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No. 1758

S.P. 588

In Senate, May 21, 2019

**An Act To Clarify and Amend MaineCare Reimbursement
Provisions for Nursing and Residential Care Facilities**

(EMERGENCY)

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,** the 90-day period may not terminate until after the beginning of the next
4 fiscal year; and

5 **Whereas,** certain expenditures and modifications of policy set forth in this
6 legislation affect obligations and expenses incident to the operation of state departments
7 and institutions during the course of the current fiscal year and require immediate
8 attention; and

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

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

14 **Sec. 1. 22 MRSA §1708, sub-§3, ¶F,** as amended by PL 2017, c. 460, Pt. B, §1,
15 is further amended to read:

16 F. Establish a nursing facility's base year every 2 years and increase the rate of
17 reimbursement beginning July 1, 2014 and every year thereafter until June 30, 2018.
18 For the state fiscal year beginning July 1, 2018, the base year for each facility is its
19 fiscal year that ended in the calendar year 2016. For state fiscal years beginning on
20 or after July 1, 2019, subsequent rebasing must be based on the most recent cost
21 report filings available as of April 30th of that respective year. The department may
22 provide a mechanism for subsequent adjustments to base year costs to reflect any
23 material difference between as-filed cost reports used in rebasing and subsequent
24 determinations of audited, allowable costs for the same fiscal period. The
25 department's rules must provide that, beginning in the state fiscal year beginning July
26 1, 2018, the rates set for each rebasing year must include an inflation adjustment for a
27 cost-of-living percentage change in nursing facility reimbursement each year in
28 accordance with the United States Department of Labor, Bureau of Labor Statistics
29 Consumer Price Index medical care services index- and, beginning in the state fiscal
30 year beginning July 1, 2019, the inflation adjustment must be further modified by:

31 (1) An adjustment of the projected inflation from the beginning to the end of the
32 payment year based upon the costs paid by nursing facilities for goods and
33 services required to provide patient care;

34 (2) An adjustment using the forecasted increase in the skilled nursing facility
35 market basket index for the coming federal fiscal year, as published in the
36 Federal Register, when the United States Department of Health and Human
37 Services, Centers for Medicare and Medicaid Services publishes the Medicare
38 program's skilled nursing facility prospective payment system rates for the
39 coming federal fiscal year; and

40 (3) When carrying out cost report audits and determining final prospective
41 payment system rates pursuant to department rules regarding costs related to

1 resident care under the principles of reimbursement for nursing facilities, an
2 adjustment to reflect the actual inflation and take into account any further
3 changes to the medical care services index or market basket index projections
4 over the payment year.

5 Any rebasing done pursuant to this paragraph may not result in a nursing facility
6 receiving a reimbursement rate that is lower than the rate in effect on June 30, 2018,
7 inclusive of casemix adjustment.

8 **Sec. 2. PL 2017, c. 460, Pt. B, §§3 and 4** are amended to read:

9 **Sec. B-3. Rate increases for nursing facilities.** The Department of Health and
10 Human Services shall amend its rule in 10-144, Chapter 101: MaineCare Benefits
11 Manual, Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities to
12 provide for the following.

13 **1. Special wage allowance for fiscal year 2018-19 and subsequent fiscal years.**

14 For the state fiscal year ending June 30, 2019, a special supplemental allowance must be
15 made to provide for increases in contract labor, wages and ~~wage-related~~ allowable
16 benefits and taxes in both the direct care cost component and routine care cost component
17 as follows. An amount equal to 10% of allowable contract labor, wages and ~~associated~~
18 allowable benefits and taxes as reported on each facility's as-filed cost report for its fiscal
19 year ending in calendar year 2016 must be added to the cost per resident day in
20 calculating each facility's prospective rate, notwithstanding any otherwise applicable caps
21 or limits on reimbursement to the contrary. This The supplemental allowance must also
22 be allocated to the routine care cost component of the rate for settlement purposes and be
23 allowed and paid at final audit to the full extent that it does not cause reimbursement to
24 exceed the facility's allowable direct care and routine care costs in that fiscal year. The
25 supplemental allowance for fiscal years ending in calendar year 2019 must be paid at
26 100% of the calculated per diem rate for state fiscal year 2018-19 and paid in each
27 successive fiscal year until the fiscal year in which a rebasing under the Maine Revised
28 Statutes, Title 22, section 1708, subsection 3, paragraph F has incorporated the costs of
29 contract labor, wages and allowable benefits and taxes of a facility. For purposes of this
30 subsection, "contract labor" includes nursing, housekeeping, dietary, laundry and related
31 services.

32 **1-A. Additional special wage allowance for fiscal year 2019-20 and subsequent**
33 **fiscal years.** For the state fiscal year ending June 30, 2020, an additional special
34 supplemental allowance must be made to provide for increases in contract labor, wages
35 and allowable benefits and taxes in both the direct care cost component and routine care
36 cost component as follows. An amount equal to 10% of allowable contract labor, wages
37 and allowable benefits and taxes as reported on each facility's as-filed cost report for its
38 fiscal year ending in calendar year 2017 must be added to the cost per resident day in
39 calculating each facility's prospective rate, notwithstanding any otherwise applicable caps
40 or limits on reimbursement to the contrary. The additional supplemental allowance must
41 be allocated to the routine care cost component of the rate for settlement purposes and be
42 allowed and paid at final audit to the full extent that it does not cause reimbursement to
43 exceed the facility's allowable direct care and routine care costs in that fiscal year. The
44 additional supplemental allowance for fiscal years ending in calendar year 2020 must be

1 paid in each successive state fiscal year until the fiscal year in which a rebasing under the
2 Maine Revised Statutes, Title 22, section 1708, subsection 3, paragraph F has
3 incorporated the costs of contract labor, wages and allowable benefits and taxes of a
4 facility. For purposes of this subsection, "contract labor" includes nursing, housekeeping,
5 dietary, laundry and related services.

6 **1-B. No requirement to show that increased rates are applied exclusively to**
7 **wages and benefits.** The department may not require a nursing facility to ensure or
8 otherwise demonstrate, including requiring a nursing facility to document in the nursing
9 facility's financial records or to the department, that an increase in reimbursement rates
10 that results from implementation of this Act is applied in full to wages and benefits for
11 employees who provide direct care services.

12 **2. Changes in occupancy penalty.** For the state fiscal years ending June 30, 2019,
13 June 30, 2020 and June 30, 2021, the reduction in allowable cost per day in the fixed
14 costs component based on minimum occupancy standards applies only for an annual level
15 of occupancy less than 70%. For fiscal years ending June 30, 2022 and thereafter, the
16 reduction in allowable cost applies only for an annual level of occupancy less than 85%
17 for facilities with 61 or more beds and 80% for facilities with 60 or fewer beds.

18 **3. High Medicaid nursing facilities.** Beginning July 1, 2019 2018, the supplemental
19 payment established by Public Law 2013, chapter 594, section 3, subsection 5 must be
20 revised to provide that for each 1% over 70% MaineCare occupancy the supplemental
21 payment increases to 60¢ per resident day, is not subject to cost settlement and must be
22 retained by the facility in its entirety for any nursing facility whose MaineCare residents
23 constitute more than 80% of the nursing facility's total number of residents and whose
24 base year direct and routine aggregate costs per day are less than the median aggregate
25 direct and routine allowable costs for the facility's peer group. The supplemental
26 payment must continue to apply as provided in Public Law 2013, chapter 594, section 3,
27 subsection 5 for facilities that do not meet the standard set forth in this subsection.

28 **3-A. Supplemental allowance to nursing facilities with specialty medical-**
29 **psychiatric beds or units.** Beginning July 1, 2019, an additional payment of 60¢ per
30 reimbursed MaineCare resident day for each 1% over 70% MaineCare occupancy must
31 be made to a nursing facility with specialty medical-psychiatric beds or units that are
32 subject to the department's rules regarding community-based specialty nursing facility
33 units under the principles of reimbursement for nursing facilities. The allowance must be
34 provided for each resident day of specialty medical-psychiatric service and retained by
35 the facility in its entirety and is not subject to cost settlement.

36 **3-B. Supplemental allowance to nursing facilities that provide intensive**
37 **acquired brain injury rehabilitation services.** Beginning July 1, 2019, an additional
38 payment of 60¢ per reimbursed MaineCare resident day for each 1% over 70%
39 MaineCare occupancy must be made to a nursing facility that provides intensive
40 rehabilitation services for individuals with acquired brain injury. The allowance must be
41 provided for each resident day of intensive acquired brain injury rehabilitation services
42 and retained by the facility in its entirety and is not subject to cost settlement.

1 **4. Hold harmless.** The rate of reimbursement for nursing facilities for direct care
2 and routine care costs that results from amending the law or the rules to reflect the revised
3 method of rebasing the nursing facility's base year pursuant to this section may not result
4 for any nursing facility in a rate of reimbursement that is lower than the rate in effect on
5 June 30, 2018.

6 **Sec. B-4. Rate increases for residential care facilities.** The Department of
7 Health and Human Services shall amend its rules in 10-144, Chapter 101: MaineCare
8 Benefits Manual, Chapter III, Section 97, Appendix C, Principles of Reimbursement for
9 Medical and Remedial Service Facilities; and 10-144, Chapter 115: Principles of
10 Reimbursement for Residential Care Facilities - Room and Board Costs to provide for the
11 following rate changes.

12 **1. Special wage allowance for fiscal year 2018-19 and subsequent fiscal years.**
13 For the state fiscal year ending June 30, 2019, a special supplemental allowance must be
14 made to provide for increases in contract labor, wages and ~~wage-related~~ allowable
15 benefits and taxes in the direct care, personal care services and routine care cost
16 components as follows. An amount equal to 10% of allowable contract labor, wages and
17 associated allowable benefits and taxes as reported on each facility's as-filed cost report
18 for its fiscal year ending in calendar year 2016 must be added to the cost per resident day
19 in calculating each facility's prospective rate, notwithstanding any otherwise applicable
20 caps or limits on reimbursement to the contrary. ~~This~~ The supplemental allowance must
21 also be allowed and paid at final audit to the full extent that it does not cause
22 reimbursement to exceed the facility's allowable costs in each component that is cost
23 settled in that fiscal year. The supplemental allowance must be paid in each fiscal year
24 after state fiscal year 2018-19 until the fiscal year in which rates have been rebased using
25 2019 or a later calendar year as a base year and the rebased rates have incorporated the
26 costs of contract labor, wages and allowable benefits and taxes that were reported on each
27 facility's as-filed cost report for its fiscal year ending in calendar year 2019. For purposes
28 of this subsection, "contract labor" includes nursing, housekeeping, dietary, laundry and
29 related services.

30 **1-A. Additional special wage allowance for fiscal year 2019-20 and subsequent**
31 **fiscal years.** For the state fiscal year ending June 30, 2020, an additional special
32 supplemental allowance must be made to provide for increases in contract labor, wages
33 and allowable benefits and taxes in the direct care, personal care services and routine care
34 cost components as follows. An amount equal to 10% of allowable contract labor, wages
35 and allowable benefits and taxes as reported on each facility's as-filed cost report for its
36 fiscal year ending in calendar year 2017 must be added to the cost per resident day in
37 calculating each facility's prospective rate, notwithstanding any otherwise applicable caps
38 or limits on reimbursement to the contrary. The additional supplemental allowance must
39 be allocated to the routine care cost component of the rate for settlement purposes and be
40 allowed and paid at final audit to the full extent that it does not cause reimbursement to
41 exceed the facility's allowable costs for each component that is cost settled in that fiscal
42 year. The supplemental allowance must be paid in each fiscal year after state fiscal year
43 2019-20 until the fiscal year in which rates have been rebased using 2020 or a later
44 calendar year as a base year and the rebased rates have incorporated the costs of contract
45 labor, wages and allowable benefits and taxes that were reported on each facility's as-filed

1 cost report for its fiscal year ending in calendar year 2020. For purposes of this
2 subsection, "contract labor" includes nursing, housekeeping, dietary, laundry and related
3 services.

4 **1-B. No requirement to show that increased rates are applied exclusively to**
5 **wages and benefits.** The department may not require a residential care facility to ensure
6 or otherwise demonstrate, including requiring a residential care facility to document in
7 the residential care facility's financial records or to the department, that an increase in
8 reimbursement rates that results from implementation of this Act is applied in full to
9 wages and benefits for employees who provide direct care services.

10 **2. Adjustment for inflation for rates for fiscal year 2019-20 and thereafter.** For
11 the state fiscal year ending June 30, 2020 and each year thereafter, the MaineCare
12 payment rates ~~attributable to wages and salaries in each cost component specified in~~
13 ~~subsection 1 for allowable direct care, personal care services and routine care costs must~~
14 be increased by an inflation factor in accordance with the United States Department of
15 Labor, Bureau of Labor Statistics Consumer Price Index medical care services index,
16 published as of April 1st of each year.

17 **Sec. 3. Retroactivity.** That section of this Act that amends Public Law 2017,
18 chapter 460, Part B, section 3, subsection 3 applies retroactively to July 1, 2018.

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

21 SUMMARY

22 This bill is emergency legislation amending statutory and unallocated provisions to
23 require the Department of Health and Human Services to amend the department's rules
24 regarding MaineCare reimbursement of nursing facility and residential care facility costs,
25 including:

26 1. Clarifying and requiring additional cost-of-living adjustments to reimbursed costs
27 based upon:

28 A. The costs paid by nursing facilities for goods and services required to provide
29 patient care;

30 B. The forecasted increase in the skilled nursing facility market basket index for the
31 coming federal fiscal year published by the United States Department of Health and
32 Human Services, Centers for Medicare and Medicaid Services; and

33 C. Any further changes to the United States Department of Labor, Bureau of Labor
34 Statistics Consumer Price Index medical care services index or market basket index
35 projections over the payment year when the department is carrying out cost report
36 audits and determining final prospective rates pursuant to department rules regarding
37 costs related to resident care under principles of reimbursement for nursing facilities
38 during the payment year;

1 2. Clarifying and amending nursing facility reimbursement provisions enacted in
2 Public Law 2017, chapter 460 regarding a 10% special supplemental wage allowance by:

3 A. Requiring the allowance to include contract labor and requiring an additional 10%
4 wage allowance in state fiscal year 2019-20 and incorporating both requirements into
5 a rebasing of the reimbursement rates in future years;

6 B. Prohibiting department rules that require a nursing facility to ensure or otherwise
7 demonstrate that the increase in rates applies only to wages and benefits;

8 C. Changing the low-cost, high Medicaid facility supplemental payment by removing
9 the low-cost requirement; and

10 D. Providing a supplemental allowance of 60¢ per reimbursed MaineCare resident
11 day for each 1% over 70% MaineCare occupancy to nursing facilities with specialty
12 medical-psychiatric beds or units and to nursing facilities that provide intensive
13 acquired brain injury rehabilitation services; and

14 3. Clarifying and amending residential care facility reimbursement provisions enacted
15 in Public Law 2017, chapter 460 regarding a 10% special supplemental wage allowance
16 by:

17 A. Requiring the allowance to include contract labor and requiring an additional 10%
18 wage allowance in state fiscal year 2019-20 and incorporating both requirements into
19 a rebasing of the reimbursement rates in future years;

20 B. Prohibiting department rules that require a residential care facility to ensure or
21 otherwise demonstrate that the increase in rate applies only to wages and benefits;
22 and

23 C. Requiring reimbursement rates for allowable direct care, personal care services
24 and routine care costs to be adjusted yearly for inflation.