

A photograph of a person with long brown hair, wearing a black tank top and a red and black headband, climbing a grey rock face. The person is seen from behind, reaching up with their right arm. The rock face is composed of large, irregular grey stones with some reddish-brown spots.

traction
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JANUARY 8, 2020

ANNUAL NURSING AND ASSISTED LIVING UPDATE



AGENDA

- BerryDunn Style Potpourri
- Long Term Care Maine Policy and Reimbursement: Past, Present and Future
- PDPM and Medicare 2020 Landscape and Beyond: A First Look
- Paid Leave Laws: Are you Ready?
- Revenue Cycle - Insight Into Improving Your Collections



GOAL / OBJECTIVE

To gain insight into the environment in which you operate by taking a closer look at regulatory and legislative initiatives, tax matters, and key operational indicators and trends to assist you in gaining control over your operations and achieving your goals and success.



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TAX UPDATE
JASON FAVREAU



COST RECOVERY

COST RECOVERY

100% Bonus Depreciation - remains in effect through 2022 for new and used qualifying property

- Cost Segregation Studies
- Qualified Improvement Property (technical error)

IRC §179 Expensing – permanently increased to \$1MM

Repairs & Maintenance – 2013 Tangible Property Regulations

- Book vs. Tax differences
- Partial disposition opportunities

IRC §179D (EPA Act) - retroactively enacted from 2018 through 2020



QUALIFIED BUSINESS INCOME (QBI) DEDUCTION

WHAT IS QBI?

Net amount of qualified income, gain, deductions and losses from a **Qualified Business**

Every trade or business is qualified, other than:

- The trade or business of performing services as an employee; and
- A specified service trade or business (generally)

Reasonable compensation (S Corporations) and guaranteed payments (Partnerships) do not qualify

**Investment
Management**

Health

Actuarial Services

**Brokerage
Services**

Consulting

**“Any trade or business where the
principal asset of such trade or
business is the reputation or skill of
one or more of its employees or
owners”**

Law

Athletics

Accounting

**Performing
Arts**

**Financial
Services**

	NON-SPECIFIED SERVICE TRADE OR BUSINESS	SPECIFIED SERVICE TRADE OR BUSINESS
Taxable Income < \$315,000 (MFJ, \$157,500 Single)	20% Deduction	20% Deduction
Taxable Income > \$315,000 but less than \$415,000	Limitation Phased-In	Deduction Phase-Out
Taxable Income > \$415,000	W-2 / Property Limit Applies	Limit Applies

The Treasury Department and the IRS agree that skilled nursing, assisted living, and similar facilities provide multifaceted services to their residents. Whether such a facility and its owners are in the trade or business of performing services in the field of health requires a facts and circumstances inquiry

The definition provided in regulations of “providing services in the field of health” includes nursing and physical therapy

Skilled Nursing Facilities

Likely SSTBs

Assisted Living Facilities

Certain AL facilities may qualify as non-SSTBs

MIXED USE FACILITIES

CHALLENGE:

How to classify QBI when activities consist of both SSTB and non-SSTB?

Related party rules?

OPPORTUNITIES:

- Final regulations provide a safe harbor to avoid SSTB classification if SSTB activity represents less than 10% of total gross receipts
- Potential to define separate trade or business activity in order to avoid reporting all QBI as SSTB



INTEREST – §163(j) LIMITATION

BUSINESS INTEREST EXPENSE DEDUCTION LIMITATION

CHALLENGE:

Deductibility of net business interest expense limited to 30% of a taxpayer's adjusted taxable income

Depreciation and amortization impact beginning in 2022

OPPORTUNITIES:

- Exemption for taxpayers with average annual gross receipts that do not exceed \$25 million
- Real property trade or business election
 - Impact of election is to stretch recovery period for depreciation
 - Uncertainty for related party rental properties
- Re-structure debt



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**STATE AND FEDERAL REGULATORY UPDATE, HIGHS AND LOWS
OF THE YEAR AND INSIGHT INTO THE INDUSTRY – A REVIEW OF
OUR PROPRIETARY DATABASES**
TAMMY BRUNETTI AND KEVIN WARE

L.D. 1758

AN ACT TO CLARIFY AND AMEND MAINECARE REIMBURSEMENT PROVISIONS FOR NURSING AND RESIDENTIAL CARE FACILITIES

GOVERNOR INITIALY DID NOT SIGN BUT HAS SUBSEQUENTLY SIGNED. PENDING IMPLEMENTATION SUBJECT TO EFFECTIVE DATE.

What does this mean for you?

L.D. 1758 - PROPOSED

AN ACT TO CLARIFY AND AMEND MAINECARE REIMBURSEMENT PROVISIONS FOR NURSING AND RESIDENTIAL CARE FACILITIES

- Base year cost report filing cut off date
- Cost of living gap correction
- Re-institute 10% SWA based on 2016 wages and related benefits for NF and RCF AND include contract labor and all allowable benefits AND pay and settle within routine component AND continue until 2016 becomes a base year
- Add another 10% SWA based on 2017 wages and benefits for NF and RCF AND include contract labor and all allowable benefits AND pay and settle within routine component AND continue until 2017 becomes a base year
- Specifically exclude “proof” of use of funds
- Changes in occupancy penalty provisions retroactive to SFY 6/30/19
- Change in Ultra High MaineCare utilization to exclude “low cost” threshold
- Supplemental Allowance for psych and brain injury units

L.D. 1758 - ENACTED

AN ACT TO CLARIFY AND AMEND MAINECARE REIMBURSEMENT PROVISIONS FOR NURSING AND RESIDENTIAL CARE FACILITIES

- Re-institute 10% SWA based on 2016 wages and related benefits for NF and RCF AND continue until 2019 becomes a base year
- Add another 10% SWA based on 2017 wages and allowable benefits and taxes, and contract labor for NF and RCF AND continue until 2020 becomes a base year

L.D. 1758

AN ACT TO CLARIFY AND AMEND MAINECARE REIMBURSEMENT PROVISIONS FOR NURSING AND RESIDENTIAL CARE FACILITIES

Why was it held up?

- Upper Payment Limit
- Funding

UPPER PAYMENT LIMIT

- **What is it?**

The Upper Payment Limit (UPL) is a federal limit on fee for service reimbursement of Medicaid providers. State Medicaid programs cannot claim federal matching dollars for provider payments in excess of the UPL.
- **How does / did it impact L.D. 1758?**
 - DHHS Concerns
 - Concerns invalidated
- **Future federal concerns: Provider assessments**

WHAT DOES THIS MEAN FOR YOU?

- Rate letter changes
- Year-end accruals
- Cost report settlement impacts
- Tests to “keep” the dollars
- Medicaid reform on the horizon

RESIDENTIAL CARE FACILITIES – SECTION 97

Case-mix:

The Department will calculate each Appendix C PNMI's rate setting case-mix index using the number of MaineCare residents in each case-mix classification group in the facility as of **March 1st for the July rate** and **September 1st for the January rate**

The Department will send a roster of Appendix C residents and source of payment **as of March 1st and September 1st** to facilities for verification prior to rate setting

COLA and SWA:

- Annual COLA for wages
- Supplemental allowance for 10% of wages and benefits and taxes
- Requires test to retain 10%

RESIDENTIAL CARE FACILITIES – CHAPTER 115

Effective November 1, 2017

- Extraordinary circumstance language
- \$350k threshold for prior approval of renovations and new construction now \$500k
- Cost for changes in law shall be paid via supplemental payment

Effective August 1, 2018

- Annual COLA for wages
- Supplemental allowance for 10% of wages and related benefits and taxes

Effective November 20, 2018

- Depreciation recapture
- Modified or new definitions for licensed capacity, occupancy, proper interest, swap investments, and remote island facility
- Computer hardware is a fixed cost and software will be considered a routine cost
- Remote island supplemental payment added

RESIDENTIAL CARE FACILITIES – CHAPTER 115

Other changes not identified in summary letter:

- Included in proper interest definition is a statement that retroactive approvals for refinancings, energy efficient improvements, construction contingencies over 5%, renovations/new projects over \$500k will not be allowed
- 20.1 – Removed. All costs not specifically identified as included in fixed, shall be routine
- If mortgage exceeds useful life, useful life must = mortgage term
- If prior approval in writing for a refinance is not obtained, the lower of actual interest paid or interest per the historical approved amortization schedule shall be allowed. Also, costs to refinance will be unallowable
- Swap investments are not allowable
- Additional vehicle requests must be in writing

NURSING FACILITIES

Effective August 2, 2018

- Base year definition
- Removal of 18.5.1 – “necessary and proper interest on both current and capital indebtedness is an allowable cost”
- Addition of “allowable loan” language
- Addition of 18.5.2 specifically excluding swaps from allowable interest.
- Substantial changes to refinancing approval language
- Changes to occupancy adjustment threshold per L.D. 925
- Additional language for Ultra High MaineCare Utilization payment per L.D. 925, effective 07/01/19
- New Principle 43 – Supplemental Wage Allowance and test to retain the 10%
- New Principle 18.13 – Aggregate Hold Harmless
- Remove funding adjustment language left over from L.D. 1776
- Changes to Community Based Specialty Nursing Facility Units language

LEAVE OF ABSENT (LOA) AND BEHOLD DAYS

- Providers should not be paid for direct care portion of rate
 - Auditors have been identifying and removing from audit reports
 - Direct care portion has been recouped/offset from claims
- Reversal of position (10/23/19)
 - Audit no longer identifying and adjusting
 - Questions to be answered:
 - Is this a dead issue?
 - Will audit reports be reissued?
 - Will providers be refunded amounts previously recouped?

RATE LETTERS

- **Cost of Living GAP correction for both NF and RCF**
- **NF**
 - March 19, 2019 rate letter
- **RCF**
 - July 22, 2019 rate letter

NEW MEDICAID COST REPORT TEMPLATES

- ICF/MR
- Nursing Facility – Single Level
- Nursing Facility – Multi-Level, RCF
- Nursing Facility – Multi-Level, 1 RCF and CBS
- Nursing Facility – Multi-Level, 2 RCFs
- Nursing Facility – Multi-Level, 1 RCF with NF and RCF CBS Units
- Nursing Facility – Multi-Level, Brain Injury
- PNMI – App B D
- PNMI – App C (Case-Mix)
- PNMI – App C ML (Case-Mix)
- PNMI – App E
- PNMI – App F (non-Case-Mix)

FEDERAL PERSPECTIVE

MEDICARE

- 2019
 - 2.4% market basket increase
 - Decrease in the labor-related weight from 70.8% to 70.5%
- 2020
 - New payment model (PDPM)
 - 2.4% market basket increase
 - Increase in the labor-related weight from 70.5% to 70.9%
 - Urban - 6.3% and Rural - 4.0%



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BERRYDUNN'S PROPRIETARY DATABASES

KEVIN WARE

TYPES

MAINTAIN THREE DATABASES

- Financial
- MaineCare cost reports
- Medicare cost reports

PURPOSE?

- Client
- Legislative / industry support

FINANCIAL

- Key financial indicators
- BerryDunn attestation clients only

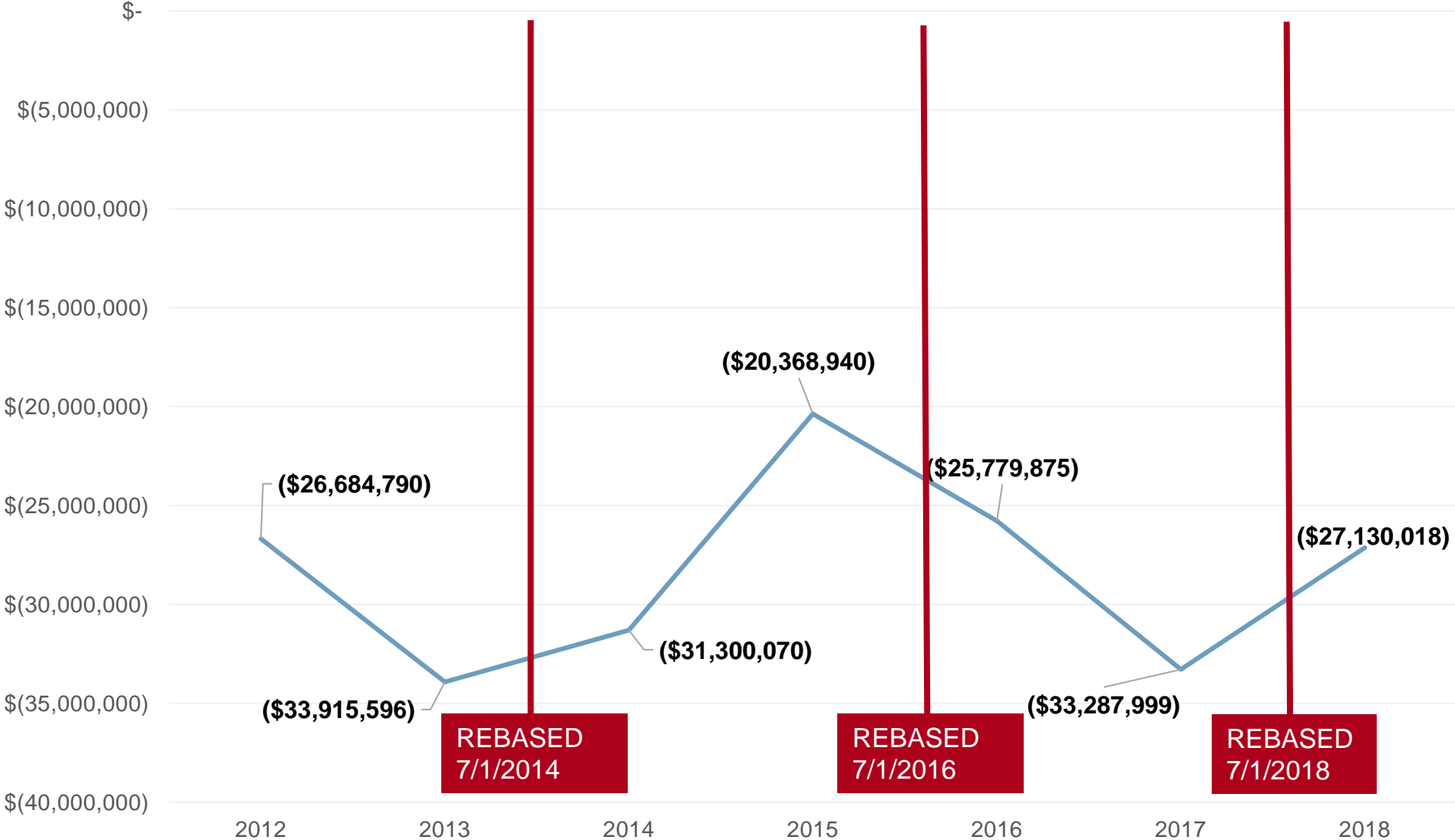
MAINECARE COST REPORTS

- Key cost report information
- All nursing and facility-based residential care facilities in Maine

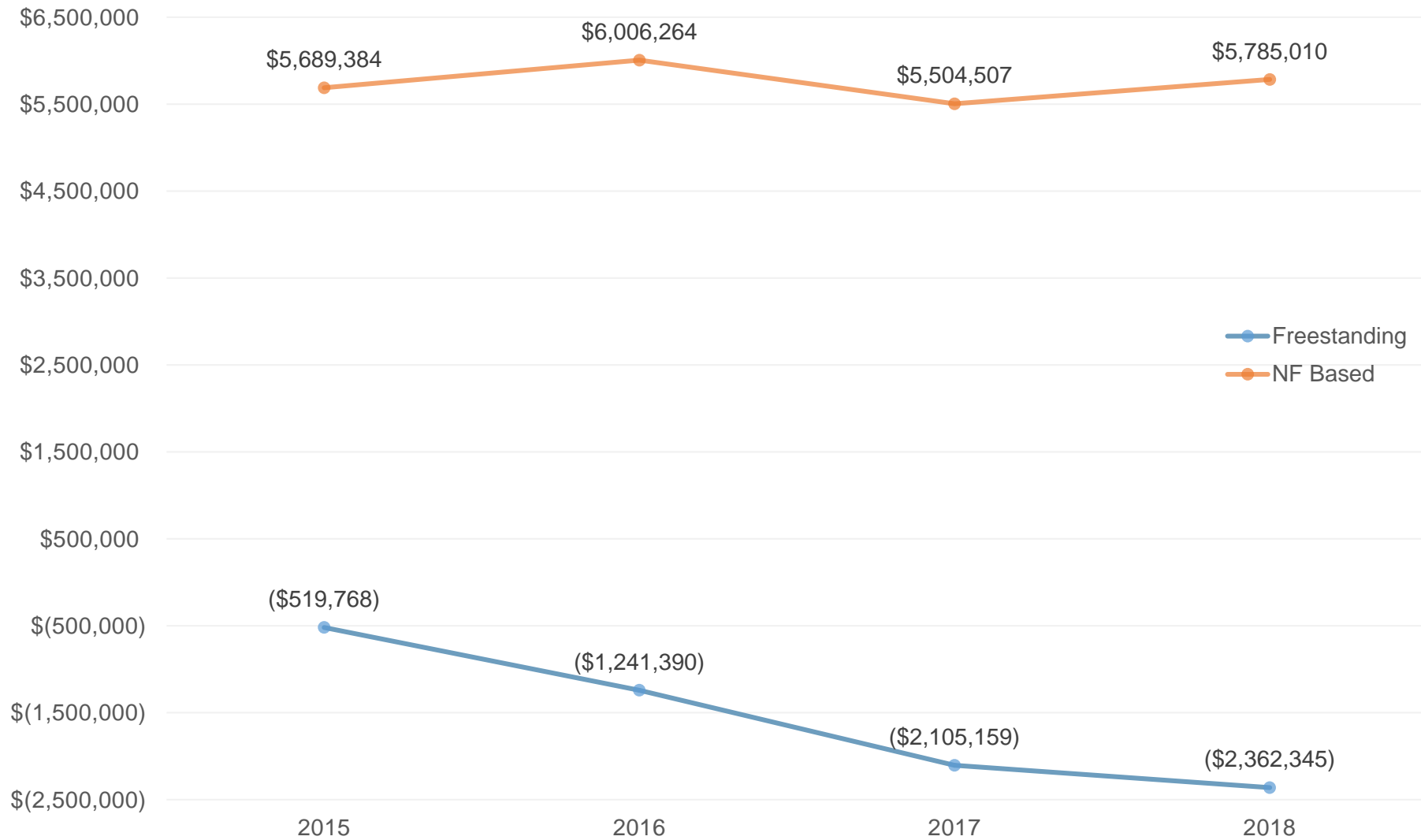
MEDICARE COST REPORTS

- Key cost report information
- All skilled nursing facilities in the country

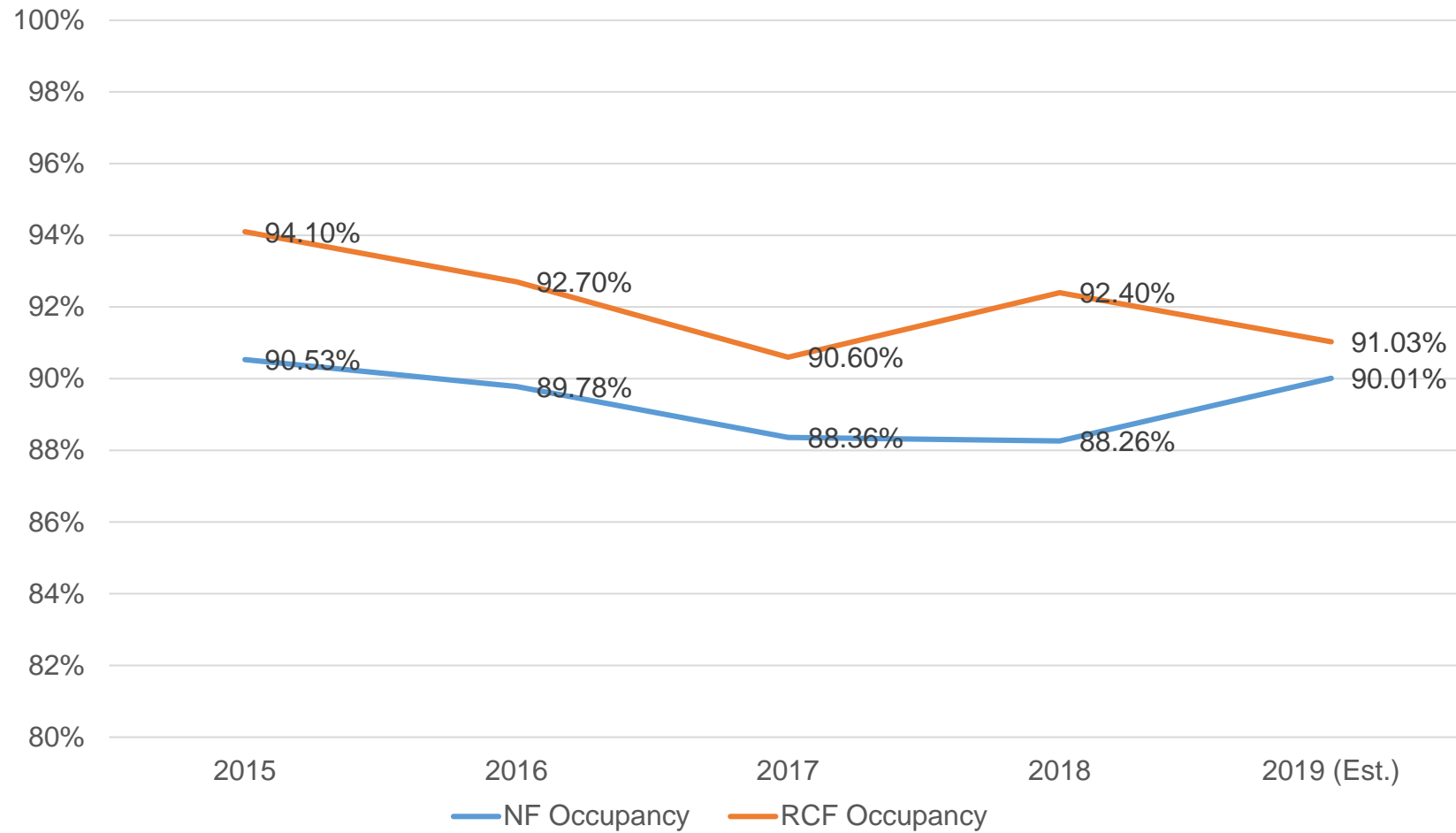
NURSING FACILITY MEDICAID SHORTFALL



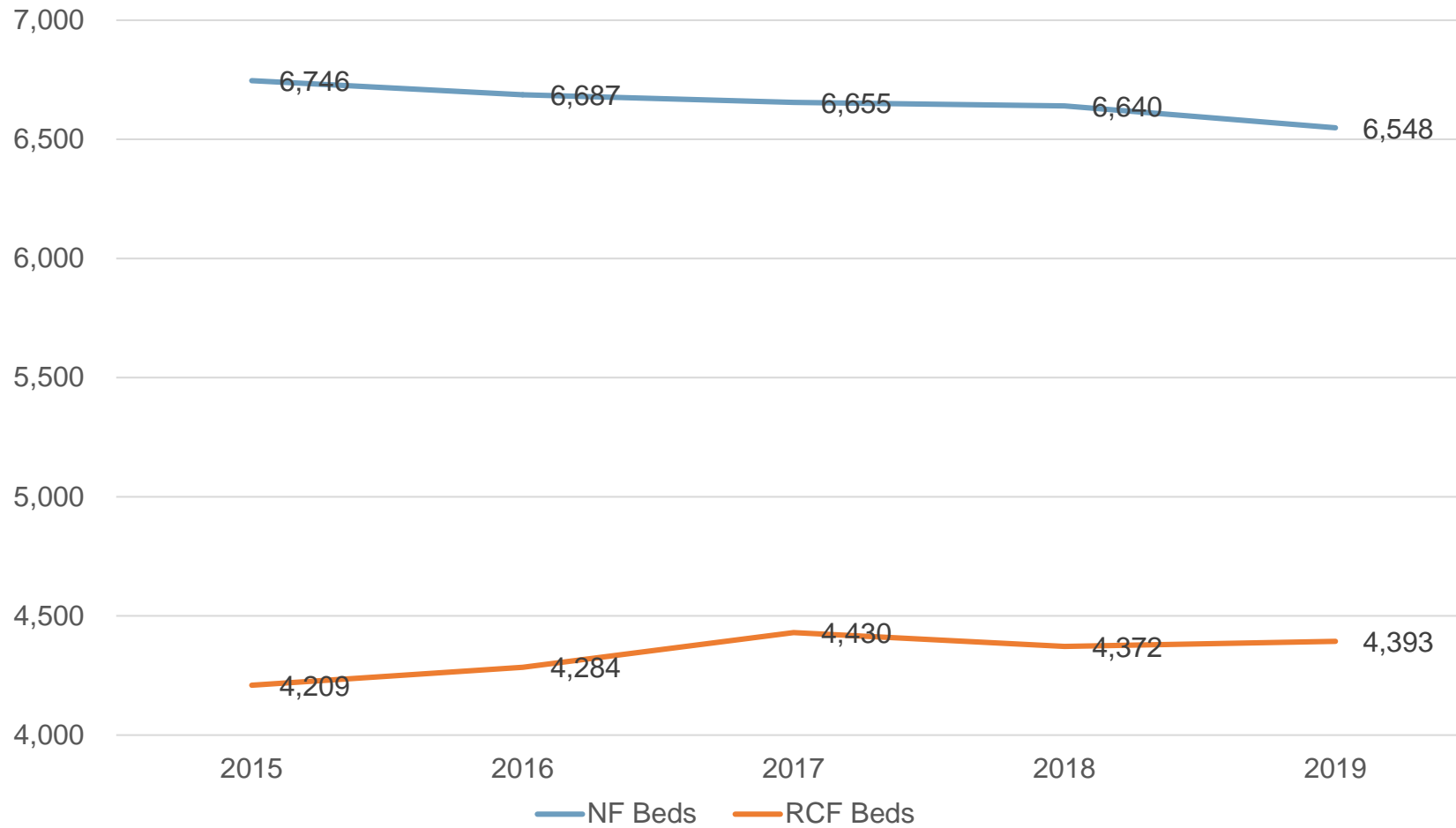
RESIDENTIAL CARE FACILITY MEDICAID SHORTFALL



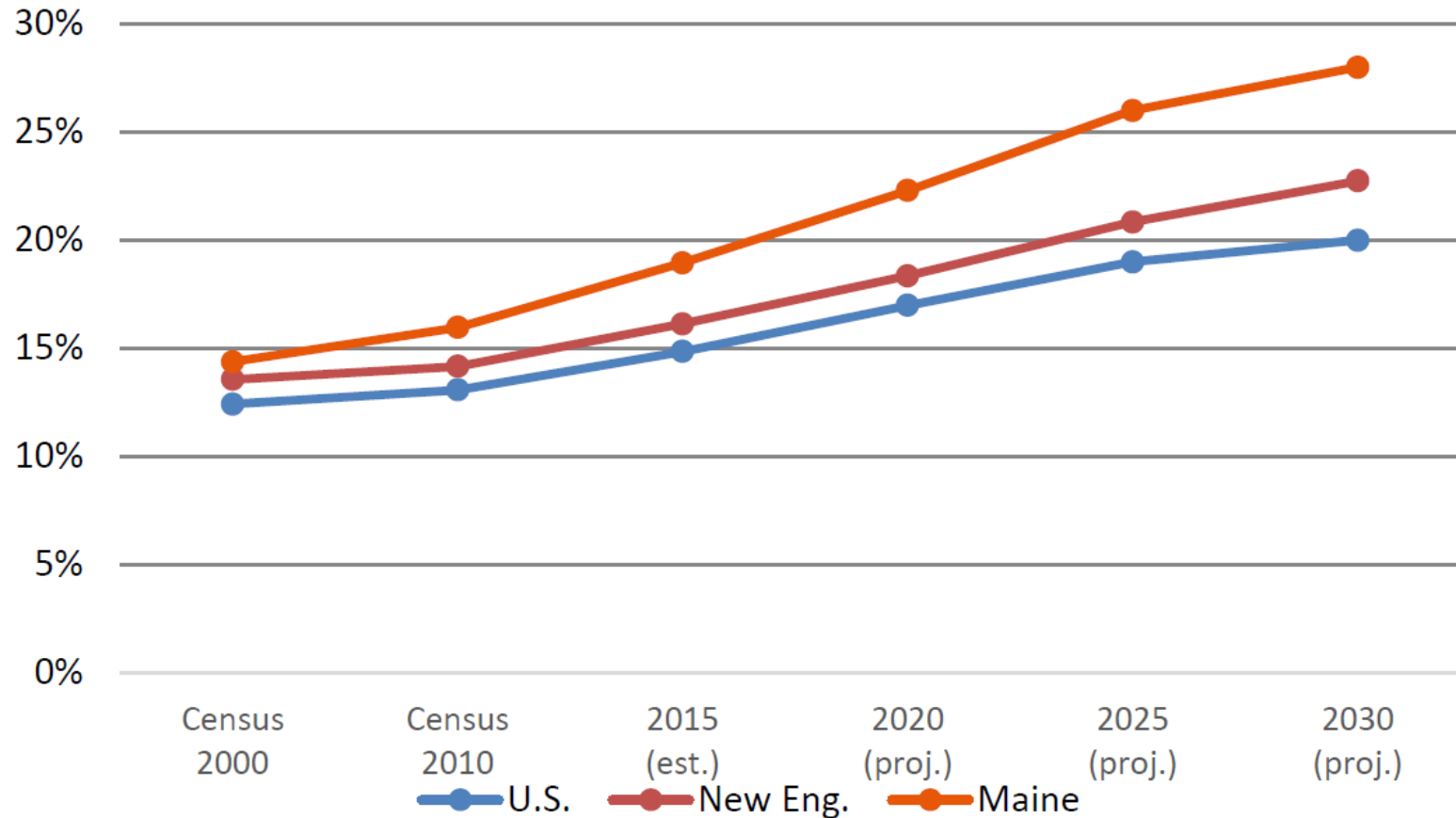
OCCUPANCY LEVELS



BEDS AVAILABLE



HISTORICAL AND PROJECTED TRENDS IN THE PERCENTAGE OF POPULATIONS 65 AND OLDER, MAINE, NEW ENGLAND, AND THE UNITED STATES, 2000-2030



SOURCE: MAINE STATE PLAN ON AGING 2016-2020