.

Also, the current bill is in direct conflict with established CMS standards for bed certifications. The CMS State Operations Manual, Chapter 3, specifically restricts nursing facilities from making multiple changes to their bed size within the same cost-reporting year. These CMS regulations are in place to maintain stability and ensure compliance with federal standards, and

this bill would undermine those requirements. By allowing frequent bed size changes without regard to CMS rules, we risk jeopardizing the facilities' certifications, which could result in penalties or loss of federal funding. Such conflicts will disrupt facilities' ability to comply with both state and federal regulations, adding unnecessary complexity and risk.

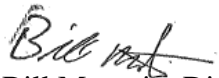
It is also unclear whether the proposed changes will eliminate the current occupancy adjustments in the nursing home reimbursement formula. If such adjustments are eliminated, this could further encourage facilities to "bank" beds by removing them temporarily, only to reinstate them later. This practice would further distort financial incentives and could result in significant disruptions in the care provided to residents. The unclear language of the bill only adds to the uncertainty surrounding its potential impact.

Finally, the financial implications of this bill are serious. Increased administrative costs, potential conflicts with federal regulations, and the overall risk of escalating MaineCare expenditures would put unnecessary strain on both the facilities and the state budget. The bill does not adequately address how these increased costs will be balanced, and there are no provisions to ensure that the financial burden will not be passed onto MaineCare recipients or taxpayers. Instead, it seems to offer a path toward financial instability for nursing homes, potentially leading to fewer resources available for quality care.

In its current form, the passage of this bill would create unnecessary administrative challenges, increase MaineCare costs, and undermine the stability of nursing facility operations. Furthermore, it risks conflict with federal CMS regulations that are vital for maintaining compliance and securing federal funding. We urge the legislature to reconsider this bill, as it could have far-reaching negative consequences for the quality of care, regulatory compliance, and the financial sustainability of Maine's nursing homes. We respectfully ask you to oppose this bill in its current form.

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

Sincerely,



Bill Montejo, Director
Division of Licensing and Certification
Maine Department of Health and Human Services