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.

Presented by Representative MEYER of Eliot.
Be it enacted by the People of the State of Maine as follows:

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

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

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

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

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

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

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

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

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

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

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

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

F. Conduct a rate study in accordance with this paragraph and paragraph G for every service for which a benchmark rate in accordance with paragraph B or C is either unavailable or is inconsistent with the goals of efficiency, economy and quality of care to support member access. The department shall:
(1) Develop annually a schedule of rate studies in consultation with the technical advisory panel established under subsection 4, as long as a review of the rate methodology and assumptions resulting from the rate study for the service occurs no less frequently than once every 5 years;

(2) Post the rate study schedule on its publicly accessible website; and

(3) Conduct off-schedule rate studies and reviews if the department determines those studies and reviews to be appropriate;

G. Conduct rate studies for specific services for which it determines benchmarking in accordance with paragraph B or C is not appropriate or advisable. Each rate study must include the following:

(1) Public notice of initiation of the rate study;

(2) Review of data that must include:

(a) An assessment as to whether the service model has changed since the previous rate study, if available, to determine if model assumptions need to be revised;

(b) The collection of data on provider costs and cost-related aspects of the service model through existing cost reports, provider surveys and other available data sources; and

(c) Research on any available national models or best practices regarding payment models and cost-related aspects of the service model;

(3) Developing or updating proposed rates by considering the following:

(a) The appropriateness of adoption of an alternative payment model or other change in payment model, consistent with the purposes of this section;

(b) The current rate assumptions and their appropriateness, given current provider costs, best practices or changes in the service model;

(c) The findings for related services of any comprehensive benchmarking report under paragraph E;

(d) The potential use of established benchmarks or comparable rate data from other payer sources; and

(e) The degree to which services are dependent on MaineCare reimbursement, including, but not limited to, cost factors, such as average wage, that may be reflective of restraints of MaineCare reimbursement versus costs of the broader marketplace;

(4) Public presentation of draft results for public comment; and

(5) Response to comments and an explanation of whether and how feedback was incorporated; and

H. Provide an annual cost-of-living adjustment effective on a consistent date to be established by the department for each service that has not received a rate adjustment within the 12 months prior to the effective date of the cost-of-living adjustment, and for which it determines benchmarking in accordance with paragraph B or C is not
appropriate or advisable. In establishing cost-of-living adjustments, the department shall:

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

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

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

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

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

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

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

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

A. The panel must include the following members:

1. A representative from the Maine Health Data Organization;

2. A representative from the Department of Professional and Financial Regulation, Bureau of Insurance;

3. A representative from the Department of Professional and Financial Regulation;
A representative from the department's division of licensing and certification;
(5) A representative from the Office of Affordable Health Care;
(6) A representative from the Department of Labor;
(7) A representative from the Department of Administrative and Financial Services; and
(8) A representative from the Office of Fiscal and Program Review.

B. The panel shall:

(1) Review annual schedules of MaineCare policy sections slated for rate studies under subsection 1, paragraph F or G;
(2) Review assumptions and recommendations from rate studies under subsection 1, paragraph F or G;
(3) Review findings from benchmarking reports to inform the appropriateness of MaineCare rate levels across services; and
(4) Advise on other related technical matters, as appropriate.

C. Meetings of the panel are governed by this paragraph. The panel shall meet at least twice per year and as otherwise convened by the commissioner. Meetings of the panel are public, and the panel shall provide public notice of the meeting and an opportunity for public comment.

SUMMARY

This bill formalizes the Department of Health and Human Services’ MaineCare provider reimbursement rate system reform effort by establishing rate development principles and processes, specifying rule-making requirements for rate adjustments, ensuring access to a funding source, as needed, for associated rate adjustments and establishing an expert technical advisory panel to assist the Commissioner of Health and Human Services on MaineCare rates and payment models.