

MAINE STATE LEGISLATURE

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AUGUSTA, MAINE 04333

June 16, 1977

David E. Smith, Commissioner
Department of Human Services
221 State Street
Augusta, Maine 04333

Dear Commissioner Smith:

You have asked whether the Department of Human Services may establish a ceiling on the level of reimbursement it sets for qualified nursing homes rendering services to Maine Medicaid recipients.

It is the opinion of this office that such a ceiling may be established consistent with federal law and state law.

Reasoning:

Federal law does not guarantee to any nursing home participating in the Medicaid Program (Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.) any specific level of payment as reimbursement for the services rendered to an eligible Medicaid recipient. A review of federal law reveals that Congress has allowed each state, participating in the Medicaid Program, considerable discretion in establishing a level of reimbursement for nursing homes rendering services to Medicaid recipients.

The opening section of the Medicaid Act indicates that Congress was aware that the States do have limited financial resources to devote to the Medicaid Program. 42 U.S.C. §1396 states that the Medicaid Act was enacted "for the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish....medical assistance to eligible needy individuals." Medical assistance is defined at 42 U.S.C. §1396d as "payment of part or all of the cost" of specific necessary medical services.

Therefore, the starting point of the statutory analysis is the recognition that federal law allows each state great discretion in dispensing its limited funds.

Congress has established standards, in the Medicaid Act, for reimbursement of nursing homes by the States. 42 U.S.C. §1396a(a)(13)(E) requires every participating State, effective July 1, 1976, to provide "for payment of the skilled nursing facility and intermediate care facility services on a reasonable cost related basis, as determined in accordance with methods and standards which shall be developed by the State on the basis of cost-finding methods approved and verified by the Secretary."

The term "payment on a reasonable cost related basis" is not defined anywhere in the Medicaid Act. The legislative history of the statute and its interpretation by the Secretary of Health, Education and Welfare do clarify its meaning, however.

The statute originated in the Senate Committee on Finance. The Committee's report, Senate Report No. 92-1230, at pages 287-288, outlines Congress' objective in enacting the statute. Congress was concerned with the effects of arbitrary rate setting practices utilized by several States participating in the Medicaid Program. These rate setting practices sometimes result in significant overpayments or underpayments to nursing homes. In order to alleviate this problem, Congress sought to require the States to use acceptable cost-finding methods to determine reasonable reimbursement rates for nursing homes rendering services to Medicaid patients. The Senate Report makes clear however, that the States must enjoy considerable latitude in establishing a reasonable rate of reimbursement for nursing homes.

The Secretary of Health, Education and Welfare was directed by Congress to approve cost-finding methods that will result in nursing home reimbursement "on a reasonable cost related basis." 42 U.S.C. §1396a(a)(13)(E). The Secretary has outlined his interpretation of the statute at 41 Federal Register 27300-27305 which is the Preamble to 45 Code of Federal Regulations §350.30 - the regulation implementing the statute. The Secretary's statement makes clear that States are not required to reimburse nursing home costs at their actual level. The Secretary maintains that each State continues to enjoy considerable discretion in determining what constitutes a reasonable level of reimbursement for nursing homes:

"...there is no single acceptable method for determining reasonable cost, but rather a variety of acceptable methods; it follows from this that there is no single figure that is the reasonable cost, but rather a spectrum of figures within an acceptable range, any one of which is a reasonable cost. The Department expects that a variety of acceptable methods for determining a reasonable cost-related payment rate will be developed. The legislative history of section 249 (42 U.S.C. §1396a(a)(13)(E) makes clear that the States are to be allowed great freedom both to define allowable costs items and to set a value on the reasonable cost of such items, and, in addition, States are to be free in setting their reasonable cost-related payment rate to take into account, on the one hand, incentives toward efficiency and economy and, on the other hand, incentives to upgrade the quality of care and to provide for growth and improvements.

The legislative history makes clear that States may set their payment rates at the level that will reimburse only those costs which a State finds reasonable"

The conclusion of the Secretary that nursing homes are entitled to "reasonable reimbursement" and not actual reimbursement is also supported by a separate statute in the Medicaid Act. 42 U.S.C. §1396a(a)(30) requires a state "to assure that payments...are not in excess of reasonable charges consistent with efficiency, economy, and quality of care." The Secretary, in order to carry out the purposes of this statute, has promulgated a regulation which itself places a ceiling on what rates of reimbursement may be deemed reasonable. 45 C.F.R. §250.30(a)(6).

A fair consideration of applicable federal law leads to the conclusion that a State may establish a ceiling on what is a reasonable level of reimbursement for the services rendered by nursing homes participating in the Maine Medicaid Program.

In addition to federal law, state law also establishes criteria for determining levels of reimbursement for nursing homes participating in Maine's Medicaid Program. In 1975, the Maine Legislature enacted 22 M.R.S.A. §1703(2): The statute prohibits the Department of Human Services from reimbursing nursing homes on a "flat rate" basis. In order to achieve this result the Legislature required the Department of Human Services to establish a nursing home reimbursement rate "relating to various types of care provided in a nursing home. Such rate or rates shall be based on the operating costs attributable to each nursing home as determined by such accounting and auditing standards as the department may establish." * 22 M.R.S.A. §1707(2).

The stated purpose of the statute is clear; it prohibits the establishment of a "flat rate" reimbursement schedule. In order to accomplish this purpose, the Legislature directed the Department of Human Services to consider two factors in establishing a reimbursement rate:

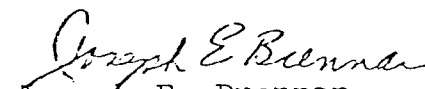
- a. type of care provided by the nursing home
- b. the operating costs attributable to each nursing home.

The statute, however, does not require the Department of Human Services to pay any nursing home its actual expenses. In fact, the statute requires the Department to determine, on the basis of its own standards, what are allowable nursing home operating costs.

This is a clear indication that the Legislature, like Congress, allows the Department of Human Services considerable discretion in establishing a rate of reimbursement that reimburses reasonable nursing home costs consistent with "efficiency, economy, and quality of care."

In conclusion, it is the opinion of this office that the Department of Human Services may, consistent with federal and state law, establish a ceiling on the level of reimbursement it sets for qualified nursing homes rendering services to Maine Medicaid recipients.

Respectfully,


Joseph E. Brennan
Attorney General