



State of Maine 132nd Maine Legislature

January 7, 2025

The Honorable Janet T. Mills
Governor of Maine
1 State House Station
Augusta, ME 04333-0001

Dear Governor Mills:

We write today to express our growing concerns about future contracts between the Maine Department of Health and Human Services (DHHS) and providers of non-emergency medical transportation brokerage (NET) services. Based both on constituent concerns and changes in the structure and financing of one of the key contractors, we hope you will rethink the next iteration of procurement before entering into the new arrangements DHHS sought in its 2023 RFP for these services.

We recognize the long road DHHS has traveled in seeking to refresh its contracting arrangement due to ongoing litigation over alleged errors and irregularities in the process of selecting a new vendor or vendors. However, much has changed since this contract award was originally made.

ModivCare Inc., a national corporation based in Denver, was ultimately selected as the sole provider for the entire state, displacing services delivered by local agencies in certain regions. Several affected agencies appealed the decision for the respective regions in which they had submitted proposals; and that litigation has not yet concluded.

Based on what we have heard from our constituents and what we learned through hearings held on this matter, we believe the delay in executing the new contract in accordance with your administration's procurement decision may offer the State the flexibility to choose a different path.

Since they began operating in Maine, ModivCare has continued to accrue service complaints at an alarming rate; and the corporation subsequently filed for bankruptcy protection. While the company attempts to characterize this proceeding as "routine," it is clear that major financial restructuring is necessary through the extraordinary remedies provided by the bankruptcy court.

This raises serious questions about whether the entity that emerges from this process will be materially different from the entity that entered it. Whether "strategic" or not, a bankruptcy proceeding is a major, transformative event for any organization – the entity that emerges is often vastly different from the one that originally filed the petition.

Severity of ModivCare's Financial Challenges

Since Aug. 20, 2025, ModivCare has been going through a corporate restructuring under 11 U.S. Code, chapter 11. While the company had made casual assertions to contracted counterparties that they are doing fine and this is a technical matter to merely strengthen the company, ModivCare reports their condition as grave with a great likelihood of business failure in court documents unless they can access debtor-in-possession financing, which the court did grant.¹ In subsequent court documents and testimony, they have further stated that:

- If the Chapter 11 case lasts a day into 2026, the Company is at substantial risk of liquidation;²
- If ModivCare did not use every penny of their \$181 million of pre-petition trade claims (including invoices as small as \$2), their regulators will shut them down;³
- Every single contract they have – and have had for years – is subject to cancellation at will and will never come back if terminated. After the loss of their contract with Humana in 2024, United HealthCare terminated their contract in July just before the bankruptcy filing. ModivCare also said several governmental counterparties reacted to the bankruptcy by “de-risking” their exposure,⁴ including South Carolina when that state canceled their Medicaid contract effective January 2026.⁵
- Even if the debtors reduce their financial leverage by their goal of more than one billion dollars, they will be in such financial distress at exit that they must use more than \$100 million in liquidity to cash collateralize letters of credit on a dollar-for-dollar basis; and
- Their business is so fundamentally challenged that it will be a stretch for them to add any incremental EBITDA per year beyond their conservative projections post-emergence, while delivering de minimis revenue growth relative to the standard rate of inflation – even as they spend \$41 million to \$48 million per year in CapEx (Capital expansion).⁶

These statements are wildly different in tone and character than the breezy assurances ModivCare CEO Heath Sampson shared with the Health and Human Services (HHS) Committee in October. The company's financial instability presents serious risks to the State and Maine's NET infrastructure with far-reaching consequences for those who rely on these essential services. Although a judge cleared the way for ModivCare to exit bankruptcy by the end of the year, it is far from certain that this legal proceeding will result in a more fiscally sound and capable company.

State Collateral and Financial Instability

Many government contracts, including those in the NET sphere, require financial assurance through surety bonds or letters of credit. ModivCare's deteriorating financial condition resulted in surety providers demanding additional collateral. In all, the company has been forced to post \$50

¹ See *In re ModivCare Inc., et al.*, [Declaration of Chad J. Shandler in Support of Debtors' Chapter 11 Petitions and First Day Relief](#), No. 25-90309, Bankr. S.D. Tex. Aug. 20, 2025.

² See *In re ModivCare Inc., et al.*, [Objection of the Official Committee of Unsecured Creditors to Confirmation of the First Amended Joint Chapter 11 Plan Reorganization of ModivCare Inc. and Its Debtor Affiliates](#), No. 25-90309, Bankr. S.D. Tex. Nov. 25, 2025.

³ *Id.*

⁴ See *In re ModivCare Inc., et al.*, [Debtors' Ominibus Brief \(A\) In Support of Plan Confirmation and \(B\) Objecting to Committee's Motions for Standing to Pursue Claims and Lien Challenges](#), No. 25-90309, Bankr. S.D. Tex. Dec. 5, 2025.

⁵ See *In re ModivCare Inc., et al.*, [Declaration of Chad J. Shandler in Support of Debtors' Proposed Plan of Reorganization](#), No. 25-90309, Bankr. S.D. Tex. Dec. 5, 2025.

⁶ See *In re ModivCare Inc., et al.*, [Declaration of Matthew L. Warren in Support](#), No. 25-90309, Bankr. S.D. Tex. Dec. 4, 2025.

million in cash collateral this year against its outstanding surety bonds, which further strained its liquidity.⁷

Maine holds the surety bonds of its NET brokers. These surety instruments cover only 10% of the cost of replacing the provider, which leaves the state on the hook for up to 90% of the contract's value.

Risks to the Transportation Provider Network (Trade Creditors)

The NET system relies on thousands of third-party transportation providers. In bankruptcy proceedings, ModivCare moved to provide payment support to critical vendors defined as those necessary to maintain ongoing operations. To be considered critical, it was required that the vendor continues providing services. If they do not, they are not considered critical to operations and are, thus, treated as regular unsecured creditors. This has forced parties to continue to contract with ModivCare if they want to get paid for services they already rendered.

In the case of Downeast Community Partners, the provider ceased operations altogether in September. As such, they are not a continuing service provider and will not have the ability to recover pre-petition debts due to them. Therefore, the State of Maine has essentially compelled regional transporters to continue their contracts with ModivCare only to be left unpaid for those previously rendered services.

Run-On-The-Bank Scenario

Aside from the risks of prior actions, the State faces the additional future risk that this contractor will be unable to perform its obligations. As we know, changes to the Medicaid program in the One Big Beautiful Bill (OBBB) legislation passed earlier this year will affect all levels of providers.

These changes will take the form of broad-based reductions in the Medicaid-eligible population due to work or community engagement requirements, more frequent redeterminations of benefits and other program changes. Further, these changes are separate from any action the State may have to take to keep MaineCare viable.

Adding to revenue pressures within the healthcare services industry are mounting competitive pressures as Medicaid and managed care organizations drive reimbursement rates downward while operating costs, such as labor, are increasing. ModivCare's history of financial instability suggests it is poorly positioned to absorb these persistent pressures while maintaining service quality.

Concerns of customer attrition also increase the potential for unpredictable revenue and fiscal stress. In a court briefing filed earlier this month, ModivCare said it experienced several destabilizing events that threatened both its "liquidity and customer confidence." The loss of the United HealthCare and South Carolina contracts alone cost the company "approximately \$438 million in annualized lost revenue."⁸

There is also a risk of operational disruption if the company needs to liquidate or separate its business segments. ModivCare told the court that such a situation would "introduce operational

⁷ See *In re ModivCare Inc., et al.*, [Declaration of Chad J. Shandler in Support of Debtors' Proposed Plan of Reorganization](#), No. 25-90309, Bankr. S.D. Tex. Dec. 5, 2025.

⁸ See *In re ModivCare Inc., et al.*, [Debtors' Omnibus Brief \(A\) in Support of Plan Confirmation and \(B\) Objecting to Committee's Motions for Standing to Pursue Claims and Lien Challenges](#), No. 25-90309, Bankr. S.D. Tex. Dec. 5, 2025.

disruption, contractual impairment and significant cost” due to factors such as the loss of key trade support (e.g., performance bonds) and anti-assignment provisions in government contracts.⁹

The risk-sharing nature of many NET contracts has intensified operational challenges. Due to ModivCare’s reliance on capitated rate contracts, increased volume of per member rides places a strain on both resources and liquidity.

Lost Recovery in Lawsuits

ModivCare provides the State of Maine with services that are vital to its most vulnerable residents. These services are costly to deliver. In an increasingly strained fiscal environment, ModivCare could reduce the quality and accessibility of their services to preserve cash flow.

In fact, the company outlined cost-cutting measures it already undertook this year to reduce headcount, including “offshoring and outsourcing” some of its labor. That is likely to continue as Medicaid reimbursements decline.¹⁰

Ensuring Best Value and Best Interest

Maine’s law governing competitive bidding for State-contracted services calls for selection of the “best-value bidder,” taking into consideration the qualities of the goods or services to be supplied, their conformity with the specifications, the purposes for which they are required, the date of delivery and the best interest of the State.¹¹ The language of this law and the rules implementing it leave wide latitude to State agencies in considering “best value” and “best interest,” provided the criteria for measuring these standards are laid out clearly in each RFP.¹²

While the RFP issued in 2023 focused solely on direct measurements of value such as service metrics for rides provided and covered by MaineCare, nothing in applicable law requires that “best interests” be defined that narrowly. We believe the criteria and objectives on which DHHS based its request for proposals in 2023 deserve reexamination, not only due to the intervening event of ModivCare’s bankruptcy but also because the RFP did not include criteria to consider all the relevant factors in determining which vendor would serve the “best interests of the State” beyond the narrow confines of NET.

For the local agencies that currently hold this contract, the removal of NET from the portfolio of transportation services will detrimentally impact the availability of other transportation services. This is because NET volume and revenue contribute substantially to the scale of ridership and network adequacy needed to make other services financially viable. A loss of this scale could lead to the elimination the non-NET services entirely.

As we consider the various needs of the State for an improved transportation infrastructure for those who cannot afford or choose not to invest in private automobile ownership, it is clearly reasonable for DHHS to consider which providers can most effectively leverage the capital and labor they must acquire to perform the NET contract and deliver additional cost-effective services

⁹ See *In re ModivCare Inc., et al.*, [Notice of Filing of Liquidation Analysis with Respect to Disclosure Statement for First Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates](#), No. 25-90309, Bankr. S.D. Tex. Oct. 5, 2025.

¹⁰ See *In re ModivCare Inc., et al.*, [Declaration of Chad J. Shandler in Support of Debtors’ Proposed Plan of Reorganization](#), No. 25-90309, Bankr. S.D. Tex. Dec. 5, 2025.

¹¹ See 5 MRS § 1825-B(7) (emphasis added).

¹² See generally 18-554 CMR Ch. 110, § 2(A)(i).

outside of MaineCare-covered rides which, of course, would be reimbursed without any MaineCare funds. Rejecting the current bids and restarting the process with a new RFP would provide an opportunity to consider these broader interests explicitly in selecting a vendor or vendors.

Legal Authority to Rebid

The fact that DHHS selected a vendor and issued a conditional contract award to ModivCare does not oblige the State to negotiate a final agreement with the company. Nothing in the purchasing statutes requires that step to be taken.¹³ The RFP in this instance states that “[i]ssuance of the RFP does not commit the Department to issue an award...”¹⁴

Similarly, the Selection and Award Section of the RFP provides that “[i]ssuance of the RFP in no way constitutes a commitment by the State of Maine to award a contract, to pay costs incurred in the preparation of a response to the RFP, or to pay costs incurred in procuring or contracting for services, supplies, physical space, personnel or any other costs incurred by the Bidder” and that “[t]he Department reserves the right to reject any and all proposals or to make multiple awards.”¹⁵

The letter that notified bidders of the award to ModivCare also stated that “ModivCare Solutions, LLC shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to the Department is executed. The Department further reserves the right to cancel this Notice of Conditional Contract Award at any time prior to the execution of a written contract.”

This reservation of the right to cancel the award was referenced by Roger Bondeson, who said during the HHS Committee hearing on Sept. 9 the State has the authority to terminate the NET contract and can do so at “basically any time.” This is consistent with the Law Court’s decision in *SC Testing Technologies v. Department of Environmental Protection*.¹⁶

In that case, the Court considered whether the State could lawfully terminate an already executed \$42 million contract on which the selected vendor had relied upon in expending substantial sums to construct facilities to carry out an automotive emissions testing program. The Court held that this was permissible due to a legislative de-appropriation of funds for the program.

If a fully executed contract can be canceled on such facts, clearly DHHS is within its rights to cancel an award in which no contract has yet been negotiated.

Moving Forward

For these reasons, we urge DHHS to exercise its broad discretion to abandon the current procurement and start the process anew. This avoids the risk that ModivCare’s bankruptcy may result in a different level of service than originally promised. It will also provide an opportunity to take into account all the factors that should be properly considered to provide the greatest value to and protect the best interests of the State and our people.

Respectfully,

¹³ See 5 MRS § 1825-A through 1825-F.

¹⁴ RFP # [202303047](#), page 8.

¹⁵ Id. page 53, items C(3) and C(4).

¹⁶ See [SC Testing Technologies Inc., et al. v. Department of Environmental Protection et al.](#), ME 1996 A.2d 421.

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Senate Minority Leader

/s/ Matthew A. Harrington
Assistant Senate Minority Leader

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