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3/13/2025

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

Re: LD 591– *Resolve, Establishing the Commission to Study MaineCare Estate Recovery (Emergency)*

Senator Ingwersen, Representative Meyer and members of the Joint Standing Committee on Health and Human Services, thank you for the opportunity to provide information in opposition to LD 591, *Resolve, Establishing the Commission to Study MaineCare Estate Recovery (Emergency)*.

This resolve creates the Commission to Study MaineCare Estate Recovery. The commission is tasked with studying issues associated with MaineCare estate recovery procedures, including a review of the history of MaineCare estate recovery procedures and review of the reasons behind the establishment of the procedures as they exist currently; an examination of allowable flexibilities in the administration of Medicaid estate recovery programs, including any possible Medicaid waivers; a review of estate recovery models employed by other states; and an examination of best practices and innovations in Medicaid estate recovery. The commission must submit a report by December 3, 2025, to the Joint Standing Committee on Health and Human Services. The committee may present legislation related to the report of the commission to the Second Regular Session of the 132nd Legislature.

The U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) requires every state to implement specific minimum estate recovery requirements. A 2021 budget initiative required Maine's Department of Health and Human Services (the "Department") to lower estate recovery recoupments to the federal mandatory minimum, and the Department implemented new rules in accordance with this initiative effective November 24, 2021. Federal law does not permit states to lower estate recovery requirements below the federal standard. All estate recovery currently undertaken by the Department is federally required.

The Department believes the intention of this commission and requirements set forth in Section 5 of LD 591 would duplicate evaluations already completed by the Department and other entities. There have been multiple external studies to examine estate recovery practices among states including Maine; Massachusetts conducted a recent study (2024) which looked at Maine and other states that are enforcing the least estate recovery permissible by federal law. The Department can make these studies available to the Committee upon request.

Section 5.2 of LD 591 calls for the examination of allowable flexibilities and waivers; however, there is no precedent for a Medicaid waiver that allows a state to go below the federal mandatory minimum requirements. States are permitted to make certain exemptions; for example, the Department does not conduct estate recovery when the deceased member has surviving children under the age of 21, surviving spouses, and/or surviving disabled children of any age.

The Department interprets the bill as currently drafted to require the Department to conduct at least some components of the reviews and analysis required for the report. The Department does not currently have the staff to complete this work; an additional staff position would be required. Section 6 of LD 591 states the Legislative Council would provide necessary staffing services outside of the regular or special legislative session. If the intent is for these Legislative Council staff to conduct the required research, additional Department staff would still be required to assist with Department-specific data and research requests. In addition, the timeframe set forth in the bill is not feasible to conduct the required research, especially if the intent of the bill would be for legislative staff to complete efforts outside of the regular or special legislative session.

The Department is already operating in alignment with the federal minimum requirements and employs case-by-case exemptions as federally allowed; estate recovery actions cannot be reduced further. The Department asks the Committee to allow the Department to continue operating in alignment with minimal federal requirements.

Please feel free to contact me if you have any questions during your deliberation of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Probert", written in a cursive style.

Michelle Probert

Director

Office of MaineCare Services

Maine Department of Health and Human Services