



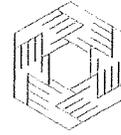
**Testimony of Trevor Putnoky**  
**to the Joint Standing Committee on Health Coverage, Insurance and Financial Services**  
**In Support of**  
**LD 378, An Act to Strengthen the Health Care System in Maine**  
**March 12, 2026**

Good afternoon, Senator Bailey, Representative Mathieson, and Members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services.

My name is Trevor Putnoky, and I'm here today to testify in support of the sponsor's amendment to LD 378. I'm the President and CEO of the Healthcare Purchaser Alliance of Maine. The HPA is a nonprofit representing the purchasers of health care in Maine. Our mission is to advance and support access to high-quality, affordable care. We have over 60 members, including some of the largest public and private employers and health trusts in Maine. Collectively, our members spend over a billion dollars annually providing health care for nearly one quarter of the commercially insured population in the state.

The sponsor's amendment to LD 378 proposes a technical amendment to LD 1906, legislation enacted last year to ensure that self-insured plan sponsors are able to secure audit rights in their contracts with third party administrators (TPAs) and pharmacy benefit managers (PBMs). Unanimously reported out of HCIFS as ought to pass as amended, the new law prohibits third party administrators (TPAs) and pharmacy benefit managers (PBMs) from including restrictive audit provisions in contracts with employers, such as limiting the number of claims that can be audited. It also details data that TPAs and PBMs are required to provide to plan sponsors when they're conducting audits, and allows pre-payment audits of claims in excess of \$100,000.

Since the bill's enactment, a number of our members and other employers have sought to exercise the new audit rights afforded to them by LD 1906. Unfortunately, those efforts revealed a technical issue with the bill—namely, the way in which LD 1906 interacts with the definition of "administrator" in existing Maine statute. Essentially, the definition of "administrator" in Maine statute (§24-A MRSA. § 1901(1), attached) exempts TPAs which are licensed by the Bureau of Insurance as insurance companies. Hence, TPAs administering self-insured plans in Maine that also offer fully insured plans—and are licensed as such—believe they are exempt from the definition of "administrator" and are therefore exempt from LD 1906's requirements. And because most self-insured employers in Maine utilize TPAs that are also licensed

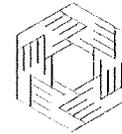


insurance companies, this essentially means that none of those employers have been able to access the rights and protections that were created by enactment of LD 1906.

It was obviously not our intention to exempt from LD 1906 those TPAs that are also licensed insurance companies, nor did it appear to be the understanding of those who testified on the bill, including those who testified in opposition, arguing that LD 1906 would impose sweeping and complicated mandates on TPAs. And while I certainly don't want to speak for the committee, it appeared that wasn't members' understanding either. That said, I want to apologize to the committee for not identifying this issue last year and for having to come back to you to request this statutory fix.

To fix this problem, LD 378 would clarify the definition of "administrator" by adding the following language in Sec. 1: Notwithstanding section 1901, subsection 1, paragraphs D or E, for the purposes of this section, an "administrator" subject to the requirements of this section includes any person who, on behalf of a plan sponsor, receives or collects charges, contributions or premiums for, or adjusts or settles claims on residents of this State in connection with any type of health benefit." This amendment to the definition would only come into play vis a vis LD 1906; it would not apply beyond that. Parallel language is included in Sec 3. LD 378 would also make a similar clarification to the definition of "plan sponsor," noting that only *fully* insured plan sponsors would be exempt from the new law. We also hope that the committee will consider an emergency designation for the bill, as many employers are in the process of entering into, revising, or renewing their TPA and PBM contracts and—based on enactment of LD 1906—had anticipated adding those new rights into those contracts. One large public purchaser shared that after the passage of 1906 they included auditing on their 2026 strategic plan, but they have been stymied in their ability to meet this goal by their plan administrator's insistence that they are exempt from LD 1906.

While my focus here today is on the fix proposed in LD 378, I want to briefly touch on LD 1906 itself, and why auditing rights are so important to Maine employers. We—and our members—were extremely grateful to Senator Bailey for sponsoring that legislation, and for the Committee's unanimous support of the bill. As I explained in my testimony at the time, few Maine employers have the ability to review whether the substantial dollars they spend on healthcare coverage are being billed and paid correctly. This is because employers' contracts with TPAs and PBMs typically include restrictive audit terms that make it impossible for purchasers to identify erroneous payments or to evaluate contract compliance. And while many of our members had tried to negotiate with their TPAs and PBMs to get these types of audit restrictions removed from their contracts, even the largest purchasers in the state have been unsuccessful.



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The right to audit is critical. The processing of healthcare claims is extremely complex, and billing errors are common. Billing advocates estimate that up to 80 percent of medical bills contain errors,<sup>1</sup> and one major auditing firm we spoke to reported that, on average, erroneous charges and overpayments comprise 2–4 percent of total healthcare benefit spend in their book of business. Across our members, that translates into \$20-40 million dollars that could otherwise be used to reduce costs for Maine employees and their families. Healthcare costs are already too high; employers and consumers shouldn't be paying even more due to billing errors and other erroneous payments.

Further, self-funded employers have a fiduciary responsibility to pay reasonable plan costs and to make decisions in the best interest of their employees and dependents. Audits allow employers to ensure that their TPA and PBM are meeting all contractual terms, including financial performance guarantees. But in order for employers to conduct this type of basic, normal oversight, they must be able to audit their claims data. Several employers nationwide have been sued for failing to meet these foundational fiduciary responsibilities, and employers who are unable to perform robust audits are increasingly concerned that they will be next.

I won't go into any further detail about why LD 1906 is so important for Maine employers, but I have attached all of the testimony submitted in support of the bill, in case you are interested in reviewing those statements.

Thank you for the opportunity to testify in support of LD 378, and many thanks to Senator Bailey for offering this amendment to LD 378, which will ensure that the audit rights created in LD 1906 will actually be available to the many self-insured Maine employers whose TPAs are also licensed insurance operators. I'd be happy to answer any questions and will be available for your work session.

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<sup>1</sup> Kelly Gooch, "Medical Billing Errors Growing, Says Medical Billing Advocates of America," *Becker's Hospital Review*, April 12, 2016. Available at: <https://www.beckershospitalreview.com/finance/medical-billing-errors-growing-says-medical-billing-advocates-of-america/>.

**§1901. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

1. "Administrator" means any person who, on behalf of a plan sponsor, health care service plan, health maintenance organization or insurer, receives or collects charges, contributions or premiums for, or adjusts or settles claims on residents of this State in connection with any type of life, annuity, health, workers' compensation or employee benefit excess insurance benefit provided in or as an alternative to insurance as defined by sections 702 to 704, former Title 39 or Title 39-A, other than any of the following:

A. An employer on behalf of the employer's employees or the employees of one or more subsidiary or affiliated corporations of the employer; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

B. A union on behalf of its members; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

C. A plan sponsor administering its own plan; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

D. An insurance company that is:

(1) Authorized to transact insurance business in this State; or

(2) Acting as an insurer with respect to a policy lawfully issued and delivered by that company in and pursuant to the laws of a state in which the insurer was authorized to transact an insurance business; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

E. A nonprofit hospital, medical or health care services plan, health maintenance organization, professional service plan corporation or person in the business of providing continuing care, possessing a valid certificate of authority issued by the Bureau of Insurance, and the sole representative of that person, plan, organization or corporation, if the activities of the plan, organization, corporation or person are limited to the activities permitted under the certificate of authority; [PL 1993, c. 702, Pt. A, §10 (AMD).]

F. An insurance agent or broker licensed in this State, whose activities are limited to the scope of that license; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

G. An adjuster licensed in this State, whose activities are limited to the adjustment of claims; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

H. A creditor on behalf of the creditor's debtors with respect to insurance covering a debt between the creditor and its debtors; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]



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**Testimony of Trevor Putnoky  
to the Joint Standing Committee on Health Coverage, Insurance and Financial Services**

**In Support of**

**LD 1906, An Act to Improve Accountability and Understanding of Data in Insurance Transactions**

**May 13, 2025**

Good afternoon, Senator Bailey, Representative Mathieson, and Members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services.

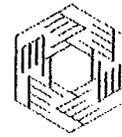
My name is Trevor Putnoky and I'm the President and CEO of the Healthcare Purchaser Alliance of Maine. The HPA is a nonprofit that represents the purchasers of health care in Maine. Our mission is to advance and support access to high-quality, affordable care. We have over 60 members, including some of the largest public and private employers and health trusts in Maine. Collectively, our members spend over a billion dollars annually providing health care for nearly one quarter of the commercially insured population in the state.

I'm here today to testify in strong support of LD 1906. I also want to thank Senator Bailey and others on this committee for sponsoring this important legislation.

Maine employers spend billions of dollars annually on healthcare coverage for employees and their families. Yet right now, few employers have the unfettered ability to review whether that substantial spend is being billed and paid correctly. While no company would pay a non-healthcare bill without at least a detailed invoice, that is exactly what employers are forced to do every day when it comes to the health plans they offer to their employees and their families.

This is because employers' contracts with third party administrators (TPAs) and pharmacy benefit managers (PBMs) typically include restrictive audit terms that make it impossible for purchasers to identify erroneous or over payments or to evaluate contract compliance. And while many of our members have tried to negotiate with their TPAs and PBMs to get these types of audit restrictions removed from their contracts, these efforts have been largely unsuccessful.

LD 1906 would address this problem by prohibiting TPAs and PBMs from including restrictive audit provisions in their contracts with employers and requiring them to provide employers with the data they need to undertake effective plan oversight and minimize overpayments.



### ***The Problem***

Healthcare costs are a substantial expense for employers. Warren Buffet famously said in 2006 that “General Motors is a health and benefits company with an auto company attached” in reference to the fact that GM spent more on healthcare than steel,<sup>1</sup> and Starbucks’s CEO noted in 2010 that his company’s healthcare costs exceeded that of coffee.<sup>2</sup>

Not only is health care a major expense for employers and consumers alike, the processing of healthcare claims is extremely complex and billing errors are common. Billing advocates estimate that up to 80 percent of medical bills contain errors,<sup>3</sup> and one major auditing firm we spoke to reported that, on average, erroneous charges and overpayments comprise 2–4 percent of total healthcare benefit spend in their book of business. Across our members, that translates into \$20-40 million dollars that could otherwise be used to reduce costs for Maine employees and their families. Healthcare costs are already too high; employers and consumers shouldn’t be paying even more due to billing errors and other erroneous payments.

Further, self-funded employers have a fiduciary responsibility to pay reasonable plan costs and to make decisions in the best interest of their employees and dependents. Audits allow employers to confirm that their TPA and PBM are meeting all contractual terms, including financial performance guarantees. But in order for employers to conduct this type of basic, normal oversight, they must be able to audit their claims data. Several employers nationwide have been sued for failing to meet these foundational fiduciary responsibilities, and employers who are unable to perform robust audits are increasingly concerned that they will be next.

Unfortunately, employers’ contracts with third party administrators (TPAs) and pharmacy benefit managers (PBMs) often include restrictive audit terms that make it impossible for purchasers to identify erroneous or over payments, or to evaluate contract compliance. Common restrictions include:

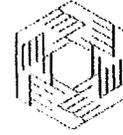
- Limits on the number of claims that can be audited, frequently fewer than 300 claims
- Allowing the TPA/PBM to select which claims are audited
- Limits on the data elements that can be included in the audit

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<sup>1</sup> Dave Chase, “You Run a Health-Care Business Whether You Like It or Not,” *CFO*, November 7, 2017. Available at: <https://www.cfo.com/news/you-run-a-health-care-business-whether-you-like-it-or-not/659705/>.

<sup>2</sup> Beth Kowitz, “Starbucks CEO: ‘We spend more on health care than coffee,’” *CNN Money*, June 7, 2010. Available at: [https://money.cnn.com/2010/06/07/news/companies/starbucks\\_schultz\\_healthcare.fortune/index.htm](https://money.cnn.com/2010/06/07/news/companies/starbucks_schultz_healthcare.fortune/index.htm).

<sup>3</sup> Kelly Gooch, “Medical Billing Errors Growing, Says Medical Billing Advocates of America,” *Becker’s Hospital Review*, April 12, 2016. Available at: <https://www.beckershospitalreview.com/finance/medical-billing-errors-growing-says-medical-billing-advocates-of-america/>.



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- Limits on the types of analyses that can be conducted, including prohibiting extrapolation of findings
- TPA/PBM veto power over choice of auditor
- Restrictions on how a purchaser can compensate/pay their auditor
- Restrictions on the frequency of audits and the time period covered by the audit
- Inability to audit claims prior to claims being paid (pre-payment audit rights)

Our members tell us that being able to effectively audit their health plans is a top priority and a necessary tool to help minimize erroneous payments. With attempts to address this issue through contract negotiations unsuccessful, we are asking the Legislature to enact a statutory solution.

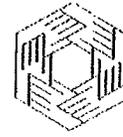
### ***The Solution***

Based on two bills recently enacted in Indiana,<sup>4</sup> LD 1906 will protect employer audit rights. It will prohibit TPAs and PBMs from including restrictive auditing provisions in their contracts with self-insured purchasers, and it will ensure that purchasers have the data they need to be confident that payments made on their behalf are correct. Currently, self-insured employers are often denied access to the granular details needed to validate that they are not paying more than they should. For instance, while most employers have access to the amounts billed to their plan by their carrier or PBM, few can see what the providers were actually paid. It will also help them to identify and potentially recover erroneous payments made on their behalf. LD 1906 will create a clear line of sight for employers that strengthens their ability to meet their fiduciary responsibility to perform due diligence and plan oversight. Further, these changes will allow employers to confirm that all contract terms and financial guarantees are being met, and ensure that systemic problems identified during audits are corrected moving forward.

The bill would also allow for pre-payment review of high-cost claims above \$50,000. These claims represent just 0.1 percent of total claims in HPA's book of business, but account for more than 16 percent of our members' total plan spend. We believe it's important for employers to have the ability to review this small—but costly—subset of claims before they're paid, because it's a lot easier to stop an erroneous payment before it goes out the door than it is to try to recover those erroneously paid dollars after they've been paid. Some may be concerned that this could delay payment of claims, but we believe the reviews can be turned around quickly once itemized billing information is provided. And that itemized information should be readily available, as providers need it to develop the billed amounts included in their claim submissions to carriers. And again, these pre-payment reviews would only impact a fraction of a percent of total claims.

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<sup>4</sup> Indiana General Assembly, House Bill 1259. Available at: <https://iga.in.gov/legislative/2024/bills/house/1259/details>.  
Indiana General Assembly, House Bill 1003. Available at: <https://iga.in.gov/legislative/2025/bills/house/1003/details>.



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I also want to emphasize that employers—not carriers—generally bear the cost of these audits, including any costs incurred by their TPA or PBM to provide the materials outlined in the bill. All that employers are asking for is access to their data, so that they can meet their fiduciary duty to ensure plan dollars are managed prudently.

We don't take this step lightly. We believe that contract terms are usually best left to the parties to negotiate. And, in fact, our members have tried to negotiate with their TPAs and PBMs to get these types of audit restrictions removed from their contracts. Unfortunately, those efforts have been largely unsuccessful. Even some of our largest members, with thousands of employees, have been unable to get audit restrictions eliminated, let alone the many smaller employers who have even less negotiating power with their TPAs and PBMs. For example, one large purchaser is allowed to audit only 300 of the nearly half a million claims its plan generates in a given year—and they are not able to extrapolate results. This means that if the plan found they overpaid by 5 percent on those 300 claims, they would have no recourse to address the likely overpayments on the other 99.9+ percent of claims. Even large plan sponsors have little leverage when negotiating with the large TPAs, who are some of the largest publicly traded companies in the country, and PBMs, where three PBMs process nearly 80 percent of prescriptions.<sup>5</sup>

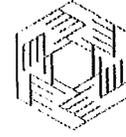
Nor is this a minor problem that employers can disregard. If the evidence indicated that claims were overwhelmingly being paid correctly, perhaps auditing rights would not be as important an issue for purchasers to pursue, but with all available evidence pointing to errors being commonplace, it is simply not acceptable to continue blindly paying what the TPAs and PBMs bill. And it is also not acceptable for employers to shirk their fiduciary responsibility by foregoing the ability to audit their plans. At this point, we feel we have no choice but to ask the Legislature for help in ensuring that Maine employers and public purchasers have access to the information they need to ensure that their employee health plans are operating appropriately and in a cost-effective manner.

### ***Addressing Stakeholder Concerns***

You will likely hear from TPAs and PBMs today that they already conduct robust claim reviews on behalf of their clients. While we agree that these TPA/PBM reviews can help to identify and address some billing issues, they do not take the place of audits by independent auditors who conduct unbiased reviews of all aspects of an employer's plan, including TPA or PBM performance and compliance with contract terms. Audits need to be objective and robust, and that's difficult to achieve if an organization audits itself. In

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<sup>5</sup> Federal Trade Commission, "FTC Releases Interim Staff Report on Prescription Drug Middlemen," July 9, 2024. Available at: <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-releases-interim-staff-report-prescription-drug-middlemen>.



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addition, many TPA and PBM agreements allow TPAs and PBMs to pocket a portion of the assets recovered by their own reviews—essentially, allowing the TPA or PBM to profit from their own mistakes.

They may also say that employers already have rights to conduct audits, and that this legislation is unnecessary. I can assure you that for our members, this is not the case. Many have tried to get audit restrictions removed from their contracts, and the vast majority have been unsuccessful. Further, if carriers and PBMs already make all necessary audit data available to employers without restriction, LD 1906 should not impose additional burdens on them.

TPAs and PBMs may also argue that they can't provide employers or their auditors with access to their own claims data because it's proprietary—with such proprietary information often including the amounts billed by providers and the amount paid by the TPA. But since federal statute and regulations now require providers and carriers to publish negotiated rates,<sup>6</sup> there's a strong argument to be made that these data are not proprietary. Moreover, all TPA and PBM agreements contain detailed confidentiality provisions that provide ample recourse to the TPA or PBM if their data were used or disclosed inappropriately. Finally, if allegedly proprietary data is disclosed on a small segment of claims, why can the information not be disclosed for all claims?

TPAs and PBMs may also claim that they are forced to include audit restrictions in their contracts with employers because that is what their contracts with providers stipulate, but federal law enacted in 2021 prohibits contract clauses that prevent the sharing of cost and quality data with plan sponsors and their business associates—such as auditors. Subsequent guidance jointly issued by three federal agencies clarifies that TPAs and PBMs cannot hide behind claims that such information is “proprietary” as a means of avoiding their obligations under federal law.<sup>7</sup> I would also note that the bill enacted in Indiana last year allowed carriers and PBMs to exclude proprietary data from their submissions, and just last week, Indiana's Governor signed into law legislation that eliminated that exemption for proprietary data.

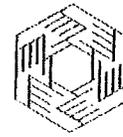
#### ***A Note on Preemption***

Some may express concern that LD 1906, if passed, would be preempted by ERISA, as it would prohibit carriers and PBMs from imposing audit restrictions on self-insured ERISA plans. Under current case law, however, we do not believe that ERISA would preempt LD 1906. Section 514(a) of ERISA states that ERISA

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<sup>6</sup> Transparency in Coverage Final Regulations, 79 Fed. Reg. 72158-72310 (Nov. 12, 2020); 26 CFR §54.9815-2715A3; 29 CFR §2590.715-2715A3; 42 CFR §147.242.

<sup>7</sup> Department of Labor, Department of Health and Human Services, Department of the Treasury, and Office of Personnel Management, FAQs About Consolidated Appropriations Act, 2021 Implementation Part 57, <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/affordable-care-act-and-cao-faqs-57.pdf>.



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pre-empts state laws insofar as those laws “relate to” any employee benefit plans covered by ERISA. The current interpretation of the statute by the U.S. Supreme Court holds that a state law “relates to” an ERISA plan if it has a **connection with or reference to** such a plan.<sup>8</sup>

As summarized in a US District Court case decided in March 2025,<sup>9</sup> a state law has a “connection with” an ERISA plan only when the law either requires a plan to structure its benefit plans in a particular way, or forces a plan to adopt a scheme of substantive coverage. LD 1906 does neither of these. It does not require a change in plan structure nor adoption of any scheme of substantive coverage. The requirements in LD 1906 apply to TPAs and PBMs, both entities that are licensed by the Bureau of Insurance for the State of Maine. Plan sponsors are free to take advantage of the broad audit rights and data that TPAs and PBMs would be required to make available to them, but they would not be required to do so. It would be completely their choice whether to conduct audits and it would not interfere with nationally uniform plan administration.

Nor do we believe “reference to” preemption applies to LD 1906. According to the U.S. Supreme Court, “reference to” preemption arises when a state’s law acts immediately and exclusively upon ERISA plans, or where the existence of ERISA plans is essential to the law’s operation. While LD 1906 would indeed prohibit TPAs and PBMs from imposing audit restrictions on ERISA plans, it would also prohibit them from imposing those restrictions on self-insured government plans, such as municipalities, the state employee plan, and the City of Portland, which are not ERISA plans. In HPA’s book of business alone, those non-ERISA self-insured government plans represent nearly 57,000 Mainers. So, here again, the preemption standard does not apply. Simply put, the bill applies to TPAs and PBMs, whether or not they manage ERISA plans.

Finally, as mentioned earlier, Indiana enacted similar legislation last year, and, to date, no preemption challenge has been asserted against that statute, which I believe suggests those who might oppose that law do not think they have a strong preemption argument against the types of audit requirements now in place in Indiana and being proposed here in Maine.

### ***In Conclusion***

We believe that contract terms are usually best left to the parties to negotiate. But negotiations are only fruitful when the party making the request has alternative options. Since these auditing provisions are ubiquitous, and carriers and PBMs have by and large put their collective feet down, employers are left without any cards to play. We hope that the Legislature will agree that, in this instance, a statutory fix is

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<sup>8</sup> Supreme Court of the United State. *Rutledge, Attorney General of Arkansas vs. Pharmaceutical Care Management Association*, December 10, 2020. Available at: [https://www.supremecourt.gov/opinions/20pdf/18-540\\_m64o.pdf](https://www.supremecourt.gov/opinions/20pdf/18-540_m64o.pdf).

<sup>9</sup> United States Court of Appeals for the Sixth Circuit, *McKee Foods Corporation vs. BFP, Inc.*, March 31, 2025. Available at: <https://www.eric.org/wp-content/uploads/2025/04/142-MEMORANDUM-OPINION-AND-ORDER.pdf>.

*132nd Legislature*  
**Senate**  
**of Maine**  
*Senate District 31*

*Senator Donna Bailey*  
*3 State House Station*  
*Augusta, ME 04333-0003*  
*Office: (207) 287-1515*

*Testimony of Senator Donna Bailey introducing*  
**LD 1906, An Act to Improve Accountability and Understanding of Data in Insurance Transactions**  
*Before the Joint Standing Committee on Health Coverage, Insurance and Financial Services*  
*Tuesday, May 13, 2025*

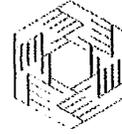
Representative Mathieson and Esteemed Colleagues on the Joint Standing Committee on Health Coverage, Insurance and Financial Services, as you know, my name is Donna Bailey, and I proudly represent Senate District 31, which includes Buxton, Old Orchard Beach, and Saco. Today I am pleased to introduce my bill **LD 1906, "An Act to Improve Accountability and Understanding of Data in Insurance Transactions."**

LD 1906 seeks to empower Maine employers with the tools they need to manage healthcare costs effectively and fulfill their fiduciary responsibilities. Maine employers collectively spend billions of dollars annually to provide health care for employees and their families, yet current contractual practices severely limit their ability to confirm whether those dollars are being spent correctly.

Restrictive audit terms in contracts with third-party administrators (TPAs) and pharmacy benefit managers (PBMs) create significant challenges for employers. These restrictions make it nearly impossible to identify billing errors, overpayments, or instances of non-compliance with contractual terms. Employers are effectively asked to pay sizeable healthcare bills without the transparency necessary to ensure accuracy—a practice unheard of in any other industry.

Many contracts with TPAs and PBMs limit the number of claims that can be audited, restrict access to critical data, limit employers' choice of auditor, and prohibit meaningful analysis of claims. These limitations can lead to erroneous or over payments and also expose employers to legal risks for failing to fulfill their fiduciary responsibilities. Lawsuits against self-funded employers have highlighted the consequences of inadequate oversight, which underscores the need for robust audit capabilities.

LD 1906 addresses these challenges by prohibiting restrictive audit terms in contracts between TPAs, PBMs, and self-insured employers. It ensures employers can access their claims data, including detailed payment and provider information, and conduct audits without undue restrictions on scope, frequency, or methodology. And employers—not carriers—will bear the cost of audits and associated data access, ensuring no undue financial burden is placed on TPAs or PBMs.



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warranted to ensure that Maine employers can effectively monitor the billions of dollars they spend annually on healthcare coverage and reduce erroneous payments that come out of the pockets not just of Maine businesses, but also their employees and families.

Thank you for the opportunity to share with the committee how pervasive audit restrictions are affecting Maine employers and consumers. Healthcare affordability has reached the crisis stage in Maine and providing employers with the tools they need to ensure that they—and their employees—are not overpaying for care is an easy and impactful step that the Legislature can take to help address the high cost of care in our state. And thank you to Senator Bailey, for bringing this important bill before the Legislature. We're grateful for her support. I'd be happy to answer any questions and will be available for the work session.



**Testimony of Danielle Moody  
to the Joint Standing Committee on Health Coverage, Insurance and Financial Services**

**In Support of**

**LD 1906, An Act to Improve Accountability and Understanding of Data in Insurance Transactions**

**May 13, 2025**

Good afternoon, Senator Bailey, Representative Mathieson, and Members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services.

My name is Danielle Moody and I'm the President of Moody's Collision Centers, a Maine-based, coworker owned collision repair company proudly serving 12 communities across the state. I am writing today to express our strong support for LD 1906 – An Act to Improve Accountability and Understanding of Data in Insurance Transactions (AUDIT).

As an employer who provides excellent health benefits to our coworkers, Moody's experiences firsthand the challenges and costs of a healthcare billing system that lacks transparency and accountability. We believe that the restrictions that LD 1906 seeks to address lead to both higher costs and increased fiduciary risk. We do our best to be prudent managers of plan assets, but without the ability to ensure our carrier and PBM are paying bills correctly, employers are forced to trust that they are catching and correcting every billing error that occurs.

The AUDIT Act addresses these issues head-on. These reforms will empower employers to identify errors, recover overpayments, and ensure that the promises made in healthcare contracts are being fulfilled. This transparency is essential for employers like us, who are trying to provide the best access to care for our coworkers while managing rising healthcare costs.

Our coworkers are hardworking Mainers with families who rely on their healthcare coverage. They deserve a system that is fair, accurate, and accountable. Without the ability to properly audit claims, employers are forced to blindly pay bills that could potentially contain errors. No business would accept that in any other part of their operations—and we shouldn't have to when it comes to healthcare.

We urge you to support Bill 1906 and help Maine's employers and families gain the tools they need to ensure their healthcare dollars are being spent wisely.

Thank you for your time and consideration.

Sincerely  
Danielle Moody  
President  
Moody's Coworker Owned  
207.632.9786

The Health Trust utilizes a unique, internal Member Services model, by which our staff frequently learns of TPA processing issues and/or billing errors made by providers. These issues are raised by staff to our TPA, which provides strong service in resolving them upon our request. However, we often discover issues which they were not aware of, and only rarely are any issues identified through the formal claims audit.

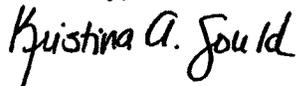
In 2021 the Health Trust's TPA introduced an enhanced internal review program, which seeks to reduce fraud, abuse and overpayments in the system. MMEHT is charged a percentage of the "shared savings" to fund this program. While we fully support this effort and its goals, our ability to understand and verify how the program creates savings, and the corresponding fees assessed, is very limited. Though we requested a more robust audit, the Health Trust was restricted to auditing just 50 claims for a two-year period. Of these, our independent auditor found concerns with a third of them. While the TPA was willing to reverse some of the fees as a result, this process reduced our confidence in their ability to accurately identify the claims which should be assessed a shared savings fee.

Of particular interest to the Health Trust is the provision in this bill which expands our ability to understand how claims are being processed by the pharmacy benefits manager (PBM), including rebate amounts. The Health Trust has negotiated a 100% pass through of pharmacy rebates, which are anticipated to be over \$18 million in 2025. However, reporting to substantiate the amount received is considered "proprietary" and is woefully inadequate. The ability to know the rebate amounts, identified by the drug and therapeutic category, will allow the Board of Trustees to make fully informed decisions by understanding the true net cost of certain prescription drugs.

On behalf of MMEHT, I urge you to support of *LD 1906, An Act to Improve Accountability and Understanding of Data in Insurance Transactions (AUDIT)*.

Thank you for your consideration.

Sincerely,



Kristina A. Gould  
Director, Health Trust Services



# MAINE MUNICIPAL EMPLOYEES HEALTH TRUST

60 Community Drive | Augusta, ME 04330-9486

## Testimony in Support of

### **LD 1906, An Act to Improve Accountability and Understanding of Data in Insurance Transactions (AUDIT)**

May 13, 2025

Senator Donna Bailey  
Representative Lori Gramlich  
Members of the Committee on Health Coverage, Insurance and Financial Services

Dear Senator Bailey, Representative Gramlich, and Members of the Committee:

The Maine Municipal Employees Health Trust (MMEHT) was founded in 1983 with the goal of containing healthcare costs while maintaining quality benefit programs and providing superior service. The Trust is a non-profit, self-insured organization, governed by Trust participants. We are a Multiple Employer Welfare Arrangement (MEWA) regulated by the Bureau of Insurance.

At the present time, over 480 Maine municipalities, counties, and quasi-municipal organizations participate in one or more of the Health Trust's medical plans. This represents over 20,000 employees, retirees and dependents, located in every county in Maine.

**LD 1906, An Act to Improve Accountability and Understanding of Data in Insurance Transactions**, would prohibit insurance companies and pharmacy benefit managers from including restrictive auditing provisions in their contracts with purchasers such as the Health Trust, and it will specify key data that they must make available for audits. We believe that these reforms will strengthen the Health Trust Board's ability to perform their due diligence and fiduciary oversight of the plan and allow us to confirm that all contract terms and financial guarantees are being met.

As health plan administration grows further complicated, MMEHT's ability to confirm that claims are being paid properly is even more critical. The Trust engages an independent auditing firm to audit claims paid by our third party administrators (TPAs) twice a year. Under our current TPA's audit policy, we are limited to auditing only a tiny fraction of claims. The sampling of 100 medical claims and 50 pharmacy claims which are audited annually is inadequate to identify any potential trends or claims processing issues.

These provisions align with successful legislation enacted in Indiana and create a clear pathway for employers to verify that plan payments are accurate and compliant with contractual terms. This bill is not about imposing onerous demands but about granting employers the basic rights they need to manage their healthcare spending prudently.

By enacting LD 1906, Maine can reduce erroneous payments, improve accountability, and empower employers to meet their fiduciary duties effectively.

I thank the Committee for its time, and I would be happy to answer any questions.



**Donna Bailey**  
State Senator, Senate District 31  
*Buxton, Old Orchard Beach, and Saco*

Geoffrey Swift  
Bates College  
LD 1906

Members of the Health Coverage Insurance and Financial Services Committee-

My name is Geoffrey Swift, and I am writing today on behalf of (and as Treasurer of) Bates College, a small private liberal arts college in Lewiston Maine that employs over 1,000 Mainers. As an organization with more than 150 years in our community, we are deeply concerned with the sustainability of our organization, and supporting the health of our community. Providing a robust health care insurance benefit is core to our value proposition as an employer, and fully one in 12 dollars of our expense budget supports employee healthcare.

Bates College strongly supports the proposed AUDIT Act.

This legislation - improving transparency and access to the healthcare claims data that we pay for on behalf of our employees – is critical to understanding the increasing percentage of our expenses that go to employee healthcare.

Bates College self-funds our employee healthcare plan, so we bear the financial risk and responsibility for our employees' medical claims. We should have full access to our claims data, and we should have the right to audit it for errors, overpayments, and contractual compliance. However, we are unable to conduct a meaningful audit due to restrictive, and currently legal, terms imposed by our Third Party Administrator (TPA). These restrictions limit our ability to select an auditor, prevent us from reviewing a statistically significant portion of claims, and deny us access to our data as it has been designated "proprietary information"—even though federal rules mandate transparency of negotiated rates.

Our fiduciary duty to our students and to our employees and their families demands that we be good stewards of plan resources to provide the best plan available for our community. Without the ability to audit our own claims data, we cannot verify the accuracy of payments or assess whether our TPA is fulfilling its contractual obligations. This lack of oversight exposes us to unnecessary financial waste and legal risk; with nearly two thirds of our total expenses supporting employees, if we are allocating precious resources to waste this is at the expense of our staff.

We urge lawmakers to support the AUDIT Act, which will ensure employers like Bates College can perform the due diligence necessary to manage healthcare costs responsibly and transparently.

Many thanks for considering this testimony.

Geoffrey Swift  
Vice President of Finance and Administration, and Treasurer, Bates College

### **Testimony in Support of LD 1906**

Distinguished members of the Committee on Health Coverage, Insurance and Financial Services,

My name is Edward Pierce. I am a Partner at Lockton where I advise large and mid-sized companies in their self-funded employee benefits programs. I work with Maine employers ranging from 350 employees to 20,000+. I am here today to testify in strong support of LD 1906.

This bill is about one simple principle: accountability. This bill, if passed, would enable employers to fulfill their fiduciary duty to the plan assets – which are a part of compensation that all of their employees receive. We want employers to act in the best interest of their employees – especially when it comes to anything compensation related. These are not hypothetical responsibilities—they are federally mandated under ERISA.

When employers can't access their claims data often due to restrictive audit language they cannot meet this obligation. They cannot be accountable. LD 1906 restores the tools they need to uphold this fiduciary standard.

In my work for clients, I have seen a range of receptivity from a carriers and administrators.

Frankly, we have negotiated effectively in instances to get the carriers to acquiesce. However – the negotiations with one client do not necessarily trickle to another – even with the same administrator and especially for smaller self-funded employers. Why should one employer gain access to critical information on their dollars spent and another is prevented from getting that information to fulfill their fiduciary duty. It isn't right and carrier and administrators should be facilitating claims data sharing.

Some people might say that the carriers already serve in an audit capacity. This is obfuscation. In my experience, on the ground, the quality outside firms that are able to audit with access to the data, find much more fraud, waste, abuse, and mistakes by administrators. Further – an outside audit firm fully discloses and explains its findings to the client.

I'd like to add a suggestion of language to the bill as well. The bill includes language of "administrator". Please consider including language that includes full audit rights within the network administration agreement as well. This is critical – otherwise we may make progress requiring 100% audit language for the administrator via the Administrative Services Agreement but if the underlying Network Administration Agreement on which the administrator relies for a network does not have to comply with the same audit language, the client will be left in the same place they are in today.

I respectfully urge the Committee to advance LD 1906 because it will level the playing field, ensure compliance with existing fiduciary law, and protect employee benefit dollars from being misused. Let's ensure that those who fund the system – our employers - have a fair and enforceable right to understand anything that is driving costs.

Thank you.



# Consumers for Affordable Health Care

Advocating the right to quality, affordable  
health care for all Mainers.

P.O. Box 2490  
Augusta, ME 04338

Telephone: 1-800-965-7476  
Fax: 1-888-214-5233  
www.mainecahc.org  
consumerhealth@mainecahc.org

## Testimony in Support of: LD 1906, An Act to Improve Accountability and Understanding of Data in Insurance Transactions

May 13, 2025

Senator Bailey, Representative Mathieson, and members of the Joint Standing Committee on Health Coverage, Insurance, and Financial Services, thank you for the opportunity to provide this testimony in support of LD 1906, An Act to Improve Accountability and Understanding of Data in Insurance Transactions.

My name is Kate Ende, policy director at Consumers for Affordable Health Care (CAHC), a nonpartisan, nonprofit organization that advocates the right to quality, affordable health care for all people living in Maine. As designated by Maine's Attorney General, CAHC serves as Maine's Health Insurance Consumer Assistance Program. Our toll-free helpline fielded nearly 7,300 calls and emails this past year from people across Maine needing help with their private health coverage or with accessing affordable healthcare services. CAHC also serves as the Ombudsman program for Maine's Medicaid program, MaineCare, and helps people apply for and navigate the enrollment process for MaineCare.

This bill is about transparency and accountability. As this committee is well aware, many large employers offer coverage to their employees through a self-funded, or self-insured, health plan. In these arrangements, employers typically contract with third-party administrators and pharmacy benefit managers to administer health and pharmacy benefits, but retain the financial risk for claims paid by the health plan. As the plan sponsor, employers offering self-funded plans should have the ability to access their claims data and ensure accurate billing and payment of claims. However, TPAs and PMBs frequently limit the ability of plan sponsors to conduct effective or comprehensive audits.

This is highly problematic, especially considering that employers offering self-insured health plans to their employees have a fiduciary responsibility to their plan members, including an obligation "to only pay reasonable plan expenses."<sup>1</sup> Medical billing is extremely complex and most individuals are not able to spot incorrect billing codes or errors. However, it is estimated that a staggering 80% of medical bills contain errors.<sup>2</sup>

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<sup>1</sup> Understanding Your Fiduciary Responsibilities Under A Group Health Plan, U.S. Department of Labor, Employee Benefits Security Administration (EBSA), <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/our-activities/resource-center/publications/group-health-plan-fiduciary-responsibilities.pdf>

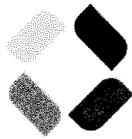
<sup>2</sup> Kelly Gooch, "Medical Billing Errors Growing, Says Medical Billing Advocates of America," Becker's Hospital Review, April 12, 2016. Available at: <https://www.beckershospitalreview.com/finance/medical-billing-errors-growing-says-medical-billing-advocates-of-america/>.

Given this high rate of billing errors, how can an employer be expected to ensure plan expenses are reasonable, or that a TPA or PBM are following the terms of their contract, if they cannot access their claims data?

Comprehensive audits are a useful and necessary tool to ensure the accuracy of claims, identify and recoup any losses from overpayments, and for plan sponsors to provide needed oversight into the management of their health plan and pharmacy benefits. Audits can also help plan sponsors ensure TPAs and PBMs are complying with the terms of their contracts.

LD 1906 would prevent TPAs and PBMs from charging excessive fees or placing overly restrictive limitations on audits. This will improve transparency and allow for better oversight, which we believe will help to generate cost savings for both employers as well as their employee members.

Given the high and rising costs of health care, we believe this bill is a commonsense solution to allow plan sponsors to better conduct due diligence and ensure limited health care dollars are being spent appropriately. For this reason, we urge you to support LD 1906. Thank you.



**J.S. McCARTHY**  
packaging + print

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**Testimony of Amy P. Tardiff**

**to the Joint Standing Committee on Health Coverage, Insurance and Financial Services**

**In Support of**

**LD 1713, An Act to Prohibit Certain Provisions in Health Care Provider Contracts with Insurance Carriers**

**May 13, 2025**

Good afternoon Senator Bailey, Representative Perry, and Members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services.

My name is Amy Tardiff and I am the Vice President and General Counsel at J.S. McCarthy Packaging + Print, a 105-person, employee-owned manufacturing company located in Augusta for over 75 years.

Thank you for the opportunity to provide testimony in support of LD 1713. We pride ourselves on placing high emphasis on our employees' benefit offerings, doing our best to control costs for them and for our business so that we can offer high quality coverage that they can afford to access.

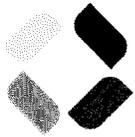
We have been self-insured for over 20 years. We self-insure our employee health plan because it allows us to offer comprehensive coverage tailored to our workforce's needs. But make no mistake — while the risk is ours, the control often isn't.

We have been self-insured for over 20 years. We self-insure our employee health plan because it allows us to offer comprehensive coverage tailored to our workforce's needs. But make no mistake — while the risk is ours, the control often isn't.

While audit rights are technically included in our contracts with our third-party administrators (TPAs) or carriers, they are so narrowly defined and heavily restricted that they're essentially unusable by small employers like us.

Here are some examples of restrictions in our current TPA contract that are effectively barriers to a group our size conducting audits:

- **Only On-Site Audits Allowed:** The contract allows only on-site audits. There is no allowance for remote audits, even though remote review is common, secure, and more cost-effective today. Our TPA is located in Chicago, adding additional cost.
- **Limited Scope Must Be "Mutually Determined":** The scope of the audit must be "mutually determined" by both the employer and the claims processor. This gives the processor the ability to limit what we can review.
- **We Can't Choose Our Own Auditor:** We must get the claims processor's consent for our choice of auditor, giving them control over who is allowed to examine their own work. While they must not



**J.S. McCARTHY**  
packaging + print

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"unreasonably" withhold consent, that's a vague standard and leaves us with little recourse if they do.

- **No Contingency Fee Audits:** Audits performed on a contingency fee basis — where the auditor only gets paid based on what they recover — are outright banned. For small businesses, this is often the only financially feasible option.
- **All Costs Paid by Employer, Including TPA's Time:** Not only do we have to pay the auditor and their expenses, we're also required to pay additional fees to the claims processor for their time and any "costs associated with the audit" — with the amount of that fee to be negotiated after we request the audit. This is unpredictable and discouraging.

This bill provides common-sense guardrails that restore basic fairness to the audit process. It offers protection to small businesses in Maine who do not have the leverage it would take to negotiate changes to these audit clauses that are often "take it or leave it." It ensures we can conduct meaningful audits with independent auditors, that audits can be conducted remotely when appropriate, and that TPAs can't impose excessive or vague pass-through fees just to block oversight. The language was carefully developed to ensure it strikes a fair balance.

As small employers, we are not looking to be adversarial. We are simply asking for reasonable tools to verify how our health plan dollars are being spent — especially when we're the ones funding those dollars.

Please support this legislation and help bring real accountability and transparency to Maine's health plans.

Thank you for your time and consideration.

Respectfully,

Amy P. Tardiff  
VP & General Counsel  
J.S. McCarthy Packaging + Print  
(207) 248-4591  
atardiff@jismccarthy.com



## **SYSTEMS** engineering

### **Testimony in Support of LD 1906**

#### **Submitted to the Joint Standing Committee on Health Coverage, Insurance and Financial Services Submitted by Jen Hughes, Director of People & Culture, Systems Engineering**

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

Thank you for the opportunity to submit testimony in support of LD 1906, An Act to Improve Accountability and Understanding of Data in Insurance Transactions, also known as the AUDIT Act.

As the Director of People & Culture for a 37-year-old Maine-based employee-owned company with 185 employee-owners, I am writing to express strong support for this legislation. Systems Engineering provides comprehensive & competitive health benefits to our team—an investment we take seriously, both from a cost perspective and as part of our commitment to the well-being of our workforce and their families.

Like many employers in Maine, we rely on third-party administrators (TPAs) and pharmacy benefit managers (PBMs) to manage our healthcare plans. However, our ability to ensure these partners are accurately processing claims and meeting their contractual obligations is hindered by significant audit restrictions. These constraints, such as limits on the number of claims we can review, lack of access to complete data, and the inability to extrapolate findings, make it nearly impossible for us to perform the level of due diligence that our fiduciary responsibilities require.

No responsible business would approve payment on a vendor invoice without reviewing the details, yet that's exactly what employers are forced to do when it comes to healthcare claims. Benefits are our second largest line item after compensation, yet we're expected to spend those dollars on behalf of our employees without full visibility into what's being billed, whether it's accurate, or if our contractual terms are being upheld. This lack of transparency not only drives up costs due to undetected billing errors, but it also exposes us to fiduciary risk. As plan sponsors, we have a duty to act in the best interest of our employee-owners and their healthcare dollars, and meaningful audit rights are essential to fulfilling that responsibility. It is unacceptable to be asked to blindly trust a system where the data tells us errors are the norm, not the exception.

Our employee-owners look to us as stewards of plan assets, therefore, we need full access to meaningful audit rights and data transparency to protect both our employees and our business. The AUDIT Act will bring much-needed accountability to this process by ensuring that employers can evaluate claim accuracy, recoup overpayments, and confirm that our partners are meeting the terms of their agreements. It will level the playing field for Maine employers who currently lack the bargaining power to negotiate these rights on their own.

On behalf of our employee-owners, I urge you to support this legislation. It is a common-sense measure that reinforces the principles of transparency, accountability, and sound business management, values that are part of our organization.

Respectfully,

Jen Hughes  
Director of People & Culture  
Systems Engineering

Palmer Higgins  
Chenmark  
LD 1906

Dear Members of the Health Coverage Insurance and Financial Services Committee,

My name is Palmer Higgins, and I am speaking today on behalf of Chenmark, a Maine-based holding company that owns and operates a number of small businesses throughout the state, employing over 100 Mainers. As a business deeply committed to the well-being of our employees and the sustainability of our operations, we strongly support the proposed AUDIT Act. This legislation addresses a fundamental issue faced by employers like us—gaining transparent, meaningful access to the healthcare claims data that we pay for on behalf of our employees.

Chenmark operates a self-funded healthcare plan, which means we bear the financial responsibility for our employees' medical claims. Logically, this should entitle us to full access to our claims data, and the right to audit it for errors, overpayments, or contractual compliance. Yet in practice, we have been unable to conduct a meaningful audit due to restrictive terms imposed by our Third Party Administrator (TPA). These restrictions limit our ability to select an auditor, prevent us from reviewing a statistically significant portion of claims, and deny us access to crucial data under the guise of "proprietary information"—even though federal rules mandate transparency of negotiated rates.

Our fiduciary duty to our employees and their families demands that we be good stewards of plan resources. Without the ability to audit our own claims data, we cannot verify the accuracy of payments or assess whether our TPA is fulfilling its contractual obligations. This lack of oversight exposes us to unnecessary financial waste and legal risk. We urge lawmakers to support the AUDIT Act, which will ensure employers like Chenmark can perform the due diligence necessary to manage healthcare costs responsibly and transparently.

Eric Jermyn  
Raymond  
LD 1906

Eric Jermyn  
23 Zephyr Road  
Raymond, Maine 04071

Joint Standing Committee on Health Coverage, Insurance and Financial Services  
Comments on LD 1906

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

My name is Eric Jermyn. I'm a licensed health and life consultant and producer here in the State of Maine. I have worked in the health insurance and employee benefits industry for 31 years. In my career, I have worked with Maine employers of every size and funding type.

I'm writing today as a concerned citizen, consultant and producer to give my strong support of LD 1906.

I work with many employers who have self-funded employee benefit plans and they are consistently frustrated by the contract terms of their third party administrators and pharmacy benefit managers. The contract language frequently includes limitations on audit rights making it virtually impossible to identify overpayments or to determine contract compliance. Some of the larger organizations are able to negotiate audit rights, but the vast majority lack the size and market clout needed to garner these terms.

LD 1906 addresses these concerns by prohibiting restrictive audit provisions in TPA and PBM contracts. Furthermore, it mandates that TPAs and PBMs provide employers with the data they need to effectively manage their claims and their overall health plan.

Employers who maintain self-funded plans have a fiduciary responsibility to manage their plans in the best interest of plan participants. Limiting their ability to view, review and audit the claims spend (which represents approximately 85% of the plan expense) creates an obvious impediment to fulfilling this fiduciary responsibility.

Among the more common limitations imposed by TPAs and PBMs are:

- Frequency of claim audits
- Data to be viewed
- Auditor selection
- Volume of claims to be audited

In addition to the limitations listed above, some TPAs and PBMs add language giving them veto authority over auditors and how they are paid, methodology used in audits, time period limits and other limitations that challenge employers' ability to meet their fiduciary obligations.

LD 1906 will protect employers' audit rights and ensure their ability to effectively manage their health plans. It will prohibit TPAs and PBMs from including restrictive contract provisions with their self-insured clients. LD 1906 will ensure that employers have the data they or their advisors need to adequately monitor claims payments made within their health plans. Some employers engage other firms to monitor PBM payments to ensure contract compliance. They do this at their own expense and these programs can result in savings of 20% or more due to inaccurate claims payments.

LD 1906 will also allow employers to review claims for claimants incurring claims above \$50,000 prior to payment. High-cost claimants represent a major expense for employers and identification of errors in these claims is a powerful tool in the management of claims spend.

It's important to note that employers directly cover the cost of claims audits. They are simply in need of clear line of sight to their data, so that they can meet their fiduciary duty to the members of their health plans.

It would be easy to argue that the contract language should be and could be negotiated on an employer by employer basis. Unfortunately, there are aspects of contract

negotiations that are driven by the size of a client...the larger the employer, the greater the willingness of the TPA or PBM to negotiate terms. That means smaller self-funded plans are generally limited to standard contract language... "sign the contract or don't," that's their only choice. LD 1906 would level the playing field for smaller self-funded health plans. A small employer's fiduciary obligations are no less than that of a large employer. LD 1906 would provide smaller self-funded employers with audit and review powers typically afforded to only the largest of self-funded plans.

I want to be clear that I am writing in support of LD 1906 as a concerned citizen, licensed consultant and licensed producer. My comments here represent my personal opinion and do not reflect the opinions of any other person or entity.

Thank you for your attention to this matter and consideration of LD 1906. I firmly believe that passage of this legislation will empower Maine employers to monitor the performance of their self-funded health plans and meet the high bar of fiduciary responsibility.

Sincerely,  
Eric Jermyn  
Raymond, Maine



Meg Garratt-Reed, Executive Director  
Office of Affordable Health Care

May 13<sup>th</sup>, 2025

Senator Donna Bailey

Representative Kristi Mathieson

Members of the Joint Standing Committee on Health Coverage, Insurance, and Financial Services

Cross Building, Room 220

100 State House Station

Augusta, ME 04333

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, and I am testifying today in support of LD 1906.

Employer-sponsored coverage has a foundational role in the current structure of our country's health care system. Here in Maine, just under half of all residents are covered by health insurance plans offered, and heavily subsidized, by an employer.<sup>1</sup> As you know from your work on this committee, state laws and regulations governing insurance plans generally do not apply to the self-funded employer sponsored plans that cover roughly 600,000 Maine residents. Instead, under the federal Employee Retirement and Income Security Act, their employer has a fiduciary duty to ensure that the plan is operated in the interest of its participants, including by ensuring that the plan only pays "reasonable plan expenses."<sup>2</sup>

In order to effectively fulfill their responsibility to plan members, employers need to be able to assess the performance of their service providers, including TPAs and PBMs. Congress recognized that necessity in 2021 when it passed a law increasing fiduciary standards for plan sponsors and reducing barriers to transparency in fee structures in order to facilitate their compliance.<sup>3</sup> From the testimony on behalf of employers, however, it seems clear that restrictive contractual clauses limiting the ability of sponsors to audit payments continue to prevent many

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<sup>1</sup> KFF, *Health Insurance Coverage of the Total Population – KFF Analysis of Census Bureau's American Community Survey 2008-2023 1-Year Estimates, 2024*. <https://www.kff.org/other/state-indicator/total-population/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

<sup>2</sup> U.S. Department of Labor, *Understanding Your Fiduciary Responsibilities Under a Group Health Plan*, September 2023. <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/group-health-plan-fiduciary-responsibilities.pdf>

<sup>3</sup> U.S. Department of Labor, *FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 57*, February 2023. <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-57>

employers from effectively overseeing these entities. This problem may be particularly acute in Maine given the high prevalence of residents employed by businesses with 500 or fewer employees, who have little leverage in negotiations with service providers.<sup>4</sup>

This bill is a reasonable step that the legislature can take to empower Maine businesses to effectively oversee spending on health care services on their behalf, and prohibiting TPAs and PBMs from utilizing these contract terms to avoid greater oversight is not just a benefit to employers. Given the significant role of job-based insurance plans in covering Maine families, it would also benefit the many plan participants who, along with their employers, bear the ultimate cost when TPAs or PBMs fail to address overpayments or erroneous charges.

Thank you for your time, and I would be happy to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Meg Garratt-Reed". The signature is fluid and cursive, with a large initial "M" and "R".

Meg Garratt-Reed, Executive Director  
Office of Affordable Health Care

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<sup>4</sup> U.S. Small Business Administration, *Small Business Profiles for the States, Territories, and Nation - Small Business Administration Office of Advocacy analysis of Statistics of U.S. Businesses Census Data, 2023*.  
<https://www.census.gov/data/tables/2022/econ/susb/2022-susb-annual.html>