



130th MAINE LEGISLATURE

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Legislative Document

No. 1867

H.P. 1377

House of Representatives, January 5, 2022

An Act To Codify MaineCare Rate System Reform

Submitted by the Department of Health and Human Services pursuant to Joint Rule 203.
Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MEYER of Eliot.
Cosponsored by Senator CLAXTON of Androscoggin and
Representative: GRIFFIN of Levant, Senator: MOORE of Washington.

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

2 **Sec. 1. 22 MRSA §3173-J** is enacted to read:

3 **§3173-J. Rate-setting system for development and maintenance of sustainable,**
4 **efficient and value-oriented MaineCare payment models and rates**

5 This section establishes a rate-setting system for the development and maintenance of
6 MaineCare payment models and rates that are consistent with efficiency, economy and
7 quality of care in order to support MaineCare member access to services in compliance
8 with the United States Social Security Act, Section 1902(a)(30)(A).

9 **1. Rate development principles and processes.** The department shall establish
10 MaineCare provider reimbursement rates, including those paid through fee-for-service and
11 value-based alternative payment models. The rates must be established in accordance with
12 the following principles and processes. The department shall:

13 A. Consider and, when appropriate, adopt payment models that use financial incentives
14 to promote or leverage greater value for the MaineCare program;

15 B. Benchmark to Medicare services for which a Medicare rate is available and
16 represents the most appropriate benchmark and method of payment by:

17 (1) Referencing Medicare rates for the most current year available, updated at least
18 annually;

19 (2) Establishing a consistent percentage of Medicare for benchmarked services;
20 and

21 (3) Documenting the rationale for the deviation from the standard Medicare
22 benchmark when there is an exceptional basis for a service to be benchmarked to
23 a rate other than the Medicare rate or a percentage of Medicare other than the
24 standard percentage benchmark;

25 C. Benchmark to a non-Medicare payer source, including, but not limited to,
26 commercial health care rates in the State or other states' Medicaid rates, if one is
27 available and represents the most appropriate benchmark and method of payment.
28 Rates benchmarked in accordance with this paragraph must be updated to the most
29 current year of data for that payer source at least once every 2 years. The department
30 shall review the percentage benchmark for updating, as appropriate, and shall take into
31 consideration the findings of the benchmarking report conducted in accordance with
32 paragraph E;

33 D. Maintain on its publicly accessible website a list of services benchmarked in
34 accordance with paragraphs B and C;

35 E. Conduct or contract for, every 4 years, a comprehensive benchmarking report to
36 compare MaineCare rates for all services to those paid by Medicare, at least 5
37 comparison Medicaid states and Maine commercial payers;

38 F. Conduct a rate study in accordance with this paragraph and paragraph G for every
39 service for which a benchmark rate in accordance with paragraph B or C is either
40 unavailable or is inconsistent with the goals of efficiency, economy and quality of care
41 to support member access. The department shall:

- 1 (1) Develop annually a schedule of rate studies in consultation with the technical
2 advisory panel established under subsection 4, as long as a review of the rate
3 methodology and assumptions resulting from the rate study for the service occurs
4 no less frequently than once every 5 years;
- 5 (2) Post the rate study schedule on its publicly accessible website; and
- 6 (3) Conduct off-schedule rate studies and reviews if the department determines
7 those studies and reviews to be appropriate;
- 8 G. Conduct rate studies for specific services for which it determines benchmarking in
9 accordance with paragraph B or C is not appropriate or advisable. Each rate study must
10 include the following:
- 11 (1) Public notice of initiation of the rate study;
- 12 (2) Review of data that must include:
- 13 (a) An assessment as to whether the service model has changed since the
14 previous rate study, if available, to determine if model assumptions need to be
15 revised;
- 16 (b) The collection of data on provider costs and cost-related aspects of the
17 service model through existing cost reports, provider surveys and other
18 available data sources; and
- 19 (c) Research on any available national models or best practices regarding
20 payment models and cost-related aspects of the service model;
- 21 (3) Developing or updating proposed rates by considering the following:
- 22 (a) The appropriateness of adoption of an alternative payment model or other
23 change in payment model, consistent with the purposes of this section;
- 24 (b) The current rate assumptions and their appropriateness, given current
25 provider costs, best practices or changes in the service model;
- 26 (c) The findings for related services of any comprehensive benchmarking
27 report under paragraph E;
- 28 (d) The potential use of established benchmarks or comparable rate data from
29 other payer sources; and
- 30 (e) The degree to which services are dependent on MaineCare reimbursement,
31 including, but not limited to, cost factors, such as average wage, that may be
32 reflective of restraints of MaineCare reimbursement versus costs of the broader
33 marketplace;
- 34 (4) Public presentation of draft results for public comment; and
- 35 (5) Response to comments and an explanation of whether and how feedback was
36 incorporated; and
- 37 H. Provide an annual cost-of-living adjustment effective on a consistent date to be
38 established by the department for each service that has not received a rate adjustment
39 within the 12 months prior to the effective date of the cost-of-living adjustment, and
40 for which it determines benchmarking in accordance with paragraph B or C is not

1 appropriate or advisable. In establishing cost-of-living adjustments, the department
2 shall:

3 (1) Use inflation indices determined through rulemaking to reflect a reasonable
4 cost of providing services for different categories of services; and

5 (2) Maximize use of a single, consistent and general cost-of-living adjustment
6 index, consistent with the cost-of-living adjustment applied to minimum wage
7 laws, in order to ensure that the cost-of-living adjustment reflects increases to
8 provider costs for delivering the service rather than other factors, such as private
9 sector price increases or cost-shifting from different payers.

10 **2. Rulemaking for rate adjustments.** Rulemaking for MaineCare provider
11 reimbursement rates must adhere to the following.

12 A. Changes to rate methodology based on a rate study or resulting from the
13 incorporation of a value-based payment model are subject to adoption through
14 rulemaking in accordance with the Maine Administrative Procedure Act. To the extent
15 possible for the specific service, the rule may specify overall methodology, not billing
16 code-level specificity, to minimize the need for multiple instances of rulemaking.

17 B. For services benchmarked to Medicare or other available payer rates, the department
18 shall adopt a rule specifying the year and other aspects of the benchmark methodology.
19 Additional rulemaking is not required for rate changes tied to the adopted benchmark
20 methodology unless the department changes the benchmarking percentage or
21 methodology.

22 C. No later than one year after the effective date of this section, the department shall
23 adopt a rule specifying the appropriate cost-of-living adjustment methodology for
24 different types of services in accordance with subsection 1, paragraph H. Additional
25 rulemaking is not required for rate increases tied to annual cost-of-living adjustment
26 increases unless the department changes the cost-of-living adjustment methodology.

27 **3. Funding.** The department may use funds from the MaineCare Stabilization Fund
28 established in section 3174-KK in order to fund the rate adjustments made in accordance
29 with this section when additional funding may be needed in addition to appropriations
30 associated with separate initiatives.

31 **4. MaineCare Rate Reform Expert Technical Advisory Panel.** The MaineCare Rate
32 Reform Expert Technical Advisory Panel, referred to in this subsection as "the panel," is
33 established for the purpose of advising the commissioner by providing technical,
34 nonpartisan, 3rd-party expertise to inform the department's planned schedule and actions
35 on rate assumptions, payment models and other related technical matters. The panel may
36 not propose rates or methodologies. The commissioner or the commissioner's designee
37 shall serve as chair.

38 A. The panel must include the following members:

39 (1) A representative from the Maine Health Data Organization;

40 (2) A representative from the Department of Professional and Financial
41 Regulation, Bureau of Insurance;

42 (3) A representative from the Department of Professional and Financial
43 Regulation;

