



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: MAINE RELAY 711

Tavis Hasenfus

50 Nobis Point
Readfield, ME 04355
(207) 446-0016

Tavis.Hasenfus@legislature.maine.gov

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Testimony of Rep. Tavis Hasenfus introducing
**LD 169, An Act to Amend the Laws Regarding Estate Recovery and Planning
for Long-term Care**
Before the Health and Human Services Committee

Senator Nangle, Representative Meyer and distinguished members of the Health and Human Services Committee. My name is Tavis Hasenfus, and I represent House District 57 and the communities of Readfield and Winthrop. I am here before you today to present **LD 169, An Act to Amend the Laws Regarding Estate Recovery and Planning for Long-term Care.**

The initial iteration of this bill came before this committee in the 130th as LD 1427. However, due to time constraints and the complexities of the bill we decided to dispose of the bill through a letter requesting some of the stakeholders review the issues addressed in LD 1427 and report back to this committee. Another iteration came before you in the 131st as LD 1406, which was ultimately amended into a study and received a unanimous Ought to Pass as Amended report from this committee. LD 1406 received the necessary two-thirds support in the House but ultimately failed as it was not properly carried over between the first and second regular sessions. It is with LD 169 that I hope we can get this necessary proposal across the finish line.

Prior to my work representing House District 57 in the Legislature, I practiced as attorney in a Winthrop law firm that specializes in elder law and estate planning.

I put forward this bill because I am constantly witnessing the pain that older Mainers are going through as they slowly lose the ability to care for themselves. Many of them are desperate to stay in their homes for the last years of their life, and still more wonder if they will have any of their hard-earned life savings to leave to their family. This all too common situation honestly breaks my heart.

I am also very aware that the individuals who are fighting Alzheimer's, dementia and similar diseases requiring nursing home care are often the victims of an unfair system that treats their diseases different from other diseases that are typically treated at a hospital.

For example, an elderly widow diagnosed with dementia and treated at a nursing home is expected to pay the full cost of care (Medicaid), whereas her counterpart of the same age and financial means who is diagnosed with cancer is afforded comprehensive coverage from the government, regardless of its cost (Medicare).

I realize that this problem extends far beyond our state borders, as the federal Medicaid program controls the baseline of what can and cannot be done. Nevertheless, there are still things we can do here in Maine to at least make life a little easier for the Mainers dealing with these heartbreaking illnesses in their later years while still fully complying with federal law – and allow them to pass something on to their family.

One step we can take here in Maine is to reassess the burden that we are placing on applicants for long-term care service who, in an attempt to stay in their home, paid a family member for their care. This bill helps keeps honest families from being denied MaineCare long-term care coverage for payments made by the applicant to a caretaker relative for services rendered.

Under current eligibility rules, an applicant is presumed to have made a disqualifying transfer, meaning they cannot receive Medicare, if, within the last five years, the applicant paid a family member for services that would otherwise qualify as fair market transfers – i.e. if the services were provided by contract it would be okay. The burden is then placed on the applicant to show by **clear and convincing evidence** (a much higher burden than the typical preponderance of the evidence standard used in most civil cases) that the transfer was not made to qualify for MaineCare services but rather as necessary payments made for care services. Unless the applicant can prove (at an elevated standard of clear and convincing) that the payments were made for care services rendered or another exempt purpose, the applicant will be denied long-term care until the penalty period runs. I have included with my testimony a factsheet from NCSL on these penalties, which was generated in 2023 when I last introduced this proposal.

In practice, this means that only applicants that preemptively executed a personal care contract are able to meet this standard. Changing the evidentiary standard to a preponderance of the evidence will be more fair and give honest families a chance.

Section 2 of this bill directs the Department to lower its high threshold of proof by requiring the Department to reduce the evidentiary burden from clear and convincing evidence to a preponderance of evidence standard when evaluating whether a transfer was made for the purpose of qualifying for Maine-care long term care. This can easily be done through rule

making, and major substantive rules would make sure the Legislature is consulted on any future changes.

It is important to note that an applicant will still need to prove that the transfer was compensation for services rendered, but at least they will not have a nearly insurmountable burden of proof in their pursuit. Moreover, reducing this standard of proof will not jeopardize federal funding as the federal rules do not require a clear and convincing evidence standard. North Carolina has a standard of greater weight of the evidence and Wisconsin's standard is a satisfactory showing. You can see these and other examples on page 3 of the NCSL factsheet.

We should not give individuals who were advised by their attorney to preemptively complete a personal care contract preference over those who had no legal help with their estate planning and made the same types of payments for the same types of services but did not preemptively memorialize their agreement in writing. At minimum, I am requesting a comprehensive educational program where the state can provide essential information in a preemptive manner to help all Mainers plan for their long-term care.

Now we enter into the educational piece of this bill. This directs the Department to assist family members wishing to care for their loved ones at home by creating an easy-to-access information database and publications on alternatives to institutionalization where a family member can receive information and assistance in navigating some of the programs that allow family members to be compensated by Medicaid for the care provided to a family member. This will be an important tool to help families who want to keep their loved ones at home navigate the complicated process of becoming eligible as a paid family caregiver under some of the recent waiver programs.

This database would also inform families of the rules regarding long-term care so they can be better informed on how to protect assets and develop a care plan that works for their family and allow an elder to leave a legacy. Ideally, this educational program will also include the state's current personal care contract be required to be published, as it is currently buried deep in the department's website.

Finally, the big ask of this bill is to end estate recovery in Maine. I have heard from so many older Mainers who are terrified that "the state might take everything" and they may not be able to leave their family any of their hard-earned life savings. Estate recovery has devastating impacts on inequality. Oftentimes the only difference between a lifetime of poverty and living the American dream is receiving the family homestead. Estate recovery came from a midnight deal in Congress and has been the subject of considerable discussion and study at the federal level.

Though estate recovery as a whole needs to be reassessed at the federal level, this bill asks for the State's portion of estate recovery to be returned to the family through a refund to the deceased applicant's estate. In the alternative, the committee may like to consider using the State's portion of estate recovery funds to reinvest in its family caregiver programs to allow willing family members the ability to care for their loved ones at home, which would both keep Mainer's in their homes and save money.

The constantly evolving rules make it harder and harder for family members who provide care to receive an exemption from estate recovery. Additionally, those that may have been well positioned to receive exemptions often find out too late. This bill moves the needle further toward exempting estate recovery by allowing an exemption from the state's share for services previously rendered by a caretaker.

In summary, this bill-

1. Ends the states portion of estate recovery by giving it back to the descendant's family.
2. Reduces the burden of proof for families arguing a transfer was made for appropriate care services rendered.
3. Tasks the Department with publishing materials to promote current family care programs and the rules relating to long term care applications.

I understand that this is a complex bill designed to tweak an already complex process. I am willing to work with the committee to find the best way to help older Mainers age in place longer and pass something on to their heirs.

I would like to add for the committee's consideration the following two links for further information on this matter.

1. https://www.kff.org/medicaid/issue-brief/what-is-medicaid-estate-recovery/?utm_source=chatgpt.com
2. https://wgme.com/newsletter-daily/maine-housing-crisis-lawmakers-push-for-reform-as-some-mainers-live-in-fear-over-the-state-taking-their-house?fbclid=IwY2xjawI_2KtleHRuA2F1bQIxMQABHWEzdI8Njls0x1Q0OvzNGW1giOtPzWr_X_dVlnnLBLhHt4_W_U151wWpDg_aem_PJOZYaWhQEGNd7Ew32MJdQ

I thank the committee for their time and consideration.