

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1825

H.P. 1257

House of Representatives, May 8, 1991

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 that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PINES of Limestone.

Cosponsored by Representative MAHANY of Easton and Senator SUMMERS of Cumberland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

---

**An Act to Amend the Laws Relating to the Collection of Debts by the  
Department of Human Services.**

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

4 Sec. 1. 22 MRSA §1714, as enacted by PL 1989, c. 34, is repealed.

6 Sec. 2. 22 MRSA §1714-A is enacted to read:

8 §1714-A. Debts owed department by providers

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

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

20 B. "Debt" means any amount of money owed to the department  
22 as a result of:

24 (1) Overpayments that have been determined by an audit  
26 pursuant to the applicable principles of reimbursement,  
28 overpayments as reported by a provider in an unaudited  
30 cost report or overpayments that have been discovered  
32 in any other manner;

34 (2) The department's authority to recapture  
36 depreciation;

38 (3) The assessment of fines and sanctions; or

40 (4) Projected overpayments reported in an interim cost  
42 report. If an interim report is not filed at least 30  
44 days prior to the transfer, "debt" also includes 5% of  
46 Medicaid reimbursement or cost reimbursement for the  
48 last fiscal year or \$50,000, whichever is less.

50 C. "Former provider" means the person reimbursed by the  
52 department for the provision of health care services at a  
nursing home, boarding home or hospital prior to its  
transfer.

D. "Hospital" means any facility licensed pursuant to  
sections 1811 and 1817.

E. "Interim cost report" means a cost report that covers  
the current fiscal year and any prior periods not covered by  
a previously filed cost report. Costs incurred in the 90  
days prior to a transfer need not be covered in an interim  
cost report.

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

2           G. "Person" means any natural person, partnership,  
3           association, corporation or other entity, including any  
4           county, local or other governmental unit.

6           H. "Provider" means a person reimbursed by the department  
7           for the provision of health care services.

8           I. "Transfer" means any change in the ownership or control  
9           of a nursing home, boarding home or hospital, including, but  
10           not limited to, a sale, lease or gift of the land, building  
11           or operating entity that results in:

14                   (1) The department reimbursing a person other than the  
15                   former provider for the provision of care or services;  
16                   or

18                   (2) The discontinuation of the provision of care or  
19                   services.

20           J. "Transferee" means any person to whom a nursing home,  
21           boarding home or hospital is transferred.

24           2. Establishment of debt. A debt is established by the  
25           department when it notifies a provider of an overpayment or debt  
26           or when the Maine Health Care Finance Commission notifies a  
27           hospital that the hospital owes the department pursuant to a  
28           final reconciliation decision and order. A debt is collectible  
29           by the department 31 days after exhaustion of all administrative  
30           appeals.

32           3. Notice of overpayment or debt. Any notice of  
33           overpayment or debt issued to a provider by the department must  
34           include the following:

36                   A. A statement of the debt accrued;

38                   B. A statement of the time period during which the debt  
39                   accrued;

40                   C. The basis for the debt;

42                   D. The debtor's right to request a fair hearing within 30  
43                   days of receipt of the notice; and

46                   E. A statement that after a debt is established, the  
47                   department may proceed to collect that debt through  
48                   administrative offset, lien, foreclosure or other collection  
49                   action.

50           4. Successor liability. Successor liability is as follows.

2 A. Whenever a nursing home, boarding home or hospital is  
4 transferred after the effective date of this section, the  
6 transferee is liable for debts owed to the department by the  
8 former provider unless by the time of sale:

10 (1) All debts owed by the former provider to the  
12 department have been paid, except as stated in  
14 subparagraph (2):

16 (2) If the indebtedness is the subject of an  
18 administrative appeal, an escrow account has been  
20 created and funded in an amount sufficient to cover the  
22 debt as claimed by the department; or

24 (3) An interim cost report has:

26 (a) Been filed and an escrow account has been  
28 created and funded in an amount sufficient to  
30 cover any overpayment by the department identified  
32 in that report; or

34 (b) Not been filed, but an escrow account has  
36 been created and funded in an amount sufficient to  
38 cover 5% of Medicaid reimbursement or cost  
40 reimbursement for the last fiscal year of \$50,000,  
42 whichever is less.

44 B. Any person who may be affected by this subsection may  
46 request that the department identify the amount of any debt  
48 owed by a nursing home, boarding home or hospital. When the  
50 department receives such a request, it shall identify the  
52 debt within 30 days. Failure to identify the amount of a  
debt when such a request is made in writing at least 30 days  
prior to the transfer precludes the department from  
recovering that debt from the transferee.

C. The department shall provide written notice of the  
requirements of this section to the transferee in a letter  
acknowledging receipt of a request for a certificate of need  
or waiver of a certificate of need for a nursing home or  
hospital transfer or in response to a request for an  
application for a license to operate a boarding home.

D. If a transferee become liable for a debt pursuant to  
this subsection, the transferee succeeds to any defenses to  
the debt that could have been exercised by the former  
provider.

E. Nothing in this subsection limits the liability of the  
former provider to the department for any debts, whether or  
not they are identified at the time of sale. In addition, a

2 transferee has a cause of action against a former provider  
3 to the extent that debts of the former provider are paid by  
4 the transferee, unless the transferee has waived the right  
5 to sue the former provider for those debts.

6 5. Department may offset. The department may offset  
7 against current reimbursement owed to a provider or any entity  
8 related by ownership or control to that provider any debt it is  
9 owed by that provider after the debt is established.

10 6. Liens. Collection by lien is as follows.

11 A. After a debt is established, the amount stated in the  
12 notice of debt or overpayment is a lien in favor of the  
13 department against all real or personal property of the  
14 provider or any entity related by ownership or control to  
15 the provider.

16 B. The lien attaches to all real and personal property of  
17 the responsible party when the department files in the  
18 registry of deeds of any county, or with any office  
19 appropriate for a notice with respect to personal property,  
20 a certificate that states the name of the responsible party,  
21 that party's address, the amount of debt accrued, the date  
22 of the underlying audit or decision and the name and address  
23 of the authorized agent of the department who issues the  
24 lien.

25 C. Whenever a lien has been filed and the person having  
26 notice of the lien possesses any property that may be  
27 subject to the lien, that property may not be paid over,  
28 released, sold, transferred, encumbered or conveyed unless:

29 (1) A release or waiver signed by the commissioner has  
30 been delivered to the person in possession of the  
31 property; or

32 (2) A court has ordered the release of the lien. A  
33 court may order a release only when alternative  
34 security has been provided for the debt owed the  
35 department.

36 D. With respect to foreclosures on filed liens, the  
37 commissioner shall proceed as follows.

38 (1) Actions to foreclose liens on real property filed  
39 under this subsection may be brought in the county  
40 where the lien is filed pursuant to the procedures of  
41 Title 14, chapter 713, subchapter VI. For purposes of  
42 foreclosure by civil action as described in Title 14,  
43 chapter 713, subchapter VI, a lien filed in accordance  
44 with this subsection may be foreclosed by civil action  
45 in the county where the lien is filed.

2                   with this subsection constitutes a mortgage claim of  
3                   the department on any real property owned by the  
4                   debtor. Failure to pay the debt owed the department  
5                   constitutes a breach of condition in the mortgage.

6                   (2) Actions to foreclose liens on personal property  
7                   filed under this subsection may be brought, pursuant to  
8                   Title 14, chapter 509, subchapter III, in the county  
9                   where the lien is filed.

10                   7. Other collection actions. In addition to the other  
11                   remedies provided in this section, the department may seek  
12                   collection of any debt established under subsection 2 pursuant to  
13                   Title 14, chapter 502.

14                   8. Rulemaking. The department may adopt or amend any rule  
15                   as necessary to implement this section.

16  
17  
18  
19   **STATEMENT OF FACT**

20  
21                   This bill improves the debt collection ability of the  
22                   Department of Human Services by amending existing law to clarify  
23                   the mechanisms that may be used to collect or secure a debt,  
24                   indicate what parties the department may collect a debt from and  
25                   establish a statutory lien for debts owed the department.  
26

27                   This bill should improve the department's ability to collect  
28                   its accounts receivable and to make those collections in a timely  
29                   fashion.  
30