

Legislative Wrap Up

September 2018



Second Session
128th Legislature

It's Over

In the longest legislative session in recent memory, the second special session of the 128th Legislature finally adjourned on September 13. Accordingly, the effective date for any bills passed during this second special session is December 13.

Entire 128th Legislative Session

More bills were filed for the entire 128th Legislature than had been filed in many years. However, the total number of bills enacted into law fell to the lowest level in years as well. As such, the rate of enactment has dropped from 50% to less than 30%.

TOTAL BILLS FILED — **1,927** (276 in the Second Session)

NEW LAWS — **553**

- Acts — **477**
- Resolves — **61**

Private & Special Laws — **15**

Over 550 newly enacted laws may not seem like a government stuck in gridlock, but it is certainly a notable reduction compared to previous sessions.

	128th (2017-18)	127th (2015-16)	126th (2013-14)	125th (2011-12)	124th (2009-10)
Bills Enacted	553	621	753	898	911
% Enacted	29%	36%	40%	47%	50%
Total Bills	1,927	1,703	1,865	1,916	1,832

Hospital Issues in the Second Session

Little more than 33% of the bills we followed this session were enacted.

Total Bills We Followed – 114

Enacted – 38

Dead – 76

The MHA Bills of Interest document for the second session can be found at [http://www.themha.org/policy-advocacy/State-Current-Legislation/Bills-of-interest-for-website-\(1\).aspx](http://www.themha.org/policy-advocacy/State-Current-Legislation/Bills-of-interest-for-website-(1).aspx).

Budget

There was no traditional supplemental budget this year but there were a few larger spending packages that served as supplemental budgets.

[LD 924](#) – *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (Supplemental Budget #1) (Enacted as PL 2017, [Ch. 459](#)).

This \$30 million general fund package deals only with home care reimbursement rates in Medicaid.

[LD 925](#) - *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (Supplemental Budget #2) (Enacted as PL 2017, [Ch. 460](#)).

This was a far more reaching budget package that increased spending on opioid treatment and long-term care for the elderly.

Legislation	Subject	SFY 2019 Amount (Gen. Fund)
LD 924		
LD 643 Medicaid (Home Care Rates)	Rate increases for home care and related personal services (Sections 12, 19, 96 and 63).	\$3.7M
LD 967 Medicaid (intellectual or developmental disabilities (IDD) Home Care Rates)	10% rate increases for providers of home/community services for individuals with IDD (Sections 21 and 29).	\$26.5M
Sub-Total		\$30.2M
LD 323 Medicaid (IDD Wait Lists)	Section 21 – 300 new members	\$5.2M
LD 1430 Uninsured (Opioid Addiction Services)	Various efforts related to the “hub and spoke” model of treatment for opioid addiction.	\$6.7M
LD 1466 Medicaid (Nursing Homes / Long-Term Care Rates)	10% rate increases for adult day care/ family care services (Section 2, and 26, Sections 61 and 69). 10% rate increases for nursing homes for wage component of rates. (Section 67). Inflation adjustments thereafter. 10% rate increase for residential care for wage component of rates (Section 97). Inflation adjustments thereafter.	\$11M

LD 1517 Medicaid (Behavioral Health)	2% rate increase for case management/ community support and behavioral health ser- vices (Section 17, 23 and 65).	\$6M
LD 1737 Medicaid (Behavioral Health)	15% rate Increase for medication management (Section 65).	\$570K
LD 1742 Assisted Living Facilities	One-time funding increase for assisted living facilities.	\$500K
LD 1820 Medicaid (Children's Services)	Rate increase for children's habilitative services (Section 28).	\$2.9M
LD 1868 Medicaid (Children's Services)	20% rate increase for multisystemic family therapy (Section 65).	\$200K
Sub-Total		\$33M
Education/Children's Health		
LD 1542 Lead Abatement	Funding for grants to do lead abatement efforts in residential housing.	\$0M (\$4M from the Fund for Healthy Maine)
LD 1710 School Health Centers	Restores funding for school-based health centers.	\$0K (\$600K from the Fund for Healthy Maine)
LD 1870 Education (Child Development Services)	One-time funding for the Department of Edu- cation for early childhood special education services.	\$3.7M
Sub-Total		\$8.3M
Law Enforcement		
LD 1429 Opioids (Criminalization)	Increases penalties for drug dealers who con- tribute to overdose drug deaths. Funding is for increased indigent legal services for drug dealers.	\$11K
LD 1783 Criminalization of Drug Trafficking		\$0
Sub-Total		11K
Total		\$71.5M

Notable Bills Enacted

[LD 320](#) – *An Act To Provide MaineCare Coverage for Chiropractic Treatment* (Enacted as PL 2017, [Ch. 421](#))

As amended, the bill requires MaineCare to cover chiropractic “evaluation and management” services.

[LD 401](#) – *An Act To Require Reimbursement to Hospitals for Patients Awaiting Placement in Nursing Facilities* [[MHA Bill](#)] (Enacted as PL 2017, [Ch. 454](#))

This law directs the Department of Health and Human Services to provide reimbursement to hospitals other than critical access hospitals for each day after the 10th day that a MaineCare-eligible individual is in the care of a hospital while awaiting placement in a nursing facility. The reimbursement is to be paid prospectively at the statewide average rate per MaineCare-member day for nursing facility services. The department is directed to implement this reimbursement for days awaiting placement for a period limited to 5 years. Reimbursement is limited to a maximum of \$500,000 of combined General Fund funds and federal funds for each year of the 5-year period.

[LD 687](#) – *An Act Regarding Reimbursement for Speech and Language Pathology Services* (Enacted as Resolve 2017, [Ch. 60](#))

As amended, the bill is replaced with a resolve. It sets the reimbursement rates for speech and language pathology services provided by an agency under Section 109 of the MaineCare manual at 69% of the federal Medicare rate as long as the reimbursement rate is no lower than the current rate. It establishes that services provided by independent speech-language pathologists are set at 90% of the reimbursement rate for agencies. The majority report also establishes reimbursement rates for agency speech-language pathology assistants for group therapy at 69% of the federal Medicare rate for equivalent services for speech-language pathologists since there is no established Medicare rate for assistants. Rates for agency assistants providing individual therapy do not change from the rate reimbursed as of January 1, 2017. Independent speech-language pathology assistant reimbursement rates are set at 90% of the agency rates for assistants.

[LD 842](#) – *Resolve, To Support Home Health Services* (Enacted as Resolve 2017, [Ch. 61](#))

The Resolve increases most reimbursement rates by January 1, 2019 for MaineCare home health services (Section 40) to 70% of the federal Medicare rates for these services. The rates for occupational therapy assistants, physical therapy assistants and speech and language assistants are increased by the same percentage increase as the respective specialists. The rates for clinical social work are increased by 30% over current rates. The resolve requires an increase of 30% over current rates.

[LD 1133](#) – *Act Regarding Access to Appropriate Residential Services for Individuals Being Discharged from Psychiatric Hospitalization* (Enacted as PL 2017, [Ch. 461](#))

As enacted, the law provides that a residential service provider may apply to the department for time-limited funding in order to meet a patient’s needs when the patient requires reasonable accommodations or a higher level of care for admission or readmission to the residential service provider. It provides that if the services are reimbursable by MaineCare that the residential service provider seek reimbursement first and it directs the department to provide the residential service provider with technical support in seeking MaineCare reimbursement. It directs the Department of Health and Human Services to adopt rules to implement this program no later than January 1, 2019. It directs the department to report to the joint standing committee having jurisdiction over health and human services matters by January 15, 2020. It provides that this section is repealed July 1, 2020.

[LD 1287](#) – *An Act To Strengthen Efforts To Recruit and Retain Primary Care Professionals and Dentists in Rural and Underserved Areas of the State* (Enacted as PL 2017, [Ch. 435](#))

This law extends through 2026 the income tax credit for eligible dentists who practice in underserved areas. With respect to the primary care access credit, the bill increases the number of primary care professionals who practice in underserved areas who may be certified for the credit and allows the credit for primary care professionals to remain in effect beyond January 1, 2019.

[LD 1388](#) – *An Act To Prohibit the Falsification of Medical Records* (Enacted as PL 2017, [Ch. 410](#))

As enacted, the law provides that the falsification of healthcare records maintained by a healthcare provider with the intent to deceive another person is a Class D crime except that it is a Class C crime if any reliance on the falsification causes bodily injury or the impairment of a person's mental or behavioral condition.

The circumstances surrounding the enactment of this law were nursing home care-related. The Attorney General's Office submitted this legislation because it felt it did not have clear statutory authority to prosecute a person for making a false entry in a medical record where the intent was to essentially deceive a supervisor that care was being provided.

An example provided by the AG was a staff member recording in the medical record that medications had been provided to a patient as scheduled, when, in fact, they had not been given as scheduled. If the purpose of that false entry had been financial fraud, the AG felt they could prosecute. But where the entry was made for the intent to cover-up a lack of fidelity to the job (for whatever reason), the AG felt they needed statutory clarity provided by this bill.

[LD 1406](#) – *An Act To Promote Prescription Drug Price Transparency* (Enacted as PL 2017, [Ch. 406](#))

The circumstances surrounding this bill are fairly obvious, the dramatic increases in the cost of prescription drugs.

As enacted, the Maine Health Data Organization (MHDO) is to analyze and publish pharmacy data it currently collects. MHDO is to identify prescription drugs, both brand name and generic, that are the most frequently prescribed in the State, are the costliest drugs as determined by total spending in the State and have the highest year-over-year cost increases in the State. MHDO is required to prepare the report annually, beginning with the first report by December 1, 2018.

It also directs the MHDO to develop a plan to collect data from manufacturers that will help explain how prescription drug prices are established. The organization is required to work with other state and national agencies and organizations to determine how to conduct the data collection. The organization must submit the plan as well as any recommendations to the Judiciary Committee matters by April 1, 2019.

The latter issue, creating a plan to collect data on how drug prices are established, is going to be much more difficult to implement than simply publishing the aggregate data about the costliest drugs in Maine.

[LD 1476](#) – *An Act To Ensure Continued Coverage for Essential Health Care* (PL 2017, [Ch. 343](#))

As enacted, the law incorporates current requirements under the federal Patient Protection and Affordable Care Act for coverage of preventive health services into state law. The requirements apply to all individual and group health insurance policies and contracts issued or renewed on or after January 1, 2019.

The genesis of the bill was the concern surrounding potential federal repeal of the ACA. While that threat has subsided somewhat, the Legislature felt it prudent to take this step regardless.

[LD 1714](#) – *An Act To Clarify Liability Pertaining to the Collection of Debts of MaineCare Providers by the Department of Health and Human Services* (Enacted as PL 2017, [Ch. 442](#))

This bill clarifies requirements for the definition of an ownership or control relationship for purposes of determining when the Department of Health and Human Services (DHHS) may offset debts owed to the department by a provider against current MaineCare reimbursement due to that provider or an entity related to that provider. It clarifies that the department may not off-set current reimbursement owed to an entity related by ownership or control to the provider unless the person whose relationship is the subject of the offset has the voting power to govern the operation of the provider owing the debt. The bill prohibits the department from imposing liability for a debt owed by a provider on any person except a provider notified in accordance with statute of the debt or a person subject to collection by offset. The bill retains the provision in current law allowing the department to recover a debt by seeking a civil penalty for a false claim.

[LD 1719](#) – *An Act To Implement a Regulatory Structure for Adult Use Marijuana* (Enacted as PL 2017, [Ch. 409](#))

This law implements the legalization of adult, recreational marijuana in Maine. It makes several changes to the law that was enacted by the voters pursuant to the referendum question presented in 2016.

Much of the 80-page law regulates the cultivation and retail sale of marijuana products.

It also increased the tax rates that had been imposed in the referendum question. Of the taxes collected, 12% must be dedicated to public health and safety awareness programs.

It eliminates the option of “social clubs.”

It takes away oversight of the medical marijuana program from DHHS and transfers that responsibility to the Department of Administration and Financial Services (DAFS); DAFS is also given the responsibility for oversight of the new recreational program as well.

Finally, it eliminates the problematic human resources issues for employers that were created by the original referendum question.

Further rulemaking by state agencies will be necessary to fully implement the law.

[LD 1762](#) – *An Act To Ensure Sustainable Health Care Access in the Jackman Region* (Enacted as PL 2017, [Ch. 451](#))

As amended, the bill appropriates \$150,000 in “one-time funding” to the Jackman Community Health Center to ensure sustainable healthcare access in the Jackman region.

[LD 1771](#) – *An Act To Stabilize Vulnerable Families* (Enacted as PL 2017, [Ch. 415](#))

As amended, the bill directs DHHS to issue a request for proposals to develop and fund two housing projects that incorporate opioid abuse treatment services for mothers of young children. These projects are to be modeled on the McAuley residences in Portland.

[LD 1875](#) – *An Act To Amend the Maine Life and Health Insurance Guaranty Association Act* (Enacted as PL 2017, [Ch. 382](#))

This law, submitted by the Bureau of Insurance, makes a number of changes to the Maine Life and Health Insurance Guaranty Association Act to bring it into alignment with the National Association of Insurance Commissioners (NAIC) model guaranty act. As its name implies, the Guaranty Association provides coverage in certain circumstances involving the insolvency of an insurer. The major changes sought by this bill are to bring HMOs into the program and to reallocate the long-term care insurance from the health insurance side of the program to the life insurance side of the program. Of more direct interest to hospitals, the bill more specifically clarifies that providers who render care to enrollees of an insolvent plan have the same coverage benefit as provided to the enrollee.

[LD 1888](#) – *An Act To Amend the Workers' Compensation Laws Governing Affiliated Self-Insurance Groups* (Enacted as PL 2017, [Ch. 401](#))

This law amends the workers' compensation laws governing self-insurers. It allows a group self-insurer to provide an irrevocable standby letter of credit as security. The letter must be filed with the Superintendent of Insurance along with other agreements or documents relating to the employer's reimbursement obligations.

The law amends the workers' compensation laws governing the participation of employers in a group self-insurance plan. It allows certain affiliated group self-insured plans to secure the plan with a letter of credit or similar security products.

Full Enacted List

[LD 238](#) – *An Act To Amend the Maine Medical Use of Marijuana Act* (Enacted as PL 2017, [Ch. 447](#)).

[LD 320](#) – *An Act To Provide MaineCare Coverage for Chiropractic Treatment* (Enacted as PL 2017, [Ch. 421](#)).

[LD 384](#) – *An Act To Strengthen Maine Children's Mental Health* (Enacted as Resolve 2017, [Ch. 47](#)).

[LD 401](#) – *An Act To Require Reimbursement to Hospitals for Patients Awaiting Placement in Nursing Facilities [MHA Bill]* (Enacted as PL 2017, [Ch. 454](#)).

[LD 565](#) – *An Act To Address Maine's Opiate Addiction Crisis* (Enacted as PL 2017, [Ch. 364](#)).

[LD 687](#) – *Resolve, Regarding Reimbursement for Speech and Language Pathology Services* (Enacted as Resolve, [Chapter 60](#)).

[LD 696](#) – *An Act To Require Notification of Adverse Changes to Prescription Drug Formularies in Health Plans* (Enacted as PL 2017, [Ch. 429](#)).

[LD 842](#) – *Resolve, To Support Home Health Services* (Enacted as Resolve 2017, [Ch. 61](#)).

[LD 924](#) – *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government (Supplemental Budget #1)* (Enacted as PL 2017, [Ch. 459](#)).

[LD 925](#) – *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government (Supplemental Budget #2)* (Enacted as PL 2017, [Ch. 460](#)).

[LD 958](#) – *An Act To Enact the Uniform Emergency Volunteer Health Practitioners Act* (Enacted as PL 2017, [Ch. 396](#)).

[LD 1030](#) – *An Act To Require Nondiscrimination Policies in Providing Health Care Services* (Enacted as PL 2017, [Ch. 340](#)).

[LD 1133](#) – *Act Regarding Access to Appropriate Residential Services for Individuals Being Discharged from Psychiatric Hospitalization* (Enacted as PL 2017, [Ch. 461](#)).

[LD 1287](#) – *An Act To Strengthen Efforts To Recruit and Retain Primary Care Professionals and Dentists in Rural and Underserved Areas of the State* (Enacted as PL 2017, [Ch. 435](#)).

[LD 1327](#) – *An Act To Allow Former Military Medical Personnel To Perform Certain Medical Services* (PL 2017, [Ch 326](#)).

[LD 1388](#) – *An Act To Prohibit the Falsification of Medical Records* (Enacted as PL 2017, [Ch. 410](#)).

[LD 1406](#) – *An Act To Promote Prescription Drug Price Transparency* (Enacted as PL 2017, [Ch. 406](#)).

[LD 1476](#) – *An Act To Ensure Continued Coverage for Essential Health Care* (Enacted as PL 2017, [Ch. 343](#)).

[LD 1539](#) – *An Act To Amend Maine's Medical Marijuana Law* (Enacted as PL 2017, [Ch. 452](#)).

[LD 1655](#) – *An Act To Update References to the United States Internal Revenue Code of 1986 Contained in the Maine Revised Statutes* (Enacted as PL 2017, [Ch. 474](#)).

[LD 1664](#) – *Resolve, Regarding Legislative Review of Portions of Chapters 126 and 261: Immunization Requirements for School Children, Joint Major Substantive Rules of the Department of Education and the Department of Health and Human Services* (Enacted as Resolve 2017, [Ch. 32](#)).

[LD 1665](#) – *An Act To Maintain Mental Health Staffing at the Dorothea Dix Psychiatric Center and Support Statewide Forensic Services* (Enacted as PL 2017, [Ch. 380](#)).

[LD 1685](#) – *An Act To Create the Barbara Bush Children's Hospital Registration Plate* (Enacted as PL 2017, [Ch. 400](#)).

[LD 1707](#) – *An Act To Reduce the Cost of Care Resulting from Blood-borne Infectious Diseases* (Enacted as PL 2017, [Ch. 464](#)).

[LD 1714](#) – *An Act To Clarify Liability Pertaining to the Collection of Debts of MaineCare Providers by the Department of Health and Human Services* (PL 2017, [Ch. 442](#)).

[LD 1717](#) – *An Act To Clarify the Authority of the Chief Medical Examiner to Properly Dispose of Abandoned Human Remains* (Enacted as PL 2017, [Ch. 335](#)).

[LD 1719](#) – *An Act To Implement a Regulatory Structure for Adult Use Marijuana* (Enacted as PL 2017, [Ch. 409](#)).

[LD 1730](#) – *An Act To Remove Veterinarians from the Controlled Substances Prescription Monitoring Program* (Enacted as PL 2017, [Ch. 360](#)).

[LD 1735](#) – *An Act To Authorize Regional Medical Control Committees to Have Access to Maine Emergency Medical Services Data for Purposes of Quality Improvement* (Enacted as PL 2017, [Ch. 373](#)).

[LD 1762](#) – *An Act To Ensure Sustainable Health Care Access in the Jackman Region* (PL 2017, [Ch. 451](#)).

[LD 1771](#) – *An Act To Stabilize Vulnerable Families* (Enacted as PL 2017, [Ch. 415](#)).

[LD 1774](#) – *An Act To Reduce Child Poverty by Leveraging Investments in Families for Tomorrow* (Enacted as PL 2017, [Ch. 387](#)).

[LD 1778](#) – *Resolve, Regarding Medicaid Reimbursement for Rehabilitation Hospitals* (Enacted as Resolve 2017, [Ch. 41](#)).

[LD 1837](#) – *An Act To Allow Cash Prizes for Certain Raffles Conducted by Charitable Organizations* (Enacted as PL 2017, [Ch. 365](#)).

[LD 1871](#) – *An Act To Implement the Recommendations of the Task Force to Address the Opioid Crisis in the State Regarding Respectful Language* (Enacted as PL 2017, [Ch. 407](#)).

[LD 1875](#) – *An Act To Amend the Maine Life and Health Insurance Guaranty Association Act* (Enacted as PL 2017, [Ch. 382](#)).

[LD 1888](#) – *An Act To Amend the Workers' Compensation Laws Governing Affiliated Self-Insurance Groups* (Enacted as PL 2017, [Ch. 401](#)).

[LD 1892](#) – *An Act To Clarify the Prescribing and Dispensing of Naloxone Hydrochloride by Pharmacists* (Enacted as PL 2017, [Ch. 417](#)).

Notable Bills Rejected.

The range of issues that were discussed but for which no action was taken was quite broad. Here are some of the most notable:

Referendum Process. [LD 31](#) – RESOLUTION, *Proposing an Amendment to the Constitution of Maine to Require that Signatures on a Direct Initiative of Legislation Come from Each Congressional District.*

Universal Health Care. [LD 386](#) – *An Act To Establish Universal Health Care for Maine.*

Mandatory Overtime in Hospitals. [LD 898](#) – *An Act To Address Mandatory Overtime for Hospital Professionals.*

Prior Authorization Process. [LD 1032](#) – *An Act To Ensure Protection and Health Insurance of Patients.*

Age of Consent. [LD 1189](#) – *An Act To Define the Age of Consent for Alcohol or Drug Treatment and Mental Health Services.*

ACA Protections. [LD 1279](#) – *An Act To Ensure Patient Protections in the Health Insurance Laws.*

Lyme Disease. [LD 1417](#) – *An Act To Require Insurance Coverage for the Diagnosis and Treatment of Lyme Disease.*

Mandatory Paid Family Leave. [LD 1587](#) – *An Act To Provide Economic Security to Maine Families Through the Creation of a Paid Family Medical Leave System.*

Universal Family Care. [LD 1612](#) – *An Act To Support Maine Families Through Universal Family Care.*

Hospital Closures. [LD 1715](#) – *An Act To Ensure Rural Patient Populations Receive Safe and Effective Health Care.*

Minimum Wage. [LD 1757](#) – *An Act To Protect Maine's Economy by Slowing the Rate at Which the State's Minimum Wage Will Increase and Establishing a Training and Youth Wage.*

Workplace Drug Testing. [LD 1768](#) – *An Act To Reduce Impairment on the Job and Improve Workplace Safety by Amending the Laws Governing Employment Practices Concerning Substance Use Testing.*

Overtime Regulation. [LD 1769](#) – *An Act To Conform the Laws Regarding a Salaried Employee Who Is Exempt from Overtime and Minimum Wage Requirements to Federal Law.*

FGM. [LD 1904](#) – *An Act To Prohibit the Practice of Female Genital Mutilation of a Minor.*

Criminalizing Mandatory Reporters. [LD 1919](#) – *An Act To Criminalize the Failure To Make a Report of Child Abuse or Neglect as Required by Statute.*



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