

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1293

S.P. 424

In Senate, March 11, 2003

**An Act To Improve the Fairness of the Health Care Provider Tax
and To Ensure Fair Implementation of Health Care Reimbursement
Reforms**

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 Senator: WESTON of Waldo, Representative: LAVERRIERE-BOUCHER of
Biddeford.

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

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

6 3-A. Increases in nursing home compensation. In addition
to rules established under subsection 3, the department shall
8 establish rules concerning reimbursement that:

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

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

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

24 (a) An increase in the direct care component of
26 the rate to address a portion of the current
shortfall in direct care Medicaid revenues
28 relative to the direct care staffing costs of
providing care to Medicaid recipients; and

30 (b) A supplemental rate component that assists
32 nursing facilities in recruiting and retaining
patient care staff and meeting other patient care
34 costs.

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

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

48 Rules adopted pursuant to this subsection are routine technical
50 rules as defined in Title 5, chapter 375, subchapter 2-A.

2 **Sec. 2. 22 MRSA §7853, sub-§7** is enacted to read:

4 **7. Reimbursement increases.** The rules of reimbursement for
6 residential care facilities must:

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

12 B. Reflect a statewide increase in reimbursement for direct
14 care costs in an amount that represents an increase relative
16 to reimbursement in effect on June 30, 2002 of not less than
18 the difference between \$1,000,000 and the aggregate
20 statewide increase provided in section 1708, subsection 3-A,
22 paragraph A; and

24 C. Upon request of a facility and a showing that there have
26 been unusual increases in particular elements in the fixed
28 cost component, require an adjustment in that facility's
30 interim payments. This paragraph applies to fixed cost
32 component elements, including without limitation liability
34 insurance.

36 Notwithstanding any other provisions of this section, rules
38 adopted pursuant to this subsection are routine technical rules
40 as defined in Title 5, chapter 375, subchapter 2-A.

42 **Sec. 3. 36 MRSA §2871, sub-§2**, as enacted by PL 2001, c. 714,
44 Pt. CC, §3 and affected by §8, is amended to read:

46 **2. Annual net operating revenue.** "Annual net operating
48 revenue" means gross charges less any amounts allowable recorded
as bad debts, charity care or payer discounts.

50 **Sec. 4. 36 MRSA §2871, sub-§3**, as enacted by PL 2001, c. 714,
52 Pt. CC, §3 and affected by §8, is repealed.

54 **Sec. 5. 36 MRSA §2871, sub-§3-A** is enacted to read:

56 **3-A. Facility fiscal year.** "Facility fiscal year" means
58 the fiscal year actually used by a person subject to this chapter
60 in keeping that person's books and records.

62 **Sec. 6. 36 MRSA §2871, sub-§6-A** is enacted to read:

64 **6-A. State fiscal year.** "State fiscal year" means the
66 uniform fiscal year established pursuant to Title 5, section 1501
68 for all financing and reporting of state government expenditures.

2 **Sec. 7. 36 MRSA §2872**, as enacted by PL 2001, c. 714, Pt. CC,
§3 and affected by §8, is repealed and the following enacted in
its place:

4
6 **§2872. Tax imposed; fiscal years beginning 2002**

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

12 **1. Residential treatment facilities.** The tax imposed on a
residential treatment facility under this section is calculated
14 as follows:

16 A. For the state fiscal year beginning July 1, 2002, the
tax imposed against each residential treatment facility is
18 equal to 6% of its annual gross patient services revenue for
the state fiscal year;

20 B. For facility fiscal years beginning on or after July 1,
2002 and before July 1, 2003, the tax imposed against each
22 residential treatment facility in addition to the tax
imposed pursuant to paragraph A is equal to 6% of its gross
24 patient services revenue for that portion of the facility
fiscal year occurring after June 30, 2003; and

26 C. For facility fiscal years beginning on or after July 1,
2003, the tax imposed against each residential treatment
28 facility is equal to 6% of its annual gross patient services
revenue for each full facility fiscal year.

30 **2. Nursing homes.** The tax imposed on a nursing home under
32 this section is calculated as follows:

34 A. For the state fiscal year beginning July 1, 2002, the
tax imposed against each nursing home is equal to 6% of its
36 annual net operating revenue for the state fiscal year;

38 B. For facility fiscal years beginning on or after July 1,
2002 and before July 1, 2003, the tax imposed against each
40 nursing home in addition to the tax imposed pursuant to
paragraph A is equal to 6% of its net operating revenue for
42 that portion of the facility fiscal year occurring after
44 June 30, 2003; and

46 C. For facility fiscal years beginning on or after July 1,
2003, the tax imposed against each nursing home is equal to
48 6% of its annual net operating revenue for each full
facility fiscal year.

2 The tax imposed by this section is an obligation of the
3 provider pursuant to section 2873 and may not be billed to a
4 patient as a separately stated charge.

6 **Sec. 8. 36 MRSA §2873, sub-§1**, as enacted by PL 2001, c. 714,
7 Pt. CC, §3 and affected by §8, is amended to read:

8 **1. Monthly returns required; payment of estimated tax**
9 **liability.** On or before the 15th day of each month, each person
10 subject to the tax imposed by this chapter shall submit to the
11 assessor a return on a form prescribed and furnished by the
12 assessor. Each return must be accompanied by a payment of an
13 amount equal to 1/12 of the person's estimated tax liability for
14 the entire current state fiscal year or facility fiscal year or,
15 in the case of a facility taxed on the basis of a partial
16 facility fiscal year after June 30, 2003, an amount equal to a
17 fraction of the estimated liability in which the denominator is
18 the number of months remaining in the facility fiscal year and
19 the numerator is one. A person may estimate its tax liability
20 for the current state fiscal year or facility fiscal year by
21 applying the tax rates provided by section 2872 to the most
22 recent state fiscal year or facility fiscal year for which
23 relevant reliable, complete information on total, taxable
24 ~~revenues have been finally determined and are no longer open to~~
25 ~~audit adjustment or correction, provided that the fiscal year in~~
26 ~~question began no earlier than 3 years prior to the beginning of~~
27 ~~the current fiscal year~~ is available. The assessor shall
28 prescribe by rule the criteria for determining reliability and
29 suitability of revenue information used for estimates. The rule
30 must provide for adjustments to reflect changes in the number of
31 licensed or certified beds or extraordinary changes in payment
32 rates. Once a taxpayer has made its first monthly payment for a
33 state fiscal year or facility fiscal year pursuant to this
34 subsection, the monthly amount must remain fixed throughout the
35 fiscal year unless the assessor authorizes a change. If the
36 person's estimated annual tax liability as reported and paid
37 pursuant to this subsection does not equal the tax imposed on
38 that person by section 2872, any adjustments necessary to
39 reconcile the estimated tax with the correct tax amount must be
40 made pursuant to subsection 2.

41 Rules adopted pursuant to this subsection are routine technical
42 rules as defined in Title 5, chapter 375, subchapter 2-A.

43 **Sec. 9. 36 MRSA §2873, sub-§2**, as enacted by PL 2001, c. 714,
44 Pt. CC, §3 and affected by §8, is repealed and the following
45 enacted in its place:

2 **2. Reconciliation return required.** On or before October
3 15, 2003 and on or before the 15th day of the 4th month following
4 the end of each facility fiscal year ending after October 15,
5 2003, each person subject in that state fiscal year or facility
6 fiscal year to the tax imposed by this chapter shall submit a
7 reconciliation return on a form prescribed and furnished by the
8 assessor. The reconciliation return must account for any
9 adjustments necessary to reconcile the annual tax for a prior
10 state fiscal year or facility fiscal year estimated pursuant to
11 subsection 1 with the person's correct tax liability, and the
12 person shall submit with the reconciliation return payment of any
13 amount due for the prior state fiscal year or facility fiscal
14 year or portion of any prior state fiscal year or facility fiscal
15 year. The taxpayer may also claim on the reconciliation return a
16 refund or credit for any overpayment of tax. The determination
17 of amounts due or overpaid is calculated by comparing the tax
18 originally estimated and paid in the prior state fiscal year or
19 facility fiscal year or years with the tax imposed by section
20 2872 on taxable revenues accrued for that period, together with
21 any audit adjustments or corrections of which the person has
22 knowledge on or before the 15th day of the month immediately
23 preceding the due date of the return. The obligation to file a
24 reconciliation return with respect to a particular state fiscal
25 year or facility fiscal year continues until the relevant taxable
26 revenues for that period have been finally determined and are no
27 longer open to audit adjustment or correction and the person has
28 reported those revenues on a reconciliation return.

29 **Sec. 10. 36 MRSA §2873, sub-§3**, as enacted by PL 2001, c. 714,
30 Pt. CC, §3 and affected by §8, is amended to read:

31 **3. Audit period to remain open; accrual of penalties and**
32 **interest.** Notwithstanding any other provision of law, the tax
33 imposed against a person by section 2872 for any fiscal year
34 remains open to audit and further assessment by the assessor
35 until the person's taxable revenues for that fiscal year have
36 been finally determined. Any underestimates of tax liability
37 reported and paid pursuant to subsection 1 are subject to an
38 assessment of interest at the rate provided in section 186 from
39 the date or dates of underpayment until payment is made, unless
40 the estimated tax liability was calculated ~~by applying the tax~~
41 ~~rates provided by section 2872 to the most recent fiscal year for~~
42 ~~which relevant taxable revenues have been finally determined~~ in
43 compliance with the standards adopted by the assessor pursuant to
44 subsection 1, in which case no interest may accrue prior to the
45 date on which the reconciliation return for the year is due. Any
46 amount of tax that is reported on a reconciliation return
47 required by subsection 2 but not paid at the time the
48 reconciliation return is filed is subject to the accrual of
49 interest as provided by section 186, as well as to any applicable
50

2 provisions of section 187-B, including, without limitation, the
penalty provided by section 187-B, subsection 2 for failure to
4 pay a tax.

6 **Sec. 11. Nursing facilities assessment Other Special Revenue Funds**
program. There is created in the Department of Human Services
8 an Other Special Revenue Funds program to be known as the
"Nursing Facilities Assessment," which is composed of the
10 revenues received from the tax imposed on nursing homes by the
Maine Revised Statutes, Title 36, section 2872. Funds in the
12 Nursing Facilities Assessment must be expended only for nursing
facility services and may be expended only upon allocation by the
14 Legislature. Any unexpended funds remaining at the end of each
fiscal year may not lapse but must be carried forward to be used
16 for the same purposes.

18 Notwithstanding the requirements of this section, \$9,500,000
must be allocated annually to the General Fund, adjusted for
inflation using the same economic trend factor methodology
20 employed by the Department of Human Services for purposes of the
Maine Revised Statutes, Title 22, section 1708, subsection 3-A.

22 **Sec. 12. Retroactivity.** This Act applies retroactively to July
24 1, 2002.

26 Rules adopted pursuant to the Maine Revised Statutes, Title
22, section 1708, subsection 3-A take effect retroactively to
28 ensure that the increases required by Title 22, section 1708,
subsection 3-A, paragraph C are applicable to all services
30 rendered by all nursing facilities on or after July 1, 2002. To
the extent necessary or expedient to accomplish this objective,
32 the department shall provide in its rules for one-time, lump-sum
payments to provide increased reimbursement for the period of
34 time between July 1, 2002 and the effective date of any
prospective rate changes established under Title 22, section
36 1708, subsection 3-A.

38 Rules amended pursuant to the Maine Revised Statutes, Title
22, section 7853, subsection 7 are retroactive to July 1, 2002.

40 **Sec. 13. Effective date.** This Act takes effect when the
42 provisions in Public Law 2001, chapter 714, Part CC, section 8
are met.

46 SUMMARY

48 This bill ensures that enhanced reimbursement that is
essential to the long-term care industry will be made possible by
50 revenue generated through the recently enacted provider tax and
be timely implemented by the Department of Human Services.

2 This bill also alleviates the unusual administrative burden
4 imposed on Maine's nursing homes by certain features of the
6 recently enacted provider tax, specifically the requirement that
8 tax returns be based on the state fiscal year rather than the
fiscal year used by the facility in keeping its books and records
and certain rigid requirements with respect to the manner in
which estimated taxes are to be computed.

10 The bill prescribes reimbursement reforms for nursing homes
12 and residential care facilities, respectively.

14 The bill makes a technical correction in the definition of
"annual net operating revenue."

16 The bill provides for a transition to taxation on the basis
18 of facility fiscal year information and returns, instead of state
fiscal years, after the close of the current state fiscal year.

20 The bill introduces reasonable flexibility into the tax
22 estimation and reconciliation processes for the provider tax.

24 The bill creates a special revenue account for the proceeds
of the new provider tax.

26 The Act applies retroactively to July 1, 2002.