

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1179

S.P. 407

In Senate, March 8, 2005

**An Act To Establish Duties for Persons Who Hold Durable Powers
of Attorney or Act as Responsible Parties for Residents of Long-
term Care Facilities**

Reference to the Committee on Judiciary 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: MAYO of Sagadahoc, ROSEN of Hancock, ROTUNDO of
Androscoggin, Representatives: CRAVEN of Lewiston, FISCHER of Presque Isle, MILLS of
Farmington, PINGREE of North Haven.

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

4 Sec. 1. 18-A MRSA §5-510 is enacted to read:

5 §5-510. Duties owed by persons who hold durable powers of
6 attorney or act as responsible parties for residents
7 of long-term care facilities

8
9 (a) As used in this section, unless the context otherwise
10 indicates, the following terms have the following meanings.

11 (1) "Agent" means an individual who holds a power of
12 attorney or otherwise acts as a responsible party for
13 payment of financial obligations of and on behalf of a
14 principal.

15 (2) "Long-term care facility" means a nursing facility or
16 unit licensed pursuant to Title 22, chapter 405 or an
17 assisted living facility or program or a residential care
18 facility licensed pursuant to Title 22, chapter 1663 or 1664.

19 (3) "Principal" means a resident of a long-term care
20 facility.

21 (4) "Principal's resources" includes assets, income,
22 pensions, cash benefits, insurance proceeds and other
23 resources available or belonging to the principal.

24 (b) An agent is subject to the duties, obligations and
25 procedures set forth in this section.

26 (c) In exercising a power of attorney or otherwise acting
27 as a responsible party for payment of financial obligations of
28 and on behalf of a principal, an agent is under a fiduciary duty
29 to observe the standards observed by a prudent person dealing
30 with the property of another. The agent may not engage in
31 self-dealing that is contrary to the interests of the principal.

32 (d) If a principal may be eligible for coverage of health
33 care expenses by the Medicare and MaineCare programs or any other
34 federal and state public health insurance program, the agent
35 shall promptly apply for coverage and shall comply with the
36 requirements governing these programs. If the principal is
37 covered by any private health insurance or long-term care
38 insurance that provides benefits for the care provided by the
39 long-term care facility, the agent shall take appropriate action
40 to claim these benefits. Except for any exclusions or allowances
41 provided for under a public health insurance program, the agent
42 shall apply the principal's resources to make timely payment to
43

2 the long-term care facility for services rendered to the
3 principal.

4 (e) If there is reasonable cause to believe that an agent
5 has breached fiduciary duty as set forth in subsection (c), the
6 Department of Health and Human Services, the long-term care
7 ombudsman under Title 22, chapter 1453 or the affected long-term
8 care facility may file a petition in Probate Court. The
9 petitioner may request the court to:

10 (1) Determine whether the agent's acts or omissions are in
11 breach of the fiduciary duty owed to the principal;

12 (2) Compel the agent to submit an accounting or report of
13 any actions and omissions on behalf of the principal;

14 (3) Seek restitution from the agent of any misappropriated
15 resources of the principal;

16 (4) Terminate the power of attorney; or

17 (5) Take other action appropriate to the circumstances.

18 The court shall hold an expedited hearing within 30 days of the
19 filing of the petition, or within a shorter period of time, for
20 good cause shown in any matter that requires a timely decision
21 affecting health care or to forestall the misappropriation of the
22 principal's resources. The court may make orders and decrees and
23 take other actions that are necessary or proper in making
24 determinations on matters presented by a petition filed under
25 this subsection. In any transfer of the principal's resources to
26 the agent or any person designated by the agent occurring after
27 the date of admission to a long-term care facility and made for
28 less than full consideration when the transfer is not authorized
29 under a gift provision in the durable power of attorney, it is
30 presumed that the transfer was not a gift. The agent may
31 overcome the presumption if the agent proves by a preponderance
32 of the evidence that the transfer was authorized and was not the
33 result of fraud, undue influence, misrepresentation or
34 self-dealing.

35 (f) A court, after hearing pursuant to subsection (e), may
36 terminate or revoke the power of attorney or terminate the
37 agent's functioning as responsible party for a principal upon
38 determination that:

39 (1) The agent has breached the agent's fiduciary duty to
40 the principal or engaged in self-dealing;

2 residents of long-term care facilities and provides mechanisms
for enforcing those duties. The bill also permits collection of
attorney's fees and costs from persons who breach the duties
4 established by this bill.