



MAINE'S LEADING
VOICE FOR HEALTHCARE

TESTIMONY OF THE MAINE HOSPITAL ASSOCIATION

In Opposition To

LD 1964 - *An Act to Implement the Recommendations of the Commission to Develop a Paid Family and Medical Leave Benefits Program*

May 25, 2023

Senator Tipping, Representative Roeder and members of the Labor and Housing Committee, my name is Jeffrey Austin and I am here on behalf of the Maine Hospital Association. I am offering this testimony in opposition to LD 1964.

The Maine Hospital Association (MHA) represents all 36 community-governed hospitals including 33 non-profit general acute care hospitals, 2 private psychiatric hospitals, and 1 acute rehabilitation hospital. In addition to acute-care hospital facilities, we also represent 11 home health agencies, 18 skilled nursing facilities, 19 nursing facilities, 12 residential care facilities, and more than 300 physician practices.

Overview

Maine's hospitals are prepared to work with the legislature on a realistic proposal for paid leave. Unfortunately, we do not view LD 1964 as that proposal. If you put forward a plan that is realistic for Maine, we could withdraw our opposition.

LD 1964

The legislation before you is not a reasonable plan for Maine.

Approximately 39 states do not have tax-funded, leave programs. To have any such program puts Maine in the distinct minority of states. As you discuss the various aspects of a program, please remember that – the vast majority of states do not have this type of program.

Second, there are essentially two waves of tax-funded leave programs: the seven states whose programs were in effect in 2022 and the four others that are in the process of being implemented in 2023 or later. The four latter states whose programs have no operational history are among the most generous in terms of benefits. LD 1964 is modeled on those four states' programs. It is not consistent with what we see in New England. I will note but three ways LD 1964 is not a moderate compromise.

1. Wage Replacement. First, the wage replacement proposal is the highest in the country. The wage replacement percentage proposed in LD 1964 is 90% of the state average weekly wage (SAWW). No state in the country is higher for a worker making the SAWW. Here is a table of wage replacements from other states:

State	Wage Replacement (@ 100% SAWW)	Wage Replacement (@ 200% SAWW)
Maine (LD 1964)	90%	60%
Rhode Island	60%	43%
Connecticut	56%	28%
Massachusetts	64%	32%
Vermont	Voluntary	Voluntary
New Hampshire	Voluntary	Voluntary
California	60%	49%
New Jersey	70%	35%
New York	67%	33%
Washington State	70%	42%
Virginia	Voluntary	Voluntary
Oregon (2023)	83%	60%
Colorado (2024)	70%	41%
Maryland (2025)	73%	36%
Delaware (2026)	73%	36%
National Average	68%	39%
36 Other States	Nothing	Nothing

Source: NewAmerica Online Table

For the worker making roughly the state average weekly wage (the Task Force actuaries used \$1,148 or \$60,000 per year), the national average wage replacement is 68%, Maine is almost 50% higher at 90%. For the worker making twice the state average weekly wage, the national average wage replacement is 39%, Maine is at 60%. There is no reasonable argument for Maine’s proposal being so different than what exists in other New England states.

2. Benefit Cap. Second, the benefit cap is the highest in the country. The proposed benefit cap of 120% of SAWW would be the highest in the country.

Here is a table of benefit caps from other states:

State	Benefit Cap
Maine (LD 1964)	120%
Rhode Island	85%
Connecticut	60%
Massachusetts	64%
New Hampshire	Voluntary
Vermont	Voluntary
California	100%
New Jersey	70%
New York	10% & 67%
Washington State	90%
Virginia	Voluntary
Oregon (2023)	120%
Colorado (2024)	90%
Maryland (2025)	76%
Delaware (2026)	72%
36 Other States	Nothing

Source: Maine Paid Leave Commission Meeting Materials (“A Better Balance Chart”)

When you consider that the benefit is exempt from state income taxation and from social security and Medicare taxation, the 90% wage replacement is much closer to full wage replacement.

Note: Using the task force actuary’s estimate of Maine’s SAWW in 2024 (\$1,148), the proposed benefit cap is 120% of the SAWW, or \$1,377. Since wage replacement is set at 90% in the proposal, the wage at which Maine’s law “maxes out” is \$1,530. On an annual basis, the amount is \$79,600.

In other words, everyone in Maine making \$79,600 or less would make 90% of their wages while on paid leave. Given the tax benefits of paid leave, workers making \$80,000 or less would be taking home roughly 100% of their weekly wages while on leave.

3. Employer Share. Third, the employer’s share of program financing is among the highest in the country. Remember, even when the employer share is 0%, like it is in RI, CT, and CA and for part of the program for NJ, MA, WA and MA, employers still face a heavy financial burden of funding 100% of the cost of the replacement worker as well as funding the employers’ share of healthcare costs for the employee. The national average employer share of program financing is between 17% and 35%. Maine is at 50%.

Several states have two different employer contribution rates, one is for family leave and the other is for employee medical leave. I could not quite calculate the medical leave caps for NY and NJ.

State	Employer Share
Maine (LD 1964)	50%
Rhode Island	0%
Connecticut	0%
Massachusetts	0% & 60%
New Hampshire	Voluntary
Vermont	Voluntary
California	0%
New Jersey	0% & ?%
New York	0% & ?%
Washington State	0% & 55%
Virginia	Voluntary
Oregon (2023)	40%
Colorado (2024)	50%
Maryland (2025)	50%
Delaware (2026)	50%
36 Other States	Nothing

Source: Maine Paid Leave Commission Meeting Materials (“A Better Balance Chart”)

These three factors demonstrate this proposal is not in the mainstream. But we believe that other aspects of the Maine proposal are similarly wrong for Maine.

More importantly, we believe LD 1964 is extreme relative to New England, which is our economic market. We are disappointed this proposal does not more closely align with the programs that are in place in New England.

Impact on Hospitals

Maine hospitals recognize the appeal of paid leave. Many of implemented short-term disability programs of some sort or another for their workers. None are structured like this law. We believe all existing programs would be banned by this legislation.

One of the biggest challenges is covering for the employee who is absent.

According to research cited by proponents, hospitals in New Jersey who were surveyed on that state's program noted the following:

The employers interviewed used various strategies to cover the work of employees on leave, including asking members of their existing workforce to put in additional hours. If workers performed the same job, they were often asked to cover for their colleagues. Nurses in both hospitals, for instance, were sometimes asked to work additional shifts when their co-workers were out. In the case management company (case F), most employees have the same training and same job title, "care manager," which makes it easy for them to substitute for one another.

This kind of strategy will be very unpopular with nurses in Maine and with many policymakers and will be almost impossible with an unrealistic staffing ratio mandate.

Maine's current unemployment rate of less than 3%, a record low, and its similar unemployment rate for nurses means that the only realistic option is to use very expensive travelers. This is a huge expense for hospitals and leads, we believe, to lower quality care.

On the other hand, surveys of workers which purport to show that people are only interested in moving to states with paid family leave are difficult to take seriously since what people appear to be doing is not consistent with what they appear to be saying. That is, people are moving and jobs are growing in non-paid leave states at least as fast as in paid leave states. New York and California are not outpacing Texas and Florida for job growth. In New England, the populations

In fact, the actuaries who assisted the Commission have modeled the proposal and have estimated that Maine's workforce will actually decline.

If Maine is going to go in this direction, it must do so with great care. Unfortunately, LD 1964 simply mimics some of the most expensive proposals in the country.

Realistic Proposal

Some employer groups have met and considered alternative approaches. Some of us are open to three alternative approaches, but our efforts have been rebuffed. We hope that changes.

Northern New England Model - Voluntary. We are open to a model that mirrors the approaches taken in our sister Northern New England states of Vermont and New Hampshire. Those states have embraced a voluntary model that is optional for employers.

Southern New England Model – Employee Financed. We are open to a model that mirrors the approaches taken in the Southern New England states of Connecticut and Rhode Island which are entirely employee financed.

Maine Proposal. We believe the best approach is one that is based upon existing Maine law. Maine has a Family Medical Leave law that provides protections to Maine workers today. This law does not include payment to workers. I would say that our biggest disappointment is that LD 1964 did not build on Maine's existing law. The media coverage and other public comments would lead you to believe that LD 1964 is simply adding payment to our current unpaid leave law. It does not.

We are open to that discussion, and we recommend that you consider adding payment to Maine's existing unpaid FML law. This means that many issues raised by this legislation would not need to be addressed because the existing Maine FML law answers so many of these questions.

The following issues are already addressed by Maine's existing FML law:

- Family definitions;
- Reasons for leave;
- Duration of leave;
- Employers/employee eligibility;
- Job protection.

Nevertheless, several issues would remain for you to address:

- Wage replacement;
- Benefit cap;
- Employer share of program financing;
- Wage cap;
- Public/private administration;
- Substantially equivalent private options.

Again, so far, our willingness to explore three different frameworks have been rebuffed. Regardless, we remain willing to work with you on a realistic alternative for Maine.

Thank you for accepting these comments.