

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND EIGHTEEN

—
H.P. 1194 - L.D. 1714

**An Act To Clarify Liability Pertaining to the Collection of Debts of
MaineCare Providers by the Department of Health and Human Services**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Department of Health and Human Services amended its rules governing the MaineCare program to provide that anyone with a direct or indirect "ownership interest" of any size in a MaineCare provider, and every officer, director or member of a MaineCare provider, is personally liable for the provider's debts owed to the department; and

Whereas, the rule amendment contravenes a foundational principle of our political and economic system assuring that a provider organization's members, directors and, if applicable, shareholders are protected from the organization's liabilities except in extraordinary circumstances; and

Whereas, the imposition of personal liability for a provider organization's debts on employees, officers, directors, members and shareholders will disruptively alter established insurance risks, financial arrangements and investor and creditor expectations and may deter qualified persons from serving in positions of trust or responsibility in nonprofit or for-profit organizations that deliver health care to Maine people; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §1714-A, sub-§5, as amended by PL 2003, c. 419, §5, is further amended to read:

5. Department may offset. The department may offset against current reimbursement owed to a provider or any entity related by ownership or control to that provider any debt it is owed by that provider after the debt becomes collectible. The department shall adopt rules that implement this subsection and define the ownership or control relationships that are subject to an offset under this subsection, except that the department may not define any ownership or control relationship as subject to an offset unless the relationship allows the person whose relationship is the subject of the offset to control at least the number of votes of the provider's governing body or management that is needed to govern the operations of the provider. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 22 MRSA §1714-A, sub-§10 is enacted to read:

10. No imposition of liability on other persons. The department may not by any means, including without limitation any rule or any contract or agreement with a provider, impose liability for a debt under this section on any person other than the provider notified of the debt pursuant to subsection 2 or a person subject to collection by offset pursuant to rules adopted under subsection 5. This subsection does not prohibit the department from seeking recovery of civil penalties from any person as provided in section 15.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.