

MAINE STATE LEGISLATURE

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A Report to the Committee on Health Coverage, Insurance, and Financial Services of the 130th Maine Legislature

Stakeholder Meetings Held in October, November, and December 2021
Concerning LD 794:

An Act to Maintain Maine's System of Therapeutic Foster Care for Children
through the Creation of a Nonprofit Risk Indemnification Trust

February 2022

Janet T. Mills
Governor

Anne L. Head
Commissioner

Eric A. Cioppa
Superintendent

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Procedural History

In March 2021, LD 794, “An Act To Maintain Maine’s System of Therapeutic Foster Care for Children through the Creation of a Nonprofit Risk Indemnification Trust,” (Exhibit A) was assigned to the Committee on Health Coverage, Insurance and Financial Services (“the Committee”). Presented as a concept draft, the bill proposed to direct the Bureau of Insurance (BOI) and Department of Health and Human Services (DHHS) to develop a “state nonprofit risk indemnification trust” for the purpose of furnishing liability insurance to providers of therapeutic foster care that are “unable to obtain affordable coverage through ordinary means and when coverage is required by law or is necessary for the conduct of a public purpose.”

The Committee voted to carry over the bill from the first to the second regular session, and asked the BOI to convene a stakeholder group “to facilitate further discussion and to develop recommendations for statutory changes or other proposed solutions” to accomplish the purpose of LD 794 (Exhibit B). The Committee asked the BOI to submit a report with any recommendations to the committee during the Second Regular Session.

As requested, the BOI gathered a stakeholder group composed of representatives from the insurance industry, foster care providers, DHHS’s Office of Child and Family Services, the BOI, and the Committee. The group met three times in 2021, on October 4, November 3, and December 8, during which stakeholders shared information about the problem faced by foster care providers in obtaining liability insurance, explored the underlying causes of this problem, and brainstormed the viability of various potential solutions. The stakeholder group identified as a factor contributing to the problem enactment in 2019 of P.L. 2019 c. 301 (L.D. 589, An Act To Provide Access to Justice for Victims of Child Sexual Abuse). Applicable to all actions based on sexual acts toward minors regardless of the date of the act, this statute revived any actions that might have been barred by a statute of limitations.

After the final meeting, BOI agreed to prepare a report to the Committee that would include, to the extent possible, an estimate of the cost of establishing an indemnification trust for foster care providers.

Summary of the Stakeholder Discussions and Findings

The Problem of Rising Liability Insurance Premiums

The stakeholders identified the high cost of liability insurance as a major problem for organizations that provide foster care services. Although foster care parents in Maine are covered under a state program managed by the Risk Management Division within the Office of the State Controller, foster care organizations are responsible for securing their own coverage for liabilities that might arise out of the services that they provide.¹

Barriers to a Legislative Solution

The stakeholders explored various potential solutions to the identified problem, including creating an indemnification trust for foster care providers or allowing providers to obtain coverage through Risk Management. Unfortunately, there appear to be significant barriers common to both approaches.

The characteristics that make foster care liability difficult to insure also make it difficult to cover through an alternative mechanism. Especially in today's social and legal climate, litigation risk related to the care of children can be severe and unpredictable. Associated losses can become more predictable if they are aggregated, but only with a risk pool that is large enough to effectively distribute costs across policyholders and over time. Instead of broadly distributing risk, creating a special indemnification trust for Maine's foster care providers would ignore this fundamental principle of insurance by concentrating a volatile risk in a small group.

Although rising costs appear to be a national problem, the group was unable to identify a solution from another jurisdiction that could be used as a model in Maine.

Conclusion

Although the stakeholder meetings yielded valuable exchanges of information, the group was unable to reach a consensus on a viable concept that would achieve the aim of LD 794. However, the BOI agreed to gather more data and attempt to estimate the cost of indemnifying foster care providers through a trust or other mechanism.

¹ See Appendix: Insurance Program for Foster Parents;

Trust Feasibility Study

Following the stakeholder meetings, the BOI gathered information with the objective of estimating the cost of indemnifying Maine's foster care providers through a trust established for that purpose. The BOI surveyed providers, sought data from outside entities, and retained an outside actuary but was unable to gather enough information to develop a cost estimate that would be useful.

A traditional feasibility study typically follows these steps:

1. Conduct preliminary analyses;
2. Prepare a projected income statement;
3. Conduct a survey (e.g., Does the trust create a good or service that is in demand in the market? What price are consumers willing to pay for the good or service?);
4. Plan the organizational structure of the trust. (e.g., What are the staffing requirements? How many workers are needed? What other resources are needed?);
5. Prepare an opening day balance of projected expenses and revenue;
6. Review and analyze the points of vulnerability that are internal to the project and that can be controlled or eliminated; and
7. Decide whether to go on with the plan/project.

The BOI was unable to obtain enough information to conduct even the preliminary analyses that would be necessary for a feasibility study. The information collected is summarized and discussed below.

Survey of Foster Care Providers

The BOI prepared a survey to be sent to all known foster care providers to collect information about liability insurance premiums (Exhibit C). Of the eight agencies that received the survey, one responded. Spurwink, an organization that provides behavioral health and educational services to children, adults, and families in Maine, reported that it placed an average of 62 foster children per year between 2014 and 2017, and that approximately seven staff members work with children in therapeutic foster care.

As shown in Figure 1 below, Spurwink has experienced an over 400% increase in its premium for umbrella liability coverage since 2020. This policy covers excess professional liability and sexual misconduct. This increase far outpaces the increase in premiums paid for the organization's general liability coverage, which has increased only 28% during the same time frame. Spurwink reports that it has had no claims history that would contribute to a premium increase.

SPURWINK GL and Umbrella Foster Care Premium Allocation and Losses			
Policy Period	GL Premium	Umbrella Premium	Claims - GL/Umbrella
2022	\$ 34,821	\$ 55,620	None
2021	\$ 32,430	\$ 55,620	None
2020	\$ 27,053	\$ 10,478	None
2019	\$ 25,730	\$ 10,429	None
2018	\$ 18,357	\$ 10,617	None
2017	\$ 15,508	\$ 8,355	None
2016	\$ 15,842	\$ 8,537	None
2015	\$ 15,196	\$ 8,165	None
2014	\$ 14,929	\$ 7,659	None
2013	\$ 12,667	\$ 6,989	None
2011-12(extended term)	\$ 13,533	\$ 6,394	None
2010	\$ 12,036	\$ 5,687	None

Other Information

The BOI also sought data from other sources to supplement the limited survey information. The BOI contacted rating advisory organizations, which often provide loss cost analysis for property and casualty insurance products, but they apparently do not have any data specific to foster care services. Additionally, they do not currently collect data on sexual abuse and molestation coverage, although they plan to do so for general liability policies.

Study Limitations

The BOI found insufficient data to generate a cost estimate that could be relied upon for the kind of trust envisioned by LD 794. Foster care liability is part of a rapidly-evolving segment of the insurance market, and reliable and robust data would be crucial to such a venture. Unfortunately, such data is not readily available.

Exploration of Alternative Sources of Indemnity

Risk Retention Groups

The BOI also explored risk retention groups (RRGs) as a possible source of indemnity. RRGs are liability insurance companies owned by their members. Businesses with similar needs use RRGs to pool their liability risks. Unlike other insurers, they are licensed only in a single state, often under captive insurance laws or similar alternative regulatory structures. Federal law authorizes RRGs to operate across state lines without obtaining a new license in each state. RRGs can be useful for organizations working in niche areas where insurance can be difficult to obtain.²

The BOI met with one such RRG operating in the nonprofit sector, Nonprofits Insurance Alliance (NIA), to explore the potential of using a risk retention model for foster care provider liability. Although NIA currently operates in 32 U.S. jurisdictions, it does not currently operate in Maine and it does not plan to expand as long as federal law precludes them from covering property risks in addition to liability. Even if NIA or another risk retention group offered liability coverage to Maine foster care providers, the BOI does not see any indication that it would be more affordable than current options.

Maine Risk Management Division

Following the stakeholder meetings, the BOI consulted with Risk Management regarding the possibility of creating or expanding a program to accommodate foster care providers (Exhibit D). As noted above, Risk Management currently offers some liability coverage to foster parents, but not to provider organizations.

After some discussion, it does not appear that this would be an economically viable solution. Risk Management lacks data to accurately rate the liability risk of foster care providers. With such a small pool of covered entities, the risk of loss would be highly concentrated, a characteristic likely to yield high premiums. Unlike many of the public entities covered through Risk Management, foster care providers do not enjoy the legal protections and immunities that would limit their liability exposure. Moreover, although the Office of the Attorney General defends most claims covered by Risk Management, the defense of foster care providers would require outside counsel. Defense costs could be substantial and erode the funds available to pay damages to third parties. Finally, Risk Management lacks the expertise and authority to identify and implement risk control measures. This is an important feature of insurance that helps control costs by reducing the frequency and/or severity of claims.

Because Risk Management cannot cover foster care providers itself, it could only indemnify providers by purchasing commercial insurance and would likely confront the same costs and challenges that are currently faced by providers themselves.

² See NAIC, "Risk Retention Groups," (Mar. 2021) *available at* [https://content.naic.org/cipr_topics/topic_risk_retention_groups.htm#:~:text=Issue%3A%20Risk%20Retention%20Groups%20\(RRGs,operate%20under%20state%20regulated%20guidelines.](https://content.naic.org/cipr_topics/topic_risk_retention_groups.htm#:~:text=Issue%3A%20Risk%20Retention%20Groups%20(RRGs,operate%20under%20state%20regulated%20guidelines.)

Conclusions

The purpose of LD 794 is to explore the development of a state nonprofit risk indemnification trust to provide liability insurance for those providers of therapeutic foster care that are unable to obtain affordable coverage through ordinary means and when coverage is required by law or is necessary for the conduct of a public purpose.

The stakeholder group was unable to determine a viable method for establishing an indemnity trust that would meet the objectives of LD 794. The group encountered obstacles that are inherent to the underlying problem: covering a niche group against highly unpredictable and potentially large losses would require a large but uncertain commitment of resources.

Although the current cost of liability insurance is high, there is no indication that it is disproportionate to the covered risk or that an indemnification trust would be less expensive.³ Indeed, the small size of an indemnification trust would tend to make it more expensive than commercial insurance. The most immediate barrier is a lack of data that could be used to estimate the cost of indemnifying Maine's foster care providers.

Alternative approaches, including risk retention groups and covering foster care providers through Risk Management, also do not seem viable.

³ See Stephanie Jones and Amy O'Connor, "Take a 'Deep Dive' Into the Nonprofit Sector: Nonprofits Treading Water as Market Hardens," *Insurance Journal* (Feb. 10, 2020) *available at* <https://www.insurancejournal.com/magazines/mag-features/2020/02/10/557790.htm>.

Exhibits

Exhibit A: LD 794

Exhibit B: Letter from the Committee on Health Coverage, Insurance and Financial Services, June 30, 2021

Exhibit C: Maine Risk Management Insurance Program for Foster Parents

Exhibit D: MBOI Survey Distributed to Therapeutic Foster Care Center Agencies

Presented by Senator SANBORN of Cumberland.

DAREK M. GRANT
Secretary of the Senate



Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

(EMERGENCY)

An Act To Maintain Maine's System of Therapeutic Foster Care for Children through the Creation of a Nonprofit Risk Indemnification Trust

In Senate, March 5, 2021

S.P. 57

No. 794

Legislative Document

FIRST REGULAR SESSION-2021

130th MAINE LEGISLATURE



Exhibit A

1 **Be it enacted by the People of the State of Maine as follows:**

2 **CONCEPT DRAFT**

3 **SUMMARY**

4 This bill is a concept draft pursuant to Joint Rule 208.

5 This emergency bill proposes to direct the Department of Professional and Financial
6 Regulation, Bureau of Insurance and the Department of Health and Human Services to
7 develop a state nonprofit risk indemnification trust to provide liability insurance coverage
8 for entities such as state-contracted providers of therapeutic foster care that are unable to
9 obtain affordable coverage through ordinary means and when coverage is required by law
10 or is necessary for the conduct of a public purpose. The bill proposes to indemnify
11 nonprofit beneficiary organizations and their officers, directors and agents for financial loss
12 due to the imposition of legal liability.

Exhibit B

SENATE

HEATHER B. SANBORN, DISTRICT 28, CHAIR
STACY BRENNER, DISTRICT 30
HAROLD "TREY" L. STEWART, III, DISTRICT 2

COLLEEN MCCARTHY REID, SR. LEGISLATIVE ANALYST
CHRISTIAN RICCI, COMMITTEE CLERK



HOUSE

DENISE A. TEPLER, TOPSHAM, CHAIR
HEIDI E. BROOKS, LEWISTON
GINA M. MELARAGNO, AUBURN
POPPY ARFORD, BRUNSWICK
RICHARD A. EVANS, DOVER-FOXCROFT
KRISTI MICHELE MATHIESON, KITTERY
JOSHUA MORRIS, TURNER
MARK JOHN BLIER, BUXTON
JONATHAN M. CONNOR, LEWISTON
TRACY L. QUINT, HODGDON

STATE OF MAINE ONE HUNDRED AND THIRTIETH LEGISLATURE COMMITTEE ON HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

June 30, 2021

Eric A. Cioppa
Superintendent
Bureau of Insurance
34 State House Station
Augusta, Maine 04333

Dear Superintendent Cioppa:

As you know, the Joint Standing Committee on Health Coverage, Insurance and Financial Services has carried over LD 794, An Act To Maintain Maine's System of Therapeutic Foster Care for Children through the Creation of a Nonprofit Risk Indemnification Trust, to the Second Regular Session. We believe carrying the bill over will allow time for additional discussion and consideration of the complex issues raised in the bill related to the availability and affordability of liability insurance coverage by therapeutic foster care providers.

We are writing on behalf of the committee to request that the Bureau of Insurance convene a stakeholder group to facilitate further discussion and to develop recommendations for statutory changes or other proposed solutions to address the difficulties experienced by therapeutic foster care providers in obtaining liability insurance. When convening the stakeholder group, we ask that you invite participation from the Department of Health and Human Services, Office of Child and Family Services, representatives of therapeutic foster care providers and insurers, and HCIFS Committee members and staff.

Please submit the report, along with any recommendations, to the committee no later than January 15, 2022 so the committee can take final action on LD 794 before the end of the Second Regular Session. If you have any questions, please do not hesitate to contact us or our legislative analyst, Colleen McCarthy Reid. Thank you for your consideration.

Sincerely,

Handwritten signature of Heather B. Sanborn in black ink.

Sen. Heather B. Sanborn
Senate Chair

Handwritten signature of Denise A. Tepler in black ink.

Rep. Denise A. Tepler
House Chair

Exhibit C
IMF22/505
INSURANCE PROGRAM FOR FOSTER PARENTS

Policy Term December 16, 2022 to December 16, 2023
Inception 12:01 A.M. Eastern Standard Time

I. PROGRAM ADMINISTRATION

This program is administered by the Risk Management Division of the Department of Administrative and Financial Services, 85 State House Station, Augusta, Maine 04333-0085 through the State of Maine Self Insurance Fund. The division's phone numbers are: (207) 287-3351 and 1-800-525-1252. Throughout this policy, the words "*we*", "*us*" and "*our*" refer to this division.

II. WHO IS AN INSURED

The following is an *Insured* under this Program: An individual

(a) Who is a Maine licensed foster parent and with whom the Department of Health and Human Services, Office of Child and Family Services, Child Welfare Services Division has placed a foster child who is not placed in connection with the Interstate Compact for Placement of Children *hereafter referred to as a Placed Child* and who is providing services as a Maine licensed foster parent to a Placed Child and who is not the birth or biological parent of the Placed Child.

III. COVERAGE

All coverage provided is subject to the *Limits of Coverage, Exclusions, and Conditions* contained herein.

COVERAGE A: Claims Made by Others

(1) Provisions for defense against claims

This insurance will provide for the defense of an Insured against civil claims, including but not limited to claims of negligent acts, physical abuse, sexual abuse, and alienation of affection, which arise directly out of activities relating to the care of or services to a Placed Child when we determine that there is substantial merit to the defense. However, we will not provide such defense and will discontinue such defense where the underlying misconduct is shown to be criminal in nature or results in a criminal conviction.

If we decline to defend, and an Insured subsequently successfully defends against claims in a civil court action, then we shall be liable for the Insured's reasonable attorney fees and court costs.

Under this section, the term *claims* shall include claims involving personal injury, bodily injury, death, and tangible property damage.

Under this section, the term *Others* does not include the Department of Health and Human Services.

(2) Provisions for payment

We will pay, or secure payment for, those sums which the Insured becomes legally obligated to pay for any claim arising out of a negligent act which arises directly out of the Insured's activities relating to the care of or services to a Placed Child, excepting fines, penalties, exemplary or punitive damages and costs related to non-monetary relief.

Claims of negligent acts shall not include fraud, willful misconduct, malicious conduct, criminal conduct, or acts involving personal injury, bodily injury, death or property damage expected or intended or not accidental.

COVERAGE B: Claims Made by an Insured

1) Provisions for payment

We will pay, or secure payment for, sudden and accidental direct physical loss of or damage to real or personal property owned by an Insured or any other person residing in the Insured's household provided that the loss or damage:

- (a) is caused by an act of a Placed Child and the act exceeds normal and reasonable expectations based on the age (chronological and functional) of the Placed Child; and
- (b) occurs while the Placed Child is in the care of an Insured.

(2) Provisions for valuation and settlement

Covered real and personal property, which is usual and incidental to common residential occupancy, will be valued on an actual cash value basis. The most we will pay for damaged property is the lesser of the cost to repair, partial replacement for a pair/set or actual cash value replacement. There is no coverage for any property that is not repaired or replaced and we reserve the right to use our discretion to exclude other items if we deem the items not to be usual and incidental to common residential occupancy

IV. LIMITS OF COVERAGE

Coverage A Claims Made by Others:

Each Occurrence Limit \$300,000 (inclusive of the cost of defense)

Coverage B Claims Made by an Insured:

Each Occurrence Limit \$50,000
Subject to a \$250 Deductible Per Occurrence

Coverage A and Coverage B:

General Aggregate Limit Per Policy Term \$500,000

The *Limits of Coverage* shown are the most we will pay regardless of the number of:

- (a) Insureds; or
- (b) Claims made or suits brought; or
- (c) Persons or organizations making claims or bringing suits.

The *General Aggregate Limit* is the most we will pay for the sum of all coverages including defense costs.

Furthermore, persons or entities participating in this program do not have any right of recovery under this program except against that portion of the assets of the state administered fund of title 5 section 1737 attributable to this program and do not have recourse against the general fund of the State of Maine, against the assets of the State, against the Commissioner, the Director, or any State employee.

V. EXCLUSIONS

This insurance program does not apply to:

- (a) Any action or inaction of an Insured when such action is undertaken in the professional capacity of that Insured (For example, the rendering of medical services by an Insured who is a physician would be an excluded act.) This exclusion does not apply to those actions or inactions which are ordinarily undertaken in the everyday care provided by an Insured;
- (b) Losses arising out of the Placed Child's **operation** of any motor vehicle or watercraft. A *motor vehicle* means a land motor vehicle, trailer, or semi trailer designed for travel on public roads, including any machinery or equipment. It also means a snowmobile, an all-terrain vehicle and farm equipment not licensed for the road. *Watercraft* does not mean a craft which is solely human-powered;
- (c) Liability assumed by an Insured under any agreement, written or oral;
- (d) Any obligation for which an Insured may be liable under any workers compensation, unemployment compensation, disability benefits law, or any similar law;
- (e) Damage to property including electronic data owned by, rented to, or loaned to any Insured which is located in the household of the Insured if such property is used primarily for business purposes. Business purposes do not include provision of foster or respite care;
- (f) Coin collections, collectibles, antiques or jewelry;
- (g) Damage caused by normal wear and tear;
- (h) Losses resulting from theft, misuse, or loss of credit cards or debit (ATM type) cards;
- (i) Losses resulting from the use of telephone and other services including but not limited to the internet, texting, emailing, pay per view, gaming, blogging, instant messaging, social networking;
- (j) Cash or checks;
- (k) Losses resulting from the ownership of animals, except we will cover limited veterinarian expenses for household pets, not to exceed \$1,000 per occurrence;
- (l) Losses resulting from identity theft, including but not limited to the theft or use of personal information to make unauthorized purchases, gain unauthorized access to bank accounts, obtain unauthorized loans, establish fraudulent insurance policies or other documents, or open unauthorized credit cards.
- (m) Personal or family information, data, or records; including but not limited to diaries, journals, writings, recordings, videos, spreadsheets, emails, photographs, personal letters, drawings, paintings, including those of weddings, vacations, or gatherings; regardless of the medium or format.

- (n) Electronic data including but not limited to e-books, pre-recorded DVDs and music CDs, software and game CDs unless the insured can show that a backup copy of the data in question could not be legally made.
- (o) FAA regulated Aircraft, Unmanned Aerial Vehicles, and Drones.
- (p) Any Placed Child who has reached the age of majority.
- (q) The policy does not provide coverage for losses related to maintenance, use or for acts involving activities that could foreseeably cause damage.

VI. CONDITIONS

1. Other Insurance

This policy is **excess** over any other insurance, whether the other insurance is primary, excess, contingent or on any other basis. This means that under:

- (a) Coverage A Claims Made by Others we will have no duty to defend or indemnify any claim or suit that any other insurer has a duty to defend or indemnify. If no other insurer defends or indemnifies, we will undertake to do so subject to all other provisions of this policy, but we will be entitled to the Insured's rights against all those other insurers; and
- (b) Coverage B Claims Made by an Insured if you have other insurance covering a loss, we will pay, subject to all other provisions of this policy only the excess over what you should have received from the other insurance and any applicable deductible.

2. Duties in the Event of Occurrence, Claim, Suit, or Loss

(a) Responsibilities of the Insured

(1) In the event of any occurrence, known to the Insured, which is likely to involve a claim covered by the program, **written notice must be given within 45 days** by the Insured to us. The notice must contain the name, address, and telephone number of the Insured, the name, address, and telephone number of the person or organization sustaining the injury or damage, and the names, addresses, and telephone numbers of any witnesses, as well as the place, date, time, and circumstances of the occurrence.

(2) If a claim is made or a suit is brought against the Insured, or a legal document is received (including but not limited to, demands, notices, summons, or other papers, documents, or pleadings), the Insured **must call us within 72 hours** for further instructions.

(3) In the event of any claim made under this policy, the Insured shall cooperate fully with us or our representative and will provide such information and documents as are requested. The Insured shall also assist in the settlement of claims, in the conduct of suits, and enforcing any right of contribution or indemnity against any person or organization who may be liable to the Insured. The Insured shall attend hearings and trials, and will assist in securing and giving evidence and obtaining the attendance of witnesses.

- (4) No Insured will, except at their own expense, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid without our written approval.
- (5) In addition, if making a claim under Coverage B Claims Made by an Insured the Insured will:
- (a) Take all reasonable steps to prevent further damage to property;
 - (b) Permit us or our representative to inspect the property; and
 - (c) Not dispose of the property until given permission to do so by us.

(b) Responsibilities of Risk Management Division

(1) We will defend or pay for the defense of any claim or suit against an Insured, subject to all provisions of this insurance program. We may make such investigation and settlement of any claim or judgment as we deem appropriate; but we will not be obligated to pay any claim or judgment or to defend any suit after any applicable Limits of Coverage have been exhausted. The Attorney General's office shall be notified of all claims and lawsuits under this program in order to assert any interest which the State may have in the proceedings. In the ordinary case we will retain private counsel to defend claims covered by this program, this however may be subject to the approval of the Attorney General's office pursuant to 5 MSRA §191. The Director of Risk Management Division, with the Commissioner of Administrative and Financial Services. will have authority to make settlements on all claims under this program.

(2) With regard to claims made under Coverage B - Claims Made by an Insured - we will, except in special circumstances, make a determination of payment within fifteen days of the completion of our investigation.

(3) Subrogation

If the Insured has rights to recover all or part of any payment we have made under this insurance program, those rights are transferred to us. The Insured must do nothing after the loss to impair them. At our request, the Insured will bring suit or transfer those rights to us and help us enforce them.

(4) Disputes

Where a dispute as to the existence or type of coverage arises, the Insured will provide to the Attorney General such information the Insured may deem appropriate. Prior to any determination, the Insured will be entitled to a statement of reason why coverage may not exist and given the opportunity to comment thereon. The Attorney General or his designee shall then make a final determination, based upon currently available information, as to existence of coverage.

Where a dispute as to the amount of coverage arises, the Insured will provide to us such information they may deem appropriate. Prior to any determination, the Insured will be provided a statement of any reasons why the amount of coverage may be less than claimed and given the opportunity to comment thereon. The Commissioner of the Department of Administrative and Financial Services, or his designee, shall then make a determination, based upon currently available information, as to the amount of coverage.

(5) Modification of Program

Risk Management Division reserves the right to modify all or any part of this program (including the coverage provided) or to cancel this program at any time upon a written notice to the Department of Health and Human Services.

Date
Signed: 12/15/2021

Suzanne Murphy

Suzanne Murphy, Director
Risk Management Division

Exhibit D

THERAPEUTIC FOSTER CARE AGENCY SURVEY

LD794 - An Act To Maintain Maine's System of Therapeutic Foster Care for Children through the Creation of a Nonprofit Risk Indemnification Trust

These survey questions are for Therapeutic Foster Care Agencies wanting to be considered for inclusion in a possible Trust to be administered by the Maine Bureau of Insurance (MBOI) intended to cover insurance liability exposure. **To answer this survey, it is strongly recommended that the agencies contact their insurance agent directly when preparing responses.**

MBOI Disclaimer: this survey is for use in a feasibility study only; this does NOT in any way constitute an offer for insurance coverage.

Background Agency Information

1. Provide the legal name of your agency.
2. Provide the mission statement of your agency.
3. How long has your agency been in operations and what year did your agency begin operations?
4. How many employees does your agency have?
5. How many employees do you have that interact with foster children placed through your agency in the course of their work?
6. How many foster children have you placed with foster parents in at least the last ten years (please list counts for each year separately for the earliest year available through 2021)?
7. What counties does your agency cover?
8. Discuss what liability policies your agency purchases.
9. Indicate whether or not you perceive your liability policies offer the following coverages:
 - a. General Liability (i.e., Premises Liability or Products and Completed Operations Liability)
 - b. Errors and Omissions Liability
 - c. Medical Professional Liability
 - d. Improper Sexual Conduct and Physical Abuse Liability
 - e. Employers Liability
 - f. Directors and Officers Liability

Agency and LD794

10. What precise liability coverages are you seeking for LD794 to provide? Why?
11. Which specific individuals/entities have insurance protection by the liability coverages in # 10? Within the response, clearly specify whether or not foster parents are covered.
12. Provide at least ten years of premium data for the precise coverages you are seeking in # 10.
13. Provide at least ten years of claims data for the precise coverages you are seeking in # 10.
14. Provide all insurance policy documentation available from your current liability insurance provider or recent liability insurance providers (or captive insurer) covering the past three to five years for coverages you are seeking in # 10. We anticipate these documents may include the following and will include all limits and sub limits for various coverages:
 - a. Declarations page
 - b. Insuring Agreement
 - c. Definitions
 - d. Exclusions

- e. Conditions
 - f. Endorsements
15. Have the policies historically written for coverages in # 10 been on an occurrence or claims-made basis?
 16. Disclose any retroactive dates in current policies for coverages in # 10.
 17. Provide us with any data and information that was provided to your insurance provider in recent years in their work to quote your liability insurance policy for coverages specified in # 10 (e.g., financial statement information, employee counts, home visit counts, etc.)
 18. Provide us with the contact information for your insurance agent and/or insurance broker for coverages specified in # 10.

Additional Feedback requested

19. Discuss the specific, key concerns your agency has related to your current liability insurance coverages (e.g., premiums, exclusions, coverages offered).
20. Discuss the perceived benefits of a Trust operated by the State to offer certain liability coverages would have on your agency.
21. Discuss the perceived concerns of a Trust operated by the State to offer certain liability coverages would have on your agency.

We respectfully request receiving these documents via electronic communication. All historical insurance policy type information should be scanned (front and back) and sent in a ZIP file along with other documents and responses to other inquiries. Excel documents

DISCLAIMER: LD794 used the word "liability," which seems very broad considering the various insurance liability coverages on the market for business risks. We anticipate that any Trust will require a very clear scope of what liability coverages would or would not be covered.

To meet our objectives, it is very important that we receive complete responses by January 7, 2022.