

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

—
H.P. 718 - L.D. 1049

**An Act To Further Define Duties for Persons Who Hold Powers of Attorney
or Act as Agents for Residents of Long-term Care Facilities**

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

Sec. 1. 22 MRSA §1826, sub-§2, ¶I, as enacted by PL 1985, c. 291, §1, is amended to read:

I. No contract or agreement may contain a provision ~~which~~ that provides for the payment of ~~attorneys'~~ attorney's fees or any other cost of collecting payments from the resident, except that attorney's fees and costs may be collected against any agent under a power of attorney who breaches the agent's duties as set forth in section 1826-A or Title 18-A, section 5-914 or against a conservator appointed under Title 18-A, section 5-404 for breach of the conservator's duties.

Sec. 2. Department of Health and Human Services; standard admission contract; rulemaking. The Department of Health and Human Services shall amend its rules Chapter 110: Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities and Chapter 113: Regulations Governing the Licensing and Functioning of Assisted Housing Programs to modify the standard admission contract for residents of nursing homes and assisted housing programs to provide enhanced notice of an agent's obligations relating to a resident's eligibility for MaineCare benefits and to the agent's filing an application for those benefits on the resident's behalf. The amendments to the rules must describe a nursing home's or assisted housing program's legal remedies if an agent fails to fulfill the agent's obligations with respect to a nursing home or assisted housing program resident's eligibility and application for MaineCare benefits. Modifications to the standard admission contract in accordance with this section must specify in substantially similar language that, by signing the standard admission contract, the resident of a nursing home or assisted housing program, the resident's agent and the nursing home or assisted housing program acknowledge the following obligations:

1. The nursing home or assisted housing program must explore whether the resident is financially eligible for MaineCare benefits and, if the resident is financially eligible,

must refer the resident or the resident's agent to the appropriate regional office of the office for family independence within the Department of Health and Human Services for the purpose of filing an application for MaineCare benefits;

2. The nursing home or assisted housing program must timely request a MaineCare eligibility assessment on behalf of the resident by submitting a completed referral form to the department or its authorized agent when the nursing home or assisted housing program has reason to believe that the resident is financially eligible for MaineCare benefits;

3. The nursing home or assisted housing program must remind the resident or the resident's agent on a quarterly basis of the availability of MaineCare benefits when the nursing home or assisted housing program has reason to believe that the resident is financially eligible for such benefits. The nursing home or assisted housing program must document each quarterly reminder provided to the resident or the resident's agent;

4. The nursing home or assisted housing program must assist the resident or the resident's agent in completing and filing an application for MaineCare benefits;

5. The resident or the resident's agent must make timely payment to the nursing home or assisted housing program for the resident's care from the resident's resources that are available for that purpose;

6. The resident or the resident's agent must notify the nursing home or assisted housing program when the resident or the resident's agent has reason to believe that the resident is financially eligible for MaineCare benefits and must timely apply for MaineCare benefits and provide to the department all information necessary to support the resident's application; and

7. As an alternative to their obligation to file an application for MaineCare benefits, the resident or the resident's agent must authorize the nursing home or assisted housing program to file an application for MaineCare benefits on behalf of the resident and timely provide all necessary financial information to the nursing home or assisted housing program or provide the nursing home or assisted housing program with all authorizations necessary to secure this financial information, so that the nursing home or assisted housing program may complete the application process on behalf of the resident.

The standard admission contract must provide that, if the resident's agent fails in the agent's obligation to ensure that the nursing home or assisted housing program is timely paid for the costs of the resident's monthly care or fails to perform any of the agent's obligations described in the amended rule or otherwise required by law or rule, in addition to any other legal remedy the nursing home or assisted housing program may possess, the nursing home or assisted housing program may pursue a legal action against the agent in Probate Court or District Court for review of the agent's performance. In addition to any other relief that the nursing home or assisted housing program may request from the court under such action, it must also include a request for attorney's fees and costs.

Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.