JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF CORRECTIONS
111 STATE HOUSE STATION
AUGUSTA MAINE
04333-0111

RANDALL A. LIBERTY
COMMISSIONER

TESTIMONY OF

RANDALL A. LIBERTY COMMISSIONER
DEPARTMENT OF CORRECTIONS

In Opposition

LD 476 An Act To Provide Licensed Assisted Living and Nursing Facilities Levels of Care for Incarcerated Persons

Before the
Joint Standing Committee on Criminal Justice and Public Safety

March 24, 2021

Senator Deschambault and Representative Warren and other distinguished members of the Criminal Justice and Public Safety committee, I am Randall A. Liberty, Commissioner of the Maine Department of Corrections providing testimony against LD 476.

While the department has concerns with each paragraph of this bill, we are in opposition primarily because the services proposed in the bill are already provided.

However, if the goal of the sponsor is to codify long-term care services in the DOC's statutes, we are amendable and offer language for consideration that will ensure as much.

I'll use this opportunity to describe to the committee the assisted living and nursing level of care available to residents of the Maine Department of Corrections.

Currently the Maine Department of Corrections has two assisted living units, one for men and one for women, and one hospice unit within the Infirmary at Maine State Prison which can serve men and women.

The assisted living unit for women is located in the Women's Center which is inside the Maine Correctional Center. This unit, which offers beds for up to 6 women is located in a wing directly off the general population area of the Women's Center. The assisted living unit serves geriatric residents, residents with health issues that significantly impact their ability to function, residents impacted by serious and persistent mental illness, and lastly, on occasion, women on a short-term basis who are recovering from a medical procedure. It can also be used for hospice care in the event moving a female resident to the Maine State Prison's Infirmary isn't desirable. In addition to unit staff, women in the assisted living unit have onsite Certified Nursing Assistants (CNA), regular visits by medical and behavioral health staff, including Dr. Ali whom this committee has met (virtually), and are served by volunteer residents known as Helping Hand Peer Assistants.

The Helping Hand Peer Assistants are DOC residents trained to assist and coach their peers residing in the assisted living unit. The responsibilities of the helping hand peer assistant include assisting with non-medical tasks such as grooming, general clean up, laundry, exercising, eating, and general companionship. The peer

STATE OF MAINE
DEPARTMENT OF CORRECTIONS
111 STATE HOUSE STATION
AUGUSTA MAINE
04333-0111

JANET T. MILLS
GOVERNOR

RANDALL A. LIBERTY
COMMISSIONER

assistants offer a service that makes life a bit more comfortable for residents dealing with long term health issues.

The assisted living unit for men is located in Mountain View Correctional Facility in Charleston. This 27-bed unit is also equipped to support geriatric residents, residents with health issues that significantly impact their ability to function, and lastly, on occasion, will house men on a short-term basis recovering from a medical procedure. Like the female facility, residents in the assisted living unit at Mountain View have regular interaction with medical and behavioral health staff and the men in this unit have their own cache of volunteer Helping Hand Peer Assistants.

Lastly, there is a housing unit within the MDOC that provides nursing facility levels of care. This is the Infirmary at the Maine State Prison. It includes hospice beds, which, while primarily used for men, can also serve women. Residents in the Infirmary, which is located in the medical area, have regular interaction with medical and behavioral health staff. To assist residents on hospice, there are trained resident Hospice Volunteers.

Maine DOC's assisted living units and the Infirmary are nationally accredited as part of the accreditation granted to each of the above facilities by the American Correctional Association (ACA), which performs a comprehensive multi-day audit every three years. Maintaining this accreditation is required by state statute.

If this bill is passed as written, it would require the MDOC to have a separate license to operate assisted living units and a nursing facility within its correctional facilities.

Not only would this be unnecessary as there are already both constitutional standards that govern resident care and the standards required to receive our American Correctional Association accreditations, but this could create unforeseen negative changes to our current assisted living units and Infirmary.

DHHS licensing for community-based assisted living and nursing facilities do not consider resident and staff safety, security, or operational needs as required in a correctional setting, as the American Correctional Association standards do. The same is true of Medicaid eligibility criteria, which are ill-suited to a correctional context. Disregarding correctional standards for traditional licensing standards could result in changes to security, operations, staffing, and building footprint, resulting in unnecessary costly building alterations, staffing changes and safety risks.

Furthermore, paragraphs D and E go well beyond the purview of the Maine Department of Corrections. It would be impractical and cost-prohibitive for the DOC to develop assisted living and nursing facilities in the community. While we are supportive of the sponsor's mission-focus on community housing, the DOC is not the right agency to develop community-based assisted living or nursing facilities. The number of DOC residents needing assisted living or nursing level care is quite low. While there are 27 beds in the Mountain View facility, the unit is not usually full. Similarly on the women's unit, all six beds are currently full, but it's full because the definition of those needing "assisted living supports" has been flexed to include an individual with vision impairment and an individual with severe and persistent mental illness.

While the DOC has had some success in making placements for releasing residents into existing community facilities, there are two challenges that are beyond our control: first, finding a facility with an opening, and second, finding a facility that will take someone with the type of criminal history that our long-term residents

STATE OF MAINE
DEPARTMENT OF CORRECTIONS
111 STATE HOUSE STATION
AUGUSTA MAINE
04333-0111

JANET T. MILLS
GOVERNOR

RANDALL A. LIBERTY
COMMISSIONER

often have, which include murder, arson, and habitual sex offenses. When MDOC staff are working to place a releasing resident into community-based assisted or nursing environment, we do everything in our power to encourages the provider to take the individual. But our encouragement cannot override a community facility's insurance, space, staffing, or safety concerns. Further, the objections of victims need to be considered whenever placement into a community setting is being contemplated.

Paragraph E also asks that the DOC provide training to existing community-based facilities in supporting the needs of any resident placed in said facility. While the DOC would love to have the staffing numbers and time to provide training to any community-based facility in which a resident is placed, it's just not possible and not appropriate for our medical team to tell another medical team how to do their job, though we currently do our best to assuage any concerns a community-based facility has in accepting a DOC resident.

Lastly, there is a request in this bill for rule making, which we cannot support as it would not allow for flexibility to change course should unforeseen circumstance arise - a given in the correctional world. For example, if the women's unit kept to rigid definitions of "need for assisted living" as rule making would suggest, at least two of the six women in the unit currently would not be able to stay in the assisted living unit. This would require their placement in other housing but not within general populations. It would also mean they would not have the benefit of a Helping Hand Peer Assistant or the more frequent interaction with medical and behavioral health staff. There is no doubt in the mind of the Warden of the Women's Center that removing these women from this unit would be a detriment to their health and wellbeing.

There any many reasons we oppose this bill, but the good news is that opposing this bill doesn't change the many services currently offered to residents of the DOC needing assisted living and nursing levels of care. As a sign of support and understanding of the sponsor's hope of codifying into law theses services, we will offer to the sponsor and committee a suggested language change that establishes into the DOC statute a long-term care services requirement.

Proposed amendment:
Sec. 1. 34-A MRSA §1402, sub-§ 14 is enacted to read:

<u>14. The commissioner shall establish and maintain or contract for long-term care services, including assisted living and nursing facility levels of care, for prisoners for whom such services are necessary as determined by the facility's treating physician.</u>

This concludes my testimony, though I'm happy to answer questions.

Randall A. Liberty