

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1510

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S.P. 457

In Senate, March 8, 2001

**An Act to Clarify Inconsistent Regulatory Requirements Affecting  
Newly Constructed Nursing Facilities and to Further Support a  
Continuum of Quality Long-term Care Services.**

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator MARTIN of Aroostook.  
Cosponsored by Representative KANE of Saco and  
President MICHAUD of Penobscot, Senator TURNER of Cumberland, Representatives:  
ANDREWS of York, LAVERRIERE-BOUCHER of Biddeford, FULLER of Manchester.

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

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Sec. 1. 22 MRSA §1708, sub-§3-A is enacted to read:

3-A. Medicaid budget neutrality. This subsection sets out the relationship among rules governing certificate of need approval, licensure and reimbursement of replacement nursing and residential care facilities that ensure Medicaid budget neutrality.

A. The provisions of this section apply to any newly constructed facility that:

(1) Replaces one or more other previously existing facilities that provided nursing facility services or residential care facility services, or both; and

(2) Fulfills any applicable Medicaid budget neutrality requirement. To fulfill Medicaid budget neutrality requirements, the newly constructed facility must demonstrate that the aggregate annual total of the department's Medicaid payments for the proposed nursing facility and residential care facility beds and related services is less than or equal to the sum of the trended-forward aggregate annual total amount of:

(a) The department's prior Medicaid payments to the combined nursing facility and for residential care facility beds that are being replaced; and

(b) The department's prior Medicaid payments for any additional beds that have been acquired by the replacement facility from other sources.

B. For a facility that fulfills the requirements of paragraph A, the department shall revise both the principles of reimbursement for nursing facilities and the principles of reimbursement for residential care facilities together with any licensing, certificate of need or other department program rules that may be applicable to ensure:

(1) That the total actual costs of nursing staff, other direct care staffing costs and other related costs within the direct patient care cost component, together with any related costs that are within the indirect or routine care cost components, which costs are consistent with the staffing patterns that are required or have been approved by the Division of Licensure and Certification, including regional differences in wage rates prevailing in the geographic

- 2                   area of the State where the facility is located, are  
3                   fully reimbursed;
- 4                   (2) That no upper limits, caps, state median rates or  
5                   other cost or payment limitations set forth in the  
6                   applicable principles of reimbursement may be applied  
7                   to limit payment of any costs or rates reviewed under  
8                   the certificate of need process or under any other  
9                   applicable department review process and found to be  
10                   reasonable and necessary to ensure the financial  
11                   feasibility of the project;
- 12                   (3) That the interim and final per diem payment rates  
13                   and the total Medicaid payments made by the department  
14                   to the facility in each cost reporting period are  
15                   consistent with, and do not assume or require  
16                   reductions in, the facility's reasonable capital and  
17                   noncapital operating costs as found and considered in  
18                   the certificate of need review process; and
- 19                   (4) That the department shall fully recognize and pay,  
20                   on an ongoing basis and not subject to any time  
21                   limitations, all costs and pro forma cost report  
22                   projections that the department has approved or found  
23                   reasonable in the course of issuing its certificate of  
24                   need approval, or that are set forth in the findings or  
25                   analysis on the basis of which that approval is based,  
26                   or have been deemed reasonable by the department in  
27                   granting approval for residential care facility beds.

32                   **SUMMARY**

34                   This bill addresses and resolves certain inconsistent  
35                   provisions in the certificate of need law governing nursing  
36                   facilities and in the principles of reimbursement governing both  
37                   nursing facilities and residential care facilities that adversely  
38                   affect facilities that replace prior existing facilities. Under  
39                   the current law, any certificate of need approval for new nursing  
40                   facilities or additional beds must ensure so-called "Medicaid  
41                   budget neutrality" and this bill does not change that requirement.

42                   Rather, the bill addresses circumstances where a replacement  
43                   facility has completely fulfilled applicable Medicaid budget  
44                   neutrality requirements, but is now prevented from receiving  
45                   compensation for its proposed nursing and other staff costs that  
46                   are necessary to meet licensure and certification requirements of  
47                   the Department of Human Services due to various statewide median  
48                   caps that limit reimbursement for certain particular components,  
49                   especially the direct patient care component, the indirect  
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2 patient care component and the routine care component. For  
3 residential care facilities, the applicable principles of  
4 reimbursement impose upper limits on direct care and routine care  
5 cost components.

6 In cases where the new facility's proposed annual expenses  
7 fulfill the Medicaid budget neutrality requirements, the bill  
8 requires the department to amend the existing nursing facility  
9 and residential care facility principles of reimbursement to  
10 ensure that:

12 1. The total actual cost of nursing staff, other direct  
13 staff and other direct and routine care costs that are within  
14 approved department staffing patterns will be fully reimbursed by  
15 the Medicaid system;

16 2. That no upper limits, caps, state median rates or other  
17 cost or payment limitations set forth in the principles of  
18 reimbursement may be applied to limit the payment to these  
19 facilities, so long as the underlying costs have been approved by  
20 the certificate of need process in the case of nursing facility  
21 beds or have otherwise been approved by the department in the  
22 case of residential care facility beds; and

24 3. That interim and final per diem rates and total Medicaid  
25 payments made to these replacement facilities fully recognize  
26 these approved costs both initially and on an ongoing basis.