

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1483

S.P. 509

In Senate, March 24, 2005

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**An Act To Amend the Laws Governing Reimbursement of Nursing  
Facilities and Nursing Home Admission Contracts**

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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 Senator: ROSEN of Hancock, Representatives: BURNS of Berwick,  
CAMPBELL of Newfield, GROSE of Woolwich, MILLER of Somerville, WALCOTT of  
Lewiston.

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

4 **Sec. 1. 22 MRSA §§1720 and 1721** are enacted to read:

5 **§1720. Return on equity for nursing facilities and private**  
6 **nonmedical institutions**

7  
8 A nursing facility, as defined in section 1812-A or any  
9 portion of a hospital or institution operating as a nursing  
10 facility, is entitled to reimbursement through the MaineCare  
11 program to provide a return on equity capital. A private  
12 nonmedical institution also is entitled to reimbursement through  
13 the MaineCare program to provide a return on equity capital. For  
14 proprietary providers, this return on equity must provide a  
15 reasonable return on equity capital invested and used in the  
16 provision of resident care and is entitled to be reimbursed as a  
17 fixed cost. The amount on an annual basis for proprietary  
18 providers must be a rate equal to the one-year United States  
19 Treasury bill rate plus 1%. For nonprofit providers, the return  
20 on equity must be 1/2 of the rate applicable to proprietary  
21 nursing facilities. The department may adopt rules to implement  
22 this section. Rules adopted pursuant to this section are routine  
23 technical rules as defined in Title 5, chapter 375, subchapter  
24 2-A. These rules must restore pertinent provisions of former  
25 MaineCare rules regarding return on equity, modified to reflect  
26 the rates set forth in this section.

27 **§1721. Nursing facility medical director reimbursement**

28  
29 The department shall include in its calculation of  
30 reimbursement for services provided by a nursing facility under  
31 section 1720 an allowance for the cost of a medical director in a  
32 base year amount not to exceed \$10,000, with such amount being  
33 subject to an annual cost-of-living adjustment.

34  
35 **Sec. 2. 22 MRSA §1826, sub-§2, ¶¶G and I,** as enacted by PL  
36 1985, c. 291, §1, are amended to read:

37  
38  
39 G. No contract or agreement may require the resident to  
40 authorize the facility or its staff to manage, hold or  
41 otherwise control the income or other assets of a resident,  
42 except that a facility may require a resident or the  
43 resident's legal representative, including, but not limited  
44 to, a guardian, conservator, power of attorney, responsible  
45 party or agent, to enter into and comply with contracts or  
46 agreements that reasonably ensure timely payment of the  
47 resident's financial obligations to the facility. These  
48 provisions may establish a duty to apply the resident's  
49 financial resources in a reasonable and financially prudent  
50 manner, giving highest priority to paying for the nursing

2 facility's services. In circumstances when timely payment  
3 has not been made to the facility, the resident or  
4 resident's legal representative may be obligated to:

5 (1) Pay directly to the facility the resident's income  
6 or other assets in an amount sufficient to ensure  
7 payment of all financial obligations to the facility  
8 and to carry out payment through direct deposit or  
9 electronic transfer means;

10 (2) Designate the facility as the representative payee  
11 for Social Security payments or other income sources;

12 (3) Otherwise apply the resident's resources to  
13 fulfill the resident's obligations; or

14 (4) Restore to the facility any financial resources of  
15 the resident that the resident's legal representative  
16 has improperly diverted to other purposes.

17 I. No contract or agreement may contain a provision which  
18 that provides for the payment of attorneys' attorney's fees  
19 or any other cost of collecting payments from the resident,  
20 except that attorney's fees and costs may be collected  
21 against any agent under a power of attorney who breaches the  
22 agent's fiduciary duty as set forth in Title 18-A, section  
23 5-508.

## 30 SUMMARY

31 This bill provides that a nursing facility or a private  
32 nonmedical institution is entitled to reimbursement through the  
33 MaineCare program to provide a return on equity capital. It  
34 requires the Department of Health and Human Services to include  
35 in its calculation of reimbursement for services provided by  
36 nursing facilities an allowance for the cost of a medical  
37 director. It allows a nursing facility to enter into a contract  
38 with a resident or a resident's legal representative that  
39 provides that payment of the nursing facility's services is the  
40 highest priority for the application of a resident's financial  
41 resources. It provides that if timely payment has not been made  
42 to the nursing facility, the resident or resident's legal  
43 representative may be obligated to pay the resident's income or  
44 other assets directly to the nursing facility, including through  
45 direct deposit or electronic transfer means; to designate the  
46 nursing facility as the representative payee for Social Security  
47 or other payments; to otherwise apply the resident's resources to  
48 fulfill the resident's obligations; or to pay to the nursing  
49 facility money that has been improperly diverted. The bill  
50

2 allows a nursing facility to collect attorney's fees and costs from an agent under a power of attorney who breaches that agent's fiduciary duty.