



# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

---

Legislative Document

No. 461

---

H.P. 337

House of Representatives, February 16, 2021

### **An Act To Allow the Reduction of a MaineCare Lien**

---

Received by the Clerk of the House on February 11, 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 cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative CARDONE of Bangor.

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

2 **Sec. 1. 22 MRSA §14, sub-§1**, as amended by PL 2007, c. 381, §1, is further  
3 amended by amending the 2nd blocked paragraph to read:

4 The commissioner's right to recover the cost of benefits provided constitutes a statutory  
5 lien on the proceeds of an award or settlement from a 3rd party if recovery for MaineCare  
6 costs was or could have been included in the recipient's claim for damages from the 3rd  
7 party to the extent of the recovery for medical expenses. The commissioner is entitled to  
8 recover the cost of the benefits actually paid out ~~when the commissioner has determined~~  
9 ~~that collection will be cost-effective to the extent that there are proceeds available for such~~  
10 ~~recovery after the deduction of reasonable attorney's fees and litigation costs from the gross~~  
11 ~~award or settlement from that portion of the award or settlement attributable to past medical~~  
12 ~~expenses paid by MaineCare after the pro rata deduction of reasonable attorney's fees and~~  
13 ~~litigation costs. In determining whether collection will be cost-effective, the commissioner~~  
14 ~~shall consider all factors that diminish potential recovery by the department, The portion~~  
15 ~~of the award or settlement attributable to past medical expenses paid by MaineCare must~~  
16 ~~be apportioned taking into consideration the full value of the recipient's claim and the~~  
17 ~~fraction by which it has been reduced due to factors including but not limited to questions~~  
18 ~~of liability and comparative negligence or other legal defenses, exigencies of trial that~~  
19 ~~reduce a settlement or award in order to resolve the recipient's claim and limits on the~~  
20 ~~amount of applicable insurance coverage that reduce the claim to the amount recoverable~~  
21 ~~by the recipient. The department's statutory lien may not be reduced to reflect an~~  
22 ~~assessment of a pro rata share of the recipient's attorney's fees or litigation costs. If an~~  
23 ~~award is established by a court judgment, and the judgment allocates the portion of the~~  
24 ~~award attributable to past medical expenses, that allocation is binding. If the commissioner~~  
25 ~~and a recipient are unable to agree on an allocation of the amount of recovery attributable~~  
26 ~~to past medical expenses paid by MaineCare, either party may submit the matter to a court~~  
27 ~~for a determination of the allocation. The commissioner may, at the commissioner's~~  
28 ~~discretion, compromise, or otherwise settle and execute a release of, any claim or waive~~  
29 ~~any claim, in whole or in part, if the commissioner determines the collection will not be~~  
30 ~~cost-effective or that the best possible outcome requires compromise, release or settlement.~~

31 **SUMMARY**

32 This bill provides that MaineCare's lien applies to the portion of the award or settlement  
33 attributable to past medical expenses paid by MaineCare. If the judgment of the court  
34 allocates the portion of the award attributable to past medical expenses, that allocation is  
35 binding. Otherwise, if the commissioner and the recipient cannot agree on the allocation,  
36 either party may submit the matter to a court for the court to determine the allocation.