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Governor

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Commissioner



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May 3, 2021

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

Re: LD 1427 – An Act To Encourage Family Care of Aging Adults

Senator Claxton, Representative Meyer, and Members of the Joint Standing Committee on Health and Human Services:

This letter is to provide information regarding LD 1427, An Act To Encourage Family Care of Aging Adults. This act prevents the Department of Health and Human Services from assessing penalties on payments made to a family member providing personal support services within the 5 years prior to applying for long-term care coverage and exempts these payments from the State's share of estate recovery. It proposes to remove current policy provisions that require a written agreement for personal services and prevents the department from presuming a disqualifying asset transfer has occurred in the absence of a written agreement or physician statement verifying the services provided were necessary. It also permits applicants who live in residential care or nursing facilities to transfer assets to a relative without penalty for services that are not provided by the facility or that supplement services provided by the facility, if the compensation is reasonable.

The department has concerns with this bill as federal Medicaid law requires states to impose periods of Medicaid ineligibility (penalty periods) when an individual transfers assets for less than fair market value (FMV) within the 60 months before applying for Medicaid. The law exempts a number of transfers from these penalties but if an exemption cannot be verified, 42 U.S.C. 1369p(c)(2)(C) requires the applicant to prove they intended to dispose of assets at fair market value or that the assets were transferred exclusively for a purpose other than to qualify for Medicaid. The bill, as written, prevents the department from gathering satisfactory evidence of intent and limits the ability to prove assets were transferred for a reason other than to qualify for MaineCare.

Personal care agreements are a common form of verification used by other states and legitimized the reason transfers are made. These agreements provide an explanation of tasks and duties performed and frequency of services and payments. Absent an agreement an applicant may still provide other documentation to prove intent and that the transfer was made for a reason other than to qualify for MaineCare.

Additionally, federal law provides a care given waiver exemption to estate recovery for personal in-home care services performed for the member. That exemption requires the member must have income under 200% of the federal poverty level, and current policy requires that the individual providing care must live in the home with the MaineCare member for no less than two years. Care given exemptions are limited to the two years prior to the member's death or institutionalization.

The Centers for Medicare and Medicaid Services (CMS) is unlikely to agree to restricting the provisions regarding transfers of assets for nursing and waiver services, and the ability to adjust the FPL requirements for estate recovery may not be possible.

We estimate that there will be a fiscal impact from this bill as more applicants would be found eligible due to a decrease in penalties for divesting assets. Additionally, the removal of an income limit, increase time period of care given, and removal or requirements for the care giver to live in the home for 2 years would result in a loss of estate recovery revenue due to the increase in the number of people who would qualify for the care given waiver. This would likely generate a fiscal impact to the state general fund.

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 blue ink, appearing to read "Anthony Pelotte".

Anthony Pelotte
Director
Office for Family Independence