

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 226

S.P. 72

In Senate, January 24, 2017

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**An Act To Protect and Improve the Health of Maine Citizens and  
the Economy of Maine**

(EMERGENCY)

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.

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

**Whereas**, over 74,000 people in this State are at risk of losing access to affordable health care due to actions being considered by Congress; and

**Whereas**, cancer, heart disease and stroke are among the leading causes of death in this State and among the most common and costly, yet preventable, of all health problems; and

**Whereas**, drug overdose deaths during the first 9 months of 2016 in this State surpassed the total for all of 2015, with at least 286 deaths, nearly one death every day, reported by the end of September;

**Whereas**, between 25,000 and 30,000 people seeking long-term drug treatment in this State last year were unable to get treatment, according to the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration;

**Whereas**, federal health care funds are available to pay for cancer prevention and treatment, cardiovascular treatment and many other life-saving preventative health care services; and

**Whereas**, federal health care funds are available to pay for prevention, treatment and recovery services for uninsured individuals and people with low income; and

**Whereas**, immediate enactment of this legislation is necessary to ensure that people in this State are protected from changes that would affect their access to preventative health care and treatment services and will continue to have access to affordable health care; 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:**

## PART A

**Sec. A-1. 22 MRSA §3174-G, sub-§1, ¶F**, as amended by PL 2011, c. 380, Pt. KK, §2, is further amended to read:

F. A person 20 to 64 years of age who is not otherwise covered under paragraphs A to E when the person's family income is below or equal to 125% of the nonfarm income official poverty line, provided that the commissioner shall adjust the maximum eligibility level in accordance with the requirements of the paragraph.

(2) If the commissioner reasonably anticipates the cost of the program to exceed the budget of the population described in this paragraph, the commissioner shall lower the maximum eligibility level to the extent necessary to provide coverage to as many persons as possible within the program budget.

(3) The commissioner shall give at least 30 days' notice of the proposed change in maximum eligibility level to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters; ~~and~~

**Sec. A-2. 22 MRSA §3174-G, sub-§1, ¶G,** as enacted by PL 2011, c. 380, Pt. KK, §3, is amended to read:

G. A person who is a noncitizen legally admitted to the United States to the extent that coverage is allowable by federal law if the person is:

(1) A woman during her pregnancy and up to 60 days following delivery; or

(2) A child under 21 years of age; ~~and~~

**Sec. A-3. 22 MRSA §3174-G, sub-§1, ¶H** is enacted to read:

H. No later than 180 days after the effective date of this paragraph, a person who is not otherwise eligible for assistance under this chapter and who is under 65 years of age, not pregnant, not entitled to or enrolled for benefits under Part A of subchapter XVIII, Title 18 of the Social Security Act or enrolled for benefits under Part B of subchapter XVIII, Title 18 of the Social Security Act when the person's income is at or below 133% plus 5% of the nonfarm income official poverty line for the applicable family size. The department shall provide to such person, at a minimum, the same scope of medical assistance as is provided to a person described in paragraph E.

(1) Cost sharing, including copayments, for coverage established under this paragraph may not exceed the maximum allowable amounts authorized under section 3173-C, subsection 7.

(2) The department may, upon obtaining any necessary federal or state approvals, limit eligibility under this paragraph for medical assistance to persons with income that does not exceed 100% plus 5% of the nonfarm income official poverty line for the applicable family size if the department uses any available federal and state allocations, appropriations or other available funding achieved through the limiting of eligibility to the extent available to ensure that persons otherwise described in this paragraph, with income between 100% plus 5% and 133% plus 5%, of the nonfarm income official poverty line for the applicable family size, have access to medical assistance at a cost for premiums that does not exceed 2% of family income and a cost for copayments, coinsurance deductibles and any other cost sharing that does not exceed 5% of the family's income.

(3) The department shall adopt rules, including emergency rules pursuant to Title 5, section 8054, if necessary, to implement this paragraph in a timely manner to

1 ensure that the persons described in this paragraph are enrolled for and eligible to  
2 receive services no later than 180 days after the effective date of this paragraph.  
3 Rules adopted pursuant to this subparagraph are routine technical rules as defined  
4 by Title 5, chapter 375, subchapter 2-A except that rules adopted to implement  
5 subparagraph (2) are major substantive rules as defined by Title 5, chapter 375,  
6 subchapter 2-A.

7 (4) The department may contract with health insurance carriers authorized in this  
8 State under Title 24-A to provide coverage as authorized in this paragraph to  
9 maximize savings and to ensure access to and quality of services.

## 10 **PART B**

11 **Sec. B-1. Waivers, state plan amendments or other approvals.** Within 90  
12 days of the effective date of the Maine Revised Statutes, Title 22, section 3174-G,  
13 subsection 1, paragraph H, the Commissioner of Health and Human Services shall submit  
14 any necessary waivers and state plan amendments or seek other necessary approvals to  
15 implement Title 22, section 3174-G, subsection 1, paragraph H. The commissioner shall  
16 act expeditiously to achieve implementation of Title 22, section 3174-G, subsection 1,  
17 paragraph H. Any waiver, state plan amendment or other method of approval submitted  
18 pursuant to this section must include provisions to achieve the following:

19 1. Positive incentives for persons who participate in wellness initiatives, health home  
20 initiatives and other initiatives aimed at reducing and managing substance use disorders,  
21 mental health disorders or chronic diseases, including, but not limited to, diabetes and  
22 heart disease, as well as programs aimed at reducing risk factors for cancer or chronic  
23 diseases, including, but not limited to, obesity and smoking;

24 2. Prevention initiatives to address chronic health conditions, including adequately  
25 informing newly eligible persons under Title 22, section 3174-G, subsection 1, paragraph  
26 H of primary care providers participating in the MaineCare program and accepting  
27 patients under the MaineCare program and providing incentives for adopting healthy  
28 behaviors through reduced cost sharing for accessing appropriate, clinically  
29 recommended services, including preventative visits, annual wellness exams and  
30 preventative health care services. The incentives must use relevant, evidence-based  
31 research and resources and waive or reduce premiums or copayments for participation in  
32 health improvement programs or activities;

33 3. A mechanism by which the Department of Health and Human Services may pay  
34 directly to health care providers and private health insurance carriers any direct payment  
35 of premium assistance and cost sharing that is due to the health care providers or health  
36 insurance carriers that is beyond the maximum amount allowed by federal law and  
37 regulation;

38 4. A plan for achieving savings by:

39 A. Ensuring that coverage provided under Title 22, section 3174-G, subsection 1,  
40 paragraph H reduces costs for health care that would otherwise be incurred by the  
41 Department of Corrections; and

1 B. Ensuring that coverage provided under Title 22, section 3174-G, subsection 1,  
2 paragraph H reduces costs for health care that would otherwise be incurred after the  
3 release of a prisoner from a state correctional facility or county or regional jail as a  
4 result of untreated mental health and substance use disorders, including assisting  
5 prisoners prior to release with applying for coverage under Title 22, section 3174-G,  
6 subsection 1, paragraph H and ensuring that applications are made for coverage under  
7 Title 22, section 3174-G, subsection 1, paragraph H for inpatient hospital services  
8 prior to release.

9 **Sec. B-2. Reduction of federal medical assistance percentage.** Upon  
10 notification to the Department of Health and Human Services or other public declaration  
11 by the United States Department of Health and Human Services, Centers for Medicare  
12 and Medicaid Services that the enhanced federal medical assistance percentage that  
13 applies with respect to amounts expended for medical assistance for persons newly  
14 eligible for Medicaid described in 42 United States Code, Section  
15 1396a(a)(10)(A)(i)(VIII) is reduced below the amounts specified in 42 United States  
16 Code, Section 1396d(y)(1), the Commissioner of Health and Human Services shall notify  
17 the joint standing committee of the Legislature having jurisdiction over health and human  
18 services matters and the joint standing committee of the Legislature having jurisdiction  
19 over appropriations and financial affairs. The commissioner shall propose a plan to  
20 maintain coverage of those persons described in the Maine Revised Statutes, Title 22,  
21 section 3174-G, subsection 1, paragraph H to the greatest extent feasible. The  
22 committees of jurisdiction may propose any necessary legislation to address any decrease  
23 in funding or other necessary changes.

24 **Sec. B-3. Interim reporting.** Between the effective date of the Maine Revised  
25 Statutes, Title 22, section 3174-G, subsection 1, paragraph H and the dates of approval of  
26 any federal or state approvals necessary for implementation of Title 22, section 3174-G,  
27 subsection 1, paragraph H, the Department of Health and Human Services shall provide  
28 monthly reports to the joint standing committee of the Legislature having jurisdiction  
29 over health and human services matters and to the joint standing committee of the  
30 Legislature having jurisdiction over appropriations and financial affairs on the progress of  
31 implementation of that paragraph, any issues that might delay implementation or act as  
32 barriers to implementation and any possible solutions to those issues and barriers.

33 **Sec. B-4. Reporting on implementation status.** No later than one year after  
34 the effective date of the Maine Revised Statutes, Title 22, section 3174-G, subsection 1,  
35 paragraph H, the Commissioner of Health and Human Services shall report to the joint  
36 standing committee of the Legislature having jurisdiction over health and human services  
37 matters and to the joint standing committee of the Legislature having jurisdiction over  
38 appropriations and financial affairs on the status of implementation of Title 22, section  
39 3174-G, subsection 1, paragraph H, including information on enrollment, costs, revenues  
40 generated from the Federal Government and other revenues, anticipated state savings and  
41 other issues pertinent to implementation.

42 **Sec. B-5. Reporting of revenues.** The Department of Administrative and  
43 Financial Services, Maine Revenue Services shall report to the joint standing committee  
44 of the Legislature having jurisdiction over appropriations and financial affairs no later

1 than 60 days following the end of the first 12 months of enrollment under the Maine  
2 Revised Statutes, Title 22, section 3174-G, subsection 1, paragraph H regarding any new  
3 revenues, including any increase in federal medical assistance payments resulting from  
4 coverage provided under Title 22, section 3174-G, subsection 1, paragraph H. Prior to  
5 the end of fiscal year 2018-19, the State Controller shall transfer any amounts identified  
6 under this section to the MaineCare Stabilization Fund established under Title 22, section  
7 3174-KK.

8 **Sec. B-6. Evaluation by legislative office.** Within 90 days after the end of the  
9 first 12 months of enrollment under the Maine Revised Statutes, Title 22, section 3174-G,  
10 subsection 1, paragraph H, the Office of Fiscal and Program Review shall independently  
11 review reports required pursuant to sections 5 and 7 of this Part and report to the joint  
12 standing committee of the Legislature having jurisdiction over health and human services  
13 matters and the joint standing committee of the Legislature having jurisdiction over  
14 appropriations and financial affairs on its determination of the savings and new revenues,  
15 if any, resulting from implementation of Title 22, section 3174-G, subsection 1,  
16 paragraph H. This report must also include information about the amount of federal  
17 funds received by the State as a result of coverage authorized under that paragraph.

18 **Sec. B-7. Report.** The Commissioner of Health and Human Services, the  
19 Commissioner of Corrections and any state agency that recognizes savings as a result of  
20 implementation of the Maine Revised Statutes, Title 22, section 3174-G, subsection 1,  
21 paragraph H shall report within 60 days prior to the end of the first 12 months of  
22 enrollment under Title 22, section 3174-G, subsection 1, paragraph H to the joint standing  
23 committee of the Legislature having jurisdiction over health and human services matters,  
24 the joint standing committee of the Legislature having jurisdiction over appropriations  
25 and financial affairs and the joint standing committee of the Legislature having  
26 jurisdiction over criminal justice and public safety matters on the amount of General  
27 Fund savings and other fund savings resulting from coverage provided under that  
28 paragraph, including, but not limited to, savings to substance abuse and mental health  
29 programs; medical services provided to persons in the care and custody of or upon release  
30 by the Department of Corrections or a county jail or regional jail; reimbursement to cities  
31 and towns for general assistance provided under Title 22, chapter 1161; services provided  
32 for individuals between 21 and 64 years of age who are currently eligible for the  
33 MaineCare program under medically needy, spend-down criteria; services provided under  
34 the Maine Medicaid Section 1115 Health Care Reform Demonstration for Individuals  
35 with HIV/AIDS; services provided for parents participating in family reunification  
36 activities under Title 22, chapter 1071; services provided to individuals awaiting a  
37 MaineCare program disability determination for whom the applications are subsequently  
38 granted; services provided to individuals who previously would have pursued a disability  
39 determination to qualify for coverage; services provided under the State's breast and  
40 cervical cancer treatment program; and other programs in which savings are achieved.  
41 The report must include the amount of savings realized during that fiscal year and the  
42 preceding fiscal year by service area or program and the amount of savings projected to  
43 be achieved during the remainder of that fiscal year and during the next fiscal year by  
44 service area or program.

**Sec. B-8. Accepting grant funding to assist with waiver submission.** The Department of Health and Human Services may apply for and accept private foundation grants to be used to cover the department's costs of preparing and submitting any waivers and state plan amendments to the Federal Government and for administering, negotiating and implementing the provisions of the Maine Revised Statutes, Title 22, section 3174-G, subsection 1, paragraph H, including writing the state implementation plan, if required as a result of the provisions of this Act.

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

## SUMMARY

This bill authorizes the State to accept federal funds to provide health insurance coverage to adults with incomes equal to or below 133% plus 5% of the nonfarm income official federal poverty line for the applicable family size. Persons with incomes equal to or below 100% of the nonfarm income official poverty line receive coverage through the MaineCare program. The Commissioner of Health and Human Services is authorized to seek approval to provide that persons with income levels over 100% of the federal poverty line and up to 133% of the federal poverty line may receive coverage from a private health insurance plan or other mechanisms. In the event that the commissioner uses this authority, any funds made available from unexpended state matching funds must be used to help ensure that those persons with income levels between 100% and 133% of the federal poverty line receive affordable and comprehensive health coverage.

The bill provides for measures to be taken in the event that federal funding, as established under federal law, is reduced, so that the Legislature may act promptly to address the consequences of this action. The bill also authorizes the Department of Health and Human Services to contract with health insurance plans to provide coverage in order to maximize savings and to ensure access to and quality of services.

The bill sets forth time standards for the start of the expansion of health care coverage, for submission of requests to obtain necessary federal approvals and for ongoing reporting to the Legislature during the start-up phase of this expansion. Further reporting is required on the status of any savings generated to state-funded programs as a result of this expansion. It requires the Department of Administrative and Financial Services, Maine Revenue Services to report no later than 60 days following the end of the first 12 months of enrollment under the expansion on revenues generated as a result of expanded coverage. It requires that savings and revenues be verified by the Office of Fiscal and Program Review within 90 days after the end of the first 12 months of enrollment under the expansion. It transfers any savings to the MaineCare Stabilization Fund prior to the next fiscal year. It requires the Office of Fiscal and Program Review to report its findings to the joint standing committee of the Legislature having jurisdiction over health and human services matters and to the joint standing committee having jurisdiction over appropriations and financial affairs.

The bill authorizes the Department of Health and Human Services to apply for and accept private foundation grants to be used to cover the cost of preparing and submitting

1 any waivers and state plan amendments to the Federal Government required as a result of  
2 expanding health care coverage.