

## §1714-A. Debts owed the department by providers

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Boarding home" means any facility that meets the definition of former section 7901-A, subsection 4 or the definition of residential care facility in section 7852, subsection 14. [PL 2001, c. 596, Pt. B, §3 (AMD); PL 2001, c. 596, Pt. B, §25 (AFF).]
- B. "Debt" means any amount of money that is owed to the department as a result of:
- (1) Overpayments that have been determined by a department audit pursuant to the applicable principles of reimbursement, overpayments as reported by a provider in an unaudited cost report or overpayments that have been discovered in any other manner;
  - (2) The department's authority to recapture depreciation;
  - (3) The assessment of fines and sanctions;
  - (4) Projected overpayments reported in an interim cost report. If an interim report is not filed at least 30 days prior to the transfer, "debt" also includes 5% of Medicaid reimbursement or cost reimbursement for the last fiscal year or \$50,000, whichever is less; or
  - (5) A final reconciliation decision and order by the former Maine Health Care Finance Commission. [PL 2007, c. 466, Pt. A, §42 (AMD).]
- C. "Former provider" means the person reimbursed by the department for the provision of health care services at a nursing home, boarding home, hospital or other provider of health care services prior to its transfer. [PL 2011, c. 687, §5 (AMD).]
- D. "Hospital" means any facility licensed pursuant to sections 1811 and 1817. [PL 1991, c. 9, Pt. G, §4 (NEW).]
- E. "Interim cost report" means a cost report that covers the current fiscal year and any prior periods not covered by a previously filed cost report. Cost incurred in the 90 days prior to the transfer need not be covered in the interim cost report. [PL 1991, c. 9, Pt. G, §4 (NEW).]
- F. "Nursing home" means any facility that meets the definition of section 1812-A, including an intermediate care facility for persons with intellectual disabilities. [PL 2011, c. 542, Pt. A, §27 (AMD).]
- G. "Person" means any natural person, partnership, association, corporation or other entity including any county, local or other governmental unit. [PL 1991, c. 9, Pt. G, §4 (NEW).]
- H. "Provider" means a person reimbursed by the department for the provision of health care services. [PL 1991, c. 9, Pt. G, §4 (NEW).]
- I. "Transfer" means any change in the ownership or control of a nursing home, boarding home, hospital or other provider of health care services, including, but not limited to, a sale, lease or gift of the land, building or operating entity, that results in:
- (1) The department reimbursing a person other than the former provider for the provision of care or services; or
  - (2) The discontinuation of the provision of care or services. [PL 2011, c. 687, §6 (AMD).]
- J. "Transferee" means any person to whom a nursing home, boarding home, hospital or other provider of health care services is transferred. [PL 2011, c. 687, §6 (AMD).]  
[PL 2011, c. 542, Pt. A, §27 (AMD); PL 2011, c. 687, §§5, 6 (AMD).]

**2. Establishment of debt.** A debt is established by the department when it notifies a provider of debt that the provider owes the department pursuant to a decision and order that constitutes final agency

action. A debt is collectible by the department 31 days after exhaustion of all administrative appeals and any judicial review available under Title 5, chapter 375.

[PL 2003, c. 419, §4 (AMD).]

**3. Notice of debt.** Any notice of debt issued to a provider by the department must include the following:

A. A statement of the debt accrued; [PL 1991, c. 9, Pt. G, §4 (NEW).]

B. A statement of the time period during which the debt accrued; [PL 1991, c. 9, Pt. G, §4 (NEW).]

C. The basis for the debt; [PL 1991, c. 9, Pt. G, §4 (NEW).]

D. The debtor's right to request a fair hearing within 30 days of receipt of the notice; and [PL 1991, c. 9, Pt. G, §4 (NEW).]

E. A statement that after a debt is established, the department may proceed to collect that debt through administrative offset, lien and foreclosure, or other collection action. [PL 1991, c. 9, Pt. G, §4 (NEW).]

[PL 1991, c. 568, §1 (AMD).]

**4. Successor liability.** Liability of transferees is governed by this subsection.

A. When a nursing home, boarding home, hospital or other provider of health care services is transferred, the transferee is liable for debts owed to the department by the former provider unless by the time of sale:

(1) All debts owed by the former provider to the department have been paid, except as stated in subparagraph (2);

(2) If the indebtedness is the subject of an administrative appeal, an escrow account has been created and funded in an amount sufficient to cover the debt as claimed by the department; or

(3) An interim cost report has:

(a) Been filed and an escrow account has been created and funded in an amount sufficient to cover any overpayment identified in the report; or

(b) Not been filed and an escrow account has been created and funded in an amount sufficient to cover 5% of Medicaid reimbursement or cost reimbursement for the last fiscal year or \$50,000, whichever is less. [PL 2011, c. 687, §7 (AMD).]

B. Any person affected by this subsection may request that the department identify the amount of any debt owed by a nursing home, boarding home, hospital or other provider of health care services. When the department receives such a request, it shall identify the debt within 30 days. Failure to identify the amount of a debt when a request is made in writing at least 30 days prior to the transfer precludes the department from recovering that debt from the transferee. [PL 2011, c. 687, §7 (AMD).]

C. The department shall provide written notice of the requirements of this section to the transferee in a letter acknowledging receipt of a request for a certificate of need or waiver of the certificate of need for a nursing home or hospital transfer or in response to a request for an application for a license to operate a boarding home or to provide other health care services. [PL 2011, c. 687, §8 (AMD).]

D. If a transferee becomes liable for a debt pursuant to this subsection, the transferee shall succeed to any defenses to the debt that could have been exercised by the former provider. [PL 1991, c. 9, Pt. G, §4 (NEW).]

E. Nothing in this subsection may limit the liability of the former provider to the department for any debts whether or not they are identified at the time of sale. In addition, a transferee has a cause of action against a former provider to the extent that debts of the former provider are paid by the transferee, unless the transferee has waived the right to sue the former provider for those debts. [PL 1991, c. 568, §2 (AMD).]

F. The commissioner may waive all or part of a transferee's liability under this subsection if the commissioner finds that a waiver of liability is in the public interest. [PL 1991, c. 568, §3 (NEW).]  
[PL 2011, c. 687, §§7, 8 (AMD).]

**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.  
[PL 2017, c. 442, §1 (AMD).]

**6. Liens.** Collection by lien is as follows.

A. After a debt is collectible, the amount stated in the notice of debt or overpayment is a lien in favor of the department against all real or personal property of the provider or any entity related by ownership or control to the provider. [PL 1991, c. 568, §4 (NEW).]

B. The lien attaches to all real and personal property of the responsible party when the department files in the registry of deeds of any county, or with any office appropriate for a notice with respect to personal property, a certificate that states the name of the responsible party, that party's address, the amount of debt accrued, the date of the underlying audit or decision and the name and address of the authorized agent of the department who issues the lien. [PL 1991, c. 568, §4 (NEW).]

C. When a lien has been filed and the person having notice of the lien possesses any property that may be subject to the lien, that property may not be paid over, released, sold, transferred, encumbered or conveyed unless:

(1) A release or waiver signed by the commissioner has been delivered to the person in possession of the property; or

(2) A court has ordered the release of the lien. A court may order a release only when alternative security has been provided for the debt owed the department. [PL 1991, c. 568, §4 (NEW).]

D. The commissioner may hold title to real or personal property for the purpose of foreclosure on filed liens. Foreclosure must proceed as follows.

(1) Actions to foreclose liens on real property filed under this subsection may be brought in the county where the lien is filed pursuant to the procedures of Title 14, chapter 713, subchapter VI. For purposes of foreclosure by civil action as described in Title 14, chapter 713, subchapter VI, a lien filed in accordance with this subsection constitutes a mortgage claim of the department on any real property owned by the debtor. Failure to pay the debt owed the department constitutes a breach of condition in the mortgage.

(2) Actions to foreclose liens on personal property filed under this subsection may be brought, pursuant to Title 14, chapter 509, subchapter III, in the county where the lien is filed. [PL 1991, c. 568, §4 (NEW).]  
[PL 1991, c. 568, §4 (NEW).]

**7. Other collection actions.** In addition to the other remedies provided in this section, the department may seek collection of any debt established under subsection 2 pursuant to Title 14, chapter 502, Title 36, chapter 7 and Title 36, section 185-A.

A business entity, including a sole proprietorship, is considered out of business for the purposes of the department's recovering indebtedness if, after reasonable investigation, the department or its legal counsel has certified in writing that the business entity is no longer conducting operations and that there is no realistic expectation of collecting any significant money from the entity based upon one or more of the following conditions:

A. The business entity has ceased offering retail or wholesale goods and services to the public; [PL 2003, c. 673, Pt. YYY, §1 (NEW).]

B. Upon reasonable investigation, nonexempt assets of the business entity of substantial value can not be identified or are otherwise unavailable for attachment and recovery; [PL 2003, c. 673, Pt. YYY, §1 (NEW).]

C. The business entity's physical location or locations of business are closed to the public; [PL 2003, c. 673, Pt. YYY, §1 (NEW).]

D. The business entity's corporate status is no longer in good standing; [PL 2003, c. 673, Pt. YYY, §1 (NEW).]

E. The business entity has admitted that it has insufficient assets to satisfy the debt; [RR 2007, c. 2, §8 (COR).]

F. After reasonable investigation, the department or its counsel can not locate the business entity or identify the debtor's nonexempt assets; and [PL 2003, c. 673, Pt. YYY, §1 (NEW).]

G. The business entity has transferred substantially all of its business assets to a 3rd party and there are no recoverable assets as a result of the transfer. [PL 2003, c. 673, Pt. YYY, §1 (NEW).]

Certification by the department that a business entity is out of business under this subsection does not preclude further collection and recovery procedures by the department, whether to formally adjudicate the indebtedness or to proceed with collection and recovery if the department becomes aware of facts that merit further recovery efforts.

[PL 2019, c. 659, Pt. D, §5 (AMD).]

**8. Rulemaking.** The department may adopt or amend any rule as necessary to implement this section.

[PL 1991, c. 568, §4 (NEW).]

**9. Cost-of-care overpayments.** On or before June 30, 2015, the department shall collect the total amount of debt arising from cost-of-care overpayments that exceeds by \$4,000,000 the amount of that debt that had been budgeted for fiscal year 2014-15 as of April 15, 2014. To the extent necessary to meet this requirement, the department may establish payment terms, modify as otherwise permitted by law existing payment agreements to accelerate payment terms and offset current payments in accordance with subsection 5. If 7 days' notice and opportunity to comment are provided, the department may adopt rules on an emergency basis to modify its implementation of subsection 5 on an emergency basis for purposes of collecting cost-of-care overpayments without making the emergency findings otherwise required by Title 5, section 8054, subsection 2.

[PL 2013, c. 594, §2 (NEW).]

**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.

[PL 2017, c. 442, §2 (NEW).]

#### SECTION HISTORY

PL 1991, c. 9, §G4 (NEW). PL 1991, c. 568, §§1-4 (AMD). PL 2001, c. 596, §§B3,4 (AMD). PL 2001, c. 596, §B25 (AFF). PL 2003, c. 419, §§4,5 (AMD). PL 2003, c. 673, §YYY1 (AMD). RR 2007, c. 2, §8 (COR). PL 2007, c. 466, Pt. A, §42 (AMD). PL 2007, c. 539, Pt. OO, §1 (AMD). PL 2011, c. 542, Pt. A, §27 (AMD). PL 2011, c. 687, §§5-8 (AMD). PL 2013, c. 594, §2 (AMD). PL 2017, c. 442, §§1, 2 (AMD). PL 2019, c. 659, Pt. D, §5 (AMD).

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