

**TESTIMONY OF Richard A. Erb
President and CEO
Maine Health Care Association**

April 1, 2021, 10:00 am

To the Joint Standing Committee on Health & Human Services

In Opposition to L.D. 739

An Act Regarding Credible Allegations of Fraud by MaineCare Providers

Good morning, Senator Claxton, Representative Meyer and members of the Committee. My name is Rick Erb and I am the President and CEO of the Maine Health Care Association. Our organization represents the majority of the state's nursing homes and many of its assisted living facilities. I am testifying today in opposition to LD 739.

When we first reviewed this LD, we were concerned about the effect it could have on due process following an assertion of "credible allegations of fraud" by the Department of Health and Human Services. Under existing law, DHHS has the right to retain funds owed by providers only after several steps have been taken. This may include judicial review processes, as authorized under the Administrative Procedures Act. It is important to note that the bill proposes to grant DHHS the authority to withhold funds when there is merely a credible allegation of fraud, as determined by the Department. We believe this is a dangerous overreach of authority that could put providers out of business with no available recourse.

I am not an attorney and have therefor asked John Doyle of the Preti Flaherty Law Firm to outline his concerns about LD 739. These have also been submitted today.

I understand from the bill's sponsor that it was submitted to address a particular problem that has come up regarding a foster home. Our concern is that the language that has been proposed will have broader implications and inadvertently deprive MaineCare providers of the fundamental right to judicial review of Department audit actions.

There has been suggestion by the sponsor that the bill may need more work to accomplish what was originally intended. We would welcome that and the opportunity to have our legal counsel participate in those discussions. I would also be pleased to try to answer any questions you have today. Thank you.