

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 116**

H. P. 65

House of Representatives, January 6, 1981

Submitted by the Department of Human Services pursuant to Joint Rule 24.  
Referred to the Committee on Health and Institutional Services. Sent up for  
concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Prescott of Hampden.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT Relating to Conflict of Interest under the Medicaid Program.**

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

22 MRSA § 15 is enacted to read:

**§ 15. Conflict of interest**

1. **Definitions.** As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "State agency" means the state agency administering or supervising the administration of the state plan pursuant to the United States Social Security Act, Title XIX, § 1902 (a) (5).

B. "State plan" means the state plan for medical assistance development in accordance with the United States Social Security Act, Title XIX, § 1902, (a).

2. **Officers and employees responsible for expenditures of funds.** For purposes of this section, state officers and employees responsible for the expenditure of substantial amounts of funds under the state plan include the following:

A. Those persons who hold positions designated in Title 5, section 711 and who have decision-making or supervisory responsibility in respect to the development or administration of the state plan; and

**B. Those persons who hold the following positions within the Department of Human Services:**

- (1) Director, Bureau of Medical Services;
- (2) Assistant Director, Bureau of Medical Services;
- (3) Director, Medicaid Plans and Policy;
- (4) Director, Medicaid Drug Program;
- (5) Director, Medical Care Adult Division; and
- (6) Director, Medical Claims Review.

**3. Disqualification of former employees. No person who has been a state officer or employee responsible for the expenditure of substantial amounts of funds under the state plan, as specified in subsection 2, may:**

**A. After his employment has ceased, knowingly act as agent or attorney for, or otherwise represent, any other person, except the state agency, in any formal or informal appearances before, or, with the intent to influence, make communication on behalf of any other person, except the state agency, to any department, agency, court or any civil commission of the State, or any officer or employee thereof, if the appearance or communication is in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter:**

- (1) Relating to activity under the state plan and involving a specific party or parties in which the state agency is a party or has a direct and substantial interest; and
- (2) In which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed;

**B. Within 2 years after his employment has ceased, knowingly act as agent or attorney for, or otherwise represent, any other person, except the state agency, in any formal or informal appearance before, or, with the intent to influence, make any oral or written communication to, or knowingly represent, and counsel, advise, consult or assist in representing any other person, except the state agency, concerning any formal or informal appearance before any department, agency, court or any civil commission of the State, or any officer or employee thereof, if the appearance, representation or communication is in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter:**

- (1) Relating to activity under the state plan and involving a specific party or parties in which the state agency is a party or has a direct and substantial interest; and

(2) Which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of the responsibility, or in which he participated personally and substantially as an officer or employee; or

C. Within one year after his employment has ceased, knowingly act as agent or attorney for, or otherwise represent, anyone other than the state agency in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of anyone other than the state agency, to the state agency or any officer or employee thereof, if the appearance or communication is in connection with any judicial, rulemaking or other proceeding, application, request for ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter:

(1) Relating to activity under the state plan; and

(2) Which is pending before the state agency or in which the state agency has a direct and substantial interest.

Any such former employee who commits any of these acts is subject to a civil penalty of not more than \$1,000 or any higher amount not to exceed twice the pecuniary gain derived from the unlawful activity by the defendant, payable to the State, to be recovered in a civil action.

The prohibitions of this subsection shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the state agency.

Nothing in this subsection shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

The prohibition contained in paragraph C shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature; nor shall the prohibition of that subparagraph prevent a former officer or employee from making or providing a statement, which is based on the former officers or employee's own knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received other than that regularly provided for by law or regulation for witnesses; nor shall the prohibition of that subparagraph apply to a special employee who serves for less than 60 days in a given calendar year.

If the commissioner finds, after notice and opportunity for hearing, that such former officer or employee violated paragraphs A, B or C, he may prohibit that person from making, on behalf of any other person, except the state agency, any informal or formal appearance before, or, the state agency on a pending matter of business relating to activity under the state plan for a period not to exceed 5 years, or may take other appropriate disciplinary action. The disciplinary action shall be subject to review.

4. Disqualification of partners of current employees. Whoever, being a partner of a state officer or employee responsible for the expenditure of substantial amounts of funds under the state plan, acts as agent or attorney for anyone other than the state agency before any department, agency, court or civil commission of the State, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, relating to activity under the state plan in which the state agency is a party or has a direct and substantial interest, and in which such officer or employee has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be subject to a civil penalty of not more than \$1,000 or any higher amount not in excess of twice the pecuniary gain derived from the unlawful activity by the defendant, payable to the State to be recovered in a civil action.

#### STATEMENT OF FACT

This legislation is necessary to bring the state's medicaid plan into compliance with federal requirements enunciated in United States Social Security Act, Title XIX, Section 1902 (a) (4), (42 U.S.C.A. § 1396a (a) (4) (C).