

MAINE STATE LEGISLATURE

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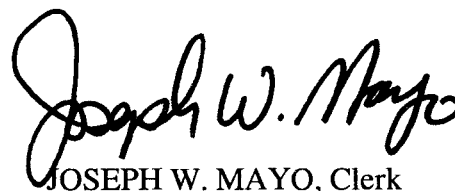
House of Representatives, January 6, 1999

**An Act to Implement the Recommendations of the Commission to
Examine the Rate Setting and Financing of Maine's Long-term Care
Facilities.**

(EMERGENCY)

Reported by Representative FULLER for the Commission to Examine Rate Setting and the Financing of Maine's Long-term Care Facilities, pursuant to Resolves 1997, chapter 81 and chapter 129.

Reference to the Joint Standing Committee on Health and Human Services suggested and printing ordered under Joint Rule 218.


JOSEPH W. MAYO, Clerk

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **Whereas,** the quality of care for residents in nursing
facilities is threatened by high staff turnover, the burdens of
excessive paperwork and the current rates and methods of
8 reimbursement used in the Medicare and Medicaid programs; and

10 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
12 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
14 safety; now, therefore,

16 **Be it enacted by the People of the State of Maine as follows:**

18 **Sec. 1. Pilot projects on performance contracts in the nursing facility**
field. The Department of Human Services shall undertake pilot
20 projects to reward high-quality care in nursing facilities based
on successful performance by the facilities. Successful
22 performance must be measured using quality indicators from the
minimum data set forms already in use and from consumer and
24 family satisfaction surveys. Successful performance rewards may
include but are not limited to financial rewards, favorable
26 public information and decreased regulation by the State. The
department shall avoid inadvertently restricting access to care;
28 avoid preserving, with financial or other assistance, facilities
that perform poorly because of incompetence; and act to preserve
30 consumer choice in urban and rural settings to the extent
practical.

32 **Sec. 2. Report regarding principles of reimbursement.** The
34 Department of Human Services shall develop new approaches to
reimbursement of nursing facilities under the Medicaid program
36 targeted to specific problems and shall report those approaches
to the Joint Standing Committee on Health and Human Services by
38 February 1, 1999. The approaches must include the following:

40 **1. Examining operating costs.** Examining operating costs to
determine specific areas in which reimbursement may be
42 inadequate. In doing so, the department shall consider the
following options for reimbursement:

44 A. Reimbursing facilities' costs for medical directors at a
46 level reflecting the increased level of care required for
nursing facility residents;

48 B. Merging the indirect and routine cost components;

50

2 C. Reimbursing for all aspects of direct care for
residents, including medical supplies, in one cost category
so that they may be adjusted by case mix;

4
6 D. Reviewing the most recent information from time studies
being used for the Medicare prospective payment system and
making a determination whether the time study presently in
8 use reflects nursing costs in the State's facilities and is
appropriate for use; and

10
12 E. Studying employment markets, labor costs and turnover
rates at facilities around the State and, for those
14 facilities that are at or above direct care limits,
developing methods for providing increased reimbursement.

16 This study must be conducted in conjunction with the Department
of Labor and must build upon the work already done by that
18 department and by the Maine Health Care Association;

20 **2. Rebasing reimbursement rates.** Rebasing reimbursement
rates from 1993 to 1996 or the most recent complete audited year
22 and adopting new medians and new cost caps in order to keep up
with the higher costs faced by facilities due to inflation,
24 increased paperwork requirements and higher resident need for
care. In doing so the department shall consider the following
26 options:

28 A. Rebasing costs with an emphasis on those most directly
affecting high-quality resident care; and

30
32 B. Rebasing cost components on a rolling schedule whether
periodically or when a stated event occurs, such as when 50%
of the facilities are over the cap;

34
36 **3. Tying caps to types of facilities.** Tying caps
applicable to the different cost components to the size of the
38 facility, thus placing higher caps on the smaller facilities,
which are often in rural areas, in recognition of the higher
costs faced by those facilities and the importance of maintaining
40 access to nursing facility care in rural areas; and

42 **4. Removing certain reimbursement incentives.** Removing any
reimbursement incentives that have unintended adverse impacts on
44 resident care.

46 **Sec. 3. Minimum staffing requirements.** The Department of Human
Services shall replace its current minimum staffing ratios with
48 minimum staffing requirements that are tied to the care needs of
residents and to the other needs of residents that affect the
50 quality of their lives and that ensure that adequate numbers of
direct care staff are available at all times to meet

2 residents' needs. The Commissioner of Human Services shall
3 present a proposal to implement and fund these new requirements
4 to the Joint Standing Committee on Health and Human Services by
5 May 1, 1999.

6 **Sec. 4. Report on paperwork reduction.** The Commissioner of
7 Human Services shall report to the Joint Standing Committee on
8 Health and Human Services by June 1, 1999 with a plan to reduce
9 paperwork in nursing facilities. The report must include
10 consideration of the opportunities presented by advancing
11 technology and the feasibility of linking data between the
12 minimum data set forms (MDS 2.0) and medical eligibility
13 determination (MED'96) forms.

14 **Sec. 5. Initiatives to make the Medicaid program more consumer**
15 **friendly.** The Department of Human Services shall take action to
16 improve the provision to the public of information on long-term
17 care services, costs and performance and to strengthen and make
18 more independent the Long-term Care Steering Committee by
19 allocating more resources to it.

20 **Sec. 6. Report on regulatory barriers to high-quality care.** The
21 Commissioner of Human Services shall study and identify
22 regulatory barriers to high-quality care and make recommendations
23 for relief or modification of departmental rules and shall report
24 to the Joint Standing Committee on Health and Human Services by
25 January 1, 2000.

26 **Sec. 7. Annual reports.** Beginning March 1, 2000, the Bureau
27 of Insurance shall collect information on long-term care
28 insurance and provide a report by March 1st each year to the
29 Commissioner of Human Services, the Joint Standing Committee on
30 Health and Human Services and the public. The information
31 collected must include the number and types of policies purchased
32 by consumers, the cost of premiums, daily benefit levels and the
33 duration of benefits. Information must also be collected on
34 policies paying benefits to or for consumers, including the types
35 of policies, daily benefit levels and the remaining duration of
36 benefits. The bureau shall also conduct a study of the use of
37 individual income tax credits as incentives to encourage the
38 purchase of long-term care insurance. The study must analyze the
39 effectiveness of tax credits in encouraging the purchase of
40 long-term care insurance in other states and the anticipated cost
41 to the State from establishing a tax credit for all or part of
42 the premium cost of qualifying long-term care policies. The
43 bureau shall provide a report to the Joint Standing Committee on
44 Health and Human Services by January 1, 2000.

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2 **Sec. 8. Report on changes in long-term care.** The Commissioner of
Human Services shall consult with the Long-term Care Steering
4 Committee, study changes in the delivery and financing of
long-term care and report to the Joint Standing Committee on
6 Health and Human Services by March 1, 2000. The report must
cover changes in the delivery of long-term care in facilities and
by home and community-based providers, changes in reimbursement
8 systems, including, but not limited to, the changes in the
Medicare reimbursement system, the use of "flex beds," the
10 quality of care provided to residents of this State, the growth
in home and community-based care and the availability of services
12 and providers in all parts of the State.

14 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.

16

18

SUMMARY

20 This bill contains the recommendations of the Commission to
Examine Rate Setting and the Financing of Maine's Long-term Care
22 Facilities. It requires the Department of Human Services to
undertake pilot projects on long-term care reimbursement that are
24 based on performance criteria, to report to the Joint Standing
Committee on Health and Human Services on potential changes in
26 the Medicaid principles of reimbursement for nursing facilities,
to present a proposal to the Joint Standing Committee on Health
28 and Human Services on minimum staffing requirements, to report to
the Joint Standing Committee on Health and Human Services on a
30 plan for paperwork reduction, to improve the provision of public
information on long-term care and to report to the Joint Standing
32 Committee on Health and Human Services on reducing or removing
regulatory barriers to high-quality care. The bill requires the
34 Bureau of Insurance to report to the Joint Standing Committee on
Health and Human Services on long-term care insurance and tax
36 credits to encourage the purchase of long-term care insurance.
The bill requires the Commissioner of Human Services to report to
38 the Joint Standing Committee on Health and Human Services on
changes in the delivery of long-term care services.