

Department of Health and Human Services  
Commissioner's Office  
221 State Street  
11 State House Station  
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January 7, 2013

Senator Margaret M. Craven, Chair  
Representative Richard R. Farnsworth, Chair  
and Members of the Joint Standing Committee on Health and Human Services  
#100 State House Station  
Augusta, Maine 04333-0100

**RE: LD 1114, an Act to Improve Dental Health Care and  
Reduce Future Avoidable Costs**

Dear Senator Craven, Representative Farnsworth, and Members of the Joint Standing Committee on Health and Human Services:

In response to the attached letter dated May 15, 2012, the Department of Health and Human Services has conducted additional research on the possibility of expanding eligibility for dental services to a limited group of MaineCare eligible adults. In consultation with Attorney General's office, the Department has concluded that passage of this act would be a violation of federal Medicaid law.

The Department is concerned that the provision would violate the comparability provision of federal Medicaid law, and discriminate against a category of MaineCare members. 42 USC 1396a(a)(10)(B) provides "that the medical assistance made available to any individual... (i) shall not be less in amount, duration, or scope than the medical assistance made available to any other such individual..." Also see 42 CFR 440.240 (Comparability of services for groups) ("...the [state] plan must provide that the services available to any categorically needy recipient under the plan are not less in amount, duration, and scope than those services available to a medically needy recipient..."). Also see 42 CFR 440.230(c) ("The Medicaid agency may not arbitrarily deny or reduce the amount, duration, or scope of a required service... to an otherwise eligible recipient solely because of the diagnosis, type of illness, or condition." The Department is bound by federal law to treat MaineCare members equally insofar as being medically eligible for MaineCare services. To treat one group of members differently and to allow services because the services are deemed to be "cost effective" would violate the Medicaid comparability provision. It would also discriminate against members by denying services because of a diagnosis, illness or condition.

If you have any further questions or concerns regarding this topic, please feel free to contact Nick Adolphsen at [nick.adolphsen@maine.gov](mailto:nick.adolphsen@maine.gov).

Sincerely,

Mary C. Mayhew  
Commissioner

MCM/klv

Attachment

SENATE

EARLE L. MCCORMICK, District 21, Chair  
NICHI S. FARNHAM, District 32  
MARGARET M. CRAVEN, District 16

JANE ORBETON, Legislative Analyst  
ANNA BROOME, Legislative Analyst  
LISA M. COTE, Committee Clerk



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LINDA F. SANBORN, Gorham  
PETER C. STUCKEY, Portland

State of Maine  
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE  
COMMITTEE ON HEALTH AND HUMAN SERVICES

May 15, 2012

Mary Mayhew, Commissioner  
Department of Health and Human Services  
221 State Street  
Augusta, ME 04330

Health & Human Services  
MAY 17 2012  
Commissioner's Office

Re: LD 1114, An Act to Improve Preventative Dental Health Care and Reduce Future Avoidable Costs

Dear Commissioner Mayhew:

During the Second Regular Session of the 125th Legislature the Health and Human Services Committee considered LD 1114, An Act to Improve Preventative Dental Health Care and Reduce Future Avoidable Costs. This bill had been carried over from the First Regular Session after being removed from the Special Appropriations table. The majority of the Committee voted Ought Not To Pass during the Second Regular Session and this report was accepted by the Legislature.

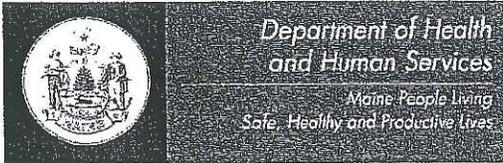
During the work session held on March 8<sup>th</sup>, the Department raised a concern that the bill could result in non-compliance with federal Medicaid law. The letter received from Nicholas Adolphsen stated that federal law and regulation require states to provide Medicaid services equal in amount, duration and scope to all recipients and therefore providing services to a specific segment of the Medicaid population would be a violation. (A copy of the letter is attached.) We request that the Department, in conjunction with the MaineCare Dental Advisory Commission, research this legal question to determine if establishing criteria for groups of adult members for whom preventative and restorative oral health care services would be cost effective is a violation of federal law and communicate your findings to the Committee by December 1<sup>st</sup>, 2012.

Sincerely,

Sen. Earle L. McCormick  
Senate Chair

Rep. Meredith N. Strang Burgess  
House Chair

cc: Members, Health and Human Services Committee



Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

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March 8 2012

Senator Earle L. McCormick, Co-Chair  
Representative Meredith N. Strang Burgess, Co-Chair  
Committee on Health and Human Services  
100 State House Station  
Augusta, ME 04333

RE: LD 1114, an Act to Improve Dental Health Care and Reduce Future Avoidable Costs

Dear Senator McCormick, Representative Strang Burgess, and Members of the Joint Standing Committee on Health and Human Services:

The Department of Health and Human Services remains neither for nor against LD 1114, but would like to express two concerns to the Committee.

The Department believes that any action taken in response to this legislation will result in non-compliance with Federal Statute. Federal comparability law states that, "Both law and regulation provide that states must provide that Medicaid services are available and equal in amount, duration and scope to all recipients." [(42 USC 1396a (a) 10) (B) (Medicaid federal law); 42 CFR 440.240 (Medicaid federal regulation)]

Based on an understanding of this regulation, providing services to a specific, "determined" segment of the Medicaid population would be a violation and open the Department to potential sanctions by the Federal government.

We are certainly willing to research options which are both cost effective and preventative in nature and would be happy to make a thorough review of the potential for savings that could be booked through implementation of the proposed policy. We do want to reiterate though, that due to the current budget shortfall within the Department; all dental services have been proposed for elimination. We feel strongly that we are not in a position to expand benefits unless a clear path to immediate savings can be realized.

Sincerely,

Nicholas Adolphsen  
Director, Legislative Affairs