

D. Michael Frink
dmf@curtisthaxter.com

November 28, 2005

Alessandro A. Iuppa, Superintendent
Bureau of Insurance
Maine Dept. of Professional & Financial Regulation
34 State House Station
Augusta, ME 04333-0034

RE: **Request for Stay Pursuant to 5 M.R.S.A. §11004**
Review of Aggregate Measurable Cost Savings Determining by Dirigo Health
for the First Assessment Year
Docket No. INS-05-700

Dear Superintendent Iuppa:

As legal counsel to the Maine Association of Health Plans ("MEAHP"), I am writing to inform you that while MEAHP has great respect for the manner in which you and your staff conducted the hearing in this case, and the efforts you have made to correct the many errors in data, calculations and assumptions in the original savings calculations proposed by the Dirigo Health Agency ("DHA") Board in its September 19, 2005 filing, MEAHP has decided to appeal the final decision dated October 29, 2005 (the "Decision").

MEAHP is very concerned that the Decision specifically declined to interpret the Dirigo Act as to what categories of proposed savings were in fact properly included. MEAHP also is very concerned that the Decision upheld the Board's so-called cost per case mix adjusted discharge ("CMAD") measure of cost savings, even though DHA's own witness admitted this methodology could not identify savings that were actually due to the operation of Dirigo Health, versus other factors such as national trends or changes in hospital patient volume.

MEAHP is extremely concerned that the CMAD methodology and other assumptions and methodologies approved in the Decision provide the basis for the Board's savings offset payment assessment in the first assessment year, and that the Board will use the same methodology in the second assessment year, which according to 24-A M.R.S.A. §6913(1), will be determined by not later than April 1, 2006. In order to preserve its procedural options in court, MEAHP is required to exhaust its administrative remedies by requesting a stay of the Decision.

Accordingly, MEAHP requests a stay of the October 29, 2005 Decision pursuant to 5 M.R.S.A. §11004.

1. MEAHP's member companies will suffer irreparable harm if a stay is not granted.

The time constraints imposed by the Legislature for determining the amount of "savings" and for determining the amount of the savings offset payment ("SOP") assessment in the first assessment year are extremely tight if not fatally unworkable. See 2005 P. Law Ch. 400 (Part B) B-2(B) and 24-A M.R.S.A. § 6913(2). Carriers must give their subscribers thirty (30) days notice of changes in premiums. Many policies renew on January 1, 2006. The DHA Board met on November 22, 2005, at which time it determined the amount of the SOP assessment to be \$43.7 million. However, the DHA Board did not and still has not determined the SOP as a percentage of paid claims. The uncertain impact of the assessment on the cost of health insurance will cause a serious disruption in the relations between MEAHP's member companies and their customers.

Carriers and TPAs must create internal systems to account for and pay the SOP assessment, and billing statements will need to be modified to reflect the assessment amount. If MEAHP prevails on appeal, this infrastructure will need to be de-constructed, and assessments will need to be accounted for and refunded. If the appeal is not decided by March 1, 2006, there is a strong likelihood that the same methodologies approved in the Decision will be utilized to calculate savings and the SOP assessment in Dirigo assessment year two. In this case two years' worth of systems, data and billings will need to be de-constructed and reconstituted.

In addition, customers of MEAHP's member companies, businesses that must pay the SOP, may be forced to reduce or eliminate coverage entirely, which will cause MEAHP's member companies to lose business.

This scenario constitutes irreparable injury to the member companies of MEAHP.

2. MEAHP has a strong likelihood of success on the merits.

The Dirigo Act lacks reasonable and clear standards for determining what constitutes "aggregate measurable cost savings ("Savings") including any reduction or avoidance of bad debt and charity care costs to health care providers in this state as a result of the operation of Dirigo Health and any increase in Maine Care eligibility occurring after June 30, 2004." 2005 P. Law Ch. 400, Part B-2(A). The Act does not specifically identify initiatives or other measures that are to be included. The Act does not specify how to calculate the amount of Savings under any of the initiatives claimed to be properly included by the DHA Board, including those measures approved in the Decision.

The statutory scheme lacks any implementing regulations to provide the needed standards and criteria. The absence of such standards, coupled with the Decision not independently interpreting the Act, has left the DHA Board completely free to interpret the Act so as to claim Savings without any objective standard for ensuring that DHA's interpretation of the Act is

reasonable. This puts an unfair and unjustified burden on employers and their employees, who under the Act are ultimately responsible to pay the SOP assessment.

The statutory scheme on its face and as applied by the DHA Board is void for vagueness and constitutes an improper delegation of the legislative authority to tax, in violation of Article IX of the Maine Constitution.

The CMAD methodology lacks any reasonable basis for measuring Savings due to the operation of Dirigo Health versus other factors. The record clearly supports this assertion. The assumptions in the uninsured initiative that providers will reduce the amount of cost shifting, dollar-for-dollar, to insurers and TPAs, based upon additional revenue from recently-insured individuals, is contrary to the record evidence.

Similarly, the assumption that Savings in the future should be counted dollar-for-dollar on the provider payments initiative, based on the time value of money, is fatally flawed. First, most of the payments included in the Decision have not yet been made to providers. Second, even when they are made, hospitals and physicians will not and reasonably should not pass these payments on dollar-for-dollar to carriers and TPAs in the form of lower rates.

Finally, the entire Decision rests on a flawed interpretation of the Act that Savings should be counted before they are realized in the form of lower rates being paid by carriers and TPAs on behalf of their members.

For these reasons, MEAHP has a strong likelihood of success on the merits.

3. There will be no substantial harm to adverse parties or the general public if a stay is granted.

The adverse parties in the proceeding before the Superintendent include DHA and Consumers for Affordable Health Care ("CAHC"). DHA was initially funded with \$53 million (See 2005 Pub. Law Ch. 400, Part B(3)). According to documents released by the DHA Board on November 10, 2005, there remained \$42 million as of July 1, 2005. (See Exh. A attached).

There will be no substantial harm to the DHA, as a state agency, if a stay is granted. As to CAHC and those individuals and groups it represents, there is money left in the DHA treasury to provide subsidies and fund the administrative expenses of the agency until this matter can be finally resolved in the courts. If necessary, prior to these matters being resolved the Legislature can appropriate additional funds from general fund revenues to provide additional support to DHA and its Dirigo insurance program. In this way the "tax" will be spread across all Maine people and businesses, and will not be imposed upon a select group of employers, their employees and dependants on a discriminatory basis under a statutory scheme with no objectively verifiable standards.

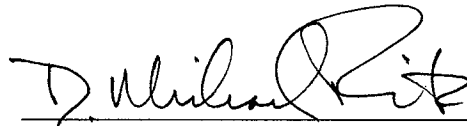
In essence, granting a stay will preserve the status quo pending final resolution of the issues to be raised on appeal.

Conclusion

For all of these reasons, the MEAHP respectfully requests that the Superintendent stay the Decision dated October 29, 2005 pending the final outcome of the appeal.

Respectfully submitted,

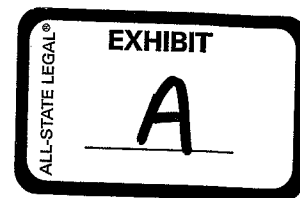
Dated: November 28, 2005



D. Michael Frink (Bar No. 2637)
George M. Linge (Bar No. 9723)
CURTIS THAXTER STEVENS BRODER
& MICOLEAU LLC
One Canal Plaza / P.O. Box 7320
Portland, Maine 04112-7320
(207) 774-9000
Attorneys for Maine Association of
Health Plans

cc: William H. Stiles, Esq.
Christopher T. Roach, Esq.
Bruce Gerrity, Esq.
William H. Laubenstein, III, Esq.
Rufus E. Brown, Esq.
Thomas C. Sturtevant, Jr., Esq.

**Dirigo Health Agency
Cash status and projection**



Goal

Maximize health coverage access while balancing payers' concern regarding the assessment amount

Enrollment

Enrollment adjusted for retroactivity, as of November 9, 2005, of 7,371 plus 4,040 parents, for a total of 11,411.

Dirigo's Cash Position

- \$42.2 MM Cash available on 7/1/05
- 17.6 MM To fund subsidy program 7/1/05 - 12/31/05 (12,536 participants)
- 13.2 MM Covers \$8.1MM FY06/FY07 DHA & DHHS Administration; \$1.65MM wrap around MaineCare coverage; \$2.25MM budget cut; \$1.2MM HealthyME program
- _____
- \$ 11.4 MM Available to fund Jan-March 31, 2006 until first SOP
- 9.6 MM Jan-March 31, 2006 program need (subsidies + MQF)

Dirigo's Cash Needs – April 1, 2006 through March 31, 2007

- \$1 MM 4/06-3/07 Maine Quality Forum
- 13.8 MM 4/06-12/06 EMP
- 25.4 MM 4/06-3/07 Sliding scale discounts/deductibles, ramp up to 20,504 participants