

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1998

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Legislative Document

No. 2152

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H.P. 1530

House of Representatives, January 21, 1998

**An Act to Strengthen the Collection of Medicaid Liens.**

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Submitted by the Department of Human Services pursuant to Joint Rule 204.  
Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative FULLER of Manchester.

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

2  
4       **Sec. 1. 22 MRSA §14, sub-§1**, as amended by PL 1997, c. 395,  
Pt. E, §1, is further amended to read:

6       **1. Recovery procedures.** When benefits are provided or will  
8 be provided to a beneficiary under the Medicaid program  
administered by the department pursuant to the United States  
10 Social Security Act, Title XIX, or under the Maine Health  
Program, section 3189, for the medical costs of injury, disease,  
12 disability or similar occurrence for which a 3rd party is, or may  
be, liable, the commissioner may recover from that party the  
14 reasonable value of the benefits provided. This right of  
recovery is separate and independent from any rights or causes of  
16 action belonging to a beneficiary under the Medicaid program or  
under the Maine Health Program. For Medicaid recipients who  
18 participated in the Medicaid managed care program, "reasonable  
value" means the total value of coverable medical services  
20 provided measured by the amount that Medicaid would have paid to  
providers directly for such services, were it not for the managed  
22 care system. The Medicaid program and Maine Health Program are  
the payors of last resort and should provide medical coverage  
24 only when there are no other available resources. The Attorney  
General, or counsel appointed by the Attorney General, may, to  
26 enforce this right, institute and prosecute legal proceedings  
directly against the 3rd party in the appropriate court in the  
28 name of the commissioner.

In addition to the right of recovery set forth in this  
30 subsection, the commissioner must also be subrogated, to the  
extent of any benefits provided under the Medicaid program or  
32 under the Maine Health Program, to any cause of action or claim  
that a beneficiary has against a 3rd party who is or may be  
34 liable for medical costs incurred by or on behalf of the  
beneficiary. The Attorney General, or counsel appointed by the  
36 Attorney General, to enforce this right may institute and  
prosecute legal proceedings in the name of the injured person,  
38 beneficiary, guardian, personal representative, estate or  
survivor. ~~If a recipient of medical assistance receives a~~  
40 ~~settlement or award from a 3rd party, the settlement or award is~~  
~~subject to disbursement as provided in subsection 2-F.~~ If  
42 necessary to enforce the commissioner's right of recovery, the  
Attorney General, or counsel appointed by the Attorney General,  
44 may institute legal proceedings against any beneficiary who has  
received a settlement or award from a 3rd party, ~~subject to the~~  
46 ~~right of equitable apportionment set forth in subsection 2-F.~~

48 The commissioner's right to recover the reasonable value of  
50 benefits provided constitutes a statutory lien on the proceeds of  
an award or settlement from a 3rd party, whether that award or

2 settlement is or is not intended to include compensation for  
3 medical costs. The commissioner is entitled to recover the full  
4 amount of the reasonable value of benefits provided to the extent  
5 that there are proceeds available for such recovery after the  
6 deduction of reasonable attorney's fees and litigation costs from  
7 the gross award or settlement. The department's statutory lien  
8 may not be reduced to reflect an assessment of a pro rata share  
9 of the recipient's attorney's fees or litigation costs. The  
10 commissioner may compromise, or settle and execute a release of,  
11 any claim or waive any claim, in whole or in part, if the  
12 commissioner determines the collection will not be cost-effective.

13 **Sec. 2. 22 MRSA §14, sub-§2-F,** as amended by PL 1989, c. 778,  
14 §2, is further amended to read:

15 **2-F. Disbursement.** A disbursement of any award, judgment  
16 or settlement may not be made to a recipient without the  
17 recipient or the recipient's attorney first ~~providing at least 10~~  
18 ~~days' written notice~~ paying to the department of the amount of  
19 the statutory lien from the award, judgment or settlement or  
20 obtaining from the department a release of any obligation owed to  
21 it for medical benefits provided to the recipient. If a dispute  
22 arises between the recipient and the commissioner as to the  
23 settlement of any claim that the commissioner may have under this  
24 section, the 3rd party or the recipient's attorney shall withhold  
25 from disbursement to the recipient an amount equal to the  
26 commissioner's claim. Either party may apply to the Superior  
27 Court or the District Court in which an action based upon the  
28 recipient's claim could have been commenced for an order to  
29 determine an equitable apportionment between the commissioner and  
30 the recipient of the amount withheld. An order of apportionment  
31 has the effect of a judgment.

32  
33 **Sec. 3. 22 MRSA §14, sub-§2-I, ¶E,** as enacted by PL 1993, c.  
34 707, Pt. I, §1 is amended to read:

35 **E.** A ~~Claim~~ claim under paragraph A, subparagraph (2) must  
36 be waived if enforcement of the claim would create an undue  
37 hardship under criteria developed by the ~~Secretary of the~~  
38 ~~United States Department of Health and Human Services~~  
39 department.

40  
41 **Sec. 4. 22 MRSA §14, sub-§3,** as amended by PL 1991, c. 9, Pt.  
42 N, §6, is further amended to read:

43 **3. Definitions.** For purposes of this section, "3rd party"  
44 or "liable party" or "potentially liable party" means any entity,  
45 including, but not limited to, an insurance carrier that may be  
46 liable under a contract to provide health, automobile, workers'  
47 compensation or other insurance coverage that is or may be liable  
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2 to pay all or part of the medical cost of injury, disease,  
4 Medicaid or Maine Health Program benefits. For purposes of this  
6 section and sections 18 and 19, an "insurance carrier" includes  
8 health insurers, group health plans as defined in 29 United  
10 States Code, Section 1167(1), service benefit plans and health  
12 maintenance organizations.

14 "Liable party," "potentially liable party" or "3rd party" also  
16 includes the trustee or trustees of any mortuary trust  
18 established by the recipient or on the recipient's behalf in  
20 which there is money remaining after the actual costs of the  
22 funeral and burial have been paid in accordance with the terms of  
24 the trust and in which there is no provision that the excess be  
26 paid to the decedent's estate. "Liable party," "potentially  
28 liable party" or "3rd party" may also include the recipient of  
30 the Medicaid or Maine Health Program benefits.

32 **Sec. 5. 22 MRSA §§18 and 19** are enacted to read:

34 **§18. Private Health Insurance Premium Program**

36 **1. Program.** The Private Health Insurance Premium Program  
38 is operated by the Bureau of Medical Services within the  
40 department and implements the provisions of 42 United States  
42 Code, Section 1396a(a)(25)(G) and 1396e.

44 **2. Condition for eligibility.** The department shall  
46 require, as a condition of being or remaining eligible for  
48 medical assistance, an individual otherwise entitled to medical  
50 assistance under this Title to apply for enrollment in a group  
health plan in which the individual is otherwise eligible to be  
enrolled, if the department determines that enrollment is  
cost-effective. For purposes of this section, the term  
"cost-effective" means that the reduction in medical assistance  
expenditures as a result of the individual's enrollment in a  
group health plan is likely to be greater than the additional  
expenditures by the department for premiums and cost-sharing with  
respect to that enrollment.

**3. Payments covered.** If the individual enrolls in a group  
health plan or is accepted for coverage under an individual  
health insurance policy pursuant to the department's approval  
under the Private Health Insurance Premium Program, except as  
provided in subsection 5, the department shall provide for  
payments of all premiums, deductibles, coinsurance and other  
cost-sharing obligations for items and services otherwise covered  
under the department's medical assistance program and shall treat  
coverage under the group health plan or the individual health  
insurance policy as a 3rd-party liability under section 14.

2 4. Family enrollment in employer plan. The department  
4 shall require, as a condition of being or remaining eligible for  
6 medical assistance, an individual who is a parent, is eligible  
8 for medical assistance under this Title and is eligible for  
10 family health coverage through an employer, to apply for  
12 enrollment for each eligible child. If the employed parent  
refuses to apply for such enrollment, the employer shall accept  
an application for enrollment of children, if otherwise eligible  
for family health coverage, submitted by the other parent or by  
the department. The employer shall enroll children in the  
employer plan without regard to any enrollment season  
restrictions.

14 5. Cost-effective enrollment. If some members of a family  
16 are not eligible for medical assistance under this Title and  
18 enrollment of the family members who are eligible for medical  
20 assistance is not possible without also enrolling the members who  
22 are not eligible for medical assistance, the department shall  
provide for payment of enrollment premiums for all family members  
if, taking into account payment of all such premiums, the  
enrollment is cost-effective.

24 §19. Prohibition against insurer discrimination

26 Insurers may not consider the availability or eligibility  
28 for medical assistance under this Title pursuant to 42 United  
30 States Code, Chapter 7, Subchapter XIX when considering coverage  
eligibility or benefit calculations for insureds and covered  
family members or for individuals and their family members for  
whom application has been made for coverage.

32 Sec. 6. 24-A MRS §2742, sub-§5, as enacted by PL 1995, c.  
34 418, Pt. C, §2, is amended to read:

36 5. Compliance. An insurer issuing policies under this  
38 chapter must comply with 42 United States Code, Section 1396g-1.  
40 If a parent is required by a court or administrative order to  
42 provide health coverage for a child and the parent is eligible  
44 for family health coverage through an insurer, the insurer shall  
46 permit either of the child's parents or the Department of Human  
48 Services to enroll the child under the family coverage without  
regard to any enrollment season restrictions if the child is  
otherwise eligible for the coverage. An insurer must provide  
policy information to the custodial parent of any dependent child  
so that the custodial parent can obtain benefits for the child  
directly from the insurer. An insurer must permit the custodial  
parent of any dependent child to submit claims for covered  
services without the approval of the noncustodial parent. If the  
custodial parent approves, an insurer must permit the provider to

2 submit claims for covered services without the approval of the  
3 noncustodial parent. An insurer shall make payment on claims  
4 submitted under this section directly to the custodial parent or,  
5 if the custodial parent approves, to the provider.

6 **Sec. 7. 24-A MRSA §2742, sub-§6** is enacted to read:

7 **6. Nondiscrimination.** An insurer may not impose  
8 requirements on a state agency that has been assigned the rights  
9 of an individual eligible for medical assistance and who is  
10 covered for health benefits from the insurer that are different  
11 from requirements applicable to an agent or assignee of any other  
12 individual so covered. If a child is otherwise eligible for  
13 health coverage, an insurer may not refuse to provide the  
14 coverage for the child because the child is eligible for medical  
15 assistance under Title 22.

### 18 SUMMARY

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21 This bill enacts procedures and methodologies for the  
22 Department of Human Services to enforce the medical child support  
23 requirements that were imposed by the federal Omnibus Budget  
24 Reconciliation Act of 1993.

25 In addition, this bill clarifies the nature of the  
26 Department of Human Services' rights to recoup Medicaid benefits  
27 out of personal injury awards or settlements by explicitly  
28 identifying that right as a statutory lien on the proceeds of  
29 such awards or settlements. This will ensure that the courts do  
30 not apply principles of subrogation or otherwise deny the  
31 department the right to be reimbursed fully from any kind of  
32 damage award or settlement. The department's right to be  
33 reimbursed fully for all Medicaid expenditures is derived from  
34 federal Medicaid law, which requires the department to collect  
35 enough for the State's share of Medicaid costs, as well as the  
36 federal government's share. This bill expressly states that the  
37 department's lien may not be reduced to reflect any pro rata  
38 share of attorney's fees or litigation costs.

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40  
41 This bill also changes language to recognize that, for  
42 estate recovery cases, the federal government has not developed  
43 criteria to govern the availability of a hardship waiver.  
44 Therefore, criteria developed by the Department of Human Services  
governs how a hardship waiver request will be reviewed.