

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 89

S.P. 87

In Senate, February 2, 1989

Submitted by the Department of Human Services pursuant to Joint Rule 24.  
Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator RANDALL of Washington.

Cosponsored by Senator BERUBE of Androscoggin and Representative FOSTER of Ellsworth.

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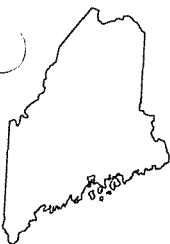
STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

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**An Act to Save Medicaid Funds by Expanding the Ability of the Department of Human Services to Recover Funds from Prior Owners of Boarding and Nursing Homes.**

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

3 22 MRSA §1714 is enacted to read:

5 §1714. Debts owed the department by providers

7 1. Definitions. As used in this section, unless the  
8 context otherwise indicates, the following terms have the  
9 following meanings.

11 A. "Boarding home" means any facility that meets the  
12 definition of section 7901-A, subsection 4.

13 B. "Debt" means any amount of money which is owed to the  
14 department as a result of:

17 (1) Overpayments that have been determined by an audit  
18 pursuant to the applicable principles of reimbursement,  
19 overpayments as reported by a provider in an unaudited  
20 cost report or overpayments that have been discovered  
21 in any other manner;

23 (2) The department's authority to recapture  
24 depreciation; or

25 (3) The assessment of fines and sanctions.

27 C. "Department" means the Department of Human Services.

29 D. "Former provider" means the person reimbursed by the  
30 department for the provision of care or services at a  
31 nursing home or a boarding home prior to its transfer.

33 E. "Nursing home" means any facility that meets the  
34 definition of section 1812-A, including an intermediate care  
35 facility for the mentally retarded.

37 F. "Person" means any natural person, partnership,  
38 association, corporation or other entity including any  
39 county, local or other governmental unit.

41 G. "Transfer" means any change in the ownership of a  
42 nursing home or boarding home, including, but not limited  
43 to, a sale, lease or gift of the land, building or operating  
44 entity, which results in:

47 (1) The department reimbursing a person other than the  
48 former provider for the provision of care or services;  
49 or

51 (2) The discontinuation of the provision of care or  
52 services.

53 H. "Transferee" means any person to whom a nursing home or

1           boarding home is transferred.

3           2. Transferee liable unless escrow agreement executed prior  
5 to sale. Whenever a nursing home or boarding home is transferred  
7 after the effective date of this section, the transferee is  
liable for debts owed to the department by the former provider  
unless by the time of sale:

9           A. All debts owed by the former provider to the department  
11 have been paid, except as stated in paragraph B; or

13           B. If the indebtedness is the subject of an administrative  
15 appeal, an escrow account has been created and funded in an  
amount sufficient to cover the debt as claimed by the  
department.

17           3. Department may offset. The department may offset  
19 against current reimbursement any debt it is owed by a nursing  
21 home or boarding home, including one owed by a transferee  
pursuant to this section. In addition, the department may  
exercise any other remedy available for the collection of a debt.

23           4. Department to identify debt. At the written request of  
25 any person who may be affected by subsection 2, the department  
27 shall identify the amount of any debt owed by a provider within  
30 days of receipt of the request.

29           5. Defenses preserved. If a transferee becomes liable for  
31 a debt pursuant to subsection 2, the transferee shall succeed to  
any defenses to the debt that could have been exercised by the  
former provider.

33           6. Liability of former provider. Nothing in this section  
35 may limit the liability of the former provider to the department  
37 for any debts whether or not they are identified at the time of  
39 sale. In addition, a transferee shall have a cause of action  
against a former provider to the extent that debts of the former  
provider are paid by the transferee, unless the transferee has  
waived the right to sue the former provider for those debts.

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## STATEMENT OF FACT

45           Existing law fails to make adequate provision for the  
47 recovery of money owed by previous owners of boarding homes and  
49 nursing homes, including intermediate care facilities for the  
51 mentally retarded. Once these facilities are sold, the  
department is no longer able to offset debts against  
reimbursement and therefore recovery of those debts is made much  
more difficult and time consuming. In fact, the department is

1 sometimes unable to collect these debts because the funds  
2 generated by the sale are dissipated before the department is  
3 paid. At this time, over \$1,000,000 is owed to the department by  
4 providers who have sold their facilities.

5  
6 This bill will enable the department to collect those debts  
7 in the future from the persons to whom nursing homes and boarding  
8 homes are transferred. This will create a powerful incentive for  
9 providers to settle with the department prior to actually selling  
10 their facilities and leaving the Medicaid program.

11  
12 Also, federal guidelines require the return of all federal  
13 dollars within 60 days of discovery of an overpayment. State  
14 funds must be used until the provider repays the State. State  
15 funds used to repay the Federal Government's share of those  
16 overpayments currently exceed \$65,000. This bill will enable  
17 more timely recovery of state funds.

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