

§14. Action against parties liable for medical care rendered to assistance recipients; assignment of claims

1. Recovery procedures. When benefits are provided or will be provided to a member under the MaineCare program administered by the department pursuant to the United States Social Security Act, Title XIX, including any prescription drug programs administered under the auspices of MaineCare, referred to collectively in this section as MaineCare, for the medical costs of injury, disease, disability or similar occurrence for which a 3rd party is, or may be, liable, the commissioner may recover from that party the cost of the benefits provided. This right of recovery is separate and independent from any rights or causes of action belonging to a member under the MaineCare program. For MaineCare recipients who participated in the MaineCare managed care program, "cost" means the total value of coverable medical services provided measured by the amount that MaineCare would have paid to providers directly for such services, were it not for the managed care system. The MaineCare program is the payor of last resort and shall provide medical coverage only when there are no other available resources. The Attorney General, or counsel appointed by the Attorney General, may, to enforce this right, institute and prosecute legal proceedings directly against the 3rd party in the appropriate court in the name of the commissioner.

In addition to the right of recovery set forth in this subsection, the commissioner must also be subrogated, to the extent of any benefits provided under the MaineCare program, to any cause of action or claim that a member has against a 3rd party who is or may be liable for medical costs incurred by or on behalf of the member. The Attorney General, or counsel appointed by the Attorney General, to enforce this right may institute and prosecute legal proceedings in the name of the injured person, member, guardian, personal representative, estate or survivor. If necessary to enforce the commissioner's right of recovery, the Attorney General, or counsel appointed by the Attorney General, may institute legal proceedings against any member, including the agent, representative or attorney of that member, who has received a settlement or award from a 3rd party.

The commissioner's right to recover the cost of benefits provided constitutes a statutory lien on the proceeds of an award or settlement from a 3rd party if recovery for MaineCare costs was or could have been included in the recipient's claim for damages from the 3rd party to the extent of the recovery for medical expenses. The commissioner is entitled to recover the cost of the benefits actually paid out when the commissioner has determined that collection will be cost-effective to the extent that there are proceeds available for such recovery after the deduction of reasonable attorney's fees and litigation costs from the gross award or settlement. In determining whether collection will be cost-effective, the commissioner shall consider all factors that diminish potential recovery by the department, including but not limited to questions of liability and comparative negligence or other legal defenses, exigencies of trial that reduce a settlement or award in order to resolve the recipient's claim and limits on the amount of applicable insurance coverage that reduce the claim to the amount recoverable by the recipient. The department's statutory lien may not be reduced to reflect an assessment of a pro rata share of the recipient's attorney's fees or litigation costs. The commissioner may, at the commissioner's discretion, compromise, or otherwise settle and execute a release of, any claim or waive any claim, in whole or in part, if the commissioner determines the collection will not be cost-effective or that the best possible outcome requires compromise, release or settlement.

[PL 2007, c. 381, §1 (AMD).]

2. Condition for eligibility.

[PL 1981, c. 24, §1 (RP).]

2-A. Assignment of rights of recovery. The receipt of benefits under the MaineCare program constitutes an assignment by the recipient or any legally liable relative to the department of the right to recover from 3rd parties for the medical cost of injury, disease, disability or similar occurrence for which the recipient receives medical benefits. The department's assigned right to recover is limited to

the amount of medical benefits received by the recipient and does not operate as a waiver by the recipient of any other right of recovery against a 3rd party that a recipient may have.

The recipient is also deemed to have appointed the commissioner as the recipient's attorney in fact to perform the specific act of submitting claims, making inquiries, requesting information, verifying other previous, current or potential coverage for the recipient or the recipient's spouse or dependents or endorsing over to the department any and all drafts, checks, money orders or any other negotiable instruments connected with the payment of 3rd-party medical claims to 3rd parties, liable parties or potentially liable 3rd parties. The appointment includes complete access to medical expense records and data, insurance policies and coverage and all other information relating to MaineCare's duty to cost-avoid and seek other coverage or payment response.

[PL 2007, c. 240, Pt. JJJ, §1 (AMD); PL 2007, c. 448, §7 (AMD); PL 2007, c. 448, §14 (AFF).]

2-B. Direct reimbursement to health care provider. When an insured is eligible under the MaineCare program for the medical costs of injury, disease, disability or similar occurrence for which an insurer is liable, and the insured's claim is payable to a health care provider as provided or permitted by the terms of a health insurance policy or pursuant to an assignment of rights by an insured, the insurer shall directly reimburse the health care provider to the extent that the claim is honored.

[PL 2003, c. 20, Pt. K, §2 (AMD).]

2-C. Direct reimbursement to department. When an insured is eligible under the MaineCare program for the medical costs of injury, disease, disability or similar occurrence for which an insurer is liable, and the claim is not payable to a health care provider under the terms of the insurance policy, the insurer shall directly reimburse the Department of Health and Human Services for any medical services paid by the department on behalf of a recipient under the MaineCare program to the extent that those medical services are payable under the terms of the insurance policy. If the insurer knows or has information upon which to reasonably conclude that the insured is a recipient of MaineCare services, the insurer shall advise the department in writing as to the existence of the claim prior to any other payment.

[PL 2003, c. 20, Pt. K, §2 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

2-D. Notification of claim. A recipient under the MaineCare program, or any agent, representative or attorney representing a recipient under the MaineCare program, who makes a claim to recover the medical cost of injury, disease, disability or similar occurrence for which the party received medical benefits under the MaineCare program shall notify the department in writing prior to settlement negotiations and provide information required by the department of the existence of the claim. If the notice is not given and the department's ability to recover for benefits paid is compromised, the department may institute legal proceedings against a recipient, including the agent, representative or attorney of that recipient, who has received a settlement or award from a 3rd party. The department may accept a letter of MaineCare claim protection in lieu of this section.

[PL 2007, c. 381, §2 (AMD).]

2-E. Notification of pleading. In an action to recover the medical cost of injury, disease, disability or similar occurrence for which the party received medical benefits under the MaineCare program, the party bringing the action shall notify the department of that action at least 10 days prior to filing the pleadings. The notification must provide timely opportunity for the department, at its discretion, to intervene in all actions as an interested party. If adequate opportunity to intervene is not given and the department's ability to recover for benefits paid is compromised, the department may institute legal proceedings against a recipient, including the agent, representative or attorney of that recipient, who has received a settlement or award from a 3rd party. The department may accept a letter of MaineCare claim protection in lieu of intervention. Department records indicating medical benefits paid by the department on behalf of the recipient are prima facie evidence of the medical expenses incurred by the recipient for the related medical services.

[PL 2007, c. 381, §3 (AMD).]

2-F. Disbursement. Except as otherwise provided in this subsection, a disbursement of any award, judgment or settlement may not be made to a recipient without the recipient or the recipient's attorney first paying to the department that amount of the award, judgment or settlement that constitutes reimbursement for medical payments made or obtaining from the department a release of any obligation owed to it for medical benefits provided to the recipient. If a dispute arises between the recipient and the commissioner as to the settlement of any claim that the commissioner may have under this section, the 3rd party or the recipient's attorney shall withhold from disbursement to the recipient an amount equal to the commissioner's claim. Either party may apply to the Superior Court or the District Court in which an action based upon the recipient's claim could have been commenced for an order to determine a reasonable amount in satisfaction of the statutory lien, consistent with federal law. [PL 2007, c. 381, §4 (AMD).]

2-G. Claims against estates of certain Medicaid recipients.
[PL 1993, c. 410, Pt. I, §2 (RP).]

2-H. Honoring of assignments. The following provisions apply to claims for payment submitted by the department or a health care provider.

A. Whenever the department submits claims to a health insurer, as included in 42 United States Code, Section 1396a(a)(25)(I), including self-insured plans, group health plans as defined in the federal Employee Retirement Income Security Act of 1974, Section 607(1), service benefit plans, managed care organizations, pharmacy benefit managers or other parties that are, by statute, contract or agreement, legally responsible for payment of a claim for a health care item or service, on behalf of a current or former recipient under the MaineCare program for whom an assignment of rights has been received, or whose rights have been assigned by the operation of law, the health insurer doing business in the State or providing coverage to a resident of this State must respond to the department within 60 days and:

- (1) Provide information, with respect to individuals who are eligible for or are provided medical assistance under the MaineCare program, upon the request of the State, to determine during what period the individual or the individual's spouse or dependents may be or may have been covered by a health insurer and the nature of the coverage that is or was provided by the health insurer, including the name, address and identifying number of the plan, in a manner prescribed by the United States Secretary of Health and Human Services;
- (2) Accept the State's right of recovery and the assignment to the State of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the state plan and, in the case of a responsible 3rd party that requires prior authorization for an item or service furnished to an individual eligible to receive medical assistance under the MaineCare program, accept authorization provided by the State that the item or service is covered under the MaineCare program for that individual, as if the authorization were the prior authorization made by the 3rd party for the item or service;
- (3) Respond to any inquiry by the State regarding a claim for payment for any health care item or service that is submitted not later than 3 years after the date of the provision of such health care item or service; and
- (4) Agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim, the type or format of the claim form, a failure to present proper documentation at the point-of-sale that is the basis of the claim or, in the case of a responsible 3rd party, a failure to obtain a prior authorization for the item or service for which the claim is being submitted, if:
 - (a) The claim is submitted by the State within the 3-year period beginning on the date on which the item or service was furnished; and

(b) Any action by the State to enforce its rights with respect to such claim is commenced within 6 years of the State's submission of such claim. [PL 2023, c. 162, §1 (AMD).]

B. [PL 2007, c. 240, Pt. JJJ, §3 (RP).]

C. A payment made as part of an assignment by a 3rd party to the MaineCare program or a contractor acting on behalf of the MaineCare program is considered final 2 years after the date of the payment and when final the payment is not subject to adjustment. [PL 2023, c. 162, §1 (NEW).]

[PL 2023, c. 162, §1 (AMD).]

2-I. Claims against estates of MaineCare recipients. Claims against the estates of MaineCare recipients are governed by this subsection.

A. The department has a claim against the estate of a MaineCare recipient when, after the death of the recipient:

(1) Property or other assets are discovered that existed and were owned by the recipient during the period when MaineCare benefits were paid for the recipient and disclosure of the property or assets at the time benefits were being paid would have rendered the recipient ineligible to receive the benefits;

(2) It is determined that the recipient was 55 years of age or older when that person received MaineCare assistance; or

(3) It is determined that the recipient has received or is entitled to receive benefits under a long-term care insurance policy in connection with which assets or resources are disregarded and medical assistance was paid on behalf of the recipient for nursing facility or other long-term care services. [PL 2003, c. 20, Pt. K, §2 (AMD).]

B. The amount of MaineCare benefits paid and recoverable under this subsection is a claim against the estate of the deceased recipient.

(1) As to assets of the recipient included in the probated estate, this claim may be enforced pursuant to Title 18-C, Article 3, Part 8.

(2) As to assets of the recipient not included in the probated estate, this claim may be enforced by filing a claim in any court of competent jurisdiction. [PL 2017, c. 402, Pt. C, §41 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Except for a claim collected through a voluntary payment arrangement under paragraph C-2, a claim may not be made under paragraph A, subparagraph (2) or (3) until:

(1) The recipient has no surviving spouse; and

(2) The recipient has no surviving child who is under age 21 or who is blind or permanently and totally disabled as defined in 42 United States Code, Section 1382c. [PL 2005, c. 12, Pt. DDD, §9 (AMD); PL 2005, c. 12, Pt. DDD, §17 (AFF).]

C-1. [PL 2007, c. 423, §1 (RP).]

C-2. The department shall provide heirs, assignees or transferees of a deceased recipient an opportunity to pay a claim under this subsection through a voluntary payment arrangement that is acceptable to the department. The payment arrangement may consist of a payment plan, promissory note or other payment mechanism. [PL 2005, c. 12, Pt. DDD, §9 (NEW); PL 2005, c. 12, Pt. DDD, §17 (AFF).]

D. Paragraph A, subparagraphs (2) and (3) apply only to a recipient who died on or after October 1, 1993 for MaineCare payments made on or after October 1, 1993. [PL 2003, c. 20, Pt. K, §2 (AMD).]

E. A claim under paragraph A, subparagraph (2) must be waived if enforcement of the claim would create an undue hardship under criteria developed by the department or if the costs of collection are likely to exceed the amount recovered. A waiver may be granted in full or in part. A waiver may not be granted if the recipient or waiver applicant acted to lose, diminish, divest, encumber or otherwise transfer any value of or title to an asset for the purpose of preventing recovery under this subsection. [PL 2005, c. 12, Pt. DDD, §9 (AMD); PL 2005, c. 12, Pt. DDD, §17 (AFF).]

F. As used in this subsection, unless the context otherwise indicates, the term "estate" means:

(1) All real and personal property and other assets included in the recipient's estate, as defined in Title 18-C, section 1-201; and

(2) Any other real and personal property and other assets in which the recipient had any legal interest at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir or assign of the deceased recipient through tenancy in common, survivorship, life estate, living trust, joint tenancy in personal property or other arrangement but not including joint tenancy in real property.

Unless otherwise required by the United States Social Security Act, 42 United States Code, Section 1396p(b), "estate" does not include an account established under a qualified ABLE program that complies with the requirements of the federal Achieving a Better Life Experience Act of 2014, Public Law 113-295. [PL 2019, c. 348, §2 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. The department may accept, hold, transfer title to and sell real property to collect a claim under this subsection. The department may receive title to real property from a personal representative, special or public administrator, creditor, heir, devisee, assignee or transferee in full or partial satisfaction of a claim under this subsection. [PL 2005, c. 12, Pt. DDD, §12 (NEW); PL 2005, c. 12, Pt. DDD, §17 (AFF).]

[PL 2019, c. 348, §2 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2-J. Authority to contract for attorney services. The department is authorized to pursue rights under this section, including 3rd-party reimbursement of MaineCare costs in workers' compensation claims cases, through contracted attorney services. The department may adopt rules as necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2007, c. 311, §1 (NEW).]

3. Definitions. For purposes of this section, "3rd party" or "liable party" or "potentially liable party" means any entity, including, but not limited to, any health insurer as included in 42 United States Code, Section 1396a(a)(25)(I) and any other parties that are, by statute, contract or agreement, legally responsible for payment of a claim for a health care item or service, that may be liable under a contract to provide health, automobile, workers' compensation or other insurance coverage that is or may be liable to pay all or part of the medical cost of injury, disease, disability or similar occurrence of an applicant or recipient of benefits under the MaineCare program. For purposes of this section and sections 18 and 19, an "insurance carrier" includes, but is not limited to, health insurers, group health plans as defined in 29 United States Code, Section 1167(1), service benefit plans and health maintenance organizations, as well as any other entity included in 42 United States Code, Section 1396a(a)(25)(I).

"Liable party," "potentially liable party" or "3rd party" also includes the trustee or trustees of any mortuary trust established by the recipient or on the recipient's behalf in which there is money remaining after the actual costs of the funeral and burial have been paid in accordance with the terms of the trust and in which there is no provision that the excess be paid to the decedent's estate. "Liable party," "potentially liable party" or "3rd party" may also include the recipient of benefits under the MaineCare program.

[PL 2007, c. 240, Pt. JJJ, §4 (AMD); PL 2007, c. 448, §9 (AMD); PL 2007, c. 448, §14 (AFF).]

SECTION HISTORY

PL 1979, c. 145 (NEW). PL 1979, c. 610, §§1,2 (AMD). PL 1981, c. 24, §§1,2 (AMD). PL 1981, c. 698, §92 (AMD). PL 1987, c. 203 (AMD). PL 1987, c. 621 (AMD). PL 1989, c. 397, §2 (AMD). PL 1989, c. 778, §§1-3 (AMD). PL 1991, c. 9, §§N1-6 (AMD). PL 1991, c. 815, §1 (AMD). PL 1993, c. 410, §§I2,3 (AMD). PL 1993, c. 707, §I1 (AMD). PL 1995, c. 462, §§D2,3 (AMD). PL 1997, c. 395, §E1 (AMD). PL 1997, c. 795, §§1-4 (AMD). PL 1999, c. 483, §§1,2 (AMD). PL 1999, c. 668, §§94-99 (AMD). PL 1999, c. 731, §§TT1-6 (AMD). PL 2003, c. 20, §K2 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 12, §DDD9 (AMD). PL 2005, c. 12, §DDD17 (AFF). PL 2007, c. 240, Pt. JJJ, §§1-4 (AMD). PL 2007, c. 311, §1 (AMD). PL 2007, c. 381, §§1-4 (AMD). PL 2007, c. 423, §1 (AMD). PL 2007, c. 448, §§7-9 (AMD). PL 2007, c. 448, §14 (AFF). PL 2009, c. 150, §3 (AMD). PL 2017, c. 402, Pt. C, §§41, 42 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 348, §2 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2023, c. 162, §1 (AMD).

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