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March 17, 2021

Senator Ned Claxton, Chair
Representative Michelle Meyer, Chair
Members, Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, ME 04333-0100

Re: LD 250 – *An Act To Assist Nursing Homes in the Management of Facility Beds*

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

This letter is to provide information in opposition to LD 250, *An Act To Assist Nursing Homes in the Management of Facility Beds*.

This bill would allow nursing facilities to reduce the number of their licensed beds and then later increase the number of their licensed beds to the prior level after obtaining a certificate of need and meeting certain conditions to reopen these “reserved beds.” The bill also removes the cap for medical director costs to be included in the Department’s calculation of reimbursement for services provided by a nursing facility, and adds the acquisition, use and maintenance of computer or cloud-based software systems as a fixed cost to be included in costs incurred by a nursing facility.

The bill reinstates a process referred to as “bed banking,” which is presently not allowed. Striking “prior to July 1, 2007” from the statute would reverse the decision to end bed banking. Bed banking was used in the 1990s as an incentive for nursing facilities to convert beds to residential care, when Maine had increased the level of care requirement, resulting in excess supply of nursing facility beds. During that time period, nursing facilities often sold bed rights to other providers.

The language “...reserved beds remain facility property until they lapse as provided for in this section or are transferred” gives nursing facilities the option to sell these rights. The Centers for Medicare and Medicaid Services (CMS) does require that a facility which is adding or deleting beds submit an application for a change in their certified beds with the CMS Fiscal Intermediary.

Because nursing facilities are reimbursed based on a prospective case mix payment system, MaineCare Rate Setting would have to recalculate rates each and every time the facility “banked beds.” Giving nursing facilities an incentive to reduce the number of beds available could harm those in need of nursing facility services. Historically, nursing facilities have had 90% occupancy. In the December occupancy report, the statewide average was down to 78%, driven by reductions in a subset of facilities that have experienced COVID-19 outbreaks. We expect occupancy to climb

again as the pandemic recedes and are concerned that bed banking will exacerbate a lack of placements outside of hospitals that is already a serious concern.


Put simply, nursing facilities would benefit from the changes in this bill because the reimbursement rate gets adjusted using a total occupancy based on fewer beds. This would increase their per-day reimbursement. There would be no benefit to the Department or members, however. Bed capacity would be reduced but MaineCare would not receive a corresponding reduction in costs.

MaineCare has contracted with the firm Myers and Stauffer to conduct a comprehensive rate system evaluation (CRSE). Myers and Stauffer recommend the Department move away from a cost settlement approach for nursing facility reimbursement due to the administrative burden this system has on providers and the Department, and the fact that it does not incent high value care. They recommend the Department consider prospective rates, incorporating adjustments into specific payment system features, and setting aside a pool for performance payment. This bill would add further burden and complication to an already burdensome, complicated reimbursement methodology.

Should the Committee decide to pass this bill, we advise adding language that would allow the Department to develop the requirements under which beds can come back online, creating an opportunity for the Department to address needs identified during the pandemic, particularly for spaces that facilitate isolation to contain infection. These needs were identified by a group of experts and articulated in a vision for residential care¹ recently issued by the Maine Health Access Foundation.

We wanted you to be aware of the above information as you consider this bill going forward. If you have any further questions, please feel free to contact me.

Sincerely,



Michelle Probert, Director
Office of MaineCare Services

¹ https://mehaf.org/wp-content/uploads/FINAL_Re-imagining-Residential-Care-Think-Group.pdf