



**Testimony of Angela Cole Westhoff, President and CEO
Maine Health Care Association**

To the Joint Standing Committee on Health & Human Services

May 1, 2023 at 10:00 AM

**In Opposition to LD 1575, An Act to Promote Quality and Innovation in Nursing and
Residential Care Facilities**

Good morning Senator Baldacci, Representative Meyer, and distinguished members of the Committee on Health and Human Services. My name is Angela Westhoff, and I serve as the President & CEO of the Maine Health Care Association. We represent approximately 200 nursing homes, assisted living, and residential care facilities (also known as Private Non-Medical Institutions or PNMI) across the state. Our mission is to empower members to ensure the integrity, quality, and sustainability of long term care in Maine.

I am here today to provide testimony in opposition to **LD 1575, An Act to Promote Quality and Innovation in Nursing and Residential Care Facilities**. While currently opposed, we have met with the Department to discuss our concerns and were encouraged by our conversation. We are committed to working collaboratively with the Department to address the top concerns with the bill and provide amended language before your work session.

Our first reservation is that this bill would sunset the existing reimbursement system before the new rate system has been fully developed. Section 2 of the bill would repeal 22 MRSA §1708, sub-§3, ¶F on June 30, 2024, which is a fundamental component of the nursing facility reimbursement current reimbursement rate system, including a guaranteed rebasing of rates with regular frequency (every two years). Section 3 of LD 1575 would give DHHS the option to

replace the lost system starting January 1, 2025. Section 3 also does not include any required actions since the language is built on “may” statements.

So essentially, LD 1575 would guarantee to stop the current reimbursement system with the hope that a new system will be ready when it needs to be. What if the new rate model isn't ready by January 1, 2025? It is deeply concerning to us that the proposal before us is asking to repeal the current system and to support the implementation of a new rate system that has not yet been developed. It's hard to take a leap of faith not knowing what a new rate system might look like or how nimble and responsive it might be to cost drivers. Under the current framework, regular rebasing and cost of living increases have not kept pace with the escalating costs long term care providers are facing, but to reduce or eliminate either one without knowing what would concretely replace them would be impossible to support. Moreover, there is a 6 month window between the sunset of the old system and when new rates would take effect. That is concerning.

We fully appreciate that the department needs to unwind the old system and also have the time to develop and implement the new system. Reform isn't easy. That is why sunseting the current system by a specific date set in statute before a new plan is fully vetted is premature and could have a disastrous impact on a sector of the health care continuum that is already struggling. Long term care providers have risen to the challenges before them time and time again throughout the pandemic, during a time when fear of the unknown was pervasive, state and federal guidelines and regulations were ever-changing, and there were continuous requests to do more without corresponding resources. These past few years have been the most challenging years in the history of the profession and our caregivers should be commended for their efforts.

Second, Section 4 of this bill refers to specific areas of policy and quality measures that have yet to be discussed through the stakeholder process. We previously believed that the stakeholder process would establish what Maine's long term quality measures should become. However,

this bill indicates that there is already a predetermined list of priorities, regardless of what our collaborative meetings conclude. Having the end goal already written does not honor the time investment that stakeholders are putting forward to engage in a meaningful rate reform process. Additionally, best practices change over time, and what is a quality indicator today may not be tomorrow. Why codify this into statute? We are not at all opposed to quality improvement initiatives and welcome engagement with the Department on these topics, but we don't think it needs to be in law right now.

Third, passing this bill would mean this committee relinquishes its authority and legislative oversight abilities to review a new rate system prior to implementation. The legislature would have no vehicle for further discussion if there are fundamental disagreements or concerns about how rate reform is implemented.

To be clear, we are in support of rate reform and our members are actively engaging in the various committees and councils related to rate reform, the long term services and supports needs assessment, and the innovation and quality advisory committee. I think we can all agree that given the increasing number of long term care facility closures the current system isn't working. There have been 15 facility closures in the last three years - and a new closure announcement just last week. However, the rate reform stakeholder process has just begun, and the pathway forward is unclear. We've had two meetings thus far and the third meeting has just been cancelled. Voting on this bill now causes too much otherwise avoidable uncertainty.

The long term care industry is in a fragile state. On numerous occasions, I have testified before this committee on the severe workforce crisis facing the sector. In addition to workforce challenges, current reimbursement rates do not cover all allowable costs of providing long term care and there is a \$40 per day difference between the allowable costs per resident day and the average MaineCare reimbursement rate for nursing homes. And while we are very grateful for

supplemental funding, our sector still faces a \$47 million annual shortfall (per BerryDunn's analysis of 2021 cost report data).

We call upon the legislature to invest in long term care in order to protect access to these critical services for the people of Maine. I would be remiss if I did not remind this committee that at present there are zero dollars appropriated to address rate reform for long term care. The continuing services budget does not include any funding for rate reform. Further, the \$29 million that was originally proposed in the Biennial Budget was roughly equal to rebasing nursing homes rates under the current system and is grossly inadequate to fund a new system, especially one that makes meaningful and significant investments in innovation, quality, technology, and a well-supported, well-trained, and well-resourced workforce. Thank you for the opportunity to provide comments today, and I would be happy to answer any questions.