

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



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April 1, 2021

Senator Ned Claxton, Chair
Representative Michelle Meyer, Chair
Members, Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, ME 04333-0100

Re: LD 739 – *An Act Regarding Credible Allegations of Fraud by MaineCare Providers*
Senator Claxton, Representative Meyer, and Members of the Joint Standing Committee on Health and Human Services:

This letter is to provide information in opposition to 739 – *An Act Regarding Credible Allegations of Fraud by MaineCare Providers*. This bill would allow the Department, after a final determination that an allegation of fraud concerning a MaineCare provider has been established, rather than that fraud has occurred, to retain and apply as an offset to amounts determined to be owed to the Department any payments to the provider that were suspended by the Department. This bill would also decrease from 31 days to 21 days after exhaustion of all administrative appeals when the Department may take that action and removes reference to judicial review.

When the Department determines that a credible allegation of fraud exists, it typically imposes a suspension of payments to that provider. The payment suspension is a prophylactic measure. “By specifically encouraging States to withhold payments on a timely basis where there is reliable evidence of fraud or willful misrepresentation, we are attempting to stop the payment of Medicaid funds at an early point so that more costly efforts of recouping monies already paid will not be necessary.” 52 Fed. Reg. 48814 (December 28, 1987). The only issues that the Department considers in these decisions are (1) whether or not there is a credible allegation of fraud and (2) whether good cause exists for not suspending payments. The Department does not determine if fraud occurred or whether there is an overpayment.

A provider is entitled to appeal the suspension of payments through the Department’s hearing process and can appeal to the courts following final agency action. The appeals process is limited to the two issues the Department decides, as listed in the paragraph above. The appeals likewise do not establish whether the fraud, in fact, occurred and, if so, what that dollar amount from that fraud might be. Those types of determinations occur later, either through further Departmental investigation or in conjunction with law enforcement action. If the Department subsequently determines an overpayment occurred, it would issue a written Notice of Violation and the provider may then appeal that determination.

From an operational standpoint, the Department would likely not start collecting against debts that are not yet the subject of final agency action. Since a provider’s payments are “suspended” if a credible allegation of fraud is established, there would be suspended funds to collect against at the

time any recoupment action becomes final agency action. Additionally, the Department is concerned about collecting against a debt that is not yet “final” and on appeal to the courts. Because the courts could overturn the recoupment amount or reduce it, prior collection actions might need to be reversed and internal bookkeeping and the Department’s reporting to CMS would become more complicated. Finally, the Department notes that this proposed change would conflict with how and when a debt is “established” under 22 MRS § 1714-A(2).

We wanted you to be aware of the above information as you consider this bill going forward. If you have any further questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Probert". The signature is written in a cursive style with some loops and flourishes.

Michelle Probert
Director
Office of MaineCare Services