

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## SECOND REGULAR SESSION-2024

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Legislative Document

No. 2287

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S.P. 1000

In Senate, April 9, 2024

### Resolve, to Fully Fund Nursing Homes

(AFTER DEADLINE)

(EMERGENCY)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by President JACKSON of Aroostook.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** a workforce shortage and funding shortfalls have led to the closure of  
4 nursing homes and limited access to long-term care, particularly in rural areas of the State;  
5 and

6           **Whereas,** MaineCare reimbursement rates have not been adequate to cover the costs  
7 of long-term care; and

8           **Whereas,** adequate funding is needed to prevent closures of nursing homes and  
9 preserve access to long-term care for the State’s oldest and most vulnerable adults; and

10           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
11 the meaning of the Constitution of Maine and require the following legislation as  
12 immediately necessary for the preservation of the public peace, health and safety; now,  
13 therefore, be it

14           **Sec. 1. Amendment of Principles of Reimbursement for Nursing Facilities**  
15 **rule. Resolved:** That, no later than July 1, 2024, the Department of Health and Human  
16 Services shall amend its rule Chapter 101: MaineCare Benefits Manual, Chapter III,  
17 Section 67, Principles of Reimbursement for Nursing Facilities as follows:

18           1. To increase the reimbursement rates to nursing facilities, other than rural nursing  
19 facilities as defined in subsection 2, to provide for a supplemental allowance per patient  
20 per day that is the difference between the amount reimbursed by the MaineCare program  
21 and the MaineCare allowable costs as reported in the as-filed MaineCare 2022 cost report,  
22 as long as the supplemental allowance is no more than \$90 per patient per day. Annual  
23 inflation adjustments provided pursuant to the Maine Revised Statutes, Title 22, section  
24 1708, subsection 3, paragraph E and any one-time funding provided to nursing facilities  
25 during the COVID-19 pandemic for additional costs may not be included in the  
26 supplemental allowance. The supplemental allowance rate is cost settled against both  
27 routine and direct care components costs;

28           2. To increase the reimbursement rates to rural nursing facilities to provide for a  
29 supplemental allowance per patient per day that is the difference between the amount  
30 reimbursed by the MaineCare program and the MaineCare allowable costs as reported in  
31 the as-filed MaineCare 2022 cost report. The supplemental allowance rate is cost settled  
32 against both routine and direct care components costs. “Rural nursing facility” means, for  
33 the purposes of this resolve, a nursing facility that is not located in a Core Based Statistical  
34 Area as defined by the United States Census Bureau or that is not located within 15 miles  
35 of a critical access hospital as designated by the United States Department of Health and  
36 Human Services, Centers for Medicare and Medicaid Services; and

37           3. To allow for education and training costs for direct care staff to be included as a  
38 cost component under the MaineCare program for:

39           A. Education and training for direct care staff for certification or recertification and  
40 for any continuing education that is considered necessary for carrying out duties as  
41 direct care staff in nursing facilities;

1 B. Reimbursement at the applicable rate pursuant to the Maine Revised Statutes, Title  
2 22, section 7402 to direct care staff receiving the education and training under  
3 paragraph A for the hours spent receiving the education and training; and

4 C. Reasonable costs for educators providing education and training to direct care staff  
5 under paragraph A.

6 **Sec. 2. Rate reform; nursing facilities not including rural nursing facilities.**

7 **Resolved:** That the Department of Health and Human Services shall ensure that new  
8 nursing facility reimbursement rates for nursing facilities that are not rural nursing facilities  
9 that are developed pursuant to the Maine Revised Statutes, Title 22, section 3173-J are no  
10 less than reimbursement rates established under section 1 including an annual inflation  
11 adjustment for the most recent year provided pursuant to Title 22, section 1708, subsection  
12 3, paragraph E.

13 **Sec. 3. Rate reform; rural nursing facilities. Resolved:** That the Department  
14 of Health and Human Services shall ensure that new rural nursing facility reimbursement  
15 rates that are developed pursuant to the Maine Revised Statutes, Title 22, section 3173-J  
16 are compared to the most recently as-filed MaineCare cost report for rural nursing facilities  
17 and reimburse at the higher rate.

18 **Sec. 4. Private nonmedical institutions; medical and remedial service**  
19 **facilities; assistance from unspent funds. Resolved:** That the Department of Health  
20 and Human Services shall direct any funds appropriated for one-time supplements or  
21 extraordinary circumstance allowances for nursing facilities within the scope of rule  
22 Chapter 101: MaineCare Benefits Manual, Chapter III, Section 67, Principles of  
23 Reimbursement for Nursing Facilities or for private nonmedical institutions within the  
24 scope of rule Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97, Appendix  
25 C, Medical and Remedial Service Facilities to be used for increased costs and lost revenue  
26 due to the COVID-19 pandemic that have remained unspent to be used to create additional  
27 financial assistance opportunities for private nonmedical institutions within the scope of  
28 rule Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97, Appendix C,  
29 Medical and Remedial Service Facilities.

30 **Sec. 5. United States Centers for Medicare and Medicaid Services**  
31 **approval. Resolved:** That the Department of Health and Human Services shall seek  
32 any approvals necessary to achieve the requirements of this resolve from the United States  
33 Department of Health and Human Services, Centers for Medicare and Medicaid Services.

34 **Emergency clause.** In view of the emergency cited in the preamble, this legislation  
35 takes effect when approved.

36 **SUMMARY**

37 This resolve requires the Department of Health and Human Services to amend its rule  
38 Chapter 101: MaineCare Benefits Manual, Chapter III, Section 67, Principles of  
39 Reimbursement for Nursing Facilities to:

40 1. Provide for a supplemental allowance per patient per day that is the difference  
41 between the amount reimbursed by the MaineCare program and the MaineCare allowable  
42 costs as reported in the as-filed MaineCare 2022 cost report. The amount may be no more  
43 than \$90 per patient per day for nursing facilities not including rural nursing facilities;

1           2. Allow for education and training costs for direct care staff to be included as a cost  
2 component under the MaineCare program, including paying direct care staff wages while  
3 attending the education or training and paying the trainers; and

4           3. Establish the category of rural nursing facilities.

5           The resolve requires any new nursing facility reimbursement rates developed pursuant  
6 to the Maine Revised Statutes, Title 22, section 3173-J to be no less than reimbursement  
7 rates that include supplemental allowances and annual inflation adjustments for nursing  
8 facilities. For rural nursing facilities, the higher of the rate in the most recent as-filed cost  
9 report and the rate developed pursuant to rate reform is the reimbursement rate that must  
10 be paid.

11          The resolve requires the department to direct any funds appropriated for one-time  
12 supplements or extraordinary circumstance allowances for nursing facilities or private  
13 nonmedical institutions within the scope of the department's rules for increased costs and  
14 lost revenue due to the COVID-19 pandemic that have remained unspent to be used to  
15 create additional financial assistance opportunities for private nonmedical institutions  
16 within the scope of the department's rules.

17          The resolve requires the department to seek any approvals necessary from the United  
18 States Department of Health and Human Services, Centers for Medicare and Medicaid  
19 Services.