

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

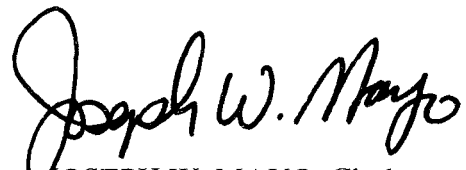
No. 1687

H.P. 1176

House of Representatives, March 4, 1999

An Act Relating to Medicaid Liens.

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


JOSEPH W. MAYO, Clerk

Presented by Representative THOMPSON of Naples.

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. 795, §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.

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

46 The commissioner's right to recover the reasonable value of
benefits provided constitutes a statutory lien on the proceeds of
48 an award or settlement from a 3rd party, ~~whether that award or
settlement is or is not intended to include compensation for
50 medical costs if recovery for Medicaid costs was or could have
been included in the recipient's claim for damages from the 3rd~~

2 party. The commissioner is entitled to recover the full amount
of the benefits actually paid out or, with regard to Medicaid
4 recipients who participated in the managed care program when the
commissioner has determined that collection will be
6 cost-effective, the reasonable value of benefits provided to the
7 extent that there are proceeds available for such recovery after
8 the deduction of reasonable attorney's fees and litigation costs
9 from the gross award or settlement. In determining whether
10 collection will be cost-effective, the commissioner shall
11 consider all factors that diminish potential recovery by the
12 department, including but not limited to questions of liability
13 and comparative negligence or other legal defenses, exigencies of
14 trial that reduce a settlement or award in order to resolve the
15 recipient's claim and limits on the amount of applicable
16 insurance coverage that reduce the claim to the amount
17 recoverable by the recipient. The department's statutory lien
18 may not be reduced to reflect an assessment of a pro rata share
19 of the recipient's attorney's fees or litigation costs. The
20 commissioner may compromise, or settle and execute a release of,
21 any claim or waive any claim, in whole or in part, if the
22 commissioner determines the collection will not be cost-effective
23 or that the best possible outcome requires compromise, release or
24 settlement.

25 **Sec. 2. 22 MRSA §14, sub-§2-F**, as amended by PL 1997, c. 795,
26 **§2**, is further amended to read:

27 **2-F. Disbursement.** A disbursement of any award, judgment
28 or settlement may not be made to a recipient without the
29 recipient or the recipient's attorney first paying to the
30 department the amount of the statutory lien from the award,
31 judgment or settlement or obtaining from the department a release
32 of any obligation owed to it for medical benefits provided to the
33 recipient. If a dispute arises between the recipient and the
34 commissioner as to the settlement of any claim that the
35 commissioner may have under this section, the 3rd party or the
36 recipient's attorney shall withhold from disbursement to the
37 recipient an amount equal to the commissioner's claim. Either
38 party may apply to the Superior Court or the District Court in
39 which an action based upon the recipient's claim could have been
40 commenced for an order to determine a reasonable amount in
41 satisfaction of the statutory lien considering whether an
42 independent action by the commissioner would have been
43 cost-effective.

44 45 46 47 48 SUMMARY

49 This bill allows the compromise, release or settlement of
50 Medicaid-related claims when the commissioner determines that the
best possible outcome requires compromise, release or settlement.