

December 3, 2009

VIA FAX 207-287-9369

Alyssa Morrison, Health Planner
Office of MaineCare Services
442 Civic Center Drive
Augusta, Maine 04333

**RE: PROPOSED AMENDMENTS TO CHAPTER 101, MAINECARE
BENEFITS MANUAL, CHAPTER I, SECTION I, GENERAL
ADMINISTRATIVE POLICIES AND PROCEDURES**

Dear Alyssa:

I am writing to express the Maine Medical Association's strong objection to the following provision in the Department's proposed amendments to the portion of the MaineCare Benefits Manual mentioned above.

1.03-9 Provider Debt

The liability for debts owed to the Department by the provider is enforceable by assessment and collection, in the manner set forth by 22 M.R.S.A. §1714-A, against the provider, including any person who has an ownership or control interest in the provider, and against any officer, director or member of the provider, who, in that capacity, is responsible for any control or any management of the funds or finances of the provider.

Specifically, the MMA objects to the extension of personal liability not only to an owner of the provider entity, but also to "any officer or director or member" of the provider entity who may be an employee with no ownership interest in the entity. The MMA urges the Department to omit proposed section 1.03-9 from the final rule based upon the following.

As a participant in the Governor's Provider Advisory Group, the MMA is aware of and sympathetic to the Department's difficulties in recovering MECMS interim payment

balances from providers, but this proposal is overreaching by the Department and is a disproportionate response to the interim payment collection problem. I offer one legal and one policy argument against this provision.

Proposed section 1.03-9 is beyond the Department's legal authority in collecting provider debts set forth in 22 M.R.S.A. §1714-A. The provision would render meaningless the limited liability protections of the corporate or limited liability company form of business, concepts of long standing in our business laws. The Department cannot eviscerate Maine's corporation and limited liability company statutes by administrative rule. Moreover, proposed section 1.03-9 exceeds the Department's rulemaking authority in that the collection statute authorizes collection action *only against a person who has received reimbursement* from the Department. See 22 M.R.S.A. §1714-A(1)(H) "Provider" means a person reimbursed by the department for the provision of health care services." This definition does not include any person with an ownership or control interest in, or an officer, director, or member of, a provider who has chosen a limited liability form of business, those classes of person the Department attempts to reach in proposed section 1.03-9.

Not only does proposed section 1.03-9 lack legal foundation, it is poor policy. It will discourage MaineCare participation by providers who can maintain a viable business without participating, such as physician organizations. The claims management system transition already has caused substantial disruption in the MaineCare provider network and this provision certainly would discourage future MaineCare participation by physicians and physician organizations. Also, it would discourage potential volunteers or employees from serving MaineCare participating providers as officers or directors.

Thank you for considering the MMA's concerns about proposed section 1.03-9.

Sincerely,

Andrew B. MacLean