

CHAPTER 138  
SB 326-LOCAL – FINAL VERSION

03/27/14 1059s  
05/01/14 1644EBA

2014 SESSION

14-2768  
01/04

SENATE BILL        **326-LOCAL**

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

SPONSORS:        Sen. Gilmour, Dist 12

COMMITTEE:      Health, Education and Human Services

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ANALYSIS

This bill clarifies the procedure for a nursing home facility or an assisted living facility to recover costs of care rendered to a client when a person has not applied for Medicaid or when the person is not able to receive Medicaid due to an asset transfer.

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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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Fourteen*

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

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

1           138:1 Support for Certain Residents of Nursing Homes and Assisted Living Facilities;  
2 Definitions. Amend RSA 151-E:19, I to read as follows:

3           I. In this section:

4                   (a) ***“Asset transfer disqualification” means a transfer of assets for less than fair***  
5 ***market value by a Medicaid applicant or recipient as set forth in 42 U.S.C. 1396p(c)(1)(A)***  
6 ***and 42 U.S.C. 1396p(c)(1)(B).***

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

10                   ~~[(b)]~~ (c) “Department” means the department of health and human services.

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

14                   ~~[(d)]~~ (e) “Long-term care facility” means a facility licensed by the department pursuant  
15 to He-P 803, 804, or 805.

16                   ~~[(e)]~~ (f) “Patient liability amount” means the amount of income that a resident is liable  
17 to contribute toward the cost of his or her nursing facility care.

18                   ~~[(f)]~~ (g) ***“Period of asset transfer disqualification” means the period of***  
19 ***ineligibility for Medicaid required under 42 U.S.C. 1396p(c)(1)(E).***

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

22                   ~~[(g)]~~ (i) “Resident” refers to any person who inhabits or inhabited a long-term care  
23 facility for any period of time.

24           138:2 New Subparagraph; Support for Certain Residents of Nursing Homes and Assisted Living  
25 Facilities; Notice Required. Amend RSA 151-E:19, II by inserting after subparagraph (b) the  
26 following new subparagraph:

27                   (c) At least 45 days before filing an action pursuant to this paragraph, the facility shall

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1 send a written notice of its intent to file the action to any person whom it intends to name as a  
2 defendant in the action.

3 138:3 Support for Certain Residents of Nursing Homes and Assisted Living Facilities; Notice  
4 Required. Amend RSA 151-E:19, III to read as follows:

5 III.(a) 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 (b) *Within 10 days of admission of the resident to the facility, such facility shall*  
20 *provide written notice to the resident, and to any fiduciary of the resident whose identity*  
21 *and mailing address are disclosed to the facility at the time of admission. The notice shall*  
22 *be deemed to have been completed when delivered in hand or when placed in first class*  
23 *United States mail to the disclosed mailing address. The notice shall contain the following*  
24 *information:*

25 (1) *A summary of the fiduciary's potential responsibility to apply for*  
26 *Medicaid under this paragraph.*

27 (2) *An explicit reference to this section of the statute.*

28 (3) *Address and telephone number of the local Medicaid office.*

29 (4) *Name, address, and telephone number of any contact person at the*  
30 *facility who is responsible for assisting the resident in applying for Medicaid, if the facility*  
31 *has such a contact person.*

32 (c) *Any action under this paragraph shall be subject to the following*  
33 *affirmative defenses:*

34 (1) *The facility failed to provide notice to the fiduciary as described in*  
35 *subparagraph (b).*

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1                   (2) *The fiduciary was unable to fulfill his or her duties under this*  
2 *paragraph due to infirmity of body or mind.*

3           138:4 Effective Date. This act shall take effect upon its passage.

4   Approved: June 16, 2014

5   Effective Date: June 16, 2014