M|H|A
Maine Hospital Association

MAINE'S LEADING
VOICE FOR HEALTHCARE

TESTIMONY OF THE MAINE HOSPITAL ASSOCIATION

FMLA Legislation

April 23, 2025

Senator Tipping, Representative Roeder and members of the Labor and Housing Committee, my name is Jeffrey Austin and I am with the Maine Hospital Association. I am offering this testimony in support of some of the bills on FMLA.

The Maine Hospital Association (MHA) represents 32 community-governed hospitals including 29 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 home health agencies, skilled nursing facilities, nursing facilities, residential care facilities, and physician practices.

Maine hospitals employ tens of thousands of Maine workers and are liable for tens of millions in FMLA taxes each year. MHA is asking you to consider changes that would make the program more fair and more reasonable.

Our **priorities** are as follows:

1. We support the adoption of the Chamber's package of reforms (**LD 1712**);
2. We support a tax refund for private plans (**LD 1307, as amended**), and
3. We support the technical clarifications in (**LD 1333**).

If the Committee is not inclined to support reforms at this time, we would encourage you to consider the proposal to delay the program's effective date (LD 1249).

For all items above not acted upon, and for all other legislation, we would suggest the **creation of a work group** to review.

MHA was most involved in the development of LD 1333 and we would be happy to address any questions you have about that legislation. We believe much of it is technical clarification or modest policy change to improve the program.

One issue of particular concern for us is the issue of employers collecting the employee share of the tax.

Both the public and policymakers were told that the tax to support the FMLA program would be evenly split between employers and employees in firms with 15 or more workers.

First, the FMLA statute (26 MRSA §850-F(5)(A)) reads as follows:

> *An employer with 15 or more employees **may deduct up to 50%** of the premium required for an employee by subsection 3 from that employee's wages and shall remit 100% of the combined premium contribution required by subsection 3 to the fund.*

There is no limitation or caveat. It doesn't say "maybe" it says "may."

This plain reading of the statute was reinforced by the current Senate President who was the lead Senate sponsor of the legislation; she testified as follows:

> *The contribution rate is 1% and that is the ceiling. In other states with similar Authorities, contribution rates have gone dowm over time thanks to strong program management and oversight. Further, **the 1% contribution rate would be split between employer and employee**, meaning each would likely make a contribution of 0.5% or less.*

Again, there is no caveat or limitation to this statement.

The AFL-CIO also testified to the even split of the tax:

> *The bill funds the program **through an even split in funding between employers and employees**. This wage contribution for the program is no more than 1% of an employee s wages **split between an employer and employee, which is .5% or less for the employee and employer**. Employers should pay into the system and the financing should not fall to working people alone.*

Again, there is no caveat or limitation to this statement.

Representative Cloutier, the lead House sponsor spoke to the issue on the House floor. She said:

> *The program would be funded for a payroll contribution **capped at 1% from both employers and employees. This rate would be split**, meaning each would likely contribute 0.5% or less.*

And the Senate President reiterated this point on the Senate floor:

> *We looked at everything of, you know, the largest option, we looked at cost shares with the employer paying 25%, with the employee doing 25%, **to the 50/50 that's in front of you, which is the same thing as Social Security**.*

The problem is that there are some labor lawyers who are trying to argue that employers are 100% responsible for the tax unless the employees agree to pay it. This is contrary to the plain reading of the statute, testimony and comments from the lead sponsors, a major union and common sense.

Both LD 1333 and LD 1712 attempt to clarify that the tax is to be evenly split between employers and employees. We are open to alternative wording or approaches to what is proposed in those bills.

I'm happy to discuss any of the other provisions in LD 1333 or any of the bills.