



# 131st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2023

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Legislative Document

No. 1406

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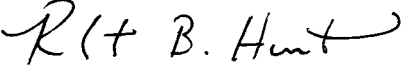
H.P. 902

House of Representatives, March 30, 2023

**An Act to Amend the Laws Regarding Estate Recovery and  
Planning for Long-term Care**

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

  
ROBERT B. HUNT  
Clerk

Presented by Representative HASENFUS of Readfield.  
Cosponsored by Senator BALDACCI of Penobscot and  
Representative: FAY of Raymond.

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

2 **Sec. 1. 22 MRSA §14, sub-§2-I, ¶H** is enacted to read:

3 H. Beginning January 1, 2024, the amount of the claim collected under this subsection  
4 is adjusted by subtracting the cost of collecting the claim and the amount attributable  
5 to federal payments to the State made according to the Federal Medical Assistance  
6 Percentage. The remainder must be refunded to the estate of the deceased MaineCare  
7 recipient.

8 **Sec. 2. Asset transfer for eligibility; standard of proof; amend rules.** The  
9 Department of Health and Human Services shall amend its rules in Chapter 332: MaineCare  
10 Eligibility Manual, Part 15, Transfer of Assets, in Section 1.6 to remove the standard of  
11 "clear and convincing evidence" required to prove that a transfer of an asset was not  
12 intended at the time of transfer to result in eligibility for Medicaid and replace it with a  
13 "preponderance of evidence" standard. The preponderance of evidence standard must  
14 apply to all asset transfers, including payments to a person who is a family member or  
15 guardian for the provision of services in assisting with activities of daily living or  
16 instrumental activities of daily living that prevented the applicant's transfer to residential  
17 or nursing facility care. The department shall adopt rules to implement this section no later  
18 than January 1, 2024. Rules adopted pursuant to this section are major substantive rules as  
19 defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

20 **Sec. 3. Public information regarding estate recovery in MaineCare**  
21 **program.** After consultation with interested parties and advocates and before January 1,  
22 2024, the Department of Health and Human Services shall prepare and publish  
23 informational documents, including brochures and postings on the department's publicly  
24 accessible website, educating the public about estate recovery requirements under the  
25 Maine Revised Statutes, Title 22, section 14. The publications must include information  
26 about long-term care planning and transferring and sheltering of assets as allowed under  
27 any federal and state law and rules. The department shall ensure that the information is  
28 broadly distributed to MaineCare members, area agencies on aging and other relevant  
29 organizations.

30 **Sec. 4. Public information regarding home and community-based services**  
31 **provided by family member or guardian.** After consultation with interested parties  
32 and advocates and before January 1, 2024, the Department of Health and Human Services  
33 shall prepare and distribute a brochure written in clear and easily understandable language  
34 describing the circumstances, requirements and eligibility to allow family members or legal  
35 guardians to be reimbursed for providing personal care services to a family member who  
36 is eligible to receive home and community-based services under the MaineCare program  
37 or a state-funded program. The brochure must include, at minimum, the following:

38 1. Information on which programs allow for family members or guardians to be  
39 reimbursed for providing services;

40 2. Information on how and where the family member can apply and how to register as  
41 a personal care agency, if required. It must also include information for the person eligible  
42 to receive home and community-based services on how and where to apply and must  
43 include information on self-direction services, as applicable; and

1           3. Any relevant information on consequences with respect to the estate recovery  
2 program of the Maine Revised Statutes, Title 22, section 14 of a family member being  
3 reimbursed for providing personal care services if it becomes necessary for the family  
4 member receiving services to enter a long-term care facility.

5           The brochure must be available to any new applicants applying for home and  
6 community-based services provided under the MaineCare program or a state-funded  
7 program. The department shall also make the brochure available to the general public and  
8 to the area agencies on aging and post it on the department's publicly accessible website.

9   **SUMMARY**

10           This bill requires the Department of Health and Human Services to return the state  
11 portion of estate recovery under the MaineCare program to the estate. This requirement  
12 does not impact the portion that is required to be paid to the Federal Government for estate  
13 recovery for Medicaid. The bill requires the department to amend its rules in Chapter 332:  
14 MaineCare Eligibility Manual, Part 15, Transfer of Assets, to change the standard for  
15 transfer of assets from "clear and convincing evidence" to "a preponderance of evidence."  
16 The rule is a major substantive rule. The bill also requires the department to develop  
17 educational materials to assist individuals with accessing programs that allow family  
18 members or legal guardians to be reimbursed for providing personal care services to a  
19 family member who is eligible to receive home and community-based services under the  
20 MaineCare program or a state-funded program. It also requires the department to develop  
21 educational materials to assist individuals with long-term care planning, estate planning  
22 and asset transferring and sheltering.