

CHAPTER 167
SB 138-FN – FINAL VERSION

03/21/13 0732s
03/21/13 1062s
22May2013... 1610h

2013 SESSION

13-0902
01/10

SENATE BILL ***138-FN***

AN ACT relative to support for certain residents of nursing and assisted living facilities.

SPONSORS: Sen. Forrester, Dist 2; Sen. Reagan, Dist 17; Sen. Hosmer, Dist 7; Sen. Sanborn, Dist 9; Sen. Gilmour, Dist 12; Rep. Cebrowski, Hills 7; Rep. LeBrun, Hills 32

COMMITTEE: Health, Education and Human Services

AMENDED ANALYSIS

This bill allows an assisted living facility or nursing home facility in certain circumstances to pursue recovery of costs of care rendered to a client from entities or certain other persons when an application for Medicaid is not timely made or when the client is not able to receive Medicaid assistance due to the transfer of the client's assets within the 5-year Medicaid look-back period.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to support for certain residents of nursing and assisted living facilities.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 167:1 New Section; Liability for Costs of Care. Amend RSA 151-E by inserting after section 18
2 the following new section:

3 151-E:19 Support for Certain Residents of Nursing Homes and Assisted Living Facilities.

4 I. In this section:

5 (a) “Costs of care” means all costs of health care and lodging and all related costs,
6 including transportation, medical, and personal care and any other costs, charges, and expenses
7 incurred by the facility in rendering care to the resident.

8 (b) “Department” means the department of health and human services.

9 (c) “Fiduciary” means a person to whom power or property has been formally entrusted
10 for the benefit of another such as an attorney-in-fact, legal guardian, trustee, or representative
11 payee.

12 (d) “Long-term care facility” means a facility licensed by the department pursuant to He-
13 P 803, 804, or 805.

14 (e) “Patient liability amount” means the amount of income that a resident is liable to
15 contribute toward the cost of his or her nursing facility care.

16 (f) “Person” includes persons both natural and otherwise, including, without limitation,
17 any corporation, partnership, limited liability company, trust or other entity.

18 (g) “Resident” refers to any person who inhabits or inhabited a long-term care facility for
19 any period of time.

20 II.(a) Except as provided in subparagraph (b), when an asset transfer made on or after the
21 effective date of this section results in a final determination of a Medicaid asset transfer
22 disqualification, the person who received the assets from a resident which resulted in the Medicaid
23 asset transfer disqualification shall be liable under this section to the long-term care facility for all
24 costs of care up to the amount transferred to the person. The person shall be liable at the facility’s
25 Medicaid rate for services for the period of asset transfer disqualification.

26 (b) It shall be an affirmative defense in any action instituted under subparagraph (a),
27 that the transfer of the asset which resulted in a final determination of a Medicaid asset transfer

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1 disqualification was not a disqualifying transfer under 42 U.S.C. 1396p. The court's decision
2 regarding such affirmative defense shall be made independently of the determination made by the
3 department. If that affirmative defense is proven, the person shall not be liable under subparagraph
4 (a).

5 III. A fiduciary who possesses or controls the income or assets of a resident of a long-term
6 care facility and has the authority and duty to file an application for Medicaid on behalf of a resident
7 shall be liable under this section to the long-term care facility for all costs of care which are not
8 covered by Medicaid due to the fiduciary's negligence in failing to promptly and fully complete and
9 pursue an application for Medicaid benefits for the resident. Upon a finding of negligence, the
10 fiduciary shall be liable to the facility for the costs of care at the facility's Medicaid rate for services
11 for the period of resulting noncoverage. At least 30 days before filing an action pursuant to this
12 paragraph, the facility shall send a written notice of its intent to file the action to any person whom
13 it intends to name as a defendant in the action. In any claim of negligence against a legal guardian,
14 notice of intent to file the action shall simultaneously be provided to the probate court having
15 jurisdiction over the guardianship. The probate court shall have jurisdiction over any action alleging
16 negligence of a legal guardian, and shall, in any such action, consider whether removal of the
17 guardian is in the ward's best interests in accordance with RSA 464-A:39, I(c) and shall have the
18 authority to assess liability and award damages under this section.

19 IV. Any fiduciary or person who has received authority over the income of a resident such as
20 a person who has been given or otherwise obtained authority over a resident's bank account, has
21 been named as or has rights as a joint account holder, or otherwise has obtained or received any
22 control over a resident's bank account or any other income of a resident, shall be liable under this
23 section to the long-term care facility to the extent that any such person or fiduciary refuses to pay
24 the patient liability amount due under Medicaid, provided that the person or fiduciary is in receipt of
25 written notice from the department of the patient liability amount at the time such income is
26 received by the fiduciary or person, and provided further that the liability of the person or fiduciary
27 shall be for amounts going forward from the receipt of the notice. At least 30 days before filing an
28 action pursuant to this paragraph, the facility shall send a written notice of its intent to file the
29 action to any person or fiduciary whom it intends to name as a defendant in the action.

30 V. No judgment obtained in any proceeding under this chapter shall be acted upon through
31 execution, levy, or otherwise during the pendency of any actually completed and filed application for
32 Medicaid. Attachments and trustee process to secure any judgment or potential judgment shall be
33 permitted subject to the discretion of the court to protect facilities from non-payment or from the
34 failure of the resident, or that resident's fiduciary, to cooperate in obtaining Medicaid.

35 VI. Nothing contained in this section shall prohibit or otherwise diminish any other causes
36 of action possessed by any such long-term care facility. The death of the resident shall not nullify or

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1 otherwise affect the liability of the person or persons charged with the cost of care rendered or the
2 patient liability amount as referenced in this section.

3 VII. A fiduciary under this section shall not be personally liable for the acts or omissions of
4 the fiduciary's predecessor, if any, solely by reason of his or her role as successor fiduciary.

5 167:2 New Section; Liability for Care. Amend RSA 507 by inserting after section 8-h the
6 following new section:

7 507:8-i Actions Under RSA 151-E:19. The defendant in any action brought under RSA 151-E:19
8 shall be liable to the long-term care facility as provided in RSA 151-E:19. An action under RSA 151-
9 E:19 shall be tried by bench trial. Nothing contained in RSA 151-E or this section shall prohibit or
10 otherwise diminish any other causes of action possessed by any such long-term care facility.

11 167:3 Effective Date. This act shall take effect upon its passage.

12

13 Approved: Enacted in accordance with Article 44, Part II, of N.H. Constitution, without signature of
14 the governor, July 2, 2013.

15

16 Effective Date: July 2, 2013