

MAINE STATE LEGISLATURE

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MAINE

L.D. 2220

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STATE OF MAINE
SENATE
120TH LEGISLATURE
FIRST SPECIAL SESSION

SENATE AMENDMENT "H" to COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2220, Bill, "An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Year Ending June 30, 2003"

Amend the amendment in Part CC by inserting before section 1 the following:

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

3-A. Increases in nursing homes compensation rulemaking. In addition to rules established under subsection 3, the department shall establish rules concerning reimbursement that:

A. Ensure that the following increases in nursing home reimbursement are provided for all services rendered on and after July 1, 2002:

(1) The amount necessary to reimburse facilities, in the fixed cost component of the Medicaid rate, for the portion of the costs of the health care provider tax imposed by Title 36, chapter 373 allocable to Medicaid-covered services; and

(2) A statewide increase in per diem reimbursement rates for patient care costs, in an amount that represents an increase relative to reimbursement in effect on June 30, 2002 of not less than \$16,300,000 annually in the aggregate, consisting of:

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2 (a) An increase in the direct care component of
4 the rate to address a portion of the shortfall
6 existing on the effective date of this subsection
 of direct care revenues relative to direct care
 staffing costs; and

8 (b) A supplemental rate component that will
10 assist nursing facilities in recruiting and
12 retaining patient care staff and meeting other
 necessary patient care costs.

14 "Patient care costs," as used in this subparagraph,
16 means all direct care costs and all routine costs. In
18 setting rates to implement this subparagraph, the
 department shall provide relief for facility losses as
 equitably as possible and seek to minimize the need for
 substantial price increases to consumers not covered by
 Medicaid.

20 Rules adopted pursuant to this paragraph are routine
22 technical rules as defined in Title 5, chapter 375,
24 subchapter 2-A. Rules adopted pursuant to this paragraph
26 may take effect retroactively to the full extent necessary
28 to ensure that the increases required by this paragraph are
30 applicable to all services rendered by all nursing
32 facilities on and after July 1, 2002. Insofar as necessary
34 or expedient to accomplish this objective, the department
 shall provide in its rules for one-time, lump-sum payments
 to provide increased reimbursement for the period of time
 between July 1, 2002 and the effective date of any
 prospective rate changes established for the purpose of
 implementing this paragraph; and

36 B. Ensure that the supplemental component of the
38 reimbursement rate provided in paragraph A, subparagraph
 (2), division (b) is determined and paid on a prospective
 basis and not subject to retrospective adjustment.'

40 Further amend the amendment in Part CC by inserting after
42 section 1 the following:

44 ' **Sec. CC-2. 22 MRSA §7853, sub-§2-A** is enacted to read:

46 2-A. Reimbursement increases. The rules of reimbursement
 for residential care facilities must:

48 A. Recognize and reimburse as fixed costs all necessary and
50 proper costs of liability, malpractice and other insurance;

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2 B. Reflect a statewide increase in reimbursement for direct
3 care costs in an amount that represents an increase relative
4 to reimbursement in effect on June 30, 2002 of not less than
5 the difference between \$1,000,000 and the aggregate
6 statewide increase provided in paragraph A; and

7
8 C. Upon request of a facility and a showing that there have
9 been dramatic market increases in particular elements in the
10 fixed cost component, require an adjustment in that
11 facility's interim payments. This paragraph applies to
12 fixed cost component elements, including without limitation
13 liability insurance.

14 Notwithstanding any other provisions of this section, rules
15 adopted pursuant to this subsection are routine technical rules
16 as defined in Title 5, chapter 375, subchapter 2-A. Rules
17 amended pursuant to this subsection must take effect no later
18 than July 1, 2002.'

19 Further amend the amendment in Part CC in section 3 in that
20 part designated "~~§2871.~~" by striking out all of subsections 2 and
21 3 (page 31, lines 9 to 13 in amendment) and inserting in their
22 place the following:

23 '2. Annual net operating revenue. "Annual net operating
24 revenue" means gross charges for health care facility services to
25 residents less any amounts recorded as bad debts, charity care or
26 payor discounts, including Medicare and Medicaid contractual
27 adjustments.

28
29 3. Fiscal year. "Fiscal year" means the fiscal year
30 actually used by a person subject to this chapter in keeping that
31 person's books and records.'

32 Further amend the amendment in Part CC in section 3 in that
33 part designated "~~§2872.~~" by striking out all of the first line
34 (page 31, line 44 in amendment) and inserting in its place the
35 following:

36 '§2872. Tax imposed'

37 Further amend the amendment in Part CC in section 3 in that
38 part designated "~~§2872.~~" by striking out all of the first
39 indented paragraph (page 31, lines 46 to 50 in amendment) and
40 inserting in its place the following:

41 'Beginning July 1, 2002, in addition to all other fees and
42 taxes assessed or imposed by the Maine Revised Statutes, a tax is
43 imposed annually against each residential treatment facility and
44 nursing home located in the State calculated as follows.'
45

2 Further amend the amendment in Part CC in section 3 in that
3 part designated "~~§2873.~~" by striking out all of subsection 2
4 (page 32, lines 38 to 50 and page 33, lines 1 to 10 in amendment)
5 and inserting in its place the following:

6
7 '2. Reconciliation return required. On or before the 15th
8 day of the 4th month following the end of each fiscal year, each
9 person subject in a prior fiscal year or fiscal years to the tax
10 imposed by the chapter shall submit a reconciliation return on a
11 form prescribed and furnished by the assessor. The
12 reconciliation return must account for any adjustments necessary
13 to reconcile the annual tax for a prior fiscal year estimated
14 pursuant to subsection 1 with the person's correct tax liability,
15 and the person must submit with the reconciliation return payment
16 of any amount due for the prior fiscal year or fiscal years. The
17 taxpayer may also claim on the reconciliation return a refund or
18 credit for any overpayment of tax. The determination of amounts
19 due or overpaid is calculated by comparing the tax originally
20 estimated and paid in the prior fiscal year or fiscal years with
21 the tax imposed by section 2872 on taxable revenues accrued for
22 that fiscal year, together with any audit adjustments or
23 corrections of which the person has knowledge on or before the
24 15th day of the month immediately preceding the due date of the
25 return. The obligation to file a reconciliation return with
26 respect to a particular fiscal year continues until the relevant
27 taxable revenues for that fiscal year have been finally
28 determined and are no longer open to audit adjustment or
29 correction and the person has reported those revenues on a
30 reconciliation return.'

31 Further amend the amendment in Part CC by inserting after
32 section 3 the following:

33
34 'Sec. CC-4. Transition. For the period from July 1, 2002 to
35 June 30, 2003, each person subject to the tax under the Maine
36 Revised Statutes, Title 36, chapter 373 is liable for a tax equal
37 to 6% of its revenue received for that 12-month period and shall
38 make estimated tax payments reflecting the equivalent of 12
39 months of tax liability for that period.'

40
41 Further amend the amendment in Part CC in section 8 in the
42 first 4 lines (page 36, lines 46 to 49 in amendment) by striking
43 out the following: "The sections of this Part that enact taxes
44 on residential treatment facilities and nursing homes take effect
45 with regard to each of those classes of facilities" and inserting
46 in its place the following: 'This Part takes effect'

47
48 Further amend the amendment by striking out all of Part CC,
49 section 9 and inserting in its place the following:

2 **'Sec. CC-9. Effective dates.** That section of this Part that
provides appropriations and allocations to the Department of
4 Behavioral and Developmental Services takes effect when the
Commissioner of Human Services notifies the State Tax Assessor
6 that the tax on residential treatment facilities is a permissible
health care related tax as specified in this Part; and that
8 section of this Part that provides appropriations and allocations
to the Department of Human Services takes effect when the
10 Commissioner of Human Services notifies the State Tax Assessor
that the tax on nursing homes is a permissible health care
12 related tax as specified in this Part.'

14 Further amend the amendment by inserting after Part RR the
following:

PART SS

18 **Sec. SS-1. Rulemaking and state plan filing.** The Department of
Human Services shall adopt rules to implement those sections of
20 Part CC that enact the Maine Revised Statutes, Title 22, section
1708, subsection 3-A and Title 22, section 7853, subsection 2-A
22 and shall prepare and file a state plan amendment reflecting such
rulemaking as promptly as possible and in no event later than
24 necessary to ensure that increased reimbursement is actually paid
to all nursing homes in accordance with Title 22, section 1708,
26 subsection 3-A no more than 45 days after the effective date of
this Part. In the event that state plan approval is not received
28 in sufficient time to permit payments pursuant to Part CC to be
made no later than 45 days after the effective date of Part CC,
30 the Commissioner of Human Services shall immediately give written
notice of this fact and of the commissioner's estimate of the
32 likely delay in the effectiveness of reimbursement to the joint
standing committee of the Legislature having jurisdiction over
34 appropriations and financial affairs and the joint standing
committee of the Legislature having jurisdiction over health and
36 human services matters and to all licensed nursing homes.

38 Rules adopted pursuant to this Part are routine technical rules
40 as defined in Title 5, chapter 375, subchapter 2-A.'

42 Further amend the amendment by relettering or renumbering
any nonconsecutive Part letter or section number to read
44 consecutively.

FISCAL NOTE

48 The amendment will increase the General Fund cost of the
bill in fiscal year 2002-03 by an amount that cannot be
50 determined at this time. The change of the definition of fiscal

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year will result in additional administrative costs to the Bureau
of Revenue Services.

SUMMARY

This amendment revises Committee Amendment "A" by making the
following changes.

1. It allows a facility to compute tax liabilities and file
returns based on the facility's fiscal year, rather than the
state fiscal year, consistent with the treatment of other
taxpayers.

2. It delays the effective date of any Department of Human
Services' authority to withhold unpaid taxes from Medicaid
payments until Medicaid payment increases have taken effect.

3. It imposes a time limit for the Department of Human
Services to adopt rules and file state plan amendments to
implement nursing facility reimbursement increases.

4. It adds provisions to the amendment to require, in the
laws governing nursing facility and residential care facility
reimbursement, that the increases in reimbursement already
announced by the Department of Human Services must be effectuated.

SPONSORED BY:

(Senator MARTIN)

COUNTY: Aroostook