

MAINE STATE LEGISLATURE

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118th Maine Legislature
Commission To Examine Rate Setting And The Financing
Of Long-Term Care Facilities

Interim Report
December 15, 1997

Members:

Joseph M. Kozak, Chair
Senator Philip E. Harriman
Senator Rochelle Pingree
Representative Elaine Fuller
Representative Jean Ginn-Marvin
Francis Finnegan
Michael Goodwin
Harmon D. Harvey
Carolyn Kasabian
Michael McNeil
Judy McGuire
Hilton Power
Wayde Rankin
Betsy Sweet
Sally Wagley

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Jon Clark, Legislative Counsel
Jon Kachmar, Researcher
Office of Policy and Legal Analysis
13 State House Station
Augusta, ME 04333, Rm. 101/107/135
(207) 287-1670

STATE OF MAINE
118TH MAINE LEGISLATURE

COMMISSION TO EXAMINE RATE SETTING AND THE
FINANCING OF LONG-TERM CARE FACILITIES

Joseph M. Kozak, Chair

December 12, 1997

Honorable Elizabeth Mitchell
Chair, Legislative Council
118th Legislature

Dear Speaker Mitchell:

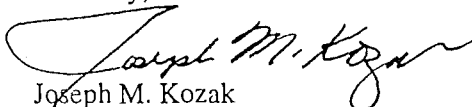
On behalf of the members of the Commission to Examine Rate Setting and the Financing of Long-term Care Facilities I'd like to thank you for granting our request for an extension on our reporting deadline until November 1998.

As we continue to collect information, our sense of the magnitude of the study increases; we expect to be very busy indeed next interim. We have discussed the resources and time we feel we will need in order to do a credible job. We feel we will need 10-12 meetings to complete our business. We also believe we will need to bring in at least 2 consultants from other states to talk with us about issues related to rate setting in the long-term care industry. It appears we will be able to bring these experts to us for the cost of their expenses, which we estimate will be in the area of \$2,500 each. Factoring in miscellaneous expenses, including postage costs for our mailings, we have determined we will need an additional appropriation of \$10,000.

We understand there is a study underway to examine the manner of funding studies in the future. Since we do not know what the resolution of that study may be, we are submitting, in accordance with our authorizing legislation (Section 7 of Chapter 81 of the Resolves of 1997), the attached interim report with proposed legislation to provide the funding we recommend. We have filed the legislation with the Revisor of Statutes for processing.

Thank you again for your support of the continuation of this important study.

Sincerely,



Joseph M. Kozak
Chair

Enclosures

cc: Members, Legislative Council
Members, Long-term Care Study Commission
Sally Tubbesing, Executive Director, Legislative Council
Commission service list

118th Maine Legislature

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**Interim Report of the
Commission to Examine Rate Setting and the Financing
of Long-term Care Facilities**

The Commission to Examine Rate Setting and the Financing of Long-term Care Facilities Commission, established by Resolves of 1997, Chapter 81 (copy attached as Appendix A), was directed to examine a variety of issues related to the long-term care industry and to issue its report with necessary legislation by December 15, 1997.

On November 13, 1997, the commission submitted a letter to the Legislative Council requesting an extension of its deadline until November 1998 (letter attached as Appendix B). On November 20, pursuant to the authority granted under Resolves of 1997, Chapter 81, Section 7, the Council approved the requested extension.

The commission was called to its first meeting on November 3, 1997. It held three subsequent informational meetings on November 12, 19 and December 3 in which it received voluminous data concerning various aspects of the long-term care industry. The commission will hold an additional planning session on December 17 and expects to resume its study in April, 1998, following the Second Regular Session of the 118th Legislature.

Findings and Recommendations

In order to complete its examination of the complex issues outlined in Resolves of 1997 Chapter 81, the commission finds it will require supplemental funding. The commission expects to need to hold ten to twelve meetings during the 1998 interim. It also finds that in order to obtain an adequate understanding of the complex issues surrounding rate setting for long-term care facilities, it will need to bring before it at least two expert consultants. The commission estimates that the cost of funding the expenses of the consultants, who will come from out of state, will be approximately \$2,500 a person. In order to fund this expense, to continue to fund expenses and per diem for legislative members and to cover miscellaneous costs of copying and mailing materials, the commission recommends the commission receive supplemental funding of \$10,000.

Pursuant to its authority under Resolves of 1997, Chapter 81, Section 7, attached to this report as Appendix C is draft legislation which implements the commission's recommendation for supplemental funding.

APPENDIX A

Resolves 1997, Chapter 81

APPROVED

CHAPTER

JUN 12 '97

81

BY GOVERNOR

RESOLVES

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-SEVEN

—
H.P. 486 - L.D. 657

**Resolve, to Establish the Commission to Examine
Rate Setting and the Financing of Long-term Care Facilities**

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

Whereas, this resolve establishes the Commission to Examine Rate Setting and the Financing of Long-term Care Facilities; and

Whereas, this resolve is necessary as an emergency measure to afford adequate time for the issues to be appropriately addressed by the commission; and

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

Sec. 1. Commission established. Resolved: That the Commission to Examine Rate Setting and the Financing of Maine's Long-term Care Facilities, referred to in this resolve as the "commission," is established; and be it further

Sec. 2. Commission membership. Resolved: That the commission consists of the following 15 members:

1. Two members of the Senate, appointed by the President of the Senate, one representing the majority party and one representing the minority party;

2. Two members of the House of Representatives, appointed by the Speaker of the House, one representing the majority party and one representing the minority party; and

3. Eleven other members appointed as follows:

A. The following members appointed by the Governor:

(1) The chair, who must have experience with rate setting;

(2) One representative of the Department of Human Services;

(3) One representative of the Long-term Care Steering Committee;

(4) One representative of the Maine Health and Higher Educational Facilities Authority; and

(5) One representative of a commercial lending institution; and

B. The following members appointed jointly by the President of the Senate and the Speaker of the House of Representatives:

(1) One representative of the long-term care ombudsman program;

(2) One representative of the Maine Health Care Association;

(3) One representative of the Maine Hospital Association;

(4) One representative of providers of long-term care services who is familiar with the principles of reimbursement;

(5) One representative of consumers of long-term care services who is familiar with the principles of reimbursement; and

(6) One representative of the American Association of Retired Persons; and be it further

Sec. 3. Appointments; meetings. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The Executive Director of the Legislative Council must be notified by all appointing authorities once the selections have been made. Within 15 days after appointment of all members, the Chair of the Legislative Council shall call and convene the first meeting of the commission; and be it further

Sec. 4. Duties. Resolved: That the commission shall examine the following issues concerning long-term care facilities:

1. The setting of rates for the different payers within the long-term care system, including monthly charges and charges for resident services and supplies, and ensuring affordability;

2. The levels of profit guaranteed by the rate of reimbursement, a comparison of rates among the different states and financial stability within the system;

3. The advisability of rate equalization between private and public payers, implementation of rate equalization and what the possible benefits and detriments might be for nursing facility residents;

4. The case mix payment system for private paying patients;

5. The possibility of regulating the long-term care industry in the manner of regulating public utilities; and

6. The relationship between staffing levels and quality of care and maintaining high-quality care; and be it further

Sec. 5. Staff assistance. Resolved: That the commission may request staffing assistance from the Legislative Council; and be it further

Sec. 6. Compensation. Resolved: That the members of the commission are not entitled to compensation or reimbursement of any type, except that members of the commission who are Legislators are entitled to receive per diem and reimbursement for travel and other necessary expenses related to their attendance at meetings of the commission; and be it further

Sec. 7. Report. Resolved: That the commission shall submit its report, together with any necessary implementing legislation, to the Second Regular Session of the 118th Legislature no later than December 15, 1997. If the commission requires an extension, it may apply to the Legislative Council, which may grant the extension; and be it further

Sec. 8. **Appropriation. Resolved:** That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

1997-98

LEGISLATURE

**Commission to Examine Rate Setting
and the Financing of Maine's Long-term
Care Facilities**

Personal Services	\$1,100
All Other	1,500

Provides funds for the per diem and expenses of legislative members and miscellaneous costs, including printing, of the Commission to Examine Rate Setting and the Financing of Maine's Long-term Care Facilities.

LEGISLATURE

TOTAL

\$2,600

Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

APPENDIX B

Letter Requesting Extension

STATE OF MAINE
118TH MAINE LEGISLATURE

COMMISSION TO EXAMINE RATE SETTING AND THE
FINANCING OF LONG-TERM CARE FACILITIES

Joseph M. Kozak, Chair

November 13, 1997

Honorable Elizabeth H. Mitchell
Chair, Legislative Council
118th Maine Legislature

Dear Speaker Mitchell:

I am writing on behalf of the Commission to Examine Rate Setting and the Financing of Long-term Care Facilities to request an extension of our reporting deadline.

As you know, the resolve establishing this study commission was signed into law as an emergency on June 12th. Under the terms of the resolve, the first meeting was to be held before the end of July. The resolve establishes a reporting deadline of December 15th.

As the Legislature clearly understood, the scope and magnitude of this study are significant. The issues surrounding rate setting for long-term care facilities are many, interrelated and difficult. The time-line established for the commission by the resolve provided some five months to undertake the study.

However, as you are well aware, the appointments to this commission were only recently completed. As a result, we were first convened on November 3, forty-two days before our deadline to issue a report.

Members of the commission are unanimously of the opinion that the issues raised by the study are complex, difficult and cannot be treated quickly or in a cursory manner. The commission has received data showing that the nursing facilities in the state currently carry on the order of a quarter billion dollars of debt, a sizable chunk of which is backed by the State's moral obligation. The commission feels it would be imprudent to produce any recommendations that could impact the repayment of this debt without first undertaking a thorough examination of the industry and the financial implications of any changes we might recommend. This will obviously require substantial time.

Commission members are of the opinion that the commission has insufficient time to undertake a credible study and to produce a report that will be of use to the Legislature. We also note that the issues raised by the study are sufficiently interrelated that it seems inappropriate and counter-productive for us to focus on some subset of the issues for

study; a report on such a subset of issues would likely amount to little more than a recitation of the interrelationship of those issues with other issues not examined.

We have been meeting weekly in an effort to begin the examination of the issues. We have been reviewing data and have developed a better sense of the scope of the study and the time we feel is needed to complete it. We have reviewed data on the financial condition of the industry (including long-term debt, financial ratios and comparisons with other states), staffing levels, the quality of care assessment system and the case mix reimbursement system. The data is voluminous and raises as many important questions as it answers.

In the process of examining the data we have noted a number of issues not specifically identified in the resolve that we feel need to be examined in the course of any serious study of the subject. The list is dynamic but presently includes these issues:

- What is the interface of the long-term care industry with the rest of the health care industry (how do decisions affecting one impact the other)?
- What are the effects of regulatory requirements on the industry (e.g., nurse time spent filling out forms)?
- How should and does the State's moral-obligation backing of industry debt affect state policy decisions with regard to the industry?
- How viable and stable is the industry today?
- What is the quality of current industry management and how can it be assessed?
- How do staffing levels relate to quality of care?
- What are the financial effects of the recent federal repeal of the so-called Boren Amendment?
- How will managed care impact the industry and how will it affect the State's control over the quality of care?

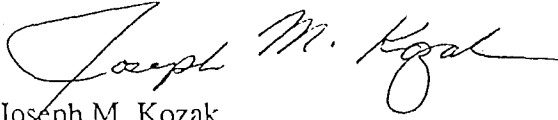
Based on our evaluation of the scope and magnitude of the study, the commission unanimously requests an extension until November 1998.

We are aware that the session begins in January. We are also aware that there are a number of issues associated with extending this study into the session, including the serious scheduling difficulties it will create for a number of members of the commission and the reduced availability of legislative staff.

We are asking for an extension to the next interim in order to avoid the difficulties associated with attempting to conduct the study during the session. This extension would allow us to set the work aside during the session and to recommence work in earnest after the session finished. Our report and recommendations would be available to the Legislature in the following session.

On behalf of the commission, I would like to thank the Council in advance for its consideration of this request. We look forward to the Council's decision and any further guidance it might care to provide to us in this matter.

Sincerely,

A handwritten signature in black ink that reads "Joseph M. Kozak". The signature is fluid and cursive, with the first name "Joseph" being the most prominent.

Joseph M. Kozak
Chair

cc: Members, Legislative Council
Sally Tubbesing
Commission members
Commission service list

APPENDIX C

Legislation Implementing Commission's
Supplemental Funding Recommendation

**Submitted by the Commission to Examine Rate Setting
and the Financing of Maine's Long-term Care Facilities
Pursuant to Resolves of 1997, Chapter 81, Section 7**

**Resolve, to Provide Supplemental Funding for the Commission to Examine
Rate Setting and the Financing of Maine's Long-term Care Facilities**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this resolve is necessary as an emergency measure to provide funding for the Commission to Examine Rate Setting and the Financing of Maine's Long-term Care Facilities to continue its work immediately following the Second Regular Session of the 118th Legislature; and

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

Sec. 1. Extended study. Resolved: That the Commission to Examine Rate Setting and the Financing of Maine's Long-term Care Facilities, established by Resolves of 1997, Chapter 81 and granted a reporting extension until November, 1998 by the Legislative Council on November 20, 1997 pursuant to authority granted under that resolve, shall submit its report, together with any necessary implementing legislation, to the First Regular Session of the 119th Legislature by November 30, 1998.

Sec. 2. Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

1997-98

LEGISLATURE

**Commission to Examine Rate Setting
and the Financing of Maine's Long-term
Care Facilities**

Personal Services	\$4,840
All Other	\$5,160

Provides supplemental funds for the per diem and expenses of legislative members, funding for consultants, and miscellaneous costs of the Commission to Examine Rate Setting and the Financing of Maine's Long-term

Care Facilities.

**LEGISLATIVE
TOTAL**

\$10,000

Emergency Clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

SUMMARY

This resolve provides supplemental funding for the Commission to Examine Rate Setting and the Financing of Maine's Long-term Care Facilities.