

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
Office of MaineCare Services
11 State House Station
Augusta, Maine 04333-0011
Tel; (207) 287-2674; Fax (207) 287-2675
TTY: Dial 711 (Maine Relay)

May 3, 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 1573 – *An Act To Implement the Recommendations of the Commission To Study Long-term Care Workforce Issues*

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 1573, *An Act To Implement the Recommendations of the Commission To Study Long-term Care Workforce Issues*. This bill implements recommendations of the Commission to Study Long-term Care Workforce Issues.

The bill's requirement that the Department "establish rules concerning MaineCare reimbursement rates for in-home and community support services" would impact, at a minimum, the following sections of the MaineCare Benefits Manual:

- Section 12, Consumer Directed Attendant Services
- Section 19, Home and Community Benefits for the Elderly and Adults with Disabilities
- Section 40, Home Health Services
- Section 43, Hospice Services
- Section 96, Private Duty Nursing and Personal Care Services

State-funded programs outside of the MaineCare Benefits Manual would also be impacted as the delivery of these programs utilizes the same workforce -- thus rate parity between programs is essential.

The Department is not entirely clear on the intent of Section A-1. The bill appears to move the payment mechanism for these services from a fee schedule (where all providers get the same rate for the same service) to cost settlement (where each provider has its own unique rate based on its own costs). At present, the Department's Division of Audit does not review these providers, so a new reporting process would have to be built, including the identification of allowable costs in accordance with federal rules. Such a change would be extremely onerous for providers—who are currently not required to file cost reports—and would require additional staff for the Division of Audit.

If the bill's intent is instead to require a new fee schedule to be set based on a rate study using the most recent provider cost data, and then for rates to be adjusted for inflation until a new rebasing can be performed in a follow-up rate study, that approach largely aligns with the approach

recommended in the Department's recently concluded Comprehensive Rate System Evaluation (RSE). The RSE recommended 1) moving all services away from cost settlement since that reimbursement approach provides no incentives for high value care, 2) conducting rate studies every five years for services that could not be benchmarked to Medicare or other appropriate rates, and 3) adjusting for inflation in between these rate studies. The Department is reviewing the RSE recommendations for adoption and timing.

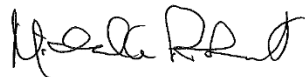
In terms of the need for increases, we note that Personal Support Services in Sections 12, 19, and 96 were increased 23-30% in 2020 by updating a previously conducted rate study. Section 43 rates are benchmarked to Medicare and already get updated annually. The RSE found that MaineCare's rates for Home Health Therapies and Nursing Services in Sections 19, 40, 43, and 96 varied in comparison to rates by other state Medicaid agencies by specific service, with the MaineCare rate averaging 92% of the comparison rate, overall. The RSE found that MaineCare's rates for Personal Care Services in sections 12, 19, 40, and 96 averaged 107% of comparison rates.

The Department interprets Sections A-2, A-3, and A-4 as requiring providers to pay their direct care workers no less than 125% of the minimum wage starting January 1, 2022 and for the Department to engage in rulemaking so its reimbursement accounts for the corresponding costs. We are unclear who would be charged with the enforcement of the 125% minimum wage provision and how it may interact with various provisions in Title 26 about employment practices and penalties for violations.

Finally, with regard to Part B of the bill, the Department opposes the establishment of a Long-term Care Workforce Oversight Advisory Committee at this time. The Office of Aging and Disability Services, working in close consultation with MaineCare and the Commissioner's Office, is committed to working with stakeholders as it works to address workforce issues in long term services and supports. Additionally, the MaineCare Advisory Committee, rulemaking processes, and legislative engagement already provide ample opportunity for input related to MaineCare payment for these services.

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", written over a horizontal line.

Michelle Probert
Director
MaineCare Services