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March 7, 2013

Sen. Margaret M. Craven, Chair
Rep. Richard R. Farnsworth, Chair
Joint Standing Committee of Health and Human
Services
Cross Office Building
Room 209
Augusta, Maine 04333

Re: LD 488 An Act To Improve Access to Home-based and Community-
based Care in the MaineCare Program

Dear Sen. Craven, Rep. Farnsworth and Members of the Committee:

On behalf of the Disability Rights Center (DRC) and the clients we serve, I thank you for inviting DRC to offer its position on this important legislation that seeks to increase home and community based options for people with disabilities.

Maine is recognized as a leader in providing home and community based services for people with disabilities. This bill is another step in that process.

Over the years, the legislature has sought to increase home and community options so that individuals with disabilities can receive services at home. This bill seeks to increase home and community based services for individuals eligible for waiver services by providing that as long as the cost of home and community based services for a particular member is equal to or less than 95% of the cost of providing services to that member in a nursing facility, that member should be allowed to receive services in the least restrictive appropriate setting-home. Not only is this sound policy, it has strong legal support.

Courts have recognized that paying to provide services to individuals so that they can remain at home is a reasonable accommodation under the integration mandate of both the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Sec. 504) as long as the cost of providing those services does not exceed the cost of institutionalizing that person. Some courts have even gone so far as to say that

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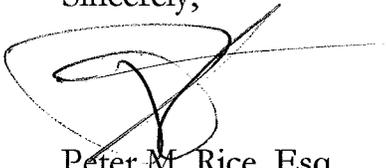
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since CMS has never turned down a request by a state to amend its waiver, it is not a fundamental alteration of the waiver program, and is a reasonable accommodation under the integration mandate, to require that a state apply to CMS to amend its waiver. The courts recognize that when determining whether a state is obligated to pay for home and community based care on behalf of an individual with a disability, the care cost is not examined in isolation, but in the context of care that must be provided to all individuals with disabilities comparable to those of the individual. That means comparing the cost of providing care to that person in an institution with what it would cost to provide care to that person at home, which is what this bill does.

For these reasons, DRC urges that the committee vote this bill Ought to Pass.

Sincerely,

A handwritten signature in black ink, appearing to be "Peter M. Rice", written over a horizontal line. The signature is stylized and somewhat cursive.

Peter M. Rice, Esq.
Legal Director