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Testimony of the Office of Affordable Health Care
Before the Joint Standing Committee on Health Coverage, Insurance and Financial Services
In support of LD 1972, *An Act to Enhance Transparency and Value in Substantial Health Care
Transactions by Changing the Review and Approval Process for Those Transactions*
May 20th, 2025

Senator Bailey, Representative Mathieson, and members of the Joint Standing Committee on Health Coverage, Insurance, and Financial Services;

I am Meg Garratt-Reed, Executive Director of the Office of Affordable Health Care.

Thank you for the opportunity to testify today in support of LD 1972.

I'd like to begin by thanking Representative Zager for his sponsorship and his thoughtful collaboration throughout the drafting process, which improved this bill in many ways.

Thanks also to the members of the committee from both parties who signed on as co-sponsors.

Given the excellent explanation from Representative Zager about the impetus for this proposal and why it is important for the legislature to take action, I'll focus my comments on the mechanics of the bill and some of the questions we've received as we've worked with stakeholders through the drafting process.

I wanted to briefly begin by noting that we have been transparent in our development of this bill, discussing the concept with our Advisory Council at meetings in December, February, March, and May. We shared language with the Council before our March meeting, and incorporated changes into the bill text based on feedback we received. We also shared the bill text throughout the drafting process with other stakeholders not represented on the Council for review. The program structure is informed by work done by the National Academy for State Health Policy, which collaborated with legal scholars and officials in other states who have experienced the fallout of problematic transactions to develop model legislation, but the bill customized to fit Maine's priorities and landscape.

The bill has two main components. The first is the creation of a Material Change Transaction Review process, which makes two important changes to the state of Maine's ability to review health care transactions:

First, it expands the scope of review beyond what currently exists in Certificate of Need (or “CON”) statute. Under CON, the Division of Licensing and Certification (“DLC”) within the Department of Health and Human Services has authority to review “transfers of ownership, acquisitions, and acquisitions of control” only for health care facilities.

The scope of Material Change Transaction review is broader, including these facility-level acquisitions and mergers, but also covering the acquisition of provider entities that do not meet the definition of a “facility” as well as sales of a material amount of assets by a health care entity, or the closure of essential health services. This new scope is limited to provider entities with \$10 million or more in assets or annual revenues – which we would expect to exclude most small independent practices.

Expanding the scope of transactions subject to review is important first because it allows the state to not only review a single acquisition transaction, but also to provide oversight of the behavior and decisions of an acquiring party into the future. This provides a strong disincentive to bad actors from entering the state, since they know that major decisions that impact care will continue to be subject to state review and approval. It is also important to provide oversight of transactions beyond just facilities, in light of the increasing acquisition of provider organizations by private equity firms.

One clarifying technical note is that nursing facilities are excluded from this new program, and remain subject to CON review for acquisitions. That is because DLC is subject to specific federal rules and requirements for the review of nursing facility transactions, in light of the significant role Medicaid plays in funding nursing homes. Maintaining the CON process for those entities was the clearest way to ensure that there wouldn’t be an interruption or unintended consequences for those reviews.

This bill also would not impact other project types currently subject to CON, such as new construction, medical equipment, or addition of services. Those projects would be subject to the same CON requirements that apply today.

In addition to expanding the types of transactions the state has authority to review, the Material Change Transaction review process also includes greater specificity about how the state should assess patient and staff impacts resulting from these transactions, and increases the resources available to DLC to ensure that those reviews can be conducted with the depth and detail necessary given today’s highly complex health landscape.

The program is funded via three mechanisms. The first is a small filing fee of \$1,000-\$5,000 for each transaction subject to Material Change Transaction review. The second is an annual assessment on health insurance companies offering fully-insured health plans or stop-loss coverage in Maine. This assessment would be equal to one five thousandth of one percent of premiums earned. Based on 2023 data, Anthem would pay the largest assessment at just under \$60,000 – that’s based on over 1 billion dollars in earned premium. Given that these carriers

benefit from a stable and competitive health care system, we think it's fair to ask them make a small contribution to support this program. The funding from this assessment will be used to support additional administrative costs associated with an anticipated number of applications needing an initial review, because of the broader scope of the Material Change Transaction review process. Finally, the bill also requires that the entities involved cover the costs of conducting a comprehensive review when one is determined necessary. We included this provision because we know it is possible that the state could be expected in this process to go toe-to-toe with some of the biggest corporate actors in our country – organizations like Amazon and United Health Care. We can't create a structure that allows those incredibly well-resourced entities to obfuscate or delay while waiting for state funding to run out.

The program also leverages the expertise being developed within the Office of Affordable Health Care, requiring the Office to produce a report on the cost and market impacts when a transaction is identified for comprehensive review. This partnership will allow each report to make use of the Office's growing body of work establishing metrics for cost, accessibility, and quality of care.

In addition to the Material Change Transaction process, the bill also includes new transparency requirements that will improve the availability of information about corporate structure and ownership of health care entities. While hospitals currently make some of this information available indirectly via audited financial statements and other documents, it requires expert analysis to reconstruct an organizational chart from those filings. For non-hospital providers, there is no comprehensive source of ownership information. This lack of reporting leaves a significant gap in the state's ability to monitor penetration of private equity and other national corporate actors in our state. This provision is necessary to fill that gap and to provide greater insight into the organizational structures of our large health systems, which is an important complement to the financial performance data already being collected by the Maine Health Data Organization.

One question that may be asked in later testimony is why this bill focuses on health care providers when financialization and corporatization is an issue across the health system, including among health insurance companies. The answer to that is simple: we view the risks posed by transactions involving providers to have greater immediate consequences for Maine people. While the exit of a health carrier from a market can absolutely be disruptive, there are processes for transitioning members to a new insurance provider, and managing continuity of care during those transitions. The closure of facilities or services, or significant declines in the quality of care at a local provider, can be far more impactful to the well-being of families and communities – especially those in rural areas of the state where there may be no alternatives nearby. Additionally, the state also already plays a significant role in overseeing the behavior of health insurance companies subject to its authority, with the Bureau of Insurance monitoring their business practices and financial stability on a regular basis, along with approving rates and plan structures.

We have also been asked what this oversight program would mean in cases where the purchase of a health care entity is viewed as the only alternative to closure or significant service reduction. Something I appreciate about this model is that it is not black or white – it allows each transaction to be evaluated on its merits. Under its approval authority, the statute directs the Department to assess whether a transaction is in the public good – a determination which would incorporate considering the alternatives, or lack thereof, to the transaction.

You may also hear that now is not the time for a bill like this, in light of the commentary you have heard throughout session about the financial status of some Maine hospitals. We would argue, however, that that is a cause for urgency in passing this legislation, so we can undertake rulemaking and establish the program in advance of any changes that may be coming. I would point out that the Material Change Transaction review process places no new burden on health care facilities or providers that are simply continuing to operate as they are – it is only relevant should they undertake a material change.

I have always acknowledged that our health care system is complex, and there are no easy answers. This bill is not a solution to the underlying factors that make providers vulnerable to investors and financial firms, but it is an important step to ensure the integrity of our health care system while we continue to work together to address those challenges. I urge you to support LD 1972 so we can begin this important work as soon as possible, and I would be happy to answer any questions now or before the work session.



LD 1972: An Act to Enhance Transparency and Value in Health Care Transactions

Who does LD 1972 apply to?

The Material Change Transaction (MCT) review process applies to any transaction involving a health care provider, provider organization, or health care facility within the state that has total assets or annual revenues, or anticipated annual revenues for new entities, of at least **\$10,000,000**.

How the MCT review process will improve oversight

Current CON Process for Acquisitions

Only facility-level transactions reviewed

Limited language on variables included
in review/determination

Post-transaction oversight focused on
clinical outcomes



Proposed MCT Process

Includes small practices, real estate
sales, closure of services, etc.

Includes affordability, equity, workforce,
access, and quality assessments

Broader post-transaction
review authority

How CON and MCT will interact

CON still covers:

- Changes to control of nursing homes
- Introduction of new health services
- Construction of new health facilities
- Changes in bed complement
- Capital expenditures > \$10M and by nursing homes
- Major medical equipment purchases

**Merger &
Acquisition
Review Moves
from CON to MCT
Process**



Preliminary review with determination: 60 days

