

132nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2025

Legislative Document

No. 169

H.P. 102

House of Representatives, January 14, 2025

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

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

R(+ B. Hunt

ROBERT B. HUNT Clerk

Presented by Representative HASENFUS of Readfield. Cosponsored by Senator HICKMAN of Kennebec and Senator: LIBBY of Cumberland.

- 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:
- H. Beginning January 1, 2026, the amount of the claim collected under this subsection
 is adjusted by subtracting the cost of collecting the claim and the amount attributable
 to federal payments to the State made according to the Federal Medical Assistance
 Percentage. The remainder must be refunded to the estate of the deceased recipient.

7 Sec. 2. Asset transfer for eligibility; standard of proof; amend rules. The 8 Department of Health and Human Services shall amend its rules in Chapter 332: MaineCare 9 Eligibility Manual, Part 15, Transfer of Assets, in Section 1.6 to remove the standard of "clear and convincing evidence" required to prove that a transfer of an asset was not 10 intended at the time of transfer to result in eligibility for Medicaid and replace it with a 11 12 "preponderance of evidence" standard. The preponderance of evidence standard must apply to all asset transfers, including payments to a person who is a family member or 13 14 guardian for the provision of services in assisting with activities of daily living or instrumental activities of daily living that prevented the applicant's transfer to residential 15 or nursing facility care. The department shall adopt rules to implement this section no later 16 17 than January 1, 2026. Rules adopted pursuant to this section are major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A. 18

19 Public information regarding estate recovery in MaineCare Sec. 3. 20 program. After consultation with interested parties and advocates and before January 1, 2026, the Department of Health and Human Services shall prepare and publish 21 informational documents, including brochures and postings on the department's publicly 22 23 accessible website, educating the public about estate recovery requirements under the 24 Maine Revised Statutes, Title 22, section 14. The publications must include information 25 about long-term care planning and transferring and sheltering of assets as allowed under any federal and state law, regulations and rules. The department shall ensure that the 26 27 information is broadly distributed to MaineCare members, area agencies on aging and other 28 relevant organizations.

29 Sec. 4. Public information regarding home and community-based services provided by family member or guardian. After consultation with interested parties 30 31 and advocates and before January 1, 2026, the Department of Health and Human Services shall prepare and distribute a brochure written in clear and easily understandable language 32 33 describing the circumstances, requirements and eligibility to allow family members or legal 34 guardians to be reimbursed for providing personal care services to a family member who 35 is eligible to receive home and community-based services under the MaineCare program or a state-funded program. The brochure must include, at a minimum, the following: 36

- Information on which programs allow for family members or guardians to be
 reimbursed for providing services;
- Information on how and where the family member can apply and how to register as
 a personal care agency, if required. It must also include information for the person eligible
 to receive home and community-based services on how and where to apply and must
 include information on self-direction services, as applicable; and

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

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

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SUMMARY

10 This bill requires the Department of Health and Human Services to return the state portion of estate recovery under the MaineCare program to the estate. This requirement 11 12 does not impact the portion that is required to be paid to the Federal Government for estate recovery for Medicaid. The bill requires the department to amend its rules in Chapter 332: 13 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." The rule is a major substantive rule. The bill also requires the department to develop 16 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.