



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF CORRECTIONS
111 STATE HOUSE STATION
AUGUSTA MAINE
04333-0111

RANDALL A. LIBERTY
COMMISSIONER

TESTIMONY OF

**RANDALL A. LIBERTY, COMMISSIONER
DEPARTMENT OF CORRECTIONS**

In Opposition to

**LD 1863 An Act to Facilitate the Provision of Medically Appropriate Levels of Care for Clients of
Correctional Facilities**

**Before the
Criminal Justice Public Safety Committee
May 9, 2023**

Senator Beebe-Center and Representative Salisbury and other distinguished members of the Criminal Justice and Public Safety Committee, I am Randall Liberty, Commissioner of the Maine Department of Corrections providing testimony in opposition to LD 1863

This bill is essentially a repeat of LD 476 from the 130th Legislature, introduced by Rep Morales. After more than a year of working together on the bill, the sponsor asked the bill voted ONTP as we were able to negotiate for an outcome Rep Morales was pleased with. Attached to this testimony is a copy of the letter the previous CJPS Chairs sent to the MDOC regarding the decision to vote the bill out.

We are perplexed to see this bill come back given the agreeable outcome and the immense amount of collaborative work that was done with the former Senate Chair of this committee, Susan Deschambault, the sponsor, former representative Victoria Morales, DHHS's licensing division, the University of New England's School of Occupational Therapy, and the stark reality associated with some of the issues addressed in the bill. We had no less than a dozen meetings throughout the first and second sessions of the 130th working to problem solve some of the issues of this bill with the stakeholders listed above.

Unfortunately, this bill, LD 1863 was only recently published, and we have had no contact with the sponsor. We can only assume that since the language in LD 1863 is nearly word for word duplicative of the language of LD 476 in the 130th that a special interest organization has requested the sponsor reprint the bill. We do not know if the sponsor is aware of the history associated with this bill, the desire of Rep Morales who originated this bill, the desire of the CJPS during the 130th, or any of the information provided to the CJPS during the 130th specific to licensing, Medicaid funds, and challenges associated with nursing home placements for individuals with felony charges.

Outlined below are our concerns with language in this bill

- Regarding paragraph A—This is unnecessary. As part of the reentry process residents receive at least 9 months of discussion and planning for reentry. If part of the reentry process includes a resident going to assisted living, nursing home care, or hospice or home health care post release, the collaborative planning will include this. Just like we work with residents, and their families, when someone is



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planning to live in a sober recovery home post release, we also work with residents to plan for moving into a health care facility post release

- Regarding paragraph B—This part of the bill is unclear. Are we being asked to assist a resident with placement post release? Or are we being asked to place a resident into a specific unit within the MDOC, by request, based on a Medicaid eligibility assessment? Based on the reference to MRS Title 22, Section 3174-I, we can assume the intent is that the MDOC assist a releasing resident to find and be placed into a suitable community based assisted living, nursing home, or hospice program. While we make every effort to help releasing residents move into these types of care residences post release when medically necessary, the MDOC is unable to compel a community care facility to take an individual. If the intent of the bill is to require the MDOC to house residents in specific units within its facilities based on Medicaid eligibility assessments, Title 22 Section 3174-I makes it very clear that a resident of a correctional facility is not eligible for Medicaid funded services (with some exceptions related to hospital visits). Further, “by request” is one of many factors, considered when making an appropriate recommendation about making housing decisions, other factors include safety, personal conflicts, and programming needs.
- Regarding paragraph C—The MDOC is amenable to codifying long-term care services into MDOC statutes. Here is a proposed amendment, same as we offered during work on the previous bill.

Proposed amendment

Sec 1 34-A MRSA §1402, sub-§ 14 is enacted to read

14 The commissioner shall establish and maintain or contract for long-term care services, including assisted living and nursing facility levels of care, for prisoners for whom such services are necessary as determined by the facility’s treating physician.

- Regarding paragraphs D, E, F—Maine DOC’s assisted living units and the Infirmary, which includes hospice services, are nationally accredited as part of the accreditation granted to each of MDOC facility by the American Correctional Association (ACA), which performs a comprehensive multi-day audit every three years. Maintaining this accreditation is required by state statute. As part of the extensive work on the same bill during the 130th it was clear that requiring the MDOC to have a separate license to operate assisted living units and a nursing facility within its correctional facilities would not only be unnecessary as there are already both constitutional standards that govern resident care and the standards required to receive our American Correctional Association accreditations, but this would create unforeseeable negative changes to our current assisted living units and Infirmary and would be quite costly. DHHS licensing staff, who came to visit our facilities as part of this work, noted that community-based assisted living and nursing facilities do not consider resident and staff safety, security, or operational needs as required in a correctional setting, as the American Correctional Association standards do. Disregarding correctional standards for traditional licensing standards could result in changes to security, operations, staffing, and building footprint, resulting in unnecessary costly building alterations, staffing changes and safety risks. The same is true of Medicaid eligibility criteria, which are not suited to a correctional context. Furthermore, paragraphs D and E go well beyond the purview of the



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Maine Department of Corrections It would be impractical and cost-prohibitive for the DOC to develop assisted living and nursing facilities in the community

It is important for the committee to recognize that Medicaid monies cannot be used to cover medical services provided to individuals while they are in jail or prison. If the MDOC went ahead with the costly and safety changes required for DHHS licensing, we would still not be able to charge Medicaid for services. Residents who qualify for SCCP who want/need residence in a community-based care facility may be Medicaid eligible, but that doesn't guarantee that the care the person requires is reimbursable.

Also concerning is the reference in the summary of the bill to the Supervised Community Confinement Program. The summary suggests that the bill enhances and improves SCCP, but there is no mention of SCCP in this bill. The summary also references making changes to MDOC's policies related to SCCP, but again there is no mention of SCCP in this bill. Further, the summary says that the bill provides guidance for the use of SCCP, but again there is no reference to SCCP in the body of the bill.

As mentioned, the MDOC worked closely with Representative Morales and former CJPS Chair Senator Deschambault on the bill during the 130th. During conversations with Rep. Morales at the last stages of working on the bill, after the work inside our assisted living facility, after the work with UNE, and after hearing from the long-term care providers in the community, Rep. Morales began to see the work we had done on our SCCP policy and statute as meeting her needs associated with the bill. When we went through the SCCP policy and showed her the level of access and priority for terminally ill or severely incapacitated residents in MDOC facilities, she was very pleased.

Procedure I of MDOC's SCCP policy, copied below, allows for the Commissioner to transfer terminally ill or severely incapacitated residents to SCCP for the purposes of receiving medically appropriate care.

Procedure I Supervised Community Confinement for a Terminally Ill or Severely Incapacitated Resident

- 1 The Commissioner, or designee, with the consent of the resident, may transfer an adult facility resident serving a Department sentence to supervised community confinement without meeting the above eligibility, application, or other requirements or criteria if the Department's Director of Medical Services has determined that the resident has a terminal or severely incapacitating medical condition and that care outside a correctional facility is medically appropriate.
 - a The resident shall live in a hospital or other appropriate care facility, such as a nursing facility, residential care facility, or a facility that is a licensed hospice program pursuant to Title 22, Section 8622, approved by the Commissioner, or designee, or
 - b As approved by the Commissioner, or designee, the resident may receive hospice services from an entity licensed pursuant to Title 22, Chapter 1681, Subchapter 1 or other care services provided by an entity approved by the Commissioner, or designee, and subject to approval by the Commissioner, or designee, may live at home while receiving these services.
- 2 The Commissioner, or designee, may approve a transfer pursuant to this procedure through any process that the Commissioner, or designee, determines appropriate, except that the Commissioner, or designee, shall consult with the Department's Director of Victim Services, or designee, and may exempt a resident transferred to supervised community confinement pursuant to this procedure from any mandatory conditions that the Commissioner, or designee, determines to be inapplicable.
- 3 The Director, or designee, may request the Commissioner, or designee, to postpone the decision until the victim, if any, of the crime(s) for which the resident was, is, or will be serving the sentence during the current time and custody is notified of the proposal that the resident be allowed to participate in SCCP and is given the opportunity to provide input.
- 4 The Commissioner, or designee, shall document the decision in CORIS.
- 5 All decisions made pursuant to this



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procedure are at the complete discretion of the Commissioner, or designee, and these decisions may not be appealed. 6 The client shall provide any information pertaining to the client's medical condition or care that is requested by the Commissioner, or designee, at any time while the client is on supervised community confinement. If the Commissioner, or designee, determines that the client has failed to fully comply with a request or if at any time the Department's Director of Medical Services determines that the client does not have a terminal or severely incapacitating medical condition or that care outside a correctional facility is not medically appropriate, the Commissioner, or designee, shall revoke the transfer to supervised community confinement. In addition, a client transferred to supervised community confinement pursuant to this procedure may be removed from supervised community confinement at any time for any reason at the complete discretion of the Commissioner, or designee, and this decision may not be appealed.

We ask this committee to vote ONTP, to recognize the work that was done by the previous legislature, including the former senate chair of this committee and because the MDOC has in place model assisted living, nursing home level, and hospice services.

If the committee or sponsor would like to work on legislation centered around compelling members of the long-term care community to accept individuals regardless of their criminal records, we would be pleased to support that.

Thank You,

Randall A. Liberty, Commissioner
Maine Department of Corrections

SENATE

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STATE OF MAINE
ONE HUNDRED AND THIRTIETH LEGISLATURE
COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

February 25, 2022

Randall Liberty, Commissioner
Department of Corrections
111 State House Station
Augusta, ME 04330-0111

Dear Commissioner Liberty,

We write as chairs of the Criminal Justice and Public Safety Committee with regard to LD 476, An Act to Provide Licensed Assisted Living and Nursing Facilities Levels of Care for Incarcerated Persons.

The Criminal Justice and Public Safety Committee has held a public hearing and three work sessions on LD 476 and has discussed thoroughly the need for assisted living and nursing facility levels of care for persons in the custody of the Department of Corrections. While working on LD 476 committee members learned that the Department of Corrections provides access to care for seriously and terminally ill and disabled clients of the department both within correctional facilities and in the community. Committee members were pleased to learn that the Department of Corrections is conducting an educational effort to ensure that clients of the department are informed of the availability of assisted living and nursing facility levels of care.

We write to ask that the Department of Corrections continue its educational efforts and report back to the Criminal Justice and Public Safety Committee by January 15, 2023 on those efforts and on how the department is informing its clients of the availability of assisted living and nursing facility levels of care.

Thank you

Sincerely,

Susan A Deschambault

Susan A Deschambault
Senate Chair

Charlotte Warren
Charlotte Warren
House Chair

c Members, Criminal Justice and Public Safety Committee
Anna Black, Department of Corrections