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No. 1427

H.P. 1043

House of Representatives, April 12, 2021

An Act To Encourage Family Care of Aging Adults

Received by the Clerk of the House on April 8, 2021. 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 black ink, reading "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HASENFUS of Readfield.
Cosponsored by Senator BALDACCI of Penobscot and
Representatives: CRAVEN of Lewiston, FAY of Raymond, WHITE of Waterville.

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

2 **Sec. 1. 22 MRSA §3173-J** is enacted to read:

3 **§3173-J. Transfer of assets; relative caregiver**

4 Notwithstanding section 3174-A or any other law to the contrary, the department may
5 not assess a penalty on payments made to a relative caregiver for reasonable services
6 rendered within 5 years prior to applying for long-term care coverage of a member under
7 the MaineCare program. Such payments may not be considered a transfer of assets for less
8 than fair market value as long as there is reasonably reliable evidence that the services were
9 provided and that the compensation did not exceed the value of the services based on the
10 average cost of such services in the geographic area where the services were provided. In
11 the event a relative caregiver provided such services but was not paid for such services
12 prior to the applicant's applying under the MaineCare program, that person's inheritance
13 from the applicant, if any, is exempt from the State's share of estate recovery under section
14 14, subsection 2-I in an amount equal to the fair market value of the services rendered.

15 Neither a physician's statement nor a service contract is required as a condition of long-
16 term care coverage under the MaineCare program, but such a statement or contract may be
17 used as evidence that the services were provided and that compensation was reasonable.

18 The department shall adopt rules to implement this section, including its MaineCare
19 eligibility rules, and provide that this section is implemented by department staff in the
20 department's application review procedures and in the estate recovery process. Rules
21 adopted pursuant to this section are routine technical rules as defined in Title 5, chapter
22 375, subchapter 2-A.

23 As used in this section, "reasonable services" means personal care assistance services
24 the cost of which is equal to or less than comparable services provided in a facility setting
25 and "relative caregiver" means an immediate family member or other relative of a recipient
26 of services who provides reasonable services to that recipient of services.

27 **Sec. 2. Section 1915(c) waiver.** The Department of Health and Human Services
28 shall seek a waiver pursuant to Section 1915(c) of the United States Social Security Act to
29 allow a person eligible for long-term care services to select a relative to provide that person
30 with personal care assistance services, as defined in the Maine Revised Statutes, Title 22,
31 section 7302, subsection 7, in a home setting pursuant to Title 22, section 7307 and to allow
32 the provider of personal care assistance services to be reimbursed under the MaineCare
33 program.

34 **Sec. 3. Rule amendment.** The Department of Health and Human Services shall
35 amend its rules pertaining to eligibility for long-term care services under the MaineCare
36 program or state-funded programs as follows:

37 1. The department may not require, as a condition of eligibility, that an applicant have
38 a prospective, legally enforceable written agreement governing the paid services provided
39 by a relative;

40 2. The department may not presume that an applicant who has received paid services
41 from a family member without a written agreement has done so for the purpose of
42 qualifying for public benefits;

3. The department may not presume that an applicant has made a disqualifying transfer of assets in the absence of a statement from a physician that the paid services provided by a relative were necessary. The department may require that the applicant, at the time of application, obtain a written statement from the applicant's physician confirming that the services provided in the past were necessary to prevent the applicant's transfer to residential or nursing facility care;

4. The department may not presume that an applicant who lives in a residential care or nursing facility has made a transfer of assets for less than fair market value, triggering a period of ineligibility, if the applicant pays reasonable compensation to a relative to provide services that are not provided by the facility or that supplement the services provided by the facility;

5. The department shall amend its rules to change the definition of "services" to mean assistance provided by a relative with activities of daily living or instrumental activities of daily living; and

6. With respect to an applicant's reimbursement of a relative for the relative's providing necessities or purchasing goods and services for the applicant, the department may not require, as a condition of eligibility, a written agreement governing such reimbursement or a statement from a physician that the purchases are or were necessary.

The department shall adopt rules to incorporate the amendments required by this section by October 15, 2022 and shall notify the Joint Standing Committee on Health and Human Services of the completion of the rulemaking. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill provides that the Department of Health and Human Services may not assess a penalty on payments made to a family member providing personal support services within 5 years of a MaineCare member applying for long-term care coverage and exempts these payments from the State's share of estate recovery. It directs the Department of Health and Human Services to seek a waiver pursuant to Section 1915(c) of the United States Social Security Act to allow the provision of personal support services by a relative chosen by the recipient of services in a home setting.

It requires the Department of Health and Human Services to amend its rules on eligibility for long-term care services provided under the MaineCare program or state-funded programs to remove provisions and presumptions that disqualify some persons from eligibility for long-term care. Amendments to the rules will enable more people to qualify for long-term care services by removing the requirements of written agreements and by removing the presumptions regarding the purpose of paying for services and certain transfers. It directs the department to adopt routine technical rules to incorporate the amendments by October 15, 2022 and to notify the Joint Standing Committee on Health and Human Services of the completion of the rulemaking.