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State of Maine
ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE
COMMITTEE ON JUDICIARY

January 28, 2010

Senator Bill Diamond, Senate Chair
Representative Emily Ann Cain, House Chair
Joint Standing Committee on Appropriations and Financial Affairs

Senator Joseph C. Brannigan, Senate Chair
Representative Anne C. Perry, House Chair
Joint Standing Committee on Health and Human Services

Re: Supplemental Budget, Part UU

Dear Senators Diamond and Brannigan and Representatives Cain and Perry:

We are writing to express our concerns about Part UU, and the accompanying deappropriations/deallocations, being included in the Governor's Supplemental Budget, LD 1671, Part UU. The amendments propose changes to the Probate Code and the estate recovery statute that the Judiciary Committee unanimously rejected in LD 365 during the First Regular Session of this Legislature.

LD 365, An Act to Amend the Laws Governing MaineCare Estate Recovery, originally included a change in the estate recovery laws to cover joint tenancies in real property, and an amendment was proposed to revise the Probate Code with regard to the elective share of a spouse.

During the public hearing and the work sessions, the Judiciary Committee members were surprised that the Department of Health and Human Services had changed its practice with regard to recovering payments from joint tenancies and life estates created after April 1, 2006, without an amendment to the statute that supported the change in practice. Portions of LD 365 were introduced to change the statute to catch up with the practice.

We were concerned that the Department made an inappropriate reading of the statute, then attempted to "correct" the statute in a retroactive manner was violative of

due process, and we were very uncomfortable with the thought of treating Maine citizens in such a cavalier manner.

We were swayed by the history of legislative action that had, in the past, specifically rejected the application of estate recovery activities to joint tenancies in real property. We chose to continue the recognition of the fundamental principle of real estate law that property held in joint tenancy passes by operation of law to the surviving joint tenant. We amended LD 365 to clarify the statute and not include joint tenancies in real property in the long list of assets that are available to recoup MaineCare expenditures.

Although in general we understand the appropriateness of a policy that seeks reimbursement for MaineCare expenditures from those who can afford it, we are quite concerned that this language is proposed in the same Legislature in which it was unanimously rejected. We think it is inappropriate for the Department to propose in the Supplemental Budget for the HHS Committee to review the very changes we rejected unanimously last year, particularly without any notice to our Committee.

The letter from the Elder Law Section of the Maine State Bar Association provides more detail and the Section's policy arguments against Part UU and the accompanying deappropriations/deallocations. We hope you will carefully consider the legal and policy arguments, as well as the method the Department has chosen to pursue last year's failed legislation.

Thank you for the opportunity to comment on initiatives not listed as within the Judiciary Committee's jurisdiction. We will be happy to answer any questions, and we wish you good luck and great fortitude in your budget activities.

Sincerely,



Senator Lawrence Bliss
Senate Chair



Representative Charles R. Priest
House Chair