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An Act To Impose Penalties for Certain Transfers of Assets at Less Than Fair Market Value by Individuals Receiving Long-term Care Services

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

Sec. 1. 22 MRSA §3174-QQ is enacted to read:

§ 3174-QQ. Penalties for certain transfers of assets at less than fair market value by individuals receiving long-term care services

1. Compliance with federal law and policy. The department shall comply with the applicable provisions of federal law that require state Medicaid plans filed with the federal Centers for Medicare and Medicaid Services to impose an ineligibility penalty for certain transfers and disposals of assets at less than fair market value by individuals and spouses of individuals who are receiving long-term care services that are funded by the MaineCare program. The ineligibility penalty must conform to the requirements of federal law, the United States Social Security Act, 42 United States Code, Section 1396p(c) and any applicable implementing regulations and guidance promulgated by the federal Centers for Medicare and Medicaid Services. The department shall implement both the mandated and the optional provisions set forth in these federal laws and policies.

2. Long-term care services subject to ineligibility penalty. The ineligibility penalty described in subsection 1 applies to individuals and their spouses who are seeking to qualify for institutional and noninstitutional long-term care services that are supported by state or federal MaineCare funding, including but not limited to the following types of long-term care services:

A. Nursing facility services;

B. Services at any other long-term care facility that officials at the federal Centers for Medicare and Medicaid Services consider equivalent to the services provided by a nursing facility;

C. Home-based or community-based services furnished under a federal Centers for Medicare and Medicaid Services-approved Medicare waiver;

D. Home health care services;

E. Home, community and personal care services; and

F. Any other long-term care services for which state or federal funding is provided, including but not limited to services provided to:

(1) Persons residing in cost reimbursement residential care facilities that receive payments under the department rules governing principles of reimbursement for residential care facilities;
or

(2) Persons residing in facilities that receive payments under the department rules governing MaineCare benefits for private nonmedical institution services.

3. Lookback period. In its review of disposals of assets at less than fair market value, the department shall apply a lookback period of 60 months for any transfers made on or after February 8, 2006 and a lookback period of 36 months for any transfers made prior to February 8, 2006.

4. Imposition of penalty period of ineligibility. In determining the penalty period of ineligibility for receipt of MaineCare funding by individuals and their spouses who have made disposals of assets for less than fair market value during the applicable lookback period, the department shall make determinations in accordance with the applicable provisions of federal law and policy, taking into account the applicable dates of the disposal, the date the individual first received applicable services and the date the individual applied for MaineCare-funded benefits, as well as the total uncompensated cumulative value of the assets transferred and the average monthly cost of the long-term care services being provided under the MaineCare program. The department shall follow applicable federal statutes and rules and federal Centers for Medicare and Medicaid Services guidance.

Sec. 2. Department to amend rules. The Department of Health and Human Services shall amend its rules and policies to conform to the provisions of the Maine Revised Statutes, Title 22, section 3174-QQ as soon as practicable. These rule changes must be adopted on an emergency basis pursuant to Title 5, section 8054, to be effective immediately upon adoption and an ongoing basis as routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill requires the Department of Health and Human Services to impose an asset transfer penalty, with a lookback period of 60 months, on a person seeking to qualify for MaineCare funding and support of any long-term care services, and who has made a transfer or other disposal of assets at less than fair market value.