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April 14, 2025

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

Re: LD 1443 – *"An Act to Ensure the Financial Stability of Behavioral Health Service Providers and Housing Assistance Providers"*

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 of LD 1443, *"An Act to Ensure the Financial Stability of Behavioral Health Service Providers and Housing Assistance Providers."*

This bill would require the Department of Health and Human Services to continue payments to service providers including, but not limited to, private or nonprofit behavioral health agencies, housing assistance providers and other nonprofit organizations in good standing with the department at their previous contract rates when delays in new contract awarding, finalization or payment exceed 30 days. It also requires the Department to pay administrative expenses and interest charged on lines of credit or loans accessed by a service provider when a delay in awarding, finalization or payment of a department contract requires the service provider to access the line of credit or loan.

In short, this bill may conflict with existing state laws and would require that the Department continue to make payments to a provider without a contract or funding mechanism in place, which stands in contrast to the laws, rules, practices and procedures otherwise applicable to state agencies.

A similar bill last session was amended to require the Department to review and report on the timeliness of payments to behavioral health providers, which was presented to the Legislature in early 2025, providing analysis and context that reinforces why this bill is not an appropriate solution to the challenge of long contracting processes. This bill would also incur additional costs to the Department that cannot be absorbed given current budgetary constraints and would hold the Department accountable for delays that may be wholly outside of its control. Previous iterations cited an example of a delay that was due to the inaccessibility of federal funds. In that instance, the Department was unable to provide funds it did not have but would have nevertheless been required to continue making payments and pay interest and administrative costs associated with the providers' independent choice to access a line of credit.

The report submitted to the Committee pursuant to LD 2082 demonstrated that the increased contract volume and the static number of staff processing them can contribute to longer contracting timelines. Further, it is not always within the Department's control or discretion to expedite or otherwise modify contracts or funding, and this bill does not account for issues and delays caused by external forces, such as losses in federal funding or provider-related (or initiated) delays. It is also unusual to require payment on contracts that have expired in the absence of a legal agreement between the Department and a vendor, without assurances that funding has been appropriated or is even available. The absence of a contract leaves the Department without the legal ability to ensure that services are provided in accordance with Department standards and leaves the Department without the standard rights and protections that a contract affords.

Correspondingly, this bill may conflict with 5 MRSA § 1582(1) which states the Department must work with DAFS and obtain funds from the Legislature before establishing a new program or expanding an existing program, and 5 MRSA §1583 which states that if federal funds are not available, the State is not obligated to provide state funds in excess of those appropriated or allocated by the Legislature. Additional laws, policies, and rules may be similarly impacted by or in contradiction with this bill, including but not limited to 5 M.R.S Chapter 155, which governs State purchases.

The Department believes this bill would further hinder an already complicated process and hold the Department financially accountable for circumstances outside of its control and could have the inverse effect of further straining contracting resources and add additional delays to the contract process. It could also lead to downstream challenges and impacts for the Department with contract amendments. In the event of a delay in awarding a new contract of more than 30 days, the Department and the provider should collaboratively work to extend the prior contract until a new contract can be put in place. This provides a legal agreement during a potential gap in contract timelines and also provides a mechanism for reimbursement. Ultimately, the Department cannot continue payments to providers without a contract in place.

The Department has outlined the findings from the analysis performed pursuant to LD 2082 in the 131st Session to further explain our opposition to this bill:

- In general, invoices are paid timely and within the statutory requirement of 25 working days which equates to 33 calendar days. The average processing time in 2024 per the Division of Contract Management (DCM) was just under 27 calendar days from receipt of a proper (error-free and complete) invoice. During a period of the COVID pandemic and in its immediate aftermath, the Department was required to process a substantially higher number of invoices than in the past while DCM and other offices were simultaneously experiencing staffing challenges. Nevertheless, the vast majority (82% within 30 days and 91% within 45 days) of contract payments were processed within the statutorily imposed timelines.
- The Department and DAFS have standard contract language that states payments will be made within 30 calendar days after receipt of a proper invoice, which is a higher standard than 5 MRSA §1553. Moreover, 5 MRSA §1554 allows for an additional 15 days

"following the date agreed to by the state agency and the business concern" before a late fee may be applied. In the case of these service contracts, the 30 days defined in the contract are the other "date agreed to," resulting in a combined total of 45 calendar days.

- Behavioral health and housing contracts are also more likely to flow through the State Procurement Review Committee (SPRC) due to their higher values. This added layer of review and approval, and any similar staffing, volume, and related considerations therein, add to the possible impacts on contract payments that are outside of the Department's control.
- The Department has posted guidance on how to request late fees and expedited payments in the event of urgencies such as cash flow issues. When these situations arise, the Department has a process in place to support providers and to expedite payments through a specific prioritization process. The Provider's executive team shall contact the Department office with an explanation of the issues and need for expedition, and DCM will then prioritize as determined appropriate.
- Lastly, 5 MRSA §1554 allows for the payment of late fees in specific circumstances where the Department may be overdue in releasing timely payments.

The Department has taken several steps in response to increased contract volume, contract delays, and to meet providers' needs. Some results of this restructuring and process improvement include:

- Reorganizing DCM to support the increased volume and implementing a queue-based system. DCM also assigned more positions to support invoice processing using a combination of reassigned and contracted positions. These changes for shared workloads and prioritization procedures to address many of the concerns this bill seeks to address.
- Streamlining standardized operating procedures to better assure predictable, repeatable, and well-documented roles and responsibilities. This includes an established checklist and improvement of consistency with initial triage of invoices.
- Development of new reports to provide insight into turnaround times and improve communication across and between Department contract teams.
- Development of a new approach to identify and finalize funding lines on contracts. Most contracts within DHHS are funded by several accounts and this new approach reduced duplication of work by tracking available funding for each account.
- Providing improved and expanded training for DCM and program offices. The training highlighted statutory requirements, roles and responsibilities, process flows, and computer system training to move invoices through approvals and payments as well as how to handle common exceptions.
- Providing improved information for providers, including guidance on how to submit invoices and technical assistance for questions or challenges with submitting invoices or receiving payments.
- Implementing the aforementioned process to expedite payments to providers experiencing financial challenges.
- Developing new technology solutions, including enhanced workflow systems to automate portions of the processes that require significant data entry.

The Department is continually reviewing internal processes and procedures with the intention of ensuring timely contract encumbrance and payment to providers. The Department and DAFS' Office of State Procurement Services also remain in ongoing collaboration for process improvements and any necessary procedural amendments to achieve compliance with the statutory requirements for contracts and provider payments. Opposition to this bill originates from the position that the Department and other State entities involved in these processes are already sufficiently addressing these matters. By enacting LD 1443, there is a risk that many of these improvements could be negatively impacted in addition to other consequences including, but not limited to, creating delays, and financial and staffing burdens.

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

Sincerely,

Benjamin Mann
Deputy Commissioner for Finance
Maine Department of Health and Human Services