

MAINE STATE LEGISLATURE

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L.D. 1924

DATE: *April 1, 2002* (Filing No. S-*523*)

HEALTH AND HUMAN SERVICES

Reported by:

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**STATE OF MAINE
SENATE
120TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT *A* to S.P. 722, L.D. 1924, Bill, "An Act to Support a Continuum of Quality Long-term Care Services"

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

PART A

Sec. A-1. 22 MRSA §1708, sub-§3, as amended by PL 1995, c. 696, Pt. A, §§32 and 33, is further amended to read:

3. Compensation for nursing homes. A nursing home, as defined under section 1812-A, or any portion of a hospital or institution operated as a nursing home, when the State is liable for payment for care, must be reimbursed at a rate established by the Department of Human Services pursuant to this subsection. The department may not establish a so-called "flat rate." This subsection applies to all funds, including federal funds, paid by any agency of the State to a nursing home for patient care. The department shall establish rules concerning reimbursement that:

A. Take into account the costs of providing care and services in conformity with applicable state and federal laws, rules, regulations and quality and safety standards;

~~A-1.--Include a specific increment to take into account the increased cost of any excise, gross receipts or similar tax that is first imposed by the State on or after January 1, 1993;~~

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2 B. Are reasonable and adequate to meet the costs incurred
by efficiently and economically operated facilities;

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6 C. Are consistent with federal requirements relative to
limits on reimbursement under the federal Social Security
Act, Title XIX; and

8
10 D. Ensure that any calculation of an occupancy percentage
or other basis for adjusting the rate of reimbursement for
12 nursing facility services to reduce the amount paid in
response to a decrease in the number of residents in the
14 facility or the percentage of the facility's occupied beds
excludes all beds that the facility has removed from service
16 for all or part of the relevant fiscal period in accordance
with section 304-F. If the excluded beds are converted to
18 residential care beds or another program for which the
department provides reimbursement, nothing in this paragraph
precludes the department from including those beds for
20 purposes of any occupancy standard applicable to the
residential care or other program pursuant to duly adopted
22 rules of the department.; and

24 E. Contain an annual inflation adjustment that:

26 (1) Reflects the actual rates of increase in the cost
28 of goods and services purchased by nursing facilities
in the State that are part of the direct care cost
component;

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32 (2) Recognizes regional variations in labor costs and
the rates of increase in labor costs and establishes at
least 4 regions for purposes of annual inflation
34 adjustments; and

36 (3) Uses the applicable regional inflation factor as
established by a national economic research
38 organization selected by the department to adjust costs
for the routine component.

40 Rules adopted pursuant to this paragraph are routine
42 technical rules as defined in Title 5, chapter 375,
subchapter II-A.

44 **Sec. A-2. 22 MRSA §1812-A**, as enacted by PL 1965, c. 403, is
46 amended to read:

48 **§1812-A. Nursing home defined**

50 A nursing home or nursing facility shall be defined as a
facility which is operated in connection with a hospital, or in

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2 which nursing care and medical services are prescribed by or
3 performed under the general direction of persons licensed to
4 practice medicine or surgery in the State, for the accommodation
5 of convalescent or other persons who are not acutely ill and not
6 in need of hospital care, but who do require skilled nursing care
7 and related medical services. The term "nursing home" shall be or
8 "nursing facility" is restricted to those facilities, the purpose
9 of which is to provide skilled nursing care and related medical
10 services for a period of not less than 24 hours per day to
11 individuals admitted because of illness, disease or physical or
12 mental infirmity and which provides a community service.

13 **Sec. A-3. Treatment of costs in principles of reimbursement for**
14 **nursing facilities.** The Department of Human Services shall amend the
15 rules regarding principles of reimbursement for nursing
16 facilities to ensure that reimbursement reflects the current cost
17 of providing services in an efficient manner. The revised
18 principles of reimbursement must:

19 **1. Adjustment of interim payments.** Upon request of a
20 facility and a showing that there have been dramatic market
21 increases in particular elements in the fixed cost component,
22 adjust that facility's interim payments. This provision applies
23 to fixed-cost component elements. The rules for adjustment of
24 interim payments for nursing facilities must apply to
25 reimbursement rates beginning July 1, 2002; and

26 **2. Retention of savings.** Allow each nursing facility to
27 retain the amount, if any, by which the interim per diem payment
28 rate for the routine component of allowable costs exceeds the
29 actual allowable per diem costs classified within the routine
30 component for any cost-reporting period to the extent that the
31 facility's actual allowable per diem costs in the direct care
32 component for the same cost reporting period exceed the cap
33 established for that component. The rules for retention of
34 savings must take effect July 1, 2003.

35 Rules adopted pursuant to this section are routine technical
36 rules as defined in the Maine Revised Statutes, Title 5, chapter
37 375, subchapter II-A.

PART B

38 **Sec. B-1. 22 MRSA §7902-A, sub-§2-A** is enacted to read:

39 2-A. Reimbursement increase due to inflation. The rules of
40 reimbursement for department medical and remedial private
41 nonmedical institutions under the Medicaid program and the rules

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of reimbursement for department medical and remedial room and board costs must contain an annual inflation adjustment that:

A. Reflects the actual rates of increase in the cost of goods and services in the direct care cost component that are purchased by department medical and remedial private nonmedical institutions in the State;

B. Recognizes regional variations in labor costs and the rates of increase in labor costs and establishes at least 4 regions for purposes of annual inflation adjustments; and

C. Uses the applicable regional inflation factor as established by a national economic research organization selected by the department to adjust costs in the routine component.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. B-2. Treatment of costs in medical and remedial private nonmedical institutions. By July 1, 2003, the Department of Human Services shall amend the rules regarding principles of reimbursement for Department of Human Services medical and remedial private nonmedical institutions under the Medicaid program and the rules of reimbursement for Department of Human Services medical and remedial room and board costs, including, without limitation, the principles governing direct care services reimbursed under the Medicaid program, to ensure that total reimbursement reflects the current cost of providing services in an efficient manner. The revised principles of reimbursement must:

1. Recognition and reimbursement of certain fixed costs. Recognize and reimburse as fixed costs all necessary and proper costs of liability, malpractice and other insurance; and

2. Adjustment of interim payments. Upon request of a facility and a showing that there have been dramatic market increases in particular elements in the fixed-cost component, adjust that facility's interim payments. The rules for adjustment of interim payments for residential care facilities must apply to reimbursement rates beginning July 1, 2002.

Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

PART C

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Sec. C-1. Treatment of costs in rules for reimbursement of adult family care services. By July 1, 2003, the Department of Human Services shall amend the rules for reimbursement of adult family care services to ensure that reimbursement reflects the current cost of providing services in an efficient manner. The revised rates of reimbursement must recognize and reimburse all necessary and proper expenditures for liability, malpractice and other insurance. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

PART D

Sec. D-1. Rules regarding penalties for occupancy declines for nursing facilities. The Department of Human Services shall amend the rules regarding the principles of reimbursement for nursing facilities regarding fixed costs to apply the existing occupancy adjustment when the occupancy for nursing facilities greater than 60 beds falls below 85% and when the occupancy for facilities of 60 beds or fewer falls below 80%. The rules amended pursuant to this section must apply to reimbursement rates for services provided beginning July 1, 2002. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

Sec. D-2. Rules regarding penalties for occupancy declines for medical and remedial private nonmedical institutions. By July 1, 2003, the Department of Human Services shall amend the rules regarding the principles of reimbursement for Department of Human Services medical and remedial private nonmedical institutions regarding fixed and routine costs to apply the existing occupancy adjustment when the occupancy for these residential care facilities greater than 25 beds falls below 85% and when the occupancy for facilities of 25 beds or fewer falls below 80%. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

PART E

Sec. E-1. 22 MRSA §42, sub-§7 is enacted to read:

7. Appeal process. The department shall amend the rules governing appeals of informal review decisions of Medicaid payment and cost report audit issues filed by providers of

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nursing facility services and medical and remedial private nonmedical institution services as provided in this subsection.

A. The department shall give to the provider involved in an informal review decision written notice of the appeal process and the time period for filing a notice of appeal.

B. The department shall contract with a person or persons who are not employees of the department for independent, impartial hearing officer services.

C. Compensation under the contract may reflect the number of appeals on which recommendations are made by the hearing officer and may not reflect the substance of the recommendations made by the hearing officer.

D. The hearing officer shall conduct a hearing de novo on issues raised in the notice of appeal filed by the provider and shall in a timely manner render a written recommendation based on the record and in accordance with applicable state and federal law, rule and regulation. The hearing officer shall provide a copy of the recommendation to the department and to the provider along with notice of the opportunity to submit written comments to the commissioner.

E. The recommendation of the hearing officer must be forwarded to the commissioner for a final decision, based on the record, which must include any written comment submitted in a timely manner by the provider and the department. The commissioner may adopt, adopt with modification or reject the recommendation of the hearing officer. The commissioner shall issue a final decision in writing, which must include the reasons for any departure from the recommendation of the hearing officer and notice of the process for appeal pursuant to Title 5, chapter 375, subchapter VII.

The department shall provide funding for contractual services under this subsection from within existing resources.

Sec. E-2. Amendment of rules. The Department of Human Services shall by October 1, 2002 amend the rules governing appeals of informal review decisions of Medicaid payment and cost report audit issues to comply with the Maine Revised Statutes, Title 22, section 42, subsection 7.

PART F

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2 **Sec. F-1. 5 MRSA §1664**, as amended by PL 1997, c. 655, §1, is
further amended by inserting after the 4th paragraph a new
paragraph to read:

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6 If the Governor submits legislation setting forth
appropriations or allocations for the Department of Human
Services with respect to reimbursement of nursing facilities and
medical and remedial private nonmedical institutions under the
Medicaid program and for medical and remedial room and board
costs reimbursed from the General Fund that differ from the full
budget request submitted by the Department of Human Services
under Title 22, section 41-A, the Governor shall simultaneously
submit a report to the joint standing committees of the
Legislature having jurisdiction over appropriations and financial
affairs and health and human services matters explaining why the
Governor's budget legislation differs from the budget submission
from the Department of Human Services.

18 **Sec. F-2. 22 MRSA §41-A** is enacted to read:

20 **§41-A. Operating budgets**

22
24 The commissioner shall include in the department's
submission of proposed budget information for use by the Governor
in presenting budgets to the Legislature an amount for
reimbursement of nursing facilities and medical and remedial
private nonmedical institutions covered by the department that
includes the amount necessary to pay all reimbursable costs for
these facilities determined pursuant to the department's
principles of reimbursement. The Governor shall include in the
budget submission the department's budget request regarding
reimbursement for nursing facilities and medical and remedial
private nonmedical institutions, including inflation, in
accordance with Title 5, section 1664, with recommendations the
Governor considers proper.

38 **PART G**

40 **Sec. G-1. Effective date.** Those sections of this Act that
42 amend the Maine Revised Statutes, Title 22, section 1708,
subsection 3 and enact Title 22, section 7902-A, subsection 2-A
take effect July 1, 2003.

46 **PART H**

48 **Sec. H-1. Appropriations and allocations.** The following
appropriations and allocations are made.

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2 HUMAN SERVICES, DEPARTMENT OF

4 Nursing Facilities 0148

6 Initiative: Provides funding to decrease the threshold at
8 which the department makes occupancy adjustments to nursing
10 facility reimbursement rates to 85% for facilities with more
12 than 60 beds and to 80% for facilities of 60 beds or fewer.

10	General Fund	2001-02	2002-03
12	All Other	\$0	\$132,284
14	Federal Expenditures Fund	2001-02	2002-03
16	All Other	\$0	\$260,367

18 HUMAN SERVICES, DEPARTMENT OF
DEPARTMENT TOTAL

18		2001-02	2002-03
20	GENERAL FUND	\$0	\$132,284
22	FEDERAL EXPENDITURES FUND	\$0	\$260,367
24	DEPARTMENT TOTALS - ALL FUNDS	\$0	\$392,651'

26 Further amend the bill by inserting at the end before the
summary the following:

28 FISCAL NOTE

30 2002-03

32 APPROPRIATIONS/ALLOCATIONS

34	General Fund	\$132,284
36	Other Funds	260,367

38 REVENUES

40	Other Funds	\$260,367
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42 The bill includes a General Fund appropriation for the
44 Department of Human Services of \$132,284 in fiscal year 2002-03.
46 The General Fund costs of the bill in the next biennium are
48 estimated to be \$3,612,665 in fiscal year 2003-04 and \$3,793,299
in fiscal year 2004-05. The bill also includes a Federal
Expenditures Fund allocation of \$260,367 in fiscal year 2002-03
for the federal match of these costs. The Federal Expenditures
Fund allocation required for 2003-04 is estimated to be
50 \$5,613,191 and for fiscal year 2004-05, \$5,893,850.

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2 The bill modifies the inflation adjustment the Department of
Human Services applies to nursing facility reimbursement rates,
4 requiring that the inflation adjustment reflect the actual
increase in direct care costs, recognize regional variations in
6 labor costs, and use a regional factor from a national economic
research organization to adjust routine costs. These provisions
8 are estimated to increase the annual inflation adjustment from 3%
to 7% per year. This requirement, not effective until July 1,
10 2003, will increase General Fund costs by \$2,031,490 in fiscal
year 2003-04 and by \$2,133,065 in fiscal year 2004-05. The
12 estimated increase in Federal Expenditures Fund allocations for
the federal match for these costs will be an estimated \$3,982,395
14 in fiscal year 2003-04 and \$4,181,514 in fiscal year 2004-05.

16 This bill also modifies the inflation adjustment the
Department of Human Services applies to medical and remedial
18 private nonmedical institution (PNMI) reimbursement rates
requiring that the inflation adjustment reflect the actual
20 increase in direct care costs, recognize regional variations in
labor costs, and use a regional factor from a national economic
22 research organization to adjust routine costs. This requirement,
not effective until July 1, 2003, will increase General Fund
24 costs by an estimated \$672,000 in fiscal year 2003-04 and by
\$705,600 in fiscal year 2004-05. Federal Expenditures Fund
26 allocations for the federal match for these costs will be
increased by an estimated \$1,317,343 in fiscal year 2003-04 and
28 by \$1,383,210 in fiscal year 2004-05.

30 The bill further modifies PNMI reimbursement rules to
include all necessary and proper costs of liability, malpractice
32 and other insurance as fixed costs that are passed through and
not subject to current caps. This requirement, not effective
34 until July 1, 2003, will increase General Fund costs by an
estimated \$599,550 in fiscal year 2003-04 and by \$629,528 in
36 fiscal year 2004-05.

38 The bill also modifies department rules for reimbursement of
adult family care services to require that reimbursement reflects
40 the current costs of providing services. This requirement, not
effective until July 1, 2003, will increase General Fund costs by
42 \$21,000 in fiscal year 2003-04 and by \$22,050 in fiscal year
2004-05. Federal Expenditures Fund allocations for the federal
44 match for these costs will be increased by an estimated \$41,167
in fiscal year 2003-04 and by \$43,225 in fiscal year 2004-05.

46 This bill would modify department rules regarding the
occupancy adjustment applied to nursing home rates. This
48 requirement would reduce the current adjustment threshold to 85%
for nursing homes with more than 60 beds and to 80% for homes
50 with 60 beds or fewer. For this requirement, effective July 1,

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2002, the bill includes a General Fund appropriation of \$132,284 in fiscal year 2002-03 and a Federal Expenditures Fund allocation of \$260,367. This requirement will increase General Fund costs by \$138,898 in fiscal year 2003-04 and by \$145,843 in fiscal year 2004-05. Federal Expenditures Fund allocations for the federal match for these costs will be increased by an estimated \$272,287 in fiscal year 2003-04 and by \$285,901 in fiscal year 2004-05.

The bill also modifies department occupancy rules regarding the adjustment applied to medical and remedial PNMIs based on the occupancy level of the facility. This requirement would reduce the current adjustment threshold to 85% for PNMIs with more than 25 beds and 80% for PNMIs with 25 beds or fewer. This requirement, not effective until July 1, 2003, will increase General Fund costs by an estimated \$149,727 in fiscal year 2003-04 and by \$157,213 in fiscal year 2004-05.

This bill would modify department rules governing the appeal of informal review decisions on nursing home and PNMI payment and cost-report audit issues. Part E would require the department contract for independent, impartial hearing officer services. The bill includes a provision requiring the department provide these services within existing resources. Effective July 1, 2002, the department estimates this provision will have a General Fund cost of just under \$7,000. The programmatic impact of requiring the department to absorb these costs within existing resources can not be determined at this time.

The bill also requires the department submit budget requests that fully fund all reimbursable costs for nursing facilities and PNMIs and, if the Governor submits legislation that differs from this request, requires the Governor explain this difference in a report to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and health and human services matters. This requirement would not have a direct fiscal impact given the Legislature is not required to approve this request. It is assumed any additional administrative costs resulting from the preparation of such reports would be absorbed by the department within existing budgeted resources.'

SUMMARY

This amendment removes from the bill the provisions on social worker qualifications. It retains provisions regarding adjustment of Medicaid reimbursement for nursing facilities and residential care facilities in the medical and remedial category and adds a reimbursement provision for adult family care homes. It provides for independent hearing officers to hear appeals of

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2 informal review decisions regarding Medicaid payment and cost
report audit issues. It requires the Department of Human
4 Services to submit budget requests that fully fund all
reimbursable costs for nursing facilities and residential care
6 facilities and requires the Governor, if the Governor submits
budget legislation that differs from that request, to explain the
8 difference in a report to the joint standing committees of the
Legislature having jurisdiction over appropriations and financial
10 affairs and health and human services matters. It also adds an
appropriation and allocation section and a fiscal note to the
bill.