

MaineHealth

Testimony of Katie Fullam Harris, MaineHealth In Support of LD 1827

“An Act to Prevent Closures and Ensure Sustainability of Nursing Facilities, Private Nonmedical Institutions and Residential Care Facilities by Removing So-called Budget Neutrality”

May 10, 2023

Senator Baldacci, Representative Meyer and distinguished members of the Joint Standing Committee on Health and Human Services, I am Katie Fullam Harris, and I am here to testify in strong support of LD 1827, “An Act to Prevent Closures and Ensure Sustainability of Nursing Facilities, Private Nonmedical Institutions and Residential Care Facilities by Removing So-called Budget Neutrality”

Maine’s long-term care system is in crisis. Yesterday, MaineHealth hospitals housed 76 patients who had been medically cleared for discharge to long-term care, but for whom there is no long-term care bed available. Of those, 57 needed nursing-level care. As we have worked to identify solutions for our patients, the convoluted regulatory construct that governs the ownership of long-term care beds has been identified as a significant barrier to a functional long-term care system to meet the needs of Maine’s population.

The so-called “budget neutrality” provision within Maine statute requires that any provider that wants to build or operate additional long-term care beds must “pay to play.” First, state approval of any new beds or the transfer of existing beds is contingent upon proving that the MaineCare costs will remain neutral. As operating costs increase, and MaineCare rates necessarily increase, the main way to achieve “budget neutrality” is to reduce the number of beds available. Such decisions are not based on demographics or demonstrated needs of Maine’s communities, but rather solely, on whether the operation of beds will increase MaineCare costs. It is the cart leading the horse.

In addition, MaineCare’s calculation for budget neutrality assumes that every nursing facility bed is a MaineCare bed – or that 100% of the beds will be filled with MaineCare patients. This is rarely the case, and it results in an artificial reduction in bed supply.

At the same time, this scenario has created a private market in which entrants must purchase from one another the opportunity to bill MaineCare. This is called “bed rights.” So, those entities that want to expand the number of beds they operate or enter the market must find another provider that has unused “bed rights” and negotiate a price. In other words, not only must they pay for the infrastructure and labor to provide care for this vulnerable population, but they also must purchase the right to bill MaineCare for a service that fails to cover the cost of care for residents.

This leads to a scenario in which providers who “own” bed rights maintain ownership but do not necessarily use those bed rights by taking MaineCare patients and billing for them. They can maintain ownership of bed rights as equity without operating MaineCare beds.

It is not a wonder we are in a long-term care crisis

We support this bill, and particularly in the context of LD 1785. The entire long-term care legal and regulatory framework must be reviewed carefully by stakeholders to recommend needed changes to better meet the needs of Maine's population.

Thank you for the opportunity to speak.