

MAINE STATE LEGISLATURE

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STATE OF MAINE

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Inter-Departmental Memorandum Date August 28, 1974

To Dean Fisher, M.D., Commissioner

Dept. Health and Welfare

From Joseph M. Kozak, Assist. Atty. Gen.

Dept. Attorney General

Subject Chapter 221, Private and Special Laws 1973

SYLLABUS:

Chapter 221, Private and Special Laws, 1973 does not provide for a flat rate increase in payments to intermediate care facilities.

FACTS:

In Chapter 221, Private and Special Laws of 1973 the Legislature appropriated \$350,000 for increases in payments to intermediate care facilities. That appropriation

"(p)rovides funds to raise payment rates in order to meet increased operating costs attributable to each facility."

Several government officials including the House Chairman, the Legislative Finance Officer and the Assistant Finance Officer have expressed what they believe to have been the intent of the Legislature in making this appropriation i.e. to raise the flat rate of payment currently being made to those intermediate care facilities presently on a flat rate method of reimbursement. The Commissioner of Health and Welfare is not in agreement with their interpretation and has asked the questions addressed in this opinion.

QUESTIONS:

1. Is each home now being paid on a flat rate required by this language to submit some kind of uniform standardized cost data by which the increased payment rate to be made by us can be determined?
2. Do we make an individualized determination of the increase to be paid to each home?
3. Do we aggregate the cost information referred to above from all of these homes and then simply make an increased payment related to the average cost increase experience of these homes?
4. In the absence of any of the above, does this language permit us to simply make some kind of an arbitrary decision on an increased flat rate to be paid to all such homes? In other words, do we simply take our present flat rate and increase it by some amount such as 10%?

ANSWERS AND REASONS:

Answers to the specific questions of the Department of Health and Welfare follow this general discussion of the Legislature's intent in appropriating, under Chapter 221, Public and Special Laws of 1973, funds for intermediate care facilities. The intent of the Legislature is controlling in any discussion concerning the meaning of a statute and

unless an ambiguity can be found on the face of the statute, legislative intent is ascertained by giving the words of the statute their plain meaning. The language of the appropriation in question follows:

"Intermediate Care
All Other 350,000
Provides funds to raise
payment rates in order
to meet increased operating
costs attributable to each
facility."

Three key words are used in this appropriation: (1) costs (2) attributable and (3) each. Giving those words their plain meaning the conclusion that the Legislature intended this appropriation to be utilized not as a flat rate of payment but rather as an increased payment based on each facility's increased costs is inescapable.

Under the current policy of reimbursing intermediate care facilities it is clear that two methods of payment have been utilized: (1) cost reimbursement and (2) flat rate. The flat rate method of reimbursement, although related to costs, does not reflect the exact costs of each facility. It is merely an average or estimate. Presumably some of the intermediate care facilities have opted for the flat rate system because it is to their advantage i.e. their costs may be less than the flat rate of payment. An increase in the flat rate, at least in respect to those intermediate care facilities in this category would clearly run contrary to the plain meaning of the language used in the appropriation, since the appropriated funds would simply be a bonus rather than a source of funds to meet increased costs attributable to such a facility.

This discussion has centered on the presumption that the language of the appropriation is clear and unambiguous. Recently several state officials including the House Chairman and the Legislative Finance Officer have expressed what they believe to have been the legislative intent that a flat rate percentage increase was contemplated. Certainly the opinions of these officials are respected and appreciated. However, no authority can be found that would permit a derivation of legislative intent based upon the honest belief of a public official, although directly involved in the passage of an appropriation bill, where the words of the bill are unambiguous.

Answers to the specific questions follow:

1. As this opinion indicates increased payments provided for in the appropriation are intended to meet increased costs. Consequently the Department of Health and Welfare should relate increased payments to costs. The specific manner in which this is carried out is, however, an internal, administrative matter and cannot be defined in this opinion.

2. Yes, since the language of the appropriation indicates that funds are provided to meet increased costs attributable to each facility, the Department of Health and Welfare would be required to make an individualized determination of the increases to be paid each intermediate care facility.

3. No. By making an increased payment based on average costs the Department of Health and Welfare would simply be applying another flat rate of payment which, although related to costs, would not fall within the plain meaning of the words of Chapter 221, Public and Special Laws of 1973 providing for an increased payment "in order to meet increased operating costs attributable to each facility."

4. No, for the same reason set out in answer 3.