

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
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April 18, 2023

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

Re: LD 1406 – *An Act to Amend the Laws Regarding Estate Recovery and Planning for Long-term Care*

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

This letter is to provide information related to LD 1406, *An Act to Amend the Laws Regarding Estate Recovery and Planning for Long-term Care*.

This bill requires the Department to return the state portion of estate recovery under the MaineCare program to the estate. The bill requires the department to amend its rules in Chapter 332: MaineCare Eligibility Manual, Part 15, Transfer of Assets, to change the standard for transfer of assets from "clear and convincing evidence" to "a preponderance of evidence." The bill also requires the Department to develop educational materials to assist individuals with long-term care planning, estate planning, and asset transferring and sheltering.


This bill would create operational challenges within the Department as we do not presently negotiate and settle estates on a claim-by-claim basis with federal funding rates tied to specific dates of service. Sending the state share of Estate Recovery back to the estate after we recoup from the estate will require additional staff to set up estate representatives as vendors so we can issue checks to them and account for this money. New staff would also be needed to undertake the tasks in this bill including meeting with advocates and recording minutes and participation in the development of educational materials.

The Department is also concerned about the requirement that staff “develop educational materials to assist individuals with long-term care planning, estate planning and asset transferring and sheltering.” These matters are best left with financial planners and attorneys, not Department staff.

P.L. 2021, ch 398, the 130th Legislature’s biennial budget, required the Department to reduce estate recovery recoupments to the federal mandatory minimum at a cost of approximately \$416,000 General Fund each fiscal year. The Department implemented this requirement via a new rule in November 2021. The new rule limits estate recovery recoupment to only nursing facility, certain home and community-based services, and associated hospital and pharmacy costs.

Given the general fund impact of this bill, the Department does not support its passage. We wanted you to be aware of the above information as you consider this bill going forward. 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 written in a cursive style with some loops and flourishes.

Michelle Probert
Director
MaineCare Services