

MAINE STATE LEGISLATURE

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Date: 06-13-07

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STATE OF MAINE
SENATE
123RD LEGISLATURE
FIRST REGULAR SESSION

SENATE AMENDMENT "A" to H.P. 1091, L.D. 1566, Bill, "An Act To Allow the State Timely Opportunity To Participate in Settlement Negotiations for MaineCare Benefits"

Amend the bill by striking out all of section 1 and inserting the following:

Sec. 1. 22 MRSA §14, sub-§1, as amended by PL 2003, c. 20, Pt. K, §2, is further amended to read:

1. Recovery procedures. When benefits are provided or will be provided to a member under the MaineCare program administered by the department pursuant to the United States Social Security Act, Title XIX, including any prescription drug programs administered under the auspices of MaineCare, referred to collectively in this section as MaineCare, for the medical costs of injury, disease, disability or similar occurrence for which a 3rd party is, or may be, liable, the commissioner may recover from that party the cost of the benefits provided. This right of recovery is separate and independent from any rights or causes of action belonging to a member under the MaineCare program. For MaineCare recipients who participated in the MaineCare managed care program, "cost" means the total value of coverable medical services provided measured by the amount that MaineCare would have paid to providers directly for such services, were it not for the managed care system. The MaineCare program is the payor of last resort and shall provide medical coverage only when there are no other available resources. The Attorney General, or counsel appointed by the Attorney General, may, to enforce this right, institute and prosecute legal proceedings directly against the 3rd party in the appropriate court in the name of the commissioner.

In addition to the right of recovery set forth in this subsection, the commissioner must also be subrogated, to the extent of any benefits provided under the MaineCare program, to any cause of action or claim that a member has against a 3rd party who is or may be liable for medical costs incurred by or on behalf of the member. The Attorney General, or counsel appointed by the Attorney General, to enforce this right may institute and prosecute legal proceedings in the name of the injured person, member, guardian, personal representative, estate or survivor. If necessary to enforce the commissioner's right of recovery, the Attorney General, or counsel appointed by the Attorney General,

SENATE AMENDMENT

1 may institute legal proceedings against any member, including the agent, representative
2 or attorney of that member, who has received a settlement or award from a 3rd party.

3 The commissioner's right to recover the cost of benefits provided constitutes a statutory
4 lien on the proceeds of an award or settlement from a 3rd party if recovery for MaineCare
5 costs was or could have been included in the recipient's claim for damages from the 3rd
6 party to the extent of the recovery for medical expenses. The commissioner is entitled to
7 recover the cost of the benefits actually paid out when the commissioner has determined
8 that collection will be cost-effective to the extent that there are proceeds available for
9 such recovery after the deduction of reasonable attorney's fees and litigation costs from
10 the gross award or settlement. In determining whether collection will be cost-effective,
11 the commissioner shall consider all factors that diminish potential recovery by the
12 department, including but not limited to questions of liability and comparative negligence
13 or other legal defenses, exigencies of trial that reduce a settlement or award in order to
14 resolve the recipient's claim and limits on the amount of applicable insurance coverage
15 that reduce the claim to the amount recoverable by the recipient. The department's
16 statutory lien may not be reduced to reflect an assessment of a pro rata share of the
17 recipient's attorney's fees or litigation costs. The commissioner may, at the
18 commissioner's discretion, compromise, or otherwise settle and execute a release of, any
19 claim or waive any claim, in whole or in part, if the commissioner determines the
20 collection will not be cost-effective or that the best possible outcome requires
21 compromise, release or settlement.

22 **Sec. 2. 22 MRSA §14, sub-§2-D**, as amended by PL 2003, c. 20, Pt. K, §2, is
23 further amended to read:

24 **2-D. Notification of claim.** A recipient under the MaineCare program, or any agent,
25 representative or attorney representing a recipient under the MaineCare program, who
26 makes a claim to recover the medical cost of injury, disease, disability or similar
27 occurrence for which the party received medical benefits under the MaineCare program
28 shall ~~advise~~ notify the department in writing with prior to settlement negotiations and
29 provide information as required by the department of the existence of the claim. If the
30 notice is not given and the department's ability to recover for benefits paid is
31 compromised, the department may institute legal proceedings against a recipient,
32 including the agent, representative or attorney of that recipient, who has received a
33 settlement or award from a 3rd party. The department may accept a letter of MaineCare
34 claim protection in lieu of this section.

35 Amend the bill by inserting after section 2 the following:

36 **Sec. 3. 22 MRSA §14, sub-§2-F**, as amended by PL 2003, c. 20, Pt. K, §2, is
37 further amended to read:

38 **2-F. Disbursement.** Except as otherwise provided in this subsection, a disbursement
39 of any award, judgment or settlement may not be made to a recipient without the recipient
40 or the recipient's attorney first paying to the department ~~the~~ that amount of the statutory
41 lien from the award, judgment or settlement that constitutes reimbursement for medical
42 payments made or obtaining from the department a release of any obligation owed to it
43 for medical benefits provided to the recipient. If a dispute arises between the recipient
44 and the commissioner as to the settlement of any claim that the commissioner may have

1 under this section, the 3rd party or the recipient's attorney shall withhold from
2 disbursement to the recipient an amount equal to the commissioner's claim. Either party
3 may apply to the Superior Court or the District Court in which an action based upon the
4 recipient's claim could have been commenced for an order to determine a reasonable
5 amount in satisfaction of the statutory lien, consistent with federal law, ~~considering~~
6 ~~whether an independent action by the commissioner would have been cost effective. If~~
7 ~~either party applies under this subsection to the court for an order to determine a~~
8 ~~reasonable amount, the court may not order payment in satisfaction of such a lien for an~~
9 ~~amount less than 75% of the recovery, net of reasonable attorney's fees and litigation~~
10 ~~costs, unless that amount exceeds the amount of the lien.'~~

11 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
12 section number to read consecutively.

13 **SUMMARY**

14 This amendment clarifies the obligation to provide notice to the Department of
15 Health and Human Services when a MaineCare recipient has received benefits paid for by
16 the MaineCare program.

17 **SPONSORED BY:**

18 (Senator BRANNIGAN)

19 **COUNTY:** Cumberland