

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 194

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H.P. 157

House of Representatives, January 17, 2019

### An Act To Allow the Reduction of a MaineCare Lien

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Reference to the Committee on Health and Human Services suggested and ordered printed.

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

ROBERT B. HUNT  
Clerk

Presented by Representative CARDONE of Bangor.  
Cosponsored by Representative: HARNETT of Gardiner.

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

2 **Sec. 1. 22 MRSA §14, sub-§1**, as amended by PL 2007, c. 381, §1, is further  
3 amended to read:

4 **1. Recovery procedures.** When benefits are provided or will be provided to a  
5 member under the MaineCare program administered by the department pursuant to the  
6 United States Social Security Act, Title XIX, including any prescription drug programs  
7 administered under the auspices of MaineCare, referred to collectively in this section as  
8 MaineCare, for the medical costs of injury, disease, disability or similar occurrence for  
9 which a 3rd party is, or may be, liable, the commissioner may recover from that party the  
10 cost of the benefits provided. This right of recovery is separate and independent from any  
11 rights or causes of action belonging to a member under the MaineCare program. For  
12 MaineCare recipients who participated in the MaineCare managed care program, "cost"  
13 means the total value of coverable medical services provided measured by the amount  
14 that MaineCare would have paid to providers directly for such services, were it not for the  
15 managed care system. The MaineCare program is the payor of last resort and shall  
16 provide medical coverage only when there are no other available resources. The Attorney  
17 General, or counsel appointed by the Attorney General, may, to enforce this right,  
18 institute and prosecute legal proceedings directly against the 3rd party in the appropriate  
19 court in the name of the commissioner.

20 In addition to the right of recovery set forth in this subsection, the commissioner must  
21 also be subrogated, to the extent of any benefits provided under the MaineCare program,  
22 to any cause of action or claim that a member has against a 3rd party who is or may be  
23 liable for medical costs incurred by or on behalf of the member. The Attorney General,  
24 or counsel appointed by the Attorney General, to enforce this right may institute and  
25 prosecute legal proceedings in the name of the injured person, member, guardian,  
26 personal representative, estate or survivor. If necessary to enforce the commissioner's  
27 right of recovery, the Attorney General, or counsel appointed by the Attorney General,  
28 may institute legal proceedings against any member, including the agent, representative  
29 or attorney of that member, who has received a settlement or award from a 3rd party.

30 The commissioner's right to recover the cost of benefits provided constitutes a statutory  
31 lien on the proceeds of an award or settlement from a 3rd party if recovery for MaineCare  
32 costs was or could have been included in the recipient's claim for damages from the 3rd  
33 party to the extent of the recovery for medical expenses. The commissioner is entitled to  
34 recover the cost of the benefits actually paid out when the commissioner has determined  
35 that collection will be cost-effective to the extent that there are proceeds available for  
36 such recovery after the deduction of reasonable attorney's fees and litigation costs from  
37 the gross award or settlement. In determining whether collection will be cost-effective,  
38 the commissioner shall consider all factors that diminish potential recovery by the  
39 department, including but not limited to questions of liability and comparative negligence  
40 or other legal defenses, exigencies of trial that reduce a settlement or award in order to  
41 resolve the recipient's claim and limits on the amount of applicable insurance coverage  
42 that reduce the claim to the amount recoverable by the recipient. The department's  
43 statutory lien may ~~not~~ be reduced to reflect an assessment of a pro rata share of the  
44 recipient's attorney's fees or litigation costs. The commissioner may, at the

1 commissioner's discretion, compromise, or otherwise settle and execute a release of, any  
2 claim or waive any claim, in whole or in part, if the commissioner determines the  
3 collection will not be cost-effective or that the best possible outcome requires  
4 compromise, release or settlement.

5 **SUMMARY**

6 Under current law, when MaineCare benefits are provided to an individual for the  
7 costs of injury, disability or other occurrence for which a 3rd party is held liable, the  
8 Commissioner of Health and Human Services is entitled to recover the costs of  
9 MaineCare benefits, and the statutory lien may not be reduced to reflect an assessment of  
10 a pro rata share of the recipient's attorney's fees or litigation costs. This bill amends that  
11 provision of law to allow the statutory lien to be reduced.