

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)



# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

---

Legislative Document

No. 1517

---

H.P. 1041

House of Representatives, April 25, 2017

### An Act To Ensure Access to Behavioral Health Services

---

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

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative PERRY of Calais.  
Cosponsored by Senator CHIPMAN of Cumberland and  
Representatives: CHACE of Durham, DENNO of Cumberland, MALABY of Hancock,  
MARTIN of Eagle Lake, TALBOT ROSS of Portland, Senator: KATZ of Kennebec.

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

2 **Sec. 1. 5 MRSA §12004-I, sub-§60-C** is enacted to read:

3 **60-C.**

4 <u>Mental Health</u>	<u>Behavioral Health</u>	<u>Legislative Per Diem</u>	<u>34-B MRSA §3911</u>
5	<u>Oversight Council</u>	<u>and Expenses for</u>	
6		<u>Legislators/Expenses</u>	
7		<u>Only for Other</u>	
8		<u>Members</u>	

9 **Sec. 2. 22 MRSA §3195** is enacted to read:

10 **§3195. Rate-setting for certain MaineCare services**

11 **1. Elements of rate-setting.** The department shall set reimbursement rates for  
12 targeted case management services, community support services, developmental and  
13 behavioral evaluation clinic services, rehabilitative and community support services for  
14 children with cognitive impairments and functional limitations, behavioral health services  
15 and private nonmedical institution services pursuant to this section. Rate-setting must:

16 A. Use actual provider costs related to the services;

17 B. Survey stakeholders for all services and include the stakeholders in this review  
18 process; and

19 C. Use actual cost-related data generated by current service providers, with  
20 reasonable, timely and expected verification processes by the department, to calculate  
21 reimbursement rates that reflect the actual cost of service delivery.

22 **2. Study.** New rates under this section must be based on a department study  
23 conducted on neutral cost-finding principles and take into account the most recent  
24 available information about actually incurred costs, adjusted for inflation from the period  
25 when the costs were incurred through the period to which the rates are to apply.

26 **3. Cost elements.** Rates established pursuant to this section must provide for  
27 compensation of providers of the services in subsection 1 for the following cost elements:

28 A. Direct salary of the provider;

29 B. Direct benefits for the provider, including health care and other employee  
30 benefits;

31 C. Direct program support for the provider, including costs for clinical supervision;

32 D. Direct costs, including occupancy, utilities, travel and liability insurance  
33 expenses;

34 E. Indirect costs;

35 F. Actual costs for special populations; and

36 G. Actual costs for providing services in a rural setting.

1 Payments per unit of service must be based on realistic estimates of achievable  
2 productivity targets, using information from actual provider experience and accounting  
3 for cancellations, failures to keep appointments, travel, training and education.

4 **4. Rate review initiated.** The department shall conduct a rate review pursuant to  
5 this section in cases of substantive changes in federal or state programs or evidence-based  
6 programs that affect the total cost of delivery of a particular MaineCare-funded service.

7 **Sec. 3. 34-B MRSA c. 3, sub-c. 6** is enacted to read:

8 **SUBCHAPTER 6**

9 **BEHAVIORAL HEALTH OVERSIGHT COUNCIL**

10 **§3911. Behavioral Health Oversight Council**

11 **1. Members.** The Behavioral Health Oversight Council, as established by Title 5,  
12 section 12004-I, subsection 60-C and referred to in this subchapter as "the council,"  
13 consists of the following 15 members:

14 A. The chairs of the joint standing committees of the Legislature having jurisdiction  
15 over health and human services matters, appropriations and financial affairs and  
16 criminal justice and public safety matters;

17 B. The Commissioner of Health and Human Services or the commissioner's  
18 designee, the Commissioner of Corrections or the commissioner's designee and the  
19 Commissioner of Public Safety or the commissioner's designee;

20 C. Two members appointed by the President of the Senate, including:

21 (1) A consumer of or an advocate for consumers of behavioral health services;  
22 and

23 (2) A representative of providers of behavioral health services;

24 D. Two members appointed by the Speaker of the House of Representatives,  
25 including:

26 (1) A consumer of or an advocate for consumers of behavioral health services;  
27 and

28 (2) A representative of providers of behavioral health services; and

29 E. Two members appointed by the Governor, representing the law enforcement and  
30 public safety community.

31 The council may appoint advisory council members who have experience and expertise in  
32 particular services under consideration.

33 **2. Terms; reappointments; vacancies.** A member of the council who is appointed  
34 pursuant to subsection 1 serves for a 3-year term and may be reappointed. A vacancy on  
35 the council of an appointed member must be filled by the appointing authority.

1           **3. Chairs; meetings; staff assistance.** The chairs of the joint standing committee of  
2 the Legislature having jurisdiction over health and human services matters or their  
3 designees shall serve as cochairs of the council. The council shall meet not less than 6  
4 times a year.

5 The Office of Policy and Legal Analysis shall provide staff support for the operation of  
6 the council, except that this staff support is not authorized when the Legislature is in  
7 regular or special session. In addition, the council may contract for administrative,  
8 professional and clerical services if funding permits.

9           **4. Duties.** The council shall review rates pursuant to subsection 5 and advise the  
10 Commissioner of Health and Human Services, the Commissioner of Corrections and the  
11 Commissioner of Public Safety regarding the behavioral health system in the State in  
12 order to:

13           A. Increase accessibility of high-quality behavioral health services through:

14                   (1) Expansion of individualized, family-centered and community-based services;

15                   (2) Maximization of federal revenue to fund behavioral health services; and

16                   (3) Improved administrative oversight and efficiencies; and

17           B. Aid in the development of a community system of care to:

18                   (1) Alleviate hospital emergency department overcrowding;

19                   (2) Reduce unnecessary admissions and lengths of stay in hospitals and  
20 residential treatment settings;

21                   (3) Reduce or alleviate the need for treatment of mental health and substance use  
22 disorder within the correctional settings of state and county facilities;

23                   (4) Increase availability of outpatient services; and

24                   (5) Promote recovery-oriented care.

25           **5. Review rates.** Notwithstanding Title 5, chapter 375, the Department of Health  
26 and Human Services, office of substance abuse and mental health services, office of  
27 aging and disability services and Office of Child and Family Services shall submit  
28 proposals for initial rates, reductions to existing rates and any changes in elements of  
29 rate-setting under Title 22, section 3195 to the council for review. The council shall  
30 review the proposals. If the council does not recommend acceptance of a proposal, it may  
31 forward a counter-recommendation to the joint standing committees of the Legislature  
32 having jurisdiction over health and human services matters and appropriations and  
33 financial affairs. If the council forwards a recommendation to the joint standing  
34 committees pursuant to this subsection, the joint standing committees shall:

35           A. Hold a joint public hearing on the subject of the proposed rates to receive the  
36 council's rationale for its recommendation; and

37           B. Not later than 90 days after the date of submission of rates by the departments to  
38 the council, make recommendations to the departments regarding the proposed rates.  
39 The departments shall incorporate recommendations of both the council and the joint  
40 standing committees when setting rates.

1            **6. Reports.** On or before the first Wednesday in December annually, the council  
2 shall submit a report to the Governor and to the joint standing committees of the  
3 Legislature having jurisdiction over health and human services matters and appropriations  
4 and financial affairs on the council's activities under this section.

5            **Sec. 4. Behavioral Health Oversight Council first appointments, terms**  
6 **and meeting.** All appointments to the Behavioral Health Oversight Council pursuant to  
7 the Maine Revised Statutes, Title 34-B, section 3911, subsection 1 must be made no later  
8 than October 1, 2017.

9            Notwithstanding Title 34-B, section 3911, subsection 2, of the members initially  
10 appointed to the Behavioral Health Oversight Council pursuant section 3911, subsection  
11 1, paragraph C, the President of the Senate shall appoint one member to serve for a 2-year  
12 term and one member to serve for a 3-year term; of the members initially appointed to the  
13 council pursuant to Title 34-B, section 3911, subsection 1, paragraph D, the Speaker of  
14 the House shall appoint one member to serve for a 2-year term and one member to serve  
15 for a 3-year term; and, of the members initially appointed to the council pursuant to Title  
16 34-B, section 3911, subsection 1, paragraph E, the Governor shall appoint one member to  
17 serve for a 2-year term and one member to serve for a 3-year term.

18            The chairs of the council shall convene the first meeting of the council no later than  
19 October 18, 2017.

20            **Sec. 5. Department of Health and Human Services to increase**  
21 **MaineCare rates.** No later than June 1, 2018, the Department of Health and Human  
22 Services shall amend the rules in Chapter 101: MaineCare Benefits Manual, Chapter III,  
23 Section 13, Targeted Case Management Services; Section 17, Allowances for Community  
24 Support Services; Section 23, Developmental and Behavioral Clinic Services; Section 28,  
25 Rehabilitative and Community Support Services for Children with Cognitive  
26 Impairments and Functional Limitations; Section 65, Behavioral Health Services; and  
27 Section 97, Private Non-Medical Institution Services to increase reimbursement rates to  
28 ensure a net increase in funding from fiscal year 2008-09 to fiscal year 2018-19 of 20%.

29            **SUMMARY**

30            This bill establishes the Behavioral Health Oversight Council to review  
31 reimbursement rate-setting for certain behavioral health services provided under  
32 MaineCare and advise the Commissioner of Health and Human Services, the  
33 Commissioner of Corrections and the Commissioner of Public Safety regarding the  
34 behavioral health system in the State. It sets out requirements for reimbursement rate-  
35 setting to be used by the Department of Health and Human Services to determine rates for  
36 certain behavioral health services provided under MaineCare. It directs the Department  
37 of Health and Human Services to amend its rules in Chapter 101: MaineCare Benefits  
38 Manual, Chapter III, Sections 13, 17, 23, 28, 65 and 97 to increase reimbursement rates  
39 by fiscal year 2018-19 to reflect a 20% increase from rates in fiscal year 2008-09.