

LTC Report 2013

Executive Summary

In 2013 the 126th Maine Legislature established the Commission to Study Long-term Care Facilities with the passage of Resolve 2013, Chapter 78. The resolve established the commission, specified the duties of the commission and set December 4th, 2013 as the due date for the report of the commission to the full Legislature. A copy of Resolve 2013, Chapter 78 is included as Appendix A. The deadline for the report was extended from December 4th to December 12th by vote of the Legislative Council on November 21st pursuant to Joint Rule 353, section 7.

The President of the Senate, Speaker of the House of Representatives and Governor completed their appointments during the late summer. The members include two State Senators, three State Representatives, an owner of a long-term care facility, a representative of a statewide association of long-term care facility owners, a representative of a statewide association of long-term care facilities, a city manager, a representative of the Governor's Office, and the director of Maine's long-term care ombudsman program. A copy of the membership list of the commission is included as Appendix B. The 11 member commission met on October 11th and 25th, November 8th and 15th and December 4th. All meetings were held in the Cross State Office Building in Augusta and were open to the public and broadcast through the Legislature's public Internet system.

The commission focused its work regarding long-term care facilities on adequate funding, staffing and regulatory requirements and access to nursing facility services in rural and urban areas. The 14 recommendations of the commission include: recommendations designed to assist facilities in achieving adequate reimbursement for the care of residents whose care is reimbursed by the MaineCare program; a recommendation that Maine retain the current nursing facility staffing requirements and ratios; a recommendation to address the use of consumer life insurance as a resource to pay for nursing facility care; recommendations relating to errors in Cost of Care overpayments to facilities; and recommendations for further study of long-term care. The recommendation for further study by a Blue Ribbon Commission on Long-term Care reflects an understanding that more work needs to be done to study and make recommendations on a state plan for long-term care services in the community and in facilities. The recommendation for further study by a Commission to Continue the Study of Long-term Care Facilities reflects an understanding that further review and recommendations are needed on adequate reimbursement for facilities, ensuring access in rural and urban areas and providing incentives for high quality care through the nursing facility principles of reimbursement of the MaineCare program. Specific recommendations, including the votes for each recommendation are below.

1. Rebase to 2011 and every two years. Direct the Department of Health and Human Services to amend the Principles of Reimbursement for Nursing Facilities, Chapter 101, MaineCare Benefits Manual, Chapter III, Section 67 in the direct care cost component for nursing facilities in subsection 80.3.3(1) to establish a facility's base year by reference to the facility's 2011 audited cost report, or if the 2011 audited report is not available by reference to the facility's 2011 as filed cost report, and rebase every two years thereafter. Direct the Department of Health and Human Services to amend the Principles of Reimbursement in the routine cost component in subsection

80.4.5.1 in a similar manner to the direct care cost component. Vote: 9 for, 0 against, 1 abstain.

2. Increase peer group upper limit. Direct the Department of Health and Human Services to amend the Principles of Reimbursement to increase the peer group upper limit on the base year case mix and regionally adjusted cost per day to 110% of the median in the direct care cost component in subsection 80.3.3.4(b) and in the routine cost component in subsection 80.5.4. Vote: 8 for, 2 against.

3. Repeal administrative and management ceiling. Direct the Department of Health and Human Services to amend the Principles of Reimbursement in subsection 43.4.2(A) to repeal the administrative and management ceiling in the routine cost component. Vote: 7 for, 3 against.

4. Cost of living adjustment included in budget request. Direct the Department of Health and Human Services to amend the Principles of Reimbursement in subsection 91.1 to require the Department of Health and Human Services to set the inflation adjustment cost of living percentage change in reimbursement on an annual basis and by reliance on a publicly available index such as the Consumer Price Index Medical Care Services Index and to require that budget requests submitted by the Department of Health and Human Services include that annual adjustment. Vote: 9 for, 0 against.

5. Health insurance as fixed cost component. Direct the Department of Health and Human Services to amend the Principles of Reimbursement to move health insurance costs for nursing facility personnel in subsection 41.1.7(3) from the direct care cost component and in subsection 43.4.1(16)(c) from the routine cost component to the fixed cost component in subsection 44. Vote: 6 for, 3 against.

6. Supplemental payment for high MaineCare census. Direct the Department of Health and Human Services to amend the Principles of Reimbursement to provide a supplemental payment, subject to cost settlement, to nursing facilities with a MaineCare census above 70%. The supplemental payment would provide additional reimbursement to those high MaineCare census facilities of 40 cents per resident per day for each 1% MaineCare census above 70%. The supplemental payment would be enacted on an emergency basis with payments beginning July 1, 2014. Vote: 7 for, 3 against. The minority favored a supplemental payment for nursing facilities with a Medicaid census above 70% that is identical to the majority proposal but that is not cost settled.

7. Increase acuity for dementia. Direct the Department of Health and Human Services to amend the Principles of Reimbursement in subsection 80.3.2 to increase the specific resident classification group case mix weight that is attributable to a resident who is diagnosed with dementia. Vote: 9 for, 0 against, 1 abstain.

8. Maintain current staffing ratios. Recommend that no changes be made to staffing ratios and requirements for licensed staff coverage adopted in Chapter 110, Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities, Chapter 9, subsection 9.A.3 and 9.A.4. Vote: 10 for, 0 against.

9. Support life settlement contract legislation. Recommend to the Insurance and Financial Services Committee that they consider, amend and report out favorably LD 1092, An Act to Increase the Use of Long-term Care Insurance, on life settlement policy conversion. The bill proposes to allow an owner of a life insurance policy to enter into a life settlement contract with a life care benefits company and to use the proceeds for long-term care expenses. The bill proposes amendments to the MaineCare program so that the policy and benefits under it do not disqualify the owner from eligibility for MaineCare long-term care services. Vote: 7 for, 0 against, 1 abstain.

10. Collect Cost of Care overpayments. Direct the Department of Health and Human Services to take all necessary actions to collect Cost of Care overpayments to nursing facilities and private non-medical institutions which were paid when the department's computer systems, when providing reimbursement owed by the department, failed to take into account the financial contributions paid by residents in the nursing facilities and private non-medical institutions. Vote: 10 for, 0 against.

11. Correct Cost of Care overpayments. Direct the Department of Health and Human Services to require that Molina make adjustments to the MIHMS computer system to correct and discontinue overpayments in the calculation and deduction of Cost of Care in the payment of nursing facilities and private non-medical institutions. Vote: 10 for, 0 against.

12. Cost of Care recoupment used for nursing facilities. Recommend that the first \$10 million collected from Cost of Care overpayment recoupments collected under recommendation 10 be appropriated to pay for initiatives recommended by the commission. Vote: 10 for, 0 against.

13. Continue the commission. Recommend establishing a Commission to Continue the Study of Long-term Care Facilities, based on the 2013 commission, with added duties of reporting to the Blue Ribbon Commission on Long-term Care and reviewing payment methodologies and removing the duties completed in 2013. The recommendation includes the duty to report to Legislature and to the Blue Ribbon Commission on Long-term Care by October 15th, 2014. Vote: 10 for, 0 against.

14. Establish Blue Ribbon Commission on Long-term care spectrum. Recommend establishing a Blue Ribbon Commission on Long-term Care to review the State's plan for long-term care and the provision of services in the community and in nursing and residential care facilities. The recommendation includes broad representation on the commission, funding for contracted staffing and consultant services and the duty to draft a plan for long-term care for presentation to Legislature and the Department of Health and Human Services. The recommendation also includes the duty to receive and consider recommendations from the Commission to Continue the Study of Long-term Care Facilities. The Blue Ribbon Commission must submit the report to the Legislature by November 4th, 2014. Vote: 10 for, 0 against.

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FOURTEEN

S.P. 704 - L.D. 1776

**An Act To Implement the Recommendations of the Commission To Study
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, the people of the State of Maine need and deserve a variety of well-planned and financially stable long-term care services in home-based and community-based care settings and in nursing facilities in their communities; and

Whereas, in order to provide high-quality care to Maine's elderly and disabled persons in a dignified and professional manner that is sustainable into the future through a spectrum of long-term care services, prompt action is needed to correct chronic underfunding and to complete a thoughtful and thorough planning process; 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 enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §1708, sub-§3, as corrected by RR 2001, c. 2, Pt. A, §33 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

3. Compensation for nursing homes. A nursing home, as defined under section 1812-A, or any portion of a hospital or institution operated as a nursing home, when the State is liable for payment for care, must be reimbursed at a rate established by the Department of Health and Human Services pursuant to this subsection. The department may not establish a so-called "flat rate." This subsection applies to all funds, including federal funds, paid by any agency of the State to a nursing home for patient care. The department shall establish rules concerning reimbursement that:

A. Take into account the costs of providing care and services in conformity with applicable state and federal laws, rules, regulations and quality and safety standards;

B. Are reasonable and adequate to meet the costs incurred by efficiently and economically operated facilities;

C. Are consistent with federal requirements relative to limits on reimbursement under the federal Social Security Act, Title XIX;

D. Ensure that any calculation of an occupancy percentage or other basis for adjusting the rate of reimbursement for nursing facility services to reduce the amount paid in response to a decrease in the number of residents in the facility or the percentage of the facility's occupied beds excludes all beds that the facility has removed from service for all or part of the relevant fiscal period in accordance with section 333. If the excluded beds are converted to residential care beds or another program for which the department provides reimbursement, nothing in this paragraph precludes the department from including those beds for purposes of any occupancy standard applicable to the residential care or other program pursuant to duly adopted rules of the department; and

E. Contain an annual inflation adjustment that:

(1) Recognizes regional variations in labor costs and the rates of increase in labor costs determined pursuant to the principles of reimbursement and establishes at least 4 regions for purposes of annual inflation adjustments; and

(2) Uses the applicable regional inflation factor as established by a national economic research organization selected by the department to adjust costs other than labor costs or fixed costs; and

~~Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.~~

F. Establish a nursing facility's base year every 2 years and increase the rate of reimbursement beginning July 1, 2014 and every year thereafter.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 22.MRSA §1714-A, sub-§9 is enacted to read:

9. Cost-of-care overpayments. On or before June 30, 2015, the department shall collect the total amount of debt arising from cost-of-care overpayments that exceeds by \$4,000,000 the amount of that debt that had been budgeted for fiscal year 2014-15 as of April 15, 2014. To the extent necessary to meet this requirement, the department may establish payment terms, modify as otherwise permitted by law existing payment agreements to accelerate payment terms and offset current payments in accordance with subsection 5. If 7 days' notice and opportunity to comment are provided, the department may adopt rules on an emergency basis to modify its implementation of subsection 5 on an emergency basis for purposes of collecting cost-of-care overpayments without making the emergency findings otherwise required by Title 5, section 8054, subsection 2.

Sec. 3. Amendment of Principles of Reimbursement for Nursing Facilities. The Department of Health and Human Services shall amend Rule Chapter

101, MaineCare Benefits Manual, Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities as follows.

1. The rule must be amended in order to establish a nursing facility's base year every 2 years and to increase the rate of reimbursement beginning July 1, 2014 and every year thereafter as follows:

A. In the direct care cost component in Section 80.3 and all other applicable divisions of Section 80.3 in which case mix data, regional wage indices or data required for rebasing calculations are referenced by date, the rule must be amended to establish a nursing facility's base year by reference to the facility's 2011 audited cost report or, if the 2011 audited cost report is not available, by reference to the facility's 2011 as-filed cost report; to refer to other required rebasing data no older than 2011 data; and to update a nursing facility's base year every 2 years thereafter; and

B. In the routine cost component in Section 80.4 and all other applicable divisions of Section 80.4 in which case mix data, regional wage indices or data required for rebasing calculations are referenced by date, the rule must be amended to establish a nursing facility's base year by reference to the facility's 2011 audited cost report or, if the 2011 audited cost report is not available, by reference to the facility's 2011 as-filed cost report; to refer to other required rebasing data no older than 2011 data; and to update a nursing facility's base year every 2 years thereafter.

2. The rule must be amended to increase the peer group upper limit on the base year case mix and regionally adjusted cost per day for a nursing facility beginning July 1, 2014 as follows:

A. In the direct care cost component in Section 80.3.3(4)(b), the peer group upper limit must be increased to 110% of the median; and

B. In the routine cost component in Section 80.5.4, the peer group upper limit must be increased to 110% of the median.

3. The rule must be amended in the routine cost component in Section 43.4.2(A) to eliminate the nursing facility administrative and management cost ceiling, thereby allowing all allowable administrative and management costs to be included in allowable routine costs for the purposes of rebasing, rate setting and future cost settlements beginning July 1, 2014.

4. The rule must be amended in Sections 91 and 91.1 to provide for ongoing, annual rate changes beginning July 1, 2014 to adjust for inflation and to set the inflation adjustment cost-of-living percentage change in nursing facility reimbursement each year in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index.

5. The rule must be amended to provide, beginning July 1, 2014, a supplemental payment, subject to cost settlement, to a nursing facility whose MaineCare residents constitute more than 70% of the nursing facility's total number of residents. The supplemental payment must provide an additional reimbursement of 40¢ per resident per day for each 1% this percentage of MaineCare residents is above 70%, except that the total supplemental payment must be calculated to avoid to the extent possible paying an

amount in excess of allowable costs that would be an overpayment upon settlement of the facility's cost report.

6. The rule must be amended in Section 80.3.2 to increase the specific resident classification group case mix weight that is attributable to a nursing facility resident who is diagnosed with dementia.

The rate of reimbursement for nursing facilities that results from amending the rules to reflect rebasing the nursing facility's base year pursuant to this section may not result for any nursing facility in a rate of reimbursement that is lower than the rate in effect on April 1, 2014. The department may implement this section by adopting emergency rules. If the department provides at least 7 days' notice and opportunity to comment before adopting these rules, it is not required to make the findings otherwise required by the Maine Revised Statutes, Title 5, section 8054, subsection 2.

Sec. 4. Savings arising from recoveries in excess of projections; transitional cap on rate increases.

1. The Department of Health and Human Services shall continue its best efforts to collect all remaining cost-of-care overpayments to nursing facilities and private nonmedical institutions that were paid when the department's computer systems, when providing reimbursement owed by the department, failed to take into account the financial contributions paid by residents in the nursing facilities and private nonmedical institutions and miscalculated the amounts payable under the MaineCare program. Cost-of-care overpayments collected in excess of amounts projected in developing and reporting budget information to the Legislature or the Governor must be used to fund the implementation of section 3 to the extent of funding provided in this Act.

2. If the total amount of debt arising from cost-of-care overpayments that the department collects in fiscal year 2014-15 exceeds \$13,000,000, the excess must be carried over to fiscal year 2015-16 to be expended to provide additional funding for implementation of section 3. In fiscal years 2014-15, 2015-16 and 2016-17, the Department of Health and Human Services, subject to state plan approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, shall limit the actual rate increase provided to the total amount available as a result of the state funds appropriated for nursing home rate increases, including without limitation the dollar amount specified in any appropriation provision plus any net amount available as a result of increased nursing facility provider tax revenue and available federal funds, minus the amount necessary to fund the supplemental payment provided in section 3, subsection 5. In establishing this limit in any year in which it applies, the department first shall calculate and publish the rate increases that would result from increasing rates pursuant to all of section 3 except for subsection 5 and then grant to all facilities a pro rata portion of that increase that does not exceed the limit established in this subsection and also grant supplemental payments pursuant to section 3, subsection 5. The pro rata methodology must be applied uniformly to all facilities so that each facility receives the same percentage of the initially published rate increases, plus the supplemental payment if applicable.

Sec. 5. Cost-of-care overpayment correction. The Department of Health and Human Services shall immediately require that the department's contractor Molina Medicaid Solutions make adjustments to the Maine Integrated Health Management Solution computer system to correct and discontinue overpayments in the calculation and deduction of cost of care in the payment of nursing facilities and private nonmedical institutions.

Sec. 6. Commission To Continue the Study of Long-term Care Facilities. Notwithstanding Joint Rule 353, the Commission To Continue the Study of Long-term Care Facilities, referred to in this section as "the commission," is established. The membership, duties and functioning of the commission are subject to the following requirements.

1. The commission consists of 11 members appointed as follows:

A. Two members of the Senate appointed by the President of the Senate, including members from each of the 2 parties holding the largest number of seats in the Legislature;

B. Three members of the House of Representatives appointed by the Speaker of the House, including members from each of the 2 parties holding the largest number of seats in the Legislature; and

C. Six members appointed by the Governor who possess expertise in the subject matter of the study, as follows:

(1) The director of a long-term care ombudsman program described under the Maine Revised Statutes, Title 22, section 5106, subsection 11-C;

(2) The director of a statewide association representing long-term care facilities and one representative of a 2nd association of owners of long-term care facilities;

(3) A person who serves as a city manager of a municipality in the State;

(4) A person who serves as a director or who is an owner or administrator of a nursing facility in the State; and

(5) A representative of the Governor's office or the Governor's administration.

2. The first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission. The chairs of the commission are authorized to establish subcommittees to work on the duties listed in subsection 4 and to assist the commission. The subcommittees must be composed of members of the commission and interested persons who are not members of the commission and who volunteer to serve on the subcommittees without reimbursement. Interested persons may include individuals with expertise in acuity-based reimbursement systems, a representative of an agency that provides services to the elderly and any other persons with experience in nursing facility care.

3. All appointments must be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all

members and after adjournment of the Second Regular Session of the 126th Legislature, the chairs shall call and convene the first meeting of the commission. If 30 days or more after the effective date of this Act a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business.

4. The commission shall study the following issues and the feasibility of making policy changes to the long-term care system:

- A. Funding for long-term care facilities, payment methods and the development of a pay-for-performance program to encourage and reward strong performance by nursing facilities;
- B. Regulatory requirements other than staffing requirements and ratios;
- C. Collaborative agreements with critical access hospitals for the purpose of sharing resources;
- D. The viability of privately owned facilities in rural communities;
- E. The impact on rural populations of nursing home closures; and
- F. Access to nursing facility services statewide.

5. The Legislative Council shall provide necessary staffing services to the commission.

6. The Commissioner of Health and Human Services, the State Auditor and the State Budget Officer shall provide information and assistance to the commission as required for its duties.

7. No later than October 15, 2014, the commission shall submit a report that includes its findings and recommendations, including suggested legislation, to the Joint Standing Committee on Health and Human Services. The joint standing committee of the Legislature having jurisdiction over health and human services matters may report out a bill regarding the subject matter of the report to the First Regular Session of the 127th Legislature.

Sec. 7. Bimonthly report. Beginning in July 2014 and ending in June 2016, the Department of Health and Human Services shall report bimonthly to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs on the department's efforts to establish and collect the debt arising from cost-of-care overpayments pursuant to the Maine Revised Statutes, Title 22, section 1714-A, subsection 9.

Sec. 8. Appropriations and allocations. The following appropriations and allocations are made.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)

Medical Care - Payments to Providers 0147

Initiative: Deappropriates funds for recovery of overpayments to providers that are in excess of the amounts currently budgeted for in the MaineCare program for fiscal year 2014-15.

GENERAL FUND	2013-14	2014-15
All Other	\$0	(\$4,000,000)
GENERAL FUND TOTAL	<u>\$0</u>	<u>(\$4,000,000)</u>

Nursing Facilities 0148

Initiative: Provides one-time funding for increased reimbursements under the MaineCare program for nursing facilities.

GENERAL FUND	2013-14	2014-15
All Other	\$0	\$4,520,000
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$4,520,000</u>

FEDERAL EXPENDITURES FUND	2013-14	2014-15
All Other	\$0	\$7,311,686
FEDERAL EXPENDITURES FUND TOTAL	<u>\$0</u>	<u>\$7,311,686</u>

Nursing Facilities 0148

Initiative: Provides one-time funds for increased nursing home costs.

GENERAL FUND	2013-14	2014-15
All Other	\$0	\$189,840
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$189,840</u>

FEDERAL EXPENDITURES FUND	2013-14	2014-15
All Other	\$0	\$307,091
FEDERAL EXPENDITURES FUND TOTAL	<u>\$0</u>	<u>\$307,091</u>

Nursing Facilities 0148

Initiative: Adjusts funds to reflect additional nursing home provider tax revenue.

GENERAL FUND	2013-14	2014-15
All Other	\$0	(\$709,901)
GENERAL FUND TOTAL	<u>\$0</u>	<u>(\$709,901)</u>
OTHER SPECIAL REVENUE FUNDS	2013-14	2014-15
All Other	\$0	\$709,901
OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$0</u>	<u>\$709,901</u>
HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS) DEPARTMENT TOTALS	2013-14	2014-15
GENERAL FUND	\$0	(\$61)
FEDERAL EXPENDITURES FUND	\$0	\$7,618,777
OTHER SPECIAL REVENUE FUNDS	\$0	\$709,901
DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$8,328,617</u>

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

**Office of the State Auditor, Prepared for Long Term Care Commission Meeting on September 2, 2014
Cost of Care Summary, Based on Audit Procedures Applied to Fiscal Year Ending 2013**

The term Cost of Care refers to a MaineCare member's personal monthly contribution toward their care at a long-term care (LTC) facility¹. This amount is determined by DHHS during the eligibility determination process. Members pay this amount directly to their LTC provider and must be used by DHHS to reduce its payment to the LTC provider. During the fiscal year 2013 Single Audit we noted the following:

Cost of Care Issue	FY13 Estimated Federal Financial Impact (Annual Amount)	FY13 Estimated State Financial Impact (Annual Amount)	Reference to Audit Evidence
1. The State's claims processing system known as MIHMS was not consistently deducting Cost of Care amounts from payments to providers. This is problematic because members were also remitting their Cost of Care contribution to the provider. System edits were not appropriately established to hold and resolve this type of claim issue prior to payment.	\$16,700,000	\$12,900,000	Report on Limited Procedures Engagement dated October 29, 2013
	FY13 Federal Questioned Costs (Annual Amount)	FY13 State Questioned Costs (Annual Amount)	
2. System design flaws in the Automated Client Eligibility System (ACES) caused LTC residents' personal financial information to be incorrect or missing. This resulted in incorrect Cost of Care assessments . To address this, Office of Family Independence (OFI) personnel were required to apply manual workarounds to correct any errors they found in member case information. Auditors found that staff did not always apply manual fixes correctly and some errors were undetected by staff.	Known - \$ Undeterminable	Known - \$ Undeterminable	Single Audit Report, Finding no. 13-1106-01, Page E-30
	Likely - \$ Undeterminable	Likely - \$ Undeterminable	
	In a sample of 60 Cost of Care assessments calculated by ACES/OFI personnel, ten assessments were calculated incorrectly: - \$5.00, \$99.90, \$33.00, -\$37.00, -\$15.00, - \$5.00, -\$1.00, -\$10.00, -\$15.00 totaling a positive \$44.90 over-assessed. <i>pe mark</i>		
3. Procedures to ensure proper accounting and recovery of Cost of Care overpayments since the implementation of MIHMS in September 2010 were inadequate . Only some amounts due to the State were recorded in the State's accounting system. The State's recoupment activities were limited by ineffective recordkeeping and collection methods and the fact that not all providers cooperate with the State by reimbursing overpayments. As of June 30, 2013, the receivable balance was \$36.4 million. This includes receivables associated with MIHMS, but, not with MECMS.	Known \$ none Likely \$ none	Known \$ none Likely \$ none	Single Audit Report, Finding no. 13-1106-12, Page E-51
4. DHHS did not consistently refund the Federal government for its share of Cost of Care overpayments within the one year required timeframe.	Known - \$ undeterminable Likely - \$ undeterminable	Known - \$ undeterminable Likely - \$ undeterminable	Single Audit Report, Finding no. 13-1106-17, Page E-58

¹ This includes nursing facilities and private non-medical institutions (PNMIs)

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5 M.R.S.A. § 8057-A

AGENCY: Department of Health and Human Services, Office of MaineCare Services
Division of Policy

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Rachel Thomas, Comprehensive Health Planner II
Office of MaineCare Services
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CHAPTER NUMBER AND RULE TITLE: Chapter 101, MaineCare Benefits Manual, Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities

STATUTORY AUTHORITY: 22 M.R.S.A. §§ 42, 3173, P.L. 2014, ch. 594

DATE AND PLACE OF PUBLIC HEARING: NA Emergency Rule

COMMENT DEADLINE: NA Emergency Rule

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE: On May 1, 2014, the Maine Legislature enacted emergency law, P.L. 2014, ch. 594 (“An Act to Implement the Recommendations of the Commission to Study Long-term Care Facilities”), which directed the Department of Health and Human Services (“Department”) to amend its regulation for the MaineCare reimbursement of Nursing Facilities (MaineCare Benefits Manual, Chapter III, Section 67), to increase the rate of reimbursement beginning July 1, 2014.

Pursuant to emergency law, P.L. 2014, ch. 594, the Department is adopting this emergency rule without making the emergency findings otherwise required by 5 MRSA Sec. 8054, since the law allows the Department to do so if it provided a seven day notice and opportunity to comment on a draft rule. On June 16, 2014, the Department provided interested parties with a copy of the draft rule and opportunity to comment.

The Department carefully reviewed the comments received from the nursing facility providers, which delayed the adoption of this emergency rule.

This emergency rule has a retroactive application back to July 1, 2014 for the rule changes. Retroactive application for MaineCare reimbursement regulations is permitted by 22 M.R.S.A. Section 42(8) if the “reimbursement or other payments under the amended rule [is] equal to or greater than the reimbursement under the rules previously in effect.” In order to comply with 22 M.R.S.A. Sec. 42(8), this emergency rule adds a provision, Principle 83, that provides:

“On August 15, 2014, the Department adopted an emergency rule with a retroactive application date of July 1, 2014. For the period July 1, 2014 through August 15, 2014, the reimbursement or other payments under the August 15, 2014 emergency rule must be equal to or greater than the reimbursement under the rules previously in effect.”

This emergency rule makes the following additional changes:

1. Establishes a new base year for nursing facilities which is the fiscal year of each nursing facility ending in calendar year 2011. The base year will be updated every two years.

Rule-making Fact Sheet

5 M.R.S.A. § 8057-A

2. For the routine care cost and for direct care cost, the peer group upper limit is increased to 110% of the median.
3. Eliminates the Administration and Management Expense ceiling, although those costs are still subject to allowability standards.
4. Establishes a payment to nursing facilities that have a high MaineCare Utilization rate (defined as greater than 70% MaineCare days of care). This payment is cost settled.
5. Changed the methodology for calculating each nursing facility's specific case mix index for the base year to the following: (1) first, the Department calculates the nursing facility's 2011 average direct care case mix adjusted rate by dividing each nursing facility's gross direct care payments received for their 2011 base year, by the 2011 base year MaineCare direct care resident days; (2) second, the Department calculates the nursing facility's 2011 case mix index by dividing the nursing facility's 2011 average direct care case mix adjusted rate as calculated in (1) by the nursing facility's 2005 base year direct care rate.
6. Eliminates the use of the 2009 CMS Nursing Home without Capital Market Basket Index for inflation adjustments, and substitutes: (a) the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Medical Care Services – Nursing Homes and Adult Day Care Services to adjust for inflation for the Routine Cost Component; and (b) the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, Historical Consumer Price Index for Urban Wage Earners and Clerical Workers – Nursing Home and Adult Day service for the Direct care Component.
7. Provides that inflation adjustments will be done every year.
8. Amended the Direct Care Add-on Principle so that December 31, 2013, rather than July 1, 2008, is used for the inflation calculation, and the facility-specific average case mix index for the base year is used as the applicable case mix index for this calculation.
9. The Direct Care Hold Harmless Provision was amended so that the differential which will be applied is the difference between each nursing facility's direct care rate for the first fiscal year to which the July 1, 2014 amendments to the rule apply, and the nursing facility's direct care rate in effect on April 1, 2014.
10. The Routine Hold Harmless Provision was amended so that the differential which will be applied is the difference between each nursing facility's routine rate for the first fiscal year to which the July 1, 2014 amendments to the rule apply, and the nursing facility's routine rate in effect on April 1, 2014.
11. Changed the heading for Principle 81 from "Interim and Subsequent Rates" to "Interim, Subsequent, and Prospective Rates" because Principle 81 was amended to add a provision regarding Prospective Rates.
12. Added Principle 81.3 (Prospective Rate), which provides that the prospective rate, excluding fixed costs, will be adjusted down to 95.12% of all the calculated Direct Care cost components and all of the Routine Care cost components. The Final Prospective Rate will remain at 95.12%.
13. Added Principle 81.4 (Funding Adjustment), which provides that in the case of an individual nursing facility, whose rebased, adjusted direct and routine care rates totaled together are less than that nursing facility's April 1, 2014, direct and routine rates, totaled

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together, then the Department will make a Funding Adjustment, by adding the difference to the rebased routine rate.

P.L. 2014, ch. 594's requirement that the rule be amended to increase the specific resident classification group case mix weight that is attributable to a nursing home resident who is diagnosed with dementia is not directly applicable to the case mix methodology which is set forth in the rule, which is function or level-of-service based, and not based on diagnosis. The rule's case mix methodology already provides that a dementia patient whose condition worsens, and needs a higher level of care, is put in a case mix with a greater weight. The Department will continue to review this issue during the regular rulemaking which will follow this emergency rulemaking.

CMS approval is needed for these changes, and the Department is seeking to amend its State Plan accordingly.

IDENTIFICATION OF PRIMARY SOURCE OF INFORMATION: P.L. 2014, ch. 594, An Act To Implement the Recommendations of the Commission To Study Long-term Care Facilities

ANALYSIS AND EXPECTED OPERATION OF THE RULE: This emergency rule changes the MaineCare nursing facility reimbursement methodology, starting on July 1, 2014.

FISCAL IMPACT OF THE RULE: In FY 2014 this initiative will cost \$25,432,166.00. This total includes \$ 9,720,173.85 in state funds and \$15,711,992.15 in federal funds.

ADDITIONAL COST UPON MUNICIPALITIES AND/OR COUNTIES AND ADVERSE ECONOMIC IMPACTS ON SMALL BUSINESSES (small businesses are those with 20 or fewer employees): This rule change is not expected to cause adverse economic impacts for municipalities, counties or small businesses.

FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS: This rule change is expected to improve the economic viability of long-term care institutions in Maine.

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED: The intent of these changes is to improve economic viability of the industry, positively affecting Nursing Facilities and their employees. Residents will be affected positively if improved economic viability of their institution is achieved.

BENEFITS OF THE RULE: MaineCare reimbursement for nursing facilities is increased by \$25 million for FY 2014.

