

MAINE STATE LEGISLATURE

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L.D. 1867

Date: 4-11-22

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HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1377, L.D. 1867, "An Act To Codify
MaineCare Rate System Reform"

Amend the bill by striking out everything after the enacting clause and inserting the
following:

Sec. 1. 5 MRSA §12004-I, sub-§36-F is enacted to read:

36-F.

<u>Human</u>	<u>MaineCare Rate Reform Expert</u>	<u>Not Authorized</u>	<u>22 MRSA</u>
<u>Services</u>	<u>Technical Advisory Panel</u>		<u>§3173-J,</u>
			<u>sub-§5</u>

Sec. 2. 22 MRSA §3173-J is enacted to read:

**§3173-J. Rate-setting system for development and maintenance of sustainable,
efficient and value-oriented MaineCare payment models and rates**

This section establishes a rate-setting system for the development and maintenance of
MaineCare payment models and rates that comply with the requirement in 42 United States
Code, Section 1396a that rates be consistent with efficiency, economy and quality of care;
that are adequate to support MaineCare member access to services; and that are equitable
and data-driven.

1. Definitions. As used in this section, unless the context otherwise indicates, the
following terms have the following meanings.

A. "Alternative payment model" means a health care payment model that uses
financial incentives to promote or leverage greater value for patients, purchasers,
payers or providers and that connects at least a portion of reimbursement to
performance on defined quality measures.

B. "MaineCare section of policy" means a set of MaineCare-covered services, as
categorized by the department through the adoption of rules that specify the parameters
for coverage.

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1 C. "Rate determination" means a process conducted by the department to establish the
 2 reimbursement rate methodology, base rate amount or payment model for a MaineCare
 3 section of policy or for a specific covered service, whether through adoption or
 4 adaptation of a benchmark rate from another payer or development through a rate
 5 study.

6 D. "Rate study" means an analysis conducted by the department or its contracted
 7 vendor to develop a recommended rate methodology and resulting base rate amount
 8 and payment model based on the service model and cost components for the service.

9 **2. Rate-setting system principles and processes.** The department shall establish
 10 MaineCare provider reimbursement rates, including those paid through fee-for-service and
 11 alternative payment models. The rates must be established in accordance with the
 12 following principles and processes and adopted through rulemaking as described in
 13 subsection 3. The department shall:

14 A. Develop annually a schedule of rate determination by MaineCare section of policy
 15 in consultation with the MaineCare Rate Reform Expert Technical Advisory Panel
 16 established under subsection 5 as follows:

- 17 (1) Post the rate determination schedule on its publicly accessible website;
- 18 (2) Provide an opportunity for the public to review and comment on the rate
 19 determination schedule and make available a summary of these comments on its
 20 publicly accessible website; and
- 21 (3) Conduct off-schedule rate determinations as the department finds appropriate;

22 B. Conduct or contract for, every 4 years, a comprehensive benchmarking report to
 23 compare MaineCare rates for all services to those paid by Medicare, at least 5
 24 comparison Medicaid states and any appropriate Maine commercial payers. The
 25 department shall provide public notice of the initiation of the comprehensive
 26 benchmarking process, provide an opportunity for the public to review and comment
 27 on the draft report and make available a summary of these comments alongside the
 28 final report;

29 C. Conduct a rate determination process for any contemplated change in
 30 reimbursement amount or model for a MaineCare section of policy or for a specific
 31 covered service, in accordance with the following procedures:

- 32 (1) Provide public notice of initiation of the rate determination for a MaineCare
 33 section of policy or for a specific covered service;
- 34 (2) Consider and, when appropriate, adopt alternative payment models that use
 35 financial incentives to promote or leverage greater value for the MaineCare
 36 program. This consideration must include a review of research on any available
 37 national models or best practices regarding payment models for the service;
- 38 (3) Determine whether a Medicare rate is available for the service and whether the
 39 Medicare rate represents the most appropriate benchmark and payment model;
- 40 (4) In the absence of a Medicare rate, determine whether a rate from a non-
 41 Medicare payer source, including, but not limited to, commercial health care rates
 42 in the State or other states' Medicaid rates, is available for the service and whether
 43 this alternate payer rate represents the most appropriate benchmark and payment

- 1 model. The department shall determine an appropriate percentage of the
- 2 benchmark rate for the service, taking into consideration the findings of the
- 3 benchmarking report conducted in accordance with paragraph B;
- 4 (5) Conduct a rate study for every service for which a benchmark rate or payment
- 5 model in accordance with subparagraph (3) or (4) either is unavailable or is
- 6 inconsistent with the goals of efficiency, economy and quality of care to support
- 7 member access. Each rate study must include the following:
- 8 (a) A review of data, which must include:
 - 9 (i) An assessment as to whether the delivery of service and associated
 - 10 requirements have changed since the previous rate study, if available, to
 - 11 determine if the rate methodology needs to be revised;
 - 12 (ii) The collection of data on provider costs and cost-related aspects of the
 - 13 delivery of service and associated requirements through existing cost
 - 14 reports, provider surveys and other available data sources; and
 - 15 (iii) Research on any available national models or best practices regarding
 - 16 cost-related aspects of the delivery of service and associated requirements;
 - 17 and
- 18 (b) Developing or updating rates by considering the following:
 - 19 (i) The appropriateness of adoption of a change in payment model
 - 20 consistent with the purposes of this section;
 - 21 (ii) The current rate assumptions and their appropriateness given current
 - 22 provider costs, best practices or changes in the delivery of service and
 - 23 associated requirements;
 - 24 (iii) The findings for related services of any comprehensive benchmarking
 - 25 report under paragraph B; and
 - 26 (iv) The degree to which services are dependent on MaineCare
 - 27 reimbursement, including, but not limited to, cost factors, such as average
 - 28 wage, that may be reflective of restraints of MaineCare reimbursement
 - 29 versus costs of the broader marketplace; and
- 30 (6) Upon completion of the rate determination process, present the department's
- 31 rationale and recommendations for rate methodology, resulting base rate amount
- 32 and payment model for public comment prior to the rule-making process; convene
- 33 a meeting of interested providers and other interested members of the public to
- 34 discuss the recommendations and hear comments; and respond in writing to
- 35 comments with an explanation of whether and how feedback was incorporated into
- 36 the final rate determination; and
- 37 D. Ensure that base rate amounts developed under paragraph C are updated to keep
- 38 pace with changes in the costs of delivering the service by:
 - 39 (1) For rates benchmarked to Medicare rates according to paragraph C,
 - 40 subparagraph (3), referencing Medicare rates for the most current year available,
 - 41 updated at least annually, and reviewing the current established percentage

1 benchmark, as appropriate, taking into consideration the findings of the most recent
 2 benchmarking report conducted in accordance with paragraph B;

3 (2) For rates benchmarked to an alternate payer source in accordance with
 4 paragraph C, subparagraph (4), updating rates to the most current year of data for
 5 that payer source at least once every 2 years and reviewing the current established
 6 percentage benchmark, as appropriate, taking into consideration the findings of the
 7 benchmarking report conducted in accordance with paragraph B; and

8 (3) For base rates determined through a rate study in accordance with paragraph C,
 9 subparagraph (5), providing an annual cost-of-living adjustment effective on a
 10 consistent date to be established by the department for each service that has not
 11 received a rate adjustment within the 12 months prior to the effective date of the
 12 cost-of-living adjustment and for which the department determines benchmarking
 13 in accordance with paragraph C, subparagraph (3) or (4) is not appropriate or
 14 advisable. In establishing cost-of-living adjustments, the department shall:

15 (a) Use inflation indices determined through rulemaking to reflect a reasonable
 16 cost of providing services for different categories of services; and

17 (b) Maximize use of a single, consistent and general cost-of-living adjustment
 18 index, consistent with the cost-of-living adjustment applied to minimum wage
 19 laws, in order to ensure that the cost-of-living adjustment reflects increases to
 20 provider costs for delivering the service rather than other factors, such as
 21 private sector price increases or cost-shifting from different payers.

22 **3. Rulemaking for establishment of rate methodology.** In addition to the
 23 requirements of Title 5, chapter 375, rulemaking for MaineCare provider reimbursement
 24 rate methodologies must comply with the following.

25 A. Establishment of a rate methodology for a new MaineCare section of policy or
 26 specific new service or changes to an existing rate methodology must be adopted
 27 through rulemaking in accordance with the Maine Administrative Procedure Act.
 28 Rulemaking is not required for the addition of new billing codes or to specify rates for
 29 specific billing codes if there is no change in the overall methodology and rates are
 30 posted in accordance with this section.

31 B. For services the department benchmarks to Medicare or other available payer rates
 32 for reimbursement, the department shall adopt a rule specifying the percentage,
 33 frequency of benchmark updates for alternate payer sources and other aspects of the
 34 benchmark methodology. Additional rulemaking is not required for rate changes tied
 35 to the adopted benchmark methodology, or for the addition of new billing codes, unless
 36 the department changes the benchmarking percentage or methodology.

37 C. No later than July 1, 2023, the department shall adopt a rule specifying the
 38 appropriate cost-of-living adjustment methodology for different types of services in
 39 accordance with subsection 2, paragraph D, subparagraph (3). Additional rulemaking
 40 is not required for rate increases tied to annual cost-of-living adjustment increases
 41 unless the department changes the cost-of-living adjustment methodology.

42 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
 43 chapter 375, subchapter 2-A unless rules to adopt MaineCare reimbursement rates are
 44 designated as major substantive rules in another section of law.

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1 **4. Funding.** The department may use funds from the MaineCare Stabilization Fund
2 established in section 3174-KK in order to fund the rate adjustments made in accordance
3 with this section when funding may be needed in addition to appropriations associated with
4 separate initiatives.

5 **5. MaineCare Rate Reform Expert Technical Advisory Panel.** The MaineCare Rate
6 Reform Expert Technical Advisory Panel, referred to in this subsection as "the panel," is
7 established for the purpose of advising the commissioner by providing technical,
8 nonpartisan, 3rd-party expertise to inform the department's planned schedule and actions
9 on rate assumptions, payment models and other related technical matters. The panel may
10 not propose rates or methodologies. The commissioner or the commissioner's designee
11 shall serve as chair.

12 A. The panel includes the following members:

- 13 (1) A representative from the Maine Health Data Organization;
14 (2) A representative from the Department of Professional and Financial
15 Regulation, Bureau of Insurance;
16 (3) A representative from the Department of Professional and Financial
17 Regulation;
18 (4) A representative from the department's division of licensing and certification;
19 (5) A representative from the Office of Affordable Health Care;
20 (6) A representative from the Department of Labor; and
21 (7) A representative from the Department of Administrative and Financial
22 Services.

23 B. The panel shall:

- 24 (1) Review annual schedules of MaineCare sections of policy scheduled for rate
25 determinations under subsection 2, paragraph A;
26 (2) Review assumptions and recommendations from rate determinations under
27 subsection 2, paragraph C;
28 (3) Review findings from benchmarking reports to inform the appropriateness of
29 MaineCare rate levels across services; and
30 (4) Advise on other related technical matters, as appropriate.

31 C. The panel shall meet at least twice per year and as otherwise convened by the
32 commissioner. Meetings of the panel are public, and the panel shall provide public
33 notice of each meeting and an opportunity for public comment.

34 **6. MaineCare Advisory Committee.** The MaineCare Advisory Committee, required
35 by 42 Code of Federal Regulations, Section 431.12 and further described in department
36 rules, and referred to in this subsection as "the committee," shall participate in the
37 department's rate-setting system in accordance with this subsection.

38 A. The committee must include a permanent rate system subcommittee that allows
39 broad participation by the full spectrum of types of MaineCare providers. Participation
40 in the rate system subcommittee may not be limited by number or type of stakeholder

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1 in order to allow for participation by any stakeholder affected by MaineCare
2 reimbursement policy and interested in participating in the work of the subcommittee.

3 B. At each meeting of the committee or rate system subcommittee, if requested by the
4 chair of the committee or rate system subcommittee, the department shall provide
5 updates on the department's planned and completed activities under this section for
6 discussion and advisement, including, but not limited to, the following:

7 (1) Schedule and status of rate determination, planned and in progress, by
8 MaineCare section of policy;

9 (2) Status of and plans for comprehensive benchmarking studies; and

10 (3) Contemplated rulemaking to establish rate methodology resulting from rate
11 determination processes.

12 C. The rate system subcommittee may formulate and present recommendations to the
13 committee pertaining to the department's activities under this section.

14 **7. Index of MaineCare rates by service code; publicly accessible website.** The
15 department shall maintain and annually update a centralized master index of rates by
16 service code and post this index on its publicly accessible website. The index must contain
17 the following:

18 A. The service code, including any modifiers that affect reimbursement;

19 B. The current year rate;

20 C. The source for the rate, including, but not limited to, Medicare or alternate payer
21 benchmark, rate study or other source, and the year and the author of the review, study
22 or report that justified the rate;

23 D. The year the base rate was last updated prior to the application of any subsequent
24 cost-of-living adjustments;

25 E. Whether the rate is subject to cost-of-living adjustments and, if so, the identity of
26 the benchmark index;

27 F. The section of MaineCare policy pursuant to which the rate was adopted; and

28 G. The target date for the next rate review.

29 In addition to the index, the department shall post on its publicly accessible website all rate
30 studies, benchmark reports and other materials used by the department to develop the rates
31 and payment models.

32 **8. Notice prior to implementation.** For planned rate changes that do not require
33 rulemaking as described in subsection 3, the department shall provide notice prior to
34 implementation, of no less than 30 calendar days for cost-of-living adjustments and no less
35 than 7 calendar days for Medicare fee schedule changes or the addition of new service
36 codes, to stakeholders who request to receive such notice.'

37 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
38 number to read consecutively.

39 **SUMMARY**

40 This amendment makes the following changes to the bill.

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COMMITTEE AMENDMENT "A" to H.P. 1377, L.D. 1867

- 1 1. It adds definitions of "alternative payment model," "MaineCare section of policy,"
2 "rate determination" and "rate study."
- 3 2. It clarifies the rule-making process and establishes that rules are routine technical
4 rules unless otherwise identified as major substantive rules for MaineCare reimbursement
5 rate setting.
- 6 3. It clarifies that all rate reviews must be posted on a publicly accessible website and
7 adds public notice and comment periods on rate review schedules.
- 8 4. It adds a requirement for public notice of initiation of the comprehensive
9 benchmarking process, opportunity for public review and comment and posting of a
10 summary of comments.
- 11 5. It revises the rate determination process to clarify that the process includes
12 consideration of alternative payment methodologies; determination of the appropriateness
13 of the benchmarking rate for each service to Medicare or other payer rate; conducting rate
14 studies for services that are not appropriate for benchmarking; and public notice and
15 comment for every rate review.
- 16 6. It requires research into best practices when considering an alternative payment
17 model.
- 18 7. It requires that rates, once developed, be updated regularly to keep pace with the cost
19 of providing services.
- 20 8. It removes a representative of the Office of Fiscal and Program Review from the
21 expert technical advisory panel and establishes the panel in the Maine Revised Statutes,
22 Title 5.
- 23 9. It adds the MaineCare Advisory Committee as an additional advisory body on the
24 rate-setting system and requires the Department of Health and Human Services to consult
25 with the committee on the department's planned and completed rate-setting activities,
26 including schedule and status of rate reviews, status and plans for comprehensive
27 benchmarking studies and contemplated rulemaking related to reimbursement rate
28 methodologies. It adds a requirement for a rate system subcommittee within the committee.
- 29 10. It adds a requirement that the department maintain and annually update a
30 centralized master index of rates by service code and post it on the department's publicly
31 accessible website.
- 32 11. It adds a requirement that the department give advance notice of rate updates that
33 do not require rulemaking to stakeholders who request notice.

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LD 1867

LR 2350(02)

An Act To Codify MaineCare Rate System Reform

Fiscal Note for Bill as Amended by Committee Amendment *ACH 968*

Committee: Health and Human Services

Fiscal Note Required: No

Fiscal Note

No fiscal impact