

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

July 7, 1980

Peter Mills, Sr., Chairman  
Governor's Task Force on Long-Term  
Care for Adults  
c/o Department of Human Services  
State House, Station 11  
Augusta, Maine 04333

Dear Mr. Mills:

This letter is in response to your request of May 8, 1980, on behalf of the Governor's Task Force on Long-Term Care for Adults for legal advice on questions pertaining to the Principles of Reimbursement for Long-Term Care Facilities promulgated by the Department of Human Services (hereinafter "Department"). The issues raised focus on the statutory authority for those principles which pertain to allowance of depreciation and recapture of depreciation.

In our letter to you of May 13, 1980, we set out the federal and state statutes governing the Medicaid program, including long-term care reimbursement, in Maine. It should be noted that the Maine Legislature has made a broad delegation of authority to the Department to develop cost-related reimbursement methodologies for nursing homes and has, with rare exception, refrained from mandating specific reimbursable costs. See, e.g., 37 M.R.S.A. § 1409, as amended by P.L. 1979, c. 724, § 3, and 1980 Me. Leg. Rec. 642-43 (remarks of Sen. Najarian). The Department must, of course, develop methodologies consistent with federal requirements in order to secure federal financial participation in the cost of providing nursing home care. These federal regulations are codified at 42 C.F.R. Part 447.

The Department's Principle 3011 provides that an appropriate allowance for depreciation on buildings and equipment is an allowable cost. Such depreciation must be pro-rated over the estimated useful life of the asset using the straight-line method. This provision is clearly consonant with federal standards; indeed, it is based on a Medicare principle of reimbursement. See 42 C.F.R. § 405.415(a). Moreover, commentary at 42 C.F.R. § 405.418(b) makes clear that recognition of depreciation as a cost is not necessarily to provide funds to pay principal on loans financing depreciable assets, but also to facilitate a provider's maintenance or replacement of assets.

Principle 3016 provides for recapture of depreciation paid under the Medicaid program to the extent of gain on the sale or transfer of a depreciated asset. The amount subject to recapture decreases as the duration of the provider's participation in the program increases. A similar method has been adopted by the Minnesota Medicaid program and has been cited with approbation by federal officials. See 41 Fed. Reg. 27303 (July 1, 1976). Moreover, the Department's Principles, including Principle 3016, have been reviewed by the U. S. Department of Health and Human Services (formerly HEW) and approved as constituting a reasonable cost-related reimbursement system.\*

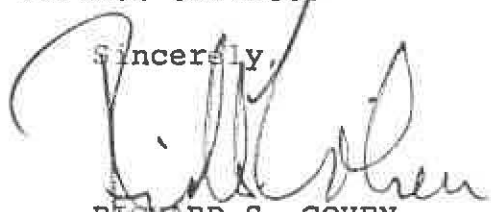
In view of the broad authority delegated to the Department to develop nursing home reimbursement rates, and in view of federal approval of the Department's reimbursement system, including the provisions relating to depreciation and its recapture, we see no basis for concluding that the Department has acted in excess of its authority in promulgating these principles. The underlying wisdom of the Principles is, of course, a policy matter to be addressed by appropriate officials.

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\* Recent amendments to the Principles are awaiting HEW approval. However, these amendments pertain to the useful lives assigned to depreciable assets and are not germane to the issues you have raised.

I hope this information is helpful. Please feel free to call on me if I can be of any further service.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Richard S. Cohen', written over the word 'Sincerely,'.

RICHARD S. COHEN  
Attorney General

RSC/ec