



Tavis Hasenfus

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

Tavis.Hasenfus@legislature.maine.gov

HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1400
TTY: MAINE RELAY 711

May 3, 2021

Testimony of Rep. Tavis Hasenfus introducing
LD 1427, An Act To Encourage Family Care of Aging Adults
Before the Health and Human Services Committee

Senator Claxton, Representative Meyer and distinguished members of the Health and Human Services Committee. My name is Tavis Hasenfus, and I represent House District 81 and the communities of Readfield, Winthrop and part of Monmouth. I am here before you today to present **LD 1427, An Act To Encourage Family Care of Aging Adults**.

In addition to representing House District 81 in the Legislature, I am also a practicing 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 elderly 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 their family. This all too common situation breaks my heart.

I also am very aware that the individuals who are fighting Alzheimer's, dementia and similar diseases 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, 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.

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 better for the Mainers dealing with these heartbreaking illnesses in their later years while still fully complying with federal law.

One step we can take 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. LD

1427 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 if, within the last five years, the applicant paid a family member for services. 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. In practice, this means that only applicants that executed a personal care contract are able to meet this standard. Section one of this bill directs the department to lower its high threshold of proof by preventing the department from presuming that the payment was a gift if a written contract did not preempt the transfer. The 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.

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 memorialize their agreement in writing.

Additionally, this bill directs the department to find a way to encourage family members to care for their loved ones at home by creating an alternative to institutionalization where a family member can receive compensation for the care provided.

A nursing home is not the preferred option for everyone, and there are many cases where a family member is perfectly capable and willing to care for a loved one but cannot afford to leave their current employment to do so. We should expand the current MaineCare elder care system to remove the financial barrier preventing many family members from caring for their elder. We can do this by having an option where DHHS can pay a family caretaker instead of a nursing home. We should develop a simple process where, as part of the MaineCare application, the applicant can select a trusted caretaker to care for them in lieu of entering a nursing home.

This bill directs the department to develop a program where family members who qualify can be paid by MaineCare to care for their aging adult. This process would require obtaining a federal waiver. As part of that process, the state would need to show that there is an alternative way to provide care for an applicant at a lesser cost. Through this section, the department would be tasked with developing a screening process to vet applicant caregivers, an oversight process to properly supervise the caregivers and make sure they are meeting the care needs of the recipient and determine the proper payment amount for the caregiver.

Finally, this bill deals with the concern so many older Mainers have: that they may not be able to leave their family any of their hard earned life savings. [Estate recovery has devastating impacts on economic and racial inequality.](#)

Oftentimes the only difference between a lifetime of poverty and living the American dream is receiving the family homestead.

Though estate recovery as a whole needs to be reassessed at the federal level, this bill asks only for a small sliver of the state's portion of estate recovery to be carved off for those families that have caretakers who provided unpaid services.

The department has recently updated its rules related to the caregiver exemption, making it even harder to qualify for the exemption of up to \$32,000.

“Previously, the rules stated that any caregiver whose current income level was below 200 percent of the current Federal Poverty Income Level, and who provided personal care services for part or all of the 2 years immediately prior to the Member's death or institutionalization, which care enabled the decedent to remain at home, could seek a waiver of a portion of the estate recovery claim. To receive the maximum deduction of \$32,000, the caregiver needed to prove that he or she provided services that enabled the decedent to remain at home and avoid institutionalization. Under the new proposed rules, the caregiver now needs to provide 24 hours a day care and the member could not be receiving in home services.” (Elder Law 2020 Legal Year In Review Jennifer L. Frank, Esq.)

The constantly evolving rules on this exemption make it harder and harder for family members who provided care to receive an exemption from estate recovery. 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.

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 thank the committee for their time and consideration.