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GOVERNOR

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Senate President Troy Jackson
3 State House Station
Augusta, ME 04333-0003

Speaker of the House Sara Gideon
2 State House Station
Augusta, ME 04333-0002

Dear President Jackson and Speaker Gideon:

This letter conveys my position on LD 1758, "An Act To Clarify and Amend MaineCare Reimbursement Provisions for Nursing and Residential Care Facilities."

It is a priority of my Administration to support quality, accessible nursing facility care for older Mainers. This is why we invested in a cost-of-living adjustment and a subsequent rebasing in this biennium for nursing facilities, on top of other recent rate increases (described below). The Maine Department of Health and Human Services (DHHS) is also working on expanding home and community-based options for older residents and people with disabilities. Maine recently became the 6th AARP-designated Age-Friendly State, and we lead the nation in the number of communities that have adapted to promote quality of life for their older residents. While it comes with challenges, Maine's older population offers great opportunities as well.

In the closing days of the First Session of the 129th Legislature, I held LD 1758 because of important unanswered questions about the bill. The additional time following adjournment – allowed by the Maine Constitution under Article IV, Part Third, Section 2 – was necessary for analysis of a number of issues in order to determine if this bill should become law.

The first question was whether LD 1758 violated the federal "upper payment limit." Under federal policy, states may only receive federal Medicaid matching payments for provider payments below the upper payment limit (UPL). UPLs are defined in federal regulation. Due to the likelihood that LD 1758 would violate the UPL, we explored the possibility of using an alternative methodology allowed under federal rules. This alternative sets the limit based on actual costs rather than a comparison to Medicare costs. We believe that this change would limit the likelihood of loss of federal funds and thus plan on changing our methodology to a cost-based UPL for nursing facilities by the end of the year. That said, we urge the Legislature to, when proposing MaineCare rate increases in the future, include a provision dropped in the final version of LD 1758: a clause that prevents implementation of a rate increase that violates the UPL.



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The second question was whether the legislation was fully funded. There are parts of the bill that suggest a rate increase that exceeds what could be funded by the bill's appropriation. This would result in an unfunded liability for the State. We consulted with the Office of Fiscal and Program Review (OFPR) and it confirmed that the Department is required, as indicated in section 5 of the bill, to use the one-time funding in section 6 proportionally to fund the items in section 1-4. In other words, the Department must only increase rates by the amounts appropriated in the bill, which has sufficient funding sources to offset the increase.

As such, I am permitting LD 1758 to become law. Combined with current rate increases, MaineCare nursing facility rates will increase, on average, by 5.5 percent for fiscal year 2020. Reimbursement to nursing facilities has increased cumulatively by 40 percent since fiscal year 2012. This is more than most other MaineCare services and should significantly bolster the ability of our nursing facilities to provide quality care.

Because the strongest rationale for this bill is the challenge of keeping minimum wage workers in nursing facility jobs, I have directed DHHS to include in its implementing regulations a nursing facility reporting requirement on how this rate increase is being used to provide for increases in direct service worker wages, contract labor wages, and allowable benefits. We anticipate the recommendations of the Long-Term Care Workforce Commission will emphasize the importance of support for direct line workers. We should prepare accordingly. LD 1758 funding should most appropriately go toward supporting wages of workers who are most directly involved in the care of those residing nursing facilities, not for administrative costs or increases executive leadership compensation.

Additionally, the confusion over this and prior pieces of legislation about nursing facility rates is a symptom of a complicated and outdated system of MaineCare reimbursement for nursing facility services. As such, I have also directed DHHS to examine reforms that would promote simplicity, quality, value, transparency, and accountability.

I look forward to working with you on further actions to support older Mainers, adults with disabilities, and their families who rely on our long-term care system.

Sincerely,



Janet T. Mills
Governor

cc: Senator Cathy Breen, Senate Chair
Representative Drew Gattine, House Chair
Senator Jim Hamper, Senate Lead
Representative Sawin Millett, House Lead
Joint Standing Committee on Appropriations and Financial Affairs