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THE MAINE SENATE
131st Legislature

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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"

**Joint Standing Committee on Health and Human Services
March 7, 2024**

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

I am Trey Stewart; and I represent Senate District 2, which includes several municipalities in Penobscot and Aroostook Counties. I appreciate your time today in allowing me to present **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."**

Please note that I am providing a small amendment to this Resolve to clarify that Section 4 refers only to Section 1 and to focus the Study Group in Section 5 specifically to residential services. **Unfortunately, this was not made clear in the final document before you.**

This bill stems out of serious concerns I have heard from behavioral health providers in my district regarding the sustainability of residential services for those challenged by mental illness. At a time when we have adults languishing in hospital emergency departments or unable to step down from inpatient psychiatric services due to a shortage of residential beds, we cannot afford to lose anymore.

We want a system that provides the right level of care, at the right time, and in the right setting. **That is the goal.**

According to the website for the new MaineCare rate reform process, as mandated, the Department must annually develop a schedule of rate determination in consultation with the Technical Advisory Panel (TAP). The Department must then post the proposed rate determination schedule on its publicly accessible website, provide an opportunity for the public to review and comment on the rate determination schedule, and make available a summary of these comments on its publicly accessible website. The Department then posts the final rate determination schedule.

At the end of December 2022, the following was the final rate review schedule posted to the website.

Progress or to be Initiated through Calendar Year 2023

In Progress as of December 9, 2022
2 Adult Family Care Homes .
13 Targeted Case Management
17 Community Support
26 Day Health
28 Children's Rehabilitative & Community Support, including school health-related services
31 Federally Qualified Health Centers (Rebasing)
45 Acute inpatient distinct psychiatric units and substance use disorder units (for medically supervised withdrawal)
60 DME Phase 1 (100% of Medicare, rural/non-rural, and DME index COLA for non-Medicare)
65 Behavioral Health, including crisis and school health-related
107 Psychiatric Residential Treatment Facility
92 Behavioral Health Home
TBD- National Diabetes Prevention Program (NDPP)
45, 46 Hospitals
23 Developmental and Behavioral Clinic Services (New service)
30 - Family Planning
Upcoming for Calendar Year 2023
TBD - Palliative Care
67, 97 C - Nursing Homes and Private Non-Medical Institution - Appendix C Residential Care
93 Opioid Health Home, including new model for other SUD
25 Dental (rebasing of benchmarks)
Ch. VI, Section 3 Primary Care Plus (PCPlus)
TBD - Certified Community Behavioral Health Clinics (CCBHC)
97 D - Private Non-Medical Institution (specific to Children's Therapeutic Foster Care)
97 E & F - Community Residences for Persons with Mental Illness (PNMI E) and Non-Case Mixed Medical and Remedial Facilities (PNMI F)
19, 20, 21, 40, 96, 102 - limited to Home & Community Based Services: Nursing and Clinical only
TBD - Community Paramedicine

*In each row, number shown is the section of the MaineCare Benefits Manual, followed by name of section, then any specific services within the section, if applicable.

This shows that MaineCare Sections 97 E and F, which is Community Residences for Persons with Mental Illness (PNMI E) and Non-Case Mixed Medical and Remedial Facilities (PNMI F), were scheduled for review and new rate determinations in Calendar Year 2024. **This year.**

For clarity purposes, PNMI stands for Private Non-Medical Institutions.

Knowing that this rate review was coming was a relief to the providers of these services as I hear many, if not most, of these providers are losing money every year they stay open. The formulas for reimbursement for these services are archaic and have not been updated or increased for decades.

However, when the new calendar was posted in draft form this last December, these services had been removed. See below for this year's calendar.

MaineCare Annual Rate Determination Schedule: Rate Determinations in Progress or to be Initiated Through Calendar Year 2024

Rate Determinations In Progress
107, Psychiatric Residential Treatment Facility
45, 46, Psychiatric Hospitals
45, Hospital Services
23, Developmental and Behavioral Clinic Services (New service)
TBD - Certified Community Behavioral Health Clinics (CCBHC)
67, 97 C, Nursing Homes and Private Non-Medical Institution, Appendix C, Residential Care
30, Family Planning (New Alternative Payment Model)
97 D, Private Non-Medical Institution (Specific to Children's Therapeutic Foster Care)
TBD - Crisis Mobile Response Teams
Lifespan and aligned HCBS Community Supports, Home Supports and Employment Supports (18, 20, 21, 29)
TBD - Palliative Care
25, Dental (rebasng of benchmarks)
Ch. VI, Section 3, Primary Care Plus (PCPlus)
TBD - Community Paramedicine
93, Opioid Health Homes, Including New Health Home Model for Other SUDs
Upcoming for CY24
12, 19, 20, 21, 40, 96, 102 - Limited to Home & Community Based Services: Nursing, Clinical & Care Coordination only
TBD - Coordinated Specialty Care (CSC)
106, School-Based Health Center Service & Early Intervention
65, New Service: Multi-Dimensional Family Therapy (MDFT)
Ch I, Sec 1: Interpreter Services

*In each row, the number shown is the section of the MaineCare Benefits Manual, followed by name of the section, then any specific services within the section, if applicable.

As you can imagine, these providers were gravely concerned. I have heard from a number of them that they simply cannot continue losing money in providing these services and several are considering closing homes or closing down beds. Providers responded to the draft with these

concerns. The Department acknowledged the concern but did not alter the schedule to reinstate these sections.

In her letter regarding this new calendar, Director Probert stated that “The Department must prioritize PNMI Appendices E and F services, which have rate methodologies that do not meet the diverse needs within and across these service models and are not aligned with best practices to ensure equitable, efficient and adequate reimbursement.” They are prioritized but remain off of the schedule. The Department has stated they need to do a more comprehensive review of these services as well as the rates and will need more time.

This bill is largely focused on making some immediate changes to the way these sections are cost settled to try to keep providers whole until the Department comes to the end of this process of a more thorough review. This process will likely take at least two years and these providers may not hold on that long. This is **Section 1** of this bill. The bill in **Section 4** refers to the fact that this change must stay in effect until this process of review and final rate determination is completed. **My amendment directs Section 4 to only refer to Section 1.**

Section 5 of this bill directs the Department to form a stakeholder group to participate with them in this review and evaluation of PNMI E and F as to how to develop a more sustainable model of reimbursement for these residential services and to meet the needs of these individuals. **My amendment clarifies that the study group only refers to the residential services.**

Section 2 of this bill was added in response to many of the providers of PNMI F who have been awaiting state dollars owed to them as a part of the end-of-year audited cost settlement process – for several years in some cases.

Section 3 of this bill was added in response to concerns I have heard that Outpatient Services, although they received a new reimbursement rate this past year, were left with an inconsistency that is impacting providers who offer this service in our schools to meet the increasing needs of our youth.

Outpatient Services now have differing reimbursement rates depending on whether the service is performed in an office-based setting or in a community-based setting. Unfortunately, these services performed in a school-based setting are set at the lower rate of an office-based setting. **Community-based setting rates are higher to offset travel requirements.** This does not work in reality as many of the providers of these services in schools have to visit several schools in a day and therefore should be under the community-based rates.

There are folks here that can speak to these issues and answer specific questions you may have. I hope you will support this legislation to continue to build a much more sustainable and accessible system of care for those facing the challenges of mental illness or developmental disability.

Thank you for your time and attention.

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

L.D. 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

Sec. 1. Department to amend rules concerning MaineCare reimbursements for certain private nonmedical institutions; method of final settlement. Resolved: That the Department of Health and Human Services, referred to in this resolve as "the department," shall amend its rules in Chapter 101: MaineCare Benefits Manual affecting reimbursement for residential services covered in Chapter III, Section 97, Appendices E and F and amend, as necessary, any language within Chapter II, Section 97 and Chapter III, Section 97 that applies to those appendices. The rules must be amended to require the department's division of audit to divide its final settlement of a provider's cost report into 2 separate calculations as follows:

1. Personnel costs expended by the provider, paid in full to the provider but not to exceed what is in the cost report projection; and
2. Operational costs expended by the provider, paid in full to the provider but not to exceed what is in the cost report projection.

Sec. 2. Department to amend rules concerning MaineCare reimbursement for certain private nonmedical institutions; timing. Resolved: That the department shall amend its rules in Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97, Appendices E and F and amend, as necessary, any language within Chapter II, Section 97 and Chapter III, Section 97 that applies to those appendices to require the department to reimburse at least 75% of a private nonmedical institution's as-filed settlement pursuant to the facility's cost reports within 90 days of receipt of the cost reports.

Sec. 3. Department to amend rules concerning MaineCare reimbursement for outpatient behavioral health services offered in public school setting. Resolved: That the department shall amend its rules in Chapter 101: MaineCare Benefits Manual, Chapters II and III, Section 65 to allow behavioral health services provided in a public school setting to be classified and reimbursed as community-based services.

Sec. 4. Timing. Resolved: That the department shall begin the process of amending its rules in accordance with Section 1 of this resolve immediately after this resolve becomes effective. The rule changes directed by this Section of the resolve must remain in effect until the department completes a rate determination of the affected rules pursuant to the Maine Revised Statutes, Title 22, section 3173-J.

Sec. 5. Formation of stakeholder group and study required. Resolved: That the department shall form a stakeholder group to conduct a study to evaluate how to develop more sustainable models of outpatient and residential mental and behavioral health treatment services under Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97, Appendices E and F and how to increase access to those services within the State. By January 1, 2025, the stakeholder group shall submit a report of the study to the department. By January 15, 2025, the department shall submit to the joint standing committee of the Legislature having jurisdiction over health coverage, insurance and financial services matters a summary of the report based on the stakeholder group's findings and recommendations, including suggested legislation. The joint standing committee may report out legislation to the 132nd Legislature in 2025 based on the report.

131st Maine Legislature

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L.D. 2243

SUMMARY

This resolve directs the Department of Health and Human Services to amend the MaineCare rules governing reimbursement for outpatient behavioral health services provided in public schools under the MaineCare Benefits Manual, Chapters II and III, Section 65 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 MaineCare Benefits Manual, Chapter III, Section 97, Appendices E and F, respectively. The department must initiate the rule-making process immediately after the resolve goes into effect, 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. By January 1, 2025, the stakeholder group must submit a report to the department, and by January 15, 2025, the department must submit to the joint standing committee of the Legislature having jurisdiction over health coverage, insurance and financial services matters a summary of the report based on the stakeholder group's findings and recommendations, including suggested legislation. The joint standing committee is authorized to report out legislation.