



128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1714

H.P. 1194

House of Representatives, December 22, 2017

**An Act To Clarify Liability Pertaining to the Collection of Debts of
MaineCare Providers by the Department of Health and Human
Services**

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 19, 2017. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative GATTINE of Westbrook.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the Department of Health and Human Services amended its rules
4 governing the MaineCare program to provide that anyone with a direct or indirect
5 "ownership interest" of any size in a MaineCare provider, and every officer, director or
6 member of a MaineCare provider, is personally liable for the provider's debts owed to the
7 department; and

8 **Whereas,** the rule amendment contravenes a foundational principle of our political
9 and economic system assuring that a provider organization's members, directors and, if
10 applicable, shareholders are protected from the organization's liabilities except in
11 extraordinary circumstances; and

12 **Whereas,** the imposition of personal liability for a provider organization's debts on
13 employees, officers, directors, members and shareholders will disruptively alter
14 established insurance risks, financial arrangements and investor and creditor expectations
15 and may deter qualified persons from serving in positions of trust or responsibility in
16 nonprofit or for-profit organizations that deliver health care to Maine people; and

17 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
18 the meaning of the Constitution of Maine and require the following legislation as
19 immediately necessary for the preservation of the public peace, health and safety; now,
20 therefore,

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

22 **Sec. 1. 22 MRSA §1714-A, sub-§5,** as amended by PL 2003, c. 419, §5, is
23 further amended to read:

24 **5. Department may offset.** The department may offset against current
25 reimbursement owed to a provider or any entity related by ownership or control to that
26 provider any debt it is owed by that provider after the debt becomes collectible. The
27 department shall adopt rules that implement this subsection and define the ownership or
28 control relationships that are subject to an offset under this subsection, except that the
29 department may not define any ownership or control relationship as subject to an offset
30 unless the relationship allows the person whose relationship is the subject of the offset to
31 control at least the number of votes of the provider's governing body or management that
32 is needed to govern the operations of the provider. Rules adopted pursuant to this
33 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

34 **Sec. 2. 22 MRSA §1714-A, sub-§10** is enacted to read:

35 **10. No imposition of liability on other persons.** The department may not by any
36 means, including without limitation any rule or any contract or agreement with a
37 provider, impose liability for a debt under this section on any person other than the
38 provider notified of the debt pursuant to subsection 2 or a person subject to collection by
39 offset pursuant to rules adopted under subsection 5. This subsection does not prohibit the

1 department from seeking recovery of civil penalties from any person as provided in
2 section 15.

3 **Emergency clause.** In view of the emergency cited in the preamble, this
4 legislation takes effect when approved.

5 **SUMMARY**

6 This bill clarifies requirements for the definition of an ownership or control
7 relationship for purposes of determining when the Department of Health and Human
8 Services may offset debts owed to the department by a provider against current
9 MaineCare reimbursement due to that provider or an entity related to that provider. It
10 clarifies that the department may not offset current reimbursement owed to an entity
11 related by ownership or control to the provider unless the person whose relationship is the
12 subject of the offset has the voting power to govern the operation of the provider owing
13 the debt. The bill prohibits the department from imposing liability for a debt owed by a
14 provider on any person except a provider notified in accordance with statute of the debt
15 or a person subject to collection by offset. The bill retains the provision in current law
16 allowing the department to recover a debt by seeking a civil penalty for a false claim.