

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1049

H.P. 718

House of Representatives, March 24, 2015

**An Act To Further Define Duties for Persons Who Hold Powers of
Attorney or Act as Agents for Residents of Long-term Care
Facilities**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MARTIN of Eagle Lake.
Cosponsored by Senator ROSEN of Hancock and
Representatives: FARNSWORTH of Portland, GATTINE of Westbrook, MALABY of
Hancock, PETERSON of Rumford, STUCKEY of Portland, Senators: BURNS of Washington,
HASKELL of Cumberland.

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

2 **Sec. 1. 22 MRSA §1826, sub-§2, ¶I,** as enacted by PL 1985, c. 291, §1, is
3 amended to read:

4 I. No contract or agreement may contain a provision ~~which~~ that provides for the
5 payment of ~~attorneys'~~ attorney's fees or any other cost of collecting payments from
6 the resident, except that attorney's fees and costs may be collected against any agent
7 under a power of attorney who breaches the agent's duties as set forth in section
8 1826-A or Title 18-A, section 5-914.

9 **Sec. 2. 22 MRSA §1826-A** is enacted to read:

10 **§1826-A. Agent's duties to principals who are residents of long-term care facilities**
11 **to seek and obtain MaineCare benefits and other available payment sources**

12 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
13 following terms have the following meanings.

14 A. "Agent" means an individual who holds a power of attorney for payment of
15 financial obligations of a principal who resides in or is applying to reside in a long-
16 term care facility and includes an individual who has executed as an agent either the
17 standardized nursing facilities admissions contract or the standard contract for
18 licensed assisted living programs, each promulgated by the department.

19 B. "Long-term care facility" means a nursing facility or unit licensed pursuant to
20 chapter 405 or an assisted living facility or program or a residential care facility
21 licensed pursuant to chapter 1663 or 1664.

22 C. "Principal" means a resident of a long-term care facility or a person applying for
23 admission as a resident at a long-term care facility.

24 D. "Principal's resources" includes assets, income, pensions, cash benefits, insurance
25 proceeds and other resources available or belonging to a principal.

26 **2. Obligated to fulfill duties.** An agent is obligated to fulfill each of the duties set
27 forth in this section and Title 18-A, section 5-914, including but not limited to duties to
28 act in good faith, to act loyally for the principal's benefit, to act with care, competence
29 and diligence for the sole interest of the principal and to cooperate with any persons
30 having authority to make health care decisions for the principal. The agent may not
31 engage in self-dealing that is contrary to the interests of the principal.

32 **3. Coverage and payment of health care expenses.** If a principal may be eligible
33 for coverage of health care expenses by the Medicare or MaineCare programs or any
34 other federal or state public health insurance program that provides coverage and
35 payment for long-term care facility services, the agent shall promptly apply for coverage
36 and shall comply with all requirements governing these programs. If the principal is
37 covered by private health insurance or long-term care insurance that provides benefits for
38 the care provided by the long-term care facility, the agent shall take all appropriate and
39 necessary actions in a timely fashion to claim these benefits and to comply with all
40 related regulatory requirements. Except for any exclusions or allowances provided for

1 under a public health insurance program, the agent shall apply the principal's resources to
2 make timely payment to the long-term care facility for services rendered to the principal.

3 **4. Standard contract changes.** The department shall amend the terms and
4 requirements of the standardized nursing facilities admissions contract set forth in section
5 1826 and the standard contract for licensed assisted living programs set forth in
6 applicable rules to incorporate the duties and requirements set forth in this section and
7 Title 18-A, section 5-914.

8 **5. Remedies for breach of duties.** If there is reasonable cause to believe that an
9 agent has breached the duties set forth in this section and Title 18-A, section 5-914, the
10 Attorney General, the department, the long-term care ombudsman under chapter 1453,
11 the affected long-term care facility or other person interested in the estate, affairs or
12 welfare of the principal, including the principal's parent, guardian, custodian, spouse or
13 domestic partner, may file a petition in Probate Court. The petition may request the court
14 to:

15 A. Determine whether the agent's acts or omissions are in breach of the duties owed
16 to the principal;

17 B. Compel the agent to submit an accounting or report of any actions and omissions
18 on behalf of the principal;

19 C. Seek restitution from the agent of any misappropriated resources of the principal;

20 D. Terminate the power of attorney; or

21 E. Take any action appropriate to the circumstances.

22 SUMMARY

23 This bill defines duties on the part of persons who hold powers of attorney or act as
24 agents for residents of long-term care facilities or for persons applying to become
25 residents of long-term care facilities and requires them to promptly apply for coverage of
26 services under the MaineCare and other applicable payment programs and comply with
27 all requirements governing these programs. It also provides remedies for breach of those
28 duties.

29 The bill further requires the Department of Health and Human Services to amend the
30 terms and requirements of the standardized nursing facilities admissions contract set forth
31 in the Maine Revised Statutes, Title 22, section 1826 and the standard contract for
32 licensed assisted living programs set forth in applicable rules to incorporate these several
33 duties and requirements.

34 The bill also permits collection of attorney's fees and costs from persons who breach
35 the duties established by this bill.