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Testimony of Lisa Trundy-Whitten

LD 979, Resolve, Regarding Legislative Review of Chapter 113: Assisted Housing Programs Licensing Rule, a Late-Filed Major Substantive Rule of the Department of Health and Human Services

Before the Health and Human Services Committee

April 1, 2025 at 1:00 pm

Senator Ingwersen, Representative Meyer, and Distinguished Members of the Committee on Health and Human Services:

My name is Lisa Trundy-Whitten, and I serve as a Principal and Lead of the Senior Living Practice at Berry Dunn, McNeil and Parker.

I am here today to testify in opposition to **LD 979, Resolve, Regarding Legislative Review of Chapter 113: Assisted Housing Programs Licensing Rule, a Late-Filed Major Substantive Rule of the Department of Health and Human Services.**

BerryDunn McNeil & Parker is an accounting firm headquartered in Portland Maine. We provide attest, cost report, and/or consulting services to 94 Level IV Private Non-Medical Institutes (PNMI) facilities, which represents slightly over 80% of the Level IV PNMI facilities in the State.

First and foremost, we believe this rule was drafted with minimal input from key stakeholders, including the provider community. Additionally, the speed at which this rule was provisionally adopted did not allow providers sufficient time to fully analyze its impact. There are multiple providers within the state who are licensed under the current assisted housing rules but reimbursed under the PNMI principles in Section 97 of the MaineCare principles of reimbursement, and it is unclear how this rule applies to them. Examples include homes with residents paid through Section 21 waivers or homes reimbursed as adult care family homes. Many of these providers are unaware the provisional rules apply to them or may not fully understand how the provisionally adopted rule will impact their facilities.

We appreciate that the Department listened to provider feedback and made revisions to the minimum staffing ratios and implementation period. However, the rule still does not adequately address the critical healthcare staff shortage and the inadequate Medicaid reimbursement, both of which threaten the industry.

The current staffing shortages and inadequate payments have led to unprecedented closures. New England States lead the nation in bed closures at 15%, with Maine at a rate of 19%. The net loss of nursing facility and residential care beds in Maine from 2020-2023 was approximately 120 beds. The MaineCare payment shortfall for residential care facilities has increased from $11.5M in 2021 to $24.3M in 2022 and $20.5M in 2023.

BerryDunn analyzed the impact of the minimum staffing rule for the 120 residential and memory care Level IV PNMI facilities that file MaineCare cost reports. The analysis estimates that the minimum resident care staffing ratio changes within the rule will increase costs to providers by approximately $4,907,000 in the first year following the rule's final adoption and $14,595,000 in the second year. These facilities alone will require an additional 140,000 hours of residential care staffing in the first year and nearly 400,000 additional hours in the second year. This level of minimum staffing is not supported by the current reimbursement system, as the pricer model for the direct care component of the PNMI rate does not increase reimbursement for additional staffing hours provided.

Approximately $9,400,000 of this additional cost is estimated to impact the 29 memory care facilities, averaging an additional $324,000 in costs for each facility. These facilities are already struggling to maintain adequate staffing and financial feasibility. Without a plan for reimbursement, the proposed rule will exacerbate these challenges, potentially accelerating the closure of healthcare facilities, particularly those serving low-income populations who rely on Medicaid.

In its responses to written comments, the Department states numerous times that the change to the current rule is to address the rise in acuity levels of resident needs; staffing ratios were created based on the acuity levels of resident needs and recommendations of the Long-term Care Ombudsman and are necessary to ensure the health and safety of a resident population with increased acuity. Quarterly data collected by the Muskie School does not support such a rise in acuity. For the quarter ended September 1, 2018, the average all payor case mix index, which is a measure of acuity, for PNMI Level IV memory care facilities was 1.46, and for the quarter ended September 1, 2024, the average all payor case mix index was 1.44. For the Level IV PNMI residential care facilities over the same period, the case mix was 1.29 and 1.34, respectively. This marginal increase in acuity for the PNMI Level IV residential care facilities does not support the Department's statements and is not commensurate with the increase in cost and administrative burden this rule will create.

Many providers expressed concern that this rule was published and provisionally adopted hastily with little to no input from key stakeholders or plan for additional reimbursement. The Department's response that reimbursement is outside the scope of this rulemaking is insufficient. While we understand that funding is not within the purview of this rule, it is irresponsible to pass this mandate without a clear plan for funding. This rule will not only add significant costs to the MaineCare system but also increase expenses for private residents. Therefore, in order to protect this needed service, this rule must be put on hold until a comprehensive reimbursement plan is in place. Without such a plan, the provisionally adopted assisted housing rule will undoubtedly accelerate the closure of healthcare facilities, particularly those serving low-income populations who rely on Medicaid.

It is crucial this committee recognize the tremendous pressure residential care providers are currently under. The healthcare industry is grappling with severe staffing shortages, particularly in rural and underserved areas where healthcare workers are scarce. Many facilities are already struggling to retain staff, let alone recruit new workers, due to the financial strain of low reimbursement rates and the rising costs of running a healthcare facility. When reimbursement rates are insufficient, healthcare organizations are forced to stretch their limited resources thinner, making it even more difficult to offer competitive salaries, maintain staffing levels, or invest in the necessary technology and infrastructure to support quality care. There are already rules and enforcement provisions in place to help ensure the residents of assisted living facilities receive the care they need, even this difficult operating environment. Adding additional regulation and cost to the system without documented evidence of need and a plan for funding will be crippling.

In conclusion, implementing this rule could have devastating consequences for assisted living providers, residents, and the state's healthcare system as a whole. We must find solutions that strengthen the workforce, support providers, and ensure that Medicaid residents continue to have access to the care they need. I strongly encourage a reevaluation of this rule to ensure it can be implemented in a way that does not force providers to close their doors or compromise the care they deliver to vulnerable populations.

Thank you for your time. I would be happy to answer any questions.

Sincerely,

Lisa Trundy-Whitten

Lisa Trundy-Whitten
Principal | Berry, Dunn McNeil & Parker, LLC