



John E. Baldacci, Governor

Brenda M. Harvey, Commissioner

Department of Health and Human Services  
MaineCare Services  
# 11 State House Station  
Augusta, Maine 04333-0011  
Tel: (207) 287-2674; Fax: (207) 287-2675  
TTY: 1-800-423-4331

**TO:** Interested Parties

**FROM:** Anthony Marple, Director, Office of MaineCare Services

**SUBJECT:** Proposed Rule: MaineCare Benefits Manual, Chapter VII, Section 5 Estate Recovery

The Department of Health and Human Services is proposing changes to the MaineCare Benefits Manual, Chapter VII, Section 5, Estate Recovery. This proposed rule makes four specific changes to the Estate Recovery program. The rule adds an exemption reflecting the value of benefits paid under a qualified long term care insurance policy. Amounts exempted from recovery due to qualified LTC insurance policies are expected to be significantly offset by overall MaineCare savings resulting due to more long term care services being paid through private insurance. This rule also limits the availability of the Care Given Exemption to persons whose incomes are less than or equal to 200 percent of the federal poverty level, as mandated by the federal Centers for Medicare and Medicaid Services. Under the new “care given exemption” language, the Department has far less authority to waive recovery from certain estate assets than it could under the pre-existing rules. The proposed rule also includes two policy changes mandated by the Legislature, barring estate recovery from members’ joint tenancy interests in real property and striking language relating to delayed recovery from the estates of certain survivors. The Department also made other structural, administrative, grammatical and clarifying within this rulemaking.

Rules and related rulemaking documents may be reviewed and printed from the Office of MaineCare Services website at [http://www.maine.gov/dhhs/oms/rules/provider\\_rules\\_policies.html](http://www.maine.gov/dhhs/oms/rules/provider_rules_policies.html) or for a fee, interested parties may request a paper copy of rules by calling 207-287-9368. For those who are deaf or hard of hearing and have a TTY machine, the TTY number is 1-800-423-4331.

A concise summary of the proposed rule is provided in the Notice of Agency Rule-making Proposal. This notice also provides information regarding the rule-making process. Please address all comments to the agency contact person identified in the Notice of Agency Rule-making Proposal.

## Notice of Agency Rule-making Proposal

**AGENCY:** Department of Health and Human Services, Office of MaineCare Services

**RULE TITLE OR SUBJECT:** MaineCare Benefits Manual, Chapter VII, Section 5, Estate Recovery

**PROPOSED RULE NUMBER:**

**CONCISE SUMMARY:** The Department of Health and Human Services is proposing changes to the MaineCare Benefits Manual, Chapter VII, Section 5, Estate Recovery. This proposed rule makes four specific changes to the Estate Recovery program. The rule adds an exemption reflecting the value of benefits paid under a qualified long term care insurance policy. Amounts exempted from recovery due to qualified LTC insurance policies are expected to be significantly offset by overall MaineCare savings resulting due to more long term care services being paid through private insurance. This rule also limits the availability of the Care Given Exemption to persons whose incomes are less than or equal to 200 percent of the federal poverty level, as mandated by the federal Centers for Medicare and Medicaid Services. Under the new "care given exemption" language, the Department has far less authority to waive recovery from certain estate assets than it could under the pre-existing rules. The proposed rule also includes two policy changes mandated by the Legislature, barring estate recovery from members' joint tenancy interests in real property and striking language relating to delayed recovery from the estates of certain survivors. The Department also made other structural, administrative, grammatical and clarifying within this rulemaking.

SEE [http://www.maine.gov/dhhs/oms/rules/provider\\_rules\\_policies.html](http://www.maine.gov/dhhs/oms/rules/provider_rules_policies.html) for rules and related rulemaking documents.

**THIS RULE WILL  WILL NOT  HAVE A FISCAL IMPACT ON MUNICIPALITIES.**

**STATUTORY AUTHORITY:** 22 M.R.S. §§ 42, 3173; P.L. 2009, c.150; P.L. 2007, c. 423, §1

**PUBLIC HEARING:**

Date:	August 26, 2009 9 AM
Location:	Conference Room # 4 Department of Health and Human Services Office of MaineCare Services 442 Civic Center Drive Augusta, ME

Any interested party requiring special arrangements to attend the hearing must contact the agency person listed below before August 21, 2009.

**DEADLINE FOR COMMENTS:** Comments must be received by midnight September 7, 2009

**AGENCY CONTACT PERSON:** Nicole Rooney, Comprehensive Health Planner  
**AGENCY NAME:** Office of MaineCare Services  
**ADDRESS:** 442 Civic Center Drive  
11 State House Station  
Augusta, Maine 04333-0011

**TELEPHONE:** 207-287-4460 **FAX:** (207) 287-9369 **TTY:** 1-800-423-4331 or 207-287-1828 (Deaf or Hard of Hearing)

---

---

10-144 Chapter 101  
MAINECARE BENEFITS MANUAL  
CHAPTER VII

SECTION 5

ESTATE RECOVERY

Established: 9/18/95  
Last Updated: 1/23/06

TABLE OF CONTENTS

PAGE

<b>5.01</b>	<b>STATUTORY AUTHORITY</b>	<b>1</b>
<b>5.042</b>	<b>DEFINITIONS</b>	<b>1</b>
5.042-1	Assets	1
5.042-2	<del>Estate</del> Department	1
5.042-3	<del>Member</del> Dependent	1
5.042-4	Disability	1
5.042-5	<del>Department</del> Estate	12
5.042-6	<del>Dependent</del> Health Maintenance Activities	12
5.042-7	<del>Legal interest</del> Institutional Care	12
5.042-8	<del>Institutional Care</del> Long Term Care Partnership	12
5.042-9	<del>Personal Care Services</del> Legal Interest	23
5.042-10	<del>Health Maintenance Activities</del> Members	23
5.02-11	Personal Care Services	3
<b>5.023</b>	<b>ELIGIBILITY</b>	<b>23</b>
<b>5.034</b>	<b>RECOVERY PROCEDURE</b>	<b>24</b>
<b>5.045</b>	<b>NOTICE</b>	<b>46</b>
<b>5.056</b>	<b>TIME OF CLAIM</b>	<b>56</b>
<b>5.067</b>	<b>HARDSHIP WAIVER</b>	<b>56</b>
<b>5.07</b>	<b>CARE GIVEN EXEMPTION</b>	<b>6</b>
<b>5.08</b>	<b>HARDSHIP WAIVER BASED ON CARE GIVEN EXEMPTION</b>	<b>9</b>
<b>5.09</b>	<b>ESTATE RECOVERY EXEMPTION WITH QUALIFIED LONG TERM CARE INSURANCE PARTNERSHIP POLICY</b>	<b>10</b>
<b>5.0810</b>	<b>CLAIM REDUCTION</b>	<b>711</b>
<b>5.0911</b>	<b>AGENCY REVIEW</b>	<b>812</b>

**5.01 STATUTORY AUTHORITY**

The following statutory authorities govern the definitions and rules defined under this Section of the MaineCare Benefits Manual:

22 M.R.S.A. §§ 14 (2-I), 42, 3173

22 M.R.S.A. § 3174-GG

42 U.S.C. §§1396a(a) (18)

42 U.S.C. § 1396p(b)

CMS, Medicaid State Plan Amendment (Maine), TN-06-006 (approved Feb. 15, 2007)

**5.042 DEFINITIONS**

5.021-1 **Assets** means property, real or personal, tangible or intangible, or any interest therein, and anything that may be the subject of ownership. It includes assets conveyed to a survivor, heir or assignee of the deceased member through a tenancy in common, survivorship, life estate, living trust, joint tenancy in personal property or other similar arrangement.

5.042-2 **Estate** includes:

A. ~~All real and personal property and other assets included in the member's estate; and~~

B. ~~Any other real and personal property and other assets in which the member has any legal interest at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir or assign of the deceased through tenancy in common, survivorship, life estate, living trust, joint tenancy in real and personal property or other arrangement. This provision shall be interpreted in a manner consistent with the MaineCare eligibility rules.~~

5.02-2 **Department** is the Department of Health and Human Services.

5.02-3 **Dependent** is:

A. A surviving spouse; or

B. A surviving child who is under age twenty-one (21); or

C. A surviving adult child who is blind or permanently and totally disabled.

5.01-3 ~~**Member** is an individual who receives MaineCare benefits.~~

5.042-4 **Disability** exists when an individual has been determined disabled using the Supplemental Security Income standards by the Social Security Administration or a disability determination has been made by the Medical Review Team (MRT) at the

10-144 Chapter 101  
MAINECARE BENEFITS MANUAL  
CHAPTER VII

SECTION 5

ESTATE RECOVERY

Established: 9/18/95

Last Updated: 1/23/06

5.02 **DEFINITIONS (cont)**

Office of Integrated Access and Support.

~~5.012-5~~ **Department** is the Department of Health and Human Services.

~~5.01-6~~ **Dependent** is:

~~A. A surviving spouse; or~~

~~-~~

~~B. A surviving child who is under age twenty one (21); or~~

~~C. A surviving adult child who is blind or permanently and totally disabled.~~

5.02-6 **Estate** includes:

A. All real and personal property and other assets included in the member's estate, as defined in 18-A, M.R.S.A. § 1-201; and

B. Any other real and personal property and other assets in which the member has any legal interest at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir or assign of the deceased through tenancy in common, survivorship, life estate, living trust, joint tenancy in personal property or other arrangement, but not including joint tenancy in real property.

5.02-7 **Health Maintenance Activities** include nursing, personal care services and additional activities for a member who otherwise would perform the activities if the member were physically and/or cognitively able to do so, and which help the member to live in the home and community. These additional activities include, but are not limited to, catheterization, ostomy care, preparation of food and tube feedings, bowel treatments, administration of medications, care of skin with damaged integrity, occupational and physical therapy activities such as assistance with prescribed exercise regimes, and transportation.

5.02-8 **Institutional Care** is care given in any MaineCare reimbursable facility providing twenty-four (24) hour care, food, shelter, and treatment services. This includes but is not limited to private non-medical institutions, nursing facilities, adult family care homes, intermediate care facilities for persons with mental retardation, psychiatric hospitals, residential care facilities, and assisted living facilities.

5.02-9 **Legal interest at Death**, for purposes of this section, means a legal interest immediately prior to death.

**5.02 DEFINITIONS (cont)**

5.02-10 **Long-term Care Insurance Partnership Program** allows for a specified amount of assets to be protected from estate recovery if a member has purchased a qualified long-term care insurance policy. The policy must meet the definition of a “qualified long-term care insurance policy” that is found in section 7702B(b) of the Internal Revenue Code of 1986.

The term “long-term care insurance policy” includes a certificate issued under a group insurance contract.

~~5.01-8~~ **Institutional Care** is any MaineCare reimbursable facility providing twenty four (24)-hour care, food, shelter, and treatment services. This includes but is not limited to private non-medical institutions, nursing facilities, adult family care homes, intermediate care facilities for persons with mental retardation, psychiatric hospitals, residential care facilities, and assisted living facilities.

5.02-11 **Member** is an individual who receives MaineCare benefits.

5.02-14~~2~~ **Personal Care Services** are activities of daily living (ADL) and instrumental activities of daily living (IADL) provided to or personally supervised for a member who does not reside in an institutional setting. ADLs include bed mobility, transfer, locomotion, eating, toilet use, bathing, and dressing. IADLs include meal preparation, routine housework, grocery shopping and storage of purchased groceries, and laundry done either within the residence or at an outside laundry facility.

~~5.01-10~~ **Health Maintenance Activities** include nursing, personal care services and additional activities for a member who otherwise would perform the activities if the member were physically and/or cognitively able to do so, and which help the member to live in the home and community. These additional activities include, but are not limited to, catheterization, ostomy care, preparation of food and tube feedings, bowel treatments, administration of medications, care of skin with damaged integrity, occupational and physical therapy activities such as assistance with prescribed exercise regimes, and transportation.

**5.023 ELIGIBILITY**

Following the death of a MaineCare member, the Department may assert a claim against the estate of that member or his or her beneficiary for MaineCare benefits that the member received when:

- A. The member owned undisclosed property or other assets during the period when MaineCare benefits were paid for the member and disclosure of the property or assets at

10-144 Chapter 101  
MAINECARE BENEFITS MANUAL  
CHAPTER VII

SECTION 5

ESTATE RECOVERY

Established: 9/18/95

Last Updated: 1/23/06

5.023 **ELIGIBILITY (cont)**

the time benefits were being paid would have rendered the member ineligible to receive the benefits; or

- B. The member was fifty-five (55) years of age or older when the member received MaineCare benefits; or
- C. The member received or was entitled to receive benefits for nursing facility services, long-term care services, or other institutional care services under a long-term-care insurance policy and MaineCare paid for those services on behalf of the member.

The Department's claim is limited to the amount paid by MaineCare on behalf of the member.

5.034 **RECOVERY PROCEDURE**

Assets subject to recovery pursuant to this section will be identified primarily through the MaineCare eligibility process. This method is not intended to be exclusive and assets may be identified through any legal means.

5.04-1 Processing Claims Against Assets

When it is determined that a MaineCare member's estate is subject to recovery, the Department may file:

- A. A claim in Probate Court against all assets included in the deceased member's estate. The process for filing such a claim is governed by existing provisions of the Probate Code regarding creditors' claims. See Title 18-A, Article 3, Part 8.
- B. A claim in any court of competent jurisdiction against real and personal property and other assets in which the member had any legal interest at death to the extent of that interest.
- ~~C.~~ C. A claim in any court of competent jurisdiction or any other legal means to recover the cost of medical services provided during a period of inaccurate eligibility. A notice of intent to recover shall be provided prior to filing suit.
- D. If asserted against the estate, a claim may not be enforced until:
  - 1. the member has no surviving spouse; and
  - 2. the member has no surviving child who is under age twenty-one (21) or who is blind or permanently and totally disabled as defined in 42 United States Code, Section 1382c.

10-144 Chapter 101  
MAINECARE BENEFITS MANUAL  
CHAPTER VII

SECTION 5

ESTATE RECOVERY

Established: 9/18/95

Last Updated: 1/23/06

5.034 RECOVERY PROCEDURE (cont)

F.E. ~~If a claim under this subsection is delayed pursuant to 5.03-1(D), the provisions of this section apply to any recovery under 5.03-1(D). The Department will seek to recover claims from a deceased member's spouse or beneficiary~~

a. ~~The following amounts are exempt from recovery:~~

~~1. the first one hundred thousand dollars (\$100,000) in value of the estate; and~~

~~b. the value of any asset (including the primary residence) of the member, that passed to the surviving spouse and was later transferred by the spouse for the sole benefit of a child who is blind or permanently and totally disabled as defined in 42-United States Code, Section 1382e.~~

~~2. The Department may recover a claim from the estate of the spouse, the estate of the beneficiary if the spouse or beneficiary received any assets from the member for less than fair market value from the member while the member was receiving MaineCare benefits, or from the estate of the member.~~

~~3.1. A claim under this paragraph is enforceable as to the value of the asset on the date the asset was received by the spouse or other beneficiary, less any value actually transferred to the member.~~

~~2. The amount of the claim is not decreased by the fact to reflect that the asset has been lost, diminished, sold, encumbered, transferred or the title otherwise adversely affected after the date of receipt by the spouse or other beneficiary.~~

F. The Department shall provide heirs, assignees or transferees of a deceased member an opportunity to pay a claim under this subsection through a voluntary payment arrangement that is acceptable to the Department. The payment arrangement may consist of a payment plan, promissory note, or other payment mechanism.

10-144 Chapter 101  
MAINECARE BENEFITS MANUAL  
CHAPTER VII

SECTION 5

ESTATE RECOVERY

Established: 9/18/95

Last Updated: 1/23/06

5.034 **RECOVERY PROCEDURE (cont)**

5.04-2 A claim made under this section must be waived if enforcement of the claim would create an undue hardship under criteria described herein or if the costs of collection are likely to exceed the amount recovered. A waiver may be granted in full or in part. A waiver may not be granted if the member or waiver applicant acted to lose, diminish, divest, encumber or otherwise transfer any value of or title to an asset for the purpose of preventing recovery under this subsection.

5.034-3 The Department may accept, hold, transfer title to and sell real property to collect a claim under this subsection. The Department may receive title to real property from a personal representative, special or public administrator, creditor, heir, devisee, assignee or transferee in full or partial satisfaction of a claim under this subsection.

Claims in subparagraphs above will be pursued against the person who holds the property or asset in which the member had an legal interest at the time of death, other than a bona fide purchaser for value. If the asset or property is transferred or dissipated with an intent to avoid the Department's claim, such action will be considered fraudulent and the person responsible will be held liable.

5.045 **NOTICE**

- A. Reasonable efforts to give notice of Estate Recovery requirements to members will be made at the time of application for MaineCare.
- B. Reasonable efforts to give notice will be provided pursuant to the relevant provisions of the Probate Code or to the legally authorized representative of the member's estate when recovery is being sought. If there is no legally authorized representative, the State shall make reasonable efforts to notify known family members or heirs. If no one comes forward on the member's behalf to settle the estate, the State may seek appointment as personal representative as a creditor pursuant to the Probate Code. Notice shall include the action the State intends to take, the basis for the action, the amount sought to be recovered and a copy of these rules.
- C. Lack of notice pursuant to this section does not bar application of Estate Recovery.

5.056 **TIME OF CLAIM**

A claim will not be enforced until the deceased member has no surviving dependent.

5.067 **HARDSHIP WAIVER**

A claim under 5.023(B) may be waived if enforcement of the claim would cause an undue hardship for the person, providing that the person holds a beneficial interest in the member's

10-144 Chapter 101  
MAINECARE BENEFITS MANUAL  
CHAPTER VII

SECTION 5

ESTATE RECOVERY

Established: 9/18/95

Last Updated: 1/23/06

5.067 **HARDSHIP WAIVER (cont)**

Estate, as defined in this Section, and properly requests a hardship waiver. To qualify for a waiver, a person who is not a son or daughter of the deceased member must also be an adult, aged eighteen (18) or over. If a determination is made that undue hardship exists, the Department may waive all or a portion of its claim.

A. An undue hardship exists when:

1. The collection of the Department's claim would result in placing the income of the person requesting the waiver below one hundred eighty percent (180%) of the current federal poverty level adjusted for the person's household size, and the total value of the household's assets is equal to or less than one hundred eighty percent (180%) of the current federal poverty annual level; or
2. The estate's real property is the primary income-producing resource for the person requesting the waiver, and enforcement of the Department's claim would result in placing that person's household income below one hundred eighty percent (180%) of the current federal poverty level, and the total value of the household's assets is equal to or less than one hundred eighty percent (180%) of the current federal poverty ~~annual~~ level.

B. All ~~reasonable~~ requests for a hardship waiver will be considered on an individual basis. The procedure for making a request is as follows:

1. A request for hardship waiver must be made within six (6) months from the member's death or within thirty (30) days from the notice of the Department's claim, whichever is later.
2. The request shall contain a written statement of the circumstances constituting the hardship and all supporting documentation.
3. The Department may request additional information, which must be provided within sixty (60) days of the request. If the information requested is not provided within sixty (60) days, the request for hardship waiver may be denied. The information requested may include, but not be limited to, any of the following:
  - a. Income statement and affidavit;
  - b. Tax return(s);
  - c. Will or bequest instructions;
  - d. Statement of resources, or
  - e. Receipts.

C. Additional information requested when applying for a hardship Waiver based on a Care Given Exemption may include but is not limited to any of the following:

5.067 **HARDSHIP WAIVER (cont)**

- a. Nursing home eligibility assessments;
- b. Home health agency plan of care;
- c. In-home service providers' report(s);
- d. Medical documentation including but not limited to reports, records and clinical notes.
- e. A written statement detailing the health maintenance activities and personal care services furnished to a member and all supporting documentation describing the care given, frequency and duration.

ED. The Department shall determine whether undue hardship exists within ninety (90) days from the date of the receipt of all information requested. Appropriate notice of the decision will be sent to the person making the request. All decisions regarding the hardship waiver will be provided in writing.

~~5.07 CARE GIVEN EXEMPTION~~

~~MaineCare will designate a portion of a member's estate as exempt from its estate recovery efforts if a person can demonstrate that health care maintenance activities or personal care services have been provided to a member, as outlined below:~~

- ~~A. The person requesting the Care Given Exemption provided health maintenance activities or personal care services as defined herein to the decedent during part or all of the two (2) years immediately prior to the member's death or institutionalization, enabling the decedent to remain at home and avoid placement in institutionalized care for an equivalent period of time. The person requesting the exemption must provide corroborating statements from the decedent's medical care providers.~~
- ~~B. MaineCare will consider a Care Given Exemption from estate recovery for health maintenance activities and personal care services performed for a member. The procedure for requesting a Care Given Exemption is as follows:~~
  - ~~1. A request for exemption must be made within six (6) months from the member's death or within thirty (30) days from the notice of the Department's claim, whichever is later.~~
  - ~~2. The request shall contain a written statement detailing the health maintenance activities and personal care services furnished to the member and all supporting documentation describing the care given, frequency, and duration.~~
  - ~~3. The Department may request additional information, which must be provided within sixty (60) days of the request. If the information requested is not provided within sixty (60) days, the request for exemption may be denied. The information requested may include but not be limited to any of the following:~~
    - ~~a. Nursing home eligibility assessments;~~
    - ~~b. Home health agency plan of care;~~

10-144 Chapter 101  
MAINECARE BENEFITS MANUAL  
CHAPTER VII

SECTION 5

ESTATE RECOVERY

Established: 9/18/95

Last Updated: 1/23/06

~~e. In home service providers report(s);~~  
5.07 **CARE GIVEN EXEMPTION (Cont.)**

~~d. Will or bequest instructions;~~

~~e. Medical reports documentation including but not limited to reports, records, and clinical notes.~~

~~C. All Care Given Exemptions will be based on and limited to the two (2) year time period immediately prior to the member's death or institutionalization. All Care Given Exemptions granted shall, in no event exceed the value of any MaineCare benefits paid on behalf of the member. Following the approval of an exemption the Department will use one of the following formulas to determine the exempt amount:~~

~~1. If the decedent received care including health maintenance and personal care activities defined in Section 5.01-9 and 5.01-10, the Department may grant an exemption not to exceed thirty-two thousand dollars (\$32,000) per year, prorated for each month of approved care given; or~~

~~2. If the decedent received care including personal care services and/or health maintenance activities less than those services he or she would have received as described in Section 5.01-8, the Department may grant an exemption not to exceed twelve thousand dollars (\$12,000) per year, prorated for each month of approved care given. If the decedent received approved care for three (3) or more health maintenance or personal care activities defined in Section 5.01 every day, the maximum exemption of twelve thousand dollars (\$12,000) may be granted. If the decedent received approved care for three (3) or more health maintenance or personal care activities defined in Section 5.01 at least three (3) times a week, a maximum exemption of six thousand dollars (\$6,000) may be granted.~~

5.08 **HARDSHIP WAIVER BASED ON CARE GIVEN EXEMPTION**

MaineCare may exempt a portion of a member's estate from estate recovery for health maintenance activities and personal care services performed for the member by an individual who has a beneficial interest in the Estate, as defined in this Section. If the current income level of the person requesting the waiver is below two hundred percent (200%) of the current federal poverty level, adjusted for the person's household size, MaineCare may designate a portion of a member's estate as exempt from its estate recovery efforts if a person can demonstrate that health care maintenance activities or personal care services have been provided to a member, as outlined below:

1. The person requesting the care given exemption provided health maintenance activities or personal care services as defined herein to the decedent during part or all of the two (2) years immediately prior to the member's death or institutionalization, enabling the decedent to remain at home and avoid institutionalization for an equivalent period of time. The person requesting the

**5.08 HARDSHIP WAIVER BASED ON CARE GIVEN EXEMPTION (cont)**

exemption must provide corroborating statements from the decedent's primary care physician or other approved medical care provider acceptable to MaineCare.

2. Any care given exemption granted will not exceed the value of MaineCare benefits paid on the behalf of the member, which would otherwise be subject to Estate Recovery. Following the approval of the hardship waiver based on a care given exemption, the Department will use one of the following formulas to determine the exempt amount:
  - a. If the decedent received care including health maintenance and personal care activities defined in Sections 5.02-6 and 5.02-11, that enabled the decedent to remain at home and avoid placement in institutionalized care as described in Section 5.02-7, the Department may grant an exemption not to exceed thirty-two thousand dollars (\$32, 000) per year, prorated for each month of approved care given; or
  - b. If the decedent received care including personal care services and/or health maintenance activities less than those services he or she would have received in institutionalized care as described in Section 5.02-7, the Department may grant an exemption not to exceed twelve thousand dollars (\$12, 000) per year, pro-rated for each month of approved care given; or
  - c. If the decedent received approved care for three (3) or more health maintenance or personal care activities defined in Section 5.02 everyday, the maximum exemption of twelve thousand dollars (\$12, 000) per year may be granted; or
  - d. If the decedent received approved care for three (3) or more health maintenance or personal care activities defined in Section 5.02 at least three (3) times per week, a maximum exemption of six thousand dollars (\$6,000) per year may be granted.

These allowances are in place to assist the member in maintaining independent living at home and reduce overutilization of institutional services.

3. Health care maintenance activities or personal care services previously used during the application process to reduce a transfer of assets cannot be counted again toward a care given exemption or a claim reduction.
4. All care given exemptions will be based on and limited to the two (2) year time period immediately prior to the member's death or institutionalization.

**5.08 HARDSHIP WAIVER BASED ON CARE GIVEN EXEMPTION (cont)**

**5.09 ESTATE RECOVERY EXEMPTION WITH QUALIFIED LTC INSURANCE PARTNERSHIP POLICY (This section will become effective upon CMS approval)**

- A. If a member covered under a long-term care insurance policy received benefits for which assets or resources were disregarded through the MaineCare Eligibility process, the Department will not seek adjustment or recovery from the member's estate for the amount of assets or resources disregarded. The amount of disregard is equal to the amount of the insurance benefit payments made to or on behalf of the individual.
- B. Before applying an exemption for a qualified long term care insurance policy described under this subsection, the Department must determine that the policy is a qualifying long term care insurance policy. The Department will verify the policy by reviewing the list of qualified policies posted on the Maine Bureau of Insurance website at <http://www.maine.gov/pfr/insurance/>.
- C. The Member is solely responsible for ensuring that any long term care insurance policy for which an exemption is sought qualifies for an exemption under the criteria adopted by the Bureau of Insurance. This can be done by contacting an eligibility specialist in the Department's Office of Integrated Access and Support (OIAS).
- D. Requests for an exemption under this subsection must be made to the Department within six (6) months from the member's death or within thirty (30) days from the notice of the Department's claim, whichever is later, and must be accompanied by:
1. A written statement explaining the circumstances of the request, description of the long term care insurance policy for which the exemption is sought, and statement supporting the member's belief that the policy qualifies for an exemption;
  2. Copies of all relevant policy documents, including but not limited to the signed policy agreement, account statements, and all invoices describing claims for payment.
  3. Any other information relevant to the exemptions sought. The Department may request additional information, which must be provided within sixty (60) days of the request. If the information requested is not provided within sixty (60) days, the request for an exemption under this subsection may be denied.

**5.108 CLAIM REDUCTION**

- A. When the collection of the Department's claim would otherwise deplete the estate fully, the Department, at its discretion may reduce its claim in order to permit whole or partial reimbursement of an heir or devisee for use of personal resources to protect against damage or loss of value to the member's real property during the member's lifetime.

The heir or devisee must request such reduction in writing, and the request must be supported by proof of payments made and the reasonableness of such payments.

- B. All reasonable requests for a claim reduction will be considered on an individual basis. The procedure for making a request is as follows:

1. A request for claim reduction must be made within six (6) months from the member's death or within thirty (30) days from the notice of the Department's claim, whichever is later.
2. The request must contain a written statement of the circumstances constituting the claim reduction and all supporting documentation.

- C. The Department may request additional information, which must be provided within sixty (60) days of the request. If the information is not provided within sixty (60) days, the request for claim reduction may be denied. The information requested may include but not be limited to the following:

1. Will or bequest instructions; and/or
2. Receipts/documentation of personal resources used to maintain property or pay member debts.

- D. All decisions regarding the claim reduction will be provided in writing.

**5.0911 AGENCY REVIEW**

A decision pursuant to this section is final unless within thirty (30) days of the date of the decision, the person making the request sends a written request for agency review to:

Estate Recovery  
Office of MaineCare Services  
Department of Health and Human Services  
11 State House Station  
Augusta, Maine 04333-0011

The agency review shall be conducted through the Department's Office of Administrative Hearings.

10-144 Chapter 101  
MAINECARE BENEFITS MANUAL  
CHAPTER VII

---

SECTION 5

**ESTATE RECOVERY**

Established: 9/18/95

Last Updated: 1/23/06

---

5.11 **AGENCY REVIEW (cont)**

If the person making the request is dissatisfied with the final decisions of the Office of Administrative Hearings, he/she may appeal this final agency decision to the Superior Court.