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An Act To Further Define Duties for Persons Who Hold Powers of Attorney or Act as Agents for Residents of Long-term Care Facilities

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

Sec. 1. 22 MRSA §1826, sub-§2, ¶I, as enacted by PL 1985, c. 291, §1, is amended to read:

I. No contract or agreement may contain a provision ~~which~~that provides for the payment of ~~attorneys'~~attorney's fees or any other cost of collecting payments from the resident, except that attorney's fees and costs may be collected against any agent under a power of attorney who breaches the agent's duties as set forth in section 1826-A or Title 18-A, section 5-914.

Sec. 2. 22 MRSA §1826-A is enacted to read:

§ 1826-A. Agent's duties to principals who are residents of long-term care facilities to seek and obtain MaineCare benefits and other available payment sources

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agent" means an individual who holds a power of attorney for payment of financial obligations of a principal who resides in or is applying to reside in a long-term care facility and includes an individual who has executed as an agent either the standardized nursing facilities admissions contract or the standard contract for licensed assisted living programs, each promulgated by the department.

B. "Long-term care facility" means a nursing facility or unit licensed pursuant to chapter 405 or an assisted living facility or program or a residential care facility licensed pursuant to chapter 1663 or 1664.

C. "Principal" means a resident of a long-term care facility or a person applying for admission as a resident at a long-term care facility.

D. "Principal's resources" includes assets, income, pensions, cash benefits, insurance proceeds and other resources available or belonging to a principal.

2. Obligated to fulfill duties. An agent is obligated to fulfill each of the duties set forth in this section and Title 18-A, section 5-914, including but not limited to duties to act in good faith, to act loyally for the principal's benefit, to act with care, competence and diligence for the sole interest of the principal and to cooperate with any persons having authority to make health care decisions for the principal. The agent may not engage in self-dealing that is contrary to the interests of the principal.

3. Coverage and payment of health care expenses. If a principal may be eligible for coverage of health care expenses by the Medicare or MaineCare programs or any other federal or state public health insurance program that provides coverage and payment for long-term care facility services, the agent shall promptly apply for coverage and shall comply with all requirements governing these programs. If the principal is covered by private health insurance or long-term care insurance that provides benefits for the care provided by the long-term care facility, the agent shall take all appropriate and necessary actions in a timely fashion to claim these benefits and to comply with all related regulatory requirements. Except for any exclusions or allowances provided for under a public health insurance program, the agent shall apply the principal's resources to make timely payment to the long-term care facility for services rendered to the principal.

4. Standard contract changes. The department shall amend the terms and requirements of the standardized nursing facilities admissions contract set forth in section 1826 and the standard contract for licensed assisted living programs set forth in applicable rules to incorporate the duties and requirements set forth in this section and Title 18-A, section 5-914.

5. Remedies for breach of duties. If there is reasonable cause to believe that an agent has breached the duties set forth in this section and Title 18-A, section 5-914, the Attorney General, the department, the long-term care ombudsman under chapter 1453, the affected long-term care facility or other person interested in the estate, affairs or welfare of the principal, including the principal's parent, guardian, custodian, spouse or domestic partner, may file a petition in Probate Court. The petition may request the court to:

- A. Determine whether the agent's acts or omissions are in breach of the duties owed to the principal;
- B. Compel the agent to submit an accounting or report of any actions and omissions on behalf of the principal;
- C. Seek restitution from the agent of any misappropriated resources of the principal;
- D. Terminate the power of attorney; or
- E. Take any action appropriate to the circumstances.

SUMMARY

This bill defines duties on the part of persons who hold powers of attorney or act as agents for residents of long-term care facilities or for persons applying to become residents of long-term care facilities and requires them to promptly apply for coverage of services under the MaineCare and other applicable payment programs and comply with all requirements governing these programs. It also provides remedies for breach of those duties.

The bill further requires the Department of Health and Human Services to amend the terms and requirements of the standardized nursing facilities admissions contract set forth in the Maine Revised Statutes, Title 22, section 1826 and the standard contract for licensed assisted living programs set forth in applicable rules to incorporate these several duties and requirements.

HP0718, LD 1049, item 1, 127th Maine State Legislature
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The bill also permits collection of attorney's fees and costs from persons who breach the duties established by this bill.