

MAINE STATE LEGISLATURE

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Amendment Name: Amendment CA (H-839) (LD 194 2020)

Date: 8/12/2020

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Date:

(Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 157, L.D. 194, Bill, “An Act To Allow the Reduction of a MaineCare Lien”

Amend the bill in section 1 in subsection 1 by striking out all of the last blocked paragraph (page 1, lines 30 to 44 and page 2, lines 1 to 4 in L.D.) and inserting the following:

The commissioner's right to recover the cost of benefits provided constitutes a statutory lien on the proceeds of an award or settlement from a 3rd party if recovery for MaineCare costs was or could have been included in the recipient's claim for damages from the 3rd party to the extent of the recovery for medical expenses. The commissioner is entitled to recover the cost of the benefits actually paid out when the commissioner has determined that collection will be cost-effective to the extent that there are proceeds available for such recovery after the deduction of reasonable attorney's fees and litigation costs from the gross award or settlement from that portion of the award or settlement attributable to past medical expenses paid by MaineCare after the pro rata deduction of reasonable attorney's fees and litigation costs. In determining whether collection will be cost-effective, the commissioner shall consider all factors that diminish potential recovery by the department. The portion of the award or settlement attributable to past medical expenses paid by MaineCare must be apportioned taking into consideration the full value of the recipient's claim and the fraction by which it has been reduced due to factors including but not limited to questions of liability and comparative negligence or other legal defenses, exigencies of trial that reduce a settlement or award in order to resolve the recipient's claim and limits on the amount of applicable insurance coverage that reduce the claim to the amount recoverable by the recipient. The department's statutory lien may not be reduced to reflect an assessment of a pro rata share of the recipient's attorney's fees or litigation costs. If an award is established by a court judgment, and the judgment allocates the portion of the award attributable to past medical expenses, that allocation is binding. If the commissioner and a recipient are unable to agree on an allocation of the amount of recovery attributable to past medical expenses paid by MaineCare, either party may submit the matter to a court for a determination of the allocation. The commissioner may, at the commissioner's discretion, compromise, or otherwise settle and execute a

COMMITTEE AMENDMENT

1 release of, any claim or waive any claim, in whole or in part, if the commissioner
2 determines the collection will not be cost-effective or that the best possible outcome
3 requires compromise, release or settlement.'

4 Amend the bill by adding after section 1 the following:

5 '**Sec. 2. Appropriations and allocations.** The following appropriations and
6 allocations are made.

7 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**
8 **Medical Care - Payments to Providers 0147**

9 Initiative: Provides funding to offset the loss of recoveries in MaineCare due to the
10 reduction of statutory liens for attorney's fees or litigation costs.

11	GENERAL FUND	2019-20	2020-21
12	All Other	\$0	\$544,200
13			
14	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$544,200</u>

15	FEDERAL EXPENDITURES FUND	2019-20	2020-21
16	All Other	\$0	\$955,800
17			
18	FEDERAL EXPENDITURES FUND TOTAL	<u>\$0</u>	<u>\$955,800</u>

20 **SUMMARY**

21 This amendment is the majority report. The amendment provides that MaineCare's
22 lien applies to the portion of the award or settlement attributable to past medical expenses
23 paid by MaineCare. If the judgment of the court allocates the portion of the award
24 attributable to past medical expenses, that allocation is binding. Otherwise, if the
25 commissioner and the recipient cannot agree on the allocation, either party may submit
26 the matter to a court for the court to determine the allocation. This amendment also
27 deletes the prohibition on reducing the statutory lien to reflect an assessment of a pro rata
28 share of the recipient's attorney's fees or litigation costs. The amendment adds an
29 appropriations and allocations section.

30 **FISCAL NOTE REQUIRED**

31 **(See attached)**



129th MAINE LEGISLATURE

LD 194

LR 1500(03)

An Act To Allow the Reduction of a MaineCare Lien

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

	FY 2019-20	FY 2020-21	Projections FY 2021-22	Projections FY 2022-23
Net Cost (Savings)				
General Fund	\$0	\$544,200	\$544,650	\$544,650
Appropriations/Allocations				
General Fund	\$0	\$544,200	\$544,650	\$544,650
Federal Expenditures Fund	\$0	\$955,800	\$955,350	\$955,350
Revenue				
Federal Expenditures Fund	\$0	\$955,800	\$955,350	\$955,350

Fiscal Detail and Notes

The bill includes General Fund appropriations to the Department of Health and Human Services of \$544,200 in fiscal year 2020-21 due to the elimination of the prohibition on reducing the statutory lien to reflect an assessment of the recipient's attorney's fees or litigation costs. Federal Expenditures Fund allocations are also included for the FMAP match.

The amendment also changes statute to state that the MaineCare lien can only apply to the portion of the award or settlement that is attributable to medical expenses paid by MaineCare. This limitation is already the law based on two Supreme Court decisions, *Arkansas v. Ahlborn*, 547 U.S. 268 (2006) and *Wos v. E.M.A.*, 568 U.S. 627 (2013), so there is no fiscal impact associated with this change.