

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1260

S.P. 406

In Senate, March 6, 2003

**An Act To Improve MaineCare Cost-of-care Procedures Affecting
Nursing Facility Residents and to Establish Clearer Duties for
Powers of Attorney**

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MARTIN of Aroostook.
Cosponsored by Senators: BRENNAN of Cumberland, TURNER of Cumberland, WESTON
of Waldo, Representatives: CURLEY of Scarborough, DUGAY of Cherryfield, LEWIN of
Eliot.

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

Sec. 1. 22 MRSA §1826-A is enacted to read:

**§1826-A. Duties owed by persons who hold powers of attorney
and other agents to residents of health care facilities**

1. Applicability. An individual who holds a power of attorney, serves as a guardian or conservator or otherwise serves as a personal representative of a resident of a nursing facility, assisted living facility, residential care facility or related facility, referred to in this section as "an agent," is subject to the duties, obligations and procedures set forth in this section.

2. Fiduciary duty. An agent has a fiduciary duty with respect to all of that agent's actions on behalf of any person for whom that agent serves as agent, referred to in this section as "the principal." An agent shall apply the available resources of the principal to make timely payment for services rendered by a licensed health care facility to the principal. An agent shall work cooperatively with facility management and government payors to secure available coverage, including, but not limited to, coverage from the Medicare and MaineCare programs.

3. Enforcement. A provider of health care services to a principal, the department or the long-term care ombudsman may file a petition in the Superior Court or the Probate Court to determine the legality of acts or omissions of an agent or to compel an agent to submit an accounting of any actions on behalf of the principal. The accounting must be made by the agent within 60 days following a request, though this 60-day time frame may be shortened to 7 days in any matter that requires a timely decision affecting health care. These time limits may be shortened by the court for good cause shown. The court may terminate the power of attorney upon a determination that the agent has violated or is unfit to perform the agent's fiduciary duties under the power of attorney or that termination is in the best interest of the principal or the principal's estate.

4. Responsibility for costs and attorney's fees. The court may order the agent to pay reasonable attorney's fees to the petitioner if the court determines that the agent has violated the agent's fiduciary duties or has failed, without reasonable cause or justification, to submit accounts or reports after written request.

Sec. 2. 22 MRSA §3174-I, sub-§4 is enacted to read:

2 4. Cost-of-care determinations and adjustments. The
3 department may carry out periodic adjustments to an individual
4 MaineCare recipient's cost of care consistent with this
5 subsection and applicable federal laws and regulations.

6 A. To the extent reasonably practicable, the department
7 shall determine, on a prospective basis, the MaineCare cost
8 of care of an individual MaineCare recipient residing in a
9 nursing facility or other health care institution, referred
10 to in this subsection as "a health care institution." The
11 department shall simultaneously determine:

12 (1) The amount of the MaineCare payments to be paid to
13 the health care institution; and

14 (2) The amount of the income and other resources that
15 the individual MaineCare recipient and the recipient's
16 spouse may retain for their personal use.

17 B. When it is not reasonably practicable for the department
18 to make its initial cost-of-care determinations effective
19 prior to the beginning of a particular month, the department
20 shall make its initial determination as soon as practicable
21 and that determination may be effective retroactively for up
22 to 3 months prior to the date of the determination.

23 C. The department shall make monthly prospective MaineCare
24 payments to a health care institution for care rendered to
25 each MaineCare recipient in accordance with the cost-of-care
26 determination it has made in accordance with paragraph A or
27 B.

28 D. When the department has already made an initial
29 determination pursuant to paragraph A or B and the
30 department subsequently determines to adjust that
31 determination in a manner that reduces the cost-of-care
32 amount that is paid to a health care institution by the
33 MaineCare program, the department may not retroactively
34 reduce the amount of the MaineCare payment to the health
35 care institution unless the individual MaineCare recipient,
36 or the recipient's responsible party, has paid to the health
37 care institution the additional amount for which the
38 individual is determined responsible following the
39 department's redetermination.

40 E. The department, and not a health care institution, has
41 the obligation to recover from an individual MaineCare
42 recipient the amount by which the previously determined
43 MaineCare cost-of-care payment has been determined to exceed
44 the amount of MaineCare benefit that individual is entitled
45 to receive.

2 F. When an individual is not able to pay the increased
3 amount to a health care institution, the department may not
4 recoup from the health care institution any portion of the
5 MaineCare payments the department was obligated to pay to
6 the health care institution based on the prior
7 determination. When the individual MaineCare recipient
8 residing in the health care institution is unwilling or
9 unable to pay the additional amount, the MaineCare program
10 continues to be responsible for the full amount of the
11 originally calculated cost-of-care portion that was
12 allocated to the MaineCare program pursuant to that prior
13 determination.

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SUMMARY

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19 This bill provides that an individual who holds a power of
20 attorney, serves as a guardian or conservator or otherwise serves
21 as a personal representative of a resident of a nursing facility,
22 assisted living facility, residential care facility or related
23 facility has a fiduciary duty with respect to that individual's
24 actions on behalf of that resident. Such an individual shall
25 apply the available resources of the resident to make timely
26 payment for services rendered by a licensed health care facility
27 to the resident and work to secure available coverage, including
28 coverage from the Medicare and MaineCare programs.

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29 This bill requires the Department of Human Services, to the
30 extent reasonably practicable, to determine on a prospective
31 basis the MaineCare cost of care of an individual MaineCare
32 recipient residing in a nursing facility or other health care
33 institution and make monthly prospective MaineCare payments to
34 the health care institution. It provides that the department may
35 not retroactively reduce the amount of the MaineCare payment to a
36 nursing facility or other health care institution unless the
37 individual MaineCare recipient or the recipient's responsible
38 party has paid to the nursing facility or other health care
39 institution the additional amount for which the department has
40 determined the individual MaineCare recipient is responsible.