

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

Sec. B-9. Explore available funding. The Commissioner of Environmental Protection shall explore all available funding opportunities prior to the implementation of the fee schedule established in the Maine Revised Statutes, Title 38, section 353-B, subsection 2, paragraph B.

Sec. B-10. Report. The Department of Environmental Protection shall monitor the effectiveness of the waste discharge licensing program and report to the joint standing committee of the Legislature having jurisdiction over natural resource matters by January 1, 2001 concerning significant aspects of the program. The report must address the department's handling of increased responsibilities as a result of being delegated the National Pollutant Discharge Elimination System permit program by the United States Environmental Protection Agency, including the following issues: timely permit issuance, effluent toxics, technical assistance, data management, customer service, compliance and enforcement. The report may include recommendations concerning any necessary statutory changes. The department shall consult with representatives of the regulated community and other interested groups when preparing the report.

Sec. B-11. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1998-99

**ENVIRONMENTAL
PROTECTION,
DEPARTMENT OF
Maine Environmental
Protection Fund**

Positions - Legislative Count	(8,000)
Personal Services	\$192,584
All Other	30,000

Provides for the allocation of funds for 2 Clerk Typist III positions, 4 Environmental Specialist II positions, one Environmental Specialist III position and one Assistant Engineer position and operational support funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL	\$222,584
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Sec. B-12. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1998-99

**ATTORNEY GENERAL,
DEPARTMENT OF THE**

**Administration - Attorney
General**

Positions - Legislative Count	(0,500)
Personal Services	\$21,935
All Other	3,748

Allocates funds for a part-time Assistant Attorney General position to handle the expected increase in workload.

**DEPARTMENT OF
THE ATTORNEY
GENERAL
TOTAL**

\$25,683

See title page for effective date.

CHAPTER 795

H.P. 1530 - L.D. 2152

**An Act Regarding the Medicaid
Program**

**Be it enacted by the People of the State of
Maine as follows:**

Sec. 1. 22 MRSA §14, sub-§1, as amended by PL 1997, c. 395, Pt. E, §1, is further amended to read:

1. Recovery procedures. When benefits are provided or will be provided to a beneficiary under the Medicaid program administered by the department pursuant to the United States Social Security Act, Title XIX, or under the Maine Health Program, section 3189, for the medical costs of injury, disease, disability or similar occurrence for which a 3rd party is, or may be, liable, the commissioner may recover from that party the reasonable value of the benefits provided. This right of recovery is separate and independent from any rights or causes of action belonging to a beneficiary under the Medicaid program or under the Maine Health Program. For Medicaid recipients who participated in the Medicaid managed care program, "reasonable value" means the total value of coverable medical services provided

measured by the amount that Medicaid would have paid to providers directly for such services, were it not for the managed care system. The Medicaid program and Maine Health Program are the payors of last resort and should provide medical coverage only when there are no other available resources. The Attorney General, or counsel appointed by the Attorney General, may, to enforce this right, institute and prosecute legal proceedings directly against the 3rd party in the appropriate court in the name of the commissioner.

In addition to the right of recovery set forth in this subsection, the commissioner must also be subrogated, to the extent of any benefits provided under the Medicaid program or under the Maine Health Program, to any cause of action or claim that a beneficiary has against a 3rd party who is or may be liable for medical costs incurred by or on behalf of the beneficiary. The Attorney General, or counsel appointed by the Attorney General, to enforce this right may institute and prosecute legal proceedings in the name of the injured person, beneficiary, guardian, personal representative, estate or survivor. ~~If a recipient of medical assistance receives a settlement or award from a 3rd party, the settlement or award is subject to disbursement as provided in subsection 2-F.~~ If necessary to enforce the commissioner's right of recovery, the Attorney General, or counsel appointed by the Attorney General, may institute legal proceedings against any beneficiary who has received a settlement or award from a 3rd party, ~~subject to the right of equitable apportionment set forth in subsection 2-F.~~

The commissioner's right to recover the reasonable value of benefits provided constitutes a statutory lien on the proceeds of an award or settlement from a 3rd party, whether that award or settlement is or is not intended to include compensation for medical costs. The commissioner is entitled to recover the full amount of the reasonable value of benefits provided to the extent that there are proceeds available for such recovery after the deduction of reasonable attorney's fees and litigation costs from the gross award or settlement. The department's statutory lien may not be reduced to reflect an assessment of a pro rata share of the recipient's attorney's fees or litigation costs. The commissioner may compromise, or settle and execute a release of, any claim or waive any claim, in whole or in part, if the commissioner determines the collection will not be cost-effective.

Sec. 2. 22 MRSA §14, sub-§2-F, as amended by PL 1989, c. 778, §2, is further amended to read:

2-F. Disbursement. A disbursement of any award, judgment or settlement may not be made to a recipient without the recipient or the recipient's

~~attorney first providing at least 10 days' written notice paying to the department of the amount of the statutory lien from the award, judgment or settlement or obtaining from the department a release of any obligation owed to it for medical benefits provided to the recipient. If a dispute arises between the recipient and the commissioner as to the settlement of any claim that the commissioner may have under this section, the 3rd party or the recipient's attorney shall withhold from disbursement to the recipient an amount equal to the commissioner's claim. Either party may apply to the Superior Court or the District Court in which an action based upon the recipient's claim could have been commenced for an order to determine an equitable apportionment between the commissioner and the recipient of the amount withheld. An order of apportionment has the effect of a judgment.~~

Sec. 3. 22 MRSA §14, sub-§2-I, ¶E, as enacted by PL 1993, c. 707, Pt. I, §1 is amended to read:

E. A ~~Claim~~ claim under paragraph A, subparagraph (2) must be waived if enforcement of the claim would create an undue hardship under criteria developed by the ~~Secretary of the United States Department of Health and Human Services~~ department.

Sec. 4. 22 MRSA §14, sub-§3, as amended by PL 1991, c. 9, Pt. N, §6, is further amended to read:

3. Definitions. For purposes of this section, "3rd party" or "liable party" or "potentially liable party" means any entity, including, but not limited to, an insurance carrier that may be liable under a contract to provide health, automobile, workers' compensation or other insurance coverage that is or may be liable to pay all or part of the medical cost of injury, disease, disability or similar occurrence of an applicant or recipient of Medicaid or Maine Health Program benefits. For purposes of this section and sections 18 and 19, an "insurance carrier" includes health insurers, group health plans as defined in 29 United States Code, Section 1167(1), service benefit plans and health maintenance organizations.

"Liable party," "potentially liable party" or "3rd party" also includes the trustee or trustees of any mortuary trust established by the recipient or on the recipient's behalf in which there is money remaining after the actual costs of the funeral and burial have been paid in accordance with the terms of the trust and in which there is no provision that the excess be paid to the decedent's estate. "Liable party," "potentially liable party" or "3rd party" may also include the recipient of the Medicaid or Maine Health Program benefits.

Sec. 5. 22 MRSA §§18 and 19 are enacted to read:

§18. Private Health Insurance Premium Program

1. Program. The Private Health Insurance Premium Program is operated by the Bureau of Medical Services within the department and implements the provisions of 42 United States Code, Section 1396a(a)(25)(G) and 1396e.

2. Condition for eligibility. The department shall require, as a condition of being or remaining eligible for medical assistance, an individual otherwise entitled to medical assistance under this Title to apply for enrollment in a group health plan in which the individual is otherwise eligible to be enrolled, if the department determines that enrollment is cost-effective. For purposes of this section, the term "cost-effective" means that the reduction in medical assistance expenditures as a result of the individual's enrollment in a group health plan is likely to be greater than the additional expenditures by the department for premiums and cost-sharing with respect to that enrollment.

3. Payments covered. If the individual enrolls in a group health plan or is accepted for coverage under an individual health insurance policy pursuant to the department's approval under the Private Health Insurance Premium Program, except as provided in subsection 5, the department shall provide for payments of all premiums, deductibles, coinsurance and other cost-sharing obligations for items and services otherwise covered under the department's medical assistance program and shall treat coverage under the group health plan or the individual health insurance policy as a 3rd-party liability under section 14.

4. Family enrollment in employer plan. The department shall require, as a condition of being or remaining eligible for medical assistance, an individual who is a parent, is eligible for medical assistance under this Title and is eligible for family health coverage through an employer, to apply for enrollment for each eligible child. If the employed parent refuses to apply for such enrollment, the employer shall accept an application for enrollment of children, if otherwise eligible for family health coverage, submitted by the other parent or by the department. The employer shall enroll children in the employer plan without regard to any enrollment season restrictions.

5. Cost-effective enrollment. If some members of a family are not eligible for medical assistance under this Title and enrollment of the family members who are eligible for medical assistance is not possible without also enrolling the members who are not eligible for medical assistance, the department shall provide for payment of enrollment premiums for all family members if, taking into account payment of all such premiums, the enrollment is cost-effective.

§19. Prohibition against insurer discrimination

Insurers may not consider the availability or eligibility for medical assistance under this Title pursuant to 42 United States Code, Chapter 7, Subchapter XIX when considering coverage eligibility or benefit calculations for insureds and covered family members or for individuals and their family members for whom application has been made for coverage.

Sec. 6. 22 MRSA §3174-P, as enacted by PL 1995, c. 665, Pt. EE, §1 and affected by §3, is repealed.

Sec. 7. 22 MRSA §3762, sub-§8, ¶A, as enacted by PL 1997, c. 530, Pt. A, §16 is amended to read:

A. The department shall administer a program of transitional Medicaid to families in accordance with this paragraph.

(1) The department shall provide transitional Medicaid to families whose average gross monthly earnings, less such costs to the family for child care as is necessary for employment, do not exceed 185% of the federal poverty guidelines in accordance with PRWORA and this subsection. In order to receive transitional Medicaid as the result of increased earnings or number of hours worked, a family must have received TANF assistance for at least 3 of the last 6 months, except as provided in subparagraph 2.

(2) The department shall provide transitional Medicaid for families whose eligibility for TANF assistance terminated due to employment obtained through work search activities pursuant to this chapter, in which case the family must have received TANF assistance for at least one of the last 3 months.

(3) To continue to receive transitional Medicaid assistance following the first 6 months of coverage, a family entering the transitional Medicaid program prior to federal approval or waiver under subparagraph 4 with income above 133% of the federal poverty guidelines must pay premiums in accordance with rules adopted by the department. If a family entering the transitional Medicaid program after federal approval or waiver has average gross monthly earnings, less average monthly costs for such child care as is necessary for employment, that are above 100% of the federal poverty guidelines, then that family shall pay, beginning in their 7th month of

receiving transitional Medicaid, monthly premiums, copayments or other methods of cost sharing equal to no more than 3% of that family's average gross monthly earnings, less the average monthly costs for such child care as is necessary for employment.

(4) By October 1, 1997, the department shall have taken reasonable steps to seek a federal waiver, approval of a state plan modification under Section 114 of PRWORA or any other appropriate action to secure federal approval to use federal matching funds to extend transitional Medicaid assistance for 2 years beyond the families' initial 1-year period of eligibility. Beginning on February 1, 1998, or at the time that the department receives the federal approval or waiver, whichever is later, the department shall provide extended benefits under this subparagraph to families that qualify under subparagraph (1) or (2) and that meet the requirements of the transitional Medicaid program.

(5) The department shall provide transitional Medicaid for 4 months to families whose eligibility for TANF assistance terminated due to an increase in the amount of child support received by the family.

(6) The department shall require reporting of income or circumstances for the purpose of determining eligibility and premium payments, copayments or other methods of cost sharing for benefits under this paragraph in accordance with rules adopted by the department.

(7) The scope of services provided under this paragraph must be the same as the scope of services provided when a family received TANF assistance.

Sec. 8. 24-A MRSA §2742, sub-§5, as enacted by PL 1995, c. 418, Pt. C, §2, is amended to read:

5. Compliance. An insurer issuing policies under this chapter must comply with 42 United States Code, Section 1396g-1. If a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, the insurer shall permit either of the child's parents or the Department of Human Services to enroll the child under the family coverage without regard to any enrollment season restrictions if the child is otherwise eligible for the coverage. An insurer must provide policy information to the custodial parent of any

dependent child so that the custodial parent can obtain benefits for the child directly from the insurer. An insurer must permit the custodial parent of any dependent child to submit claims for covered services without the approval of the noncustodial parent. If the custodial parent approves, an insurer must permit the provider to submit claims for covered services without the approval of the noncustodial parent. An insurer shall make payment on claims submitted under this section directly to the custodial parent or, if the custodial parent approves, to the provider.

Sec. 9. 24-A MRSA §2742, sub-§6 is enacted to read:

6. Nondiscrimination. An insurer may not impose requirements on a state agency that has been assigned the rights of an individual eligible for medical assistance and who is covered for health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered. If a child is otherwise eligible for health coverage, an insurer may not refuse to provide the coverage for the child because the child is eligible for medical assistance under Title 22.

Sec. 10. Medicaid for persons with disabilities. Beginning October 1, 1998 the Department of Human Services is authorized to implement the provisions of the Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251, Section 4793 to create a Medicaid categorically needy eligibility group for individuals whose family income is less than 250% of the nonfarm income official poverty line and who, except for their earned income, would be considered to be receiving supplemental security income benefits.

Sec. 11. Mental health facilities safety net. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall develop a comprehensive, statewide plan to address the need for mental health facilities as a safety net to the community-based system of services. The department shall report the plan to the joint standing committee of the Legislature having jurisdiction over health and human services matters by February 1, 1999.

Sec. 12. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1998-99

HUMAN SERVICES, DEPARTMENT OF

Medical Care - Payments to Providers

All Other \$150,000

Provides funds to implement a Medicaid buy-in program for certain people with disabilities.

Sec. 13. Allocation. The following funds are allocated from the Federal Expenditure Fund to carry out the purposes of this Act.

1998-99

**HUMAN SERVICES,
DEPARTMENT OF**

**Medical Care - Payments to
Providers**

All Other \$295,236

Provides funds to implement a Medicaid buy-in program for certain people with disabilities.

See title page for effective date.

CHAPTER 796

H.P. 1670 - L.D. 2293

**An Act to Implement the
Recommendations of the Joint
Standing Committee on Inland
Fisheries and Wildlife Pursuant to
Their Review under the Government
Evaluation Act**

**Be it enacted by the People of the State of
Maine as follows:**

Sec. 1. 12 MRSA §7035, sub-§18 is enacted to read:

18. "Hooked on Fishing Not on Drugs" program. The "Hooked on Fishing Not on Drugs" program is established in the department to encourage youth fishing activities in the State. The commissioner may accept money, goods or services donated to the department for the "Hooked on Fishing Not on Drugs" program. Money, goods and services accepted by the commissioner under this subsection may be used only for those program activities.

Sec. 2. 12 MRSA §7377, sub-§9 is enacted to read:

9. Fishing during an event sanctioned by the department. Notwithstanding section 7371, as it applies to subchapter IV, a person who does not hold a fishing license may assist a child or a handicapped

person who is a participant in a fishing event sanctioned by the department.

Sec. 3. 12 MRSA §7406, sub-§8, as amended by PL 1981, c. 644, §§16 to 18, is repealed.

Sec. 4. 12 MRSA §7406, sub-§9, as enacted by PL 1979, c. 420, §1, is repealed.

Sec. 5. 12 MRSA §7406, sub-§§9-A and 9-B are enacted to read:

9-A. Shooting from or having a loaded firearm in or on a motor vehicle. Except as provided in subsection 20, paragraph A, a person is guilty of shooting from or having a loaded firearm in or on a motor vehicle if that person:

A. Shoots while in or on a motor vehicle or while in or on a trailer or other type of vehicle being hauled by a motor vehicle; or

B. While in a motor vehicle or in or on a trailer or other type of vehicle being hauled by a motor vehicle, has any firearm with a cartridge or shell in the chamber or in an attached magazine, clip or cylinder or a muzzle-loading firearm charged with powder, lead and a primed-ignition device or mechanism.

9-B. Intentionally killing, injuring or molesting a wild animal or wild bird with motor vehicle, motorboat or aircraft. A person is guilty of intentionally killing, injuring or molesting a wild animal or wild bird with a motor vehicle, motorboat or aircraft if that person intentionally kills, injures or molests a wild animal or wild bird with any motor vehicle, motorboat or aircraft.

Sec. 6. 12 MRSA §7652, sub-§4 is enacted to read:

4. The Public Boat Launch Access Program. The Public Boat Launch Access Program, referred to in this subsection as the "program," is established in the department. The purpose of the program is to provide anglers, boaters and other persons fair and equitable public access to public waters that offer recreational fishing opportunities by acquiring lands adjacent to those waters and providing appropriate opportunities to access those waters. The commissioner may establish program priorities based on fishery management or other resource management objectives and may use for these purposes any funds received through federal programs intended to aid in the restoration of sport fishing and other revenues available for providing access to public waters.

Sec. 7. 12 MRSA §7827, sub-§22, ¶A, as amended by PL 1989, c. 913, Pt. A, §15, is further amended to read: