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MEMORANDUM

TO: Joint Standing Committee on Health and Human Services
FROM: Office of MaineCare Services
DATE: April 6, 2021
RE: Responding to questions re: LD 652

How did we get "extraordinary circumstances for Secs 50, 67 and 97 C and F?

Existing policy for these sections allows for an extraordinary circumstances allowance—e.g. for App C PNMIS, Sec 97 of the MaineCare Benefits Manual states, "facilities which experience unforeseen and uncontrollable events during a year that result in unforeseen and uncontrollable increases in expenses, as defined herein, may request an adjustment to a prospective rate in the form of an extraordinary circumstance allowance (ECA)."

How often is extraordinary circumstances used? Was it used for the initial minimum wage increases? When has it been used recently (last 5-6 years)?

The ECA is used in limited circumstances but that is the intent of the rule – it's for unforeseen and uncontrollable circumstances that result in increased costs. It has been used for the minimum wage law change in limited circumstances.

Impact of pandemic on rates – how formally included and how funded?

The Department has utilized:

- Flexibility under existing state authority in the MaineCare Benefits Manual for temporary rate increases and outbreak rate increases for long term care facilities (NF, PNMI C, E & F);
- Disaster State Plan Authority under CMS 1135 waiver (available to states under the public Health Emergency) to provide temporary rate increases and outbreak rates to PNMI B & D facilities (that do not have ECA authority in rule), supplemental payments to hospitals, to providers of certain behavioral health services, and to providers of children's preventive and dental services; and
- Federal Appendix K amendment to Home and Community Based Services waivers authority for temporary rate increases.

Under the recently passed SFY21 supplemental budget, the Department will again utilize the Disaster SPA and Appendix K authorities to provide additional COVID support to behavioral health and HCBS providers, respectively.

These rate increases were made possible by the enhanced federal match available to states under the federal Public Health Emergency.

Rate study process – does it take into account workforce shortage and related labor costs (concerns expressed that it doesn't)?

First, it is necessary to distinguish between the Comprehensive Rate System Evaluation (RSE) that MaineCare contracted with the firm Myers and Stauffer to conduct, and the more typical "rate studies" that MaineCare conducts on a regular basis. The former is a special project that MaineCare contracted with the firm Myers and Stauffer to provide the following:

- Benchmark comparisons between rates paid for MaineCare services and those paid by Medicare, commercial Maine health plans, and comparison Medicaid state agencies,
- Recommendations to streamline and rationalize MaineCare's rate setting system, and
- Recommended prioritization of services to the Department for rate and methodology adjustments going forward.

The benchmarking report under the RSE was intended to highlight clear areas of inequity in rates, where possible (e.g. services Medicare covers), as well as areas that would require further study to determine whether rate differences are appropriate (e.g. services where populations served, service models, and/or broader state-specific economic factors may vary and impact reimbursement levels). It was beyond the scope of the RSE for this report to take into account individual state economic factors such as labor costs and workforce—analysis that would have greatly expanded the timeline and resources required to conduct the work. The RSE did seek stakeholder feedback regarding adequacy of current rates and related challenges, which was captured, documented, and incorporated into the recommendations.

By contrast, the more typical "rate study" MaineCare conducts, most often with assistance from a vendor, is a study specific to a service to set reasonable rates to cover the costs of providing the service. These regular rate studies account for labor costs both by collecting provider cost data on all related costs; looking at national best practices in terms of the service and staffing model, where available; and by utilizing standard benchmarks for wages by staff positions, such as Bureau of Labor Statistics median wage amounts for Standard Occupational Code classifications, and average fringe benefit costs.

How will the new rate study process account for the types of pressures that are included by extraordinary circumstance but in other sections of MaineCare that don't have that language?

The Department is currently reviewing RSE recommendations to adapt, as appropriate, into its own proposed plan for implementation.

Do you see this language as applying to state-funded services that are equivalent, e.g. Sec. 61 and 63 (or Sec. 69 which doesn't have a Medicaid equivalent) or not because it is drafted in section 3173?

We infer from its placement in Sec. 3173 that it is Medicaid only, not state funded, but the intent is not clear.

How does the department fund rate increases? Obviously, they are often included in the budget proposals or other bills (PSS rates from B&A took several bills to fund the increase). But are there times when the department increases rates without an appropriation? I seem to remember a proposal to fund an increase to MAT in Sec. 65 a couple of years ago (or maybe four?) and it turned out that the rate had already been increased without an appropriation and no one seemed to know that (the proposal was to increase it further).

The Department aims to fund its proposed rate increases through budget proposals. Generally, no, the Department does not increase rates absent proper appropriations. Estimated costs for new MaineCare services and/or rate increases need to be appropriated to balance sources and uses and to maintain sufficient budgetary resources to pay providers in a timely manner and without interruption.

The last MAT increase was funded through the budget, P.L. 2019, Ch. 343 *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2019, June 30, 2020 and June 30, 2021*, (effective June 17, 2019). The funding for this rate increase was properly appropriated in the budget.