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Testimony of the Office of MaineCare Services
Maine Department of Health and Human Services

Before the Joint Standing Committee on Health and Human Services

In opposition to LD 2055, *An Act to Prohibit the Department of Health and Human Services from Implementing Electronic Visit Verification for Hospice Providers Within the MaineCare Program Unless Mandated by the Federal Government*

Sponsor: Representative Cloutier
Hearing Date: January 9, 2024

Senator Baldacci, Representative Meyer, and Members of the Joint Standing committee on Health and Human Services, my name is Molly Slotznick, and I serve as the Chief Operating Officer of the Office of MaineCare Services (OMS) in the Department of Health and Human Services. I am here today to testify in opposition of LD 2055, *An Act to Prohibit the Department of Health and Human Services from Implementing Electronic Visit Verification for Hospice Providers Within the MaineCare Program Unless Mandated by the Federal Government*.

I will begin by stating that the Department strongly opposes this bill for two reasons. First, this bill will reduce the Department's ability to monitor and prevent potential instances of fraud, waste, and abuse within the Medicaid program, for a population of Medicaid members who are particularly vulnerable. Second, the Department has engaged in years of extensive stakeholder engagement, outreach, and education regarding these requirements, has developed a compromise implementation approach that we believe meets the Department's needs while reducing administrative burden on hospice providers, and has already moved the implementation date multiple times to give providers time to prepare.

In 2016, the 21st Century Cures Act mandated that Medicaid programs implement EVV for personal care services and home health care services that require an in-home visit by a provider, with the intention to reduce fraud, waste, and abuse within the Medicaid program.¹ EVV is, at its core, technology that electronically records where, when, and to whom health care services are provided through what are called "visit records." The Department can then verify that MaineCare members are receiving the services they are meant to receive, and that we are paying for, either by matching the visit records to Medicaid claims during the claims adjudication process or by reviewing visit records after the fact through Program Integrity reviews. If the information does not match, the Department can withhold, deny, or recoup payment. The Department implemented this requirement for personal care services in January 2021 and home health care services in January 2023.

In July 2018, the U.S. Department of Health and Human Services Office of the Inspector General (OIG) submitted a report to the Centers for Medicare & Medicaid Services (CMS) depicting

¹ See 42 U.S.C. Sec. 1396b(l)

vulnerabilities within the Medicare hospice program.² These vulnerabilities are equally applicable to hospice services reimbursed by Medicaid. The vulnerabilities included, but were not limited to, instances of hospice providers failing to provide needed services to patients and sometimes providing poor quality care. The OIG also identified instances of hospice providers unable to effectively manage symptoms or medications, leaving patients in unnecessary pain for many days. The OIG also found fraud schemes involving billing for services never provided.

More recently, the OIG executed a 2023 Nationwide Health Care Fraud Enforcement Action that resulted in criminal charges brought against hospice operators, amongst other health care providers. In 2023, CMS stepped up efforts to prevent fraud, waste, and abuse in Medicare hospice programs, including public reporting requirements, an overhaul of inspection protocol, and enhanced oversight of new hospice providers in four states that had been the subject of media investigations and had had findings of “phantom” billing for patients, among other actions.³ MaineCare members receiving hospice services are among MaineCare’s most vulnerable member populations. These members are terminally ill and oftentimes are unable to appropriately advocate for themselves and the level of care needed.

The Cures Act does not explicitly include hospice services. However, in light of the OIG report and ongoing scrutiny by CMS, the media, and the Legislature, and to remain consistent with MaineCare efforts to protect MaineCare members and prevent fraud, waste, and abuse for home-based services, in 2024 the Department plans to implement EVV for in-home hospice services. Based on feedback from hospice providers, the Department plans to vary the implementation approach by service. Hospice facilities will not be subject to EVV requirements, as oversight functions already exist in those settings.

Since 2018, the Department has actively communicated and collaborated with hospice providers regarding these requirements and has worked diligently and in good faith with stakeholders to develop an approach that we believe best supports both MaineCare members and hospice providers. The Department has provided, and continues to provide, many resources and training opportunities to help providers understand and implement EVV requirements.

In October 2022, the Department initiated a “soft launch” of EVV for hospice providers to give them time to prepare their systems in anticipation of full implementation on January 1, 2023. In response to operational challenges raised by providers during this soft launch period, the Department paused EVV implementation to allow providers additional time to prepare. In parallel, in early 2023 the Department engaged in extensive discussions with hospice stakeholders to incorporate their feedback into the Department’s implementation approach.

Almost all services a member in hospice requires are reimbursed by MaineCare via a bundled, per diem rate. When a greater service intensity is required, usually in the last week of the member’s life, MaineCare reimburses for Service Intensity Add-Ons and Continuous Home Care services in quarter hour or hourly increments. We plan to require EVV for both the per diem and greater intensity services, and all these services may be subject to Program Integrity reviews using visit records. However, as a result of our discussions with hospice stakeholders in early

² OEI-02-16-00570, July 2018

³ <https://www.propublica.org/article/hospices-arizona-california-nevada-texas-cms-medicaid-medicare>

2023 and their presentation of operational challenges, the Department agreed to not tie EVV requirements to the claims adjudication process for per diem services and to only tie EVV requirements to the claims adjudication process for Service Intensity Add-On Services and the Continuous Home Care Services, again only when provided in in-home settings. These enhanced end-of-life services subject to EVV occur at the most vulnerable time for patients and families.

These discussions also resulted in pushing back the implementation date to January 1, 2024.

More recently, in response to comments received during the MaineCare Benefits Manual (MBM) Chapter II, Section 43: Hospice Services rulemaking process, again pushed the EVV implementation date to July 1, 2024. We expect that this new implementation date will give providers ample time to prepare their systems and organizations to meet the requirements. We anticipate adopting that rule this week. Following rule adoption, we will publish billing guidance with specific information related to the claims adjudication process for each impacted service.

In conclusion, the Department strongly opposes this LD. In response to feedback from hospice providers, the Department has delayed implementation multiple times and has substantially revised its implementation approach to ease administrative burden. More important, though, the Department has a responsibility to protect MaineCare members receiving end-of-life hospice services and will continue to act in their best interest, and in the best interest of the MaineCare program, by implementing protections so that we know members are receiving the care they need. Following extensive review of impacts and potential burdens for both providers and patients, it is clear to the Department that the benefits of these EVV requirements outweigh remaining administrative challenges, challenges already overcome by other provider types who have been implementing EVV for a year or longer.

We appreciate the committee's consideration of the information provided and welcome further discussion on the matter.

Thank you for your time and attention. I would be happy to answer any questions you may have and to make myself available for questions at the work session.