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Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



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March 29, 2023

Senator Joseph Baldacci, Chair
Representative Michele Meyer, Chair
Members, Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, ME 04333-0100

Re: LD 874 – *An Act to Address the Shortage of Direct Care Workers for Children with Disabilities in Maine*
LD 346 – *An Act to Clarify the Requirements for Family Caregivers*

Senator Baldacci, Representative Meyer, and Members of the Joint Standing Committee on Health and Human Services:

This letter is to provide information with regard to LD 874 – *An Act to Address the Shortage of Direct Care Workers for Children with Disabilities in Maine* and LD 346 – *An Act to Clarify the Requirements for Family Caregivers*. The Department is opposed to both proposals.

LD 874 requires the reimbursement of a parent providing in-home personal care services to the parent's child by allowing the parent to register as a personal care agency if the parent has made reasonable efforts to obtain regular in-home personal care services and has passed a background check. The child must be eligible for the MaineCare program. An individual who is not a parent of the child must be designated as the employer and must be approved as the employer by both the parent and the Department of Health and Human Services. The proposed amendment to LD 346 establishes a state-funded pilot program to achieve the same services as outlined in LD 874.

This bill conflicts with federal regulations. Parents of minor children are not allowed to be reimbursed under Medicaid for providing personal care services for their children. The Code of Federal Regulations (42 C.F.R. Section 440.167) states (emphasis added):

- (a) ***Personal care services*** means services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, or institution for mental disease that are -
- (1) Authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State;
 - (2) **Provided by an individual who is qualified to provide such services and who is *not* a member of the individual's family;** and
 - (3) Furnished in a home, and at the State's option, in another location.
- (b) For purposes of this section, *family member* means a legally responsible relative.

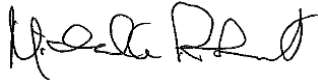
The State would not be able to receive federal match to reimburse parents who provide personal care services to their children under Section 96 of the MaineCare Benefits Manual. The Centers for Medicare & Medicaid Services has developed flexibilities under a limited number of vehicles for federal authority,

mostly related to Home and Community Based Services, to enable payment of family members with legal responsibility for a member. MaineCare does not currently cover children under these HCBS options. Alternative options for federal approval would be time intensive to explore and may not meet the intended goal(s) of this bill.

It should be noted that the Legislature recently repealed a requirement of the Department to establish this payment due to implementation and federal allowability concerns. This repeal was passed unanimously in PL 2023, Ch. 3 – section C-1.

If you have any further questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Probert". The signature is fluid and cursive, with a large initial "M" and a distinct "P".

Michelle Probert
Director
MaineCare Services