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Commissioner



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April 5, 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 1197 – *Resolve, To Require Continued MaineCare Reimbursement to Nursing Facilities for Bed Hold Days During Hospitalizations and Therapeutic Leaves of Absence*

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 1197, *Resolve, To Require Continued MaineCare Reimbursement to Nursing Facilities for Bed Hold Days During Hospitalizations and Therapeutic Leaves of Absence*. This resolve requires the Department to continue to provide reimbursement under the MaineCare program to nursing facilities for direct costs on bed holds during hospitalizations and therapeutic leaves of absence.

Nursing facility reimbursement is complex and must be understood, in the context of the Medicaid program, as reimbursement for services rendered. Both the State Plan and the MaineCare Benefits Manual (MBM) provisions governing nursing facilities reflect this orientation. Under MaineCare rules, there are three components of nursing facility costs: fixed costs, routine costs, and direct care costs. The first two components are reimbursed during approved bed hold days and therapeutic leaves of absence in accordance with program requirements.

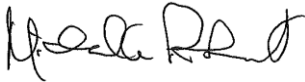
Requiring reimbursement of direct care costs on days when the member is not present in the facility, and no direct care is provided, would raise questions about the appropriateness of federal reimbursement on those days. The MBM specifically states in Chapter III, Section 67 of the MaineCare Benefits Manual (paragraph 9.5) that in order for MaineCare to reimburse for direct care wages, those wages, “to be allowable, must be reasonable and for services that are necessary and related to resident care and pertinent to the operation of the facility. The services must actually be performed and must be paid in full.” Many providers have historically abided by this rule and only billed for fixed and routine costs during bed hold days.

This provision in the MBM is mirrored and approved by CMS as part of the Nursing Facility reimbursement principles in the State Plan.

This bill is essentially directing the Department to pay for services *not* provided, as no direct care is being provided to the member, since the member is not present in the facility. CMS states, “FFP is not available under the Medicaid state plan to pay providers directly for the time when care is not provided to beneficiaries.”¹ As such, the Department does not believe paying for direct care during bed hold days is permissible under federal regulations and would thus have to be paid entirely with state funds.

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,

A handwritten signature in black ink, appearing to read "Michelle Probert". The signature is written in a cursive, somewhat stylized font.

Michelle Probert
Director
MaineCare Services

¹ <https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf>, p.98