

# MAINE STATE LEGISLATURE

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# HEALTH AND SOCIAL SERVICES TRANSITION TEAM BILL



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## 116th MAINE LEGISLATURE

### SECOND REGULAR SESSION-1994

Legislative Document

No. 1793

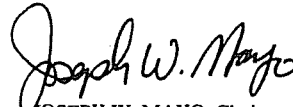
H.P. 1330

House of Representatives, January 27, 1994

#### An Act to Implement the Recommendations of the Health and Social Services Transition Team.

Reported by Representative MITCHELL for the Health and Social Services Transition Team pursuant to Resolve 1993, chapter 36.

Reference to the Joint Standing Committee on Human Resources suggested and printing ordered under Joint Rule 20.

  
JOSEPH W. MAYO, Clerk

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

Whereas, the Legislature has stated its intent to abolish the Department of Human Services and the Department of Mental Health and Mental Retardation; and

Whereas, as much transition time as possible is needed in order to avoid disruption of services and loss of federal funds; 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 A-1. 22 MRSA, as amended, is repealed.

Sec. A-2. 22-A MRSA is enacted to read:

#### TITLE 22-A

#### PART 1

#### GENERAL PROVISIONS

#### CHAPTER 101

#### DEPARTMENT OF CHILDREN AND FAMILIES; COMMISSIONER

#### §101. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.

1. Commissioner. "Commissioner" means the Commissioner of Children and Families.

2. Department. "Department" means the Department of Children and Families.

#### §102. Department of Children and Families

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2 The Department of Children and Families is established.  
3 Except where responsibility is expressly given to another  
4 department, the Department of Children and Families is  
5 responsible for ensuring the implementation of the provisions of  
6 this Title. The department is a cabinet-level department  
7 consisting of at least the following organizational units:

8 1. Bureau of Children and Families in Need of Special  
9 Services. The Bureau of Children and Families in Need of Special  
10 Services:

11 2. Bureau of Child Welfare and Related Services. The  
12 Bureau of Child Welfare and Related Services:

13 3. Bureau of Family Assistance. The Bureau of Family  
14 Assistance:

15 4. Office of Management and Budget. The Office of  
16 Management and Budget: and

17 5. Office of Consumer Affairs. The Office of Consumer  
18 Affairs.

19 Within the resources available to the department, the  
20 commissioner may establish additional organizational units and  
21 subunits necessary to carry out the responsibilities of the  
22 department in an efficient and effective manner.

### 23 §103. Mission

24 1. Mission statement. The State of Maine declares that  
25 every child has the right to a consistent, nurturing environment  
26 in order to achieve optimal growth and development. Families  
27 have the primary responsibility of meeting the needs of their  
28 children and the State has an obligation to help them fulfill  
29 this responsibility when families are unable to do so. The State  
30 has the responsibility to ensure the availability of an  
31 integrated continuum of services that is responsive to the  
32 physical, emotional, social, and educational needs of children  
33 and their families and which helps children develop as healthy,  
34 productive, and caring persons. The role of the State is to  
35 complement what families and public, private, and nonprofit  
36 agencies provide in order to enhance the strengths and talents of  
37 each child and family.

38 2. Goals. The State's goals regarding children and  
39 families are:

2 A. To support consistent, nurturing environments that  
3 promote optimal growth and development for children and  
4 families:

5 B. To promote physical and emotional well-being,  
6 educational opportunities, financial stability, and healthy  
7 interdependence of family members, their communities, and  
8 the State:

9 C. To ensure that children are protected when their  
10 families are unable or unwilling to do so:

11 D. To support those who provide the care, education,  
12 treatment, supervision, and protection of children; and

13 E. To ensure that families are Maine's most valuable  
14 resource as providers of care, nurturing, and parenting to  
15 children.

16 3. Guiding principles. The following principles guide the  
17 State:

18 A. Priority should be placed on the development of a  
19 community-based, culturally and linguistically sensitive,  
20 and multidisciplinary system of care and outreach:

21 B. Services should follow the child and be child-centered,  
22 family-focused, and provided in the least restrictive and  
23 most appropriate and integrated setting:

24 C. Services should strengthen family involvement so that  
25 families are empowered to better care for their children:

26 D. The ideal system should ensure a unified system of entry  
27 and provision of services according to an individualized  
28 treatment plan that is respectful of the child's and  
29 family's strengths and needs:

30 E. The service delivery system should represent a  
31 decentralized approach to the resolution of problems faced  
32 by children and families; and

33 F. The ideal system should unite the public, private, and  
34 nonprofit sectors in a new effort to plan and create new  
35 service resources at the local level.

### 36 §104. Commissioner of Children and Families

37 1. Appointment. The Governor shall appoint the  
38 commissioner, subject to review by the joint standing committee  
39

of the Legislature having jurisdiction over human resource matters and to confirmation by the Senate. The commissioner is the head of the department, responsible for its overall direction. The commissioner serves at the pleasure of the Governor.

2. Vacancy. Vacancies in the office of the commissioner must be filled as follows.

A. Any vacancy of the commissioner's position must be filled by appointment under subsection 1.

B. If the commissioner's position is vacant or if the commissioner is absent or disabled, the associate commissioner for programs shall perform the duties and have the powers provided by law for the commissioner.

C. If the positions of the commissioner and the associate commissioner for programs are both vacant or if both officials are absent or disabled, the associate commissioner for administration shall perform the duties and have the powers provided by law for the commissioner.

3. Qualifications. To qualify for appointment as commissioner, a person must have training and experience in human services administration or satisfactory experience in the direction of work of a comparable nature.

#### §105. Commissioner's powers and duties

1. Powers. The commissioner may:

A. Distribute the functions and duties outlined in this Title among the department's organizational units so as to integrate the work properly and to promote the most economical and efficient administration of the department.

2. Duties. The commissioner shall:

A. As soon as practicable after the close of the fiscal year that ends in an even-numbered year, report to the Governor the activities of the department during the biennial period just ended with suggestions for legislative action the commissioner considers necessary or important.

#### §106. Department personnel

The commissioner may employ staff necessary to carry out the responsibilities of the department. Staff are subject to the Civil Service Law unless otherwise specified in law. Positions

listed in this section are not subject to the Civil Service Law and serve at the pleasure of the commissioner.

1. Associate commissioners. The commissioner may appoint an Associate Commissioner for Programs, who must have training and experience in the planning and administration of human services, and an Associate Commissioner for Management and Budget, who must have training and experience in general management.

2. Other positions. The commissioner may appoint the following:

A. Director, Bureau of Children and Families in Need of Special Services;

B. Director, Bureau of Child Welfare and Related Services;

C. Director, Bureau of Family Assistance; and

D. Director, Office of Consumer Affairs.

#### §107. Service delivery regions

The commissioner shall organize regional service delivery in accordance with the following regional boundaries.

1. Region I. Region I is all of Aroostook County.

2. Region II. Region II is all of Piscataquis County, Penobscot County, Hancock County and Washington County.

3. Region III. Region III is all of Somerset County, Kennebec County, Waldo County, Knox County, Lincoln County and Sagadahoc County and that portion of Cumberland County that includes the municipalities of Brunswick, Freeport and Harswell.

4. Region IV. Region IV is all of Franklin County, Oxford County and Androscoggin County.

5. Region V. Region V is all of York County and all of Cumberland County except that portion that is part of Region III.

#### §108. Joint location of services

In cooperation with the Bureau of General Services and the Department of Health and Developmental Services, the department shall locate its service delivery sites with those of the Department of Health and Developmental Services, subject to the following provisions.

2 1. Leases. Joint location must occur as leases expire,  
3 except as provided in subsection 2. A lease may be renegotiated  
4 or extended on a short-term basis in order to make its expiration  
5 date coincide with those of other relevant leases.

6 2. Exceptions. Joint location is not required if the costs  
7 as estimated by the Bureau of General Services substantially  
8 exceed the benefits as estimated by the Bureau of General  
9 Services. In estimating benefits, the Bureau of General Services  
10 shall consider, but is not limited to, the following:

11 A. Monetary savings expected from leasing fewer but larger  
12 spaces;

13 B. Administrative savings expected by either the department  
14 or the Department of Health and Developmental Services from  
15 sharing regional administrative functions;

16 C. Improved access expected for customers; and

17 D. Improved coordination and quality of services expected  
18 from greater interaction of staff across departments.

19 3. Other departments. This section does not prohibit the  
20 Bureau of General Services from including other State agencies at  
21 a joint location site. Other State agencies that may jointly  
22 locate include, but are not limited to, the Department of the  
23 Secretary of State, the Department of Labor and the Department of  
24 Education.

25 4. Reports. The Bureau of General Services shall submit  
26 progress reports regarding the implementation of this section to  
27 the joint standing committee of the Legislature having  
28 jurisdiction over human resource matters by the following dates:

29 A. January 1, 1996;

30 B. January 1, 1998; and

31 C. January 1, 2000.

## 32 CHAPTER 103

### 33 USE OF CONFIDENTIAL INFORMATION FOR 34 PERSONNEL AND LICENSURE ACTIONS

#### 35 §201. Definitions

36 As used in this chapter, unless the context otherwise  
37 indicates, the following terms have the following meanings:

38 1. Confidential information. "Confidential information"  
39 means information that is confidential under chapter 401 or  
40 section 6103.

41 2. Hearing officer. "Hearing officer" means presiding  
42 officer, judge, board chair, arbitrator or any other person  
43 responsible for conducting a proceeding or hearing subject to  
44 this chapter.

45 3. Licensing board. "Licensing board" means a professional  
46 or occupational licensing board that licenses, certifies or  
47 registers a person in a profession or occupation that is included  
48 in the list of professional and occupational licensing boards in  
49 Title 5, section 12004-A.

#### 50 §202. Disclosure and use of confidential information: governing provisions

51 Any information derived by the department in the course of  
52 carrying out its functions and that is confidential under chapter  
53 401 or section 6103, that relates to a state employee or a person  
54 licensed, certified or registered by a licensing board who is  
55 alleged to have engaged in any unlawful activity or professional  
56 misconduct, or in conduct in violation of laws or rules relating  
57 to a licensing board, may be disclosed to and used by the  
58 appropriate state agencies and licensing boards only in  
59 accordance with this chapter. The department, other state  
60 agencies and licensing boards shall comply with the following.

61 1. Purpose for which disclosure is made. Any confidential  
62 information provided to a state agency, department or licensing  
63 board may be used only for investigative and other action within  
64 the scope of the authority of that agency, department or  
65 licensing board and to determine whether the employee or the  
66 person licensed, certified or registered by the board has engaged  
67 in unlawful activity, professional misconduct or activities in  
68 violation of the laws or rules relating to the board.

69 2. Designation of person to receive confidential  
70 information. State agencies, departments and licensing boards  
71 reasonably expected to be recipients of confidential information,  
72 as determined by the commissioner, shall designate a person to  
73 receive the confidential information for investigative purposes.

74 3. Limitations on disclosure. Disclosure is limited to  
75 information that is directly related to the matter at issue. The  
76 identity of reporters and other persons may not be disclosed

2 except as necessary and relevant. Access to the information is  
3 limited to parties, parties' representatives, counsel of record  
4 and the hearing officers responsible for the determinations. The  
5 information may be used only for the purpose for which the  
6 release was intended.

8 **§203. Confidential information provided to state employees, the  
9 Bureau of Human Resources and the Bureau of Employee  
10 Relations**

12 **1. Disclosure to state employees.** Confidential information  
13 that is relevant to a grievance or a disciplinary procedure  
14 within the department must be provided to the affected employee  
15 and the employee's designated representative.

16 **2. Disclosure to Bureau of Employee Relations and the  
17 Bureau of Human Resources.** Confidential information that is  
18 relevant to a grievance or disciplinary procedure within the  
19 department shall be provided to the Bureau of Employee Relations  
20 in cases regarding state employment subject to the State Employee  
21 Labor Relations Act, Title 26, chapter 9-B, and to the Bureau of  
22 Human Resources for state employees not subject to Title 26,  
23 chapter 9-B, when the Bureau of Employee Relations or the Bureau  
24 of Human Resources become involved in the grievance or  
25 disciplinary process, including appeals to an arbitrator or the  
26 Civil Service Appeals Board.

28 **3. Procedures governed by contract.** If any other procedure  
29 relating to the use of confidential information in state employee  
30 personnel actions is governed by collective bargaining  
31 agreements, the collective bargaining agreements shall control,  
32 except as provided in section 202.

34 **§204. Confidential information provided to professional and  
35 occupational licensing boards**

37 **If confidential information regarding a person subject to or  
38 seeking licensure, certification or registration by a licensing  
39 board indicates that the person may have engaged in unlawful  
40 activity, professional misconduct or conduct that may be in  
41 violation of the laws or rules relating to the licensing board,  
42 the commissioner may release this information to the appropriate  
43 licensing board. Confidential information must be disclosed and  
44 used in accordance with section 202 and may also be disclosed to  
45 members, employees and agents of a licensing board who are  
46 directly related to the matter at issue.**

48 **1. Notice to the licensee or applicant.** Notice of the  
49 release of confidential information must be provided by the board  
50 to the licensee or applicant in accordance with the law and rules

2 relating to the licensing board. If the law or rules relating to  
3 a licensing board do not provide for notice to licensees or  
4 applicants subject to or seeking licensure, certification or  
5 registration, the licensing board shall provide notice to the  
6 licensee or applicant upon determination of the board to take  
7 further action following its investigation.

8 **2. Licensing board requests for confidential information.**  
9 Any licensing board pursuing action within the scope of the  
10 board's authority or conducting an investigation of any person  
11 subject to or seeking licensure, certification or registration by  
12 the board for engaging in unlawful activity, professional  
13 misconduct or conduct that may be in violation of the laws or  
14 rules relating to the board may request confidential information  
15 from the department. Any information provided to the board for  
16 an investigation is governed by section 202 and this section.

18 **3. Use of confidential information in proceedings.** The use  
19 of confidential information in proceedings, informal conferences  
20 and adjudicatory hearings is governed by Title 5, section 9057,  
21 subsection 6.

24 **§205. Information provided for unemployment compensation  
25 proceedings relevant to state employment**

26 **If confidential information is relevant to an unemployment  
27 compensation proceeding with respect to the provision of, denial  
28 or termination of unemployment compensation benefits related to a  
29 person's state employment, the commissioner may release the  
30 confidential information to the Commissioner of Labor. The  
31 Commissioner of Labor may request from the commissioner  
32 confidential information that may be directly related to an  
33 unemployment compensation proceeding with respect to a person's  
34 state employment. The commissioner may release the confidential  
35 information to the Commissioner of Labor if the confidential  
36 information is related to the proceeding. The Commissioner of  
37 Labor shall provide the claimant with access to the information.**

38 **§206. Penalty for violations**

40 **Any person who violates this chapter is subject to the  
41 applicable penalty as provided in chapter 401 or section 6102.**

44 **CHAPTER 105**

46 **MISCELLANEOUS PROVISIONS**

48 **§301. Legal assistance from Attorney General**

2 The Attorney General and the several district attorneys  
3 within their respective counties, when requested by the  
4 department, shall furnish legal assistance, counsel or advice as  
5 required by the department in the discharge of its duties.

6 **§302. State wards**

8 When a State ward becomes 18 years of age and the ward and  
9 the department agree that need for care and support for  
10 educational, social or physical reasons exists, the department  
11 may continue care and support until the person reaches 21 years  
12 of age.

14 **§303. Payment for state agency clients**

16 The commissioner shall authorize payment of approved mental  
17 health treatment costs for state agency clients who are placed  
18 for educational purposes, with the recommendation of an employee  
19 of the Bureau of Children and Families in Need of Special  
20 Services, in an in-state residential treatment center, as  
21 identified in Title 20-A, section 1, subsection 24-A, paragraph  
22 D, subparagraph (3), to the extent of the amount of funds  
23 appropriated by the Legislature for this purpose. The  
24 commissioner may authorize payment of mental health treatment  
25 costs for similar placements in out-of-state residential  
26 placements on a case-by-case basis, within the limits of  
27 available funds. The commissioner shall further authorize  
28 payment of approved board and care and mental health treatment  
29 costs for state agency clients who are placed for other than  
30 educational purposes, with the recommendation of an employee of  
31 the Bureau of Children and Families in Need of Special Services,  
32 in any residential placement, as defined in Title 20-A, section  
33 1, subsection 24-A, to the extent of the funds appropriated by  
34 the Legislature for this purpose. In no event may payments that  
35 the commissioner is required to authorize under this section  
36 exceed the funds appropriated by the Legislature for the purposes  
37 referred to in this section. Payment from these funds must be  
38 made only when other appropriate state or federal funds to which  
39 the department has access have been exhausted. For the purposes  
40 of this section, "State agency client" has the same meaning as in  
41 Title 20-A, section 1, subsection 34-A.

42 **§304. Funds for social services**

44 The department may administer any funds available from  
45 private, local, state or federal sources for the provision of  
46 social services to carry out the purposes of this Title. To the  
47 extent allowed by the funding source, the department may provide  
48 the social services directly, through contracts or grants with

2 public or private agencies, or jointly with public or private  
3 agencies.

4 The department shall adopt rules to define eligibility for  
5 the social services, contractual terms, conditions for grants,  
6 matching ratios, quality of performance standards and other rules  
7 as necessary for the implementation of this section. The rules  
8 must be adopted in accordance with Title 5, chapter 375.

10 **§305. Agreements with community agencies**

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

16 A. "Agreement" means a legally binding document between 2  
17 parties, including documents commonly referred to as  
18 accepted application, proposal, prospectus, contract, grant,  
19 joint or cooperative agreement, purchase of service or state  
20 aid.

22 B. "Community agency" means a person, a public or private  
23 nonprofit organization or a firm, partnership or business  
24 corporation operated for profit, that operates a human  
25 service program at the community level.

26 C. "Funds" means any and all general funds, dedicated  
27 funds, fees, special revenue funds, 3rd party  
28 reimbursements, vendor payments or other funds available for  
29 expenditure by the department in support of the provision of  
30 a human service.

32 D. "Human service" means any alcoholism, children's  
33 community action, corrections, criminal justice,  
34 developmental disability, donated food, education, elderly,  
35 food stamp, income maintenance, health, juvenile, law  
36 enforcement, legal, medical care, mental health, mental  
37 retardation, poverty, public assistance, rehabilitation,  
38 social, substance abuse, transportation, welfare or youth  
39 service operated by a community agency under an agreement  
40 financially supporting the service, wholly or in part, by  
41 funds authorized for expenditure by the department.

42 E. "Nonprofit organization" means any agency, institution  
43 or organization that is, or is owned and operated by, one or  
44 more corporations or associations, no part of the net  
45 earnings of which inures, or may lawfully inure, to the  
46 benefit of any private shareholder or individual and which  
47 has a territory of operations that extends to a  
48 neighborhood, community, region or the State.  
49

2 F. "Public" means municipal, county and other governmental  
4 bodies that are political subdivisions within the State.

6 2. Commissioner may disburse funds. The commissioner may  
8 disburse funds to a community agency for the purpose of  
10 financially supporting a human service, only if the disbursement  
12 is covered by a written agreement between the department and the  
14 agency, specifying at least the following:

16 A. The human service to be provided by the community agency;

18 B. The method of payment by the department to the community  
20 agency; and

22 C. The criteria for monitoring and evaluating the  
24 performance of the community agency in the provision of the  
26 human service.

28 3. Requirements. The commissioner's duties are as follows.

30 A. The commissioner shall adopt rules consistent with and  
32 necessary for the effective administration of this section.

34 B. When making agreements with community agencies for the  
36 provision of a human service, the commissioner shall use  
38 agreement forms and shall develop uniform procedures.

40 C. When disbursing funds pursuant to an agreement, the  
42 commissioner shall require uniform accounts payable forms or  
44 uniform supporting documentation and information.

46 D. When accounting for funds disbursed under an agreement,  
48 the commissioner shall use uniform accounting principles,  
policies and procedures.

4. Rules. The commissioner may not request competitive  
bids for existing services until the commissioner has adopted  
rules in accordance with the Maine Administrative Procedure Act,  
Title 5, chapter 375, to ensure:

A. The stability of the provider system by setting forth  
the causes for which existing services may be placed out for  
competitive bid;

B. The protection of consumers in such a way that any  
change in provider will be accomplished in a manner which  
fully protects the consumer; and

2 C. The verification of the nonservice revenue portion of  
4 proposed budgets submitted by current and prospective  
6 providers.

#### 7 §306. Advise on incorporation of institutions

8 The department shall give its opinion as to the advisability  
10 of the proposed organization and incorporation of any nonprofit  
12 institution that falls under the jurisdiction of the department.

#### 14 §307. Charitable and benevolent institutions to submit itemized 16 bills; recipients not deemed paupers

18 Appropriations made by the State for the care, treatment,  
20 support or education of any person by any charitable or  
22 benevolent organization not wholly owned or controlled by the  
24 State may not be paid until an itemized bill, showing the name of  
26 the person receiving the service, the date on which the service  
28 was rendered, and the rate charged per day or week, is filed with  
30 the State Controller together with a certificate from the  
32 department that satisfactory evidence has been filed in its  
34 office by the organization furnishing the service that the person  
36 receiving the service was in need of the service; that the person  
38 was not able to pay for the service; and that the rate charged is  
40 not greater than that charged to the general public for the same  
42 service. The only exceptions to the above specific procedures are  
44 those instances in which the charitable or benevolent  
46 organization by agreement with the department elects to return  
48 its State appropriation, either in whole or in part, to the  
department for matching with federal funds. In all instances,  
payments made by the State to charitable and benevolent  
organizations under this section are governed by rules and rates  
adopted by the department.

A person may not be deemed a pauper by reason of having  
received the benefit of any funds, either State or municipal,  
that have been expended on that person's behalf under this  
section.

#### 40 §308. Purchased services report

42 The department shall prepare an annual report on all  
44 services delivered under contract with private or municipal  
46 providers. The department shall submit its report to the joint  
48 standing committee of the Legislature having jurisdiction over  
appropriations and financial affairs by January 31st of each  
year. The report must include:

2 1. Listing by contractor. A listing, by contractor, of all  
4 funds received from the State and a summary of the purposes for  
6 which those funds were expended:

8 2. Allocations. A summary of the most recent year's  
10 allocations of all funds by bureau or office, service area,  
12 region and, if available, county:

14 3. Regional equity. An evaluation of additional funding  
16 needed to equalize funding among all regions by individual  
18 service areas, presented in prioritized order:

20 4. Outstanding service needs. The department's assessment,  
22 by individual service area, of the outstanding service needs of  
24 the State. The assessment must identify the funding source  
26 projected by the department to be available for the expansion of  
28 service, presented in prioritized order; and

30 5. Recommended changes. Recommendations for changes in  
32 funding resulting from the department's planning and evaluation  
34 system presented in the following order of priority:

36 A. Greatest service need within existing funding scheme:

38 B. Equalization of regional funding with each service area:  
40 and

42 C. New or outstanding needs.

#### 34 §309. Fees for service

36 1. Reasonable fees authorized. The department may charge  
38 reasonable fees for any services provided under this Title  
40 whether directly or indirectly provided by the department.  
42 Except as otherwise provided by law, any fees received constitute  
44 a permanent fund for use by the department as special revenue  
46 income and do not become part of the General Fund. When  
48 applicable, fees so generated must be utilized in accordance with  
50 federal law.

2. Sliding fee scale. The department may establish a  
sliding fee scale for the provision of community-based purchased  
services administered by the Bureau of Child Welfare and Related  
Services.

A. The sliding fee scale must be based on gross family  
income and family size.

B. Any fees charged as a result of implementing this  
subsection must be paid to the provider of the service and

2 used by the provider for additional services of the same or  
4 related type for which the fees were paid.

#### 6 §310. Acceptance of federal funds

8 Receipt and expenditure of federal funds by the department  
10 is governed by the following provisions.

12 1. Application. The department may, subject to the  
14 approval of the Governor, apply for federal funds under the  
16 United States Social Security Act, as amended, and under other  
18 federal acts regarding human welfare.

20 2. Administration. The department may administer  
22 assistance received under this section in a manner that complies  
24 with federal requirements if those requirements are not  
26 inconsistent with this Title.

28 3. Municipal or private entities. The department may make  
30 grants to cities or towns within the State, or to private  
32 entities organized for purposes related to human welfare, out of  
34 federal funds if the grants are permitted by the federal funding  
36 source. The grants must be made in conformity with applicable  
38 federal requirements and state accounting requirements, and in  
40 accordance with rules adopted by the department.

42 4. Treasurer to receive funds. The Treasurer of State  
44 shall receive available federal funds for programs administered  
46 by the department under the federal Social Security Act, as  
48 amended, and the State Controller shall authorize expenditures  
50 from those funds as approved by the department.

#### 34 §311. Appropriated funds transferable

36 The appropriations made by the Legislature to any  
38 organizational unit of the department may be combined or  
40 transferred from one to another by authority of the Governor when  
42 a transfer is considered necessary.

#### 40 §312. Expenditure of unidentified child support payments

42 The department may expend any unidentified child support  
44 payments and any interest earned on those funds that the  
46 department has received when the department can not identify the  
48 child for which payment was made. The department may expend  
50 these funds only in its efforts to enforce child support laws in  
accordance with Title 19, chapter 7. Before making any  
expenditure, the department shall wait at least 12 months from  
the date the unidentified funds were received.

2 §313. Adoption of a grievance procedure concerning discrimination  
3 on the basis of handicap

4 The commissioner shall adopt rules pursuant to the Maine  
5 Administrative Procedure Act, Title 5, chapter 375, subchapter  
6 II, to create a grievance procedure applicable to all bodies of  
7 State Government in accordance with 45 Code of Federal  
8 Regulations, Section 84.7. To the extent that a grievance  
9 procedure adopted under this section conflicts with a grievance  
10 procedure otherwise adopted by a state agency to comply with 45  
11 Code of Federal Regulations, Section 84.7, the procedure adopted  
12 under this section controls, except in cases of conflict with  
13 other federal regulations.

14 §314. Penalties and jurisdiction; certificate of commissioner as  
15 evidence

16 Any person who hinders, obstructs or interferes with any  
17 officer, inspector or duly authorized agent of the department  
18 while in the performance of the officer's, inspector's or agent's  
19 duties commits a Class E crime. Any person who violates any order  
20 or rule of the department made for the protection of life or  
21 health under law commits a Class E crime unless otherwise  
22 provided in this Title. Any person who violates any provision of  
23 this Title or willfully fails, neglects or refuses to perform any  
24 of the duties imposed upon that person by this Title commits a  
25 Class E crime, unless specific penalties are provided elsewhere.  
26 Any certificate of the commissioner in regard to the records of  
27 the department is admissible in evidence in all prosecutions  
28 under this Title.

29 §315. Civil liability of persons making false claims

30 Any person, firm, association, partnership, corporation or  
31 other legal entity who makes or causes to be made or presents or  
32 causes to be presented for payment or approval any claim upon or  
33 against the department or upon any funds administered by the  
34 department, knowing the claim to be false, fictitious or  
35 fraudulent or who, for the purpose of obtaining or aiding another  
36 to obtain the payment or approval of such a claim, makes any  
37 false written statement or submits any false document that the  
38 person does not believe to be true, or who enters into any  
39 agreement, combination or conspiracy to defraud the department by  
40 obtaining the payment or approval of any false, fictitious or  
41 fraudulent claim, is, in addition to any criminal liability that  
42 may be provided by law, subject to civil suit by the State in the  
43 Superior Court for recovery of damages to include the following:

44 1. Restitution. Restitution for all excess benefits or  
45 payments made;

2 2. Payment of interest. Payment of interest on the amount  
3 of the excess benefits or payments as set forth in subsection 1  
4 at the maximum legal rate in effect on the date the payment was  
5 made and computed for the date payment was made to the date on  
6 which repayment is made;

7 3. Payment of damages. Payment of damages, without regard  
8 to the amount in controversy, in an amount that is threefold the  
9 amount of the excess benefits or payments as set forth in  
10 subsection 1, but in any case not less than \$2,000 for each false  
11 claim for assistance, benefits or payments, or for each document  
12 submitted in support of the false claim, whichever is the greater  
13 amount; and

14 4. Cost of the suit. Cost of the suit.

15 §316. Rules

16 The department shall adopt rules considered necessary and  
17 proper for the protection of life, health and welfare, and the  
18 successful implementation of this Title. The rules must be  
19 adopted pursuant to the requirements of Title 5, chapter 375.  
20 The rules must include, but are not limited to, the following:

21 1. Administration of medication. Rules regarding the  
22 administration of medication in day care facilities, children's  
23 homes, nursery schools and other facilities as considered  
24 necessary by the department. In adopting rules for each type of  
25 facility, the department shall consider, among other factors, the  
26 general health of the persons likely to receive medication, the  
27 number of persons served by the facility and the number of  
28 persons employed at the facility who might be involved in the  
29 administration of medication; and

30 2. Department records. Reasonable rules governing the  
31 custody, use and preservation of the records, papers, files and  
32 communications of the department, and especially those that  
33 pertain to the granting of public assistance. The use of these  
34 records, papers, files and communications by any other agency or  
35 department of government to which they may be furnished is  
36 limited to the purposes for which they are furnished and by the  
37 law under which they are furnished. It is unlawful for any  
38 person, except for purposes directly connected with the  
39 administration of the public assistance and in accordance with  
40 the rules of the department, to solicit, disclose, receive, make  
41 use of or authorize, knowingly permit, participate in or  
42 acquiesce in the use of, any list of or names of, or any  
43 information concerning, persons applying for or receiving public  
44 assistance, directly or indirectly, derived from the records.



2 papers, files or communications of the State or subdivisions or  
3 agencies of the State, or acquired in the course of the  
4 performance of official duties. Any person violating any  
5 provision of this subsection must be punished by a fine of not  
6 more than \$500 or by imprisonment for not more than 11 months, or  
7 by both.

8 **PART 2**

10 **CHILDREN AND FAMILIES IN NEED OF**  
11 **SPECIAL SERVICES**

12 **CHAPTER 201**

13 **GENERAL PROVISIONS**

14 **§2001. Definitions**

15 As used in this Part, unless the context otherwise  
16 indicates, the following terms have the following meanings.

17 1. Bureau. "Bureau" means the Bureau of Children and  
18 Families in Need of Special Services.

19 2. Child in need of treatment. "Child in need of  
20 treatment" means:

21 a. A child under 17 years of age who has treatment needs  
22 related to mental illness, mental retardation, autism,  
23 developmental disabilities or emotional or behavioral needs  
24 that are not under current statutory authority of other  
25 state agencies; or

26 b. A person 18 years of age or older and under 21 years of  
27 age who has treatment needs related to mental illness,  
28 mental retardation, autism, developmental disabilities or  
29 emotional or behavioral needs if the bureau, in consultation  
30 with the Department of Health and Developmental Services,  
31 has determined that it is in the interest of that person to  
32 receive treatment through the bureau.

33 3. Director. "Director" means the director of the bureau.

34 4. Recipient. "Recipient" means a person who requests or  
35 receives services from the bureau or from an agency that receives  
36 funds from or through the bureau.

37 5. Respite care. "Respite care" means temporary  
38 care-giving to a child or adult for the purpose of relieving that  
39 person's family or another primary care-giver.

2 6. Treatment. "Treatment" means the provision of services  
3 to children in need of treatment and their families, the services  
4 consisting primarily of:

5 A. Psychiatric, psychological, counseling, developmental  
6 and other therapeutic modalities; and

7 B. Social, interpersonal and other living skills, related  
8 supportive services and habilitative training.

9 **§2002. Insurance available for respite providers**

10 Persons who have completed the training program for respite  
11 care providers through the department or the Department of Health  
12 and Developmental Services are eligible for any insurance  
13 provided to family foster home providers pursuant to Title 5,  
14 section 1728-A. In any action for damages against a respite care  
15 provider insured pursuant to Title 5, section 1728-A, for damages  
16 covered under that policy, the claims for and award of those  
17 damages, including costs and interest, may not exceed \$300,000  
18 for any and all claims arising out of a single occurrence. When  
19 the amount awarded to or settled for multiple claimants exceeds  
20 the limit imposed by this section, any party may apply to the  
21 Superior Court for the county in which the governmental entity is  
22 located to allocate to each claimant that claimant's equitable  
23 share of the total, limited as required by this section. Any  
24 award by the court in excess of the maximum liability limit is  
25 automatically abated by operation of this section to the maximum  
26 limit of liability. Nothing in this section makes respite care a  
27 state activity nor does it expand in any way the liability of the  
28 State or respite care provider.

29 **CHAPTER 203**

30 **BUREAU OF CHILDREN AND FAMILIES IN NEED**  
31 **OF SPECIAL SERVICES**

32 **§2201. Policy**

33 1. Services. It is the policy of the State to provide an  
34 efficient, coordinated statewide system of services to children  
35 in need of treatment and their families, including a  
36 comprehensive system of family support services, to the extent  
37 resources permit.

38 2. Setting. It is the policy of the State that the setting  
39 for the services described in this Part must, consistent with the  
40 availability of appropriate resources:

2 A. Impose the fewest possible restrictions on the liberty  
3 of children in need of treatment; and

4 B. Be as close as possible to the patterns and norms of the  
5 mainstream of society, recognizing regional, cultural and  
6 ethnic characteristics.

8 3. Other agencies. Nothing in this Part constrains or  
9 impairs any other state agency in carrying out statutorily  
10 mandated responsibilities to children and their families or  
11 alters or diminishes any services, benefits or entitlements  
12 received by virtue of those statutory responsibilities.

14 4. Spiritual treatment. Nothing in this Part replaces or  
15 limits the right of any child to treatment in accordance with a  
16 recognized religious method of healing, if the treatment is  
17 requested by the child or by the child's parent or guardian.

18 **§2202. Establishment of bureau**

20 There is established, within the department, the Bureau of  
21 Children and Families in Need of Special Services.

24 **§2203. Duties**

26 The bureau shall:

28 1. Support other care givers. Strengthen the capacity of  
29 families, natural helping networks, self-help groups and other  
30 community resources to support and serve children in need of  
31 treatment;

32 2. Facilitate comprehensive system. Facilitate the  
33 planning, promotion, coordination, delivery and evaluation of a  
34 complete and integrated statewide system of services to children  
35 in need of treatment and their families; and

38 3. Support services. Support those services appropriate to  
39 children in need of treatment and their families, including, but  
40 not necessarily limited to, the following:

42 A. Advocacy;

44 B. Assessment and diagnosis;

46 C. Child development;

48 D. Consultation and education;

50 E. Crisis intervention;

2 F. Family guidance and counseling;

4 G. Preventive intervention;

6 H. Professional consultation and training;

8 I. Respite care and other family support services; and

10 J. Treatment.

12 **§2204. Powers**

14 The bureau may perform the duties described in section 2203  
15 and may provide other services to children in need of treatment  
16 through state-operated facilities and programs or through  
17 contracts and grants to public and private agencies. In all  
18 cases, the bureau shall ensure that services are provided in the  
19 least restrictive setting consistent with the child's needs,  
20 commensurate with the resources available to the bureau and in  
21 coordination with services and resources of other state agencies  
22 servng children and families. Emphasis must be placed on  
23 maintaining each child in the child's natural home or in an  
24 alternative placement within the community whenever possible.

26 **§2205. Director**

28 The commissioner shall, with the advice of the Maine  
29 Advisory Committee on Children with Special Needs, appoint and  
30 set the salary for the director of the bureau, subject to the  
31 approval of the Governor. The director serves at the pleasure of  
32 the commissioner. Notwithstanding any other law, the  
33 commissioner may designate any employee of the department to  
34 serve, for a period not to exceed 180 days, as acting director of  
35 the bureau, if the position of director is vacant. Service as  
36 acting director must be considered a temporary additional duty  
37 for the person so designated.

38 1. Qualifications. In order to be eligible for appointment  
39 as director, a person must have:

42 A. A graduate degree in child development, social welfare  
43 or a related field; and

44 B. At least 5 years of experience in the administration of  
45 children's services programs or satisfactory experience in  
46 work of a comparable nature.

48 2. Duties and powers of director. In addition to other  
49 duties and powers set out in this Part, the director:

2 A. Shall report directly to the commissioner; and

4 B. Shall carry out the duties and responsibilities of the  
6 bureau.

8 **§2206. Commissioner's duties**

10 In order to facilitate the development and operation of a  
12 coordinated, statewide system of services to children in need of  
14 treatment and their families, the commissioner, through the  
16 bureau, shall:

18 1. Administration. Provide a decentralized administrative  
20 structure for the provision of services to children in need of  
22 treatment and their families:

24 2. Normalization. Work toward the provision of normalized  
26 services through the establishment of in-home, community-based,  
28 family-oriented programs for the child in need of treatment. If  
30 treatment in an out-of-home or out-of-community setting becomes  
32 necessary, it should be in the least restrictive setting  
34 consistent with the needs of the child, commensurate with the  
36 resources available to the bureau and in coordination with  
38 services and resources of other state agencies serving children  
40 and their families:

42 3. Coordination. Continue coordination and linkage with  
44 other agencies, programs and systems that serve children and  
46 their families on a state, regional and local level, so as to  
48 encourage effective and efficient procedures and practice in the  
delivery of services to children in need of treatment and their  
families:

4. Prevention. Place a high priority on continued  
participation with the Department of Education and the Department  
of Human Services in preventive intervention services to families  
of children in need of treatment:

5. Qualified care givers. Strive to ensure that all  
services and programs are adequately staffed by persons  
appropriately qualified by training and experience:

6. Outreach. Publicize the availability of services to  
children in need of treatment to ensure that these services are  
accessible to the greatest possible number of children and their  
families:

2 7. Advocacy. Ensure that all children in need of treatment  
4 and their families are notified of their rights to advocacy  
6 services available in this State:

8 8. Appeals process. Ensure that rules are adopted that  
10 specify the procedures by which a parent or guardian of a child  
12 in need of treatment may appeal decisions made relative to  
14 services provided by the bureau:

16 9. Services. Provide a comprehensive system of support  
18 services, including respite care, to families with children in  
20 need of treatment:

22 10. Request-for-proposal contracting. Require that any new  
24 contract for services be awarded through a request-for-proposal  
26 procedure and any contract for services of \$150,000 per year or  
28 more that is renewed be awarded through a request-for-proposal  
30 procedure at least every 6 years; and

32 11. Consumer advice. Establish a procedure to obtain  
34 assistance and advice from consumers of services regarding the  
36 selection of contractors when requests for proposals for services  
38 are issued.

40 **§2207. Plan**

42 The commissioner, through the bureau shall monitor, review  
44 and evaluate at least annually the allocation and adequacy of  
46 services provided by the department to children in need of  
48 treatment and shall prepare and maintain a plan that meets the  
following criteria.

1. Effective services that protect rights. The plan must  
indicate the most effective and efficient manner in which to  
implement services and programs for children in need of treatment  
and their families, while safeguarding and respecting the legal  
and human rights of those children and families.

2. Gaps in service. The plan must specifically indicate how  
gaps in services for children in need of treatment and their  
families can best be met.

3. Identification of priorities. The plan must establish a  
procedure for setting priorities among the various services  
required by children in need of treatment and their families, in  
cooperation with other agencies of State Government that provide  
services to children and families, including, but not limited to,  
the Department of Corrections and the Department of Education.

2 4. Coordination. The plan must specifically indicate the  
4 department's efforts in ensuring that services provided by the  
6 bureau are effectively coordinated with resources and procedures  
8 in other parts of the department.

10 5. Biennial. The plan must be prepared in even-numbered  
12 years for submission to the joint standing committee of the  
14 Legislature having jurisdiction over human resource matters and  
16 the joint standing committee of the Legislature having  
18 jurisdiction over appropriations and financial affairs matters no  
20 later than January 30th of odd-numbered years.

22 6. Individual needs. The plan must ensure that children  
24 with divergent treatment needs are not inappropriately mixed  
26 while in residence at state operated facilities for children in  
28 need of treatment.

30 7. Family support. The plan must indicate the State's  
32 progress in ensuring the development of an array of family  
34 support services to enable families to maintain more adequately  
36 their children in need of treatment in their natural homes and  
38 communities.

#### 24 §2208. Advocacy

26 1. Establishment. The Office of the Advocate is  
28 established within the department solely to investigate the  
30 claims and grievances of recipients, to investigate with the  
32 Bureau of Child Welfare and Related Services, as appropriate, all  
34 allegations of child abuse in state institutions and to advocate  
36 for compliance by any institution, other facility or agency  
38 administered, licensed or funded by the department with all laws,  
administrative rules and institutional and other policies  
relating to the rights and dignity of recipients.

36 2. Advocate. The advocate shall direct and coordinate the  
38 program of the office.

40 A. The advocate shall report administratively to the  
42 commissioner and advise, consult with and inform the  
44 commissioner on the issues described in this section.

44 B. The advocate is a classified state employee.

46 3. Duties. The Office of the Advocate shall:

48 A. Receive or refer complaints made by recipients and  
50 represent the interests of recipients in any matter  
pertaining to the rights and dignity of recipients;

2 B. Intercede on behalf of recipients with officials of  
4 institutions, facilities and agencies administered, licensed  
6 or funded by the department, except that the Office of the  
Advocate may refuse to take action on any complaint that it  
deems to be trivial or moot or for which there is clearly  
another remedy available;

8 C. Assist recipients in any hearing or grievance proceeding  
10 of the department;

12 D. Refer recipients to other agencies or entities for the  
14 purpose of advocating for the rights and dignity of the  
16 recipients;

18 E. Act as an information source regarding the rights of all  
20 recipients, keeping itself informed about all laws,  
22 administrative rules and institutional and other policies  
relating to the rights and dignity of the recipients and  
about relevant legal decisions and other developments  
related to the field of mental health and mental  
retardation, both in this State and in other parts of the  
country;

24 F. Make and publish reports necessary to the performance of  
26 the duties described in this section. The advocate may  
28 report findings of the office to groups outside the  
department, such as legislative bodies, advisory committees,  
30 commissions, law enforcement agencies and the press.  
Annually by January 1, the advocate shall submit a report  
32 regarding activities under this section to the joint  
standing committee of the Legislature having jurisdiction  
over human resource matters; and

34 G. Negotiate joint working agreements with the Bureau of  
36 Child Welfare and Related Services concerning procedures and  
38 respective responsibilities for conducting investigations in  
state institutions of allegations of abuse pursuant to  
chapter 401.

40 4. Access to files and records. The Office of the Advocate  
42 has access, limited only by the law, to the files, records and  
44 personnel of any institution, facility or agency administered,  
licensed or funded by the department. All persons with knowledge  
46 about an incident related to recipient care, including  
recipient-to-recipient assault, staff-to-recipient assault,  
48 recipient-to-staff assault, excessive use of seclusion or  
mechanical or chemical restraint, incidents stemming from  
50 questionable psychiatric and medical practice or any other  
alleged abuse or neglect, shall immediately report the details of  
that incident to the Office of the Advocate. A copy of any

2 incident report must be provided to the Office of the Advocate by  
3 the person making the report.

4 5. Confidentiality. Requests for action must be treated  
5 confidentially as follows.

6 A. Any recipient request for action by the office and all  
7 written records or accounts related to the request are  
8 confidential as to the identity of the recipient.

9 B. The records and accounts may be released only as  
10 provided by law.

11 6. Protection for advocate. The advocate may not be  
12 disciplined or sanctioned for any actions taken on behalf of  
13 recipients.

14 7. Budget. When submitting any budget request to the  
15 Legislature, the department and the Governor shall provide that  
16 any funds for the Office of the Advocate be listed in a separate  
17 account.

18 §2209. Improvement and expansion of day treatment services for  
19 school-age children

20 The bureau shall work cooperatively with the Department of  
21 Corrections, Department of Education and the Department of Health  
22 and Developmental Services to improve and expand day treatment  
23 programs for school-age children in need of treatment so that  
24 they and their families may receive necessary, appropriate and  
25 coordinated therapeutic and educational services in home and  
26 community settings, reducing the likelihood that out-of-home or  
27 residential treatment placements will be required. The  
28 Department of Health and Developmental Services shall license  
29 these programs pursuant to Title 22-B, sections 16004 and 16303.  
30 The Department of Education shall approve these programs pursuant  
31 to Title 20-A, chapter 206. The Department of Health and  
32 Developmental Services and the Department of Education shall  
33 jointly develop standards to ensure a consistent high quality  
34 throughout the State.

35 §2210. Services for juveniles committed to the Maine  
36 Youth Center

37 1. Bureau authority. The bureau may provide consultation  
38 services to any juvenile with mental retardation committed to the  
39 Maine Youth Center if those services are requested by the  
40 Commissioner of Corrections. Consultation services may include  
41 participation by appropriate bureau professionals on the Clinical  
42 Services Committee of the Maine Youth Center in order to assist

2 in the design of individual treatment plans to provide  
3 habilitation, education and skill training to juveniles with  
4 mental retardation in residence at the Maine Youth Center.

5 2. Support services. If a program has been designed for a  
6 juvenile with mental retardation by the Clinical Services  
7 Committee and the Clinical Services Committee has included  
8 participation by the bureau professionals, the bureau shall  
9 provide, to the extent possible, support services to implement  
10 that program.

11 3. Case management. The bureau may provide case management  
12 services to juveniles with mental retardation who are released  
13 from the Maine Youth Center.

14 **CHAPTER 205**

15 **MAINE ADVISORY COMMITTEE ON CHILDREN**  
16 **WITH SPECIAL NEEDS**

17 §2401. Maine Advisory Committee on Children with Special Needs

18 The Maine Advisory Committee on Children with Special Needs,  
19 as established by Title 5, section 12004-I, subsection 59, is  
20 constituted as follows.

21 1. Appointed by Governor. The committee consists of 15  
22 members appointed by the Governor. In making the appointments,  
23 the Governor shall give due consideration to including parents or  
24 relatives of children in need of treatment, providers of services  
25 to these children and representatives of state agencies concerned  
26 with children.

27 2. Chair. The Governor shall designate one member as chair  
28 of the committee.

29 3. Terms. Members serve for terms of 3 years. Any member  
30 appointed to fill a vacancy occurring prior to the expiration of  
31 the term for which that member's predecessor was appointed must  
32 be appointed only for the remainder of the term.

33 §2402. Duties and compensation

34 The committee shall act in an advisory capacity to the  
35 commissioner and to the director in assessing present programs,  
36 planning future activities and developing the means to meet the  
37 needs of children in need of treatment and their families.  
38 Members of the committee serve without pay, but are eligible for  
39 reimbursement of expenses incurred in the performance of their  
40 duties in accordance with Title 5, chapter 379.

2 A. The committee shall monitor the adoption of rules  
4 defining the rights of children in need of treatment and  
6 make recommendations for improving the rules to the  
8 department that is proposing them.

10 B. The committee shall provide advice and direction to the  
12 director concerning the effective and efficient management  
14 of the Bath Children's Home and the Elizabeth Levinson  
16 Center in coordination with long-range missions and  
18 priorities of the bureau. The committee may inspect the  
20 Bath Children's Home and the Elizabeth Levinson Center and  
22 may make recommendations on the management of those  
24 institutions to the director and the commissioner.

26 C. Annually, the committee shall submit a report to the  
28 commissioner and the joint standing committee of the  
30 Legislature having jurisdiction over human resource matters  
32 regarding the implementation of the rights of children in  
34 need of treatment.

#### 36 §2403. Access

38 Committee members have access to all living areas, program  
40 areas and records of the Elizabeth Levinson Center, the Bath  
42 Children's Home and facilities that contract with the bureau,  
44 provided that the access conforms with the laws regarding  
46 confidentiality of mental health information.

### 48 CHAPTER 207

## 50 STATE-OPERATED FACILITIES FOR CHILDREN 52 WITH SPECIAL NEEDS

### 54 SUBCHAPTER I

#### 56 GENERAL PROVISIONS

#### 58 §2601. Maintenance of facilities for children

60 The department shall maintain the Elizabeth Levinson Center  
62 and the Bath Children's Home. The bureau shall ensure that  
64 services at those facilities are provided in accordance with this  
66 chapter.

#### 68 §2602. Services to children in other facilities

70 1. Policy direction. All programs and services provided to  
72 children and adolescents at Augusta Mental Health Institute,  
74 Bangor Mental Health Institute or Pineland Center must be

2 coordinated with the bureau and must be operated in concert with  
4 general policy of the bureau as outlined in this Part.

6 2. Report to commissioner. By July 1st of even-numbered  
8 years, the superintendent of the facilities referred in  
10 subsection 1 shall report to the commissioner and the  
12 Commissioner of Health and Developmental Services as to the  
14 number of children and adolescents served in each program of  
16 their respective facilities and as to the purposes of the  
18 services provided. The director must be consulted as part of the  
20 preparation of this report. The report must also include plans  
22 for proposed services to children in need of treatment that  
24 reflect needs expressed regionally by other state and  
26 governmental agencies, private providers and parents of children  
28 in need of treatment.

#### 30 §2603. Rights

32 Any resident of the Elizabeth Levinson Center or the Bath  
34 Children's Home has a right to nutritious food in adequate  
36 quantities, adequate professional medical care, an acceptable  
38 level of sanitation, ventilation and light, a reasonable amount  
40 of space per person in any sleeping area, a reasonable  
42 opportunity for physical exercise and recreational activities,  
44 protection against any physical or psychological abuse and a  
46 reasonably secure area for the maintenance of permitted personal  
48 effects.

### 50 SUBCHAPTER II

#### 52 ELIZABETH LEVINSON CENTER

#### 54 §2651. Establishment

56 There is established the Elizabeth Levinson Center at  
58 Bangor, which must be maintained for the training, education,  
60 treatment and care of children in need of treatment.

#### 62 §2652. Center director

64 The chief administrative officer of the Elizabeth Levinson  
66 Center is the center director. The following provisions apply to  
68 the center director.

70 1. Appointment. The commissioner shall, with the advice of  
72 the Maine Advisory Committee on Children with Special Needs,  
74 appoint and set the salary for the center director.

2 2. Term. The center director must be appointed for an  
indefinite term and serves at the pleasure of the commissioner  
until the center director's successor is appointed.

6 3. Qualifications. In order to qualify for appointment as  
the center director, a person must have sufficient education and  
experience to administer a facility providing services to  
children in need of treatment.

10 4. Duties. The center director:

12 A. Is responsible for the training, education, treatment  
and care of all persons received into or receiving services  
from the Elizabeth Levinson Center;

14 B. Is responsible for the discharge of all persons received  
into the Elizabeth Levinson Center; and

16 C. Has direct supervision, management and control of the  
grounds, buildings, property, officers and employees of the  
Elizabeth Levinson Center, subject to the approval of the  
commissioner.

20 §2653. Admission

22 Children in need of treatment may be admitted to the  
Elizabeth Levinson Center in any of the following ways.

24 1. Short-term evaluation. When considered necessary by an  
interdisciplinary team and approved by the center director,  
persons may be admitted into the short-term evaluation program  
for a period of 40 program days, excluding weekends, without  
certification.

26 2. Respite care. Respite care may be provided to any  
person by the center without full compliance with the procedures  
for admission by judicial certification under Title 22-B, section  
18651, if:

28 A. The purpose of the respite care is for evaluation,  
diagnosis or other clearly stated and broadly defined  
therapeutic purposes of the person or the person's family; or

30 B. The person, the person's guardian or parent has applied  
to the bureau for respite services that do not exceed 21  
days at a time and do not exceed 60 days during any 12-month  
period.

2 3. Judicial certification. A person may be admitted in  
accordance with the judicial certification process set forth in  
Title 22-B, section 18651.

4 §2654. Applicability of laws

6 If a child in need of treatment who has mental retardation  
is admitted to the center, all provisions in Title 22-B, Part 6  
that are applicable to state institutions apply to the center  
with respect to that child.

10 SUBCHAPTER III

12 BATH CHILDREN'S HOME

14 §2701. Establishment; purpose

16 There is established the Bath Children's Home at Bath to  
provide shelter and care for children of this State who are in  
need of services for one or more of the following reasons:

18 1. Lack of shelter. Lack of appropriate alternative shelter  
and care;

20 2. Abuse and neglect. Potential or actual abuse and  
neglect; or

22 3. Family concerns. Family crisis and upheaval.

24 §2702. Center Director

26 The chief administrative officer of the Bath Children's Home  
is the center director. The following provisions apply to the  
center director.

28 1. Appointment. The commissioner shall appoint and set the  
salary for the center director. The center director is appointed  
for an indefinite term and serves at the pleasure of the  
commissioner until the center director's successor is appointed.

30 2. Qualifications. The center director must have  
sufficient education and experience to administer a facility  
providing services to children in need of treatment.

32 3. Duties. The center director:

34 A. Is responsible for the shelter, care and related  
services of all persons received into or receiving services  
from the Bath Children's Home; and

2 B. Has direct supervision, management and control of the  
4 grounds, buildings, property, officers and employees of the  
6 Bath Children's Home, subject to the approval of the  
8 commissioner.

6 **§2703. Veterans' preference**

8 Preference in admission to the Bath Children's Home must be  
10 given to the children of veterans of this State who have served  
12 in wars in which the United States has been involved, including  
14 the Korean Campaign, the Vietnam War and the Persian Gulf War.

14 **§2704. Educational or vocational training programs**

16 Any child in residence at the Bath Children's Home who, upon  
18 reaching legal age, is a participant in an educational or  
20 vocational training program, the interruption or cessation of  
22 which will be caused by discharge from the home, may, with the  
24 approval of the center director, voluntarily elect to remain in  
26 residence at the home until all or part of the educational or  
28 vocational training program is completed.

24 **CHAPTER 209**

26 **FAMILY SUPPORT SERVICES**

28 **§2801. Definitions**

30 As used in this chapter, unless the context otherwise  
32 indicates, the following terms have the following meanings.

34 1. Crisis intervention. "Crisis intervention" means an  
36 unplanned and temporary service necessary to alleviate a crisis  
38 and preserve the living arrangements of a person who receives  
40 services from the department.

42 2. Family support services. "Family support services"  
44 means services that enable a family, which is otherwise eligible  
46 to receive services from the department, to maintain and care for  
48 its minor or adult member at home. Family support services  
50 include but are not limited to the following:

44 A. Dental and medical care;

46 B. Respite care;

48 C. Recreation and leisure activities;

50 D. Homemaker services;

2 E. Transportation;

4 F. Personal assistance services;

6 G. Home health services;

8 H. Therapeutic and nursing services;

10 I. Home and vehicle modifications;

12 J. Equipment and supplies;

14 K. Family counseling services;

16 L. Communication services;

18 M. Crisis intervention;

20 N. Specialized utility costs;

22 O. Integrated child care;

24 P. Specialized diagnosis and evaluation;

26 Q. Specialized nutrition and clothing;

28 R. Family education and training;

30 S. Service coordination;

32 T. Information services;

34 U. Assistive technology; and

36 V. Permanency planning.

38 3. Respite care. "Respite care" means a temporary service  
40 that provides a respite to a family in a planned and predictable  
42 manner. Respite care may include but is not limited to bringing  
44 outside caretakers into the home and bringing a child outside the  
46 home for services.

48 4. Service coordination. "Service coordination" means a  
50 lifelong, goal-oriented process for coordination of the range of  
services needed and wanted by persons with disabilities and their  
families.

5. Therapeutic services. "Therapeutic services" means  
occupational, physical, speech and language, respiratory, and  
vision therapy, counseling and other therapies to increase,



maintain or improve the functional capabilities of persons with disabilities.

#### §2802. Principles of family support

The department and the Department of Health and Developmental Services shall provide family support services in accordance with the following principles.

1. Importance of family setting and home care. Children, regardless of the type or severity of their disabilities, belong with and do best with families. Accordingly, families should receive whatever support is necessary to care for their family members with disabilities at home.

2. Focus on whole family. Family support must focus on the needs of the entire family.

3. Flexibility. Family needs change over time and family support must be flexible and responsive to the unique needs and strengths of individual families.

4. Integration. Families should be supported to fully integrate their family members with disabilities into education, employment and social settings in their own communities. Support to families must build on social networks and other sources of support that exist in their communities.

5. Long-term support. Family support is needed throughout the life spans of family members with disabilities.

6. Family expertise. Families should be recognized as experts regarding the needs of their members with disabilities. The family should be the primary decision-making unit regarding the support, services and opportunities it needs. Accordingly, families must be included in the planning and implementation of family support systems.

7. Family contributions. Families that have members with disabilities should be recognized for enriching the lives of all citizens through their contributions to the economic health and social fabric of the State.

8. Individual needs and aspirations. People with disabilities have personal needs and preferences to live, work, learn, grow and to have relationships. People with disabilities have abilities, competencies and aspirations and should be supported to pursue their personal desires and reach their fullest potential.

#### §2803. Family support policy coordination

With the assistance and advice of the councils established in sections 2804 and 2805, the commissioner and the Commissioner of Health and Developmental Services shall coordinate the development and implementation of consistent family support policies and services between the departments. The commissioner shall assign at least one person from the department and the Commissioner of Health and Developmental Services shall assign at least one person from the Department of Health and Developmental Services to carry out the duties of this chapter. The duties include but are not limited to the following.

1. Resource allocation. Those persons assigned by the commissioners under this section shall make recommendations to the commissioners regarding the allocation or reallocation of family support resources between the departments.

2. Policy development and implementation. Those persons assigned by the commissioners under this section shall develop and implement a family support policy that is consistent between the departments.

3. Service coordination and monitoring. Those persons assigned by the commissioners under this section shall oversee service coordination for families who are served by more than one department and shall resolve interdepartmental disagreements.

4. Liaison to other departments. Those persons assigned by the commissioners under this section shall serve as the departments' liaisons to other departments when a family is served by other departments.

#### §2804. Regional family support councils

The commissioner and the Commissioner of Health and Developmental Services shall appoint jointly a regional family support council as established in Title 5, section 12004-I, subsection 59-B in each of the departments' regions. Each council must have 12 members, all of whom are persons with disabilities or family members of persons with disabilities. Each council shall select its chair who shall serve on the Maine Family Support Council.

Each council shall determine which family support services are needed in its region and shall assist the commissioners to plan the development and implementation of those services. Each council shall participate in all departmental planning activities for family support services that are required by state or federal mandates.

2 **§2805. Maine Family Support Council**

4 The Maine Family Support Council, as established in Title 5,  
6 section 12004-I, subsection 59-C, consists of the chairs of each  
8 of the regional family support councils. The council shall  
10 select its chair. The department and the Department of Health  
12 and Developmental Services shall provide appropriate staff  
14 assistance to the council.

16 The Maine Family Support Council shall advise the  
18 commissioner and the Commissioner of Health and Developmental  
20 Services regarding the statewide development and implementation  
22 of family support services.

24 **§2806. Authority to provide family support services**

26 The commissioner and the Commissioner of Health and  
28 Developmental Services may provide family support services  
30 directly from the departments or through agreements with  
32 community agencies.

34 **§2807. Rules**

36 The commissioner shall adopt rules in accordance with Title  
38 5, chapter 375 to implement this chapter. The commissioner  
40 shall consult with the Commissioner of Health and Developmental  
42 Services in preparing or amending the rules.

44 **PART 3**

46 **PROTECTION, CARE AND TREATMENT OF CHILDREN**

48 **CHAPTER 401**

50 **CHILD AND FAMILY SERVICES AND CHILD**  
52 **PROTECTION ACT**

54 **SUBCHAPTER I**

56 **GENERAL PROVISIONS**

58 **§4001. Title**

60 This chapter may be known and cited as the "Child and Family  
62 Services and Child Protection Act."

64 **§4002. Definitions**

2 As used in this chapter, unless the context otherwise  
4 indicates, the following terms have the following meanings.

6 1. Abuse or neglect. "Abuse or neglect" means a threat to a  
8 child's health or welfare by physical, mental or emotional injury  
10 or impairment, sexual abuse or exploitation, deprivation of  
12 essential needs or lack of protection from these, by a person  
14 responsible for the child.

16 2. Abandonment. "Abandonment" means any conduct on the part  
18 of the parent showing an intent to forego parental duties or  
20 relinquish parental claims. The intent may be evidenced by:

22 A. Failure, for a period of at least one year, to  
24 communicate meaningfully with the child;

26 B. Failure, for a period of at least one year, to maintain  
28 regular visitation with the child;

30 C. Failure to participate in any plan or program designed to  
32 reunite the parent with the child;

34 D. Deserting the child without affording means of  
36 identifying the child and the child's parent or custodian;

38 E. Failure to respond to notice of child protective  
40 proceedings; or

42 F. Any other conduct indicating an intent to forego parental  
44 duties or relinquish parental claims.

46 3. Child. "Child" means any person who is less than 18  
48 years of age.

50 4. Child protection proceeding. "Child protection  
52 proceeding" means a proceeding on a child protection petition  
54 under subchapter IV, a subsequent proceeding to review or modify  
56 a case disposition under section 4178, an appeal under section  
58 4006, a proceeding on a termination petition under subchapter VI  
60 or a proceeding on a medical treatment petition under subchapter  
62 VIII.

64 5. Custodial parent. "Custodial parent" means a parent with  
66 custody.

68 6. Custodian. "Custodian" means the person who has legal  
70 custody and power over the person of a child.

72 7. Jeopardy to health or welfare or jeopardy. "Jeopardy to  
74 health or welfare" or "jeopardy" means serious abuse or neglect,  
76 as evidenced by:

2 A. Serious harm or threat of serious harm;

4 B. Deprivation of adequate food, clothing, shelter,  
6 supervision or care, including health care when that  
deprivation causes a threat of serious harm;

8 C. Abandonment of the child or absence of any person  
10 responsible for the child, that creates a threat of serious  
harm; or

12 D. The end of voluntary placement, when the imminent return  
14 of the child to the child's custodian causes a threat of  
serious harm.

16 B. Licensed mental health professional. "Licensed mental  
18 health professional" means a psychiatrist, licensed psychologist,  
licensed clinical social worker or certified social worker.

20 9. Parent. "Parent" means a natural or adoptive parent,  
22 unless parental rights have been terminated.

24 10. Permanent plan. "Permanent plan" means a plan designed  
26 to provide long-term stability for a child, that includes, but  
need not be limited to:

28 A. Reunification of the child with the child's family  
30 unless reunification has been determined to be inappropriate;

32 B. Termination of parental rights for the purposes of  
34 adoption;

36 C. Custody to an appropriate person;

38 D. Long-term foster care as defined in section 4345,  
40 subsection 1;

42 E. Continued care as provided for in section 4340,  
44 subsection 1; and

46 F. Emancipation of the child, if the requirements of Title  
48 15, section 3506-A, are met.

50 11. Person. "Person" means an individual, corporation,  
facility, institution or agency, public or private.

12. Person responsible for the child. "Person responsible  
for the child" means a person with responsibility for a child's  
health or welfare, whether in the child's home or another home or  
a facility that, as part of its function, provides for care of

2 the child. "Person responsible for the child" includes the  
4 child's custodian.

6 13. Serious harm. "Serious harm" means:

8 A. Serious injury;

10 B. Serious mental or emotional injury or impairment that  
12 now or in the future is likely to be evidenced by serious  
14 mental, behavioral or personality disorder, including severe  
anxiety, depression or withdrawal, untoward aggressive  
behavior, seriously delayed development or similar serious  
dysfunctional behavior; or

16 C. Sexual abuse or exploitation.

18 14. Serious injury. "Serious injury" means serious physical  
20 injury or impairment.

### 22 §4003. Purposes

24 Recognizing that the right to family integrity is limited by  
26 the right of children to be protected from abuse and neglect and  
recognizing also that uncertainty and instability are possible in  
extended foster home or institutional living, it is the intent of  
the Legislature that this chapter:

28 1. Authorization. Authorize the department to protect and  
30 assist abused and neglected children, children in circumstances  
that present a substantial risk of abuse and neglect, and their  
families;

32 2. Removal from parental custody. Provide that children  
34 will be taken from the custody of their parents only if failure  
to do so would jeopardize their health or welfare;

36 3. Reunification as a priority. Give family rehabilitation  
38 and reunification priority as a means for protecting the welfare  
of children, but prevent needless delay for permanent plans for  
children when rehabilitation and reunification is not possible;  
40 and

42 4. Permanent plans for care and custody. Promote the early  
44 establishment of permanent plans for the care and custody of  
children who can not be returned to their family. It is the  
intent of the Legislature that the department reduce the number  
of children receiving assistance under the United States Social  
Security Act, Title IV-E, who have been in foster care more than  
24 months, by 10% each year beginning with the federal fiscal  
48 year that starts on October 1, 1983.

2 §4004. Authorizations

4 1. General The department may take appropriate action that  
6 will help achieve the goals of section 4003 and subchapter X,  
8 including:

10 A. Developing and providing services that:

- 12 (1) Support and reinforce parental care of children;
- 14 (2) Supplement that care; and
- 16 (3) When necessary, substitute for parental care of  
18 children;

20 B. Encouraging the voluntary use of services under  
22 paragraph A and other services by families and children who  
24 may need them;

26 C. Cooperating and coordinating with other agencies,  
28 facilities or persons providing related services to families  
30 and children;

32 D. Establishing and maintaining a Child Protective Services  
34 Contingency Fund to provide temporary assistance to families  
36 to help them provide proper care for their children; and

38 E. Establishing a child death and serious injury review  
40 panel for reviewing deaths and serious injuries to  
42 children. The panel consists of the following members: the  
44 Chief Medical Examiner, a pediatrician, a public health  
46 nurse, forensic and community mental health clinicians, law  
48 enforcement officers, departmental child welfare staff,  
50 district attorneys and criminal or civil assistant attorneys  
general.

The purpose of the panel is to recommend to state and local  
agencies methods of improving the child protection system,  
including modifications of statutes, rules, policies and  
procedures.

2. Duties The department shall act to protect abused and  
neglected children and children in circumstances that present a  
substantial risk of abuse and neglect, to prevent further abuse  
and neglect, to enhance the welfare of these children and their  
families and to preserve family life wherever possible. The  
department shall:

A. Receive reports of abuse and neglect;

B. Promptly investigate all abuse and neglect cases coming  
to its attention or in the case of out-of-home abuse and  
neglect investigations, the department shall act in  
accordance with subchapter X;

C. Determine the degree of harm or threatened harm to each  
child in each case; and

D. Take appropriate action to further the purposes of this  
chapter.

3. Objection of parent. Except as specifically authorized  
by law, no person may take charge of a child over the objection  
of the child's parent or custodian.

§4005. Parties' rights to representation; legal counsel

1. Child; guardian ad litem. The following provisions  
govern guardians ad litem. The term guardian ad litem includes  
lay court appointed special advocates under Title 4, chapter 31.

A. The court, in every child protection proceeding, except  
a request for a preliminary protection order under section  
4173 or a petition for a medical treatment order under  
section 4400, but including hearings on those orders, shall  
appoint a guardian ad litem for the child. The District  
Court shall pay the guardian ad litem's reasonable costs and  
expenses. After the proceeding is initiated the court shall  
appoint the guardian ad litem as soon as possible.

B. The guardian ad litem shall act in pursuit of the best  
interests of the child. The guardian ad litem must be given  
access to all reports and records relevant to the case. The  
guardian ad litem shall investigate to ascertain the facts  
and shall include in an investigation, when possible and  
appropriate, the following:

(1) Review of relevant mental health records and  
materials;

(2) Review of relevant medical records;

(3) Review of relevant school records and other  
pertinent materials;

(4) Interviews with the child with or without other  
persons present; and

2 (5) Interviews with parents, foster parents, teachers,  
3 caseworkers and other persons who have been involved in  
4 caring for or treating the child.

6 C. The guardian ad litem may subpoena, examine and  
7 cross-examine witnesses and shall make a recommendation to  
8 the court.

10 D. The guardian ad litem shall make a written report of the  
11 guardian ad litem's investigation, findings and  
12 recommendations, and shall provide a copy of the report to  
13 each of the parties reasonably in advance of the hearing,  
14 and to the court on consent of all parties, except that the  
15 guardian ad litem need not provide a written report prior to  
16 a hearing on a preliminary protection order.

18 E. If the child has expressed the child's wishes, the  
19 guardian ad litem shall make the wishes of the child known  
20 to the court, regardless of the recommendation of the  
21 guardian ad litem.

23 F. The guardian ad litem may request the court to appoint  
24 legal counsel for the guardian ad litem. The District Court  
25 shall pay reasonable costs and expenses of the legal counsel.

27 2. Parents. Parents and custodians are entitled to legal  
28 counsel in child protection proceedings, except a request for a  
29 preliminary protection order under section 4173 or a petition for  
30 a medical treatment order under section 4400, but including  
31 hearings on those orders. They may request the court to appoint  
32 legal counsel for them. The court, if it finds them indigent,  
33 shall appoint and pay the reasonable costs and expenses of their  
34 legal counsel.

36 §4006. Foster parents right to standing and  
37 intervenor status in child protection proceedings

39 1. Definition. As used in this section, unless the context  
40 otherwise indicates, the following terms have the following  
41 meanings.

43 A. "Foster parent" means a person who has had a child in  
44 that person's home for at least one year and who has  
45 received a license for a family foster home as defined in  
46 section 6201, subsection 3, or who is a relative.

48 2. Petition. A foster parent may petition for standing and  
49 intervenor status in any child protection proceeding under this  
50 chapter regarding a foster child that lives or has lived in the  
foster parent's home. The standing and intervenor status is  
limited to that proceeding unless otherwise ordered by the court.

2 3. Criteria. The court shall make a determination whether  
3 to grant standing based on the strength and duration of the  
4 relationship between the foster parents and the child and in the  
5 best interests of the child.

7 §4007. Appeals

8 A party aggrieved by an order of a court under this chapter,  
9 except an order entered pursuant to subchapter VI, may appeal to  
10 the Superior Court in accordance with the Maine Rules of Civil  
11 Procedure.

13 Any appeal from an order of the court under subchapter VI  
14 lies directly to the Supreme Judicial Court sitting as the Law  
15 Court. Appeals from an order under subchapter VI are governed by  
16 the Maine Rules of Civil Procedure, chapter 9.

18 Appeals from any order under this chapter must be  
19 expedited. Any attorney appointed to represent a party in a  
20 District Court proceeding under this chapter shall continue to  
21 represent that client in any appeal unless otherwise ordered by  
22 the court.

24 §4008. Conducting proceedings

26 1. Procedures. All child protection proceedings must be  
27 conducted according to the rules of civil procedure and the rules  
28 of evidence, except as provided otherwise in this chapter. All  
29 the proceedings must be recorded. All proceedings and records  
30 must be closed to the public, unless the court orders otherwise.

32 2. Interviewing children. The court may interview a child  
33 witness in chambers, with only the guardian ad litem and counsel  
34 present. Statements made in chambers must be made a matter of  
35 record. The court may admit and consider oral or written evidence  
36 of out-of-court statements made by a child and may rely on that  
37 evidence to the extent of its probative value.

39 3. Motion for examination. At any time during the  
40 proceeding, the court may order that a child, parent, alleged  
41 parent, person frequenting the household or having custody at the  
42 time of the alleged abuse or neglect, any other party to the  
43 action or person seeking care or custody of the child be examined  
44 pursuant to the Maine Rules of Civil Procedure, Rule 35.

46 4. Report of licensed mental health professional. In any  
47 hearing held in connection with a child protection proceeding  
48 under this chapter, the written report of a licensed mental  
49 health professional who has treated or evaluated the child must  
50 be admitted as evidence if the party seeking admission of the

2 written report has furnished a copy of the report to all parties  
4 at least 21 days prior to the hearing. The report may not be  
6 admitted as evidence without the testimony of the mental health  
8 professional if a party objects at least 7 days prior to the  
10 hearing. This subsection does not apply to the caseworker  
12 assigned to the child.

14 5. Interstate Compact on Placement of Children. The  
16 provisions of the Interstate Compact on Placement of Children,  
18 chapter 615, apply to proceedings under this chapter. Any report  
20 submitted pursuant to the compact is admissible in evidence for  
22 purposes of indicating compliance with the compact, and the court  
24 may rely on evidence to the extent of its probative value.

26 6. Records. Records released by the department pursuant to  
28 section 4009 may be used only for the purposes for which that  
30 release was intended.

32 7. Benefits and support for children in custody of  
34 department. When a child has been ordered into the custody of  
36 the department under this chapter, Title 15, chapter 507 or Title  
38 19, chapter 13, within 30 days of the order, each parent shall  
40 provide the department with information necessary for the  
42 department to make a determination regarding the eligibility of  
44 the child for state, federal or other 3rd-party benefits and  
46 shall provide any necessary authorization for the department to  
48 apply for these benefits for the child.

50 Prior to a hearing under section 4173, subsection 4, section 4174  
or section 4178, each parent shall file income affidavits as  
required by Title 19, sections 312 and 314, unless current  
information is already on file with the court. If a child is  
placed in the custody of the department, the court shall order  
child support from each parent according to the guidelines  
pursuant to Title 19, chapter 7, subchapter I-A, designate each  
parent as a nonprimary care provider and apportion the obligation  
accordingly.

Income affidavits and instructions must be provided to each  
parent by the department at the time of service of the petition  
or motion. The court may order a deviation pursuant to Title 19,  
section 317. Support ordered pursuant to this section must be  
paid directly to the department pursuant to Title 19, section  
777-A, subsection 3. The failure of a parent to file an  
affidavit does not prevent the entry of a protection order. A  
parent may be subject to Title 19, section 314, subsection 1,  
paragraph D for failure to complete and file income affidavits.

§4009. Records; confidentiality; disclosure

2 1. Confidentiality of records. All department records that  
4 contain personally identifying information and are created or  
6 obtained in connection with the department's child protective  
8 activities and activities related to a child while in the care or  
10 custody of the department are confidential and subject to release  
12 only under the conditions of subsections 2 and 3. Within the  
14 department, the records are available only to and may be used  
16 only by appropriate departmental personnel and legal counsel for  
18 the department in carrying out their functions.

20 2. Optional disclosure of records. The department may  
22 disclose relevant information in the records to the following  
24 persons:

26 A. An agency or person investigating or participating on a  
28 team investigating a report of child abuse or neglect when  
30 the investigation or participation is authorized by law or  
32 by an agreement with the department;

34 B. A physician treating a child whom the physician  
36 reasonably suspects may be abused or neglected;

38 C. A child named in a record who is reported to be abused  
40 or neglected, or the child's parent or custodian, or the  
42 subject of the report, with protection for identity of  
44 reporters and other persons when appropriate;

46 D. A person having the legal responsibility or  
48 authorization to educate, care for, evaluate, treat or  
50 supervise a child, parent or custodian who is the subject of  
a record, or a member of a panel appointed by the department  
to review child deaths and serious injuries. This includes  
a member of a treatment team or group convened to plan for  
or treat a child or family that is the subject of a record.  
This may also include a member of a support team for foster  
parents, if that team has been reviewed and approved by the  
department;

E. Any person engaged in bona fide research, provided that  
no personally identifying information is made available,  
unless it is essential to the researcher and the  
commissioner or the commissioner's designee gives prior  
approval. If the researcher desires to contact a subject of  
a record, the department shall obtain the subject's consent  
prior to the contact;

F. Any agency or department involved in licensing or  
approving homes for, or the placement of, children or  
dependent adults, with protection for identity of reporters  
and other persons when appropriate;

2 G. Persons and organizations pursuant to Title 5, section  
4 9057, subsection 6, and pursuant to chapter 103;

6 H. The representative designated to provide child welfare  
8 services by the tribe of an Indian child as defined by the  
10 federal Indian Child Welfare Act, 25 United States Code,  
12 Section 1903; and

14 I. A person making a report of suspected abuse or neglect.  
16 The department may only disclose that it has not accepted  
18 the report for investigation, unless other disclosure  
20 provisions of this section apply.

22 3. Mandatory disclosure of records. The department shall  
24 disclose relevant information in the records to the following  
26 persons:

28 A. The guardian ad litem of a child named in a record who  
30 is reported to be abused or neglected;

32 B. A court on its finding that access to those records may  
34 be necessary for the determination of any issue before the  
36 court or a court requesting a report from the department  
38 pursuant to Title 19, section 533 or 751. Access to the  
40 report or record is limited to counsel of record unless  
42 otherwise ordered by the court. Access to actual reports or  
44 records is limited to in camera inspection, unless the court  
46 determines that public disclosure of the information is  
48 necessary for the resolution of an issue pending before it;

32 C. A grand jury on its determination that access to those  
34 records is necessary in the conduct of its official business;

36 D. An appropriate state executive or legislative official  
38 with responsibility for child protection services or the  
40 Child Welfare Services Ombudsman, as established in section  
42 4451, in carrying out official functions, provided that no  
44 personally identifying information may be made available  
46 unless necessary to the ombudsman's functions;

48 E. The protection and advocacy agency for persons with  
50 disabilities, designated pursuant to Title 5, section 19502,  
in connection with investigations conducted in accordance  
with Title 5, chapter 511. The determination of what  
information and records are relevant to the investigation  
must be made by agreement between the department and the  
agency;

F. The Commissioner of Education when the information  
concerns teachers and other professional personnel issued

2 certificates under Title 20-A, persons employed by schools  
4 approved pursuant to Title 20-A or any employees of schools  
6 operated by the Department of Education; and

8 G. The prospective adoptive parents. Prior to a child  
10 being placed for the purpose of adoption, the department  
12 shall disclose fully to the prospective adoptive parents  
14 available information regarding the child's medical and  
16 genetic background and any reasonably available background  
18 or history that pertains to serious sexual, emotional or  
20 physical abuse of or harm to the child, with protection for  
22 the identity of persons other than the child.

24 4. Confidentiality. The proceedings and records of the  
26 child death and serious injury review panel created in accordance  
28 with section 4004, subsection 1, paragraph E are confidential and  
30 are not subject to subpoena, discovery or introduction into  
32 evidence in a civil or criminal action. The commissioner shall  
34 disclose conclusions of the review panel upon request, but may  
36 not disclose data that is otherwise classified as confidential.

38 5. Unlawful dissemination; penalty. A person is guilty of  
40 unlawful dissemination if that person knowingly disseminates  
42 records that are determined confidential by this section, in  
44 violation of the mandatory or optional disclosure provisions of  
46 this section. Unlawful dissemination is a Class E crime, which,  
48 notwithstanding Title 17-A, section 1252, subsection 2, paragraph  
E, is punishable by a fine of not more than \$500 or by  
imprisonment for not more than 30 days.

6. Retention of unsubstantiated child protection services  
records. Except as provided in this subsection, the department  
shall retain unsubstantiated child protective services case  
records for no more than 18 months following a finding of  
unsubstantiation and then expunge unsubstantiated case records  
from all departmental files or archives unless a new referral has  
been received within the 18-month retention period.  
Unsubstantiated child protective services records of persons who  
were eligible for Medicaid services under the federal Social  
Security Act, Title XIX, at the time of the investigation may be  
retained for up to 5 years for the sole purpose of state and  
federal audits of the Medicaid program. Unsubstantiated child  
protective services case records retained for audit purposes  
pursuant to this subsection must be stored separately from other  
child protective services records and may not be used for any  
other purpose.

§4010. Penalty for violations

2 A person who knowingly violates a provision of this chapter  
3 commits a civil violation for which a forfeiture of not more than  
4 \$500 may be adjudged.

6 **§4011. Spiritual treatment**

8 1. Treatment not considered abuse or neglect. Under  
9 subchapters I to VII, a child is not considered to be abused or  
10 neglected, in jeopardy of health or welfare or in danger of  
11 serious harm solely because treatment is by spiritual means by an  
12 accredited practitioner of a recognized religious organization.

14 2. Treatment to be considered if requested. When medical  
15 treatment is authorized under this chapter, treatment by  
16 spiritual means by an accredited practitioner of a recognized  
17 religious organization may also be considered if requested by the  
18 child or the child's parent.

20 **§4012. Child abuse policies**

22 1. Policy development. Every public or private agency or  
23 program that is administered, licensed or funded by the  
24 Department of Health and Developmental Services, the Department  
25 of Children and Family Services or the Department of Corrections  
26 and hires staff or selects volunteers and provides care or  
27 services for children shall develop a written policy regarding  
28 child abuse and neglect.

30 The policy must include:

32 A. A description of how the program and children are  
33 managed to prevent abuse or neglect;

34 B. The reporting of suspected abuse or neglect or other  
35 violations to the appropriate designated authorities;

36 C. The agency's course of action if allegations of abuse or  
37 neglect are made against the agency or its staff; and

38 D. The agency's grievance procedures for staff and for  
39 children and their parents or guardians regarding alleged  
40 abuse or neglect.

42 2. Filing. The agency shall file the policy as part of its  
43 application for licensure or renewal with the state entity that  
44 regulates the agency within one year of the date the agency comes  
45 into existence.

46 3. Availability of policy. The agency shall make the  
47 policy available to its staff, clients and the public.

2 **SUBCHAPTER II**

4 **REPORTING OF ABUSE OR NEGLECT**

6 **§4060. Persons mandated to report suspected**  
7 **abuse or neglect**

8 1. Reasonable cause to suspect. When, while acting in a  
9 professional capacity, an adult who is a medical or osteopathic  
10 physician, resident, intern, emergency medical services person,  
11 medical examiner, physician's assistant, dentist, dental  
12 hygienist, dental assistant, chiropractor, podiatrist, registered  
13 or licensed practical nurse, teacher, guidance counselor, school  
14 official, social worker, court appointed special advocate or  
15 guardian ad litem for the child, homemaker, home health aide,  
16 medical or social service worker, psychologist, child care  
17 personnel, mental health professional, law enforcement official,  
18 state fire inspector, municipal code enforcement official,  
19 municipal fire inspector or chair of a professional licensing  
20 board that has jurisdiction over mandated reporters knows or has  
21 reasonable cause to suspect that a child has been or is likely to  
22 be abused or neglected, that person shall immediately report or  
23 cause a report to be made to the department.

24 A. Whenever a person is required to report in a capacity as  
25 a member of the staff of a medical or public or private  
26 institution, agency or facility, that person shall  
27 immediately notify either the person in charge of the  
28 institution, agency or facility, or a designated agent, who  
29 shall then cause a report to be made. The staff member may  
30 also make a report directly to the department.

32 B. Any person may make a report if that person knows or has  
33 reasonable cause to suspect that a child has been or is  
34 likely to be abused or neglected.

35 C. When, while acting in a professional capacity, any  
36 person required to report under this section knows or has  
37 reasonable cause to suspect that a child has been abused or  
38 neglected by a person not responsible for the child, the  
39 person shall immediately report or cause a report to be made  
40 to the appropriate district attorney's office.

42 2. Mental health treatment. When a licensed mental health  
43 professional is required to report under subsection 1, and that  
44 person's knowledge or reasonable cause to suspect that a child  
45 has been or is likely to be abused or neglected comes from  
46 treatment of a person responsible for the abuse or neglect, the  
47 licensed mental health professional shall report to the  
48 appropriate district attorney's office.



2 department in accordance with subsection 1 and under the  
3 following conditions.

4 A. The department shall consult with the licensed mental  
5 health professional who has made the report and shall  
6 attempt to reach agreement with the professional as to how  
7 the report is to be pursued. If agreement is not reached,  
8 the licensed mental health professional may request a  
9 meeting under paragraph B.

10 B. Upon the request of the licensed mental health  
11 professional who has made the report, after the department  
12 has completed its investigation of the report under section  
13 4115 or has received a preliminary protection order under  
14 section 4173 and where the department plans to initiate or  
15 has initiated a final protection action under section 4174  
16 or plans to refer or has referred the report to law  
17 enforcement officials, the department shall convene at least  
18 one meeting of the licensed mental health professional who  
19 made the report, at least one representative from the  
20 department, a licensed mental health professional with  
21 expertise in child abuse or neglect and a representative of  
22 the district attorney's office having jurisdiction over the  
23 report, unless that office indicates that prosecution is  
24 unlikely.

25 C. The persons meeting under paragraph B shall make  
26 recommendations regarding treatment and prosecution of the  
27 person responsible for the abuse or neglect. The persons  
28 making the recommendations shall take into account the  
29 nature, extent and severity of abuse or neglect, the safety  
30 of the child and the community and needs of the child and  
31 other family members for treatment of the effects of the  
32 abuse or neglect and the willingness of the person  
33 responsible for the abuse or neglect to engage in  
34 treatment. The persons making the recommendations may  
35 review or revise these recommendations at their discretion.

36 The intent of this subsection is to encourage offenders to seek  
37 and effectively utilize treatment, at the same time providing any  
38 necessary protection and treatment for the child and other family  
39 members.

40 3. Photographs of visible trauma. Whenever a person is  
41 required to report as a staff member of a law enforcement agency  
42 or a hospital, that person shall make reasonable efforts to take,  
43 or cause to be taken, color photographs of any areas of trauma  
44 visible on a child.

2 A. The taking of photographs must be done in a manner  
3 consistent with professional standards, including minimizing  
4 trauma. The parent's or custodian's consent to the taking  
5 of photographs is not required.

6 B. Photographs must be made available to the department as  
7 soon as possible. The department shall pay the reasonable  
8 costs of the photographs from funds appropriated for child  
9 welfare services.

10 C. The person shall notify the department as soon as  
11 possible if that person is unable to take, or cause to be  
12 taken, these photographs.

13 D. Designated agents of the department may take photographs  
14 of any subject matter when necessary and relevant to an  
15 investigation of a report of suspected abuse or neglect or  
16 to subsequent child protection proceedings.

#### 20 §4061. Reporting procedures

21 1. Immediate report. Reports regarding abuse or neglect  
22 must be made immediately by telephone to the department and must  
23 be followed by a written report within 48 hours if requested by  
24 the department.

25 2. Information required. The reports must include the  
26 following information if within the knowledge of the person  
27 reporting:

28 A. The name and address of the child and the persons  
29 responsible for the child's care or custody;

30 B. The child's age and sex;

31 C. The nature and extent of abuse or neglect, including a  
32 description of injuries and any explanation given for them;

33 D. A description of sexual abuse or exploitation;

34 E. Family composition and evidence of prior abuse or  
35 neglect of the child or the child's siblings;

36 F. The source of the report, the person making the report,  
37 that person's occupation and where that person can be  
38 contacted;

39 G. The actions taken by the reporting source, including a  
40 description of photographs or x rays taken; and

2 H. Any other information that the person making the report  
3 believes may be helpful.

4 **§4062. Mandatory reporting to medical examiner for**  
5 **postmortem investigation**

6 A person required to report cases of known or suspected  
7 abuse or neglect, who knows or has reasonable cause to suspect  
8 that a child has died as a result of abuse or neglect, shall  
9 report that fact to the appropriate authority as provided in  
10 Title 22-B, section 20415. A child is not considered to be  
11 abused or neglected solely because the child was provided with  
12 treatment by spiritual means by an accredited practitioner of a  
13 recognized religious organization.

14 **§4063. Immunity from liability**

15 **1. Reporting and proceedings.** A person, including an agent  
16 of the department, participating in good faith in reporting under  
17 this subchapter or participating in a related child protection  
18 investigation or proceeding, including, but not limited to, a  
19 multidisciplinary team, out-of-home abuse investigating team or  
20 other investigating or treatment team, is immune from any  
21 criminal or civil liability for the act of reporting or  
22 participating in the investigation or proceeding. Good faith  
23 does not include instances when a false report is made and the  
24 person knows the report is false. Nothing in this section may be  
25 construed to bar criminal or civil action regarding perjury or  
26 regarding the abuse or neglect that led to a report,  
27 investigation or proceeding.

28 **2. Photographs and x rays.** A person participating in good  
29 faith in taking photographs or x rays under this subchapter is  
30 immune from civil liability for invasion of privacy that might  
31 otherwise result from these actions.

32 **3. Presumption of good faith.** In a proceeding regarding  
33 immunity from liability, there is a rebuttable presumption of  
34 good faith.

35 **§4064. Privileged or confidential communications**

36 The husband-wife and physician and psychotherapist-patient  
37 privileges under the Maine Rules of Evidence and the confidential  
38 quality of communication under Title 20-A, sections 4008 and  
39 6001, to the extent allowed by applicable federal law; Title  
40 24-A, section 4224; Title 32, sections 1092-A and 7005; and Title  
41 22-B, section 701, are abrogated in relation to required  
42 reporting, cooperating with the department or a guardian ad litem  
43 in an investigation or other child protective activity or giving

44 evidence in a child protection proceeding. Information released  
45 to the department pursuant to this section must be kept  
46 confidential and may not be disclosed by the department except as  
47 provided in section 4009.

48 Statements made to a licensed mental health professional in  
49 the course of counseling, therapy or evaluation where the  
50 privilege is abrogated under this section may not be used against  
51 the client in a criminal proceeding except to rebut the client's  
52 testimony contradicting those statements. Nothing in this  
53 section limits any responsibilities of the professional pursuant  
54 to this chapter.

55 **§4065. Confidentiality of employee records**

56 Notwithstanding Title 5, section 554, subsection 2,  
57 paragraph E or any other provision of law, the confidentiality of  
58 employee records is abrogated in relation to required reporting,  
59 cooperating with the department or guardian ad litem in an  
60 investigation or other child protective activity or giving  
61 evidence in a child protective proceeding.

62 **§4066. Discrimination**

63 No person may be discriminated against by any employer in  
64 any way for participating in good faith in reporting under this  
65 subchapter or in a related child protection investigation or  
66 proceeding.

67 **SUBCHAPTER III**

68 **INVESTIGATIONS AND EMERGENCY SERVICES**

69 **§4115. Investigations**

70 **1. Subpoenas and obtaining criminal history.** The  
71 commissioner, the commissioner's delegate or the legal counsel  
72 for the department may:

73 **A. Issue subpoenas requiring persons to disclose or provide**  
74 **to the department information or records in their possession**  
75 **that are necessary and relevant to an investigation of a**  
76 **report of suspected abuse or neglect, to a subsequent child**  
77 **protection proceeding or to a panel appointed by the**  
78 **department to review child deaths and serious injuries.**

79 **(1) The department may apply to the District Court to**  
80 **enforce a subpoena.**

2 (2) A person who complies with a subpoena is immune  
4 from civil or criminal liability that might otherwise  
6 result from the act of turning over or providing  
8 information or records to the department; and

10 B. Obtain nonconviction data and other criminal history  
12 record information under Title 16, chapter 8, subchapter  
14 VIII, that the commissioner deems relevant to an abuse or  
16 neglect case.

18 2. Confidentiality. Information or records obtained by  
20 subpoena must be treated in accordance with section 4009.

22 3. Interviewing the child without prior notification. The  
24 department may interview a child without prior notification under  
26 the following provisions.

28 A. The department may interview a child without prior  
30 notification to the parent or custodian when the department  
32 has reasonable grounds to believe that prior notice would  
34 increase the threat of serious harm to the child or another  
36 person. The department may conduct one initial interview  
38 with a child without prior notification to the parent or  
40 custodian of the child when the child contacts the  
42 department or a person providing services puts the child  
44 into contact with the department.

46 B. The interview may take place at a school, hospital,  
48 police station or other place where the child is present.

C. School officials shall permit the department to meet  
with and interview the child during school hours, if the  
interview is necessary to carry out the department's duties  
under this chapter.

36 §4116. Voluntary care

38 On the written request of a person responsible for the  
40 child, the department may care for that child for a specified  
42 period by agreement, unless a custodian objects. Voluntary care  
44 agreements do not affect custody. The department may require  
46 reimbursement from a parent or custodian for these services.

48 §4117. Short-term emergency services

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

2 A. "Agency" means a person with a contract or written  
4 agreement with the department to provide short-term  
6 emergency services.

8 B. "Short-term emergency services" means protective  
10 services, emergency shelter care, counseling, emergency  
12 medical treatment and other services that are essential to  
14 the care and protection of a child. These services include  
16 emergency caretaker or homemaker services in the child's  
18 home or care outside the child's home when no parent or  
20 other responsible adult is available and willing to care for  
22 the child in the child's home.

24 2. Authorization. The department may provide short-term  
26 emergency services, directly or through contracts or written  
28 agreements with agencies, to a child who has been or appears to  
30 be:

32 A. Threatened with serious harm;

34 B. A runaway from the child's parents or custodian;

36 C. Without any person responsible for the child; or

38 D. Taken into interim care under Title 15, section 3501, by  
40 a law enforcement officer.

42 3. Consent to treatment. The department may give consent  
44 for the child to receive necessary emergency medical treatment  
46 while receiving short-term emergency services. When the  
48 department has given its consent, a physician or health care  
50 provider is immune from civil liability for providing emergency  
medical treatment without the informed consent of the child or  
the child's parents or custodian.

4. Contacting parents. The following procedures apply.

A. Prior to or on initiating short-term emergency services,  
the department or agency shall take reasonable steps to  
notify a custodian that the child will receive or is  
receiving the services. Notwithstanding this subsection,  
shelters for homeless children, as defined in section 6201,  
subsection 5, are governed by the parental notification  
requirements contained in the department rules for the  
licensure of shelters for homeless children.

B. Short-term emergency services, except for medical  
treatment, may not be provided to a child who expresses a  
clear desire not to receive them.

2 C. If a parent or custodian objects to medical treatment,  
4 it must be discontinued within 6 hours of receiving the  
6 objection.

8 5. Time limit. Short-term emergency services may not  
10 exceed 72 hours from the time of the department's assumption of  
12 responsibility for the child. Notwithstanding this subsection,  
14 shelters for homeless children, as defined in section 6201,  
16 subsection 5, are governed by the time-limit requirements  
18 contained in the department rules for the licensure of shelters  
20 for homeless children.

22 6. Parent's obligations. Providing short-term emergency  
24 services to a child does not affect a parent's obligation for the  
26 support of the child.

28 7. Reimbursement. The department may, by agreement or  
30 court order, obtain reimbursement from a parent for the support  
32 of a child who receives short-term emergency services. An agency  
34 may also obtain reimbursement from a parent subject to its  
36 contract or written agreement with the department.

38 §4118. Department responsible for required services

40 If the department requires that a child receive mental  
42 health services or other medical services as an alternative to  
44 the initiation of a child protection proceeding, the department  
46 shall inform the person responsible for the child that the  
48 services must be approved by the department. If the person  
50 responsible for the child's medical expenses is unable to pay for  
the services required, the department shall inform the person  
responsible for the child that the department will pay for the  
services if the services are approved by the department.

SUBCHAPTER IV

PROTECTION ORDERS

40 §4170. Jurisdiction; venue

42 1. Jurisdiction. The following provisions govern  
44 jurisdiction.

46 A. The District Court has jurisdiction over child  
48 protection petitions.

50 B. The Probate Court and the Superior Court have concurrent  
jurisdiction to act on requests for preliminary child  
protection orders under section 4173. As soon as the action  
is taken by the Probate Court or the Superior Court, the  
matter must be transferred to the District Court.

2 2. Venue. The following provisions govern venue.

4 A. Petitions must be brought in the district where the  
6 child legally resides or where the child is present. When a  
8 child is in voluntary placement with the department or an  
10 agency, the petition may be brought only in the district  
12 where the child legally resides.

14 B. The court, for the convenience of the parties or in the  
16 interests of justice, may transfer the petitions to another  
18 district or division.

20 C. A judge from another district, division or county may  
22 hear a petition and make a preliminary or final protection  
24 order if no judge is available in the district and division  
26 in which the petition is filed.

28 3. Scope of authority. The court shall consider and act on  
30 child protection petitions regardless of other decrees regarding  
32 a child's care and custody. The requirements and provisions of  
34 Title 19, chapter 16, the Uniform Child Custody Jurisdiction Act,  
36 do not apply to child protection proceedings. If custody is an  
38 issue in another pending proceeding, the proceedings may be  
40 consolidated in the District Court, with respect to the custody  
42 issue. In any event, the court shall make an order on the child  
44 protection petition in accordance with this chapter. That order  
46 takes precedence over any other prior order regarding the child's  
48 care and custody.

50 §4171. Child protection petition; petitioners; content; filing

52 1. Who may petition. Petitions may be brought by:

54 A. The department through an authorized agent;

56 B. A police officer or sheriff; or

58 C. Three or more persons.

60 2. Contents of petition. A petition must be sworn and must  
62 include at least the following:

64 A. Name, date, place of birth and municipal residence, if  
66 known, of each child;

68 B. The name and address of the petitioner and the nature of  
70 the petitioner's relationship to the child;

C. Name and municipal residence, if known, of each parent  
and custodian;

2 D. A summary statement of the facts that the petitioner  
4 believes constitute the basis for the petition;

6 E. An allegation that is sufficient for court action;

8 F. A request for specific court action;

10 G. A statement that the parents and custodians are entitled  
12 to legal counsel in the proceedings and that, if they want  
14 an attorney but are unable to afford one, they should  
16 contact the court as soon as possible to request appointed  
18 counsel; and

20 H. A statement that petition proceedings could lead to the  
22 termination of parental rights, under subchapter VI.

24 3. Hearing date. On the filing of a petition, the court  
26 shall set the earliest practicable time and date for a hearing.

28 **§4172. Service and notice**

30 1. Petition service. A child protection petition must be  
32 served as follows.

34 A. The petition and a notice of hearing must be served on  
36 the parents and custodians, the guardian ad litem for the  
38 child and any other party at least 10 days prior to the  
40 hearing date. A party may waive this time requirement if  
42 the waiver is written and voluntarily and knowingly executed  
44 in court before a judge. Service must be made in accordance  
46 with the Maine Rules of Civil Procedure.

48 B. If the department is not the petitioner, the petitioner  
50 shall serve a copy of the petition and notice of hearing on  
the State.

2. Notice of preliminary protection order. If there is to  
be a request for a preliminary protection order, the petitioner  
shall, by any reasonable means, attempt to notify the parents and  
custodians of the petitioner's intent to request that order and  
of the time and place at which the petitioner will make the  
request. This notice is not required if the petitioner includes  
in the petition a sworn statement of the petitioner's belief that:

A. The child would suffer serious harm during the time  
needed to notify the parents or custodians; or

B. Prior notice to the parents or custodians would increase  
the risk of serious harm to the child or petitioner.

2 3. Service of preliminary protection order. If the court  
4 makes a preliminary protection order, a copy of the order must be  
6 served on the parents and custodians by:

8 A. In-hand delivery by the judge or court clerk to any  
10 parent, custodian or their counsel who is present when the  
12 order is made;

14 B. Service in accordance with the Maine Rules of Civil  
16 Procedure. Notwithstanding the Maine Rules of Civil  
18 Procedure, the court may waive service by publication of a  
20 preliminary protection order for a party whose whereabouts  
22 are unknown if the department shows by affidavit that  
24 diligent efforts have been made to locate the party; or

26 C. Another manner ordered by the court.

28 4. Information provided to parents. When the court makes a  
30 preliminary protection order on a child who is physically removed  
32 from the child's parents or custodians, the following information  
34 must be provided to the parents or custodians in written form by  
36 the petitioner at the time of removal of the child:

38 A. The assigned caseworker's name and work telephone number;

40 B. The location where the child will be taken; and

42 C. A copy of the complete preliminary protection order.

44 This information is not required if the petitioner includes in  
46 the petition a sworn statement of the petitioner's belief that  
48 providing the information would cause the threat of serious harm  
50 to the child, the substitute care giver, the petitioner or any  
other person.

5. Service of final protection order. The court shall  
deliver in-hand at the court, or send by ordinary mail promptly  
after it is entered, a copy of the final protection order to the  
parent's or custodian's counsel or, if no counsel, to the parents  
or custodians. The copy of the order must include a notice to  
them of their rights under section 4178. Lack of compliance with  
this subsection does not affect the validity of the order.

**§4173. Request for a preliminary protection order**

1. Request. A petitioner may add to a child protection  
petition a request for a preliminary protection order, which must  
include a sworn summary of facts to support the request.

2 2. Order. If the court finds by a preponderance of the  
4 evidence presented in the sworn summary or otherwise that there  
6 is an immediate risk of serious harm to the child, it may order  
any disposition under section 4175. A preliminary protection  
order automatically expires at the time of the issuing of a final  
protection order under section 4174.

8 3. Custodial consent. If the custodian consents in writing  
10 and the consent is voluntarily and knowingly executed in court  
before a judge, or the custodian does not appear after proper  
12 notice has been given, then the hearing on the preliminary  
protection order need not be held, except as provided in  
subsection 4.

14 4. Preliminary hearing. If the custodial parent appears  
16 and does not consent, or if a noncustodial parent requests a  
hearing, then the court shall hold a preliminary hearing on that  
18 order within 10 days of its issuance or request, unless all  
parties agree to a later date. The petitioner bears the burden  
20 of proof. If, after the hearing, the court finds, by a  
preponderance of the evidence, that returning the child to the  
22 child's custodian would place the child in immediate risk of  
serious harm, it shall continue the order or make another  
24 disposition under section 4175.

26 5. Contents of order. The order must include a notice to  
the parents and custodians of their right to counsel, as required  
28 under section 4171, subsection 2, paragraph G, and, if the order  
was made without consent, notice of the date and time of the  
30 preliminary hearing.

#### 32 §4174. Hearing on final protection petition

34 1. Hearing required. The court shall hold a hearing prior  
to making a final protection order.

36 2. Adjudication. After hearing evidence, the court shall  
38 make a finding, by a preponderance of the evidence, whether the  
child is in circumstances of jeopardy to the child's health or  
40 welfare.

42 3. Grounds for disposition. If the court determines that  
the child is in circumstances of jeopardy to the child's health  
44 or welfare, the court shall hear any relevant evidence regarding  
proposed dispositions, including written or oral reports,  
46 recommendations or case plans. The court shall then make a  
written order of any disposition under section 4175. If  
48 possible, this dispositional phase must be conducted immediately  
after the adjudicatory phase. Written materials to be offered as  
50 evidence must be made available to each party's counsel and the

guardian ad litem reasonably in advance of the dispositional  
phase.

4 4. Final protection order. The court shall issue a final  
6 protection order within 18 months of the filing of the child  
protection petition unless good cause is shown why the order  
should not be issued within that time period.

#### 8 §4175. Disposition and principles

10 1. Disposition. In a protection order, the court may order  
12 one or more of the following:

14 A. No change in custody;

16 B. Departmental supervision of the child and family in the  
child's home;

18 C. That the child, the custodians, the parents and other  
20 appropriate family members accept treatment or services to  
ameliorate the circumstances related to the jeopardy;

22 D. Necessary emergency medical treatment for the child when  
24 the custodians are unwilling or unable to consent;

26 E. Emancipation of the child, if the requirements of Title  
15, section 3506-A are met;

28 F. Removal of the child from the child's custodian and  
30 granting custody to a noncustodial parent, other person or  
the department;

32 G. Removal of the perpetrator from the child's home,  
34 prohibiting direct or indirect contact with the child by the  
perpetrator and prohibiting other specific acts by the  
36 perpetrator that the court finds may threaten the child;

38 H. Payment by the parents of a reasonable amount of support  
40 for the child as determined or modified according to Title  
19, chapter 7, subchapter I-A;

42 I. That the department has no further responsibility under  
44 section 4230 and, when the child has been placed in the  
custody of the department, that the department move forward  
46 in a timely fashion to make permanent plans for the child; or

48 J. Other specific conditions governing custody.

50 2. Principles. In determining the disposition, the court  
shall apply the following principles in this priority:

2 A. Protect the child from jeopardy to the child's health or  
4 welfare;

6 B. Give custody to a parent if appropriate conditions can  
8 be applied;

10 C. Make disposition in the best interests of the child; and

12 D. Terminate department custody at the earliest possible  
14 time.

16 3. Time of order. The order may be for a specified period,  
18 with a review at the end of that period, or it may be for an  
20 indeterminate period, not beyond age 18.

22 4. Disposition of child in custody of department. The  
24 court may not order that a child who has been ordered into the  
26 custody of the department be placed with a parent. Nothing in  
28 this subsection prevents the department from placing a child in  
30 its custody in the home of a parent for a trial period.

32 5. Notice of criminal penalties. If an order is issued  
34 under this section that contains a provision subject to criminal  
36 penalties under section 4176, the order must indicate in a clear  
38 and conspicuous manner the potential consequences of violating  
40 the order.

42 **§4176. Criminal penalty**

44 1. Definition. For purposes of this section, "order" means  
46 an order entered in a case filed pursuant to this chapter.

48 2. Crime committed. When disposition under section 4175  
50 includes a provision that a party named in a petition not have  
contact with a child or children named in the petition or a  
provision that a party named in the petition not enter the  
residence of a child or children named in the petition, and the  
party has prior actual notice of the order containing those  
provisions, violation of that provision is a Class D crime. The  
criminal sanctions in this subsection are in addition to and not  
in lieu of contempt powers of the court.

3. Warrantless arrest. Notwithstanding any statutory  
provision to the contrary, an arrest for criminal violation of an  
order may be without warrant upon probable cause whether or not  
the violation is committed in the presence of the law enforcement  
officer. The law enforcement officer may verify, if necessary,  
the existence of an order by telephone or radio communication  
with an agency with knowledge of the order.

2 **§4177. Authority of custodian**

4 When custody of the child is ordered to the department or  
6 other custodian under a preliminary or final protection order,  
8 the custodian has full custody of the child subject to the terms  
10 of the order and other applicable law. Custody does not include  
12 the right to initiate adoption proceedings without parental  
14 consent, except as provided under Title 19, section 532.

16 **§4178. Mandated review; review on motion**

18 1. Mandated review. If a court has made a final protection  
20 order, it shall review the case at least once within 18 months of  
22 the final protection order and at least every 2 years thereafter,  
24 unless the child has been emancipated or adopted.

26 2. No mandated review. Notwithstanding subsection 1, no  
28 subsequent judicial review is required unless petitioned for by  
30 any party or unless specifically ordered by the court:

32 A. When custody has been granted to a person other than a  
34 parent or the department;

36 B. When custody has been granted to a parent who did not  
38 have custody at the time the child protection petition was  
40 filed; or

42 C. When the child lives with the foster parent with whom  
44 the department has entered into a long-term foster care  
46 agreement pursuant to section 4345.

48 3. Review on motion. The court, the child's parent,  
50 custodian or guardian ad litem or a party to the proceeding,  
except a parent whose rights have been terminated under  
subchapter VI, may move for judicial review. The moving party  
has the burden of going forward.

4. Notice of review. Notice of the reviews must be to all  
parties to the initial proceeding according to Maine Rules of  
Civil Procedure, Rule 4. Notice may not be given to a parent  
whose rights have been terminated under subchapter VI.

5. Hearing. The court shall hear evidence and shall  
consider the original reason for the adjudication and disposition  
under sections 4174 and 4175, the events that have occurred since  
then and the efforts of the parties as set forth under section  
4230. The court shall also consider the effect of a change in  
custody on the child.

2 6. Disposition. The court may make any further order,  
3 based on a preponderance of evidence, that is authorized under  
4 section 4175.

5 7. Review of child in custody of the department. When a  
6 child has been placed in the custody of the department, the  
7 following must be accomplished.

8 A. The court shall review the final protection order and  
9 make a determination within 18 months of its initial order  
10 either to:

11 (1) Return the child to the parent;

12 (2) Continue reunification efforts for a specific  
13 limited time not to exceed 6 months and to review  
14 judicially the matter within the time specified; or

15 (3) Enter an order under section 4175, subsection 1,  
16 paragraph I.

17 The court may not order reunification efforts to continue  
18 under subparagraph (2) more than once unless all parties  
19 agree to the order to continue reunification.

20 B. Before the court may enter an order returning the  
21 custody of the child to a parent, the parent must show that  
22 the parent has carried out the responsibilities set forth in  
23 section 4230, subsection 1, paragraph B, that, to the  
24 court's satisfaction, the parent has rectified and resolved  
25 the problems that caused the removal of the child and any  
26 subsequent problems that would interfere with the parent's  
27 ability to care for and protect the child from jeopardy and  
28 that the parent can protect the child from jeopardy.

29 C. When 2 placements with the same parent have failed and  
30 the child is returned to the custody of the department, the  
31 court shall enter an order under section 4175, subsection 1,  
32 paragraph I unless the parent demonstrates that  
33 reunification should be continued.

34 D. The court shall consider, but is not bound by, the  
35 wishes of the child in making a determination under  
36 paragraph A, if the child is 12 years of age or older.

37 §4179. Enforcement of custody orders

38 When the court has ordered a change in the custody of a  
39 child and a person not entitled to custody refuses to relinquish  
40 physical custody to the custodian, then, at the request of the  
41

2 department or custodian, a law enforcement officer may take any  
3 necessary and reasonable action to obtain physical custody of the  
4 child for the rightful custodian. Necessary and reasonable  
5 action includes entering public or private property with a  
6 warrant based on probable cause to believe that the child is  
7 there.

8 SUBCHAPTER V

9 FAMILY REUNIFICATION

10 §4230. Departmental responsibilities

11 1. Rehabilitation and reunification. When a child has been  
12 ordered into the custody of the department under this chapter or  
13 under Title 19, section 214 or section 752, the responsibility  
14 for reunification and rehabilitation of the family is shared as  
15 follows.

16 A. The department shall:

17 (1) Develop a rehabilitation and reunification plan  
18 which includes the following:

19 (a) The reasons for the child's removal;

20 (b) Any changes that must occur for the child to  
21 return home;

22 (c) Rehabilitation services that must be  
23 completed satisfactorily prior to the return home;

24 (d) Services available to assist the parents in  
25 rehabilitating and reunifying with the child,  
26 including reasonable transportation within the  
27 area in which the child is located for visits if  
28 the parents are unable to afford that  
29 transportation;

30 (e) A schedule of visits between the child and  
31 the parents when visits are not detrimental to the  
32 child's best interests, including any special  
33 conditions under which the visits must take place;

34 (f) A reasonable time schedule for proposed  
35 reunification that is reasonably calculated to  
36 meet the child's needs; and



2           (g) A delineation of the financial  
4           responsibilities of the parents and the department  
6           during the reunification process;

8           (2) Provide the parents with prompt written notice of  
10           the following, unless that notice would be detrimental  
12           to the best interests of the child:

14           (a) The child's residence and, when practicable,  
16           at least 7 days' advance written notice of a  
18           planned change of residence; and

20           (b) Any serious injuries, major medical care  
22           received or hospitalization of the child;

24           (3) Make good faith efforts to cooperate with the  
26           parents in the development and pursuit of the plan;

28           (4) Periodically review with the parents the progress  
30           of the reunification plan and make any appropriate  
32           changes in that plan;

34           (5) Petition for judicial review and return of custody  
36           of the child to the child's parents at the earliest  
38           appropriate time; and

40           (6) Petition for termination of parental rights at the  
42           earliest possible time that it is determined that  
44           family reunification efforts will be discontinued  
46           pursuant to subsection 2 and that termination is in the  
48           best interests of the child;

B. Parents are responsible for rectifying and resolving  
problems that prevent the return of the child to the home  
and shall take part in a reasonable rehabilitation and  
reunification plan and shall:

2           (1) Maintain meaningful contact with the child  
4           pursuant to the reunification plan. When a parent has  
6           left the area where the child has been placed, this  
8           includes making arrangements to visit the child at or  
10           near the child's placement;

12           (2) Seek and utilize appropriate services to assist in  
14           rehabilitating and reunifying with the child;

16           (3) Pay reasonable sums toward the support of the  
18           child within the limits of their ability to pay;

2           (4) Maintain contact with the department, including  
4           prompt written notification to the department of any  
6           change of address; and

8           (5) Make good faith efforts to cooperate with the  
10           department in developing and pursuing the plan; and

12           C. Where the parties cannot agree as to contents of a  
14           reasonable rehabilitation and reunification plan, any party  
16           may file a motion for judicial review pursuant to section  
18           4038. At the review, the court shall review the proposed  
20           plans of either party and shall order reasonable  
22           reunification plans as it deems necessary.

24           2. Determination of need to commence or discontinue  
26           rehabilitation and reunification efforts. The following  
28           provisions determine when rehabilitation and reunification  
30           efforts are not necessary or may be discontinued.

32           A. The department may either decide to not commence or to  
34           discontinue rehabilitation and reunification efforts with  
36           either parent or the court may order that rehabilitation and  
38           reunification efforts need not commence or that the  
40           department has no further responsibilities for  
42           rehabilitation and reunification with either parent when:

2           (1) The parent is willing to consent to termination of  
4           parental rights;

6           (2) The parent cannot be located;

8           (3) The parent is unwilling or unable to rehabilitate  
10           and reunify with the child within a time that is  
12           reasonably calculated to meet the child's needs;

14           (4) The parent has abandoned the child;

16           (5) The parent has acted toward a child in a manner  
18           that is heinous or abhorrent to society or has failed  
20           to protect a child in a manner that is heinous or  
22           abhorrent to society, without regard to the intent of  
24           the parent; or

26           (6) The victim of any of the following crimes was a  
28           child for whom the parent was responsible or the victim  
30           was a child who was a member of a household lived in or  
32           frequented by the parent and the parent has been  
34           convicted of:

36           (a) Murder;

2 (b) Felony murder:

4 (c) Manslaughter:

6 (d) Aiding or soliciting suicide:

8 (e) Aggravated assault:

10 (f) Rape:

12 (g) Gross sexual misconduct:

14 (h) Sexual abuse of minors:

16 (i) Incest:

18 (j) Kidnapping:

20 (k) Promotion of prostitution; or

22 (l) A comparable crime in another jurisdiction.

24 B. When the department discontinues efforts to return the child to a parent, it shall give written notice of this decision to that parent at the parent's last known address. This notice must include the specific reasons for the department's decision, the specific efforts the department has made in working with the parent and child and a statement of the parent's rights under section 4178. This notice requirement must precede service of a copy of a petition to terminate parental rights under subchapter VI.

34 C. If the department discontinues efforts to return the child to a parent, but does not seek termination of parental rights, then subsection 1, paragraph A, subparagraph (1), division (e) and subsection 1, paragraph A, subparagraph (2), still apply.

40 3. Notice to guardian ad litem. The department shall notify the guardian ad litem, as described in section 4005, of any substantial change in circumstances that may have an impact on the best interests of the child. A substantial change in circumstances includes but is not limited to any change in the child's residence.

46 SUBCHAPTER VI

48 TERMINATION OF PARENTAL RIGHTS

50 §4280. Purpose

2 Recognizing that instability and impermanency are contrary to the welfare of children, it is the intent of the Legislature that this subchapter:

4 1. Termination of parental rights. Allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts have been discontinued and termination is in the best interest of the child;

10 2. Return to family. Eliminate the need for children to wait unreasonable periods of time for their parents to correct the conditions that prevent their return to the family;

16 3. Adoption. Promote the adoption of children into stable families rather than allowing children to remain in the impermanency of foster care; and

18 4. Protect interests of child. Be liberally construed to serve and protect the best interests of the child.

20 §4281. Venue

22 A petition for termination of parental rights must be brought in the court that issued the final protection order. The court, for the convenience of the parties or other good cause, may transfer the petition to another district or division. A petition for termination of parental rights may also be brought in a Probate Court as part of an adoption proceeding as provided in Title 19, chapter 9, when a child protective proceeding has not been initiated.

32 §4282. Termination petition; petitioners; time filed; contents

34 1. Petitioner. A termination petition may be brought by the custodian of the child.

38 2. Time filed. A termination petition may be brought no earlier than 3 months after disposition under section 4175 or under Title 19, section 213, 214 or 752.

40 3. Contents of petition. A termination petition must be sworn and must include at least the following:

44 A. The name, date and place of birth and municipal residence, if known, of the child;

48 B. The name and address of the petitioner and the nature of the petitioner's relationship to the child;

2 C. The name and municipal residence, if known, of each of  
3 the child's parents;

4 D. The name and address of the guardian ad litem of the  
5 child in the related child protection proceeding or adoption  
6 proceeding;

8 E. A summary statement of the facts that the petitioner  
9 believes constitute the basis for the request for  
10 termination;

12 F. An allegation that is sufficient for termination;

14 G. A statement of the effects of a termination order; and

16 H. A statement that the parents are entitled to legal  
17 counsel in the termination proceedings and that, if they  
18 want an attorney and are unable to afford one, they should  
19 contact the court as soon as possible to request appointed  
20 counsel.

22 4. Hearing date. On the filing of a petition, the court  
23 shall set a time and date for a hearing.

24 **§4283. Service**

26 The petition and the notice of hearing must be served on the  
27 parents and the guardian ad litem for the child at least 10 days  
28 prior to the hearing date. Service must be made in accordance  
29 with the Maine Rules of Civil Procedure.

32 **§4284. Hearing on termination petition**

34 The court shall hold a hearing prior to making a termination  
35 order.

36 **§4285. Grounds for termination**

38 1. Grounds. The court may order termination of parental  
39 rights if:

42 A. One of the following conditions has been met:

44 (1) Custody has been removed from the parent under:

46 (a) Section 4174 or 4178;

48 (b) Title 19, section 213, 214 or 752; or

2 (c) Former Title 22, section 3792 prior to the  
3 repeal of that section; or

4 (2) The petition has been filed as part of an adoption  
5 proceeding in Title 19, chapter 9; and

6 B. Either:

8 (1) The parent consents to the termination. Consent  
9 must be written and voluntarily and knowingly executed  
10 in court before a judge. The judge shall explain the  
11 effects of a termination order; or

14 (2) The court finds, based on clear and convincing  
15 evidence, that:

16 (a) Termination is in the best interest of the  
17 child; and

20 (b) Either:

22 (i) The parent is unwilling or unable to  
23 protect the child from jeopardy and these  
24 circumstances are unlikely to change within a  
25 time which is reasonably calculated to meet  
26 the child's needs;

28 (ii) The parent has been unwilling or unable  
29 to take responsibility for the child within a  
30 time which is reasonably calculated to meet  
31 the child's needs;

34 (iii) The child has been abandoned; or

36 (iv) The parent has failed to make a good  
37 faith effort to rehabilitate and reunify with  
38 the child pursuant to section 4230.

40 2. Rebuttable presumption. The court may presume that the  
41 parent is unwilling or unable to protect the child from jeopardy  
42 and these circumstances are unlikely to change within a time that  
43 is reasonably calculated to meet the child's needs if:

44 A. The parent has acted toward a child in a manner that is  
45 heinous or abhorrent to society or has failed to protect a  
46 child in a manner that is heinous or abhorrent to society  
47 without regard to the intent of the parent; or

48 B. The victim of any of the following crimes was a child  
49 for whom the parent was responsible or the victim was  
50 \_\_\_\_\_

child who was a member of a household lived in or frequented by the parent and the parent has been convicted of:

(1) Murder;

(2) Felony murder;

(3) Manslaughter;

(4) Aiding or soliciting suicide;

(5) Aggravated assault;

(6) Rape;

(7) Gross sexual misconduct;

(8) Sexual abuse of minors;

(9) Incest;

(10) Kidnapping;

(11) Promotion of prostitution; or

(12) A comparable crime in another jurisdiction.

3. Considerations. In deciding to terminate parental rights, the court shall consider the needs of the child, including the child's age, the child's attachments to relevant persons, periods of attachments and separation, the child's ability to integrate into a substitute placement or back into the child's parent's home and the child's physical and emotional needs.

4. Wishes of child. The court may not order termination if the child is at least 14 years old and objects to the termination. The court shall consider, but is not bound by, the wishes of a child 12 years of age or older in making an order under this section.

#### §4286. Effects of termination order

1. Parent and child divested of rights. An order terminating parental rights divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except the inheritance rights between the child and the child's parent.

2. Only one parent affected. The termination of one parent's rights does not affect the rights of the other parent.

3. Parent not entitled to participate in adoption proceedings. A parent whose rights have been terminated is not entitled to notice of the child's adoption proceedings, nor does the parent have any right to object to the adoption or participate in the proceedings.

4. Child not disentitled to benefit. No order terminating parental rights may disentitle a child to benefits due the child from any 3rd person, agency, state or the United States; nor may it affect the rights and benefits that a native American derives from the native American's descent from a member of a federally-recognized Indian tribe.

#### §4287. Termination orders of other states

If parental rights have been terminated by judicial order in another state, the order, unless against the public policy of this State, must be accorded full faith and credit.

### SUBCHAPTER VII

#### CARE OF CHILD IN CUSTODY

##### §4340. Expenses; reimbursement

1. Department. The department shall care for a child ordered into its custody in licensed or approved family foster homes, in other residential child care facilities or in other living arrangements as appropriate to meet the child's individual needs.

2. Reimbursement. The department may obtain reimbursement for child care expenses from the child's parents according to a support order or agreement.

3. Other custodian. When a child is ordered into the custody of a custodian other than the department, that custodian shall support the child, subject to a support order or agreement.

##### §4341. Payments

1. Payments by department. The department shall provide payments to facilities caring for children to meet the costs of clothing, board and care, within the limits of available funds. The department may establish, by rule, different categories of facilities, levels of need and care and flat-rate or reimbursement methods to distribute these funds. The department

2 may provide child care and travel expense payments to foster and  
adoptive parents, trainers participating in foster and adoptive  
parent training programs and volunteers participating in the  
administrative case review program.

6 2. Unexpended balance. An unexpended balance of funds for  
these purposes may not be transferred to another account and does  
not lapse.

10 3. Priority of payments. The department shall ensure that  
payments for foster care made under this subchapter have the same  
priority as payments for aid to families with dependent children  
pursuant to section 8419, subsection 5.

14 §4342. Religious faith of placements; parents' request

18 If the parents of a child in the custody of the department  
request in writing that the child be placed in a family of the  
same general religious faith, for foster care or adoption, the  
department shall do so when a suitable family of that faith can  
be found.

22 §4343. Medical and psychological examination

26 1. Physical examination required. The department shall  
ensure that a child ordered into its custody receives an  
appointment for a medical examination by a licensed physician or  
nurse practitioner within 10 working days after the department's  
custody of the child commences.

32 2. Psychological assessment. If the physician or nurse  
practitioner who performs a physical examination pursuant to  
subsection 1 determines that a psychological assessment of the  
child is appropriate, the department shall ensure that an  
appointment is obtained for such an assessment within 30 days of  
the physical examination.

36 §4344. Establishment of early counseling

40 Whenever a child is ordered into the custody of the  
department under this chapter and the child is not expected to be  
returned to the home within 21 days, the department shall obtain  
counseling for the child as soon as possible, unless the  
department finds that counseling is not indicated.

44 §4345. Long-term foster care

48 1. Defined. "Long-term foster care" means a foster family  
placement for a child in the custody of the department in which  
the department retains custody of the child while delegating to

2 the foster parents the duty and authority to make certain  
decisions. The placement is intended to continue until the child  
becomes 18 years old, unless altered or terminated in the best  
interests of the child.

6 2. Authority for placement. The department may place in  
long-term foster care a child in its custody, if:

8 A. The child has been in foster care for one year or  
parental rights have been terminated;

12 B. The department has decided that it is not likely that  
the child can be returned to the child's parents and has so  
notified the parents;

16 C. In the judgment of the department, it is not likely that  
the child can be placed in an adoptive home;

18 D. The prospective foster parents have met standards  
established by the department for a placement; and

22 E. A written agreement between the foster parents and the  
department has been completed that specifies the duty and  
authority delegated by the department to the foster parents  
and the rights retained by the department and the parents,  
and includes an individual plan for the care of the child.  
A foster child at least 14 years old may participate in the  
development of the agreement. The department shall, after  
consultation with the foster parents, review and, if  
necessary, revise the plan at least once every 6 months.

30 3. Duty and authority delegated by the department. The  
foster parents may make the following decisions:

34 A. Consent to emergency medical treatment;

36 B. Consent to the application for a driver's license; and

38 C. Permit travel by the child outside of the State.

40 4. Rights of department. Except as delegated in this  
section or by agreement, the department shall retain custody of  
the child and all custody rights as provided by court order,  
statute or rule.

44 5. Rules. The department may adopt rules for long-term  
foster care placements in accordance with the Maine  
Administrative Procedure Act, Title 5, chapter 375. These rules  
may include, among other things, standards for settings  
appropriate for long-term foster care, methods of supervising of

2 those settings, procedures for selecting children and foster  
3 parents, methods for establishing and reviewing individual plans,  
4 additional rights or powers that may be delegated and  
5 requirements or conditions for exercising the delegated authority.

6 **§4346. Department's responsibility after death of**  
7 **committed child**

8 If a child in the custody of the department dies, the  
9 department shall arrange and pay for a decent burial for the  
10 child. If administration of the deceased child's estate is not  
11 commenced, within 60 days after the date of death, by an heir or  
12 a creditor, then the department may petition the Probate Court to  
13 appoint an administrator and settle the estate of the deceased  
14 child pursuant to Title 18-A.

15 **SUBCHAPTER VIII**

16 **MEDICAL TREATMENT ORDER**

17 **§4400. Medical treatment order**

18 1. **Petitioner.** The department, a physician or a chief  
19 medical administrator of a hospital may petition for a medical  
20 treatment order.

21 2. **Contents of petition.** A petition must be sworn and must  
22 include at least the following:

23 A. **Name, date of birth and municipal residence, if known,**  
24 **of the child;**

25 B. **The name and address of the petitioner and the**  
26 **petitioner's professional position;**

27 C. **Name and municipal residence, if known, of each parent**  
28 **and custodian;**

29 D. **A summary of the medical diagnosis and treatment**  
30 **alternatives;**

31 E. **A request for the court to order specific treatment; and**

32 F. **A statement that attempts to notify and secure consent**  
33 **from the custodians have been unsuccessful, either because**  
34 **they cannot be located or they have refused consent.**

35 3. **Notice to parents and custodians.** The petitioner shall,  
36 by any reasonable means, attempt to notify the parents and  
37 custodians of the petitioner's intent to request the order and of  
38

39 the time and place the petitioner will make the request, unless  
40 the petitioner believes that the child would suffer increased  
41 serious injury during the time needed to notify them.

42 4. **Order.** On the basis of the petition or other evidence,  
43 the court may order medical treatment for the child if the  
44 custodians are unable or unwilling to consent to it, and the  
45 treatment is necessary to treat or prevent an immediate risk of  
46 serious injury. The order must include a notice to the parents  
47 and custodians of their right to counsel, as required under  
48 section 4171, subsection 2, paragraph G, and notice of the date  
and time of the hearing.

5. **Service of order.** If a hearing has not been held prior  
to issuing the order, a copy of the order and petition must be  
served on the parents and custodians by:

A. **In-hand delivery by the judge or court clerk to any**  
**parent, custodian or their counsel who is present when the**  
**order is issued;**

B. **Service in accordance with the Maine Rules of Civil**  
**Procedure. Notwithstanding the civil rules, service by**  
**publication of an order and petition must be complete 5 days**  
**after a single publication; or**

C. **Another manner ordered by the court.**

6. **Hearing.** If a hearing has not been held prior to  
issuing the order, then it must be held within 10 days of its  
issuance, unless all parties agree to a later date. If, after  
the hearing, the court finds, by a preponderance of the evidence,  
that the medical treatment ordered is necessary to treat or  
prevent the immediate risk of serious injury to the child, then  
it may continue the order.

39 **SUBCHAPTER IX**

40 **CHILD WELFARE SERVICES**

41 **§4451. Child welfare services ombudsman**

42 1. **Purpose.** The purpose of the child welfare services  
43 ombudsman is to represent the best interests of individuals  
44 involved in the State's child welfare system as a class and to  
45 investigate and resolve complaints against state agencies that  
46 may be infringing on the rights of individuals involved in the  
47 State's child welfare system.

2 2. Selection of child welfare services ombudsman. The  
3 department shall contract for the services of the child welfare  
4 services ombudsman.

5 3. Powers. The ombudsman may:

6 A. Provide ombudsman services to individual citizens in  
7 matters relating to those child welfare services provided by  
8 and under the jurisdiction of the State;

9 B. Advise, consult and assist the executive and legislative  
10 branches of State Government, including the Governor, on  
11 activities of State Government related to child welfare.  
12 The ombudsman is solely advisory in nature, may not be  
13 delegated any administrative authority or responsibility nor  
14 supplant existing avenues for recourse or appeals. The  
15 ombudsman may make recommendations regarding any function  
16 intended to improve the quality of child welfare services in  
17 State Government. If findings, comments or recommendations  
18 of the ombudsman vary from, or are in addition to, those of  
19 the bureau, department or other state agency, the statements  
20 of the ombudsman must be sent to the respective branches of  
21 State Government as attachments to those submitted by the  
22 bureau, department or other state agency. Recommendations  
23 may take the form of proposed budgetary, legislative or  
24 policy actions;

25 C. Review and evaluate, on a continuing basis, state and  
26 federal policies and programs relating to the provision of  
27 child welfare services conducted or assisted by any state  
28 departments or agencies for the purpose of determining the  
29 value and impact on individuals involved in the State's  
30 welfare system;

31 D. Receive and address inquiries, complaints, problems or  
32 requests for information and assistance regarding the  
33 State's child welfare services;

34 E. Conduct research, gather facts and evaluate procedures  
35 and policies regarding the State's child welfare services;

36 F. Consult with and advise state agencies on operational  
37 and management issues or specific or special situations  
38 regarding child welfare services and recommend remedial  
39 actions when necessary through direct oral communication,  
40 memoranda, reports or meetings;

41 G. Serve as a coordinator of communication and cooperation  
42 for all components of the State's child welfare services  
43 system, especially among state agencies, whenever desirable  
44 or necessary;

2 H. Make referrals for service to relevant state agencies  
3 when appropriate;

4 I. Set priorities to carry out effectively the purposes of  
5 this subchapter; and

6 J. Inform the public to encourage a better public  
7 understanding of the current status of the State's child  
8 welfare system by collecting and disseminating information,  
9 conducting or commissioning studies, publishing the results,  
10 of studies and issuing publications and reports.

11 4. Confidentiality of records. No information or record  
12 maintained by the ombudsman relating to a complaint or  
13 investigation may be disclosed unless the ombudsman authorizes  
14 the disclosure and the disclosure is otherwise permitted pursuant  
15 to section 4009. The ombudsman may not disclose the identity of  
16 any complainant unless:

17 A. The complainant or a legal representative consents in  
18 writing to the disclosure; or

19 B. A court orders the disclosure.

20 A complainant or a legal representative, in providing the  
21 consent, may specify to whom the identity may be disclosed and  
22 for what purposes, in which event no other disclosure is  
23 authorized.

24 5. Administration. The ombudsman shall submit annually by  
25 March 1st a report to the commissioner, the Governor and the  
26 joint standing committee of the Legislature having jurisdiction  
27 over human resource matters, concerning its work, recommendations  
28 and interests of the previous fiscal year and future plans; and  
29 make any interim reports the ombudsman deems advisable. Copies  
30 of these reports must be available to all Legislators and other  
31 state agencies upon request.

32 6. Information from state agencies. State agencies shall  
33 provide to the ombudsman copies of all reports and other  
34 information required for the fulfillment of this chapter pursuant  
35 to section 4009, subsection 3, paragraph D.

36 **SUBCHAPTER X**

37 **OUT-OF-HOME ABUSE AND NEGLECT**  
38 **INVESTIGATING TEAM**

39 §4501. Out-of-home abuse and neglect investigating team

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

A. "License" has the same meaning as in Title 5, section 8002, and includes approval and registration.

B. "Out-of-home abuse and neglect" means abuse and neglect of a child that occurs in a facility or by a person subject to licensure or inspection by this department, the Department of Education and the Department of Corrections or in a facility operated by these departments.

C. "Team" means the out-of-home abuse and neglect investigating team.

2. Team established. The out-of-home abuse and neglect investigating team is established to investigate reports of suspected abuse and neglect of children by persons or in facilities subject to licensure pursuant to this Title. The team is also authorized to assist other persons or agencies to investigate suspected abuse and neglect by persons or in facilities providing services to children that are subject to licensure pursuant to other Titles and to assist in investigations of suspected abuse and neglect in state-operated facilities providing services for children.

3. Authority and responsibility. The team has the following authority and responsibilities regarding investigation of out-of-home abuse and neglect. The team:

A. Shall receive all reports of out-of-home abuse and neglect;

B. Shall investigate all reports received by the department regarding alleged out-of-home abuse and neglect occurring in facilities or by persons subject to licensure by the department;

C. Shall conduct a single investigation sufficient to determine not only if abuse or neglect has occurred but also to determine whether a licensing violation has occurred in order to protect children from further harm and establish a basis upon which to take licensing action. This procedure minimizes duplicative or redundant investigations to the extent possible in response to the same or related allegations of out-of-home abuse or neglect in facilities or by persons subject to licensure by the department;

D. Shall coordinate and consult with the bureau staff performing general licensing functions to eliminate

duplicative or redundant investigations to the extent possible and to prevent, correct or eliminate the abuse or neglect or threat of abuse or neglect in out-of-home settings;

E. Shall provide the results of the investigation to the department's licensing staff for appropriate action;

F. Shall include relevant professionals outside the department as members of the team for all investigations of residential treatment centers, group homes or day care centers mandated by this subchapter and for other child care facilities as warranted;

G. When a report alleges out-of-home abuse and neglect in facilities or by persons not subject to licensure by the department, shall immediately refer the report to the agency or department charged with the responsibility to investigate such a report or, if applicable, to the state department operating the facility;

H. With respect to reports described in paragraph G, may, on its own initiative or upon request of another department or agency charged with the responsibility to investigate, participate in the out-of-home abuse and neglect investigation of persons or facilities subject to licensure or operated by the Department of Education, the Department of Corrections or the Department of Health and Developmental Services;

I. Shall refer to the office of the district attorney or office of the Attorney General, when appropriate, any case in which criminal activity is alleged and shall coordinate its investigation with that office to minimize the trauma to the children involved; and

J. Shall consult and train law enforcement personnel, advocates and others in the identification, reporting, prevention and investigation of out-of-home abuse and neglect as time allows.

4. Training. The team must be trained in techniques of investigating out-of-home abuse and neglect of children, as well as child development; identification of abuse and neglect; interview techniques; treatment alternatives for perpetrators, victims and their families; licensing regulations applicable to facilities or persons licensed pursuant to chapter 603, and other statutory and regulatory remedies available to prevent, correct or eliminate abuse and neglect in out-of-home settings.



2 5. Records; confidentiality; disclosure. Records created  
3 pursuant to this subchapter must be maintained in accordance with  
4 section 4009 and may not be disclosed except as provided by that  
5 section or by section 6103, subsections 2 to 4.

6 6. Assistance. Staff performing general licensing  
7 functions may assist the team in conducting out-of-home  
8 investigations upon the request of the Commissioner, provided  
9 that the licensing staff member has neither currently licensed  
10 nor monitored for compliance the subject of the investigation.

12 SUBCHAPTER XI

14 CHILD WELFARE ADVISORY COMMITTEE

16 §451. Child Welfare Advisory Committee

18 1. Composition. The Child Welfare Advisory Committee, as  
19 established by Title 5, section 12004-I, subsection 37-A, is  
20 constituted as follows.

22 A. Members shall serve on the committee at the invitation  
23 of the commissioner. In making the appointments, the  
24 commissioner shall give due consideration to the following:

26 (1) Private citizens interested in child welfare  
27 service programs;

28 (2) Past or present recipients of department services  
29 to children and families or their representatives;

30 (3) Representatives of professional, civic or other  
31 public or private organizations; and

32 (4) Representatives of state agencies concerned with  
33 child welfare services.

34 B. The committee must consist of not fewer than 10 nor more  
35 than 30 members.

36 C. The commissioner shall designate one member as chair of  
37 the committee.

38 D. Members serve for terms of 3 years, except that any  
39 member appointed to fill a vacancy occurring prior to the  
40 expiration of the term for which the predecessor was  
41 appointed may be appointed only for the remainder of the  
42 term.

2 E. The child welfare services ombudsman, appointed in  
3 accordance with section 4451, shall serve as a permanent  
4 member.

6 2. Duties. The committee has the following duties:

8 A. To advise the department on the development of policies  
9 and programs that affect the well-being of children and  
10 their families for whom the department has responsibility  
11 under this chapter, as well as those programs that prevent  
12 the maltreatment of children in the State;

14 B. To reinforce the department's awareness of the needs of  
15 Maine's children and their families;

16 C. To increase the department's awareness of the impact of  
17 its activities on Maine's children and their families; and

18 D. To assist in communicating the activities and goals of  
19 the department to the public.

22 3. Compensation. Members of the committee serve without  
23 pay, but are entitled to reimbursement for expenses incurred in  
24 the performance of their duties pursuant to Title 5, chapter 379.

26 SUBCHAPTER XII

28 HOSPITAL-BASED SUSPECTED CHILD ABUSE AND  
29 NEGLECT COMMITTEES

30 §4601. Purpose

32 The purpose of this subchapter is to encourage the  
33 implementation of statewide standards to be developed by the  
34 department and participating hospitals for the identification and  
35 management of suspected child abuse and neglect cases presented  
36 at hospitals by providing financial support for the establishment  
37 of hospital-based suspected child abuse and neglect committees.

38 §4602. Definitions

40 As used in this subchapter, unless the context otherwise  
41 indicates, the following terms have the following meanings.

42 1. Case plan prescription. "Case plan prescription" means  
43 a plan developed by the family support team.

44 2. Council. "Council" means the Maine Suspected Child  
45 Abuse and Neglect Council as authorized by section 4604.

2 3. Family support team. "Family support team" means a  
3 specialized team of professionals evaluating children who are  
4 suspected victims of child abuse and neglect. Evaluations must  
5 include a family diagnosis and recommendations for treatment and  
6 follow-up.

7 4. Protocols. "Protocols" means procedures developed for  
8 the interaction of the suspected child abuse and neglect  
9 committee and family support team.

10 5. Suspected child abuse and neglect committee. "Suspected  
11 child abuse and neglect committee" means a committee representing  
12 public and private community agencies, hospital departments and  
13 the departments that are directly involved in providing services  
14 to suspected victims of child abuse and the victims' families.

15 §4603. Hospital-based suspected child abuse  
16 and neglect committees

17 Each hospital may establish a suspected child abuse and  
18 neglect committee and family support team under this subchapter.  
19 The committee shall meet regularly to provide the ongoing  
20 development and monitoring of the specialized family support team  
21 and the approval of protocols. These hospitals shall serve as a  
22 resource to other institutions desiring to form such a program.

23 The family support team must be coordinated by a team  
24 manager who is hired by the participating hospital. The team  
25 shall be available to evaluate children who are the suspected  
26 victims of abuse and neglect. The department shall contract for  
27 the services of the family support team manager.

28 The family support team shall provide a multidisciplinary  
29 approach for suspected child abuse cases that are initially  
30 identified in hospital emergency rooms, inpatient pediatric  
31 departments and ambulatory clinics. The child protective staff  
32 of the department shall participate on the teams. The team shall  
33 report immediately to the department as required in section 4060.

34 The team shall review the nature, extent and severity of  
35 abuse or neglect and the needs of the child and other family  
36 members. The team shall develop a case plan prescription for the  
37 treatment, management and follow-up of the child abuse victims  
38 and their families, and shall forward these recommendations to  
39 the department.

40 §4604. Maine Suspected Child Abuse and Neglect  
41 Council

42 1. Council established. Pursuant to Title 5, section  
43 12004-I, subsection 36-A, the Maine Suspected Child Abuse and  
44

2 Neglect Council is established to coordinate a statewide program  
3 for the identification and management of suspected child abuse  
4 and neglect cases through hospital-based committees that are  
5 authorized in this subchapter. The council is a body politic and  
6 a public instrumentality of the State.

7 2. Membership. The council is composed of 2  
8 representatives from each of the hospital-based suspected child  
9 abuse and neglect committees in the State. Each hospital-based  
10 committee shall designate its 2 representatives who shall serve  
11 on the council at the pleasure of that committee.

12 3. Rule-making authority. The council may adopt rules in  
13 accordance with the Maine Administrative Procedure Act, Title 5,  
14 chapter 375, to carry out its responsibilities.

15 4. Meetings. The council shall meet at least once a year.  
16 Special meetings may be held as determined necessary by the  
17 council. The minutes of all proceedings of the council must be a  
18 public record available and on file in the office of the  
19 council. Members of the council are compensated according to  
20 Title 5, chapter 379.

21 5. Financing. The council may accept contributions of any  
22 type from any source other than the General Fund to assist in  
23 carrying out its responsibilities and to make arrangements  
24 regarding the administration of these funds, if required as a  
25 condition precedent to the receipt of these funds, by the Federal  
26 Government or any other source.

27 6. Executive director; staff. The council may employ an  
28 executive director who is the principal administrative and  
29 executive employee of the council. The executive director may  
30 hire staff to carry out the responsibilities for the coordination  
31 of all affairs of the council including, but not limited to, the  
32 training and education of volunteers, health care professionals  
33 and the general public. The executive director is also  
34 responsible for advocacy on behalf of hospital-based suspected  
35 child abuse and neglect committees throughout the State. The  
36 executive director may obtain office space, goods and services as  
37 required to carry out these responsibilities.

38 7. Funding. Funding for implementation of this Act must  
39 come from any source except the General Fund and expenses may  
40 only be authorized in the amount of funds that have been received  
41 by the council.

42 CHAPTER 403

43 CHILD ABUSE AND NEGLECT COUNCILS

44 §4654. Purpose

2        The purpose of this chapter is to encourage and maintain  
4 coordinated community efforts in each county to prevent child  
6 abuse and neglect and to ensure adequate intervention and  
8 treatment for abused and neglected children and their families.

10 **§4655. Definitions**

12        As used in this chapter, unless the context otherwise  
14 indicates, the following terms have the following meanings.

16        1. Child abuse and neglect council. "Child abuse and  
18 neglect council" means a community organization that provides  
20 continuous year-round service as a county's primary organization  
22 that serves to encourage and coordinate community efforts in  
24 primary prevention and the treatment of child abuse and neglect.

26        2. Fiscal agent. "Fiscal agent" means an incorporated  
28 community organization, agency or institution designated by the  
30 child abuse and neglect council and authorized by the Department  
32 of Human Services to receive and distribute grants to that child  
34 abuse and neglect council.

36        3. Maine Association of Child Abuse and Neglect Councils.  
38 "Maine Association of Child Abuse and Neglect Councils" means the  
40 statewide organization composed of a majority of the child abuse  
42 and neglect councils. The association must have at least one  
44 representative from each member council. The association shall  
46 establish standards of practice by which it may evaluate the  
48 effectiveness of each individual council's strategies to combat  
50 child abuse and neglect and also maintain a statewide network  
that works to develop statewide plans and effective  
implementation strategies.

**§4656. Child abuse and neglect council's**  
**responsibilities**

1. Duties. A child abuse and neglect council shall assess  
and monitor the extent and causes of child abuse and neglect in  
its county and carry out the following activities:

A. Coordinate services, utilizing community, state and  
federal resources to ensure that direct services are being  
provided to children and families;

B. Provide training to professionals who deal directly with  
children and families; and

C. Provide education and awareness concerning child abuse  
and neglect and its prevention.

**§4657. Authorization for expenditure of funds**

The department and other state agencies shall, from funds  
authorized to the department and state agencies, make grants to  
the child abuse and neglect councils or fiscal agents to further  
the purposes of this chapter.

1. Grants. Grants must be made on a competitive basis  
according to rules adopted by the commissioner. Grants in excess  
of \$15,000 must be made on a one-to-one matching basis with  
contributions from the community. Community contributions may be  
donations of cash or may be in-kind contributions, as determined  
by departmental rule.

2. Distribution of grants. Grants must be awarded to  
support existing child abuse and neglect councils and to assist  
the establishment of new child abuse and neglect councils. It is  
the intent of this chapter to support a statewide network of  
child abuse and neglect councils in each county as resources  
permit. Nothing in this chapter requires the department to fully  
fund the activities of any child abuse and neglect council.

3. Consultation with Maine Association of Child Abuse and  
Neglect Councils. The Maine Association of Child Abuse and  
Neglect Councils shall advise the department regarding the  
distribution of grants before any grants are awarded. The Maine  
Association of Child Abuse and Neglect Councils, in conjunction  
with the department, shall develop a plan establishing a  
statewide strategy for child abuse and neglect prevention in  
local counties and communities. This plan must be updated  
annually. Grants must be awarded in accordance with the goals  
and strategies set out in the plan.

**§4658. Fiscal agents**

A fiscal agent receiving grants under this chapter shall act  
only in an administrative capacity to receive and distribute  
grant money to the child abuse and neglect councils, as described  
in the rules adopted by the department for regulating the local  
administration of these programs.

**§4659. Child abuse and neglect councils; membership**

The child abuse and neglect councils are responsible for  
governing the community programs under this chapter. Each  
council shall establish a governing board of directors. The  
board must be diverse with broad-based participation in each  
county. Terms of the directors and methods of appointment or  
election of members must be determined by the child abuse and  
neglect council's bylaws.

CHAPTER 405

SOCIAL WORKERS' AND CASEWORKERS' TRAINING

§4720. Training plan

The department shall develop a training plan for persons employed in social worker and caseworker job classifications. The department shall establish the goals and objectives of the plan. The department shall also establish goals and objectives for each course and training program that must be designed to meet the goals and objectives of the plan. The plan must include, but is not limited to:

1. Differentiation of training to meet specific needs. Courses and training programs designed to meet the specific needs of social workers and caseworkers engaged in different activities based on the different responsibilities of these social workers and caseworkers;

2. Mandatory training. Courses and training programs designed to meet the specific needs of social workers and caseworkers for which successful completion is mandatory;

3. Optional training. Optional courses and training programs for social workers and caseworkers;

4. Assessment and investigation. Courses and training programs in assessment and investigation that are mandatory for social workers and caseworkers who conduct investigations or assessments involving clients of the department that may result in the filing of civil or criminal actions;

5. Sources of training. A description of courses and training programs that departmental staff will conduct and a description of courses and training programs to be conducted by persons outside the department;

6. Evaluation procedure. An evaluation procedure by which the effectiveness of the courses and training programs can be determined. The department, to the greatest possible extent, will use objective criteria to conduct evaluations of courses and training programs; and

7. Equivalent training. Provisions for the waiver of training programs and courses for social workers and caseworkers with equivalent training or training that exceeds the training requirements in the plan.

§4721. Implementation

The department shall establish a schedule governing successful completion of course and training requirements for newly employed social workers and caseworkers of the department and a schedule for all other social workers and caseworkers currently employed by the department.

PART 4

SERVICES FOR CHILDREN AND FAMILIES

CHAPTER 601

BUREAU OF CHILD WELFARE AND RELATED SERVICES

§6001. Bureau of Child Welfare and Related Services

There is within the department the Bureau of Child Welfare and Related Services. The bureau is equal in organizational level and status with other major organizational units within the department. The bureau is under the immediate and full supervision of the commissioner.

The Bureau of Child Welfare and Related Services is the sole agency of State Government responsible for administration of this Part and Part 3 subject to the direction of the commissioner. The bureau shall fully coordinate with appropriate state agencies and fully utilize existing support services.

The Bureau of Child Welfare and Related Services is designated as the single agency of State Government responsible for administering, subject to the direction of the commissioner, any state plans required to receive funds under Titles IV and VI of the federal Social Security Act, as amended.

Annually by September 1st, the Bureau of Child Welfare and Related Services shall submit to the joint standing committee of the Legislature having jurisdiction over human resource matters a report covering its activities for the immediately past fiscal year and plans for current and future fiscal years.

§6002. Director

The Bureau of Child Welfare and Related Services is administered by the director, who is appointed by the commissioner and serves at the pleasure of the commissioner.

The director must have training and experience in the direction, organization and administration of public or private human services or comparable training and experience relevant to

2 the administration of the Bureau of Child Welfare and Related  
3 Services.

4 The director has full authority and responsibility for  
5 administering this Part and Part 3, subject to the direction of  
6 the commissioner.

7 The director may employ, subject to the Civil Service Law  
8 and within the limits of available funds, competent professional  
9 personnel and other staff necessary to carry out the purposes of  
10 this Part and Part 3.

11 CHAPTER 603

12 LICENSING CHILDREN'S FACILITIES

13 SUBCHAPTER I

14 GENERAL PROVISIONS

15 §6101. Definitions

16 As used in this chapter, chapter 605 and chapter 607, unless  
17 the context otherwise indicates, the following terms have the  
18 following meanings.

19 1. Children. "Children" means persons who are not related  
20 by blood or marriage to, or who have not been legally adopted by,  
21 the licensee or administrator of the facility that provides  
22 services to those children.

23 2. Facility. "Facility" means any of the places defined in  
24 sections 6201, 6301 or 6451.

25 3. Abuse or neglect. "Abuse or neglect" refers to the  
26 definition found in section 4002, subsection 1.

27 §6102. Violation; penalty

28 Whoever violates any provision of this chapter; chapter 605,  
29 chapter 607; or chapter 609, subchapters II and III; may be  
30 punished by a fine of not more than \$500 or by imprisonment for  
31 not more than 11 months, or by both, except that anyone violating  
32 section 6103 or 6455 may be punished only by a fine of not more  
33 than \$500.

34 §6103. Records; disclosure

35 1. Records. Except as otherwise provided by law, any  
36 records that are made, acquired or retained by the department in  
37 connection with its responsibilities under this chapter; chapter

38 605; chapter 607; or chapter 609, subchapters II and III; must be  
39 available to the public.

40 2. Confidential information. Except as provided in  
41 subsections 3 and 4, confidential information may not be released  
42 without a court order or a written release from the person about  
43 whom the confidential information has been requested. The  
44 following information is confidential:

45 A. Any information that identifies, directly or indirectly,  
46 a recipient of services of the facility, a client of the  
47 facility or the client's family or custodian, except where  
48 the family member or custodian is an owner or operator of  
49 the facility;

50 B. Notwithstanding section 4009, any information gathered  
51 in the course of an investigation of neglect or abuse,  
52 except a statement indicating whether or not a report of  
53 abuse or neglect has been received, the nature of the  
54 alleged abuse or neglect and the conclusion reached by the  
55 department, if any;

56 C. Any information that identifies, directly or indirectly,  
57 a reference, complainant or reporter of suspected abuse or  
58 neglect;

59 D. Any information pertaining to the adoption of an  
60 individual;

61 E. Any information about the private life of any person,  
62 other than an owner, operator or employee of a facility, in  
63 which there is no legitimate public interest and that would  
64 be offensive to a reasonable person, if disclosed, except as  
65 provided in paragraph F; and

66 F. Any information about the private life of any person who  
67 has applied for a license or approval or is or has been  
68 licensed or approved as a family foster home as defined in  
69 section 6201, subsection 3, in which there is no legitimate  
70 public interest and which would be offensive to a reasonable  
71 person, if disclosed.

72 Within the department, confidential information is available to  
73 and may be used by appropriate departmental personnel and legal  
74 counsel in carrying out their various functions. This section  
75 does not prevent the release of statistical information regarding  
76 the population of the facility by diagnosis or other  
77 classification, provided that it does not directly or indirectly  
78 identify the clients or recipients of services of the facility.

3. Optional disclosure of confidential information.  
Relevant information made confidential by subsection 2 may be released to the following:

A. An agency investigating a report of child or adult abuse or neglect when the investigation is authorized by law or by an agreement with the department:

B. A physician treating a child or adult whom the physician reasonably suspects may be abused or neglected:

C. A person, the parent or guardian of a minor, or the guardian of an incapacitated adult named in a record, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected when appropriate:

D. A person having the legal responsibility or authorization to educate, care for, evaluate, treat or supervise a client or recipient of services of the facility. This includes a member of a treatment team or group convened to plan for or treat a person named in a record, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected, when appropriate:

E. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the commissioner or a designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent must be obtained by the department prior to the contact:

F. Any agency involved in approving homes for the placement of children, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected, when appropriate:

G. An individual seeking to place a child or adult in a particular facility with protection for the identity of any reference, complainant, reporter of suspected abuse or neglect or other person, when appropriate:

H. An owner or operator of a facility which is the subject of a record, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected, when appropriate; or

I. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 103.

4. Mandatory disclosure of confidential information. The department shall disclose relevant information in the records made confidential by subsection 2 to the following persons:

A. The guardian ad litem of a child or adult named in a record who is reported to be abused or neglected:

B. A law enforcement agency investigating a report of child or adult abuse or neglect or the commission of a crime by an owner, operator or employee of a facility against a client or recipient of services of the facility:

C. A court on its finding that access to those records may be necessary for the determination of any issue before the court. Access is limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before it:

D. A grand jury on its determination that access to those records is necessary in the conduct of its official business:

E. An appropriate state executive or legislative official with responsibility for adult or child protection services in carrying out the official's official functions, provided that no personally identifying information may be made available unless necessary to the official's functions:

F. The Protection and Advocacy Agency for the Developmentally Disabled in Maine in connection with investigations conducted in accordance with Title 5, chapter 511. The determination of what information and records are relevant to the investigation must be made by agreement between the department and the agency; and

G. The Commissioner of Education, when the information concerns teachers and other professional personnel issued certificates under Title 20-A.

5. Dissemination of confidential information. Information released pursuant to subsections 3 and 4 must be used solely for the purpose for which it was provided and may not be further disseminated.

## SUBCHAPTER II

### LICENSES

§6151. License or approval required

2 A person, firm, corporation or association may not operate  
3 any of the following without having, subject to this chapter,  
4 chapter 605; chapter 607; and chapter 609, subchapters II and  
5 III; and to the rules adopted by the department under those  
6 chapters; a written license from the department;

7 1. Children's home. A children's home as defined in  
8 section 6201;

9 2. Child placing agency. A child placing agency as defined  
10 in section 6301;

11 3. Day care. A day care facility as defined in section  
12 6451; or

13 4. Nursery school. A nursery school as defined in section  
14 6501.

15 §6152. Issuance of license or approval

16 1. Types of license or approval. The department shall  
17 issue the following types of licenses.

18 A. A provisional license or approval must be issued by the  
19 department to an applicant who:

20 (1) Has not previously operated the facility for which  
21 the application is made or is licensed or approved but  
22 has not operated during the term of that license or  
23 approval;

24 (2) Complies with all applicable laws and rules,  
25 except those that can only be complied with once  
26 clients are served by the applicant; and

27 (3) Demonstrates the ability to comply with all  
28 applicable laws and rules by the end of the provisional  
29 license or approval term.

30 B. The department shall issue a full license or approval to  
31 an applicant who complies with all applicable laws and rules.

32 C. A conditional license or approval may be issued by the  
33 department if the individual or agency fails to comply with  
34 applicable law and rules and, in the judgment of the  
35 commissioner, the best interest of the public would be  
36 served by issuing a conditional license or approval. The  
37 conditional license or approval must specify when and what  
38 corrections must be made during the term of the conditional  
39 license or approval.

2 D. A temporary license to operate a family foster home may  
3 be issued on a one-time basis when a preliminary evaluation  
4 of the home by the department has determined that the  
5 applicants are capable of providing foster care, in  
6 accordance with applicable laws and rules relating to  
7 minimum standards of health, safety and well-being, except  
8 that it is not possible to obtain a fire safety inspection  
9 in accordance with section 6207 prior to licensure and there  
10 are no obvious fire safety violations and, in the judgment  
11 of the commissioner, the best interest of the public will be  
12 served by issuing a temporary license.

13 2. Term of license or approval; compliance visits. Terms  
14 of licenses are governed by this subsection.

15 A. The provisional license or approval must be issued for a  
16 minimum period of 3 months or a longer period, as deemed  
17 appropriate by the department, not to exceed 12 consecutive  
18 months.

19 B. The terms of full licenses or approvals are as follows.

20 (1) Except as provided in subparagraph (2), the term  
21 of all full licenses and approvals issued pursuant to  
22 this chapter is one year or the remaining period of a  
23 conditional or provisional license that has been issued  
24 for less than one year.

25 (2) The term of a residential child care facility  
26 license is 2 years.

27 C. The conditional license must be issued for a specific  
28 period, not to exceed one year, or the remaining period of  
29 the previous full license, whichever the department  
30 determines appropriate based on the laws and rules violated.

31 D. The term of a temporary family foster home license must  
32 be for a specific period not to exceed 120 days.

33 E. Regardless of the term of the license or approval, the  
34 department shall monitor for continued compliance with  
35 applicable laws and rules on at least an annual basis.

36 3. Failure to comply with applicable laws and rules. In  
37 taking action pursuant to this subsection, the department shall  
38 notify the licensee of the opportunity to request an  
39 administrative hearing or shall file a complaint with the  
40 Administrative Court in accordance with the Maine Administrative  
41 Procedure Act, Title 5, chapter 375.

2 A. When an applicant fails to comply with applicable law  
4 and rules, the department may refuse to issue or renew the  
6 license or approval.

8 B. If, at the expiration of a full or provisional license  
10 or approval, at the expiration of a temporary family foster  
12 home license or during the term of a full license or  
14 approval, the facility fails to comply with applicable law  
16 and rules and, in the judgment of the commissioner, the best  
18 interest of the public would be served, the department may  
20 issue a conditional license or approval, or change a full  
22 license or approval to a conditional license or approval.  
24 Failure by the conditional licensee to meet the conditions  
specified by the department permits the department to void  
the conditional license or approval or refuse to issue a  
full license or approval. The conditional license or  
approval is void when the department has delivered in hand  
or by certified mail a written notice to the licensee or, if  
the licensee can not be reached for service in hand or by  
certified mail, has left written notice at the agency or  
facility. For the purposes of this subsection the term  
"licensee" means the person, firm, corporation or  
association to whom a conditional license or approval has  
been issued.

26 C. Whenever, upon investigation, conditions are found that,  
28 in the opinion of the department, immediately endanger the  
30 health or safety of persons living in or attending a  
32 facility, the department may request the Administrative  
34 Court for an emergency suspension pursuant to Title 4,  
36 section 1153.

38 D. Any license or approval issued under this chapter;  
40 chapter 605; chapter 607; or chapter 609, subchapters II and  
42 III; may be suspended or revoked for violation of applicable  
44 law and rules, committing, permitting, aiding or abetting  
any illegal practices in the operation of the facility or  
conduct or practices detrimental to the welfare of persons  
living in or attending the facility.

46 When the department believes that a license or approval  
48 should be suspended or revoked, it shall file a complaint  
50 with the Administrative Court as provided in the Maine  
Administrative Procedure Act, Title 5, chapter 375.

4. Subsequent application for a full license or approval.  
Subsequent to any of the following actions, a subsequent  
application for a full license or approval may be considered by  
the department when the deficiencies identified by the department  
have been corrected:

2 A. Issuance of a conditional license or approval;

4 B. Refusal to issue or renew a full license or approval;

6 C. Revocation or suspension of a full license or approval;

8 D. Refusal to issue a provisional license or approval; or

10 E. Expiration of a temporary family foster home license.

12 5. Appeals. Any person aggrieved by the department's  
14 decision to take any of the following actions, may request an  
16 administrative hearing, as provided by the Maine Administrative  
18 Procedure Act, Title 5, chapter 375:

18 A. Issue a conditional license or approval;

20 B. Amend or modify a license or approval;

22 C. Void a conditional license or approval;

24 D. Refuse to issue or renew a full license or approval;

26 E. Refuse to issue a provisional license or approval; or

28 F. Refuse to issue a temporary family foster home license.

30 **§6153. Right of entry**

32 The department has the right of entry to any facility  
34 licensed under this chapter, at any reasonable time in order to  
36 determine the state of compliance by the facility to applicable  
38 laws and rules.

40 To inspect any facility that the department knows or  
42 believes is operated without a license, the department may enter  
44 only with the permission of the owner or person in charge or with  
46 a search warrant from the District Court authorizing entry and  
48 inspection.

50 Any application for a license under this chapter constitutes  
permission for entry and inspection to verify compliance with  
applicable law and rules.

**§6154. Indian reservations**

This chapter; chapter 605; chapter 607; and chapter 609,  
subchapters II and III; also apply to the licensing of children's  
homes and day care facilities located on Indian reservations.



2 The department shall consider for licensure those children's  
4 homes and day care facilities that are recommended by the  
6 Governor and tribal council of the reservations on which they are  
8 located.

10 **CHAPTER 605**

12 **CHILDREN'S HOMES**

14 **§6201. Definitions**

16 As used in this chapter, chapter 603 and chapter 607, unless  
18 the context otherwise indicates, the following terms have the  
20 following meanings.

22 1. Children's home. "Children's home" means any residence  
24 maintained exclusively or in part for the board and care of one  
26 or more children under the age of 18, by anyone other than a  
28 relative by blood, marriage or adoption. "Children's home" does  
30 not include:

32 A. A facility established primarily to provide medical care;

34 B. A children's camp established solely for recreational  
36 and educational purposes; or

38 C. A school established solely for educational purposes  
40 except as provided in subsection 4.

42 2. Emergency shelter. "Emergency shelter" means a  
44 children's home that operates to receive children 24 hours a day  
46 and that limits placement to 30 consecutive days or less.  
48 "Emergency shelter" does not mean a family foster home or a  
50 specialized children's home and, if a service of a residential  
child care facility, must be limited to a designated physical  
area of the facility.

3. Family foster home. "Family foster home" means a  
children's home that is a private dwelling where substitute  
parental care is provided within a family on a regular, 24-hour a  
day, residential basis.

4. Residential child care facility. "Residential child  
care facility" means any children's home which provides board and  
care for one or more children on a regular, 24-hour a day,  
residential basis. A residential child care facility does not  
mean family foster home, specialized children's home or an  
emergency shelter facility. The term includes, but is not  
limited to, a residential child care facility as defined in Title  
20-A, section 1, subsection 24-A, paragraph D.

2 5. Shelter for homeless children. "Shelter for homeless  
4 children" means an emergency shelter designed to provide for the  
6 overnight lodging and supervision of children 10 years of age or  
8 older for no more than 30 consecutive overnights.

10 6. Specialized children's home. "Specialized children's  
12 home" means a children's home where care is provided to no more  
14 than 4 children with moderate to severe handicaps by a caretaker  
16 who is specifically educated and trained to provide for the  
18 particular needs of each child placed.

20 **§6202. Limit on children in family foster homes**

22 The total number of children in a family foster home may not  
24 exceed 6, including the family's legal children under 16 years of  
26 age, with no more than 2 children under the age of 2.

28 **§6203. Limit on children in specialized children's home**

30 The total number of children in a specialized children's  
32 home may not exceed 4, including the caretaker's legal children  
34 under 16 years of age, with no more than 2 children under the age  
36 of 2.

38 **§6204. Exceptions**

40 The following exceptions to this chapter apply.

42 1. Number; placement. The limitations on the number of  
44 children in children's homes do not prohibit the placement of  
46 more than the allowed number, if the purpose of the placement is  
48 to keep siblings together.

50 2. Residents 18 years of age or older. Notwithstanding  
section 6201, a resident in a children's home may remain in that  
home after attaining the age of 18 years without the home being  
required to be licensed as a boarding care facility if the  
department determines that it is in the best interest of the  
resident.

**§6205. Children with handicaps**

This chapter does not prohibit the department from placing a  
child with a moderate to severe handicap in any appropriate child  
care facility at the department's discretion, subject to the  
limitations on the number of children allowed in that type of  
facility.

**§6206. Emergency medical care**

2 Any children's home licensed under chapter 603 may consent  
4 to emergency medical treatment for any state ward in residence in  
6 the home if payment for the treatment is available under Title  
8 XIX of the federal Social Security Act, as amended. Within 24  
10 hours following any emergency medical treatment pursuant to this  
12 section, the children's home shall notify the department of the  
14 nature of the emergency situation, the emergency treatment that  
16 has been given and the need, if any, for further treatment.

12 **§6207. Fire safety: exceptions**

14 1. Procedures. All procedures and other provisions  
16 included in Title 22-B, section 9104, subsections 1 and 2, for  
18 boarding care facilities also apply to children's homes, except  
20 that the written statement referred to in Title 22-B, section  
22 9104, subsection 1, need not be furnished annually by the State  
24 Fire Marshal to the department when a children's home serves only  
26 one or 2 children.

22 2. Temporary license. The department may issue a temporary  
24 license to operate a family foster home without complying with  
26 subsection 1 prior to issuing the license, if a preliminary  
28 evaluation of the home reveals no obvious fire safety violations.

26 **§6208. Insurance coverage for family foster homes**

28 Family foster homes licensed by the department or relatives'  
30 homes approved by the department as meeting licensing standards  
32 are eligible for insurance pursuant to Title 5, section 1728-A.  
34 In any action for damages against a family foster home provider  
36 insured pursuant to Title 5, section 1728-A, for damages covered  
38 under that policy, the claim for and award of those damages,  
40 including costs and interest, may not exceed \$300,000 for any and  
42 all claims arising out of a single occurrence. When the amount  
44 awarded to or settled for multiple claimants exceeds the limit  
46 imposed by this section, any party may apply to the Superior  
48 Court for the county in which the governmental entity is located  
50 to allocate to each claimant that claimant's equitable share of  
the total, limited as required by this section. Any award by the  
court in excess of the maximum liability limit must be  
automatically abated by operation of this section to the maximum  
limit of liability. This section does not make the operation of  
a family foster home a state activity nor does it expand in any  
way the liability of the State or foster parent.

48 **§6209. Rules**

50 The department shall adopt rules for children's homes in  
accordance with the Maine Administrative Procedure Act, Title 5,

2 chapter 375. The rules must be designed to protect the health,  
4 safety, well-being and development of children and must include,  
6 but not be limited to:

8 1. Staff. The number and qualifications of staff;

10 2. Rights. Rights and responsibilities of parents,  
12 children and staff;

14 3. Programs. The nature, provision, documentation and  
16 management of programs of care or treatment;

18 4. Environment. The physical environment; and

20 5. Medication. The administration of medication.

22 **§6210. Interagency licensing**

24 1. Interagency licensing method. The commissioner, the  
26 Commissioner of Education and the Commissioner of Health and  
28 Developmental Services, or their designees, shall jointly  
30 establish a method for interagency licensing of residential child  
32 care facilities subject wholly or partly to licensing by at least  
34 2 of the departments. The method must provide for the following:

36 A. Development of common licensing rules;

38 B. Periodic review of licensing rules;

40 C. Delegation of departmental responsibilities; and

42 D. Determination of licensing fees.

44 2. Licensing authority. For the purposes of this section,  
46 the department has licensing authority for residential child care  
48 facilities. This authority does not relieve any agency of  
responsibility for the proper and efficient management or  
evaluation of programs funded by that agency.

46 3. Common licensing rules. Common licensing rules  
48 developed under this section must eliminate varying, duplicative  
and conflicting rules and procedures. Common licensing rules  
must also ensure, as far as practicable, that:

A. Licensing is accomplished expeditiously;

B. Applicants have to deal with as few agency  
representatives as possible;

2 C. Consideration is given to special circumstances made  
4 known by an applicant that make the timing of licensing  
6 investigation unreasonable;

8 D. Applicants are promptly informed of licensing decisions  
10 and of the cause for any delay or denial;

12 E. Applicants do not have to obtain information from  
14 another agency if the licensing agency can obtain the  
16 information more conveniently; and

18 F. Rules are applied uniformly.

20 **CHAPTER 607**

22 **CHILD PLACING AGENCIES**

24 **§6301. Definition of child placing agency**

26 As used in this chapter, chapter 603 and chapter 605, unless  
28 the context indicates otherwise, the term "child placing agency"  
30 means a facility that advertises itself or holds itself out as  
32 finding homes for or otherwise placing children under the age of  
34 18, in homes where care is provided on a 24 hours a day basis.  
36 "Child placing agency" includes an individual who advertises as  
38 or professes to be a person who places or finds homes for  
40 children for the purpose of adoption.

42 **§6302. Additional license permitted**

44 A licensed children's home may also be licensed as a child  
46 placing agency if the children's home complies with the law and  
48 rules applicable to child placing agencies.

50 **§6303. Individuals placing children for adoption**

The following provisions apply to individuals who place or  
find homes for children for the purposes of adoption.

1. License required. Any individual who operates a child  
placing agency is subject to the licensing requirements of the  
department, as specified under this chapter and chapter 603.

2. License not required. An individual who does not  
advertise as or profess to be a person who places or finds homes  
for children for the purpose of adoption, but who places or  
assists in placing a child for adoption, does not operate a child  
placing agency and is not subject to the licensing requirements  
specified under this chapter and under chapter 603.

3. Fees; violation and penalty. No individual who places  
or assists in placing a child for adoption may charge a fee that  
represents more than the reasonable costs of the services  
provided.

Violation of this subsection is a Class D crime.

**§6304. Disclosure of child's background**

Prior to a child being placed for the purpose of adoption, a  
child placing agency shall disclose fully to the prospective  
adoptive parents available information regarding the child's  
medical and genetic background and any reasonably available  
background or history that pertains to serious sexual, emotional  
or physical abuse of or harm to the child, with protection for  
the identity of persons other than the child.

**§6305. Rules**

The department shall adopt rules for child placing agencies  
that include, but are not limited to, rules pertaining to the  
appropriateness of placement, the continued welfare of the child  
placed and licensing procedures.

**CHAPTER 609**

**CHILD CARE**

**SUBCHAPTER I**

**CHILD CARE SERVICES**

**§6401. Definitions**

As used in this subchapter, unless the context otherwise  
indicates or unless they are inconsistent with federal law, the  
following terms have the following meanings.

1. Child care. "Child care" means a regular service of  
care and protection provided for compensation for any part of a  
day less than 24 hours to a child or children under 16 years of  
age whose parents work outside the home, attend an educational  
program or are otherwise unable to care for their children.  
"Child care" also means administrative functions related to the  
delivery of child care services, including, but not limited to,  
contract management, voucher administration, licensing, training,  
technical assistance and referral.

2 2. Council. "Council" means the Child Care Advisory  
4 Council established pursuant to Title 5, section 12004-I,  
6 subsection 35-B.

8 3. Office. "Office" means the Office of Child Care  
10 Coordination established pursuant to section 6409.

12 4. Region. "Region" means a service delivery region  
14 established pursuant to section 107.

16 §6402. Principles of child care system

18 The department shall allocate resources available under this  
20 subchapter in a manner that promotes the following principles.

22 1. Family self-sufficiency. A stable source of child care  
24 is a critical ingredient to economic self-sufficiency. Child  
26 care policies and programs must facilitate a smooth transition  
28 into the work force for parents and a rich and stable environment  
30 for children.

32 2. Investment in children. Child care is a critical  
34 investment that affects a child's readiness to learn.  
36 High-quality child care programs recognize and implement good,  
38 early childhood practices, as articulated by Head Start, the  
40 National Association for the Education of Young Children and  
42 other early childhood organizations.

44 3. Consumer orientation and education. Child care policies  
46 and programs must be responsive to the changing needs of families  
48 and educate families about available options, identifying quality  
programs and selecting appropriate care.

4. Accessibility. High-quality child care must be  
available to any family seeking care regardless of where the  
family lives or the special needs of the child. A centralized  
place in local communities must be available to facilitate  
parents' access to child care.

5. Affordability. High-quality child care must be  
available on a sliding scale basis, with families contributing  
based on ability to pay.

6. Diversity. It is the goal of the State to strive  
wherever possible to provide child care in an integrated setting,  
where children with various needs and of various income levels  
and cultures are cared for together.

2 7. Efficient, coordinated administration. Child care  
4 programs must be coordinated to ensure the most effective use of  
6 federal and state funds.

8 8. Support for infrastructure. State child care agencies  
10 and policies must support the orderly development of a  
12 high-quality child care system.

14 §6403. Designated agency

16 To the extent permitted by federal law, the department shall  
18 coordinate and administer all available federal and state child  
20 care funds, including, but not limited to, those available under  
22 the federal Social Security Act, Title IV, Part A and Title XX;  
24 the federal Family Support Act of 1988; the federal Omnibus  
26 Budget Reconciliation Act of 1990, Section 5081; and the federal  
28 Child Care and Development Block Grant Act of 1990.

30 §6404. Use of federal funds

32 The department shall seek the advice of the council when  
34 applying or reapplying for federal funds under this subchapter  
36 and when submitting state plans, amendments to state plans or  
38 waivers for federal approval. Whenever the department makes  
40 these submissions to the Federal Government, it shall notify the  
42 joint standing committee of the Legislature having jurisdiction  
44 over human resource matters and the Executive Director of the  
46 Legislative Council.

48 The following additional provisions apply to certain federal  
50 child care funds, as indicated.

1. Used to supplement state funds. Federal child care  
funds must be used to supplement and may not replace existing  
state and local child care funds.

2. Block grant funds encumbered. Within 6 months of  
receiving any payment under the federal Child Care and  
Development Block Grant Program, the department shall expend or  
encumber 100% of the payment.

§6405. Child care for ASPIRE-JOBS participants

The department shall ensure that all persons referred for  
participation in the State's ASPIRE-JOBS program receive  
information regarding child care options from caseworkers who are  
knowledgeable about the range of child care subsidies available  
in this State and who can explain the relative advantages of each  
option. This may be done directly by the department or by the  
department's designee.

2 §6406. Eligibility

4 1. Single application form. The department shall develop a  
6 universal application for all publicly funded child care programs  
8 for applicants who are seeking child care as their primary  
10 service. The department shall require all caseworkers and  
contractors to use the form to determine eligibility for those  
applicants. Applicants submitting applications to more than one  
caseworker or contractor may submit photocopies.

12 2. Eligibility decision within 30 days. The department  
14 shall determine eligibility for child care programs administered  
16 under this subchapter within 30 days of receiving an  
18 application. If a contractor determines eligibility, the  
department shall require that the contractor determine  
eligibility within 30 days of receiving an application.

20 §6407. Payments to providers

22 1. No payments to recipients. The department may not make  
24 cash payments to recipients for child care services provided  
under this subchapter, except when those payments represent  
reimbursement for services already provided to the recipient.

26 2. Maintenance of existing options. The department shall  
28 ensure that child care funds are distributed through a range of  
mechanisms, including, but not limited to, vouchers to recipients  
and contracts to providers.

30 3. Quality differential. To the extent permitted by  
32 federal law, the department may pay a differential rate for child  
34 care services that meet nationally recognized quality standards,  
such as those standards required by the Head Start program or  
36 required for accreditation by the National Association for the  
Education of Young Children, and shall do so from the Child Care  
38 and Development Block Grant 25% Quality Set-aside funds or by  
other federally acceptable practices.

40 §6408. Child Care Advisory Council

42 1. Purpose. The Child Care Advisory Council is  
44 established, in accordance with Title 5, section 12004-I,  
subsection 35-B, to advise the Legislature and the department  
46 regarding child care services in the State. The council shall  
encourage the development of child care policies that are  
48 coordinated among state agencies to promote quality, uniformity  
and efficiency of service.

2 2. Membership. The council has 25 members, appointed as  
follows:

4 A. One employee of the department who works in the Aid to  
6 Families with Dependent Children program and who is  
responsible for child care services offered through that  
program, appointed by the commissioner;

8 B. Two employees of the department who are responsible for  
10 the distribution of the federal Child Care and Development  
Block Grant Program funds and other funds distributed under  
this subchapter, appointed by the commissioner;

12 C. One employee of the department who has responsibility  
14 for services to children with special needs, appointed by  
the commissioner;

16 D. One employee of the Department of Education, appointed  
18 by the Commissioner of Education;

20 E. One employee who coordinates the state Head Start  
22 program, appointed by the commissioner;

24 F. The State Fire Marshal or the State Fire Marshal's  
26 designee;

28 G. One employee of the Office of Substance Abuse, appointed  
by the Director of the Office of Substance Abuse;

30 H. One employee of the Department of Economic and Community  
32 Development, appointed by the Commissioner of Economic and  
Community Development;

34 I. One member of the Senate, appointed by the President of  
36 the Senate;

38 J. Two members of the House of Representatives, at least  
one of whom must be from the minority party, appointed by  
the Speaker of the House of Representatives;

40 K. One parent or other consumer who receives a child care  
42 subsidy at the time of that parent's or consumer's  
appointment, appointed by the Governor;

44 L. One parent or other consumer of child care services who  
46 does not receive a child care subsidy, appointed by the  
Governor;

48 M. One business representative nominated by the Maine  
50 Chamber of Commerce and Industry, appointed by the Governor;

2 N. One center-based care representative nominated by the  
4 Maine Child Care Directors' Association, appointed by the  
6 Governor;

8 O. One Head Start provider nominated by the Maine Head  
10 Start Directors' Association, appointed by the Governor;

12 P. One family day-care provider nominated by the Maine  
14 Family Day Care Association, appointed by the Governor;

16 Q. One person representing Native Americans, appointed by  
18 the Governor;

20 R. One child care provider who does not receive public  
22 funds, appointed by the Governor;

24 S. One person associated with a local preschool handicapped  
26 project coordination site, appointed by the Governor;

28 T. One person nominated by the Coalition for Maine's  
30 Children, appointed by the Governor;

32 U. One person nominated by the Maine Association of Child  
34 Care Resource and Referral Agencies, appointed by the  
36 Governor;

38 V. One representative of women nominated by the Maine  
40 Women's Lobby, appointed by the Governor; and

42 W. One provider of child care for school-age children,  
44 appointed by the Governor.

46 Senators and members of the House of Representatives serve for  
48 the duration of the legislative terms that they are serving when  
appointed. Members from state departments serve at the pleasure  
of their appointing authorities. All other members serve 3-year  
terms and may continue to serve beyond their terms until their  
successors are appointed but may not be appointed to subsequent  
consecutive terms. If a vacancy occurs before a term has  
expired, the vacancy must be filled for the remainder of the  
unexpired term by the authority who made the original  
appointment. If a member is absent for 2 consecutive meetings  
and has not been excused by the chair from either meeting, the  
council may remove the member by majority vote. If a nominating  
organization does not submit nominations within a reasonable  
period of time, the appointing authority may fill that  
organization's seat with a member of the public at large.

2 3. Meetings; chair. The commissioner shall call the first  
4 meeting of the council by October 15, 1993. At the first  
6 meeting, the council shall select by majority vote a chair from  
8 among its members to serve a term of one year. A chair may be  
10 reelected to subsequent terms. The chair shall call subsequent  
12 meetings. The council may meet as often as funding permits, but  
14 must meet at least 4 times per year.

16 4. Powers. The council must have access to all  
18 departmental records regarding child care programs administered  
20 under this subchapter, except that the council does not have  
22 access to information that identifies individuals who receive  
24 assistance under this subchapter.

26 5. Duties. The council shall:

28 A. Advise the department and the Legislature regarding the  
30 coordination of child care services in the State;

32 B. Advise the department regarding the preparation of any  
34 application, amendment, waiver request, plan or other  
36 document submitted by the department to the Federal  
38 Government regarding child care funding and recommend  
40 changes to the submission when appropriate;

42 C. Establish a subcommittee that includes licensing  
44 officials, public health and safety representatives, early  
46 childhood educators and others considered necessary by the  
48 council to review the current system of licensing and  
registration and recommend a uniform regulatory system for  
family day-care homes. In its first annual report, the  
council shall submit its recommendations, along with  
implementing legislation, if needed, to the joint standing  
committee of the Legislature having jurisdiction over human  
resource matters;

D. Examine the role and funding of resource development  
centers and submit recommendations regarding the number and  
role of the centers in the State. These recommendations  
must be made in the council's first or 2nd annual report;

E. Determine how the State can better use child care funds  
available under the federal Social Security Act, Title IV,  
Part A, particularly those funds available through the  
federal Transitional Child Care Program, and develop a  
proposal to use federal and state funds to supplement the  
earned income disregard for families receiving aid to  
families with dependent children;

2 F. Explore ways in which child care services may be better  
3 integrated into a system of comprehensive services for  
4 children and families; and

5 G. Examine any other relevant child care issues and make  
6 recommendations as needed. The council may establish ad hoc  
7 subcommittees as needed.

8 6. Report. By January 15th, annually, the council shall  
9 submit a report to the commissioner and the joint standing  
10 committee of the Legislature having jurisdiction over human  
11 resource matters. The report must describe the council's  
12 activities for the year regarding its duties specified in  
13 subsection 5 and must outline policy changes recommended by the  
14 council, along with necessary implementing legislation.

15 7. Staff. The office shall provide staff and office  
16 supplies to the council within the office's existing resources.  
17 The council may refuse these services and supplies and may accept  
18 and expend private funds to carry out its duties under this  
19 subchapter.

20 **§6409. Office of Child Care Coordination**

21 1. Establishment. The Office of Child Care Coordination is  
22 established within the department.

23 2. Powers and duties. The office shall:

24 A. Maintain an inventory of child care information;

25 B. Provide public education on becoming better consumers of  
26 child care;

27 C. Provide staffing assistance to the council;

28 D. Coordinate an ongoing review of all child care licensing  
29 rules;

30 E. Provide technical assistance to public and private  
31 sector employers, school systems and community groups  
32 concerning child care, flexible benefits and work schedules;

33 F. Coordinate the development of a training system for  
34 child care providers;

35 G. Develop incentives for employer involvement in child  
36 care; and

37 H. Promote cooperative relationships between public health  
38 organizations and child care programs.

39 **§6410. State employee child care programs**

40 The Office of Child Care Coordination annually shall  
41 evaluate the status of state financed or operated child care  
42 facilities and programs that are operated primarily as a service  
43 for children of state employees, and shall set forth plans for  
44 the development of additional facilities. For the purpose of  
45 this section, "state employee" includes employees subject to the  
46 civil service law, employees defined in Title 5, chapter 71, and  
47 legislative employees.

48 1. Evaluation and report. The Office of Child Care  
49 Coordination shall report its findings and recommendations  
50 annually to the joint standing committee of the Legislature  
51 having jurisdiction over human resources no later than the 3rd  
52 Wednesday in January of each first regular session of the  
53 Legislature. This report, at a minimum, must include the  
54 following:

55 A. The number and location of child care sites operated or  
56 planned for operation primarily for children of state  
57 employees;

58 B. The number and ages of children at each site;

59 C. The number and ages of children of state employees on  
60 waiting lists for admittance to the programs;

61 D. The types of activities and programs provided to the  
62 children;

63 E. The budget for each site, including expenditures and  
64 income. Income must be further described to include fees  
65 charged and income from other sources. Any deficits must  
66 also be described;

67 F. Assistance provided for children of low-income state  
68 employee households, including sliding scale fees and any  
69 other assistance. The number of children for whom this  
70 assistance is being provided must also be included;

71 G. Any problems encountered in the operation of the child  
72 care facilities and programs and the reasons for these  
73 problems;

2 H. The successes that have been realized as a result of  
3 this service to state employees, including state employee  
4 successes relating directly to the program;

6 I. The hours of operation of each facility; and

8 J. Any other information considered relevant and useful by  
9 the Office of Child Care Coordination.

10 2. Feasibility study of other child care facilities and  
11 programs. Prior to the creation of new or additional state  
12 financed or operated child care facilities provided primarily for  
13 the benefit of state employees, except the initial facility to be  
14 located in the Augusta area, the Office of Child Care  
15 Coordination, in cooperation with the Bureau of Public  
16 Improvements, shall conduct a feasibility study of the proposed  
17 child care facility which must be located in a state-owned  
18 facility or in a facility located conveniently near the  
19 workplaces of state employees. This feasibility study, at a  
20 minimum, must include:

22 A. The location of the site and the reasons justifying the  
23 location, including reasons justifying or not justifying  
24 using state-owned facilities;

26 B. An analysis of the benefits and liabilities of  
27 contracting with the private sector to provide child care  
28 programs under this section;

30 C. An analysis of the benefits and liabilities of State  
31 Government operation of child care programs and facilities  
32 for children of state employees;

34 D. The number and ages of children proposed for the site;

36 E. The type of assistance to be made available to children  
37 of state employees classified as low-income households;

39 F. The types of activities and programs to be provided,  
40 including preschool and after school programs;

42 G. A time schedule for the commencement of programs at each  
43 facility;

45 H. Sources of income, including fees, if any, for funding  
46 each facility; and

48 I. Any other information considered important by the Office  
49 of Child Care Coordination and the Bureau of Public  
50 Improvements.

2 The report required by this subsection must be provided to the  
3 joint standing committee of the Legislature having jurisdiction  
4 over human resource matters in a timely manner preceding the  
5 selection of the site.

6 3. Priorities; rulemaking. Any child care facility and  
7 programs operated primarily as a service to state employees must  
8 give priority to children of low-income state employee  
9 households. Any facilities and programs offered under this  
10 section must also be conveniently located for the use of state  
11 employees. The Office of Child Care Coordination shall adopt  
12 rules in accordance with the Maine Administrative Procedure Act,  
13 Title 5, chapter 375, with respect to:

14 A. Priorities of eligibility for the program;

16 B. The number of children that each state employee may  
17 enroll;

19 C. A sliding scale of fees for state employee households of  
20 different incomes; and

22 D. A definition of low income.

24 4. Collective bargaining. It is not the intent of the  
25 Legislature in this section to limit or restrict the rights of  
26 state employees to bargain collectively as provided in Title 26.  
27 This section does not invalidate or supersede the provisions of a  
28 collective bargaining agreement between an employee organization  
29 and the State.

## 31 SUBCHAPTER II

### 33 DAY CARE FACILITIES

#### 35 §6451. Definition of day care facility

37 As used in this chapter, chapter 603 and chapter 605, the  
38 term "day care facility" means a house or other place in which a  
39 person or combination of persons maintains or otherwise carries  
40 out a regular program, for consideration, for any part of a day  
41 providing care and protection for 3 or more children under the  
42 age of 16.

44 The term does not include any facility operated as a nursery  
45 school, home day care for which the person or combination of  
46 persons does not receive any federal or state funds, a summer  
47 camp established solely for recreational and educational  
48 purposes, or a formal public or private school in the nature of :  
49



2 kindergarten or elementary or secondary school approved by the  
3 Commissioner of Education in accordance with Title 20-A, section  
4 5001-A.

6 **§6452. Fee for licenses**

8 The department shall adopt rules to establish reasonable  
9 fees for both initial licensure or certification and license or  
10 certification renewals for day care facilities, nursery schools  
11 and registered home baby-sitting services.

12 **§6453. Fire safety**

14 1. Inspection required. As an ongoing condition of  
15 licensure or registration, the Office of the State Fire Marshal  
16 must provide annually to the department a written statement that  
17 the day-care facility complies with applicable fire safety rules  
18 adopted pursuant to Title 25, section 2452. The Commissioner of  
19 Public Safety shall adopt rules in accordance with the Maine  
20 Administrative Procedure Act to implement this subsection. The  
21 rules must provide for at least the following.

24 A. The State Fire Marshal shall issue a fire safety  
25 technician certificate to any person who successfully  
26 completes a training course established by the Office of the  
27 State Fire Marshal. A person who receives a fire safety  
28 technician certificate pursuant to this paragraph may  
29 perform fire safety inspections under this section.

31 B. In addition to ongoing certification requirements,  
32 inspection and certification are required under this section  
33 whenever a day-care facility changes or augments a heating  
34 system or makes major structural alterations to the facility.

36 2. Fees. The department shall establish and pay reasonable  
37 fees to the State Fire Marshal for services rendered under this  
38 section. Fees collected by the State Fire Marshal under this  
39 section must be deposited into a special revenue account to carry  
40 out the purposes of this section. A balance remaining in the  
41 account at the end of the fiscal year may not lapse but must be  
42 carried forward into subsequent fiscal years.

44 3. Inspectors. The Commissioner of Public Safety may  
45 appoint subject to the Civil Service Law employees needed to  
46 carry out the purposes of this section. A person appointed  
47 pursuant to this subsection is under the administrative and  
48 supervisory direction of the State Fire Marshal.

50 **§6454. Options for home day care providers**

2 Providers of home day care who do not receive federal or  
3 state funds may choose to be licensed, under rules adopted by the  
4 department pursuant to section 6457; if they do not, they shall  
5 register in accordance with section 6455.

6 **§6455. Home baby-sitting service**

8 1. Registration. Persons providing home day care on a  
9 regular basis for 3 to 12 children under 16 years of age  
10 unrelated to the provider who do not have a day care facility  
11 license shall register with the department as a home baby-sitting  
12 service. The department shall issue a certificate of  
13 registration to the home baby-sitting service provider, upon  
14 receipt of evidence from the registrant that:

16 A. The provider is at least 18 years of age;

18 B. The provider has had a standard skin test for  
19 tuberculosis, as approved by the Department of Health and  
20 Developmental Services, and that the test is negative or, if  
21 the skin test is positive, an appropriate follow-up test, as  
22 approved by the Department of Health and Developmental  
23 Services, is negative. Subsequent testing may be required  
24 by the Department of Health and Developmental Services.

26 A provider who states in writing that it is contrary to that  
27 provider's religious teachings and practice may not be  
28 compelled to undergo a test for tuberculosis;

30 C. The water used for drinking and cooking:

32 (1) Comes from a municipal water supply; or

34 (2) Has been tested on an annual basis and meets the  
35 standards established by the Department of Health and  
36 Developmental Services or a laboratory approved by the  
37 Department of Health and Developmental Services;

38 D. The home has met the requirements of section 6453;

40 E. If the provider is caring for 6 or more preschool  
41 children, there must be an additional provider present  
42 whenever the children are on the premises. The additional  
43 provider must be at least 14 years of age and have had a  
44 tuberculosis test, as provided in paragraph B; and

46 F. The provider, other residents or other persons who  
47 frequent the home have not been convicted of a crime in  
48 which a child was a victim; have not been found, in a  
49 statutorily authorized form, to have abused or neglected

children; or have not had parental rights terminated by a statutorily authorized entity.

2. Complaints. Upon receipt of a complaint, the department may, if it has reasonable cause to suspect that a violation of the certification requirements has occurred, investigate complaints against the provider and has the right of entry at any reasonable time for the purposes of the investigation.

3. Suspension or revocation of registration. A certificate of registration issued under this subchapter may be suspended or revoked for violation of applicable law or for committing or permitting conduct or practices detrimental to the welfare of the children receiving home baby-sitting services. When the department believes that a certificate should be suspended or revoked, it shall file a complaint with the Administrative Court as provided in the Maine Administrative Procedure Act, Title 5, section 10051. An order by the Administrative Court suspending or revoking a registration voids a renewal application currently on file by the registrant. The Administrative Court may order that a person whose registration has been revoked or suspended may not apply for registration under this section or for licensure under this chapter for a period of time determined by the court.

4. Compliance inspection. The department may conduct one annual inspection of the provider's facility to ensure compliance with the law.

#### §6456. Information brochure

The department shall distribute a brochure to each home day care provider and home baby-sitting service provider, which clearly outlines the differences between home day care and home baby-sitting services. Each provider shall distribute a copy of this brochure to any applicant for home day care or home baby-sitting services before those services may be provided.

#### §6457. Rules

The commissioner shall adopt rules to implement this subchapter that include but are not limited to the following topics:

1. Health and safety. The health and safety of the children and staff;
2. Quality. The quality of the program provided;
3. Medication. The administration of medication;

#### 4. Procedures. Licensing procedures; and

5. Use of cloth diapers. The use of cloth diapers in licensed day care facilities and registered home baby-sitting services.

### SUBCHAPTER III

#### NURSERY SCHOOLS

#### §6501. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Children. "Children" means persons 7 years of age and under who are not related by blood or marriage to or who have not been legally adopted by the licensee or administrator of the nursery school that the children attend.

2. Nursery school. "Nursery school" means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program that provides care for 3 or more children, provided that:

A. No session conducted for the children is longer than 3 1/2 hours in length;

B. No more than 2 sessions are conducted per day;

C. Each child in attendance at the nursery school attends only one session per day; and

D. No hot meal is served to the children.

This term does not include any facility operated as a day care center, a summer camp established solely for recreational and educational purposes or a public or private school in the nature of a kindergarten approved by the Commissioner of Education, in accordance with Title 20-A, section 5001-A.

#### §6502. Licensure

1. Requirements. In order to receive a license from the department a nursery school must meet the following requirements:

A. Each licensee, administrator or other staff member of the nursery school, who provides care for the children, must

2 be declared, annually, by a licensed physician to be free  
3 from communicable disease.

4 B. Drinking water that is taken from sources other than a  
5 public water system must pass a test for bacteria, nitrates  
6 and nitrites every year and must pass a partial chemical  
7 test every 4 years.

8 C. The nursery school shall carry minimum liability  
9 insurance of \$100,000 per person and \$300,000 per occurrence.

10 D. During any nursery school session there must be at least  
11 one adult present for every 12 children. When only one  
12 adult is present, another responsible adult must be on call  
13 and available in case of any emergency.

14 E. The nursery school must meet, annually, the fire safety  
15 requirements specified in section 6504.

16 F. The nursery school shall comply with rules for the  
17 administration of medication as adopted by the department.

18 2. License issued promptly. The department shall issue  
19 with reasonable promptness a license to each nursery school from  
20 which the department has received and verified documentation  
21 indicating that the nursery school has met the requirements  
22 included in this section.

23 3. Relationship to licensing of day care facilities. A  
24 facility licensed as a nursery school may not be required to be  
25 licensed as a day care facility; but any facility licensed as a  
26 nursery school may also be licensed as a day care facility, if  
27 the nursery school complies with the law and rules applicable to  
28 day care facilities.

#### 29 §6503. Rules and regulations

30 The department shall adopt rules regarding the  
31 administration of medication in nursery schools.

#### 32 §6504. Fire safety

33 1. Inspection required. A license may not be issued by the  
34 department for a nursery school until the department has received  
35 from the State Fire Marshal a written statement signed by one of  
36 the officials designated in Title 25, sections 2360, 2391 or 2392  
37 to make fire safety inspections.

38 2. Requirements. This written statement, which must be  
39 furnished annually by the State Fire Marshal to the department,

2 must indicate that the nursery school has complied with at least  
3 the requirements of the Life Safety Code of the National Fire  
4 Protection Association as adopted by the State Fire Marshal, that  
5 are specified in:

6 A. The family day care homes section, if the nursery school  
7 has at least 3 but no more than 6 children per session; or

8 B. The group day care homes section, if the nursery school  
9 has at least 7 but no more than 20 children per session; or

10 C. The child day care centers section, if the nursery  
11 school has more than 20 children per session.

12 3. Fees. The department shall establish and pay reasonable  
13 fees to the State Fire Marshal or municipal officials for each  
14 such inspection.

#### 15 SUBCHAPTER IV

#### 16 HEAD START

#### 17 §6551. Head Start

18 The Head Start program is administered by the department.

#### 19 CHAPTER 611

#### 20 MAINE CHILDREN'S TRUST FUND

#### 21 §6601. Definitions

22 As used in this chapter, unless the context indicates  
23 otherwise, the following terms have the following meanings.

24 1. Fund. "Fund" means the Maine Children's Trust Fund.

25 2. Income. "Income" means annual contributions made to the  
26 fund through the income tax checkoff plus interest earned by the  
27 fund.

28 3. Prevention programs. "Prevention programs" means  
29 programs, plans or training associated with the prevention of  
30 child abuse, child neglect or mental illness or with other  
31 factors associated with the physical and emotional well-being of  
32 the youth of the State, including strategies to alleviate  
33 problems associated with behavior prohibited by law, but not  
34 adjudicated as a juvenile crime.

#### 35 §6602. Maine Children's Trust Fund

2 1. Establishment. There is established the Maine  
4 Children's Trust Fund. The fund receives money deposited by the  
6 Treasurer of State pursuant to Title 36, section 5285. The fund  
8 is administered by the department.

2 2. Purpose. The purpose of the Maine Children's Trust Fund  
4 is to provide permanent funding of prevention programs.

10 **§6603. Disbursement of fund income**

12 The department shall disburse income in accordance with the  
14 following provisions.

16 1. Distribution to child abuse and neglect councils.  
18 Notwithstanding section 4657, the department shall distribute  
20 income available under this section to the child abuse and  
22 neglect councils created under chapter 403. The department shall  
24 distribute the income among all the child abuse and neglect  
26 councils, with each council receiving an amount that reflects the  
28 demographics of its area of jurisdiction. The child abuse and  
30 neglect councils shall use funds received under this subsection  
32 to award direct grants for the development and operation of  
34 prevention programs and to fund prevention programs and  
36 activities sponsored by the councils.

28 2. Administrative allowance. The department may expend up  
30 to but no more than 1% of income each year to administer the fund.

30 3. Income up to \$100,000. Of the first \$100,000 of income  
32 each year, the amount remaining after disbursement of the  
34 administrative allowance must be expended as follows: 1/3 must  
36 be allocated to the fund and 2/3 must be disbursed in accordance  
38 with subsection 1.

36 4. Income greater than \$100,000 up to \$500,000. One half  
38 of the amount of income each year that exceeds \$100,000 but does  
40 not exceed \$500,000 must be allocated to the fund. The  
42 department shall disburse the remainder in accordance with  
44 subsection 1.

42 5. Income above \$500,000. Income each year that exceeds  
44 \$500,000 must be allocated to the fund until the fund reaches  
46 \$4,000,000. When the fund reaches \$4,000,000, contributions  
48 cease, as provided in Title 36, section 5285, and,  
50 notwithstanding subsections 3 and 4, the department shall  
disburse annually in accordance with subsections 1 and 2 the  
total amount of interest earned by the fund.

50 **§6604. Rules: report**

2 The commissioner may adopt rules to implement this chapter.  
4 Annually by January 15, the commissioner shall submit a report to  
6 the joint standing committees of the Legislature having  
8 jurisdiction over human resource matters and appropriations  
matters. The report must provide a summary of the fund for the  
previous fiscal year, including the amount of income, the amount  
and a description of each disbursement made and the amount  
allocated to the fund.

10 **CHAPTER 613**

12 **ADOPTION ASSISTANCE COMPACT**

14 **§6701. Findings and purposes**

16 1. Findings. The Legislature finds that:

18 A. Finding adoptive families for children for whom state  
20 assistance is desirable, pursuant to Title 19, chapter 10,  
22 the Adoption Subsidy Act, and assuring the protection of the  
24 interests of the children affected during the entire  
26 assistance period, require special measures when the  
28 adoptive parents move to other states or are residents of  
30 another state; and

28 B. Provision of medical and other necessary services for  
30 children with state assistance encounters special  
32 difficulties when the provision of services takes place in  
34 other states.

32 2. Purposes. The purposes of this chapter are to:

34 A. Authorize the department to enter into interstate  
36 agreements with agencies of other states for the protection  
38 of children on behalf of whom adoption assistance is being  
40 provided by the department; and

40 B. Provide procedures for interstate children's adoption  
42 assistance payments, including medical payments.

42 **§6702. Compacts authorized; definitions**

44 1. Authorization. The department may develop, participate  
46 in the development of, negotiate and enter into one or more  
48 interstate compacts on behalf of this State with other states to  
50 implement one or more of the purposes set forth in this chapter.  
When entered into, for as long as it remains in force, a compact  
developed under this chapter has the force and effect of law.

2 2. Definitions. As used in this chapter, unless the  
3 context indicates otherwise, the following terms have the  
4 following meanings.

5 A. "Adoption assistance state" means the State that is  
6 signatory to an adoption assistance agreement in a  
7 particular case.

8 B. "State" means a State of the United States, the District  
9 of Columbia, the Commonwealth of Puerto Rico, the Virgin  
10 Islands, Guam, the Commonwealth of the Northern Mariana  
11 Islands or a territory or possession of or administered by  
12 the United States.

13 C. "Residence state" means the state of which the child is  
14 a resident by virtue of the residence of the adoptive  
15 parents.

16 **§6703. Contents of compacts**

17 1. Content. A compact entered into pursuant to this  
18 chapter must have the following content:

19 A. A provision making it available for joinder by all  
20 states;

21 B. A provision or provisions for withdrawal from the  
22 compact upon written notice to the parties, but with a  
23 period of one year between the date of the notice and the  
24 effective date of the withdrawal;

25 C. A requirement that the protection afforded by or  
26 pursuant to the compact continue in force for the duration  
27 of the adoption assistance and be applicable to all children  
28 and their adoptive parents who, on the effective date of the  
29 withdrawal, are receiving adoption assistance from a party  
30 state other than the one in which they are resident and have  
31 their principal place of abode;

32 D. A requirement that each instance of adoption assistance  
33 to which the compact applies be covered by an adoption  
34 assistance agreement in writing between the adoptive parents  
35 and the state child welfare agency of the State that  
36 undertakes to provide the adoption assistance and that any  
37 such agreement be expressly for the benefit of the adopted  
38 child and enforceable by the adoptive parents and the state  
39 agency providing the adoption assistance; and

40 E. Other provisions as appropriate to implement the proper  
41 administration of the compact.

2 **§6704. Optional contents of compacts**

3 1. Optional content. A compact entered into pursuant to  
4 this chapter may contain provisions in addition to those required  
5 pursuant to section 6703, as follows:

6 A. Provisions establishing procedures and entitlements to  
7 medical, developmental, child care or other social services  
8 for the child in accordance with applicable laws, even  
9 though the child and the adoptive parents are in a state  
10 other than the one responsible for or providing the services  
11 or the funds to defray part or all of the costs of the  
12 services; and

13 B. Other provisions as appropriate or incidental to the  
14 proper administration of the compact.

15 **§6705. Medical assistance**

16 1. Medical assistance identification. A child with special  
17 needs resident in this State who is the subject of an adoption  
18 assistance agreement with another state is entitled to receive a  
19 medical assistance identification from this State, upon the  
20 filing in the department of a certified copy of the adoption  
21 assistance agreement obtained from the adoption assistance  
22 state. In accordance with rules of the department, the adoptive  
23 parents must be required at least annually to show that the  
24 agreement is still in force or has been renewed.

25 2. Processing and payment of claims. The department shall  
26 consider the holder of a medical assistance identification  
27 pursuant to this section as any other holder of a medical  
28 assistance identification under the laws of this State and shall  
29 process and make payment on claims on account of that holder in  
30 the same manner and pursuant to the same conditions and  
31 procedures as for other recipients of medical assistance.

32 3. Coverage: benefits. The department shall provide  
33 coverage and benefits for a child who is in another state and who  
34 is covered by an adoption assistance agreement made by the  
35 department for the coverage or benefits, if any, not provided by  
36 the residence state. The adoptive parents acting for the child  
37 may submit evidence of payment for services or benefit amounts  
38 not payable in the residence state and must be reimbursed. There  
39 may be no reimbursement for services or benefit amounts covered  
40 under any insurance or other 3rd party medical contract or  
41 arrangement held by the child or the adoptive parents. The  
42 department shall adopt rules implementing this subsection. The  
43 additional coverage and benefit amounts provided pursuant to this  
44 section shall be in addition to any other coverage or benefits  
45 provided to the child.

subsection must be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. Among other things, the rules must include procedures to be followed in obtaining prior approvals for services when applicable.

4. False claims. The submission of any claim for payment or reimbursement for services or benefits, pursuant to this section or the making of any statement in connection therewith, which claim or statement the maker knows or should know to be false, misleading or fraudulent is punishable as perjury and subject to the provisions of the Maine Criminal Code and other applicable laws.

5. Application. The provisions of this section apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this State under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this State. All other children entitled to medical assistance, pursuant to adoption assistance agreements entered into by this State, are eligible to receive it in accordance with the laws and procedures that apply.

#### §6706. Federal participation

Consistent with federal law, the department, in connection with the administration of this chapter and any compact pursuant to this chapter, must include in any state plan made pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, Titles IV-E and XIX of the United States Social Security Act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the Federal Government pays some or all of the cost. The department shall apply for and administer all relevant federal aid, in accordance with applicable law.

### CHAPTER 615

## INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

### SUBCHAPTER I

#### COMPACT

#### §6801. Purpose and policy -- Article I

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that each child requiring placement receives the

maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

The appropriate authorities in a state where a child is to be placed have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

The proper authorities of the state from which the placement is made obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

Appropriate jurisdictional arrangements for the care of children will be promoted.

#### §6802. Definitions -- Article II

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Child. "Child" means a person who, by reason of minority being under 18 years of age, is legally subject to parental, guardianship or similar control.

2. Placement. "Placement" means the arrangement for the care of a child in a family home or boarding home or in a child-caring agency or institution, hospital or medical facility, but does not include any institution caring for the mentally ill, mentally disabled or epileptic or any institution primarily educational in character.

3. Receiving state. "Receiving state" means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

4. Sending agency. "Sending agency" means a party state or officer or employee of a party state; a subdivision of a party state or an officer or employee of a subdivision; a court of a party state; or a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state.

#### §6803. Conditions for placement -- Article III

A sending agency may not send, bring or cause to be sent or brought into any other party state any child for placement in

2 foster care or as a preliminary to a possible adoption unless the  
3 sending agency complies with each and every requirement set forth  
4 in this article and with the applicable laws of the receiving  
5 state governing the placement of children in that state.

6 Prior to sending, bringing or causing any child to be sent  
7 or brought into a receiving state for placement in foster care or  
8 as a preliminary to a possible adoption, the sending agency shall  
9 furnish the appropriate public authorities in the receiving state  
10 written notice of the intention to send, bring or place the child  
11 in the receiving state. The notice must contain the name, date  
12 and place of birth of the child, the identity and address or  
13 addresses of the parents or legal guardian, the name and address  
14 of the person, agency or institution to or with which the sending  
15 agency proposes to send, bring or place the child and a full  
16 statement of the reasons for the proposed action and evidence of  
17 the authority pursuant to which the placement is proposed to be  
18 made.

20 Any public officer or agency in a receiving state that is in  
21 receipt of a notice pursuant to this article may request of the  
22 sending agency, or any other appropriate officer or agency of or  
23 in the sending agency's state, and is entitled to receive any  
24 supporting or additional information the officer or agency deems  
25 necessary under the circumstances to carry out the purpose and  
26 policy of this compact.

28 The child may not be sent, brought or caused to be sent or  
29 brought into the receiving state until the appropriate public  
30 authorities in the receiving state notifies the sending agency,  
31 in writing, to the effect that the proposed placement does not  
32 appear to be contrary to the interests of the child.

34 §6804. Penalty for illegal placement -- Article IV

36 The sending, bringing or causing to be sent or brought into  
37 any receiving state of a child in violation of the terms of this  
38 compact constitutes a violation of the laws respecting the  
39 placement of children of both the state in which the sending  
40 agency is located or from which it sends or brings the child and  
41 of the receiving state. The violation may be punished and is  
42 subject to penalty in either jurisdiction in accordance with its  
43 laws. In addition to liability for any punishment or penalty,  
44 any violation constitutes full and sufficient grounds for the  
45 suspension or revocation of any license, permit or other legal  
46 authorization held by the sending agency which empowers or allows  
47 it to place or care for children.

50 §6805. Retention of jurisdiction -- Article V

2 The sending agency retains jurisdiction over the child  
3 sufficient to determine all matters in relation to the custody,  
4 supervision, care, treatment and disposition of the child that it  
5 would have had if the child had remained in the sending agency's  
6 state, until the child is adopted, reaches majority, becomes  
7 self-supporting or is discharged with the concurrence of the  
8 appropriate authority in the receiving state. Jurisdiction  
9 includes the power to effect or cause the return of the child or  
10 transfer of the child to another location and custody pursuant to  
11 law. The sending agency continues to have financial  
12 responsibility for support and maintenance of the child during  
13 the period of the placement. This section does not defeat a  
14 claim of jurisdiction by a receiving state sufficient to deal  
15 with an act of delinquency or crime committed in the receiving  
16 state.

18 When the sending agency is a public agency, it may enter  
19 into an agreement with an authorized public or private agency in  
20 the receiving state providing for the performance of one or more  
21 services in respect of the case by the latter as agent for the  
22 sending agency.

24 This compact may not be construed to prevent a private  
25 charitable agency authorized to place children in the receiving  
26 state from performing services or acting as agent in that state  
27 for a private charitable agency of the sending state; nor to  
28 prevent the agency in the receiving state from discharging  
29 financial responsibility for the support and maintenance of a  
30 child who has been placed on behalf of the sending agency without  
31 relieving the responsibility set forth in the first paragraph.

32 §6806. Institutional care of delinquent children --  
33 Article VI

36 A child adjudicated delinquent may be placed in an  
37 institution in another party jurisdiction pursuant to this  
38 compact but the placement may not be made unless the child is  
39 given a court hearing on notice to the parent or guardian with  
40 opportunity to be heard, prior to the child being sent to the  
41 other party jurisdiction for institutional care and the court  
42 finds that:

44 1. Facilities. Equivalent facilities for the child are not  
45 available in the sending agency's jurisdiction; and

46 2. Best interest of child. Institutional care in the other  
47 jurisdiction is in the best interest of the child and will not  
48 produce undue hardship.

50 §6807. Compact administrator -- Article VII

2        The executive head of each jurisdiction party to this  
4        compact shall designate an officer as general coordinator of  
6        activities under this compact in the officer's jurisdiction and  
8        who, acting jointly with designated officers of other party  
10       jurisdictions, has power to promulgate rules and regulations to  
12       carry out more effectively the terms and provisions of this  
14       compact.

10       **§6808. Limitations -- Article VIII**

12       This compact does not apply to:

14       1. Nonagencies. The sending or bringing of a child into a  
16       receiving state by the child's parent, step-parent, grandparent,  
18       adult brother or sister, adult uncle or aunt, or the child's  
20       guardian and leaving the child with the child's parent,  
22       step-parent, grandparent, adult brother or sister, adult uncle or  
24       aunt, or nonagency guardian in the receiving state.

22       2. Other compacts or agreements. Any placement, sending or  
24       bringing of a child into a receiving state pursuant to any other  
26       interstate compact to which both the state from which the child  
28       is sent or brought and the receiving state are party, or to any  
30       other agreement between the states that has the force of law.

26       **§6809. Enactment and withdrawal -- Article IX**

28       This compact is open to joinder by any state, territory or  
30       possession of the United States, the District of Columbia, the  
32       Commonwealth of Puerto Rico, and, with the consent of Congress,  
34       the Government of Canada or any province of Canada. It becomes  
36       effective with respect to any eligible jurisdiction when that  
38       jurisdiction has enacted the same into law. Withdrawal from this  
40       compact is achieved by the enactment of a statute repealing the  
42       compact, but does not take effect until 2 years after the  
44       effective date of the repealing statute and until written notice  
46       of the withdrawal has been given by the withdrawing state to the  
48       Governor of each other party jurisdiction. Withdrawal of a party  
50       state does not affect the rights, duties and obligations under  
      this compact of any sending agency therein with respect to a  
      placement made prior to the effective date of withdrawal.

44       **§6810. Construction and severability -- Article X**

46       This compact must be liberally construed to effectuate its  
48       purposes. This compact is severable and if any phrase, clause,  
50       sentence or provision of this compact is declared to be contrary  
      to the constitution of any party state or of the United States or  
      its applicability to any government, agency, person or

2       circumstance is held invalid, the validity of the remainder of  
4       this compact and its applicability to any government, agency,  
6       person or circumstance is not affected. If this compact is held  
8       contrary to the constitution of any state party, the compact  
10       remains in full force and effect as to the remaining states and  
12       in full force and effect as to the state affected as to all  
14       severable matters.

10       **SUBCHAPTER II**

10       **ADMINISTRATIVE PROVISIONS**

12       **§6851. Ratification of compact**

14       The Interstate Compact on the Placement of Children is  
16       enacted into law and entered into with all other jurisdictions  
18       legally joining in form substantially as set forth in this  
20       chapter.

20       **§6852. Financial responsibility**

22       Financial responsibility for any child placed pursuant to  
24       the Interstate Compact on the Placement of Children is determined  
26       in accordance with Article V in the first instance. In the event  
28       of partial or complete default of performance under the compact,  
30       the department or the private agency supervising the child  
32       assumes financial responsibility.

28       **§6853. Appropriate public authorities**

30       The "appropriate public authorities" as used in Article III  
32       of the Interstate Compact on the Placement of Children, with  
34       reference to this State, means the Department of Children and  
36       Families. The department receives and acts with reference to  
38       notices required by Article III.

36       **§6854. Appropriate authority in the receiving state**

38       As used in the first paragraph of Article V of the  
40       Interstate Compact on the Placement of Children, the phrase  
42       "appropriate authority in the receiving state" with reference to  
44       this State means the Department of Children and Families.

44       **§6855. Authority to enter into agreements**

46       The officers and agencies of this State and its subdivisions  
48       who have authority to place children are empowered to enter into  
50       agreements with appropriate officers or agencies of or in other  
      party states pursuant to the 2nd paragraph of Article V of the  
      Interstate Compact on the Placement of Children. Any agreement



2 that contains a financial commitment or imposes a financial  
3 obligation on this State or a subdivision or agency of this State  
4 is not binding unless it has the approval in writing of the  
5 commissioner in the case of the State or of the chief local  
6 fiscal officer in the case of a subdivision of the State.

#### 7 §6856. Jurisdiction

8 Any court having jurisdiction to place a delinquent child  
9 may place the child in an institution of or in another state  
10 pursuant to Article VI of the Interstate Compact on the Placement  
11 of Children and retains jurisdiction as provided in Article V.

#### 12 §6857. Executive head

13 As used in Article VII of the Interstate Compact on the  
14 Placement of Children, the term "executive head" means the  
15 Governor. The Governor is authorized to appoint a compact  
16 administrator in accordance with Article VII.

### 17 CHAPTER 617

#### 18 COMMUNITY SERVICES

#### 19 §6901. Definitions

20 As used in this chapter, unless the context otherwise  
21 indicates, the following terms have the following meanings.

22 1. Community action agency. "Community action agency"  
23 means a private nonprofit agency that has previously been  
24 designated by and authorized to accept funds from the Federal  
25 Community Services Administration under the United States  
26 Economic Opportunity Act of 1964.

27 2. Poverty level. "Poverty level" means the official  
28 poverty level issued by the Director of the United States Office  
29 of Management and Budget.

30 3. Service area. "Service area" means the geographical  
31 area within the jurisdiction of a community action agency.

#### 32 §6902. Department responsibilities

33 The department shall carry out the responsibilities of State  
34 Government related to planning and financing community services  
35 and community action agencies and shall administer state and  
36 federal community services programs and other block grants that  
37 may be available, including, but not limited to, the Community  
38 Services Block Grant.

#### 39 §6903. Powers and duties

40 1. Federal, state and other funds. Through plans and  
41 contracts, the department shall obtain, distribute and administer  
42 federal, state and other community services funds. Any balances  
43 of funds appropriated to the department to carry out the purposes  
44 of this chapter may not lapse, but must be carried forward from  
45 year to year to be expended for the same purpose.

46 2. Monitoring of poverty level. The department shall  
47 monitor the poverty level of state citizens and carry out the  
48 following activities:

49 A. Conduct an annual survey of poverty in Maine, reporting  
50 the results of this survey to the Governor, the Legislature  
51 and the public;

52 B. Make recommendations annually to the Governor and the  
53 Legislature on ways and means to combat and reduce poverty  
54 in the State;

55 C. Seek federal, state and private funds to combat poverty  
56 in the State; and

57 D. Advise the Governor, the Legislature and local officials  
58 on the impact of state and local policies on poverty in the  
59 State.

60 3. Overseeing community action agencies. The department  
61 shall oversee community action agencies as follows.

62 A. The department shall designate community action agencies  
63 every 7 years in accordance with the requirements of this  
64 chapter.

65 B. The department shall establish audit requirements in  
66 accordance with Title 5, chapter 148-B.

67 C. The department shall evaluate community action agencies  
68 every 3 years.

69 4. Planning and coordination for state services. The  
70 department shall provide planning and coordination for state  
71 services to people with low income.

72 5. Technical assistance. The department shall provide  
73 technical assistance to community action agencies and other  
74 groups serving the interests of people with low income in this  
75 State.

2 6. Monitoring local program operators. The department  
4 shall monitor subgrantees to ensure conformance with appropriate  
6 rules.

6 §6904. Community action agencies

8 1. Designation. Community action agencies must be  
10 designated by the department to carry out the purposes of this  
12 chapter. In making these designations, the department shall  
14 solicit and consider comments from other state agencies or  
16 authorities that operate programs in which community action  
18 agencies participate. These designations are for 7 years.

20 2. Designation withdrawn. The department may withdraw its  
22 designation of a community action agency after an evaluation in  
24 which the agency has demonstrated substantial incompetency and a  
26 clear inability to carry out the purposes of this chapter, unless  
28 there is or has been financial malfeasance, which may be cause  
30 for immediate withdrawal of designation. In performing these  
32 evaluations, the department shall solicit and consider comments  
34 from other state agencies or authorities that operate programs in  
36 which the community action agency participates.

2 The department shall notify an agency of a pending withdrawal of  
4 designation. Upon notification, the agency has up to 6 months to  
6 take corrective action, at which time a designation withdrawal  
8 evaluation must be performed by the department. Failure to pass  
10 this evaluation means immediate loss of designation.

12 Upon the final order from the department that rescinds a  
14 community action agency's designation, the community action  
16 agency may file a petition for review of this final decision in  
18 the appropriate Superior Court within 30 days under the Maine  
20 Rules of Civil Procedure, Rule 80B.

22 3. Community action agencies. Community action agencies  
24 shall:

26 A. Develop information regarding the causes and conditions  
28 of poverty in the service area;

30 B. Determine how much and how effectively assistance is  
32 being provided to deal with those causes and conditions;

34 C. Establish priorities among projects, activities and  
36 areas as needed for the best and most efficient use of  
38 available resources;

2 D. Develop, administer and operate programs to reduce  
4 poverty with particular emphasis on self-help approaches and  
6 programs to promote economic opportunities through  
8 affirmative action;

10 E. Initiate, sponsor and provide programs and services  
12 responsive to the needs of the poor that are not otherwise  
14 being met;

16 F. Promote interagency cooperation and coordination of all  
18 services and activities in the service area that are related  
20 to the purposes of this chapter;

22 G. Establish effective procedures by which the poor and  
24 other concerned area residents may influence the character  
26 of programs affecting their interests, provide for their  
28 regular participation in the implementation of those  
30 programs and provide technical and other support needed to  
32 enable low-income and neighborhood groups to secure on their  
34 own behalf available assistance from public and private  
36 sources;

38 H. Join with and encourage business, labor and other  
40 private groups and organizations to undertake, together with  
42 private officials and agencies, activities in support of the  
44 purposes of this chapter that will result in the increased  
46 use of private resources and capabilities in providing  
48 social and economic opportunities to low-income citizens;

50 I. Enter into contracts with federal, state and local  
public agencies and private agencies and organizations,  
businesses and individuals as necessary to carry out the  
purposes of this chapter; and

J. Receive funds from federal, state and local public and  
private sources as appropriate to carry out the purposes of  
this chapter.

§6905. Governing board for community action agency

1. Board of directors: establishment. Each community  
action agency shall establish a governing board of directors,  
which must consist of not less than 15 nor more than 30 members.  
One third of the members must be representatives of people with  
low-income who are residents of the service area who are selected  
through a democratic process in accordance with guidelines  
established by the department. One third of the members must be  
elected public officials or their designees or officials of  
public agencies operating in the service area. One third of the  
members must be representatives of private sector organizations.

including business and industry, as well as educational, civic, labor and religious organizations. All meetings of the board of directors must be in accordance with the freedom of access laws.

2. Responsibilities. A community action agency board of directors is responsible for the following:

A. Overall direction, oversight and development of policies of the agency;

B. Selection, evaluation and dismissal of the executive director of the community action agency;

C. Approval of all contracts;

D. Approval of all agency budgets;

E. Performance of an annual audit by an independent, qualified outside auditor. The audit must be submitted upon completion to the department;

F. Convening public meetings to provide people with low-income and other citizens of the service area the opportunity to comment upon policies and programs of the community action agencies; and

G. Evaluating agency programs and assessing community and agency needs.

#### §6906. Programs

All programs administered by community action agencies must conform with federal and state laws and regulations. Applicants for programs and assistance must be promptly notified of their rights and responsibilities when they qualify for or are denied services.

#### §6907. Allocation of Community Services Block Grant funds

1. Distribution of Community Services Block Grant funds. In accordance with Title 5, section 1670, the department shall administer and distribute to community action agencies Community Services Block Grant funds received from the Federal Government. The department may expend up to but not more than 5% of the block grant per fiscal year to carry out its administrative functions under this chapter.

2. Community action agencies: priority. Of the amount passed through to local agencies, community action agencies must

receive first priority in the allocation of Community Services Block Grant funds. These funds must be distributed according to a formula determined annually as follows.

A. Twenty percent of the amount passed through to local agencies must be divided equally among all designated agencies.

B. The balance of the funds must be distributed according to rules adopted by the department.

3. Block grant proposals. Proposals for Community Services Block Grant funds submitted to the Legislature by the department in accordance with Title 5, section 1670 must be developed and must:

A. Include a description of current allocation of Community Services Block Grant funds and how the plan proposes to change that allocation;

B. Retain the absolute minimum necessary for administrative costs; and

C. Provide for maximum flexibility within community action agencies for the use of Community Services Block Grant funds.

#### §6908. Confidentiality of records

1. Confidentiality. Records containing the following information are confidential and are not public records for the purpose of Title 1, section 402, subsection 3:

A. Any information acquired by a state agency, municipality, district, private corporation, copartnership, association, fuel vendor, private contractor, individual or an employee or agent of any of those persons or entities, providing services related to authorized programs of the department or programs administered by community action agencies, when that information was provided by the applicant for those services or by any 3rd person; and

B. Any statements of financial condition or information pertaining to financial condition submitted to any of the persons or entities set forth in paragraph A in connection with an application for services related to authorized programs of the department or programs administered by community action agencies.

2. Exceptions. Notwithstanding subsection 1, any person or agency directly involved in the administration or auditing of

2 authorized programs of the department or programs administered by  
3 community action agencies and any agency of the State with a  
4 legitimate reason to know must be given access to those records  
5 described in subsection 1.

6 3. Waiver of protection. This section does not limit in  
7 any way the right of any person whose interest is protected by  
8 this section to waive in writing the benefits of protection.

10 4. Reports to State Government or Federal Government.  
11 Notwithstanding subsection 1, the department may make full and  
12 complete reports concerning its administration of authorized  
13 programs as required by the Federal Government, any agency or  
14 department of the Federal Government or the Legislature.

#### 16 §6909. Rules

18 The department shall adopt rules to carry out the  
19 requirements of this chapter.

### 22 CHAPTER 619

#### 24 EMERGENCY SERVICES FOR VICTIMS OF FAMILY 25 VIOLENCE

#### 26 §7001. Provision of services

28 The department shall provide, through social service  
29 contracts, emergency services for family members who cannot  
30 safely remain in their own homes because of violence, serious  
31 threat of violence or other serious family crisis. Emergency  
32 services include, but are not limited to, shelter care,  
33 counseling and coordination of other necessary services.

34 To the greatest extent practicable, the department shall  
35 make these services available to all areas of the State.

### 38 CHAPTER 621

#### 40 RAPE CRISIS CENTERS

#### 42 §7101. Legislative intent

44 The Legislature finds that rape and sexual assault are  
45 crimes of violence that are both underreported and increasing in  
46 incidence; that victims of rape need support services and  
47 counseling that are currently unavailable from traditional  
48 medical or legal institutions; that the recent formation of local  
49 and regional rape crisis centers has provided rape and sexual  
50 assault victims with vital counseling and intervention services;

2 and that the volunteer efforts of these and future rape crisis  
3 centers should be supported and enhanced on a statewide basis, if  
4 possible. The Legislature declares that it is consistent with  
5 public policy to fund counseling and preventive educational  
6 programs by rape crisis centers.

#### 8 §7102. Funds

10 1. Purposes. The department may receive and disburse funds  
11 made available to it for financial support grants or contracts to  
12 rape crisis centers for the following purposes:

14 A. Direct crisis intervention counseling of rape and sexual  
15 assault victims;

16 B. Programs to support a sexual assault victim's  
17 interaction with medical, psychological and legal  
18 professionals;

20 C. Programs to advocate and work with the sexual assault  
21 victim throughout the court process, but not to provide  
22 legal services; and

24 D. Programs to educate and train the public on rape and  
25 sexual assault prevention.

26 2. Geographic coverage. To the greatest extent  
27 practicable, the department shall make funds available to all  
28 areas of the State.

30 3. Local match. Any rape crisis center which applies for  
31 funds under this chapter shall demonstrate a match of either  
32 private donations, local funding or in-kind resources in  
33 accordance with rules adopted by the department.

#### 36 §7103. Rules

38 The commissioner shall adopt rules to implement this  
39 chapter. The commissioner shall consult with organizations who  
40 counsel rape victims, the Maine Coalition on Rape, and other  
41 appropriate parties and shall make allocations based on their  
42 recommendations.

#### 44 §7104. Lapse

46 Funds made available to the department for the purposes of  
47 this chapter, whether from state, federal or private sources,  
48 does not lapse, but must be carried forward to the next fiscal  
49 year to be expended for the same purposes.  
50

PART 5

FAMILY ASSISTANCE

CHAPTER 801

GENERAL PROVISIONS

§8001. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

1. Public assistance. "Public assistance" means any form of assistance provided by or through the department under this Part. "Public assistance" also means medical benefits received under the Medicaid program.

§8002. Investigation of system of public charities

The department shall investigate and inspect the whole system of public charities in the State which derive their support wholly or in part from state, county or municipal appropriations but not including any institution of a purely educational or industrial nature.

§8003. Transfer of public assistance recipients between states

The department may enter into reciprocal agreements with corresponding agencies in other states, and may arrange with their local or county boards for the acceptance, transfer and support of persons going from one state to another and requiring public assistance and to continue payments of public assistance until eligibility to receive assistance under a similar program has been established in the other state and the first payment from the other state has been received by the recipient. These reciprocal agreements do not in any way commit the State to support persons who are not, in the determination of the department, entitled to support under the laws of this State.

§8004. Information upon request

The commissioner shall give to the Governor or to the Legislature or any committee of the Legislature at any time upon their request information and advice with reference to any charitable or correctional institution about which the commissioner has information. The officers in charge of any institution of a charitable or correctional nature under the inspection of the department and local boards or committees having any powers or duties relative to the management of the

same, and those who are in any way responsible for the administration of public funds used for the relief or maintenance of people with low income, shall furnish to the department any information and statistics requested by the department in a form determined necessary by the department to achieve uniformity and accuracy.

§8005. Telephone subsidies

The department may participate in the determination of eligibility for various subsidies of telephone costs for people with low income as established by the Public Utilities Commission pursuant to Title 35-A, section 7101.

§8006. Agent Orange awards

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

A. "Agent Orange" means the chemical containing trichlorophenoxy acidic acid and dichlorophenoxy acidic acid that was used in Southeast Asia during the Vietnam Conflict.

B. "Aid" means:

- (1) Aid to families with dependent children under chapter 807;
- (2) Food stamp assistance under chapter 803;
- (3) General assistance under chapter 809; or
- (4) Medicaid.

2. Agent Orange award; eligibility not affected. In determining eligibility for aid, any money or other form of compensation received by a person as a result of a settlement agreement or a money judgment in a law suit against a manufacturer or distributor of Agent Orange for damages resulting from exposure to Agent Orange may not be used to reduce the amount of aid otherwise received by that person and is not subject to a lien or available for repayment to the State or municipality for aid received by that person.

§8007. Payment to conservator or guardian

If an applicant for public assistance, a recipient of public assistance or a relative with whom a child recipient is living is found by the department to be incapable of taking care of self or

2 money, payment must be made only to a legally appointed guardian  
3 or conservator for the benefit of the applicant or recipient.  
4 Notwithstanding Title 18-A, article V, Part 4, in the matter of  
5 an infirmity of age or physical disability that precludes a  
6 person from managing that person's estate with prudence and  
7 understanding, the Probate Court may appoint any suitable person  
8 as a conservator.

9 **§8008. Inalienability of public assistance**

10 All rights to public assistance are absolutely inalienable  
11 by any assignment, execution, pledge or otherwise, and may not  
12 pass, in case of insolvency or bankruptcy, to any trustee,  
13 assignee or creditor.

14 **§8009. Access to financial records of deposit accounts of  
15 recipients**

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

19 **A. "Aid" means:**

20 (1) Aid to families with dependent children under  
21 chapter 807;

22 (2) Food stamp assistance under chapter 803;

23 (3) Medicaid; or

24 (4) Any other program that is based on need and is  
25 conducted or administered by this State.

26 **B. "Financial institution" means a trust company, savings  
27 bank, industrial bank, commercial bank, savings and loan  
28 association or credit union organized under the laws of this  
29 State or otherwise authorized to do business in this State.**

30 **C. "Match" means a comparison by name and social security  
31 number of recipients with individuals included in records of  
32 deposit accounts in any financial institution.**

33 **D. "Recipient" means an individual who is receiving or has  
34 an application pending for aid.**

35 **2. Verification procedure.** Upon written request from the  
36 commissioner and at the expense of the department, each financial  
37 institution in this State shall match its records of deposit  
38 accounts against recipient lists provided to the financial

39 institution by the department and shall compile for the  
40 department a list of accounts that, as a result of the match,  
41 appear to be owned in whole or in part by recipients. The list  
42 of accounts must include the name and social security number of  
43 each matched recipient and the type of deposit account, the  
44 account number and the account balance that appear in the records  
45 of the financial institution. The department is responsible for  
46 making its computer data compatible with the data of any  
47 financial institution with which a match is sought.

48 **3. Limitations.** The department may not automatically  
terminate or deny aid solely on the basis of information received  
through a match, nor may anything in this section be construed to  
create a lien on or otherwise encumber deposit accounts that have  
been matched. The department shall ensure that the privacy of  
individuals involved in matching will be protected to the maximum  
extent possible.

**§8010. Change of circumstances**

If at any time during the continuance of public assistance  
the recipient obtains any property or income in excess of the  
amount last disclosed to the department, the recipient shall  
immediately notify the department of the receipt or possession of  
the property or income, and the department may, after  
investigation, cancel the public assistance or change the amount  
of the public assistance in accordance with the circumstances.

**§8011. Effect on medical benefits**

Any recipient of federal Aid to Families with Dependent  
Children or federal Supplemental Security Income benefits whose  
benefits are terminated by the department must be sent a  
separate, timely and adequate notice of the effect the  
termination will have on the recipient's medical assistance. In  
cooperation with the Department of Health and Developmental  
Services, the department shall develop procedures to ensure the  
continuation, without interruption, of medical assistance to  
persons who, despite the termination of their categorical  
assistance benefits, are eligible for continuing medical coverage  
through any program under this Part or under Title 22-B, Part 3.

**§8012. Fraud Investigation Unit**

**1. Establishment; composition.** The commissioner may create  
within the department a Fraud Investigation Unit, referred to in  
this section as the "unit." The commissioner is authorized to  
employ and assign to the unit employees as appropriate.

2 2. Purpose. The purpose of the unit is to investigate  
3 reported acts of fraud or attempted fraud or incidents of  
4 commingling or misapplication of funds in connection with, but  
5 not limited to, the requesting, obtaining, receiving,  
6 withholding, recording, reporting, expending or handling of funds  
7 administered by the department. The unit shall investigate the  
8 reported acts or incidents involving, but not limited to,  
9 recipients, providers and vendors receiving or applying for  
10 services or funds administered by the department.

11 3. Cooperation; information. All agencies of the State and  
12 municipal governments shall cooperate fully with the unit,  
13 rendering any assistance requested by the unit. Every head of a  
14 department, bureau, division, commission or any other unit of  
15 State Government shall report in writing to the unit all  
16 information concerning any suspected incident of fraud or  
17 attempted fraud or violation of any law in connection with funds  
18 administered by the department.

19 4. Violation of law; action. If the unit determines that a  
20 fraud, attempted fraud or a violation of law in connection with  
21 funds administered by the department may have occurred, it shall  
22 report in writing all information concerning the fraud or  
23 violation to the Attorney General for action as the Attorney  
24 General finds appropriate, including civil action for recovery of  
25 funds and criminal prosecution. The unit shall, upon request of  
26 the Attorney General and in the manner the Attorney General  
27 considers appropriate, assist in the recovery of funds.

28 **§8013. Fraudulent representations; penalty**

29 A person commits a misdemeanor, and upon conviction must be  
30 punished by a fine of not more than \$500, or by imprisonment for  
31 not more than 11 months, or by both if the person by means of a  
32 willfully false statement or representation, or by impersonation  
33 or other fraudulent devices, obtains or attempts to obtain, or  
34 aids or abets any person to obtain:

35 1. Assistance not entitled. Public assistance to which the  
36 person is not entitled;

37 2. Larger assistance. A larger amount of public assistance  
38 than that to which the person is entitled; or

39 3. Forfeited assistance. Payment of any forfeited  
40 installment of public assistance; and any person who knowingly  
41 buys or aids or abets in buying or in any way disposing of  
42 property of a recipient in such a way as to constitute a fraud  
43 upon the department.

2 Notwithstanding this section, fraudulent misrepresentations  
3 made in connection with benefits under chapter 809 are governed  
4 by section 9117.

5 **§8014. General penalty**

6 Any person who violates any of the provisions of this Part  
7 for which no penalty is specifically provided must be punished by  
8 a fine of not more than \$500, or by imprisonment for not more  
9 than 11 months, or by both. If a recipient of aid is convicted of  
10 an offense under this Part, the department may cancel the aid.

11 **CHAPTER 803**

12 **FOOD STAMPS**

13 **§8101. Statewide food stamp program**

14 The department shall administer a statewide food stamp  
15 program in accordance with requirements specified by the federal  
16 Department of Agriculture and the federal Department of Health  
17 and Human Services.

18 **§8102. Certification periods**

19 Households participating in the food stamp program must be  
20 certified for a 6-month period unless there is a likelihood of  
21 change in income or household status. Households consisting of  
22 elderly or disabled persons with stable incomes must be certified  
23 for 12 months.

24 **§8103. Verification of information**

25 The department shall establish and implement uniform  
26 verification procedures that are applied to all applicants and  
27 recipients of food stamps.

28 **§8104. Authorization of emergency food stamp benefits prior to**  
29 **full verification**

30 If an applicant for food stamps states to the department  
31 that the applicant is in need of immediate food assistance, the  
32 department shall, pending verification, authorize the applicant  
33 to purchase food stamps at the time of the department's initial  
34 interview with the applicant or within one working day of the  
35 interview, if all of the following conditions are met:

36 1. Likelihood of eligibility. As a result of the initial  
37 interview with the applicant, the department has determined that

the household of the applicant will probably be eligible for food stamps after full verification is completed;

2. Documentation. The applicant has submitted to the department at the time of the initial interview documentation adequate to verify that the applicant is in need of immediate food assistance or, if adequate documentation is not available at the time of the initial interview, the department has contacted at least one other person for the purpose of obtaining information to confirm the applicant's statements about the need for immediate food assistance; and

3. Limits on emergency food stamps. Authorization to purchase food stamps under this section may not exceed 30 days from the date that the applicant receives the authorizing card, and no further food stamp authorization may be issued to the applicant's household until full verification has been obtained that confirms the eligibility of the household.

#### §8105. Supplemental monthly issuance

If a household receiving food stamps informs the department of a change in circumstances that will result in an increase in its food stamp allotment, the department shall issue a supplemental food stamp allotment to that household for the month in which the change is reported. The supplemental allotment must represent the difference between the amount for which the household was originally certified in that month and the amount for which it is actually eligible as a result of its reported change in circumstances. The department shall mail the supplemental allotment within 5 working days of the date that the change in circumstances is reported.

#### §8106. Mail issuance of coupons

The department shall institute a system of mail issuance of food stamp allotments through a direct coupon mailing system as authorized by and in conformity with regulations promulgated by the United States Department of Agriculture. In those areas of the State where the department can document evidence of significant diminution of client demand or of loss of significant numbers of coupons resulting from mail issuance, the department may, after notice and hearing, establish an alternative system of food stamp issuance.

#### §8107. Information on notice to recipients

All notices of denial, reduction of benefits, termination of benefits, fraud claims, nonfraud claims or other actions must contain information on the appeal procedure, and the availability

of free legal representation in the geographic area and must include, at a minimum, the address and telephone number for these services.

#### §8108. Outreach

It is the intent of the Legislature that the department fully carry out all outreach activities established by federal regulation to encourage the participation of all eligible households in the food stamp program. In carrying out its outreach activities, the department shall:

1. Inform applicants. Ensure that all applicants and recipients are informed of their right to have the requirement for a face-to-face interview waived as provided by federal regulations; and

2. Bilingual requirements. Print and distribute brochures or pamphlets concerning the food stamp program in other languages as it determines necessary. The department shall prepare public service announcements in French for distribution to appropriate newspapers and radio and television stations.

#### §8109. Food stamp overpayment recovery

Any money recovered by the department as a result of the overpayment of food stamps must be deposited in the General Fund.

### CHAPTER 805

#### STATE SUPPLEMENTAL INCOME

##### SUBCHAPTER I

#### GENERAL PROVISIONS

#### §8201. Definitions

For purposes of this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Agreement. "Agreement" means a legally binding document between the department and the United States Department of Health and Human Services.

2. Category. "Category" means a subclassification of state supplemental income benefits for any one of the following: a person who is blind, disabled or elderly.



2 3. Person who is blind. "Person who is blind" means a  
4 person who is blind as defined in section 1614, Title XVI of the  
6 United States Social Security Act, as amended.

8 4. Person who is disabled. "Person who is disabled" means  
10 a person who is disabled as defined in section 1614, Title XVI of the  
12 United States Social Security Act, as amended.

14 5. Person who is elderly. "Person who is elderly" means a  
16 person who is aged as defined in section 1614, Title XVI of the  
18 United States Social Security Act, as amended.

20 6. Program. "Program" means the State Supplemental Income  
22 program established in accordance with this chapter.

24 7. Secretary. "Secretary" means the Secretary, United  
26 States Department of Health and Human Services.

28 8. Social Security Administration. "Social Security  
30 Administration" means the Social Security Administration, United  
32 States Department of Health and Human Services.

34 9. Title XVI. "Title XVI" means Title XVI of the United  
36 States Social Security Act of 1935, as amended.

#### §8202. Applicability of chapter

28 The provisions of this chapter apply only to the portions of  
30 the program that are administered directly by the department, and  
32 not to those portions administered by the secretary. If the  
34 administration of any portion of the program is transferred to  
36 the secretary, this chapter no longer applies to that portion.

#### §8203. Liability of relatives

36 The spouse of a recipient of program benefits, if of  
38 sufficient ability, is responsible for the partial or total  
40 support of the recipient. In determining the ability of the  
42 spouse, assets as well as income must be considered.

44 The Attorney General shall bring proceedings in the name of  
46 the State of Maine in any court of competent jurisdiction to  
48 compel any person liable under this section to contribute to the  
50 support of any recipient of program benefits, if, after  
reasonable efforts on the part of the department, voluntary  
contributions have not been made. The court shall determine a  
fair and reasonable amount for support to be paid by the  
defendant to the department as reimbursement for money furnished  
to a recipient.

2 The action must be brought as a petition for support upon  
4 not less than 7 days' notice. Upon failure to pay the support  
6 ordered, execution shall issue. The State shall pay the expense  
8 of commitment and support when the defendant is committed to jail  
10 on execution and the defendant may be discharged in the same  
12 manner as provided by Title 19, section 722.

14 The department shall encourage and stimulate voluntary  
16 contributions from the parents and adult children of program  
18 recipients, if those relatives are of sufficient ability to  
20 contribute toward the support of the recipients.

#### §8204. Civil rights

22 The state supplemental income program must be conducted in  
24 accordance with Title VI of the federal Civil Rights Act, as  
26 amended.

#### §8205. Provisions severable

28 The provisions of subchapters I, II and III are severable  
30 and, if any of the provisions are held unconstitutional by any  
32 court of competent jurisdiction, the decision of that court does  
34 not affect nor impair any of the remaining provisions. If any of  
36 the provisions of this chapter are in violation of any amendment  
38 to the Social Security Act that takes effect subsequent to April  
40 1, 1974, the department shall recommend to the Legislature  
42 legislation necessary or desirable to conform the laws of the  
44 State to that amendment.

#### §8206. Report

46 Annually by September 1st, the department shall submit a  
48 detailed report on the program to the Governor in accordance with  
Title 5, sections 43, 44, 45 and 46 and to the joint standing  
committees of the Legislature having jurisdiction over human  
resource matters and appropriations and financial affairs  
matters. A copy of the report must be submitted to the Executive  
Director of the Legislative Council. The report must include  
copies of all pertinent state and federal rules and regulations,  
and the department's recommendations for policy, budgetary and  
legislative action.

### SUBCHAPTER II

#### STATE SUPPLEMENTAL INCOME BENEFITS

#### §8251. Declaration of objectives and purpose

1. Objective. In keeping with the American heritage that each person in our society has an inherent human dignity, it is declared that citizens of the State of Maine who are blind, disabled or elderly are entitled to sufficient income to attain a reasonable standard of living, that will encourage the pursuit of a meaningful life of greatest value to the nation, State of Maine and fellow human beings. It is the mutual and shared duty of first, the individual and the individual's family, 2nd the community and private agencies of the community, and ultimately the governments of the political subdivisions of this State, the State of Maine, and the United States of America to enable people who are blind, disabled or elderly to secure income. The objective of this chapter is to reduce income barriers to personal and economic independence by encouraging people who are blind, disabled or elderly to secure and maintain maximum dignity, independence and self care in a home environment, and if needed, with an appropriate state supplemental income.

2. Purpose. It is further declared that many people who are blind, disabled or elderly in the State of Maine do not have income sufficient to meet the minimum cost of living budget relating to Maine as determined by the United States Department of Labor, Bureau of Labor Statistics. It is therefore the purpose of this chapter, in support of the above objective, to make available to people who are blind, disabled or elderly a program of state supplemental income.

#### §8252. Program established

1. Authorized. The department shall provide a program of regular monthly state supplemental income for people who are blind, disabled or elderly. Benefits under the program must be based on need and provided in supplementation of benefits provided by the United States Government to people who are aged, blind or disabled under Title XVI. Benefits must be provided to any person who, on account of blindness, disability or age, qualifies for federal supplemental security income provided pursuant to Title XVI and may, based on need, be provided to individuals who would, but for their income, be eligible for federal supplemental security income benefits.

2. Standard levels. The department, to the extent allowed by Title XVI and regulations promulgated thereunder, shall establish standard levels of state supplemental income benefits for people who are blind, disabled or elderly. The benefits must be provided under a modified flat benefit system, and may vary by marital status, and by living arrangements to the extent allowed by Title XVI and regulations promulgated thereunder. The benefits may not be based on individual budgeted need and may not vary by category or geographical area. Benefits for a couple,

except as provided under section 8255, subsection 1, paragraph B, must be equal to the sum of the amount of benefit for an individual and 50% of the benefit for an individual.

3. Other programs. The department may also require, as a condition of eligibility, that any applicant for benefits or beneficiary under this chapter must apply for any income supplementation that may be available under any other federal or state programs operated pursuant to the provisions of the Social Security Act, if it reasonably appears that the applicant or beneficiary is likely to be eligible for income supplementation under those other programs.

#### §8253. Applying for benefits

An individual who is a resident of the State of Maine and who applies to the Social Security Administration for supplemental security income benefits pursuant to Title XVI must be considered to be applying for state supplemental income benefits provided under this chapter and for medical care benefits provided by the State of Maine pursuant to Title XIX of the Social Security Act. Eligibility of a person for any benefit must be determined in accordance with applicable laws of the United States and State of Maine.

#### §8254. Standard

The standard utilized to determine need must be the current annual budget at the lower level of living for a retired couple as most recently determined by the United States Department of Labor, Bureau of Labor Statistics, for Portland, Maine, or budgets that are consistent with such a budget at the lower level of living, taking into account budget variances by marital status and living arrangements permitted pursuant to Title XVI and regulations promulgated thereunder.

#### §8255. Program benefits

1. Combined benefits. The department shall take action, as necessary, to ensure that, within the limits of available funds, a state supplemental income benefit, when combined with a federal supplemental security income benefit, will consist of such amounts that the sum will:

A. Increase the minimum monthly federal payment standard, in addition to that established pursuant to federal law, by an amount of at least \$8 per month for an individual and \$12 per month for a couple;

2 B. For an individual who resides in an adult foster home or  
4 boarding home, having a contract with the department for the  
6 provision of services to eligible residents, or nursing  
8 facility, as defined in Title 22-B, section 9001, in  
10 addition to the benefits provided under paragraphs A and C,  
12 provide sufficient income to allow the individual for  
14 personal needs an amount equal to at least \$30 a month, plus  
16 an amount sufficient to meet the monthly per resident  
18 payment rate as established by the department of the adult  
20 foster home or boarding home in which the individual  
22 resides; and

23 C. For a beneficiary who resides in a living arrangement  
24 that meets a living arrangement classification established  
26 by the department, but who does not reside in an adult  
28 foster home or boarding home, in addition to the minimum  
30 federal payment level as adjusted pursuant to paragraph A,  
32 provide, based on that living arrangement classification, an  
34 amount not to exceed \$42 per month for an individual and \$63  
36 per month for a couple.

37 2. Participation limited. The limitation on eligibility of  
38 certain individuals established in subsections (e)(i)(A) and  
40 (e)(i)(B) of section 1611 of Title XVI of the United States  
42 Social Security Act, as amended, applies to benefits provided  
44 pursuant to this section.

45 3. Payments for boarding home care. The following  
46 provisions apply to payments for boarding home care under the  
48 program.

49 A. If an agreement can not include payment levels and  
50 variations of payment levels to provide the individual  
51 sufficient income to meet the monthly per resident payment  
52 rate for boarding home care, the department shall take any  
53 and all reasonable action necessary to the goal of  
54 achieving, within a reasonable time, a payment structure for  
55 each boarding home that will permit execution of an  
56 agreement with the secretary for administration of all state  
57 supplemental income benefits.

58 B. In the unfortunate and unlikely event that such an  
59 agreement can not be effected to provide the individual  
60 sufficient income as specified in subsection 1, paragraph B,  
61 the department may provide a special grant whenever the  
62 benefit pursuant to subsection 1, paragraph B, is  
63 insufficient to meet the rate set for a boarding home. The  
64 department shall make the special grant preferably via a  
65 vendor payment system or via payment to a payee designated  
66 by the individual, or if necessary, via payment to the

2 individual. Noting the intent of Title XVI of the United  
4 States Social Security Act, as amended, the administrative  
6 efficiencies, and the substantial cost savings to Maine  
8 taxpayers, it is the intent of the Legislature that the  
10 department shall take any and all reasonable action to  
12 obtain the approval of the secretary for a system of vendor  
14 payments for the special grants.

15 4. Priority of expenditures. Appropriations available for  
16 benefits provided in subsection 1 must be budgeted and authorized  
18 for expenditure by the department in a priority sequence. First,  
20 the available appropriation must be budgeted and expended to  
22 increase the minimum monthly federal payment, as specified in  
24 subsection 1, paragraph A. Second, any balance of the  
26 appropriation remaining after that budgeting must be budgeted and  
28 expended to provide an individual sufficient income for personal  
30 needs, in accordance with subsection 1, paragraph B, and to meet  
32 the monthly per resident payment rate for adult foster and  
34 boarding home care as provided in subsection 1, paragraph B and  
36 subsection 3. Finally, any balance of the appropriations  
38 remaining after that budgeting must be budgeted and expended to  
40 provide benefits related to variations by living arrangements as  
42 provided in subsection 1, paragraph C.

43 5. Retroactive payments. Retroactive payments relating to  
44 benefits provided in subsection 1, paragraph B and subsection 3  
46 may not be made for any care provided prior to April 1, 1974.  
48 Retroactive payments relating to benefits provided in subsection  
50 1, paragraphs A and C may not be provided for any period of time  
51 prior to July 1, 1974.

52 6. Future changes in types of benefits. Changes in  
53 benefits are governed by the following provisions.

54 A. It is the declared intent of this chapter that, if it is  
55 proposed that benefits provided pursuant to subsection 1 are  
56 to be increased on any future date, the proposal must  
57 recommend, and implementation of the increases must provide,  
58 that the benefits pursuant to subsection 1, paragraph A must  
59 be increased, and the benefits pursuant to subsection 1,  
60 paragraph B must be increased, rather than increasing  
61 benefits pursuant to subsection 1, paragraph C.

62 B. On July 1st of every year, the sum of the monthly amount  
63 of any state supplemental income benefit authorized by  
64 subsection 1, paragraphs A and C, plus the amount of the  
65 minimum monthly federal supplemental security income in  
66 effect at that time must be increased by a percentage amount  
67 equal to the percentage rise in the United States Consumer  
68 Price Index for April 1st of that year over the level of the

Index for April 1st of the previous year plus any additional percentage amount as is recommended annually by the department. The increase may be made only to the extent appropriations are available. In determining the additional percentage amount, consideration must be given to the goal of reaching, within a reasonable time, a benefit level equal to or consistent with the current budget at the lower level of living for a retired couple established by the United States Department of Labor, Bureau of Labor Statistics, for Portland, Maine.

If, on April 1st of any year, the sum of the monthly amount of any state supplemental payment authorized by subsection 1, paragraphs A and C, plus the amount of the minimum monthly federal supplemental security income in effect at that time, is equal to or exceeds the amount resulting from 12 divided into the current annual budget at the lower level of living for a retired couple as most recently established by the United States Department of Labor, Bureau of Labor Statistics, for Portland, Maine, or taking into account variances by marital status and living arrangements as established by the department, a budget that is not inconsistent with that annual budget divided by 12, the increase provided on July 1st next following is limited to the percentage rise in the Consumer Price Index.

#### §8256. Mandatory payments

1. Amount of payment. The department shall provide so-called "mandatory" state supplemental income payments to beneficiaries of the supplemental security income program who receive payments under the State's former aid to the aged, blind and disabled program based on eligibility established for the month of December, 1973.

A so-called "mandatory" state supplemental income benefit, when combined with a federal supplemental security income benefit, must, to the extent required by federal law to qualify the State of Maine to receive federal matching funds for medical care pursuant to Title XIX of the United States Social Security Act, as amended, and to the extent funds are available, be at least equal to and in no event less than the level of payment to the a recipient effective for December, 1973, under the former state aid to the aged, blind and disabled program, based on eligibility for December, 1973, in accordance with standards of payment applicable to such aid.

2. Administration. Insofar as an agreement made pursuant to section 8301 pertains to so-called "mandatory" payments, it must provide that the department enter into an agreement with the

secretary under which the secretary, through the Social Security Administration, on behalf of the State of Maine, shall administer the program of so-called "mandatory" state supplemental income benefits authorized in subsection 1.

3. Applying for benefits. Persons who receive payments under the State's former aid to aged, blind and disabled program based on eligibility established for the month of December, 1973, may, if eligible, receive benefits provided pursuant to this chapter and for medical care benefits provided by the State of Maine pursuant to Title XIX of the United States Social Security Act, as amended, without filing an application for supplemental security income with the Social Security Administration.

4. Inconsistent provisions. The provisions of sections 8252, 8254 and 8255 do not apply to so-called "mandatory" payments. If any provision of these sections is inconsistent with this section, this section, as it relates to mandatory payments, prevails.

#### §8257. Personal needs of nursing facility residents

In administering this chapter, the department shall ensure that eligible individuals residing in nursing facilities, as defined in section 9001, have at least \$30 a month for personal needs.

#### §8258. Disqualification

Any beneficiary of state supplemental income not administered by the secretary must be disqualified from receiving benefits unless the beneficiary files with the department, whenever the department requires it, information concerning income, assets and other conditions relating to the beneficiary's financial circumstances.

### SUBCHAPTER III

#### ADMINISTRATION

#### §8301. Agreement for federal administration

1. Agreement with secretary. The department shall enter into an agreement with the secretary under which the secretary, through the Social Security Administration, on behalf of the State of Maine, shall administer the program of state supplemental income benefits authorized in sections 8252 and 8256. The agreement must contain all requirements for, and limitations and qualifications on, state supplemental income benefits which Title XVI and regulations adopted thereunder, make

necessary in order to qualify the State for administration of state supplemental income benefits by the secretary. The agreement may include, but need not be limited to, provisions to implement the programs of state supplemental benefits pursuant to this chapter. The department shall take any and all reasonable action to ensure that the agreement contains provisions that the secretary administer the program, particularly as relates to processing of applications, receipt of benefits by eligible applicants, and hearing and reviews, in a manner that is timely and convenient to the applicant and beneficiary.

**2. Optional benefits.** The department shall take any and all reasonable action necessary to effect an agreement with the secretary of administration of all state supplemental income benefits. To the extent that an agreement pertains to so-called "optional" state supplemental income benefits provided pursuant to section 8252, administration by the secretary on behalf of the State is effective for benefits payable beginning July 1, 1974.

#### **§8302. Hearings and review**

Regarding program benefits administered by the secretary, any individual who is or claims to be an eligible individual or eligible spouse pursuant to this chapter and is in disagreement with any determination concerning this chapter by the United States Department of Health and Human Services must be provided a hearing before the secretary in accordance with the hearings and review provisions of subsection (C), section 1631 of Title XVI.

Regarding program benefits administered by the department, any individual who is aggrieved by an action taken by the department under this chapter may appeal in accordance with Title 5, chapter 375.

#### **§8303. Fiscal procedures**

There must be advanced with the authorization of the department, from the State Treasury to the secretary, prior to the first day of each month, an amount equal to the secretary's estimate of state supplemental benefits authorized pursuant to this chapter for that month corrected for any adjustments resulting from benefits relating to any other month. The department shall conduct, at least once each fiscal year, an audit of benefits paid by the secretary under this section on behalf of the State.

An agreement must specify procedures for making payments to the secretary and limitations on those payments, limits on state supplemental payments for patients in health care facilities, provision for recoupment of overpayments, or payments unlawfully

procured, of state supplementary payments, adjustments against future state payments on account of recoupment, and any other fiscal and quality control provision considered advisable by the department.

#### **§8304. Confidentiality**

Information concerning an applicant or beneficiary under this chapter must be held in strict confidence. The department and secretary may disclose or use the information only for purposes directly relating to administration of this chapter.

#### **§8305. Acceptance of federal provisions**

All provisions of sections 1611, 1612, 1613, 1614 and 1615 relating to determination of benefits, and sections 1631, 1632 and 1633 relating to procedural and general provisions, of Title XVI of the United States Social Security Act, as amended, are accepted and are deemed to apply to the program to the extent that they are required to conduct a state supplemental income program pursuant to this chapter.

#### **§8306. Unindorsed checks; procedure**

If, for any reason, a person eligible for state supplemental income is unable to endorse the check for the last payment approved prior to the person's death, the department may approve payment by the State of obligations incurred by the person for board and room in anticipation of the receipt of the check. Payments under this section must be authorized in accordance with the rules of the department. Any claim that may be paid under this section must be presented to the department in writing within 60 days of the date of the death of the eligible person.

#### **§8307. Balances of funds not to lapse**

Any balances of funds appropriated for the program of state supplemental income benefits authorized under this chapter may not lapse but must be carried forward from year to year to be expended for the same purpose.

#### **§8308. Emergency rulemaking**

In addition to any other rule-making authority granted under this chapter, the department may adopt emergency rules. The need to reduce benefits to eligible recipients and payments to boarding homes via vendor payments in accordance with the appropriations made available for this purpose is considered an emergency for the purpose of emergency rulemaking.

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CHAPTER 807

AID TO FAMILIES WITH DEPENDENT CHILDREN

SUBCHAPTER I

AUTHORIZATION; GENERAL PROVISIONS

§8401. Aid to dependent children

The department may administer and operate a program of aid to dependent children in accordance with the United States Social Security Act, as amended. The department shall also implement and operate a program of aid to the dependent children of intact families with unemplyed parents in accordance with 42 United States Code, Section 607, as amended.

§8402. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. ASPIRE Program. "ASPIRE Program" means the Additional Support for People in Retraining and Education Program, an umbrella program that provides education, training and employment services to people who receive food stamps or aid to families with dependent children benefits.

2. ASPIRE-JOBS Program. "ASPIRE-JOBS Program" means the Additional Support for People in Retraining and Education - Job Opportunities and Basic Skills Training Program. The ASPIRE-JOBS Program is the component of the ASPIRE Program established pursuant to this chapter and the federal Family Support Act of 1988, Public Law 100-485, as amended, to serve exclusively people who receive aid to families with dependent children benefits.

3. Recipient. "Recipient" means a person who receives or has been found eligible to receive aid to families with dependent children benefits under this chapter.

§8403. Maine Aid to Families with Dependent Children Advisory Council

1. Duties. The Maine Aid to Families with Dependent Children Advisory Council, as established by Title 5, section 12004-I, subsection 36, shall advise the commissioner or the commissioner's designee regarding education, training, job opportunities and other matters affecting recipients.

2. Members. The commissioner shall appoint the members of the council. Members must include at least the following:

A. Two recipients of benefits under the Aid to Families with Dependent Children program;

B. One representative of employers within the State;

C. One representative of organized labor;

D. One representative of women's interests; and

E. One or more representatives of organizations or agencies that have experience in addressing the training, education and job needs of low-income women.

3. Training, education and placements. In order to help recipients obtain jobs that can eliminate their dependency on public assistance, the council shall:

A. Encourage the development and ensure coordination of training, education and preapprenticeship programs, supportive services and remedial and preparatory programs at the University of Maine System, the technical colleges, the State Apprenticeship and Training Council and other institutions and programs;

B. Encourage the University of Maine System, the technical colleges and other institutions and programs to promote opportunities for educational placement for recipients who meet admission requirements; and

C. Establish procedures with the goal of ensuring that appropriate education and training support resources, grants-in-aid and scholarships are made available to eligible recipients.

§8404. Education, training or employment participation requirements

All recipients are required to participate in an education, training or employment program in accordance with the mandatory participation provisions of the federal Family Support Act of 1988, Public Law 100-485, as amended, and in accordance with the following provisions.

1. Caring for child under 3 years of age. A recipient is not required to participate in an education, training or employment activity as a condition of eligibility for federal Aid to Families with Dependent Children if that recipient is the

parent or other relative of a child under 3 years of age who is personally providing care for that child.

**2. Families eligible for federal Aid to Families with Dependent Children by reason of unemployment.** If a family is eligible for federal Aid to Families with Dependent Children by reason of the unemployment of the parent who is the principal wage earner:

A. One parent is eligible to be excused from mandatory participation based on the age of the child; and

B. A parent who is under 25 years of age and who has not completed high school or an equivalent course of education must be given the choice of participating in educational activities directed at the attainment of a high school diploma, or its equivalent, in lieu of other required activities.

**3. Custodial parents under 20 years of age.** A custodial parent who has not attained 20 years of age and who has not completed a high school education, or its equivalent, is required by the department to participate in an educational activity, except that:

A. A person personally providing care for a child under 6 years of age is not required to accept employment for more than 20 hours a week;

B. The department must establish criteria under which custodial parents who have not attained 18 years of age are exempt from the school attendance requirement; and

C. A custodial parent who is 18 or 19 years of age may be required to seek and accept employment if:

(1) That parent fails to make good progress in successfully completing educational activities; or

(2) Prior to that parent being assigned to educational activities, the department determines that participation in educational activities is inappropriate for that parent, based on an educational assessment and the employment goal established in the individual's employability plan.

#### **§8405. Exemptions**

**1. Federal exemptions.** A recipient may not be required to register for the ASPIRE-JOBS Program who would otherwise be

exempt from registration under the United States Social Security Act, 42 United States Code, Section 602, Subsection 19.

**2. Child with special needs.** A recipient may not be required to participate in the ASPIRE-JOBS Program who has a child with special needs. A child with special needs means a child who has needs, professionally documented, related to physical disabilities, mental illness, mental retardation, developmental delays or disabilities, or emotional or behavioral problems.

#### **§8406. Mutual agreement**

During the ASPIRE-JOBS Program referral process, a representative of the department and each individual who is determined to be a mandatory participant under 42 United States Code, Section 602(a)(19) or who volunteers to participate in the ASPIRE-JOBS Program shall sign a form, referred to as a mutual agreement. The mutual agreement must outline the requirements of the individual to participate in the ASPIRE-JOBS Program when the program is able to provide services necessary for the individual to participate in that individual's employability plan.

#### **§8407. Eligibility for federal Aid to Families with Dependent Children based on unemployment**

To determine eligibility for federal Aid to Families with Dependent Children based on the unemployment of the principal wage earner, the department shall consider a qualifying quarter of work to include a calendar quarter in which the individual attended, full time, an elementary school, secondary school or vocational-technical training course designed to prepare the individual for gainful employment, or in which the individual participated in a training program under the federal Job Training Partnership Act, 29 United States Code, Section 1501.

#### **§8408. Extended medical assistance**

The department shall administer a program of extended eligibility for medical assistance in accordance with the federal Family Support Act of 1988, Public Law 100-485, as amended, subject to the following.

**1. Extension of medical assistance.** The department shall provide for the extension of medical assistance without requiring any reapplication for benefits.

**2. Premiums; copayments; deductibles.** In accordance with federal law, the department may require participants whose net family income exceeds 133% of the federal poverty level and is

less than 185% of the federal poverty level to pay a premium not to exceed 3% of their net family income, less the child care deduction.

3. Scope of services. The department shall provide the same scope of medical assistance to the individual as provided when the family was receiving federal Aid to Families with Dependent Children cash assistance.

§8409. Transitional support services; child care; transportation

1. Transitional child care. The department shall establish a program to provide transitional child care when the services are necessary for an individual's employment, when a family has ceased to receive federal Aid to Families with Dependent Children as a result of increased hours of, or increased income from, employment or by reason of the exhaustion of the earned income disregard used in determining benefit amounts in the federal Aid to Families with Dependent Children program. The transitional child care program must:

A. Provide for the actual cost of child care, less participant contribution, up to the maximum allowable rate established in section 8603 for a period of 12 months in accordance with the federal Family Support Act of 1988, Public Law 100-485, as amended;

B. Give the participant the child care transitional benefit as a direct payment; and

C. Require contribution by the participant toward the cost of that care. A family with household income that equals or is less than 133% of the federal poverty level is responsible for contributing \$1 per child per week towards that family's child care expenses. A family with household income in excess of 133% of the federal poverty level is responsible for contributing 3% of the household income toward the cost of that family's child care expenses. The family's contribution may be waived, except for a nominal amount, when additional child care assistance is necessary to assist the family in maintaining employment during the transitional period authorized by this section.

2. Transitional transportation services. The department shall provide limited transitional transportation benefits to meet employment-related costs to ASPIRE-JOBS participants who have lost eligibility for Aid to Families with Dependent Children benefits due to employment. Benefits must be provided for 90 days following loss of Aid to Families with Dependent Children eligibility. The department may adopt rules that impose a weekly

limit on available transitional transportation benefits and require a contribution from each participant toward the cost of transportation.

§8410. Assistance for needy full-time students 18 to 21 years of age

The commissioner shall establish an assistance program for needy children over 18 and under 21 years of age who are in full-time attendance in a secondary school. The program must be operated for those who fail to meet the age requirement for the Aid to Families with Dependent Children program under the United States Social Security Act, but otherwise qualify for that program. Except for the age requirement, all provisions of the Aid to Families with Dependent Children program, including the standard of need and the amount of assistance, must apply to the program established pursuant to this section. The commissioner shall adopt rules in accordance with the provisions of this Title to administer the program.

§8411. Assistance to first-time pregnant women

Any first-time pregnant woman who is otherwise eligible for assistance under this chapter, except that she has no dependents under 18 years of age is eligible for the monthly benefit for one eligible person if the medically substantiated expected date of the birth of her child is not more than 90 days following the date the benefit is received.

§8412. Emergency assistance

The department, at the discretion of the commissioner, may establish and operate a program of emergency assistance to needy families with children within the United States Social Security Act, Title IV-A, Section 406(e), and any amendments and additions thereto. The department may not expend more than \$750,000 of state general assistance funds for the purposes of covering the cost of the program.

This program must provide benefits to needy families with children in emergency situations in which the family is deprived of the basic necessities essential to their support, including, but not limited to, utility terminations, lack of adequate shelter, fire and other natural disasters. In determining what constitutes an emergency with respect to utility terminations, the department shall grant assistance when an otherwise qualified family has received a disconnection notice and has exhausted their ability to negotiate and pay the terms of a reasonable payment arrangement. The program may not be used to supplant



2 local responsibility for operating or funding a general  
3 assistance program.

4 The department may establish eligibility guidelines and  
5 limits on services covered under this program.

6 **§8413. Special needs payment for recipients with excessive**  
7 **shelter costs**

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10 1. Amount of payment. The department shall provide a  
11 special housing allowance in the amount of \$75 per month for each  
12 assistance unit to recipients whose shelter expenses for rent,  
13 mortgage or similar payments, property insurance and property  
14 taxes equal or exceed 75% of their monthly assistance unit  
15 income. Effective July 1, 1994 the special housing allowance is  
16 limited to \$50 per month for each assistance unit. For purposes  
17 of this subsection "monthly assistance unit income" means the  
18 total of the unit's Aid to Families with Dependent Children  
19 monthly benefit, plus income countable under Aid to Families with  
20 Dependent Children program rules, plus child support received by  
21 the unit, excluding the so-called \$50 pass-through payment.

22  
23 2. Federal approval. In the event that federal approval  
24 for the Aid to Families with Dependent Children housing special  
25 needs payment described in this section is not given, the  
26 department is directed to negotiate with the appropriate federal  
27 agency to seek approval. Notwithstanding any other provision in  
28 this section, the department may implement a different method or  
29 standard for determining the housing special need for the  
30 purposes of obtaining federal approval, if the target population  
31 described in subsection 1 receives substantially the same  
32 benefit. The department shall consult with advocates for  
33 recipients during any negotiations with a federal agency for  
34 approval of the housing special needs payment.

35 **§8414. Households headed by minor parents**

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37 An otherwise eligible minor parent is required as a  
38 condition of eligibility for federal Aid to Families with  
39 Dependent Children to reside with a parent or other legal  
40 guardian.

41 **§8415. Earned income tax credit**

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45 The department shall advise applicants and recipients of Aid  
46 to Families with Dependent Children regarding the federal earned  
47 income tax credit, including the opportunity to receive it as an  
48 advanced payment.

49 **§8416. Fraud in obtaining aid; civil recovery**

2 Any sums paid to or in behalf of any person under section  
3 8007, 8008, 8401, 8404, 8405, 8407, 8408, 8409, 8603 or 8604, as  
4 a result of any false statement, misrepresentation or concealment  
5 of assets or income, may be recovered in a civil action brought  
6 by the department against the person to whom the money was paid.

7 **§8417. Substantiation of eligibility**

8  
9  
10 The department shall appropriately substantiate the facts  
11 supporting eligibility stated in any application for aid to  
12 families with dependent children before approving the application.

13  
14 "Appropriately substantiate" means that the department must  
15 assure itself of the eligibility of the family for public  
16 assistance benefits. To obtain such assurance, it shall contact,  
17 as appropriate, the local town official in the town of residence,  
18 banks or savings institutions, vital records, specific public  
19 court files, or similar sources.

20 **§8418. Appeals**

21  
22  
23 1. Hearing. Any person who is denied public assistance  
24 under this chapter, or who is not satisfied with the amount of  
25 public assistance allotted to that person, or is aggrieved by a  
26 decision of the department made under this chapter, or whose  
27 application is not acted upon with reasonable promptness, may  
28 appeal to the commissioner, who shall provide the appellant with  
29 reasonable notice and opportunity for a fair hearing. The  
30 commissioner or the commissioner's designee shall hear all  
31 evidence pertinent to the matter at issue and render a decision  
32 within a reasonable period after the date of the hearing. The  
33 hearing must be held in accordance with Title 5, chapter 375.

34  
35 2. Notice. Any action related to the grant, denial,  
36 reduction, suspension or termination of public assistance  
37 provided under this chapter must be communicated to the applicant  
38 or recipient in writing, must include the specific reason or  
39 reasons for the action and must state that the person affected  
40 has a right to a hearing.

41 **§8419. Disbursements**

42  
43 1. Carrying account for unexpended balances.  
44 Notwithstanding any other provision of law, funds appropriated  
45 for the aid to families with dependent children account may not  
46 be transferred from that account and may not lapse at the end of  
47 a fiscal year, but must be carried forward from year to year to  
48 be expended for the same purpose. All unexpended balances of the  
49 account must be expended pursuant to subsections 3 and 4.

2 2. Funds to support positions authorized. Funds to support  
4 positions authorized must be taken from savings realized by  
6 reduced error rates for ineligible payments and overpayments made  
8 to recipients and on behalf of recipients. No reduction in  
maximum payments as defined in the Maine Public Assistance  
Manual, chapter II, section D, page 3 may be made for the purpose  
of funding staff.

10 3. Analysis of unexpended balance. Each month, from the  
12 savings resulting from the error rate, the aid to families with  
14 dependent children account must be analyzed to determine if the  
16 unexpended balance is sufficient to provide for an increase in  
payment maximums. The balance to be analyzed is the balance as  
of the most recent month for which data is available, preferably  
the 2nd month preceding the month in which the analysis is made.

18 4. Payment maximums. Payment maximums must be increased  
20 when the unexpended balance of the account is sufficient and when  
22 the amount of the monthly payment maximum does not exceed an  
24 amount consistent with 1/12 of the annual lower level budget for  
26 a family of 4 people computed for Portland, Maine, by the United  
28 States Department of Labor, Bureau of Labor Statistics. Subject  
30 to the availability of funds, the increase may be no less than 5%  
of the current payment maximum rounded to the nearest dollar and  
must be effective with checks issued the first month following  
the current month and must be continued for the balance of the  
fiscal year. If the unexpended balance is not sufficient to  
provide for an increase, it must be expended to continue payments  
at current levels.

32 5. Payment priority. Payments made on behalf of the  
34 department for aid to families with dependent children and for  
36 foster care have priority over other payments and must be made  
38 without delay whether or not they are pursuant to a state plan or  
contract under 45 Code of Federal Regulations, Part 23. The  
department shall cooperate with other state agencies to  
accomplish priority payments.

40 §8420. Report of commissioner

42 The commissioner shall report by January 15 annually, to the  
44 joint standing committees of the Legislature having jurisdiction  
over human resource matters and appropriations matters:

46 1. Amount needed to raise standard of need. The amount  
48 required to raise the standard of need by the amount of increase  
in the Consumer Price Index in the previous calendar year;

2 2. Difference; standard of need. The difference between  
4 the standard of need as compared with a full contemporary and  
adequate standard of living as measured by the United States  
Bureau of Labor lower living standard; and

6 3. Increase to meet contemporary standard of living. The  
8 amount of additional increase that would be required to meet the  
contemporary standard of living within 5 years.

10 §8421. Notification to the Legislature

12 The department shall notify the joint standing committee of  
14 the Legislature having jurisdiction over human resource matters  
of any request for waivers from the United States Department of  
16 Health and Human Services or any other federal agency concerning  
the implementation of chapters 1053, 1053-A, 1054 and 1054-A.

18 SUBCHAPTER II

20 RESPONSIBILITY OF PARENTS

22 §8501. Parental responsibility

24 The parents of a child receiving aid to dependent children  
26 are, if of sufficient ability, responsible for partial or total  
28 support of that child. In determining the ability of the  
parents, their assets as well as their income must be considered.

30 The department may bring proceedings in the District Court  
32 or Superior Court in the county where the child resides or in the  
34 county where the parent may be found to compel any person liable  
36 under this section to contribute to the support of any child  
38 receiving aid, if after reasonable efforts on the part of the  
department, voluntary contributions have not been made. The  
department shall bring the action as a petition for support upon  
not less than 7 days' notice. The court may order either one or  
40 both parents of the child to contribute to the support of the  
42 child sums payable weekly or monthly as determined in accordance  
44 with Title 19, chapter 7, subchapter I-A, and may enforce  
46 obedience by appropriate decrees, execution issuing for the sums  
when payable. An order for child support under this section may  
include an order for the payment of part or all of the medical  
expenses, hospital expenses and other health care expenses of the  
children or an order to provide a policy or contract for coverage  
of those expenses. When the defendant is committed to jail on  
execution under this section, the county having jurisdiction of  
the process shall bear the expense of the defendant's commitment  
and support. The defendant may petition the court issuing the  
48 execution for relief. Upon receipt of a petition, the court,  
50 after due notice to the department and hearing on the petition,

2 may order the defendant's discharge from imprisonment on terms  
3 and conditions as justice requires.

4 §8502. Locating those liable for support of dependents

6 To assist in locating parents who have deserted their  
7 children and other persons liable for support of dependents, the  
8 department may request and receive information from the records  
9 of all departments, boards, bureaus and other agencies of this  
10 State. Departments, boards, bureaus and other agencies are  
11 authorized to provide information necessary for this purpose.  
12 Only information directly bearing on the identity and whereabouts  
13 of a person owing or asserted to be owing an obligation of  
14 support may be requested and used or transmitted by the  
15 department pursuant to the authority conferred by this section.  
16 The department may make the information available only to public  
17 officials and agencies of this State, other states and the  
18 political subdivisions of this State and other states seeking to  
19 locate parents who have deserted their children and other persons  
20 liable for support of dependents for the purpose of enforcing  
21 their liability for support.

22 §8503. Disclosure of information in medical support recoupment  
23 and child support cases

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

27 A. "Assets" means any interest in real or personal property.

28 B. "Dependent child" has the same meaning as in Title 19,  
29 section 493.

30 C. "Earnings" has the same meaning as in Title 19, section  
31 493.

32 D. "Medicaid recipient" means an individual authorized by  
33 the department to receive services under the provisions of  
34 the United States Social Security Act, Title XIX and  
35 successors to it.

36 E. "Person" has the same meaning as in Title 19, section  
37 493.

38 F. "Responsible parent" has the same meaning as in Title  
39 19, section 493.

40 2. Request for information concerning responsible parents.  
41 Except as provided in subsection 5, the department may request of

2 any person information relating to the following matters  
3 concerning a responsible parent or alleged responsible parent:

4 A. Complete name;

5 B. Social security number;

6 C. Date and place of birth;

7 D. Present and past employment status;

8 E. Earnings;

9 F. Current or last known address;

10 G. Assets;

11 H. Availability and description of present or previous  
12 health insurance coverage for a dependent child; and

13 I. Health insurance benefits paid or applied for under a  
14 policy of health insurance for a dependent child.

15 3. Request for information concerning present and former  
16 Medicaid recipients. The department may request of any person  
17 information relating to the following matters concerning a  
18 present or former Medicaid recipient:

19 A. Availability and description of health insurance  
20 coverage for a present or former Medicaid recipient; and

21 B. Health insurance benefits paid or applied for under a  
22 policy of health insurance for a present or former Medicaid  
23 recipient.

24 4. Demand for information. If a response to a request  
25 under subsection 2 or 3 is not received by the department within  
26 2 weeks of its mailing by regular mail, the department may serve  
27 a demand upon the person to whom the request was directed for the  
28 information sought. The demand may be served by certified mail,  
29 return receipt requested, or by service in hand as specified in  
30 the Maine Rules of Civil Procedure, except that a demand may be  
31 served by any authorized representative of the commissioner.

32 5. Limitation. If an alleged responsible parent is a  
33 putative father of a child conceived and born out of wedlock, a  
34 request or demand is limited to information relating to the  
35 following matters concerning the alleged responsible parent:

36 A. Complete name;

2 B. Date and place of birth:  
4 C. Present and past employment status:  
6 D. Social security number; and  
8 E. Current or last known address.

10 6. Immunity from liability. Any person may disclose to the  
12 department any of the information described in subsection 2 or 3  
14 that is sought in a request or demand by the department, the  
16 disclosure of which is not prohibited by federal or state statute  
18 or which is not privileged under the Maine Rules of Evidence,  
20 without incurring any liability to any other person because of  
22 the disclosure.

24 7. Affirmation of responses. The department may require  
26 that a response to a request or demand be affirmed under the  
28 penalties for unsworn falsification under Title 17-A, section 453.

30 8. Facilitation of responses. A request or demand must  
32 contain or be accompanied by a business-reply or prepaid  
34 self-addressed envelope.

36 9. Notice. At the time that the department makes a demand,  
38 it shall notify the responsible parent or alleged responsible  
40 parent by regular mail to the last known address.

42 10. Penalty for knowing failure to respond or for knowing  
44 failure or knowing refusal to disclose. The penalty for knowing  
46 failure to respond or for knowing failure or knowing refusal to  
48 disclose is governed as follows.

50 A. Knowing failure to respond to a demand for information  
within 10 days following the date of service of the demand  
is a civil violation for which a forfeiture not to exceed  
\$1,000 may be adjudged.

B. Knowing refusal or knowing failure to disclose to the  
department any of the information described in subsection 2  
or 3 that is sought in a demand for information by the  
department, the disclosure of which is not prohibited by  
federal or state statute, or which is not privileged under  
the Maine Rules of Evidence, is a civil violation for which  
a forfeiture not to exceed \$1,000 may be adjudged.

11. Confidentiality of information; unlawful dissemination;  
penalty. All information collected in connection with the  
department's child support enforcement activity and medical

2 support recoupment pursuant to this section is confidential and  
4 available only for the use of appropriate departmental personnel  
6 and legal counsel for the department in carrying out their  
8 functions. A person is guilty of unlawful dissemination if that  
10 person knowingly disseminates information in violation of this  
12 subsection. Unlawful dissemination is a Class E crime, which,  
14 notwithstanding Title 17-A, section 1252, subsection 2, paragraph  
16 E, is punishable by a fine of not more than \$500 or by  
18 imprisonment for not more than 30 days.

### SUBCHAPTER III

#### ADDITIONAL SUPPORT FOR PEOPLE IN RETRAINING AND EDUCATION - JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

##### §601. ASPIRE-JOBS Program; general provisions

18 1. Establishment; administration. The ASPIRE-JOBS Program  
20 is established. The department shall administer the program.

22 2. Purpose. The purpose of the ASPIRE-JOBS Program is to  
24 provide services and support to recipients and to reduce  
26 dependence on public assistance to the extent that adequate  
28 funding is available for that purpose. The principal goal is to  
30 assist the recipient in securing stable employment that pays  
32 wages sufficient to maintain adequate family income without  
34 public assistance and to increase the basic life skills and  
36 self-confidence of the recipient.

38 3. Decision-making authority reserved to department. If  
40 federal law requires the department to make an ASPIRE-JOBS case  
42 decision, the authority to make that final decision is reserved  
44 to the department.

46 4. Purchase of services. The department may contract with  
48 public and private agencies and individuals to deliver  
50 employment, training and other services for program participants  
consistent with the purposes of the program. Program funds may  
not be used to purchase services from an agency under this  
subsection that are available on a nonreimbursable basis, if  
those nonreimbursable services meet the needs of a program  
participant.

5. Monitoring of contract agencies. If the department  
contracts for the provision of program services under this  
subchapter, it shall monitor each contract agency at least  
annually to ensure compliance with this section and section 603  
to ensure compliance with the contracts entered into by the  
parties and to ensure that quality services are provided for

2 program participants. The department shall adopt rules in  
3 accordance with the Maine Administrative Procedure Act by which  
4 satisfactory performance is measured. The rules must identify  
5 the circumstances under which sanctions, including contract  
6 suspension, reduction or termination, are applied.

8 6. Rural access. The department shall adopt rules in  
9 accordance with the Maine Administrative Procedure Act to provide  
10 access to ASPIRE-JOBS Program services for recipients living in  
11 rural areas. Services must be provided on an equitable basis  
12 throughout the State. Access to these services may be reasonably  
13 limited by the department due to factors such as availability of  
14 staff and funding. The rules adopted by the department must  
15 include, in addition to other methods necessary to achieve this  
16 goal, adequate provisions for itinerant service stationing.

18 7. Readability. All notices, applications and decisions  
19 intended to be read by ASPIRE-JOBS Program applicants or  
20 participants must be designed to be easily understood and must  
21 have a readability score, as determined by a recognized  
22 instrument for measuring adult literacy, equivalent to no higher  
23 than a 6th grade reading level.

24 8. Availability of funds. Nothing in this subchapter  
25 requires a department, agency, institution or program to obligate  
26 or expend funds beyond existing funds available to them for these  
27 purposes. The department shall adopt rules in accordance with  
28 the Maine Administrative Procedure Act that include methods for  
29 limiting or reducing services when adequate resources are not  
30 available.

32 9. Rules. The department shall adopt rules in accordance  
33 with the Maine Administrative Procedure Act for the  
34 implementation of this subchapter. Rules governing services  
35 provided under this subchapter apply equally to all participating  
36 recipients, whether those services are provided by the department  
37 or any other agency, organization or individual providing  
38 ASPIRE-JOBS Program services to participants.

40 10. Annual report. The department shall submit a report by  
41 March 15th annually to the joint standing committee of the  
42 Legislature having jurisdiction over human resources matters.  
43 The report must include the number of ASPIRE-JOBS Program  
44 participants who are receiving pretraining and job search  
45 services and must specify the specific services provided and the  
46 agencies providing those services. A copy of the report must be  
47 submitted to the Office of the Executive Director of the  
48 Legislative Council.

50 §8602. Sanctions

2 An individual may not be sanctioned under ASPIRE-JOBS  
3 Program or aid to families with dependent children for failure to  
4 participate in the ASPIRE-JOBS Program if that failure to  
5 participate is based on good cause. Good cause for failure to  
6 participate in this program must be found when there is  
7 reasonable and verifiable evidence of:

8 1. Illness or incapacitation. The individual's illness,  
9 incapacity or advanced age, or the illness or incapacity of a  
10 household member, that requires the individual to provide care in  
11 the home;

14 2. Sexual harassment. Sexual harassment at a  
15 program-approved component;

18 3. Court-required appearance; incarceration.  
19 Court-required appearance or incarceration;

20 4. Lack of supportive services. Lack or breakdown of  
21 necessary supportive services such as child care or  
22 transportation with no appropriate alternatives available;

24 5. Inclement weather. Inclement weather that prevents the  
25 individual from traveling to an activity when the weather is  
26 severe enough to prevent other individuals from traveling to the  
27 same activity;

30 6. Assignment to another activity. Assignment by the  
31 department to an activity or component that has not been made  
32 part of the individual opportunity service contract;

34 7. Remoteness. Participation that requires the individual  
35 to travel outside the individual's immediate geographic area,  
36 defined as an area within a 2-hour round trip commute;

38 8. Crisis or special circumstance. A crisis or special  
39 circumstance that causes an individual to be absent from or  
40 discontinue a department activity about which the department has  
41 been advised and has determined to constitute good cause;

42 9. Caretakers of children under 6 years of age. Assignment  
43 by the department to an activity that would require the  
44 individual to work more than 20 hours per week, if the individual  
45 is a parent or relative personally providing care for a child  
46 under 6 years of age;

48 10. Net loss of cash income. Employment resulting in the  
49 family of the individual experiencing a net loss of cash income;  
50 or

2 11. Other good cause. Any other reason resulting in  
4 failure to participate that is beyond the control of the  
6 individual or that a reasonable person would determine to be good  
8 cause.

10 §8603. Program requirements

12 1. Notice of program assistance. The department shall  
14 provide written notice to all applicants for and recipients of  
16 the Aid to Families with Dependent Children program of the range  
18 of education, employment and training opportunities, and the  
20 types of support services, including transitional support  
22 services and medical assistance, available under the ASPIRE-JOBS  
24 Program, together with a statement that all participants may  
26 apply for those opportunities and services.

28 2. Application; decision. Notwithstanding any provision  
30 contained in an employability development plan, all participants  
32 must be given the opportunity to apply for any education,  
34 training and support services at the office of the program  
36 provider serving the area in which that individual lives. The  
38 program provider shall issue a written decision promptly, in  
40 accordance with rules adopted by the department, on all  
42 applications and shall include the type and amount of assistance  
44 that has been authorized or denied. The participant must be  
46 given in writing the reasons and specific rules supporting a  
48 denial and an explanation of the individual's right to request a  
50 conciliation meeting, a fair hearing, or both. For the purposes  
of this subsection, "participant" means a recipient who has  
completed the ASPIRE-JOBS Program orientation and has been  
informed by the department that funds are available to provide  
ASPIRE-JOBS Program services to the recipient.

3. Case management services. The department shall provide  
case management services to individuals participating in the  
ASPIRE-JOBS Program. The department shall adopt rules in  
accordance with the Maine Administrative Procedure Act defining  
or describing those services.

4. Assessment. Each participant's case manager shall  
conduct an individualized assessment to determine that  
individual's education, training and employment needs in  
accordance with the federal Family Support Act of 1988, Public  
Law 100-485, as amended.

5. Employability plan. An employability plan must be  
adopted in accordance with the Family Support Act of 1988, Public  
Law 100-485, as amended, for each individual who has completed an  
ASPIRE-JOBS Program orientation.

2 6. Individual opportunity service contract. To the extent  
4 that sufficient funds, training sites and employment  
6 opportunities are reasonably available, the department and a  
8 participant in the ASPIRE-JOBS Program shall enter into an  
10 individual opportunity service contract that reflects, to the  
12 maximum extent possible, the preference of the participant and  
14 the services offered by the program. The individual opportunity  
16 service contract must include the individual's education,  
18 training and employment plan and the support services necessary  
20 to participate in that plan in accordance with the federal Family  
22 Support Act of 1988, Public Law 100-485, as amended. The  
24 participant's first individual opportunity service contract must  
26 be established promptly in accordance with rules adopted by the  
28 department. The rules must provide for an expedited procedure  
30 for the development of the individual opportunity service  
32 contract when necessary to meet the participation or enrollment  
34 requirements of an educational institution or training program.

36 7. Education, training and employment services. The  
38 ASPIRE-JOBS Program shall make available a broad range of  
40 education, training and employment services in accordance with  
42 section 8601 and the federal Family Support Act of 1988, Public  
44 Law 100-485, as amended. These services and activities must  
46 include all of those services and activities offered by the  
48 Additional Support for People in Retraining and Education Program  
50 on October 1, 1989. This section does not prohibit the  
department from purchasing equivalent services from providers  
other than those from whom those services were purchased on  
October 1, 1989. When a particular approved education or  
training service is available at comparable quality and cost,  
including the cost of support services, and the implementation of  
the employability plan would not be unreasonably delayed, the  
program participant may choose to enroll for that service with  
the provider of that person's preference. If this decision is  
not mutually agreed to by the participant and the case manager,  
the decision must be reviewed by the case manager's supervisor.  
These services do not include reimbursement for the cost of  
tuition or mandatory fees for postsecondary education unless:

A. The participant is unable to secure other educational  
funding needed to complete the participant's individual  
opportunity service contract due to:

(1) Poor credit as determined by the educational  
funding source; or

(2) The consideration by the educational funding source  
of resources from past years that are not actually  
available to the participant;

2 B. In the determination of the department, failure to pay  
4 the tuition or fee would result in higher ASPIRE-JOBS  
6 Program costs to achieve the participant's approved goal; or

8 C. The participant meets an exception specified in rules  
10 adopted by the department.

12 When a substantially similar postsecondary education or training  
14 program of comparable quality is available at both a public and  
16 private institution, within a reasonable commuting distance for  
18 the participant, the department may choose to approve the program  
20 offered at the public institution if the participant's program  
22 can be completed at less cost at the institution.

24 A person may not be discouraged from participating in a 4-year  
26 postsecondary program if such a program is appropriate for the  
28 participant and consistent with the goals of the ASPIRE-JOBS  
30 Program.

32 8. Provision of support services. Payment for support  
34 services must be furnished promptly in accordance with rules  
36 adopted by the department to, or on behalf of, eligible  
38 individuals as agreed to in the employability plan. The rules  
40 must provide for an expedited procedure for payment for support  
42 services when those services are immediately necessary to enable  
44 the participant to participate in an approved education, training  
46 or employment plan.

48 The support services required to participate in the employability  
50 plan must be specified in an individual opportunity service  
contract, and each participant must receive the support services  
prescribed in that contract, which may include respite care.

9. Child care during participation in employment, education  
and training. The department shall provide child care in  
accordance with the federal Family Support Act of 1988, Public  
Law 100-485, as amended, when the child care is necessary to  
permit a federal Aid to Families with Dependent Children eligible  
family member to participate in the ASPIRE-JOBS Program.

The department shall provide an ASPIRE-JOBS Program participant's  
actual cost for child care up to the maximum rate authorized by  
federal law. In determining the maximum rate, the State shall  
use a method that results in an amount that equals, or most  
closely approaches, the actual market rate in different regions  
of the State for various types of child care services received by  
families in the State participating in the ASPIRE-JOBS Program.

§8604. Voluntary participants given priority

2 1. First priority given to targeted recipients who  
4 volunteer. Recipients who are within one of the target  
6 populations of the federal Job Opportunity and Basic Skills  
8 training program, or JOBS, or are eligible on the basis of  
10 unemployed parent status and who volunteer to participate in the  
12 ASPIRE-JOBS Program, must be given first consideration for  
14 services. The federal JOBS target populations are individuals  
16 who:

18 A. Have received federal Aid to Families with Dependent  
20 Children for any 36 of the preceding 60 months;

22 B. Are custodial parents under 24 years of age who:

24 (1) Have not completed a high school education and are  
26 not enrolled in high school at the time of application;  
28 or

30 (2) Had little or no work experience in the preceding  
32 year; or

34 C. Are members of families in which the youngest child  
36 because of age is within 2 years of being ineligible for  
38 federal Aid to Families with Dependent Children.

40 2. Mandatory participation to meet federal mandates.  
42 Recipients who do not volunteer may be required to participate in  
44 the ASPIRE-JOBS Program only in order to meet the federal  
46 participation requirements necessary to receive enhanced federal  
48 matching funds under the federal Family Support Act of 1988,  
Public Law 100-485, or its successor.

3. Voluntary participation when federal mandates are  
exceeded. Recipients who volunteer regardless of their JOBS  
target status to participate in the ASPIRE-JOBS Program must be  
given priority for program services.

4. Order of service. Recipients who volunteer for the  
ASPIRE-JOBS Program must be served in order of date of  
participation in ASPIRE-JOBS Program orientation in accordance  
with this section; except that nothing in this section prohibits  
the department from making use of services for volunteers when  
the ASPIRE-JOBS Program matching expenditure for that service is  
available from another bureau or agency or the service is  
available at no cost to the ASPIRE-JOBS Program. Any such  
service must be offered to participants in order of the date of  
their participation in ASPIRE-JOBS Program orientation.

2 5. Exception. Notwithstanding subsection 4, the department  
3 may use up to 20% of ASPIRE-JOBS Program funds to serve persons  
4 regardless of their date of participation in the ASPIRE-JOBS  
5 Program orientation. The department may also use ASPIRE-JOBS  
6 Program funds to serve persons regardless of their date of  
7 participation in the ASPIRE-JOBS Program orientation when other  
8 organizations or agencies provide benefits to that participant  
9 that are equal to or greater than the value of services that the  
10 person is eligible to receive under the rules of the ASPIRE-JOBS  
11 Program. This subsection is repealed June 30, 1994.

#### 12 §8605. Self-initiated training

14 1. Participation requirement satisfied. If a recipient is  
15 attending, in good standing, an institution of higher education  
16 or a school or course of vocational or technical training  
17 consistent with the individual's employment goals and is making  
18 satisfactory progress in that institution, school or course at  
19 the time the recipient would otherwise commence participation in  
20 the ASPIRE-JOBS Program, that attendance constitutes satisfactory  
21 participation for the purposes of 42 United States Code, Section  
22 602(a)(19).

24 2. Education, training and employment services. The  
25 department rules pertaining to education, training and employment  
26 services for ASPIRE-JOBS Program participants apply equally to  
27 persons who are in self-initiated training at the time those  
28 persons would otherwise commence participation in the ASPIRE-JOBS  
29 Program.

### 30 CHAPTER 809

#### 32 MUNICIPAL GENERAL ASSISTANCE

#### 34 §9101. Definitions

36 As used in this chapter, unless the context otherwise  
38 indicates, the following terms have the following meanings.

40 1. Basic necessities. "Basic necessities" means food,  
41 clothing, shelter, fuel, electricity, nonelective medical  
42 services as recommended by a physician, nonprescription drugs,  
43 telephone if it is necessary for medical reasons and any other  
44 commodity or service determined essential by the overseer in  
45 accordance with the municipality's ordinance and this chapter.  
46 "Basic necessities" do not include security deposits for rental  
47 property, except for emergency purposes. For the purposes of  
48 this subsection, "emergency purposes" means any situation in  
49 which no other permanent lodging is available unless a security  
50 deposit is paid.

2 2. Direct costs. "Direct costs" means the total value of  
3 general assistance benefits paid out by a municipality that is in  
4 compliance with this chapter and the municipality's general  
5 assistance ordinance.

6 3. Dwelling unit. "Dwelling unit" means a building or part  
7 of a building used for separate living quarters for one or more  
8 persons living as a single housekeeping unit.

10 4. Eligible person. "Eligible person" means a person who  
11 is qualified to receive general assistance from a municipality  
12 according to standards of eligibility determined by the municipal  
13 officers whether or not that person has applied for general  
14 assistance.

16 5. Emergency. "Emergency" means any life-threatening  
17 situation or a situation beyond the control of the individual  
18 that, if not alleviated immediately, could reasonably be expected  
19 to pose a threat to the health or safety of a person.

22 6. General assistance program. "General assistance  
23 program" means a service administered by a municipality for the  
24 immediate aid of persons who are unable to provide the basic  
25 necessities essential to maintain themselves or their families.  
26 A general assistance program provides a specific amount and type  
27 of aid for defined needs during a limited period of time and is  
28 not intended to be a continuing "grant-in-aid" or "categorical"  
29 welfare program. This definition does not in any way lessen the  
30 responsibility of each municipality to provide general assistance  
31 to a person each time that the person has need and is found to be  
32 otherwise eligible to receive general assistance.

34 7. Household. "Household" means an individual or a group  
35 of individuals who share a dwelling unit.

37 8. Income. "Income" means any form of income in cash or in  
38 kind received by the household, including net remuneration for  
39 services performed, cash received on either secured or unsecured  
40 credit, any payments received as an annuity, retirement or  
41 disability benefits, veterans' pensions, workers' compensation,  
42 unemployment benefits, benefits under any state or federal  
43 categorical assistance program, supplemental security income,  
44 social security and any other payments from governmental sources,  
45 unless specifically prohibited by any law or regulation,  
46 court-ordered support payments, income from pension or trust  
47 funds and household income from any other source, including  
48 relatives or unrelated household members.



2 The following items are not available within the meaning of this  
3 subsection and subsection 12:

4 A. Real or personal income-producing property, tools of  
5 trade, governmental entitlement specifically treated as  
6 exempt assets by state or federal law;

7 B. Actual work-related expenses, whether itemized or by  
8 standard deduction, such as taxes, retirement fund  
9 contributions, union dues, transportation costs to and from  
10 work, special equipment costs and child care expenses; or

11 C. Earned income of children below the age of 18 years who  
12 are full-time students and who are not working full time.

13 9. Just cause. "Just cause" means a valid, verifiable  
14 reason that hinders an individual in complying with one or more  
15 conditions of eligibility.

16 10. Lump sum payment. "Lump sum payment" means a one-time  
17 or typically nonrecurring sum of money issued to an applicant or  
18 recipient after an initial application. Lump sum payment  
19 includes, but is not limited to, retroactive or settlement  
20 portions of social security benefits, workers' compensation  
21 payments, unemployment benefits, disability income, veterans'  
22 benefits, severance pay benefits, or money received from  
23 inheritances, lottery winnings, personal injury awards, property  
24 damage claims or divorce settlements. A lump sum payment  
25 includes only the amount of money available to the applicant  
26 after payment of required deductions has been made from the gross  
27 lump sum payment. A lump sum payment does not include conversion  
28 of a nonliquid resource to a liquid resource if the liquid  
29 resource has been used or is intended to be used to replace the  
30 converted resource or for other necessary expenses.

31 11. Municipality of responsibility. "Municipality of  
32 responsibility" means the municipality that is liable for the  
33 support of any eligible person at the time of application.

34 12. Need. "Need" means the condition whereby a person's  
35 income, money, property, credit, assets or other resources  
36 available to provide basic necessities for the individual and the  
37 individual's family are less than the maximum levels of  
38 assistance established by the municipality.

39 13. Net general assistance costs. "Net general assistance  
40 costs" means those direct costs incurred by a municipality in  
41 providing assistance to eligible persons according to standards  
42 established by the municipal officers and does not include the  
43 administrative expenses of the general assistance program.

2 14. Overseer. "Overseer" means an official designated by a  
3 municipality to administer a general assistance program. The  
4 municipal officers shall serve as a board of overseers if no  
5 other persons are appointed or elected.

6 15. Pooling of income. "Pooling of income" means the  
7 financial relationship among household members who are not  
8 legally liable for mutual support in which there occurs any  
9 commingling of funds or sharing of income or expenses.

10 16. Real estate. "Real estate" means any land, buildings,  
11 homes, mobile homes and any other things affixed to that land.

12 **§9102. Delegation of duties; oath; bond**

13 Overseers may authorize some person to perform any of the  
14 duties imposed upon them by this chapter. The overseers may  
15 designate more than one person to perform those duties. Before  
16 entering upon the performance of those duties, the person or  
17 persons designated must be sworn and give bond to the town for  
18 the faithful performance of those duties, in the sum and with the  
19 sureties the overseers order.

20 **§9103. Prosecution and defense of towns**

21 For all purposes provided for in this chapter, the overseers  
22 or any person appointed by them in writing may prosecute and  
23 defend a town.

24 **§9104. General assistance offices**

25 1. Local office. There must be in each municipality a  
26 general assistance office or designated place where any person  
27 may apply for general assistance at regular, reasonable times  
28 designated by the municipal officers. Notice must be posted of  
29 these times, the name of the overseer available to take  
30 applications in an emergency at all other times, the fact that  
31 the municipality must issue a written decision on all  
32 applications within 24 hours and the department's toll-free  
33 telephone number for reporting alleged violations in accordance  
34 with section 9124.

35 2. District office. In situations where in the judgment of  
36 a municipality the number of applicants does not justify the  
37 establishment of a local office or designated place, or where for  
38 other reasons a local office or designated place is not  
39 necessary, 2 or more municipalities, by a vote of their  
40 respective legislative bodies, may establish a district office  
41 for the administration of general assistance and make agreements

2 as to the payment of expenses and any other matters relevant to  
the operation of the office.

4 Any district office established pursuant to this subsection must  
6 be located so as to be accessible by a toll-free telephone call  
from any part of every municipality it is designated to serve.

8 Every district general assistance officer shall be available for  
the taking of applications at least 35 hours each week and shall  
10 make provision for designated personnel to be available to take  
applications in an emergency 24 hours a day.

12 3. Emergencies. In any case when an applicant is unable,  
14 due to illness, disability, lack of transportation, lack of child  
care or other good cause, to apply in person for assistance or  
16 unable to appoint a duly authorized representative, the overseer  
shall accept an application by telephone subject to verification  
18 by mail and a visit to the applicant's home with the consent of  
the applicant. Municipalities may arrange with emergency  
20 shelters for the homeless to presume eligible for municipal  
assistance persons to whom the emergency shelter provides shelter  
22 services.

24 **§9105. Municipal ordinance required**

26 1. Program required; ordinance. A general assistance  
program must be operated by each municipality and must be  
28 administered in accordance with an ordinance enacted, after  
notice and hearing, by the municipal officers of each  
30 municipality.

32 2. Availability of ordinance. The ordinance and a copy of  
this chapter must be available in the town office and be easily  
34 accessible to any member of the public. Notice to that effect  
must be posted. A copy of this chapter must be distributed by  
36 the department to each municipality.

38 3. Standards of eligibility. Municipalities may establish  
standards of eligibility, in addition to need, as provided in  
40 this chapter. Each ordinance must establish standards that:

42 A. Govern the determination of eligibility of persons  
applying for relief and the amount of assistance to be  
44 provided to eligible persons;

46 B. Provide that all individuals wishing to make application  
48 for relief have the opportunity to do so; and

2 C. Provide that relief must be furnished or denied to all  
eligible applicants within 24 hours of the date of  
4 submission of an application.

6 4. Maximum levels of assistance. Municipalities may  
establish maximum levels of assistance by ordinance. The maximum  
8 levels of assistance must set reasonable and adequate standards  
sufficient to maintain health and decency. A maximum level of  
10 assistance established by municipal ordinance is subject to a  
review by the department, upon complaint, to ensure compliance  
12 with this chapter.

14 5. Temporary maximum levels. Notwithstanding subsection 4,  
municipalities shall establish an aggregate maximum level of  
16 assistance that is 110% of the applicable existing housing fair  
market rents as established by the United States Department of  
18 Housing and Urban Development pursuant to 24 Code of Federal  
Regulations, Section 888.115, applying the zero-bedroom level for  
one person, the one-bedroom level for 2 persons, the 2-bedroom  
20 level for 3 persons, the 3-bedroom level for 4 persons and the  
4-bedroom level for 5 persons. For each additional person, the  
22 aggregate maximum level increases by \$75. For the purposes of  
this subsection, municipalities with populations greater than  
24 10,000 are deemed Standard Metropolitan Statistical Areas in  
those counties for which there are 2 fair market rent values and  
the aggregate maximum level of assistance for all Standard  
26 Metropolitan Statistical Areas is the average of the fair market  
rental values for the Standard Metropolitan Statistical Areas and  
28 areas that are not Standard Metropolitan Statistical Areas for  
each county in which there are 2 fair market rental values.

30 6. Ordinance filed. Each municipality shall present a copy  
of the ordinance establishing eligibility standards, maximum  
32 levels of assistance, administration and appeal procedures to the  
department. The ordinance filed must include all forms and  
34 notices, including the application form, notice of decision and  
appeal rights. Any amendment or modification of the municipal  
36 ordinance must be submitted to the department.

38 7. Assistance by vouchers or contract. Except when  
40 determined impractical by the administrator for good cause shown,  
assistance is provided in the form of a voucher payable to vendor  
42 or vendors or through direct municipal contract with a provider  
of goods or services.

44 **§9106. Shared dwelling units**

46 When an applicant shares a dwelling unit with one or more  
48 individuals, even when a landlord-tenant relationship may exist  
50 between individuals residing in the dwelling unit, eligible

2 applicants may receive assistance for no more than their pro rata  
3 share of the actual costs of the shared basic needs of that  
4 household according to the maximum levels of assistance  
5 established in the municipal ordinance. The income of household  
6 members not legally liable for supporting the household is  
7 considered available to the applicant only when there is a  
8 pooling of income.

9 Municipalities may by ordinance establish as a rebuttable  
10 presumption that persons sharing the same dwelling unit are  
11 pooling their income. Applicants who are requesting that the  
12 determination of eligibility be calculated as though one or more  
13 household members are not pooling their income have the burden of  
14 rebutting the presumption of pooling income.

15 **§9107. Determination of need: lump sum payments**

16 In determining need, the period of time used as a basis for  
17 the calculation is the 30-day period commencing on the date of  
18 the application. This prospective calculation does not  
19 disqualify an applicant who has exhausted income to purchase  
20 basic necessities if that income does not exceed the income  
21 standards established by the municipality. Notwithstanding this  
22 prospective calculation, if any applicant or recipient receives a  
23 lump sum payment prior to applying for assistance, that payment  
24 must be prorated over future months. The period of proration is  
25 determined by disregarding any portion of the lump sum payment  
26 that the applicant or recipient has spent to purchase basic  
27 necessities, including but not limited to: all basic necessities  
28 provided by general assistance; reasonable payment of funeral or  
29 burial expenses for a family member; reasonable travel costs  
30 related to the illness or death of a family member; repair or  
31 replacement of essentials lost due to fire, flood or other  
32 natural disaster; repair or purchase of a motor vehicle essential  
33 for employment, education, training or other day-to-day living  
34 necessities; and payment of bills earmarked for the purpose for  
35 which the lump sum is paid. All income received by the household  
36 between the receipt of the lump sum payment and the application  
37 for assistance is added to the remainder of the lump sum. The  
38 period of proration is then determined by dividing the remainder  
39 of the lump sum payment by the aggregate maximum level of  
40 assistance designated under section 9105. That dividend  
41 represents the period of proration determined by the  
42 administrator to commence on the date of receipt of the lump sum  
43 payment. The prorated sum for each month must be considered  
44 available to the household for 12 months from the date of  
45 application or during the period of proration, whichever is less.

46 **§9108. Records: confidentiality of information**

2 The overseer shall keep complete and accurate records  
3 pertaining to general assistance, including the names of eligible  
4 persons assisted and the amounts paid for their assistance.  
5 Records, papers, files and communications relating to an  
6 applicant or recipient made or received by persons charged with  
7 responsibility of administering this chapter are confidential and  
8 no information relating to a person who is an applicant or  
9 recipient may be disclosed to the general public, unless  
10 expressly permitted by that person.

11 **§9109. Municipality of responsibility: residency**

12 **1. General assistance required.** Municipalities shall  
13 provide general assistance to all eligible persons at the expense  
14 of that municipality, except as provided in section 9113.

15 A municipality may not move or transport a person into another  
16 municipality to avoid responsibility for general assistance  
17 support for that person. Any municipality that illegally moves  
18 or transports a person, or illegally denies assistance to a  
19 person that results in the person's relocation, in addition to  
20 the other penalties provided in this chapter, shall reimburse  
21 twice the amount of assistance to the municipality that provided  
22 the assistance to that person. That reimbursement must be made  
23 in accordance with subsection 5.

24 **2. Municipality of responsibility.** Except as provided in  
25 subsection 4, a municipality is responsible for the general  
26 assistance support of the following individuals:

27 **A. A resident of the municipality.** For the purposes of  
28 this section, a "resident" means a person who is physically  
29 present in a municipality with the intention of remaining in  
30 that municipality to maintain or establish a home and who  
31 has no other residence; and

32 **B. Eligible persons who apply to the municipality for**  
33 **assistance and who are not residents of that or any other**  
34 **municipality.** If a person is not a resident of any  
35 municipality, the municipality where that person first  
36 applies is responsible for support until a new residence is  
37 established.

38 **3. Durational residency requirement prohibited.** No  
39 municipality may establish a durational residency requirement for  
40 general assistance.

41 **4. Special circumstances.** Overseers of a municipality may  
42 not move or transport an applicant or recipient into another  
43 municipality to relieve their municipality of responsibility for  
44

2 that applicant's or recipient's support. The municipality of  
3 responsibility for relocations and institutional settings is as  
4 follows.

6 A. When an applicant or recipient requests relocation to  
7 another municipality and the overseers of a municipality  
8 assist that person to relocate to another municipality, the  
9 municipality from which that person is moving is responsible  
10 for the support of the recipient for 30 days after  
11 relocation. As used in this paragraph, "assist" includes:

12 (1) Granting financial assistance to relocate; and

14 (2) Making arrangements for a person to relocate.

16 B. If an applicant is in a group home, shelter,  
17 rehabilitation center, nursing home, hospital or other  
18 institution at the time of application and has either been  
19 in that institution for 6 months or less, or had a residence  
20 immediately prior to entering the institution that the  
21 applicant had maintained and to which the applicant intends  
22 to return, the municipality of responsibility is the  
23 municipality where the applicant was a resident immediately  
24 prior to entering the institution. For the purpose of this  
25 paragraph, a hotel, motel or similar place of temporary  
26 lodging is considered an institution when a municipality:

28 (1) Grants financial assistance for a person to move  
29 to or stay in temporary lodging;

32 (2) Makes arrangements for a person to stay in  
33 temporary lodging;

34 (3) Advises or encourages a person to stay in  
35 temporary lodging; or

38 (4) Illegally denies housing assistance and, as a  
39 result of that denial, the person stays in temporary  
40 lodging.

42 5. Disputes between municipalities. Nothing in this  
43 section permits a municipality to deny assistance to an otherwise  
44 eligible applicant when there is any dispute regarding  
45 residency. In cases of dispute regarding which municipality is  
46 the municipality of responsibility, the municipality where the  
47 application has been filed shall provide support until  
48 responsibility has been determined by the department. The  
49 department shall make a written determination within 30 working  
50 days of a complaint or notification of a dispute. The  
department's decision must include the sources of information

2 relied upon, findings of fact and conclusions of law regarding  
3 which municipality is responsible and the reimbursement due, if  
4 any, from the responsible municipality to the municipality  
5 providing assistance. If after 30 days the reimbursement has not  
6 been paid, the municipality to which reimbursement is due shall  
7 notify the department, and the department shall credit the  
8 municipality owed the reimbursement and either deduct that amount  
9 from the debtor municipality or refer the bill to the Treasurer  
10 of State for payment from any taxes, revenue, fines or fees due  
11 from the State to the municipality.

12 6. Appeals. Any municipality or person who is aggrieved by  
13 any decision or action made by the department pursuant to this  
14 section may appeal pursuant to the Maine Administrative Procedure  
15 Act. A request for that appeal must be in writing and must be  
16 made within 30 days of the written department decision. The  
17 appeal must be held within 30 days of receipt of that request and  
18 must be conducted by one or more fair hearing officers. In no  
19 event may an appeal be held before a person or body responsible  
20 for the decision or action. Review of any decision under this  
21 subsection must be pursuant to the Maine Rules of Civil  
22 Procedure, Rule 80C.

#### 24 §9110. Applications

26 In order to receive assistance from any municipality, the  
27 applicant or a duly authorized representative shall file a  
28 written application with the overseer, except as provided in  
29 section 9104, subsection 3.

32 1. Initial and subsequent applications. Except as provided  
33 in section 4316-A, subsection 1-A, a person who makes an  
34 application for assistance who has not applied for assistance in  
35 that or any other municipality must have that person's  
36 eligibility determined solely on the basis of need. All  
37 applications for general assistance that are not initial  
38 applications are repeat applications. The eligibility of repeat  
39 applicants must be determined on the basis of need and all other  
40 conditions of eligibility established by this chapter and  
municipal ordinance.

42 2. Emergencies. A person who does not have sufficient  
43 resources to provide one or more basic necessities in an  
44 emergency is eligible for emergency general assistance, even when  
45 that applicant has been found ineligible for nonemergency general  
46 assistance, except as provided in this subsection.

48 A. A person who is currently disqualified from general  
49 assistance for a violation of section 9117, 9119 or 9120 is  
50 ineligible for emergency assistance under this subsection.

2 B. Municipalities may by standards adopted in municipal  
4 ordinances restrict the disbursement of emergency assistance  
6 to alleviate emergency situations to the extent that those  
8 situations could not have been averted by the applicant's  
use of income and resources for basic necessities. The  
person requesting assistance shall provide evidence of  
income and resources for the applicable time period.

10 §9111. Eligibility

12 1. Eligibility of applicant; duration of eligibility. The  
14 overseer shall determine eligibility each time a person applies  
16 or reapplies for general assistance pursuant to this chapter and  
18 the ordinance adopted by the municipality in accordance with  
section 9105. The period of eligibility may not exceed one  
month. At the expiration of that period the person may reapply  
for assistance and the person's eligibility may be redetermined.

20 2. Determination of eligibility; applicant's  
22 responsibilities. Applicants for general assistance are  
24 responsible for providing to the overseer all information  
26 necessary to determine eligibility. If further information or  
28 documentation is necessary to demonstrate eligibility, the  
30 applicant must have the first opportunity to provide the specific  
information or documentation required by the overseer. When  
information required by the overseer is unavailable, the overseer  
shall accept alternative available information, which is subject  
to verification.

32 3. Determination of eligibility; overseer's  
34 responsibilities. In order to determine an applicant's  
36 eligibility for general assistance, the overseer first shall seek  
38 information and documentation from the applicant. Once the  
40 applicant has presented the necessary information, the overseer  
42 is responsible for determining eligibility. The overseer may  
44 seek verification necessary to determine eligibility. In order  
46 to determine eligibility, the overseer may contact sources other  
than the applicant for verification only with the specific  
knowledge and consent of the applicant, except that the overseer  
may examine public records without the applicant's knowledge and  
consent. Assistance may be denied or terminated if the applicant  
is unwilling to supply the overseer with necessary information,  
documentation or permission to make collateral contacts, or if  
the overseer can not determine that eligibility exists based on  
information supplied by the applicant or others.

48 4. Redetermination of eligibility. The overseer may  
50 redetermine a person's eligibility at any time during the period  
that person is receiving assistance if the overseer is notified

2 of any change in the recipient's circumstances that may affect  
4 the amount of assistance to which the recipient is entitled or  
6 that may make the recipient ineligible, provided that once a  
8 determination of eligibility has been made for a specific time  
period, a reduction in assistance for that time period may not be  
made without prior written notice to the recipient with the  
reasons for the action and an opportunity for the recipient to  
receive a fair hearing upon the proposed change.

10 5. Eligibility of members of person's household. Failure  
12 of an otherwise eligible person to comply with this chapter does  
14 not affect the general assistance eligibility of any member of  
16 the person's household who is not capable of working, including  
18 at least:

20 A. A dependent minor child;

22 B. An elderly, ill or disabled person; and

24 C. A person whose presence is required in order to provide  
26 care for any child under 6 years of age or for any ill or  
28 disabled member of the household.

30 6. Eligibility of minors who are parents. A person under  
32 18 years of age who has never married and who has a dependent  
34 child or is pregnant is eligible only if that person and child  
36 reside in a dwelling maintained by a parent or other adult  
38 relative as that parent's or relative's own home or in a foster  
40 home, maternity home or other adult-supervised supportive living  
42 arrangement unless:

32 A. The person has no living parent or the whereabouts of  
34 both parents are unknown;

36 B. No parent will permit the person to live in the parent's  
38 home;

40 C. The department determines that the physical or emotional  
42 health or safety of the person or dependent child would be  
44 jeopardized if that person and dependent child lived with a  
46 parent;

48 D. The individual has lived apart from both parents for a  
50 period of at least one year before the birth of any  
dependent child; or

E. The department determines, in accordance with rules  
adopted pursuant to this section, which must be in  
accordance with federal regulations, that there is good  
cause to waive this requirement.

2 For the purposes of this subsection, "parent" includes legal  
4 guardian.

6 **§9112. Emergency benefits prior to full verification**

8 If an applicant for general assistance states to the  
10 administrator that the applicant is in an emergency situation and  
12 requires immediate assistance to meet basic necessities, the  
14 overseer shall, pending verification, issue to the applicant  
16 either personally or by mail, as soon as possible but in no event  
18 later than 24 hours after application, sufficient benefits to  
20 provide the basic necessities needed immediately by the  
22 applicant, provided that the following conditions are met.

24 1. Probability of eligibility for assistance after full  
26 verification. As a result of the initial interview with the  
28 applicant, the overseer must have determined that the applicant  
30 will probably be eligible for assistance after full verification  
32 is completed.

34 2. Documentation. Where possible, the applicant shall  
36 submit to the overseer at the time of the initial interview  
38 adequate documentation to verify that there is a need for  
40 immediate assistance.

42 3. Information obtained. When adequate documentation is  
44 not available at the time of the initial application, the  
46 overseer may contact at least one other person for the purpose of  
48 obtaining information to confirm the applicant's statements about  
50 the need for immediate assistance.

4. Limitations. In no case:

A. May the authorization of benefits under this section  
exceed 30 days; and

B. May there be further authorization of benefits to the  
applicant until there has been full verification confirming  
the applicant's eligibility.

**§9113. State reimbursement to municipalities; reports**

1. Departmental reimbursement. When a municipality incurs  
net general assistance costs in any fiscal year in excess of  
.0003 of that municipality's most recent state valuation relative  
to the state fiscal year for which reimbursement is being issued,  
as determined by the State Tax Assessor in the statement filed as  
provided in Title 36, section 381, the Department of Human  
Services shall reimburse the municipality for 90% of the amount

in excess of these expenditures when the department finds that  
the municipality has been in compliance with all requirements of  
this chapter. If a municipality elects to determine need without  
consideration of funds distributed from any municipally  
controlled trust fund that must otherwise be considered for  
purposes of this chapter, the department shall reimburse the  
municipality for 66 2/3% of the amount in excess of these  
expenditures when the department finds that the municipality has  
otherwise been in compliance with all requirements of this  
chapter.

2. Municipalities reimbursed. When a municipality pays for  
expenses approved pursuant to section 9115 for hospital inpatient  
or outpatient care at any hospital during the time preceding the  
hospital's first payment year, as defined in Title 22-B, section  
10804, subsection 1, on behalf of any person who is otherwise  
eligible and who would have been entitled to receive payments for  
hospital care if that care had been rendered prior to May 1,  
1984, for services under the Catastrophic Illness Program, the  
department shall reimburse the municipality for 100% of those  
payments.

3. Reimbursement for administrative expenses. The  
department shall reimburse each municipality for the costs of a  
portion of the direct costs of paying benefits through its  
general assistance program if the department finds that the  
municipality was in compliance with all requirements of this  
chapter during the fiscal year for which reimbursement is  
sought. The amount of reimbursement to each municipality must be  
an amount equal to:

A. Fifty percent of all general assistance granted by that  
municipality below the .0003% of all state valuation amount;  
or

B. Ten percent of all general assistance granted.

Each municipality shall elect to be reimbursed under paragraph A  
or B at the beginning of the fiscal year for which reimbursement  
is sought.

4. Submission of reports. Municipalities shall submit  
reports as follows.

A. For purposes of this section, those municipalities that  
received reimbursement at 90% during the previous fiscal  
year of the State and those municipalities that expect to  
receive reimbursement at 90% during the current fiscal year  
of the State shall submit monthly reports on forms provided  
by the department.

2 B. Those municipalities that did not receive reimbursement  
4 at 90% during the previous fiscal year and do not expect to  
6 receive reimbursement at 90% for the current fiscal year  
shall submit quarterly or semiannual reports on forms  
provided by the department.

8 5. Claims. The Department of Human Services may refuse to  
10 accept and pay any claim for reimbursement that is not submitted  
12 by a municipality to the department within 90 days of the payment  
14 on which that claim is based or at the end of the reporting  
period for which reimbursement is sought unless just cause exists  
for failure to file a timely claim.

16 §9114. Unorganized territory

18 Residents of the unorganized territory are eligible for  
20 general assistance in the same manner as provided in this  
22 chapter. The commissioner shall establish standards of  
24 eligibility for the unorganized territory and has the same  
26 responsibilities with regard to the unorganized territory as  
28 apply to overseers in a municipality. The commissioner may  
30 appoint agents to administer the general assistance program  
32 within the unorganized territory. All costs of providing general  
assistance in the unorganized territory must be charged to the  
Unorganized Territory Education and Services Fund established  
under Title 36, chapter 115, except that costs which the State  
would reimburse under section 9113, if the unorganized territory  
were a municipality, must be paid by the General Fund.

34 §9115. Reimbursement to individuals relieving eligible persons:  
36 prior approval; emergencies

38 Municipalities, as provided in section 9109, shall pay  
40 expenses necessarily incurred for providing basic necessities to  
42 eligible persons anywhere in the State by any person not liable  
44 for their support provided that the municipality of  
46 responsibility must be notified and approve those expenses and  
48 services prior to their being made or delivered, except as  
provided in this section.

1. Emergency care. In the event of an admission of an  
eligible person to the hospital, the hospital shall notify the  
overseer of the liable municipality within 5 business days of the  
person's admission. In no event may hospital services to a  
person who meets the financial eligibility guidelines, adopted  
pursuant to Title 22-B, section 10807, subsection 1, be billed to  
the patient or to a municipality.

2 2. Burial or cremation. In the event of the death of an  
4 eligible person, the funeral director shall notify the overseer  
6 prior to burial or cremation or by the end of the next business  
8 day following the funeral director's receipt of the body,  
10 whichever is earlier. Notwithstanding section 9105, subsection 3,  
12 paragraph C, a decision on any application for assistance with  
14 burial expenses need not be rendered until the overseer has  
16 verified that no relative or other resource is available to pay  
18 for the direct burial or cremation costs, but the decision must  
20 be rendered within 10 days after receiving an application. The  
22 father, mother, grandfather, grandmother, children, grandchildren  
24 or siblings, by consanguinity, living within or owning real or  
26 tangible property within the State, are responsible for the  
28 burial or cremation costs of the eligible person in proportion to  
30 their respective abilities. When no legally liable relative  
32 possesses a financial capacity to pay either in lump sum or on an  
installment basis for the direct costs of a burial or cremation,  
the contribution of a municipality under this subsection is  
limited to a reasonable calculation of the funeral director's  
direct costs, less any and all contributions from any other  
source.

34 §9116. Cooperation in administration of general assistance

36 1. State departments. Upon the request of any municipal  
38 official charged with the responsibility of administering general  
40 assistance, the Department of Children and Families and any other  
42 department of the State having information that has a bearing on  
44 the eligibility of any person applying for general assistance  
46 shall release that information. The information must be  
48 restricted to those facts necessary for the official to make a  
50 determination of eligibility for general assistance.

2. Financial institutions. A treasurer of any bank, trust  
company, benefit association, insurance company, safe deposit  
company or any corporation or association receiving deposits of  
money, except national banks, shall, on request in writing signed  
by the overseer of any municipality or its agents, or by the  
commissioner or the commissioner's agents or by the Commissioner  
of Defense and Veterans' Services or that commissioner's agents,  
inform that overseer or the department or the Division of  
Veterans' Services of the amount deposited in the corporation or  
association to the credit of the person named in the request, who  
is a charge upon the municipality or the State, or who has  
applied for support to the municipality or the State.

3. Verification of employment. The applicant has  
responsibility for providing documentary verification of benefits  
received during the period for which assistance is requested, or  
in the month immediately prior to the application for assistance

2 when those wages and benefits are expected to be the same during  
3 the period for which assistance is requested.

4 The overseer shall give the applicant written notice that if the  
5 applicant does not provide the documentary verification within  
6 one week of the application, the employer will be contacted.

8 Notwithstanding any other provision of law, every employer shall,  
9 upon written request of the overseer, release information  
10 regarding any wages or other financial benefits paid to the  
11 applicant or a member of the applicant's household. No employer  
12 may discharge or otherwise adversely affect an employee because  
13 of any request for information pursuant to this section.

14 4. Confidentiality. Any person who seeks and obtains  
15 information under this section is subject to the same rules of  
16 confidentiality as the person who is caretaker of the information  
17 that is by law confidential.

20 5. Refusal. Any person who refuses to provide any  
21 information to an overseer who requests it in accordance with  
22 this section shall state in writing the reasons for the refusal  
23 within 3 days of receiving the request.

24 6. Penalty. Any person who refuses upon request to provide  
25 information as required by this section without just cause  
26 commits a civil violation for which a forfeiture of not less than  
27 \$25 nor more than \$100 may be adjudged to be recovered in a civil  
28 action in any court of competent jurisdiction. Any person who  
29 willfully renders false information to an administrator commits a  
30 Class E crime.

#### 32 §9117. False representation

34 Whoever knowingly and willfully makes any false  
35 representation of a material fact to the overseer of any  
36 municipality or to the department or its agents for the purpose  
37 of causing that or any other person to be granted assistance by  
38 the municipality or by the State is ineligible for assistance for  
39 a period of 120 days and is guilty of a Class E crime.

42 A person disqualified from receiving general assistance for  
43 making a false representation must be provided notice and an  
44 opportunity for an appeal as provided in sections 9124 and 9125.

46 If the fair hearing officer finds that a recipient made a  
47 false representation to the overseer in violation of this  
48 section, that recipient is required to reimburse the municipality  
for any assistance rendered for which that recipient was

2 ineligible and is ineligible from receiving further assistance  
3 for a period of 120 days.

4 Any recipient whose assistance is terminated or denied under  
5 this section may appeal that decision pursuant to the Maine Rules  
6 of Civil Procedure, Rule 80-B.

8 No recipient who has been granted assistance, in accordance  
9 with this chapter, may have that assistance terminated prior to  
10 the decision of the fair hearing officer. In the event of any  
11 termination of assistance to any recipient, the dependents of  
12 that person may still apply for and, if eligible, receive  
13 assistance.

#### 14 §9118. Use of income for basic necessities required

16 All persons requesting general assistance shall use their  
17 income for basic necessities. Except for initial applicants,  
18 recipients are not eligible to receive assistance to replace  
19 income that was spent within the 30-day period prior to the  
20 application on goods and services that are not basic  
21 necessities. The income not spent on goods and services that are  
22 basic necessities is considered available to the applicant. A  
23 municipality may require recipients to utilize income and  
24 resources according to standards established by the municipality,  
25 except that a municipality may not reduce assistance to a  
26 recipient who has exhausted income to purchase basic  
27 necessities. Municipalities shall provide written notice to  
28 applicants of the standards established by the municipalities.

#### 30 §9119. Work requirement

32 1. Ineligibility for assistance. An applicant is  
33 ineligible for assistance for 120 days in all municipalities in  
34 the State when any municipality establishes that the applicant,  
35 without just cause:

38 A. Refuses to search for employment when that search is  
39 reasonable and appropriate;

40 B. Refuses to register for work;

42 C. Refuses to accept a suitable job offer under this  
43 section;

46 D. Refuses to participate in a training, educational or  
47 rehabilitation program that would assist the applicant in  
48 securing employment;



2 E. Refuses to perform or willfully fails to perform a job  
3 assigned under subsection 3; or

4 F. Willfully performs a job assigned under subsection 3  
5 below the average standards of that job.

6 If a municipality finds that an applicant has violated a  
7 work-related rule without just cause, under this subsection or  
8 subsection 2, it is the responsibility of that applicant to  
9 establish the presence of just cause.

10 2. Period of ineligibility. An applicant, whether an  
11 initial or repeat applicant, who quits work or is discharged from  
12 employment due to misconduct as defined in Title 26, section  
13 1043, subsection 23, is ineligible to receive assistance for 120  
14 days after the applicant's separation from employment.

15 3. Municipal work program. A municipality may require that  
16 an otherwise eligible person who is capable of working be  
17 required to perform work for the municipality or work for a  
18 nonprofit organization, if that organization has agreed to  
19 participate as an employer in the municipal work program, as a  
20 condition of receiving general assistance. The municipality may  
21 also require recipients, as a part of the municipal work program,  
22 to participate in a training, educational or rehabilitative  
23 program that would assist the recipient in securing employment.  
24 The municipal work program is subject to the following  
25 requirements.

26 A. A person may not, as a condition of general assistance  
27 eligibility, be required to do any amount of work that  
28 exceeds the value of the net general assistance that the  
29 person would otherwise receive under municipal general  
30 assistance standards. Any person performing work under this  
31 subsection must be provided with net general assistance, the  
32 value of which is computed at a rate of at least the State's  
33 minimum wage.

34 B. A person may not be required to work under this  
35 subsection for a nonprofit organization if that work would  
36 violate a basic religious belief of that person.

37 C. An eligible person performing work under this subsection  
38 may not replace regular municipal employees or regular  
39 employees of a participating nonprofit organization.

40 D. An eligible person in need of emergency assistance may  
41 not be required to perform work under this subsection prior  
42 to receiving general assistance. An applicant who is not in  
43 need of emergency assistance may be required to

2 satisfactorily fulfill a workfare requirement prior to  
3 receiving the nonemergency assistance conditionally granted  
4 to that applicant.

5 E. Expenses related to work performed under this subsection  
6 by an eligible person must be considered in determining the  
7 amount of net general assistance to be provided to the  
8 person.

9 F. General assistance provided by a municipality for work  
10 performed by an eligible person under this subsection must be:

11 (1) Included in the reimbursable net general  
12 assistance costs; and

13 (2) Itemized separately in reports to the department  
14 under section 9113.

15 G. A person may not be required to work under this  
16 subsection if that person is physically or mentally  
17 incapable of performing the work assigned.

18 4. Limitations of work requirement. In no case may any  
19 work requirement or training or educational program under this  
20 section interfere with a person's:

21 A. Existing employment;

22 B. Ability to pursue a bona fide job offer;

23 C. Ability to attend an interview for possible employment;

24 D. Classroom participation in a primary or secondary  
25 educational program intended to lead to a high school  
26 diploma; or

27 E. Classroom or on-site participation in a training program  
28 that is either approved or determined, or both, by the  
29 Department of Labor to be reasonably expected to assist the  
30 individual in securing employment. This paragraph does not  
31 include participation in a degree granting program, except  
32 when that program is a training program operated under the  
33 control of the Department of Children and Families or the  
34 Department of Labor.

35 5. Eligibility regained. A person who has been  
36 disqualified by any municipality for not complying with any work  
37 requirement of this section may regain eligibility during the  
38 120-day period by becoming employed or otherwise complying with

2 the work requirements of this section. An applicant who is  
3 disqualified due to failure to comply with the municipal work  
4 program may be given only one opportunity to regain eligibility  
5 during the 120-day disqualification period, except that if an  
6 applicant who regains eligibility is again disqualified for  
7 failing to comply with the municipal work program within the  
8 initial period of disqualification, the applicant is ineligible  
9 for assistance for 120 days and does not have the opportunity to  
10 requalify during the 120-day period.

11 6. Just cause defined. Just cause for failure to meet work  
12 requirements or the use of potential resources must be found when  
13 there is reasonable and verifiable evidence of:

14 A. Physical or mental illness or disability;

15 B. Below-minimum wages;

16 C. Sexual harassment;

17 D. Physical or mental inability to perform required job  
18 tasks;

19 E. Inability to work required hours or to meet piece work  
20 standards;

21 F. Lack of transportation to and from work or training;

22 G. Inability to arrange for necessary child care or care of  
23 an ill or disabled family member;

24 H. Any reason found to be good cause by the Department of  
25 Labor; and

26 I. Any other evidence that is reasonable and appropriate.  
27 The overseer may not require medical verification of medical  
28 conditions that are apparent or are of such short duration  
29 that a reasonable person would not ordinarily seek medical  
30 attention. In any case in which the overseer requires  
31 medical verification and the applicant has no means of  
32 obtaining verification, the overseer shall grant assistance  
33 for the purpose of obtaining that verification.

34 **§9120. Use of potential resources**

35 An applicant or recipient shall make a good faith effort to  
36 secure any potential resource that may be available, including,  
37 but not limited to, any state or federal assistance program,  
38 employment benefits, governmental or private pension programs,  
39 available trust funds, support from legally liable relatives,  
40

41 child-support payments and jointly held resources where the  
42 applicant or recipient share may be available to the individual.  
43 Assistance may not be withheld pending receipt of the resource if  
44 application has been made or good faith effort is being made to  
45 secure the resource.

46 An individual applying for or receiving assistance due to a  
47 disability shall make a good faith effort to make use of any  
48 medical and rehabilitative resources that may be recommended by a  
49 physician, psychologist or other professional retraining or  
50 rehabilitation specialist that are available without financial  
burden and would not constitute further physical risk to the  
individual.

An applicant who refuses to utilize potential resources  
without just cause, after receiving a written 7-day notice, is  
disqualified from receiving assistance until the applicant has  
made a good faith effort to secure the resource.

An applicant who forfeits receipt of or causes reduction in  
benefits from another public assistance program because of fraud,  
misrepresentation or a knowing or intentional violation of  
program rules or a refusal to comply with program rules without  
just cause is not eligible to receive general assistance to  
replace the forfeited assistance for the duration of the  
forfeiture.

**§9121. Recovery of expenses**

A municipality or the State, that has incurred general  
assistance program costs for the support of any eligible person,  
may recover the full amount expended for that support either from  
the person relieved or from any person liable for the recipient's  
support, their executors or administrators, in a civil action. In  
no case may a municipality or the State recover through a civil  
action, the full or part of, the amount expended for the support  
of a previously eligible person, if, as a result of the repayment  
of that amount, the previously eligible person would, in all  
probability, again become eligible for general assistance.

Notwithstanding any other provision of law, municipalities  
have a lien for the value of all general assistance payments made  
to a recipient on any lump sum payment made to that recipient  
under the Maine Workers' Compensation Act of 1992 or similar law  
of any other state.

The department shall enter into an agreement with the Social  
Security Administration to institute an interim assistance  
reimbursement for the purpose of the repayment of state and local  
funds expended for providing assistance to Supplemental Security

Income applicants or recipients while the Supplemental Security Income payments are pending or suspended. Written authorization must be given by the recipients.

A municipality may not recover from any recipient who has been injured while performing work under section 9119, subsection 3, any portion of any medical or rehabilitative expenses associated with that injury or any portion of any other general assistance benefits associated with that injury.

Nothing in this section limits or affects in any way the right of any individual to file an action under the Maine Tort Claims Act, except that a municipality that provides general assistance to a minor is absolutely immune from suit on any tort claims seeking recovery or damages by or on behalf of the minor recipient in connection with the provision of general assistance.

All collections, fees and payments received by the department from the Federal Government as a result of an interim assistance reimbursement must be dedicated to support the administration of the General Assistance program.

#### §9122. Liability of relatives for support

1. Relatives liable. A parent of a child under 25 years of age and a spouse living in or owning property in the State shall support their children or husband or wife in proportion to their respective ability. Liability for burial expenses is governed by section 9115.

2. Rental payments to relatives. A municipality or the State may decide not to make payments for rental assistance on behalf of an otherwise eligible individual when the rental payments would be made to a parent, grandparent, child, grandchild, sibling, parent's sibling or any of their children, unless the municipality finds that the rental arrangement has existed for 3 months prior to the application for assistance and is necessary to provide the relative with basic necessities.

3. Recovery of assistance provided. A municipality or the State, after providing general assistance to a dependent of a legally responsible parent or to a person's spouse who is financially capable of providing support, may then seek reimbursement or relief for that support by initiating a complaint to the Superior Court or District Court, including by small claims action, located in the division or county where the legally responsible parent or spouse resides. The court may cause the legally responsible parent or spouse to be summoned and upon hearing or default may assess and apportion a reasonable sum upon those who are found to be of sufficient ability for the

support of the eligible person and if a sum is so assessed and apportioned, the court shall execute a writ. The assessment may not be made to pay any expense for relief provided more than 12 months before the complaint was filed. Any action brought under this section is governed by the Maine Rules of Civil Procedure. The court may, from time to time, make any further order on complaint of an interested party and, after notice is given, alter the assessment or apportionment.

#### §9123. Liens on real estate

A municipality or the State may claim a lien against the owner of real estate for the amount of money spent by it to provide mortgage payments on behalf of an eligible person under this chapter on any real estate that is the subject of a mortgage, whether land or buildings or a combination of land and buildings. In addition, a municipality may claim a lien against the owner of real estate for the amount of money spent by it to make capital improvements to the real estate, whether land or buildings or a combination of land and buildings, on behalf of an eligible person under this chapter.

The municipal officers, their designee or the State shall file a notice of the lien with the register of deeds of the county where the property is located within 30 days of making a mortgage payment or, if applicable, payment for capital improvements. That filing secures the municipality or State's lien interest for an amount equal to the sum of that mortgage or capital improvement payment and all subsequent mortgage or capital improvement payments made on behalf of the same eligible person. Not less than 10 days prior to the filing, the municipal officers, their designee or the State shall send notification of the proposed action by certified mail, return receipt requested, to the owner of the real estate and any record holder of the mortgage. The lien notification must clearly inform the recipient of the limitations upon enforcement contained in this section; it must also contain the title, address and telephone number of the municipal official who granted the assistance. A new written notice including these provisions must be given to the recipient each time the amount secured by the lien is increased. The lien is effective until enforced by an action for equitable relief or until discharged.

Interest on the amount of money secured by the lien may be charged by the State or a municipality, but in no event may the rate exceed the maximum rate of interest allowed by the Treasurer of State, pursuant to Title 36, section 186. For the State, the rate of interest must be established by the department. For a municipality, the rate of interest must be established by the

2 municipal officers. Interest accrues from and including the date  
3 the lien is filed.

4 The costs of securing and enforcing the lien may be  
5 recoverable upon enforcement.

6 No lien may be enforced under this section while the person  
7 named in the lien is either currently receiving any form of  
8 public assistance or, as a result of enforcement, would become  
9 eligible for general assistance.

10 In no event may the lien be enforced prior to the death of  
11 the recipient of general assistance or the transfer of the  
12 property.

13 §9124. Grant, denial, reduction or termination to be  
14 communicated in writing; right to a hearing

15 Any action relating to the grant, denial, reduction,  
16 suspension or termination of relief provided under this chapter  
17 must be communicated to the applicant in writing. The decision  
18 must include the specific reason or reasons for that action and  
19 must inform the person affected of the right to a hearing, the  
20 procedure for requesting a hearing, the right to notify the  
21 department and the available means for notifying the department,  
22 if the person believes that the municipality has acted in  
23 violation of this chapter. All proceedings relating to the  
24 grant, denial, reduction, suspension or termination of relief  
25 provided under this chapter are not public proceedings under  
26 Title 1, chapter 13, unless otherwise requested by the applicant  
27 or recipient.

28 §9125. Right to a fair hearing

29 A person aggrieved by a decision, act, failure to act or  
30 delay in action concerning that person's application for general  
31 assistance under this chapter has the right to an appeal. If a  
32 person's application has been approved, general assistance may  
33 not be revoked during the period of entitlement until that person  
34 has been provided notice and an opportunity for hearing as  
35 provided in this section. Within 5 working days of receiving a  
36 written decision or notice of denial, reduction or termination of  
37 assistance, in accordance with the provisions of section 9124, or  
38 within 10 working days after any other act or failure to act by  
39 the municipality with regard to an application for assistance,  
40 the person may request an appeal. A hearing must be held by the  
41 fair hearing authority within 5 working days following the  
42 receipt of a written request by the applicant for an appeal. The  
43 hearing may be conducted by the municipal officers, a board of  
44 appeals created under Title 30-A, section 2691, or one or more  
45 persons appointed by the municipal officers to act as a fair  
46 hearing authority. An appeal may not be held before a person or  
47 body responsible for the decision, act, failure to act or delay  
48 in action relating to the applicant.

2 persons appointed by the municipal officers to act as a fair  
3 hearing authority. An appeal may not be held before a person or  
4 body responsible for the decision, act, failure to act or delay  
5 in action relating to the applicant.

6 The person requesting the appeal and the municipal  
7 administrator responsible for the decision being appealed must be  
8 afforded the right to confront and cross-examine any witnesses  
9 presented at the hearing, present witnesses in their behalf and  
10 be represented by counsel or other spokesperson. A claimant must  
11 be advised of these rights in writing. The decision on an appeal  
12 must be based solely on evidence adduced at the hearing. The  
13 Maine Rules of Evidence do not apply to information presented to  
14 the fair hearing authority. The standard of evidence is the  
15 standard set in Title 5, section 9057, subsection 2. The person  
16 requesting the appeal must, within 5 working days after the  
17 appeal, be furnished with a written decision detailing the  
18 reasons for that decision. When any decision by a fair hearing  
19 authority or court authorizing assistance is made, that  
20 assistance must be provided within 24 hours. Review of any  
21 action or failure to act under this chapter must be conducted  
22 pursuant to the Maine Rules of Civil Procedure, Rule 80-B. The  
23 municipality shall make a record of the fair hearing. The  
24 municipality's obligation is limited to keeping a taped record of  
25 the proceedings. The applicant must pay costs for preparing any  
26 transcripts required to pursue an appeal of a fair hearing  
27 authority's decision.

28 §9126. Department responsibilities

29 The department shall, in accordance with this section, share  
30 responsibility with municipalities for the proper administration  
31 of general assistance.

32 1. Review. The department shall review the administration  
33 of general assistance in each municipality for compliance with  
34 this chapter. This review must be made on a regular basis and  
35 may be made in response to a complaint from any person as  
36 necessary.

37 The department shall inspect the municipality's records and  
38 discuss the administration of the program with the overseer. The  
39 overseer or the overseer's designee shall be available during the  
40 department's review and shall cooperate in providing all  
41 necessary information.

42 The department shall report the results of its review in writing  
43 to the municipality and, when applicable, to the complainant.  
44 The written notice must set forth the department's findings of  
45 whether the municipality is in compliance with this chapter.

2 2. Violation; penalty. If the department finds any  
4 violation of this chapter after review, it shall notify the  
6 municipality that it has 30 days in which to correct that  
8 violation and specify what action must be taken in order to  
10 achieve compliance. The municipality shall file a plan with the  
12 department setting forth how it will attain compliance. The  
14 department shall notify the municipality if the plan is  
16 acceptable and that it will review the municipality for  
18 compliance within 60 days of accepting the plan. Any  
20 municipality that fails to file an acceptable plan with the  
22 department or that is in violation of this chapter at the  
24 expiration of the 60-day period is subject to a civil penalty of  
26 not less than \$500. The department shall enforce this section in  
28 any court of competent jurisdiction. Every 30-day period that a  
30 municipality is in violation of this chapter after review and  
32 notification constitutes a separate offense. In addition to the  
34 civil penalty, the department shall withhold reimbursement to any  
36 municipality that is in violation of this chapter until it  
reaches compliance.

22 3. Departmental assistance. If the department finds that a  
24 person in immediate need of general assistance has not received  
26 that assistance as a result of a municipality's failure to comply  
28 with the requirements of this chapter, the department shall,  
30 within 24 hours of receiving a request to intervene and after  
32 notifying the municipality, grant this assistance in accordance  
34 with rules adopted by it. The expense of that assistance  
36 granted, including a reasonable proportion of the State's  
administrative cost that can be attributed to that assistance,  
must be billed by the department to the municipality. If that  
bill remains unpaid 30 days after presentation to the  
municipality, the department shall refer the bill to the  
Treasurer of State for payment from any taxes, revenue, fines or  
fees due from the State to the municipality.

A municipality may not be held responsible for reimbursing the  
department for assistance granted under this subsection if the  
department failed to intervene within 24 hours of receiving the  
request to intervene or if the department failed to make a good  
faith effort, prior to the intervention, to notify the  
municipality of the department's intention to intervene.

44 4. Appeal. Any municipality or person who is aggrieved by  
46 any decision or action made by the department pursuant to this  
48 section may appeal pursuant to the Maine Administrative Procedure  
50 Act, Title 5, chapter 375, subchapter IV. A request for that  
appeal must be in writing and must be made within 30 days of  
receiving notification. The hearing on an appeal must be held  
within 30 days of receipt of that request and must be conducted

2 by one or more fair hearing officers. In no event may an appeal  
4 be held before a person or body responsible for the decision or  
6 action. Review of any decision under this section must be  
8 pursuant to the Maine Rules of Civil Procedure, Rule 80 C.

Sec. A-3. 22-B MRSA is enacted to read:

TITLE 22-B

HEALTH AND DEVELOPMENTAL SERVICES

PART 1

GENERAL PROVISIONS

CHAPTER 101

DEPARTMENT OF HEALTH AND DEVELOPMENTAL  
SERVICES; COMMISSIONER

§101. Definitions

As used in this Title, unless the context otherwise  
indicates, the following terms have the following meanings.

1. Commissioner. "Commissioner" means the Commissioner of  
Health and Developmental Services.

2. Department. "Department" means the Department of Health  
and Developmental Services.

3. State institution. "State institution" means:

A. The Augusta Mental Health Institute;

B. The Bangor Mental Health Institute;

C. The Pineland Center; or

D. The Aroostook Residential Center.

§102. Department of Health and Developmental Services

The Department of Health and Developmental Services is  
established. Except where responsibility is expressly given to  
another department, the Department of Health and Developmental  
Services is responsible for ensuring the implementation of the  
provisions of this Title. The department is a cabinet-level  
department consisting of at least the following organizational  
units:

2 1. Bureau of Community Health. The Bureau of Community  
4 Health;

6 2. Bureau of Adults in Need of Special Services. The  
8 Bureau of Adults in Need of Special Services;

10 3. Bureau of Mental Health. The Bureau of Mental Health;

12 4. Bureau of Medical Quality Assurance. The Bureau of  
14 Medical Quality Assurance; and

16 5. Office of Consumer Affairs. The Office of Consumer  
18 Affairs.

20 Within the resources available to the department, the  
22 commissioner may establish additional organizational units and  
24 sub-units necessary to carry out the responsibilities of the  
26 department in an efficient and effective manner.

### 28 §103. Mission

30 1. Mission statement. The State of Maine declares that all  
32 citizens must have the opportunity to live in healthy  
34 surroundings and must have adequate access to health care and  
36 social services. The State must provide leadership to promote  
38 health, prevent disease and to reduce or eliminate the health,  
40 social, geographic and economic barriers to optimal independence  
42 for all Maine citizens by:

44 A. Generating organized community effort to pursue public  
46 health by applying the latest scientific and technical  
48 knowledge;

B. Ensuring that the health care system is rational and  
well integrated, and that it meets the needs of all  
citizens; and

C. Ensuring that a comprehensive system of care exists that  
enables citizens with chronic physical or mental conditions  
to fully participate in their communities.

The State's role is to ensure that vital elements are in place to  
pursue the mission and to facilitate a partnership with citizens  
and public, private and nonprofit agencies to achieve common  
goals.

2 2. Goals. The goals of the State are:

2 A. To ensure that health and social services necessary to  
4 achieve agreed upon objectives are provided efficiently and  
6 effectively and are continuously improved through an  
8 appropriate balance of public and private efforts;

10 B. To assess health needs in the State based on State-wide  
12 data collection and to establish State-wide health outcomes,  
14 collaborating with regional and local health entities where  
16 they exist;

18 C. To promote State and federal legislation that provides  
20 an adequate statutory base for health activities in the  
22 State;

24 D. To ensure appropriate organized State-wide, regional and  
26 local efforts to develop and maintain essential personal,  
28 vocational, educational, and environmental health services;  
30 to provide full access to necessary services; and to solve  
32 problems inimical to health; and

34 E. To ensure that services are accessible to all Maine  
36 citizens and to advocate for empowerment, choice, personal  
38 responsibility and participation by consumers and families.

40 3. Guiding principles. The following principles guide the  
42 State.

44 A. Priority should be placed on the development of a  
46 comprehensive, coordinated, community-based system of  
48 services that is driven by customer needs and desired  
outcomes.

B. Maximum feasible involvement of all Maine people should  
be promoted in the establishment of State health policy.

C. The health services delivery system should be  
decentralized and services should be accessible to all Maine  
citizens.

D. The ideal health services delivery system should ensure  
the provision of services that are respectful of the  
complete health needs, both physical and mental, of each  
individual.

E. The ideal system should unite the public, private, and  
nonprofit sectors in a new effort to plan and create new  
service resources at the local level.

2 §104. Commissioner of Health and Developmental Services

1. Appointment. The Governor shall appoint the commissioner, subject to review by the joint standing committee of the Legislature having jurisdiction over human resource matters and to confirmation by the Senate. The commissioner is the head of the department, responsible for its overall direction. The commissioner serves at the pleasure of the Governor.

2. Vacancy. Vacancies in the office of the commissioner must be filled as follows.

A. Any vacancy of the commissioner's position must be filled by appointment under subsection 1.

B. If the commissioner's position is vacant or if the commissioner is absent or disabled, the associate commissioner for programs shall perform the duties and have the powers provided by law for the commissioner.

C. If the positions of the commissioner and the associate commissioner for programs are both vacant or if both officials are absent or disabled, the associate commissioner for administration shall perform the duties and have the powers provided by law for the commissioner.

3. Qualifications. To qualify for appointment as commissioner, a person must have training and experience in human services administration or satisfactory experience in the direction of work of a comparable nature.

#### §105. Commissioner's powers and duties

1. Powers. The commissioner may:

A. Distribute the functions and duties outlined in this Title among the department's organizational units so as to integrate the work properly and to promote the most economical and efficient administration of the department;

B. Perform any legal act relating to the care, custody, treatment, relief and improvement of the residents of state institutions or purchase residential services when the department does not provide the appropriate institutional services for those persons;

C. Provide for the training of nurses; and

D. Designate employees of the department to represent the department in Probate Court only in:

(1) Matters relating to the performance of duties in uncontested guardianship, conservatorship or termination of guardianship or conservatorship proceedings; and

(2) Requests for emergency guardianships arising from the need for emergency medical treatment or placement in adult foster homes, boarding homes or nursing homes or for orders necessary to apply for or preserve an estate in emergency situations.

2. Duties. The commissioner shall:

A. As soon as practicable after the close of a fiscal year that ends in an even-numbered year, report to the Governor the activities of the department during the biennial period just ended with suggestions for legislative action that the commissioner considers necessary or important.

#### §106. Department personnel

The commissioner may employ staff necessary to carry out the responsibilities of the department. Staff are subject to the Civil Service Law unless otherwise specified in law. Positions listed in this section are not subject to the Civil Service Law and serve at the pleasure of the commissioner.

1. Associate commissioners. The commissioner may appoint an Associate Commissioner for Programs, who must have training and experience in the planning and administration of human services, and an Associate Commissioner for Management and Budget, who must have training and experience in general management.

2. Other positions. The commissioner may appoint the following:

A. Director, Bureau of Community Health;

B. Director, Bureau of Adults in Need of Special Services;

C. Director, Bureau of Mental Health;

D. Director, Bureau of Medical Quality Assurance;

E. Director, Mental Retardation Facility;

F. Assistant to the Commissioner for Consumer Affairs; and

G. Assistant to the Commissioner.

2 3. Clinical directors. The commissioner, with the approval  
of the Governor, may employ and set the salaries up to the  
4 maximum adjusted pay grade for clinical director positions.  
Clinical director positions are excluded from the definition of  
6 state employee under Title 26, section 979-A, subsection 6.  
Employees in that classification hired after July 1, 1989 serve  
8 at the pleasure of the commissioner and must, as a condition of  
continued employment, maintain clinical privileges to practice  
10 medicine as determined by the respective medical staff and the  
superintendent of the facility. Employees in the classification  
12 of clinical director prior to July 1, 1989, may elect to retain  
current bargaining unit and civil service status. Employees so  
14 "grandfathered" retain salary and benefit entitlement provided  
for on current pay schedules and collective bargaining agreements.

16 4. Physicians. Employees in the classifications of  
physician I, II and III within the department who work in the  
18 areas of mental health, mental retardation or forensics are  
unclassified state employees, as defined by Title 26, section  
20 979-A, subsection 6, and are members of bargaining units, subject  
to Title 26, chapter 9-B. An employee in any of these  
22 classifications must, as a condition of continued employment,  
maintain necessary clinical privileges to practice medicine in  
24 that employee's position as determined by the respective medical  
staff and the superintendent of the facility. Any termination of  
26 employment due to a loss of clinical privileges to practice  
28 medicine as referenced under this paragraph is not subject to the  
grievance procedure under any collective bargaining agreement.

#### 30 §107. Service delivery regions

32 The commissioner shall organize regional service delivery in  
34 accordance with the following regional boundaries.

36 1. Region I. Region I is all of Aroostook County.

38 2. Region II. Region II is all of Piscataquis County,  
40 Penobscot County, Hancock County and Washington County.

42 3. Region III. Region III is all of Somerset County,  
Kennebec County, Waldo County, Knox County, Lincoln County and  
44 Sagadahoc County and that portion of Cumberland County that  
includes the municipalities of Brunswick, Freeport and Harpswell.

46 4. Region IV. Region IV is all of Franklin County, Oxford  
County and Androscoggin County.

48 5. Region V. Region V is all of York County and all of  
50 Cumberland County except that portion that is part of Region III.

#### 2 §108. Joint location of services

4 In cooperation with the Bureau of General Services and the  
Department of Children and Families, the department shall locate  
6 its service delivery sites with those of the Department of  
Children and Families, subject to the following provisions.

8 1. Leases. Joint location must occur as leases expire,  
10 except as provided in subsection 2. A lease may be renegotiated  
or extended on a short-term basis in order to make its expiration  
12 date coincide with those of other relevant leases.

14 2. Exceptions. Joint location is not required if the costs  
as estimated by the Bureau of General Services substantially  
16 exceed the benefits as estimated by the Bureau of General  
Services. In estimating benefits, the Bureau of General Services  
18 shall consider, but is not limited to, the following:

20 A. Monetary savings expected from leasing fewer but larger  
spaces;

22 B. Administrative savings expected by either the department  
24 or the Department of Children and Families from sharing  
regional administrative functions;

26 C. Improved access expected for customers; and

28 D. Improved coordination and quality of services expected  
30 from greater interaction of staff across departments.

32 3. Other departments. This section does not prohibit the  
Bureau of General Services from including other State agencies at  
34 a joint location site. Other State agencies that may jointly  
locate include, but are not limited to, the Department of Labor,  
36 the Department of Secretary of State and the Department of  
Education.

38 4. Reports. The Bureau of General Services shall submit  
40 progress reports regarding the implementation of this section to  
the joint standing committee of the Legislature having  
42 jurisdiction over human resource matters by the following dates:

44 A. January 1, 1996;

46 B. January 1, 1998; and

48 C. January 1, 2000.

50 **CHAPTER 103**



2 **USE OF CONFIDENTIAL INFORMATION FOR**  
4 **PERSONNEL AND LICENSURE ACTIONS**

6 **§201. Definitions**

8 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

10 1. Confidential information. "Confidential information" means information deemed confidential by chapter 1413, section 8008 or section 8903.

14 2. Hearing officer. "Hearing officer" means presiding officer, judge, board chairman, arbitrator or any other person responsible for conducting a proceeding or hearing subject to this chapter.

18 3. Licensing board. "Licensing board" means a professional or occupational licensing board that licenses, certifies or registers a person in a profession or occupation that is included in the list of professional and occupational licensing boards in Title 5, section 12004-A.

20 **§202. Disclosure and use of confidential information; governing provisions**

24 Any information derived by the department in the course of carrying out its functions and that is confidential under chapter 1413, section 8008 or section 8903, that relates to a state employee or a person licensed, certified or registered by a licensing board who is alleged to have engaged in any unlawful activity or professional misconduct, or in conduct in violation of laws or rules relating to a licensing board, may be disclosed to and used by the appropriate state agencies and licensing boards only in accordance with this chapter. The department, other state agencies and licensing boards shall comply with the following.

28 1. Purpose for which disclosure is made. Any confidential information provided to a state agency, department or licensing board may be used only for investigative and other action within the scope of the authority of that agency, department or licensing board and to determine whether the employee or the person licensed, certified or registered by the board has engaged in unlawful activity, professional misconduct or activities in violation of the laws or rules relating to the board.

30 2. Designation of person to receive confidential information. State agencies, departments and licensing boards

2 reasonably expected to be recipients of confidential information, as determined by the commissioner, shall designate a person to receive the confidential information for investigative purposes.

4 3. Limitations on disclosure. Disclosure is limited to information that is directly related to the matter at issue. The identity of reporters and other persons may not be disclosed except as necessary and relevant. Access to the information is limited to parties, parties' representatives, counsel of record and the hearing officers responsible for the determinations. The information may be used only for the purpose for which the release was intended.

14 **§203. Confidential information provided to state employees, the Bureau of Human Resources and the Bureau of Employee Relations**

16 1. Disclosure to state employees. Confidential information that is relevant to a grievance or a disciplinary procedure within the department must be provided to the affected employee and the employee's designated representative.

18 2. Disclosure to Bureau of Employee Relations and the Bureau of Human Resources. Confidential information that is relevant to a grievance or disciplinary procedure within the department must be provided to the Bureau of Employee Relations in cases regarding state employment subject to the State Employee Labor Relations Act, Title 26, chapter 9-B, and to the Bureau of Human Resources for state employees not subject to Title 26, chapter 9-B, when the Bureau of Employee Relations or the Bureau of Human Resources become involved in the grievance or disciplinary process, including appeals to an arbitrator or the Civil Service Appeals Board.

22 3. Procedures governed by contract. If any other procedure relating to the use of confidential information in state employee personnel actions is governed by collective bargaining agreements, the collective bargaining agreements control, except as provided in section 202.

24 **§204. Confidential information provided to professional and occupational licensing boards**

26 If confidential information regarding a person subject to or seeking licensure, certification or registration by a licensing board indicates that the person may have engaged in unlawful activity, professional misconduct or conduct that may be in violation of the laws or rules relating to the licensing board, the commissioner may release this information to the appropriate licensing board. Confidential information must be disclosed and

used in accordance with section 202 and may also be disclosed to members, employees and agents of a licensing board who are directly related to the matter at issue.

1. Notice to the licensee or applicant. Notice of the release of confidential information must be provided by the board to the licensee or applicant in accordance with the law and rules relating to the licensing board. If the law or rules relating to a licensing board do not provide for notice to licensees or applicants subject to or seeking licensure, certification or registration, the licensing board shall provide notice to the licensee or applicant upon determination of the board to take further action following its investigation.

2. Licensing board requests for confidential information. Any licensing board pursuing action within the scope of the board's authority or conducting an investigation of any person subject to or seeking licensure, certification or registration by the board for engaging in unlawful activity, professional misconduct or conduct that may be in violation of the laws or rules relating to the board may request confidential information from the department. Any information provided to the board for an investigation is governed by section 202 and this section.

3. Use of confidential information in proceedings. The use of confidential information in proceedings, informal conferences and adjudicatory hearings is governed by Title 5, section 9057, subsection 6.

#### §205. Information provided for unemployment compensation proceedings relevant to state employment

If confidential information is relevant to an unemployment compensation proceeding with respect to the provision of, denial or termination of unemployment compensation benefits related to a person's state employment, the commissioner may release the confidential information to the Commissioner of Labor. The Commissioner of Labor may request from the commissioner confidential information that may be directly related to an unemployment compensation proceeding with respect to a person's state employment. The commissioner may release the confidential information to the Commissioner of Labor if the confidential information is related to the proceeding. The Commissioner of Labor shall provide the claimant with access to the information.

#### §206. Penalty for violations

Any person who violates this chapter is subject to the applicable penalty as provided in chapter 1413 or section 8902.

## CHAPTER 105

### OTHER DEPARTMENTAL FUNCTIONS AND ADVISORY ORGANIZATIONS

#### §301. Office of Advocacy

1. Definition. As used in this section, "client" means a person requesting or receiving services from the Bureau of Mental Health, the Division of Mental Retardation, a state institution or from any agency licensed or funded by the Bureau of Mental Health, the Division of Mental Retardation or a state institution.

2. Establishment. The Office of Advocacy is established within the department solely to investigate the claims and grievances of clients, to investigate with the Department of Children and Families or the Bureau of Adults in Need of Special Services, as appropriate, all allegations of adult and child abuse in state institutions and to advocate on behalf of clients for compliance by any institution, other facility or agency administered, licensed or funded by the department with all laws, administrative rules and institutional and other policies relating to the rights and dignity of clients.

3. Chief advocate. A chief advocate shall direct and coordinate the program of the office.

A. The chief advocate shall report administratively to the commissioner and advise, consult with and inform the commissioner on the issues described in this section.

B. The chief advocate shall select other advocates needed to carry out the intent of this section who shall report only to the chief advocate.

C. Both the chief advocate and all other advocates are classified state employees.

4. Duties. The Office of Advocacy, through the chief advocate and the other advocates, shall:

A. Receive or refer complaints made by clients and represent the interests of clients in any matter pertaining to the rights and dignity of clients;

B. Intercede on behalf of these clients with officials of the institutions, facilities and agencies administered, licensed or funded by the department, except that the Office of Advocacy may refuse to take action on any complaint that

2 it deems to be trivial or moot or for which there is clearly  
3 another remedy available;

4 C. Assist clients in any hearing or grievance proceeding of  
5 the department;

6 D. Refer clients to other agencies or entities for the  
7 purpose of advocating for the rights and dignity of these  
8 persons;

9 E. Act as an information source regarding the rights of all  
10 clients, keeping itself informed about all laws,  
11 administrative rules and institutional and other policies  
12 relating to the rights and dignity of the clients and about  
13 relevant legal decisions and other developments related to  
14 the field of mental health and mental retardation, both in  
15 this State and in other parts of the country;

16 F. Make and publish reports necessary to the performance of  
17 the duties described in this section. The chief advocate may  
18 report findings of the office to groups outside the  
19 department, including legislative bodies, advisory  
20 committees, commissions, law enforcement agencies and the  
21 press, and may authorize the advocates in the Office of  
22 Advocacy to report findings. At least annually, the chief  
23 advocate shall report both in person and in writing to the  
24 joint standing committee of the Legislature having  
25 jurisdiction over human resource matters; and

26 G. Negotiate joint working agreements with the Department  
27 of Children and Families concerning procedures and  
28 respective responsibilities for conducting investigations in  
29 state institutions of allegations of abuse pursuant to the  
30 Child and Family Services and Child Protection Act, Title  
31 22, chapter 1071.

32 5. Access to files and records. The Office of Advocacy,  
33 through the chief advocate and the other advocates, has access,  
34 limited only by the law, to the files, records and personnel of  
35 any institution, facility or agency administered, licensed or  
36 funded by the department. All persons with knowledge about an  
37 incident related to client care, including client-to-client  
38 assault, staff-to-client assault, client-to-staff assault,  
39 excessive use of seclusion or mechanical or chemical restraint,  
40 incidents stemming from questionable psychiatric and medical  
41 practice or any other alleged abuse or neglect, shall immediately  
42 report the details of that incident to the Office of Advocacy. A  
43 copy of any incident report must be provided to the Office of  
44 Advocacy by the person making the report.

2 6. Confidentiality. Requests for action must be treated  
3 confidentially as follows.

4 A. Any client request for action by the office and all  
5 written records or accounts related to the request are  
6 confidential as to the identity of the client.

7 B. The records and accounts may be released only as  
8 provided by law.

9 7. Protection for advocates. Advocates may not be  
10 disciplined or sanctioned for any actions taken on behalf of  
11 clients.

12 8. Budget. When submitting any budget request to the  
13 Legislature, the department and the Governor shall provide that  
14 any funds for the Office of Advocacy be listed in a separate  
15 account.

#### 16 §302. State Forensic Service

17 1. Establishment and membership. The commissioner shall  
18 establish a State Forensic Service and appoint its members.  
19 Members must be psychiatrists and licensed clinical psychologists  
20 experienced in forensic service and not directly involved in the  
21 treatment of persons committed to the department under Title 15,  
22 chapter 5. These psychiatrists and psychologists may be employed  
23 by the department directly or as independent contractors.

24 2. Duties. The State Forensic Service has the following  
25 duties:

26 A. To perform examinations of the mental condition of a  
27 defendant pursuant to Title 15, section 101-B and to do the  
28 evaluations or examinations on behalf of any court of  
29 record, pursuant to agreement between the commissioner and  
30 the jurisdiction requesting that the evaluation be performed;

31 B. To perform examinations of the mental condition of  
32 persons committed to the custody of the commissioner under  
33 Title 15, section 103, for the purposes specified in Title  
34 15, section 104-A; and

35 C. To perform examinations of the mental condition of  
36 persons pursuant to chapter 207.

37 3. Professional education program. The State Forensic  
38 Service may establish and maintain a professional education  
39 program designed to assist licensed psychologists and  
40 psychiatrists in developing expertise in the forensic aspects of  
41 the profession.

2 each profession, with emphasis on the assessment of competency,  
3 criminal responsibility and abnormal condition of mind under the  
4 laws of the State.

6 §303. Maine Developmental Disabilities Council

8 1. Establishment. The Governor shall establish the Maine  
9 Developmental Disabilities Council, as authorized by Title 5,  
10 section 12004-I, subsection 66.

12 2. Appointments. Appointments to the council are governed  
13 as follows.

14 A. The Governor shall appoint appropriate representatives  
15 to the council as are required as a condition of eligibility  
16 for benefits under the federal Amendments to the  
17 Developmental Disabilities Services and Facilities  
18 Construction Act of 1978, Public Law 93-288, United States  
19 Code, Title 42, Section 6000 et seq.

20 B. The Governor shall ensure that there is at least one  
21 representative from each of the regions established by the  
22 department, except that regional representatives may not be  
23 in addition to those required by the federal Public Law  
24 93-288.

25 3. Duties. The council shall consult with and coordinate  
26 with the commissioner in carrying out the purposes of the program  
27 established under the federal act specified in subsection 2.

28 4. Departmental role. The department's role under this  
29 section is as follows.

30 A. Except where a single state agency is otherwise  
31 designated or established in accordance with any other state  
32 law, the department is designated to be the sole agency of  
33 the State:

34 (1) To develop jointly with the council the statewide  
35 plan required by the federal act specified in  
36 subsection 2; and

37 (2) To be the sole administering agency for that plan,  
38 as required as a condition to the eligibility for  
39 benefits under the federal act specified in subsection  
40 2.

41 B. The department may receive, administer and expend any  
42 funds that are available under the federal act specified in

2 subsection 2 or from any other sources, public or private,  
3 for those purposes.

4 CHAPTER 107

6 STATE INSTITUTIONS GENERALLY

8 §401. Definitions

10 As used in this chapter, unless the context otherwise  
11 indicates, the following terms have the following meanings.

12 1. Chief administrative officer. "Chief administrative  
13 officer" means the head of a state institution.

14 2. Parking area. "Parking area" means land maintained by  
15 the State at a state institution that is designated as a parking  
16 area by the chief administrative officer.

17 3. Public way. "Public way" means a road or driveway at a  
18 state institution.

19 4. Written political material. "Written political  
20 material" means flyers, handbills or other nonperiodical  
21 publications that are subject to the restrictions of Title 21-A,  
22 chapter 13.

23 §402. Duties of the commissioner

24 1. General. The commissioner is responsible for the  
25 general supervision, management and control of the research and  
26 planning, grounds, buildings, property, officers, employees and  
27 residents of state institutions.

28 2. Enforcement of laws. The commissioner shall enforce all  
29 laws concerning state institutions, unless specific law  
30 enforcement duties are given by law to other persons.

31 3. Rules. The commissioner shall adopt rules as follows.

32 A. The commissioner shall adopt rules appropriate or  
33 necessary for the care and management of the property of all  
34 state institutions, for the production and distribution of  
35 the products of the institutions, for guiding the  
36 institutions in determining whether to approve admissions  
37 and for the execution of the statutory purposes and  
38 functions of the institutions.

39 B. The central principle underlying all rules relating to  
40 residents of state institutions is that the residents retain

all rights of an ordinary citizen, except those expressly or by necessary implication taken from them by law.

4. Grievance procedures. The commissioner shall establish procedures for hearing grievances of residents of state institutions.

5. Abuse allegations. The commissioner shall ensure appropriate intervention and remediation in cases of substantiated abuse and neglect in state institutions. The commissioner shall ensure, through inspection on a periodic basis, that all state institutions meet appropriate federal and state standards relating to the health, safety and welfare of residents.

6. Establish standards of care. The commissioner shall establish standards of care for residents of the Augusta Mental Health Institute and the Bangor Mental Health Institute.

7. Lease of unused buildings. The commissioner may, with the approval of the director of the Bureau of General Services, lease unused buildings at the state institutions for the purposes of providing services to departmental clients.

A. The leases may not be for a period exceeding one year.

B. The commissioner shall submit a plan of the proposed leases and their impact on the state institutions and departmental clients to the joint standing committee of the Legislature having jurisdiction over human resource matters no later than January 31st of each year.

#### §403. Chief administrative officers

1. Appointment. The commissioner may appoint chief administrative officers as necessary for the proper performance of the functions of the department. Appointments must be made in accordance with this section and with law governing each of the state institutions. To be eligible for appointment as a chief administrative officer, a person must be experienced in the management of the particular type of institution to which the person is to be assigned.

2. Acting chief administrative officer. Notwithstanding any other provision of law, the commissioner may delegate any employee of the department to serve as the acting chief administrative officer of any state institution, if the office of the chief administrative officer of any state institution is vacant.

A. The acting chief administrative officer may not serve for a period exceeding 180 days.

B. Service as the acting chief administrative officer of a state institution is considered a temporary additional duty for the person so delegated.

#### §404. Legal actions

1. Contract actions. Actions founded on any contract made with the State Purchasing Agent, or with any official of the department under the authority granted by the State Purchasing Agent, on behalf of a state institution, may be brought by the official making the contract or the official's successor in office.

2. Actions for injuries to property. Actions for injuries to the real or personal property of the State, used by any state institution and under the management of the chief administrative officer of the institution, may be prosecuted in the name of the officer or the officer's successor in office.

#### §405. Emergencies

When emergency situations are certified by the chief administrative officer of a state institution to exist at the institution, the commissioner may, with the approval of the Governor, assign departmental personnel as necessary to assist in controlling the emergency situation.

1. Temporary assignment. The assignment of personnel must be only for the period during which the emergency exists.

2. Compensation. Any personnel transferred are entitled to receive compensation as required by the Civil Service Law, rules and contract terms.

#### §406. Improper conduct of institutional officers

The commissioner may inquire into any improper conduct imputed to state institutional officers in relation to the concerns of their institutions, and for that purpose may:

1. Subpoenas. Issue subpoenas for witnesses and compel their attendance and the production of papers and writings by punishment for contempt in case of willful failure, neglect or refusal;

2. Examination of witnesses. Examine witnesses under oath; and

2 3. Adjudication. Adjudicate cases of alleged improper  
4 conduct in a manner similar to and with similar effect as cases  
6 of arbitration.

6 §407. Appointment of physician

8 In every state institution to which a person with mental  
10 illness or mental retardation may be committed, the commissioner  
12 shall appoint a physician experienced in the care and treatment  
14 of those persons and shall appoint the necessary assistants to  
16 the physician.

14 §408. Cooperation with state departments

16 Whenever it is considered advisable, the chief  
18 administrative officer of any institution for persons with mental  
20 illness or mental retardation may cooperate with state  
22 departments to examine upon request and recommend suitable  
24 treatment and supervision for:

22 1. Mental illness or mental retardation. Persons thought  
24 to have mental illness or mental retardation; or

26 2. Juvenile Court. Children brought before any Juvenile  
28 Court.

28 §409. Payment for care and treatment of residents

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

34 A. "Care and treatment" includes all goods and services  
36 provided, or caused to be provided, to a resident by the  
38 State.

38 B. "Liable person" means a person liable for the care and  
40 treatment of a resident under subsection 3.

42 C. "State institution," for purposes of this section only,  
44 includes the Freeport Towne Square in addition to the state  
46 institutions included in section 101, subsection 3.

46 2. Charges. Charges under this section are governed as  
48 follows.

48 A. The commissioner shall establish charges for the care  
50 and treatment of residents at any state institution.

2 B. Charges made under this section are a debt of the  
4 resident, or any person legally liable for the resident's  
6 care and treatment under this section, and are recoverable  
8 in any court of competent jurisdiction in a civil action  
10 brought in the name of the State.

6 3. Liable persons. Each resident, the resident's spouse,  
8 and the resident's parent are jointly and severally liable for  
10 the care and treatment of the resident, whether the resident was  
12 committed or otherwise legally admitted, from the date of the  
14 resident's admission to a state institution, except that:

16 A. A parent is not liable for a child resident's care and  
18 treatment, unless the child resident was wholly or partially  
20 dependent for support upon the parent at the time of  
22 admission; and

22 B. The department may not charge any parent for the care  
24 and treatment of a child resident beyond the child's 18th  
26 birthday, or beyond 6 months from the date of the child's  
28 admission, whichever occurs later.

28 4. Financial statement forms. Financial statement forms are  
30 governed as follows.

30 A. The commissioner shall prescribe financial statement  
32 forms that must be completed by:

32 (1) The resident;

34 (2) Any person liable for the resident's care and  
36 treatment under this section; or

36 (3) Any fiduciary acting on behalf of the resident or  
38 person liable for the resident.

38 B. The form in each case must be witnessed.

40 5. Determination of ability to pay. After a resident is  
42 admitted into any state institution, the department shall:

42 A. Investigate to determine what property, real and  
44 personal, the resident has, and, in determining ability to  
46 pay, the department shall consider all income, debts,  
48 expenses, obligations and the number and condition of  
50 dependents; and

48 B. Investigate to determine whether there exist any persons  
50 liable under subsection 3 for the payment of charges for the  
resident's care and treatment.

2           (1) The department shall ascertain the financial  
4           condition of the persons, if any, and shall determine  
6           whether each person is financially able to pay the  
8           charges.

10           (2) In determining the person's ability to pay, the  
12           department shall consider all income, debts, expenses,  
14           obligations and the number and condition of dependents.

16           6. Obtaining information. The obtaining of information  
18           under this section is governed as follows.

20           A. Every agency and department of the State shall render  
22           all reasonable assistance to the department in obtaining all  
24           information necessary for the proper implementation of the  
26           purposes of this section.

28           B. To carry out the purposes of this section, the  
30           commissioner may administer oaths, take testimony, subpoena  
32           and compel the attendance of witnesses, and subpoena and  
34           compel the production of books, papers, records and  
36           documents considered material or pertinent in connection  
38           with the commissioner's duty of securing payments for care  
40           and treatment as provided in this section.

42           (1) Any person failing to obey a subpoena may, upon  
44           petition of the commissioner to any Justice of the  
46           Superior Court, be ordered by the justice to appear and  
48           show cause for disobedience of the subpoena.

(2) The justice, after hearing, may order that the  
            subpoena be obeyed or, if it appears to the justice  
            that the subpoena was for any reason inappropriately  
            issued, may dismiss the petition.

(3) A person is guilty of contempt if the person fails  
            to obey a subpoena when ordered to do so by a Justice  
            of the Superior Court under this subsection, upon  
            application by the commissioner to the Superior Court  
            for an order of contempt.

C. Upon request of the commissioner, banking organizations,  
            insurance companies, brokers or fiduciaries shall furnish to  
            the commissioner full information concerning the earnings  
            of, income of, funds deposited to the credit of or funds  
            owing to any resident, or any person liable under subsection  
            3 for the resident.

2           (1) The information must be provided in writing and  
4           duly certified.

6           (2) The certified statement is admissible in evidence  
8           in any action or proceeding to compel payment for the  
10           care and treatment of the resident.

12           (3) The certified statement is prima facie evidence of  
14           the facts stated in the statement.

16           7. Inability to pay. If it is determined that any resident  
18           or liable person is unable to pay all or part of the charges for  
20           care and treatment, the commissioner may cancel, suspend or  
22           reduce charges in accordance with the resident's or liable  
24           person's ability to pay.

26           8. Postponement of billing. The commissioner may enter into  
28           an agreement with any resident or liable person to postpone  
30           billing for care and treatment for any period of time.

32           9. Benefit payments. The chief administrative officer of  
34           any state institution may receive as payee any benefits from  
36           social security, veterans' administration, railroad retirement or  
38           any other like benefits paid on behalf of any resident.

40           A. The chief administrative officer shall apply the  
42           benefits toward the care and treatment of the resident in  
44           accordance with charges made by the department.

46           B. Any surplus from the payments must be held in a personal  
48           account at the hospital in the name of the resident and must  
50           be available for the resident's personal needs.

10. Claims against estates. The State has a claim  
            enforceable in Probate Court against the estate of any resident,  
            and the estate of any liable person, for any amount due to the  
            State at the date of death of the resident or the liable person,  
            including any claim arising under an agreement entered into under  
            this section.

A. The state's claim has priority over all unsecured claims  
            against the estate, except:

(1) Administrative expenses, including probate fees  
                and taxes;

(2) Expenses of the last sickness; and

(3) Funeral expenses, not exceeding \$400, exclusive of  
                the honorarium of the clergy and cemetery expenses.

2 B. The Attorney General shall collect any claim that the  
3 State may have against the estate.

4 C. The State may not enforce a claim against any real  
5 estate while it is occupied as a home by the surviving  
6 spouse of the resident or liable person and while the  
7 surviving spouse remains unmarried.

10 11. Reimbursement of providers. Notwithstanding any other  
11 law, if part of the care and treatment of a resident under this  
12 section is provided by a party other than the State, the  
13 commissioner shall pay to the other party, from the fee collected  
14 by the department for the care and treatment of the resident, the  
15 portion of those costs borne by the other party in the same ratio  
16 as the fee collected to the total charge made, except that:

18 A. This subsection does not limit compensation for  
19 providers of resident care and treatment; and

20 B. This subsection does not limit contractual arrangements  
21 between the providers and the State.

24 12. Special revenue account: Augusta Mental Health  
25 Institute. The commissioner shall establish a special revenue  
26 account for the Augusta Mental Health Institute and shall deposit  
27 into it payments or income received from residents of the Augusta  
28 Mental Health Institute, the Medicaid program or other 3rd-party  
29 payers. The commissioner shall use the funds on deposit for  
30 expenses of the Augusta Mental Health Institute.

32 13. Special revenue account: Bangor Mental Health  
33 Institute. The commissioner shall establish a special revenue  
34 account for the Bangor Mental Health Institute and shall deposit  
35 into it payments or income received from residents of the Bangor  
36 Mental Health Institute, the Medicaid program or other 3rd-party  
37 payers. The commissioner shall use the funds on deposit for  
38 expenses of the Bangor Mental Health Institute.

40 §410. General Fund account: disproportionate share hospital match

42 The commissioner shall establish a General Fund account to  
43 provide the General Fund match for eligible disproportionate  
44 share hospital components in the Augusta Mental Health Institute  
45 and the Bangor Mental Health Institute. Any unencumbered  
46 balances of General Fund appropriations remaining at the end of  
47 each fiscal year must be carried forward to be used for the same  
48 purposes.

50 §411. Posting of political material

2 In accordance with the following provisions, each chief  
3 administrative officer shall provide in at least one accessible  
4 area in each institution an appropriate space for the posting of  
5 written political material sent for that purpose to the chief  
6 administrative officer by candidates for state office or federal  
7 office in this State.

8 1. One item limit. Not more than one item of written  
9 political material may be posted in one place on behalf of any  
10 one candidate.

11 2. Removal. Written political material must be removed  
12 after the election to which it is relevant.

13 3. Voting place. If there is a voting place within the  
14 institution, the posting place may not be located within 250 feet  
15 of the entrance to the voting place.

16 4. Violation. The posting of written political material  
17 under this section is not a violation of Title 21-A, section 32  
18 or Title 21-A, section 674, subsection 1, paragraph C.

20 §412. Public ways and parking areas

21 1. Rules. Each chief administrative officer may adopt and  
22 enforce rules, subject to the approval of the commissioner,  
23 governing the use of public ways and parking areas.

24 A. The rules must be adopted in accordance with the Maine  
25 Administrative Procedure Act, Title 5, chapter 375.

26 B. The Secretary of State shall forward a copy of the  
27 rules, attested under the Great Seal of the State, to the  
28 District Court in the area of jurisdiction.

29 2. Special police officers. Each chief administrative  
30 officer may appoint and employ, subject to the Civil Service Law,  
31 special police officers for the purpose of enforcing rules  
32 adopted under subsection 1.

33 A. The special police officers shall:

34 (1) Patrol all the public ways and parking areas  
35 subject to this section;

36 (2) Enforce rules adopted under this section; and

37 (3) Arrest and prosecute violators of the rules.



2 B. The State Police, sheriffs, deputy sheriffs, police  
4 officers and constables who have jurisdiction over the areas  
6 in which the state institutions are located shall, to the  
8 extent possible, cooperate with the special police officers  
10 in the enforcement of the rules adopted under subsection 1.

12 3. Court procedure. The District Court in the area in  
14 which a state institution is located has jurisdiction in all  
16 proceedings related to that institution brought under this  
18 section.

20 A. The District Court shall take judicial notice of all  
22 rules adopted under subsection 1.

24 B. In any prosecution for a violation of the rules, the  
26 complaint may allege the offense as in prosecutions under a  
28 general statute and need not recite the rule.

30 4. Prohibited acts: forfeitures. A person who violates any  
32 rule adopted under this section commits a civil violation for  
34 which a forfeiture may be adjudged in an amount consistent with  
36 the amount charged for a similar violation by the municipality in  
38 which the state institution is located, but not to exceed the  
40 maximum amount provided for a traffic infraction under Title 29,  
42 section 2303, subsection 1. Notwithstanding any other law, the  
44 finest and costs of court paid under this section inure to the  
46 municipality in which the proceedings take place.

#### 48 §413. Rights

50 Every resident of a state institution has a right to  
nutritious food in adequate quantities, adequate professional  
medical care, an acceptable level of sanitation, ventilation and  
light, a reasonable amount of space per person in any sleeping  
area, a reasonable opportunity for physical exercise and  
recreational activities, protection against any physical or  
psychological abuse and a reasonably secure area for the  
maintenance of permitted personal effects.

#### 52 §414. Indefinite convalescent status

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

60 A. "Living conditions" includes, but is not limited to, the  
physical conditions of a residential facility, the  
individual treatment plan provided for each outpatient  
client and the programs for treatment available to and  
appropriate for each outpatient client.

2 B. "Residential facility" means a boarding home, nursing  
4 facility, foster home, group home or halfway house licensed  
6 by or receiving funds from the department.

8 2. Requirements. The chief administrative officer of any  
10 state institution, or the chief administrative officer's  
12 designee, may place any person who has been admitted with mental  
14 illness or mental retardation, except residents described in  
16 chapter 1609, subchapter II, on indefinite convalescence status,  
18 if the officer or the designee determines that the residential  
20 facility in which the person will be residing is at least  
22 equivalent in the quality of living conditions to the state  
24 institution to which the person was admitted.

26 3. Standards. The commissioner shall establish standards  
28 for assessing whether living conditions in residential facilities  
30 are equivalent to the existing living conditions in state  
32 institutions.

#### 34 §415. Administration of medication

36 The administration of medication in state institutions is  
38 governed by rules adopted by the State Board of Nursing. The  
40 State Board of Nursing shall adopt the rules in accordance with  
42 the Maine Administrative Procedure Act, Title 5, chapter 375. In  
44 establishing rules for each type of state institution, the State  
46 Board of Nursing shall consider, among other factors:

1. Health of residents. The general health of the persons  
likely to receive medication;

2. Number of residents. The number of persons served by  
the institution; and

3. Number of staff. The number of persons employed at the  
institution.

#### 42 §416. Resident's abandoned property

44 Any property abandoned or unclaimed by a resident of a state  
46 institution must be disposed of according to Title 33, chapter 27.

#### 48 §417. Unnatural death of resident

50 When the death of any resident in a state institution is not  
clearly the result of natural causes, an examination and inquest  
must be held as in other cases, and the commissioner or the chief  
administrative officer of the state institution shall cause a  
medical examiner to be immediately notified for that purpose.

2 **§418. Rules regarding cardiopulmonary resuscitation**

4 The department shall adopt rules regarding the use of  
6 cardiopulmonary resuscitation in state institutions, pursuant to  
8 the Maine Administrative Procedure Act, Title 5, chapter 375.

10 **§419. Negotiations with municipalities**

12 The commissioner, or the commissioner's designee, shall  
14 negotiate with officials of the municipality in which state  
16 institutions for either juveniles or adults constructed after  
18 August 23, 1989 are located to provide state reimbursement to  
20 that municipality for the net increased costs that a new state  
22 institution imposes on that municipality. Negotiations may  
24 commence only upon request of municipal officials and only within  
26 6 months after the net increased costs arise. As used in this  
28 section, unless the context otherwise indicates the following  
30 terms have the following meanings.

32 1. Net increased costs. "Net increased costs" means the  
34 costs of those services rendered to the state institution by the  
36 municipality and the costs of any adverse impact approximately  
38 caused by the operation of the state institution, subtracted from  
40 the fair market value of those services rendered by the state  
42 institution to the municipality.

44 2. State institution. "State institution" means a facility  
46 owned by the State that provides residential mental health or  
48 mental retardation services to children or adults.

50 **CHAPTER 109**

**DUE PROCESS IN STERILIZATION ACT**

2 **§501. Short title**

4 This chapter may be cited as the "Due Process in  
6 Sterilization Act."

8 **§502. Legislative intent**

10 The Legislature finds and declares that sterilization  
12 procedures are generally irreversible and represent potentially  
14 permanent and highly significant consequences for the patient  
16 involved. The Legislature recognizes that certain legal  
18 safeguards are necessary to prevent indiscriminate and  
20 unnecessary sterilization and to ensure equal access to desired  
22 medical procedures for all Maine citizens.

2 **§503. Definitions**

4 As used in this chapter, unless the context otherwise  
6 indicates, the following terms have the following meanings.

8 1. Custodian. "Custodian" means the person having care and  
10 custody over the individual seeking sterilization or the  
12 individual for whom sterilization is sought.

14 2. Disinterested expert. "Disinterested expert" means an  
16 appropriately licensed or certified professional not associated  
18 with an institution serving the person for whom sterilization is  
20 being sought and not personally related to the petitioner.

22 3. Guardian. "Guardian" means a person who has qualified  
24 as a guardian of a minor or incapacitated person pursuant to  
26 testamentary or court appointment, but excludes one who is merely  
28 a guardian ad litem.

30 4. Informed consent. "Informed consent" means consent that  
32 is:

34 A. Based upon an actual understanding by the person to be  
36 sterilized of the nature of sterilization, its potentially  
38 permanent consequences, all alternative methods of  
40 contraception and all reasonably foreseeable risks and  
42 benefits of sterilization; and

44 B. Wholly voluntary and free from express or implied  
46 coercion.

48 5. Parent. "Parent" means a natural or adoptive mother or  
50 father of a person.

2 6. Physician. "Physician" means any person licensed to  
4 practice medicine under Title 32, chapter 48, subchapter II, or  
6 under Title 32, chapter 36, subchapters II and IV.

8 7. Psychiatrist. "Psychiatrist" means a physician licensed  
10 to practice medicine under Title 32, chapter 48, subchapter II,  
12 who specializes in the diagnosis and treatment of mental  
14 disorders.

16 8. Psychologist. "Psychologist" means any person licensed  
18 to practice psychology under Title 32, chapter 56, subchapter III.

20 9. Sterilization. "Sterilization" means a medical or  
22 surgical procedure, the purpose of which is to render an  
24 individual permanently incapable of procreation. Sterilization  
26 does not refer to procedures that must be performed for distinct

2 and urgent medical reasons and that have the unavoidable  
3 secondary effect of rendering the individual infertile.

4 **§504. Informed consent required for sterilization**

6 1. Informed consent required. Except as provided in this  
7 chapter, prior to initiating sterilization procedures on any  
8 individual, a physician shall obtain and record the informed  
9 consent of that individual.

10 2. Hearing required to determine ability to give informed  
11 consent for sterilization. A hearing to determine ability to  
12 give informed consent for sterilization is required when  
13 sterilization is sought for:

14 A. Persons under age 18 years and not married or otherwise  
15 emancipated;

16 B. Persons presently under public or private guardianship  
17 or conservatorship;

18 C. Persons residing in a state institution, or otherwise  
19 in state custody; or

20 D. Persons from whom a physician could not obtain informed  
21 consent.

22 **§505. Sterilization authorized by court**

23 1. Court order required. A District Court order  
24 authorizing sterilization is required before the sterilization of  
25 any person described in section 504, subsection 2.

26 2. Determination prior to issuance of order. Before an  
27 order may be issued, the court shall determine whether the person  
28 seeking sterilization or for whom sterilization is sought is able  
29 to give informed consent for sterilization and, if so, whether  
30 the person has given informed consent for sterilization.

31 **§506. Contents of petition for determination of ability to give**  
32 **informed consent for sterilization**

33 The petition for determination of ability to give informed  
34 consent for sterilization must be executed under oath and must  
35 set forth:

36 1. Person seeking sterilization or for whom sterilization  
37 is sought. Name, age and residence of the person seeking  
38 sterilization or for whom sterilization is sought;

2 2. Parent, guardian or spouse. Names and residences of any  
3 parents, spouse or guardian of the person seeking sterilization  
4 or for whom sterilization is sought;

5 3. Basis of petition. A statement of the factors,  
6 including any listed in section 504, subsection 2, and mental  
7 condition, when appropriate, that necessitate a determination of  
8 the ability of the person seeking sterilization or for whom  
9 sterilization is sought to give informed consent for  
10 sterilization;

11 4. Reasons for sterilization. A statement of the reasons  
12 for which sterilization is sought; and

13 5. Person initiating petition. The name, address, position  
14 and statement of interest of the person initiating the petition  
15 or any person assisting with a self-initiated petition.

16 **§507. Submitting petition to determine informed consent; notice**  
17 **of hearing**

18 1. Petition submission. The petition for a determination  
19 of ability to give informed consent must be submitted to the  
20 District Court in the division of residence of the person seeking  
21 sterilization or for whom sterilization is sought.

22 2. Notice of hearing. Upon the receipt of a petition to  
23 determine informed consent, the District Court shall assign a  
24 time, not later than 30 days after receipt of a petition, and a  
25 place for hearing the petition. The court may, at its  
26 discretion, hold the hearing on the petition at a place within  
27 the county other than the usual courtroom if it would facilitate  
28 the presence of the person seeking sterilization or for whom  
29 sterilization is sought.

30 3. Service of notice. The court shall cause a copy of the  
31 petition and notice of hearing to be served on the person seeking  
32 sterilization or for whom sterilization is sought and the  
33 person's guardian or custodian, if any, at least 7 days prior to  
34 the hearing date. If a guardian or custodian of the person  
35 seeking sterilization or for whom sterilization is sought is not  
36 a resident of this State, notice may be served by registered  
37 mail. If the residence of a guardian or custodian is unknown, an  
38 affidavit so stating must be filed in lieu of service.

39 **§508. Hearing upon a petition to determine informed consent for**  
40 **sterilization**

41 1. Counsel. If the person seeking sterilization or for  
42 whom sterilization is sought requests counsel and can not afford

2 counsel, the court shall appoint counsel to represent that person  
3 at public expense. If the person is not represented by counsel  
4 and appears to the court unable to request counsel, the court  
5 shall order that counsel be retained or shall appoint counsel to  
6 represent the person at public expense if the person can not  
7 afford counsel. A reasonable fee must be set for appointed  
8 counsel by the District Court, Counsel, or the person seeking  
9 sterilization or for whom sterilization is sought, may present  
10 evidence, call witnesses and cross-examine witnesses who testify  
11 or present evidence at any hearing on the petition.

12 2. Appointment of disinterested experts. For the purpose  
13 of determining a person's ability to give informed consent, the  
14 court shall appoint not less than 2 disinterested experts  
15 experienced in the field of developmental disabilities or mental  
16 health, including at least one psychologist or psychiatrist, to  
17 examine the person, to report on that examination and to testify  
18 at the hearing as to the person's competency. Other evidence  
19 regarding the person's capabilities may be introduced at the  
20 hearing by any party.

21 3. Preference of person seeking sterilization or for whom  
22 sterilization is sought. If the person seeking sterilization or  
23 for whom sterilization is sought has any preference as to a  
24 disinterested expert by whom the person would prefer to be  
25 examined, the court shall make a reasonable effort to accommodate  
26 that preference.

27 4. Person's presence at hearing. The person seeking  
28 sterilization or for whom sterilization is sought must be present  
29 at any hearing regarding ability to give informed consent for  
30 sterilization, unless that right is waived by the person,  
31 personally or through the person's attorney, and that waiver is  
32 approved by the court. The court shall inquire at the time of  
33 the hearing as to the types and effects of any medications being  
34 administered to or taken by the person.

35 5. Determination that person is able to give informed  
36 consent for sterilization. If the court determines by clear and  
37 convincing evidence that the person is able to give informed  
38 consent for sterilization and that the person does consent to  
39 sterilization, it shall issue an order so stating and permitting  
40 the sterilization to be performed. Prior to the performance of  
41 the sterilization, the physician and hospital involved shall also  
42 obtain the written consent of the person for sterilization.

43 If the court determines by clear and convincing evidence that the  
44 person is able to give informed consent for sterilization, but  
45 determines that the person does not consent to sterilization, it  
46 shall issue an order so stating and forbidding sterilization of

2 the person, unless that person later makes a different choice and  
3 only after a rehearing under this section.

4 6. Determination that person is not able to give informed  
5 consent for sterilization. If the court determines that the  
6 person is not able to give informed consent for sterilization, it  
7 shall issue an order so stating and forbidding sterilization of  
8 the person, unless a determination is made under section 513  
9 that sterilization is in the best interest of the person.

#### 10 §509. Limitations

11 1. Consent not to be a condition for exercise of any right,  
12 privilege or freedom. Consent to sterilization may not be made a  
13 condition for release from or confinement in any institution nor  
14 may it be made a condition for the exercise of any right,  
15 privilege or freedom, nor may it be made a condition for  
16 receiving any form of public assistance, nor as a prerequisite  
17 for any other service. The consent must be free from express or  
18 implied inducements or constraints.

19 2. Guarantees and limitations to be given to person to be  
20 sterilized. The guarantees and limitations provided in this  
21 section must be communicated to the person seeking sterilization  
22 or for whom sterilization is sought by the court prior to issuing  
23 an order under section 508. These guarantees and limitations  
24 must also appear prominently at the top of the consent document  
25 used by a physician or hospital to obtain written consent for  
26 sterilization.

#### 27 §510. Determination of the best interests of a person unable to 28 give informed consent for sterilization

29 The parent, spouse, guardian or custodian of any person  
30 found unable to give informed consent for sterilization may  
31 petition the District Court, in the county of residence of the  
32 person being considered for sterilization, to determine if  
33 sterilization is in the best interest of that person. The court  
34 has sole jurisdiction and authority to order that a sterilization  
35 procedure be performed when a person is incapable of giving  
36 informed consent, as determined by the hearing required in  
37 section 508.

#### 38 §511. Contents of petition for consideration of sterilization of 39 a person based upon a determination

40 The petition for determination if sterilization is in the  
41 best interest of a person must be executed under oath and must  
42 set forth:

1. Person being considered for sterilization. The name, age and residence of the person being considered for sterilization;

2. Parents, spouse, custodian or guardian of person being considered for sterilization. The names and residences of any parents, spouse, custodian or guardian of the person being considered for sterilization;

3. Mental condition. The mental condition of and effects of any medications being administered to or taken by the person being considered for sterilization;

4. Reasons sterilization is sought. A statement, in terms of the best interest of the person, of the reasons for which sterilization is sought;

5. Petitioner. The name and relationship of the petitioner to the person being considered for sterilization;

6. Alternatives. Less drastic alternative contraceptive methods that have been tried or the reason those methods are believed to be unworkable or inappropriate for the person being considered for sterilization;

7. Physiological capability to procreate. A medical statement assessing the physiological capability of the person to procreate;

8. Risk to life or health. A medical statement regarding the potential risk to the life or health of the person that could be caused by procreation or child rearing;

9. Person's attitudes or desires regarding sterilization. Any attitudes or desires expressed by the person regarding sterilization; and

10. Informed consent order. The date and contents of the order issued under section 508 concerning the ability to give informed consent for sterilization of the person being considered for sterilization.

**§512. Notice of hearing upon the petition to determine the best interest of a person being considered for sterilization**

Upon the receipt of a petition, the court shall assign a time, not later than 30 days after receipt of the petition, and a place for a hearing on the petition. The court may, at its discretion, hold the hearing on the petition at a place within the county other than the usual courtroom, if it would facilitate

the presence of the person being considered for sterilization. The court shall cause the petition and notice of the hearing to be served on the person being considered for sterilization and that person's guardian or custodian at least 20 days prior to the hearing date. The court shall direct that personal service be made upon the person being considered for sterilization and that person's guardian or custodian. If the guardian or custodian of the person being considered for sterilization is not a resident of this State, notice may be served by registered mail. If the residence of the guardian or custodian of the person being considered for sterilization is unknown, an affidavit so stating must be filed in lieu of service.

**§513. Hearing upon a petition to determine the best interest of a person being considered for sterilization**

1. Ability to give or withhold informed consent. In all instances where the issue of whether sterilization is in the best interest of a person is to be considered, a prior determination, as required by section 508, that the person can not give or withhold informed consent is required.

2. Presence of person; counsel; findings. The person being considered for sterilization must be physically present throughout the entire best interest hearing, unless that right is waived by the person, personally or through the person's attorney, and that waiver is approved by the court. The person being considered for sterilization must be represented by counsel and provided the right and opportunity to be confronted with and to cross-examine all witnesses. The right to counsel may not be waived. If the person can not afford counsel, the court shall appoint an attorney, not less than 20 days before the scheduled hearing, to represent the person at public expense. A reasonable fee must be set for appointed counsel by the District Court. Counsel shall represent the person being considered for sterilization in ensuring that information and evidence in opposition to sterilization without informed consent is fully represented. All stages of the hearing must be recorded by a tape recorder or a court reporter, as the court directs. In all cases, the court shall issue written findings to support its decision.

3. Disinterested experts; evidence. The court shall hear the petition to determine whether sterilization is in the best interest of the person being considered for sterilization. The court shall appoint not less than 3 disinterested experts with experience related to the condition of the person as alleged in the petition, including at least one physician and one licensed psychologist or psychiatrist, to examine the person and to

2 testify at the hearing. The court shall hear and consider  
4 evidence on the following:

4 A. All issues raised by the petition executed under section  
6 511; and

8 B. The beneficial or detrimental psychological and  
10 physiological effects of sterilization on the person being  
12 considered for sterilization.

14 Any other relevant evidence concerning the mental and physical  
16 condition of the person being considered for sterilization may be  
18 introduced at the hearing.

20 4. Burden of proof. The burden of proof by clear and  
22 convincing evidence that sterilization is in the best interest of  
24 the person being considered for sterilization rests with the  
26 party seeking to establish that sterilization is the appropriate  
28 course of action.

30 5. Finding that sterilization is in person's best  
32 interest. The court shall find that sterilization is in the best  
34 interest of the person being considered for sterilization if it  
36 is shown by clear and convincing evidence that:

38 A. Methods of contraception less drastic than sterilization  
40 have proven to be unworkable or inappropriate for the  
42 person; and

44 B. Sterilization is necessary to preserve the physical or  
46 mental health of the person.

48 6. Court order. If the court finds that sterilization is  
50 in the best interest of the person being considered for  
sterilization, the court shall order that sterilization may be  
performed. The sterilization procedure used must be the most  
reversible procedure available at the time when, in the judgment  
of the physician performing the sterilization, that procedure is  
not inconsistent with the health or safety of the patient. If  
the court finds that sterilization is not in the best interest of  
the person being considered for sterilization, the court shall  
order that sterilization not be performed, unless the order is  
amended by a District Court to permit sterilization.

7. Appeal. Appeal of a final order of a District Court is  
by right in accordance with the Maine Rules of Civil Procedure,  
except that, upon a finding of inability to pay the required fees  
for an appeal, those fees must be waived. Pendency of an appeal  
of an order under this section stays any order allowing  
sterilization.

2 **§514. Confidentiality: court costs**

4 1. Confidentiality of proceedings and records. All court  
6 proceedings occurring under this chapter are confidential and  
8 closed to the public, unless the person seeking sterilization or  
10 being considered for sterilization, personally or through that  
12 person's attorney, requests that the proceedings be open to the  
public. Records of the court proceedings are not open to  
inspection by the public without the consent, personally or  
through that person's attorney, of the person seeking  
sterilization or for whom sterilization is being considered.

14 2. Costs and fees. The court, after considering the  
16 financial resources of the parties concerned and the source of a  
18 petition under this chapter, shall assess court costs and  
20 attorneys' fees.

22 **§515. Penalties**

24 1. Violations. Anyone knowingly or willfully violating  
26 section 509, subsection 1, is guilty of a Class D crime.

28 2. Falsification of petition; aiding or procuring unlawful  
30 sterilization. Anyone knowingly or willfully falsifying a  
32 petition under this chapter or otherwise aiding or procuring the  
34 performance of a sterilization without a court order in a  
36 situation covered by this chapter is guilty of a Class D crime.

38 **§516. Liability**

40 1. Participation in sterilization. Nothing in this chapter  
42 requires any hospital or any person to participate in performing  
44 any sterilization procedure, nor is any hospital or any person  
46 civily or criminally liable for refusing to participate in  
48 performing any sterilization procedure.

50 2. Immunity. A physician, psychiatrist or psychologist  
acting nonnegligently and in good faith in a professional  
capacity under this chapter is immune from any civil liability  
that might otherwise result from that person's actions. In a  
proceeding regarding immunity from liability, there is a  
rebuttable presumption of good faith.

**CHAPTER 111**

**FUNDS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES**

**§601. Self-sufficiency trust fund**

1. Trust established. There is created the Self-sufficiency Trust Fund. The State Treasurer, ex officio, is custodian of the trust fund and the comptroller shall direct payments from the trust fund upon vouchers properly certified by the commissioner. The treasurer shall credit interest on the trust fund to the trust fund and the commissioner shall allocate that interest pro rata to the respective accounts of the named beneficiaries of the trust fund.

A. For the purposes of this section, the term "self-sufficiency trust" means a trust created by a nonprofit corporation that is a 501-C-3 organization under the United States Internal Revenue Code of 1954 and that was organized under the Nonprofit Corporation Act, Title 13-B, for the purpose of providing for the care or treatment of one or more persons with developmental disabilities or persons eligible for department services.

2. Rules. The department shall adopt rules under the Maine Administrative Procedure Act, Title 5, chapter 375, that are necessary or useful for the administration of the trust fund.

#### §602. Administration of fund

1. Naming beneficiaries. The department may accept money from a self-sufficiency trust for deposit in the trust fund pursuant to an agreement with the trust naming one or more beneficiaries with developmental disabilities or persons eligible for department services residing in this State and specifying the care or treatment to be provided for them. The department shall maintain a separate account in the trust fund for each named beneficiary.

2. Care and support of beneficiaries. The money in these accounts must be spent by the department, pursuant to its rules, only to provide care and treatment for the named beneficiaries in accordance with the terms of the agreement.

3. Return of money. In the event that the commissioner determines that the money in the account of a named beneficiary can not be used for the care or treatment of the beneficiary in a manner consistent with the rules of the department and the agreement, or upon request of the self-sufficiency trust, the remaining money in that account, together with any accumulated interest on that account, must be promptly returned to the self-sufficiency trust that deposited the money in the trust fund.

4. Other benefits not affected. The receipt by a beneficiary of money from the trust fund, or of care or treatment provided with that money, does not in any way reduce, impair or

diminish the benefits to which the beneficiary is otherwise entitled by law.

#### §603. Special fund in the State Treasury

The fund for the developmentally disabled is created as a special fund in the State Treasury. The commissioner may accept money from any source for deposit into the fund. The money in the fund must be used by the department, subject to an allocation for the purpose of providing for the care and treatment of low-income persons with developmental disabilities, or low-income persons eligible for department services, as defined by the department.

### CHAPTER 113

#### MISCELLANEOUS PROVISIONS

#### §701. Confidentiality of information

1. Client defined. As used in this section, unless the context otherwise indicates, "client" means a person receiving mental health or mental retardation services from the department or from any agency licensed or funded by the department to provide mental health or mental retardation services.

2. Generally. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any client are confidential and may not be disclosed by any person, except that:

A. A client, the client's legal guardian, if any, or, if the client is a minor, the client's parent or legal guardian may give informed written consent to the disclosure of information;

B. Information may be disclosed if necessary to carry out any of the statutory functions of the department, the hospitalization provisions of chapter 1609, the purposes of Title 5, section 19506, the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319;

C. Information must be disclosed to the Department of Children and Families for the purpose of cooperating in an investigation or any other activity pursuant to Title 15, chapter 507, or Title 22-A, chapter 401, pursuant to an

2 agreement between the department and the Department of  
4 Children and Families. The agreement, specifying the  
6 circumstances and conditions by which disclosure must be  
8 made, must be adopted as rules by the department in  
10 accordance with the Maine Administrative Procedure Act,  
12 Title 5, chapter 375;

14 D. Information may be disclosed if ordered by a court of  
16 record, subject to any limitation in the Maine Rules of  
18 Evidence, Rule 503;

20 E. This subsection does not preclude disclosure, upon  
22 proper inquiry, of information relating to the physical  
24 condition or mental status of a client to the spouse or next  
26 of kin;

28 F. This subsection does not preclude the disclosure of  
30 biographical or medical information concerning a client to  
32 commercial or governmental insurers, or to any other  
34 corporation, association or agency from which the department  
36 or a licensee of the department may receive reimbursement  
38 for the care and treatment, education, training or support  
40 of the client, if the recipient of the information uses it  
42 for no other purpose than to determine eligibility for  
44 reimbursement and, if eligibility exists, to make  
46 reimbursement; and

48 G. This subsection does not preclude the disclosure or use  
50 of any information, including recorded or transcribed  
diagnostic and therapeutic interviews, concerning any client  
in connection with any educational or training program  
established between a public hospital and any college,  
university, hospital, psychiatric or counseling clinic or  
school of nursing, provided that, in the disclosure or use  
of the information as part of a course of instruction or  
training program, the client's identity remains undisclosed.

3. Statistical compilations and research. Confidentiality  
of records used for statistical compilations or research is  
governed as follows.

A. Persons engaged in statistical compilation or research  
may have access to treatment records of clients when needed  
for research, if:

(1) The access is approved by the chief administrative  
officer of the facility or the officer's designee;

(2) The research plan is first submitted to and  
approved by the chief administrative officer of the

facility, or the officer's designee, where the person  
engaged in research or statistical compilation is to  
have access to communications and records; and

(3) The records are not removed from the facility that  
prepared them, except that data that do not identify  
clients or coded data may be removed from a facility if  
the key to the code remains on the premises of the  
facility.

B. The chief administrative officer of the facility and the  
person doing the research shall preserve the anonymity of  
the client and may not disseminate data that refer to the  
client by name, number or combination of characteristics  
that together could lead to the client's identification.

4. Use by the commissioner. Confidentiality of information  
and records used by the commissioner for administration, planning  
or research is governed as follows.

A. Any facility licensed by the department under section  
16004 or a facility that receives funds from the department  
or has received or is receiving funds under the Mental  
Retardation Facilities and Community Mental Health Centers  
Construction Act of 1963, Public Law 88-164, United States  
Code, Title 42, Section 6001, et seq., as amended, shall  
send information and records to the commissioner, if  
requested by the commissioner pursuant to the obligation to  
maintain the overall responsibility for the care and  
treatment of clients.

B. The commissioner may collect and use the information and  
records for administration, planning or research, under the  
following conditions.

(1) The use of the information is subject to  
subsection 1, paragraph C.

(2) Data identifying particular clients by means other  
than case number or code must be removed from all  
records and reports of information before issuance from  
the facility that prepared the records and reports.

(3) A code must be the exclusive means of identifying  
clients and may be available only to the commissioner.

(4) The key to the code must remain in the possession  
of the issuing facility and may be available only to  
the commissioner.



2 (5) Members of the department may not release or  
4 disseminate to any other person, agency or department  
6 of government any information that refers to a client  
8 by name, numbers, address, birth date or other  
10 characteristics or combination of characteristics that  
12 could lead to the client's identification, except as  
14 otherwise required by law.

16 5. Prohibited acts. Prohibited acts under this section are  
18 governed as follows.

20 A. A person is guilty of unlawful disclosure of information  
22 if the person disseminates, releases or discloses  
24 information in violation of this section.

26 B. Unlawful disclosure of information is a Class D crime.

28 **§702. Funds for social services**

30 The department may administer any funds available from  
32 private, local, state or federal sources for the provision of  
34 social services to carry out the purposes of this Title. To the  
36 extent allowed by the funding source, the department may provide  
38 the social services directly, through contracts or grants with  
40 public or private agencies, or jointly with public or private  
42 agencies.

44 The department shall adopt rules to define eligibility for  
46 the social services, contractual terms, conditions for grants,  
48 matching ratios, quality of performance standards and other rules  
50 as necessary for the implementation of this section. The rules  
must be adopted in accordance with Title 5, chapter 375.

**§703. Agreements with community agencies**

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

A. "Agreement" means a legally binding document between 2  
parties, including documents commonly referred to as  
accepted application, proposal, prospectus, contract, grant,  
joint or cooperative agreement, purchase of service or state  
aid.

B. "Community agency" means a person, a public or private  
nonprofit organization or a firm, partnership or business  
corporation operated for profit, that operates a human  
service program at the community level.

C. "Funds" means any and all general funds, dedicated  
funds, fees, special revenue funds, 3rd party  
reimbursements, vendor payments or other funds available for  
expenditure by the department in support of the provision of  
a human service.

D. "Human service" means any alcoholism, children's  
community action, corrections, criminal justice,  
developmental disability, donated food, education, elderly,  
food stamp, income maintenance, health, juvenile, law  
enforcement, legal, medical care, mental health, mental  
retardation, poverty, public assistance, rehabilitation,  
social, substance abuse, transportation, welfare or youth  
service operated by a community agency under an agreement  
financially supporting the service, wholly or in part, by  
funds authorized for expenditure by the department.

E. "Nonprofit organization" means any agency, institution  
or organization that is, or is owned and operated by, one or  
more corporations or associations, no part of the net  
earnings of which inures, or may lawfully inure, to the  
benefit of any private shareholder or individual and that  
has a territory of operations that may extend to a  
neighborhood, community, region or the State.

F. "Public" means municipal, county and other governmental  
bodies that are political subdivisions within the State.

2. Commissioner may disburse funds. The commissioner may  
disburse funds to a community agency for the purpose of  
financially supporting a human service, only if the disbursement  
is covered by a written agreement between the department and the  
agency, specifying at least the following:

A. The human service to be provided by the community agency;

B. The method of payment by the department to the community  
agency; and

C. The criteria for monitoring and evaluating the  
performance of the community agency in the provision of the  
human service.

3. Requirements. The commissioner's duties are as follows.

A. The commissioner shall adopt rules consistent with and  
necessary for the effective administration of this section.

2 B. When making agreements with community agencies for the  
4 provision of a human service, the commissioner shall use  
6 agreement forms and shall develop uniform procedures.

8 C. When disbursing funds pursuant to an agreement, the  
10 commissioner shall require uniform accounts payable forms or  
12 uniform supporting documentation and information.

14 D. When accounting for funds disbursed under an agreement,  
16 the commissioner shall use uniform accounting principles,  
18 policies and procedures.

20 4. Rules. The commissioner may not request competitive  
22 bids for existing services until the commissioner has adopted  
24 rules in accordance with the Maine Administrative Procedure Act,  
26 Title 5, chapter 375, to ensure:

28 A. The stability of the provider system by setting forth  
30 the causes for which existing services may be placed out for  
32 competitive bid;

34 B. The protection of consumers in such a way that any  
36 change in provider will be accomplished in a manner that  
38 fully protects the consumer; and

40 C. The verification of the nonservice revenue portion of  
42 proposed budgets submitted by current and prospective  
44 providers.

46 **§704. Mental health services in residential child care facilities**

48 Before mental health services may be delivered in a  
50 residential child care facility, as defined in Title 22-A,  
section 6201, subsection 4, they must be approved by the  
commissioner. The commissioner shall participate in licensure of  
these programs in accordance with Title 22-A, section 6210.

**§705. Advise on incorporation of institutions**

The department shall give its opinion as to the advisability  
of the proposed organization and incorporation of any non-profit  
institution that falls under the jurisdiction of the department.

**§706. Charitable and benevolent institutions to submit itemized**  
**bills; recipients not deemed paupers**

Appropriations made by the State for the care, treatment,  
support or education of any person by any charitable or  
benevolent organization not wholly owned or controlled by the  
State may not be paid until an itemized bill, showing the name of

2 the person receiving the service, the date on which the service  
4 was rendered, and the rate charged per day or week, is filed with  
6 the State Controller together with a certificate from the  
8 department that satisfactory evidence has been filed in its  
10 office by the organization furnishing the service that the person  
12 receiving the service was in need of the service; that the person  
14 was not able to pay for the service; and that the rate charged is  
16 not greater than that charged to the general public for the same  
service. The only exceptions to the above specific procedures are  
those instances in which the charitable or benevolent  
organization by agreement with the department elects to return  
its State appropriation, either in whole or in part, to the  
department for matching with federal funds. In all instances,  
payments made by the State to charitable and benevolent  
organizations under this section are governed by rules and rates  
adopted by the department.

2 A person may not be considered a pauper by reason of having  
4 received the benefit of any funds, either State or municipal,  
6 which that been expended on that person's behalf under this  
8 section.

**§707. Purchased services report**

2 The department shall prepare an annual report on all  
4 services delivered under contract with private or municipal  
6 providers. The department shall submit its report to the joint  
8 standing committee of the Legislature having jurisdiction over  
10 appropriations and financial affairs by January 31st of each  
12 year. The report must include:

14 1. Listing by contractor. A listing, by contractor, of all  
16 funds received from the State and a summary of the purposes for  
18 which those funds were expended;

20 2. Allocations. A summary of the most recent year's  
22 allocations of all funds by bureau or office, service area,  
24 region and, if available, county;

26 3. Regional equity. An evaluation of additional funding  
28 needed to equalize funding among all regions by individual  
30 service areas, presented in prioritized order;

32 4. Outstanding service needs. The department's assessment,  
34 by individual service area, of the outstanding service needs of  
36 the State. The assessment must identify the funding source  
38 projected by the department to be available for the expansion of  
40 service, presented in prioritized order; and  
42

2 5. Recommended changes. Recommendations for changes in  
3 funding resulting from the department's planning and evaluation  
4 system presented in the following order of priority:

6 A. Greatest service need within existing funding scheme:

8 B. Equalization of regional funding with each service area:  
9 and

10 C. New or outstanding needs.

12 §708. Fees for service

14 The department may charge reasonable fees for any services  
15 provided under this Title whether directly or indirectly provided  
16 by the department. Except as otherwise provided by law, any fees  
17 received constitute a permanent fund for use by the department as  
18 special revenue income and do not become part of the General  
19 Fund. When applicable, fees so generated must be utilized in  
20 accordance with federal law.

22 §709. Acceptance of federal funds

24 Receipt and expenditure of federal funds by the department  
25 is governed by the following provisions.

26 1. Application. The department may, subject to the  
27 approval of the Governor, apply for federal funds under the  
28 United States Social Security Act, as amended, and under other  
29 federal acts regarding human welfare.

30 2. Administration. The department may administer  
31 assistance received under this section in a manner that complies  
32 with federal requirements if those requirements are not  
33 inconsistent with this Title.

34 3. Municipal or private entities. The department may make  
35 grants to cities or towns within the State, or to private  
36 entities organized for purposes related to human welfare, out of  
37 federal funds if the grants are permitted by the federal funding  
38 source. The grants must be made in conformity with applicable  
39 federal requirements and state accounting requirements, and in  
40 accordance with rules adopted by the department.

41 4. Treasurer to receive funds. The Treasurer of State  
42 shall receive available federal funds for programs administered  
43 by the department under the federal Social Security Act, as  
44 amended, and the State Controller shall authorize expenditures  
45 from those funds as approved by the department.

2 §710. Appropriated funds transferable

3 The appropriations made by the Legislature to any  
4 organizational unit of the department may be combined or  
5 transferred from one to another by authority of the Governor when  
6 a transfer is considered necessary.

8 §711. Rules

9 The department shall adopt rules considered necessary and  
10 proper for the protection of life, health and welfare, and the  
11 successful implementation of this Title. The rules must be  
12 adopted pursuant to the requirements of Title 5, chapter 375.  
13 The rules must include, but are not limited to, the following:

14 1. Administration of medication. Rules regarding the  
15 administration of medication in boarding care facilities, group  
16 home intermediate care facilities for persons with mental  
17 retardation, and other facilities as considered necessary by the  
18 department. In establishing rules for each type of facility,  
19 the department shall consider, among other factors, the general  
20 health of the persons likely to receive medication, the number of  
21 persons served by the facility and the number of persons employed  
22 at the facility who might be involved in the administration of  
23 medication; and

24 2. Department records. Reasonable rules governing the  
25 custody, use and preservation of the records, papers, files and  
26 communications of the department, and especially those that  
27 pertain to the granting of public assistance. The use of  
28 records, papers, files and communications by any other agency or  
29 department of government to which they are furnished is limited  
30 to the purposes for which they are furnished and by the law under  
31 which they are furnished. It is unlawful for any person, except  
32 for purposes directly connected with the administration of the  
33 public assistance and in accordance with the rules of the  
34 department, to solicit, disclose, receive, make use of or  
35 authorize, knowingly permit, participate in or acquiesce in the  
36 use of, any list of or names of, or any information concerning,  
37 persons applying for or receiving public assistance, directly or  
38 indirectly, derived from the records, papers, files or  
39 communications of the State or subdivisions or agencies of the  
40 State, or acquired in the course of the performance of official  
41 duties. Any person violating any provision of this subsection  
42 must be punished by a fine of not more than \$500 or by  
43 imprisonment for not more than 11 months, or by both.

44 §712. Aliens

2 1. Notification of immigration officer. When a person is  
4 admitted or committed to a state, county, city or private  
6 institution that is supported wholly or in part by public funds,  
8 the chief administrative officer of the institution shall inquire  
at once into the nationality of the person and, if it appears  
that the person is an alien, the chief administrative officer  
shall immediately notify the United States immigration officer in  
charge of the district in which the institution is located, of:

10 A. The date of and the reason for the alien's admission or  
12 commitment;

14 B. The length of time for which the alien is admitted or  
16 committed;

18 C. The country of which the alien is a citizen; and

20 D. The date on which and the port at which the alien last  
22 entered the United States.

24 2. Copy of record to immigration officer. Upon the  
26 official request of the United States immigration officer in  
charge of the territory or district in which is located any court  
committing an alien to a state, county, city or private  
institution that is supported wholly or in part by public funds,  
the clerk of the court shall furnish without charge a certified  
copy of any record pertaining to the alien's case.

### 28 §713. Interim assistance payments

30 The department shall establish and maintain a nonlapsing  
32 revolving fund to provide interim assistance payments to  
Supplemental Security Income recipients;

34 1. Benefits for hospitalization. Whose benefits have been  
36 terminated while they were hospitalized and who are reapplying  
for benefits because of their release from the hospital; or

38 2. Benefits when no longer able to work. Whose benefits  
40 have been terminated because they returned to work and who are  
reapplying for benefits because they have suffered a relapse and  
42 are no longer able to work.

44 These benefits must be provided until their Supplemental Security  
46 Income application has been acted on. The fund must be  
reimbursed, pursuant to section 8211, for interim assistance  
48 payments made under this section.

### 50 §714. Penalties and jurisdiction; certificate of commissioner as evidence

2 Any person who hinders, obstructs or interferes with any  
4 officer, inspector or duly authorized agent of the department  
while in the performance of the officer's, inspector's or agent's  
6 duties commits a Class E crime. Any person who violates any order  
or rule of the department made for the protection of life or  
8 health under law commits a Class E crime unless otherwise  
provided in this Title. Any person who violates any provision of  
10 this Title or willfully fails, neglects or refuses to perform any  
of the duties imposed upon that person by this Title commits a  
12 Class E crime, unless specific penalties are provided elsewhere.  
Any certificate of the commissioner in regard to the records of  
14 the department is admissible in evidence in all prosecutions  
under this Title.

### 16 §715. Civil liability of persons making false claims

18 Any person, firm, association, partnership, corporation or  
20 other legal entity who makes or causes to be made or presents or  
causes to be presented for payment or approval any claim upon or  
22 against the department or upon any funds administered by the  
department, knowing the claim to be false, fictitious or  
24 fraudulent or who, for the purpose of obtaining or aiding another  
to obtain the payment or approval of such a claim, makes any  
false written statement or submits any false document that the  
26 person does not believe to be true, or who enters into any  
agreement, combination or conspiracy to defraud the department by  
28 obtaining the payment or approval of any false, fictitious or  
fraudulent claim, is, in addition to any criminal liability which  
30 may be provided by law, subject to civil suit by the State in the  
Superior Court for recovery of damages to include the following:

34 1. Restitution. Restitution for all excess benefits or  
payments made;

36 2. Payment of interest. Payment of interest on the amount  
of the excess benefits or payments as set forth in subsection 1  
38 at the maximum legal rate in effect on the date the payment was  
made and computed for the date payment was made to the date on  
40 which repayment is made;

42 3. Payment of damages. Payment of damages, without regard  
to the amount in controversy, in an amount that is threefold the  
44 amount of the excess benefits or payments as set forth in  
subsection 1, but in any case not less than \$2,000 for each false  
46 claim for assistance, benefits or payments, or for each document  
submitted in support of the false claim, whichever is the greater  
48 amount; and

50 4. Cost of the suit. Cost of the suit.

2 §716. Legal assistance from Attorney General

4 The Attorney General and the several district attorneys  
6 within their respective counties, when requested by the  
8 department, shall furnish legal assistance, counsel or advice as  
10 required by the department in the discharge of its duties.

12 §717. Individuals may select own physician

14 Nothing in this Title empowers or authorizes the department  
16 or its representative to interfere in any manner with the right  
18 of any individual to select the physician or mode of treatment of  
20 the individual's choice, if sanitary laws and rules are complied  
22 with.

24 PART 2

26 PUBLIC HEALTH

28 CHAPTER 201

30 GENERAL PROVISIONS

32 §2001. Definitions

34 As used in this Part, unless the context otherwise  
36 indicates, the following terms have the following meanings.

38 1. Bureau. "Bureau" means the Bureau of Community Health  
40 within the department.

42 2. Director. "Director" means the director of the bureau  
44 or the director's designee.

46 3. Notifiable disease. "Notifiable disease" means any  
48 communicable disease or occupational disease the occurrence or  
50 suspected occurrence of which is required to be reported to the  
department pursuant to sections 2304, 2307, 2351, 2352, 2353 or  
2603.

§2002. Director

The director of the bureau must be a licensed physician or a  
person eligible for licensure in this State under Title 32,  
chapter 48, who is educated and experienced in public health  
administration, or a person with an advanced degree in public  
health and who has administrative experience.

§2003. Confidentiality of public health records

2 1. Records confidential. Department records that contain  
4 personally identifying medical information that are created or  
6 obtained in connection with the department's public health  
8 activities or programs are confidential. These records include,  
10 but are not limited to, information on genetic, communicable,  
12 occupational or environmental disease entities, and information  
14 gathered from public health nurse activities, or any program for  
16 which the department collects personally identifying medical  
18 information.

20 2. Release prohibited. Records that are confidential under  
22 this section may not be open to public inspection, are not public  
24 records for purposes of Title 1, chapter 13, subchapter I and may  
26 not be examined in any judicial, executive, legislative or other  
28 proceeding as to the existence or content of any individual's  
30 records obtained by the department.

32 3. Exceptions. Subsections 1 and 2 do not apply to the  
34 following exceptions:

36 A. Release of medical and epidemiologic information in such  
38 a manner that an individual can not be identified;

40 B. Disclosures that are necessary to carry out the  
42 provisions of chapter 207;

44 C. Disclosures made upon written authorization by the  
46 subject of the record; or

48 D. Disclosures that are specifically provided for by other  
50 provisions of law.

§2004. Information for department on request

Any officer of the State, physician of any incorporated  
company and president or agent of any company chartered,  
organized or transacting business under the laws of this State,  
as far as practicable, shall furnish to the department any  
information bearing upon public health that is requested by the  
department for the purpose of facilitating its duties of  
collecting and distributing useful knowledge regarding public  
health.

§2005. Comprehensive health planning

The department may develop, administer and revise a plan for  
providing comprehensive health services, including continued  
comprehensive health planning, in accordance with the United  
States Public Health Services Act, as amended.

2 Any comprehensive health planning conducted under this  
3 section must be conducted in cooperation with a broadly  
4 representative health planning council as provided for in the  
5 United States Public Health Services Act, as amended.

6 Subject to state fiscal procedure laws, the department may  
7 accept and expend federal funds available to states for the  
8 purposes of health planning.

10 **§2006. Program of health services**

11 The department, through the bureau, may administer a program  
12 to extend and improve its services for promoting the general  
13 public health.

14 The department may:

15 1. Apply for federal aid. Apply for federal aid under the  
16 Public Health Service Act, Public Law 410, 78th Congress Second  
17 Session, as amended;

18 2. Cooperate with Federal Government. Cooperate with the  
19 Federal Government through the United States Public Health  
20 Service in matters of mutual concern pertaining to general public  
21 health, including methods of administration that are necessary  
22 for the efficient operation of the plan for the aid; and

23 3. Reports. Prepare and submit reports in the form and  
24 containing the information the Surgeon General of the United  
25 States Public Health Service requires and comply with provisions  
26 the Surgeon General finds necessary to ensure the correctness and  
27 verification of the reports.

28 The Treasurer of State must be the fiscal officer of the  
29 State to receive federal grants on account of general public  
30 health services as contemplated by Public Health Service Act, as  
31 amended, and the State Controller shall authorize expenditures  
32 from those grants as approved by the department.

33 **§2007. Acceptance of federal and other funds**

34 The department may comply with any federal law for the  
35 purposes of receiving federal funds available for public health  
36 services of all kinds. The department, subject to the approval of  
37 the Governor, may accept funds from other sources for the same  
38 purposes.

39 **§2008. Distribution of antitoxins in emergency**

2 The department, with the approval of the Governor, may, for  
3 the purpose of aiding in national defense in case of war or in  
4 any state emergency declared by the Governor under the Civil  
5 Defense Law, procure and distribute within the State, and sell or  
6 give away, in its discretion, antitoxins, serums, vaccines,  
7 viruses and analogous products applicable to the prevention or  
8 cure of disease of humans.

9 **CHAPTER 203**

10 **LOCAL HEALTH OFFICERS**

11 **§2101. Local health officer**

12 1. Appointment. The municipal officers of each municipality  
13 in the State shall appoint a local health officer. The local  
14 health officer must be appointed for a term of 3 years and  
15 continues to serve until a successor is appointed. Upon  
16 expiration of the term of office or resignation of the local  
17 health officer, the municipal officers shall appoint a successor  
18 within 30 days of the resignation or expiration. The municipal  
19 officers or clerk of each municipality shall within 10 days  
20 notify the department in writing of the appointment of a health  
21 officer, stating the health officer's name, age, address and the  
22 dates of appointment and beginning of 3-year term. The local  
23 health officer may be employed part-time or full-time. The  
24 offices of the local health officer and town or school physician  
25 may be combined when, in the opinion of the municipal officers,  
26 the health needs of the people would be better served. The  
27 health officer in towns or plantations contiguous to unorganized  
28 territory shall perform the duties of health officer in that  
29 territory.

30 2. Incapacity or absence. In the event of incapacity or  
31 absence of the local health officer, the municipal officers shall  
32 appoint a person to act as health officer during the incapacity  
33 or absence. If no temporary appointment is made, the chair of the  
34 municipal officers shall perform the duties of local health  
35 officer until the regular health officer is returned to duty or  
36 appointment of another person has been made.

37 3. Municipal manager. In municipalities with a manager  
38 form of government, when the charter so provides, the  
39 appointments provided for in this section may be made by the  
40 manager and the duty prescribed for the chair of the municipal  
41 officers during incapacity or absence of the health officer must  
42 be performed by the manager.

43 4. Conflict of interest. In no case may a person be  
44 appointed to hold office as a local health officer or as a member

2 of the local board of health if that person has any pecuniary  
3 interest, directly or indirectly, in any private sewer  
4 corporation over which the officer or board has general  
5 supervision.

6 **§2102. Local board of health**

8 Any municipality may appoint, in addition to the local  
9 health officer, a board of health consisting of 3 members in  
10 addition to the local health officer, one of whom must be a  
11 physician if available in the community, and one a woman. When  
12 first appointed members of the board must be appointed one for  
13 one year, one for 2 years and one for 3 years. Subsequent  
14 appointments are for 3-year terms.

16 The local health officer is secretary ex officio of the  
17 board and keeps a record of all proceedings. The local board of  
18 health serves as an advisory body to the local health officer.

20 **§2103. Duties**

22 The local health officer shall:

24 1. Keep records. In a book kept for that purpose, record  
25 all the proceedings, transactions, orders and rules of the local  
26 health officer;

28 2. Assist in protecting health. Assist in the reporting,  
29 prevention and suppression of diseases and all conditions  
30 dangerous to health, subject to the supervision and direction of  
31 the department;

33 3. Report communicable diseases. Report promptly to the  
34 commissioner or the commissioner's designee facts that relate to  
35 communicable diseases occurring within the local health officer's  
36 jurisdiction, including but not limited to, every case of a  
37 notifiable disease; and

39 4. Receive and act upon complaints. Receive and evaluate  
40 complaints made by local inhabitants concerning nuisances that  
41 pose potential public health threats within the local health  
42 officer's jurisdiction. With the consent of the owner, agent or  
43 occupant, the local health officer may enter upon or within any  
44 premises where nuisances or conditions posing a public health  
45 threat are known or believed to exist, and personally, or by  
46 appointed agents, inspect and examine the premises. If entry is  
47 refused, the municipal health officer shall apply for an  
48 inspection warrant from the District Court pursuant to Title 4,  
49 section 179 prior to conducting the inspection. When the local  
50 health officer has reasonable cause to suspect the presence of a

2 public health threat, the local health officer shall consult with  
3 the commissioner, or a designee. The health officer shall then  
4 order the suppression and removal of nuisances and conditions  
5 posing a public health threat found to exist within the public  
6 health officer's jurisdiction. For purposes of this section,  
7 "public health threat" means any condition or behavior that can  
8 reasonably be expected to place others at significant risk of  
9 exposure to infection with a communicable disease.

10 **§2104. Providing for free vaccinations**

12 The local health officer of each municipality may provide  
13 for free vaccinations with suitable material, as defined by the  
14 department. Vaccinations and inoculations must be done under the  
15 care of skilled, practicing physicians and under those  
16 circumstances and restrictions as the local health officer  
17 adopts, not contrary to law or in violation of any rules of the  
18 department.

20 Notwithstanding any municipal charter provision to the  
21 contrary, the local health officer may carry out this section  
22 when the local health officer deems it necessary for the proper  
23 discharge of duties outlined in section 2103.

26 The municipal officers shall pay any reasonable bills or  
27 charges approved by the local health officer under this section.

28 **§2105. Notice to owner to clean premises; expenses on refusal**

30 The local health officer, when satisfied upon due  
31 examination that a cellar, room, tenement or building in the  
32 town, occupied as a dwelling place, has become, because of  
33 dirtiness or other cause, unfit for dwelling and a cause of  
34 sickness to the occupants or the public, may issue, in  
35 consultation with the department, a notice in writing to the  
36 occupants, or the owner or the owner's agent, or any one of them,  
37 declaring the premises unfit for dwelling and requiring the  
38 premises to be cleaned, or, if they deem necessary, requiring the  
39 occupants to quit the premises within a time deemed reasonable by  
40 the local health officer. If any of the persons notified neglect  
41 or refuse to comply with the terms of the notice, the local  
42 health officer may have the premises cleaned at the expense of  
43 the owner, or may close the premises. If the premises are  
44 closed, they may not be occupied as a dwelling place until  
45 cleaned to the satisfaction of the local health officer. If the  
46 owner occupies or knowingly permits unfit premises to be  
47 occupied, the owner shall forfeit not less than \$10 nor more than  
48 \$50 for each day that the unfit premises remain occupied.

50 **§2106. Removal of private nuisance**

2 When any source of filth whether or not the cause of  
4 sickness is found on private property and deemed by the local  
6 health officer to be potentially injurious to health, the owner  
8 or occupant of the property shall, within 24 hours after notice  
10 from the local health officer, at the owner or occupant's  
12 expense, remove or discontinue it. If the owner or occupant  
14 neglects or unreasonably delays to do so, the owner or occupant  
16 forfeits an amount not exceeding \$300 and the local health  
18 officer shall cause the nuisance to be removed or discontinued,  
20 and all expenses incurred must be repaid to the town by the owner  
22 or occupant, or by the person who caused or permitted it.

24 **§2107. Depositing of dead animal where nuisance**

26 Whoever personally or through another leaves or deposits the  
28 carcass of a dead horse, cow, sheep, hog or of any domestic  
30 animals or domestic fowl or parts thereof in any place where it  
32 may cause a nuisance shall, upon receiving a notice to that  
34 effect from the local health officer, promptly remove, bury or  
36 otherwise dispose of the carcass. If the person fails to do so  
38 within the time required by the local health officer and in a  
40 manner that is satisfactory to the local health officer, the  
42 person must be punished by a fine of not less than \$10 nor more  
44 than \$100, or by imprisonment for not more than 3 months.

28 **§2108. Assistance if obstructed in duty**

30 Any local health officer or other person employed by the  
32 local health officer may, when obstructed in the performance of  
34 that person's duty, call for assistance from a law enforcement  
36 officer.

34 **§2109. Penalties**

36 Whoever willfully violates any provision of section 2101,  
38 2103, 2105 or 2108, or of rules adopted pursuant to those  
40 sections, or neglects or refuses to obey any order or direction  
42 of any local health officer authorized by those provisions, the  
44 penalty for which is not specifically provided, or willfully  
46 interferes with any person or thing to prevent the execution of  
48 those sections or of the rules, commits a Class E crime. The  
50 District Court has jurisdiction of all offenses under these  
sections.

46 **CHAPTER 205**

48 **ENVIRONMENTAL HEALTH**

50 **SUBCHAPTER I**

2 **GENERAL PROVISIONS**

4 **§2201. Findings and declaration of purpose**

6 The Legislature finds that adequate measures must be taken  
8 to ensure that any threats to the health of the people of the  
10 State posed by natural phenomena or the introduction of  
12 potentially toxic substances into the environment are identified,  
14 appropriately considered and responded to by those responsible  
16 for protecting the public's health and environment.

18 The purpose of this chapter is to provide the department  
20 with the capability it requires to discharge its public health  
22 responsibilities satisfactorily.

24 **§2202. Environmental Health Program**

26 The department shall create the Environmental Health  
28 Program, referred to in this chapter as the "program," within the  
30 bureau. The program must be staffed by individuals with training  
32 and experience in environmental medicine, epidemiology,  
34 toxicology, statistics and related fields. The program shall:

36 1. Develop and monitor health status. Develop indicators of  
38 health problems in the State, monitor the health status of the  
40 people of the State and establish and maintain the necessary data  
42 banks for broad surveillance of human health and disease in the  
44 State.

46 2. Identify health problems. Identify significant health  
48 problems in the State, including those that may be related to  
50 environmental factors:

3. Investigate. Conduct and contract for investigations as  
necessary to determine whether particular problems are related to  
environmental factors:

4. Advise state agencies. Advise the commissioner and other  
state agencies and boards, including, but not limited to, the  
Department of Conservation, the Department of Environmental  
Protection and the Department of Agriculture, Food and Rural  
Resources regarding the potential health implications of their  
actions, the nature and extent of identified problems and the  
steps that can be taken to address them; and

5. Public information. Provide the public with information,  
and advise them as to preventive and corrective actions in the  
area of environmental health.



2 §2203. Investigations

4 1. Access to reports and records. The department must be  
6 given access to all confidential reports and records filed by  
8 physicians, hospitals or other private or public sector  
10 organizations, with all departments, agencies, commissions or  
12 boards of the State for the purpose of conducting investigations  
14 or evaluating the completeness or quality of data submitted to  
16 the department's disease surveillance programs. The department  
18 shall follow the data confidentiality requirements of the  
20 departments, agencies, commissions or boards of the State  
22 providing this information.

24 Upon request of the department, physicians or hospitals shall  
26 provide to the department any further information requested for  
28 the purpose of conducting investigations or evaluating the  
30 completeness or quality of data submitted to the department's  
32 disease surveillance programs.

34 2. Limited immunity. A physician, hospital or employee of  
36 a physician or hospital is not liable for any civil damages as a  
38 result of the department's use of information gathered under this  
40 section. This immunity is limited to legitimate activities  
42 pursued in good faith under this section.

44 3. Adoption of rules. The department shall adopt rules  
46 governing the conditions under which and purposes for which the  
48 department may use identifying information under this section.  
50 The rules must ensure that:

A. Identifying information is used only to gain access to  
medical records and other medical information pertaining to  
an investigation designed to accomplish public health  
research of substantial public importance;

B. Medical information about an identified patient is not  
sought from any person without the consent of that patient  
except when the information sought pertains solely to  
verification or comparison of health data that the  
department is otherwise authorized by law to collect and the  
department finds that confidentiality can be adequately  
protected without patient consent;

C. Those persons conducting the investigation do not  
disclose medical information about an identified patient to  
any other person except a health care practitioner  
responsible for treating the patient;

D. Those persons gaining access to medical information  
about an identified patient use that information to the

minimum extent necessary to accomplish the purposes of the  
investigation;

E. The protocol for any investigation is designed to  
preserve the confidentiality of all medical information that  
can be associated with identified patients, to specify the  
manner in which contact is made with patients and to  
maintain public confidence in the protection of confidential  
information;

F. An advisory body, independent from the department, is  
established and charged with responsibility for approving  
the protocol of the investigation, overseeing the conduct of  
the investigation to ensure consistency with the protocol  
and the department's rules and assessing both the scientific  
validity of the investigation and its effects upon patients;

G. The department does not seek information under this  
section if the proposed identification of or contact with  
patients or health care practitioners would diminish the  
confidentiality of medical information or the public's  
confidence in the protection of that information in a manner  
that outweighs the expected benefit to the public of the  
proposed investigation; and

H. Whenever a physician or hospital furnishes patient  
information requested by the department in accordance with  
this section, the department reimburses the physician or  
hospital for the reasonable costs incurred in providing the  
information.

34 §2204. Cooperation with state agencies

36 The director may obtain, upon request, information from and  
38 the assistance of the Department of Labor, the Department of  
40 Environmental Protection, Bureau of Pesticides Control and other  
42 state agencies as appropriate in the conduct of investigations  
44 under this chapter. Information obtained under this section is  
46 subject to the trade secret provisions governing the agencies  
48 supplying the information.

50 §2205. Provision of information: trade secrets

A person may withhold the identity of a specific toxic or  
hazardous substance, if the substance has been registered as a  
trade secret under Title 26, chapter 22. All other information,  
including routes of exposure, effects of exposure, type and  
degree of hazard and emergency treatment and response procedures,  
must be provided if requested by the director and is a public  
record.

2 §2206. Contracts with educational, research and charitable  
4 organizations

6 The program shall, to the maximum extent feasible, and  
8 within the amounts appropriated for these purposes, contract with  
10 educational, research and charitable organizations within the  
12 State for research and investigation activities that can be  
14 carried out more economically, expeditiously or conveniently by  
16 those nonstate organizations.

18 §2207. Acceptance of funds

20 The department may accept any public or private funds  
22 available for carrying out the purposes of this chapter.

24 SUBCHAPTER II

26 ENVIRONMENTAL HAZARDS

28 §2251. Findings and intent

30 The Legislature finds and declares that the proliferation of  
32 hazardous substances in the environment poses a growing threat to  
34 the public health, safety and welfare; that the constantly  
36 increasing number and variety of hazardous substances, and the  
38 many routes of exposure to them make it difficult and expensive  
40 to adequately monitor and detect any adverse health effects  
42 attributable to them; that individuals are often able to detect  
44 and thus minimize effects of exposure to hazardous substances if  
46 they are aware of the identity of the substances and the early  
48 symptoms of unsafe exposure; and that individuals have an  
50 inherent right to know the full range of the risks they face so  
that they can make reasoned decisions and take informed actions  
concerning their employment and their living conditions.

The Legislature further declares that accidental releases of  
hazardous materials pose a threat to public health and safety and  
that there are serious questions concerning the State's ability  
to respond to these emergencies in a coordinated and effective  
manner; and that local health, fire, police, safety and other  
government officials require information about the identity,  
characteristics and quantities of hazardous substances used and  
stored in communities within their jurisdictions, in order to  
adequately plan for, and respond to, emergencies and enforce  
compliance with applicable laws and rules concerning these  
substances.

The Legislature further declares that the extent of the  
toxic contamination of the air, water and land in this State has

caused a high degree of concern among its residents; and that  
much of this concern is needlessly aggravated by the  
unfamiliarity of these substances to residents.

The Legislature determines that it is in the public interest  
for the State to examine its emergency response mechanisms and  
procedures for accidents involving hazardous materials, to  
establish a comprehensive program for the disclosure of  
information about hazardous substances in the community and to  
provide a procedure whereby residents of this State may gain  
access to this information.

§2252. Hazardous air pollutants

1. Findings and declaration of purpose. The Legislature  
finds that:

A. Pure scientific considerations must govern the review  
and evaluation of potential health risks associated with  
chemical pollutants;

B. Scientific review and evaluation of potential health  
risks associated with potential hazardous air pollutants is  
an integral component of a successful hazardous air  
pollutant control program; and

C. The scientific review and evaluation is the  
responsibility of the department since it is charged with  
the protection of the public health and welfare and has the  
professional expertise to assess potential public health  
risks from chemical hazards.

2. Duties. The department, through the program, shall:

A. Collect and consider the health data for substances or  
classes of substances that are under consideration for  
regulation as hazardous air pollutants by the Board of  
Environmental Protection;

B. Establish a protocol for the health risk review and  
evaluation of potentially hazardous air pollutants for the  
following parameters: Carcinogenicity; in vivo and in vitro  
mutagenicity; teratogenicity; reproductive effects;  
neurotoxicity; acute and chronic reversible and irreversible  
effects; pharmacokinetics and pharmacodynamics; high-risk  
groups; bioaccumulation; and atmospheric fate;

C. Report the health consequences of exposure to various  
ambient air concentrations indicating a range of risk levels  
for cancer-causing substances and the health consequences of

2 exposure to various ambient air concentrations of  
3 noncancer-causing substances, after considering the adequacy  
4 of the data base, animal to human extrapolation, high-risk  
5 groups and any other health-based considerations; and

6 D. Report whether exposure to the substance should be  
7 considered for regulation by the Board of Environmental  
8 Protection to protect public health.

10 3. Requests for review. Requests for review are governed  
11 by the following provisions.

12 A. The bureau shall review or evaluate the potential health  
13 risks associated with potentially hazardous air pollutants  
14 at the request of:

15 (1) The director; or

16 (2) The Commissioner of Environmental Protection  
17 following notice to the director.

18 B. Requests from parties other than those listed in this  
19 subsection must be reviewed by the director and, if  
20 justified, must be pursued. The director may assess any  
21 reasonable costs to the party making those requests.

22 4. Reporting. The director shall compile all available  
23 information and prepare a report for each substance, class of  
24 substances or pollutants evaluated and submit the report to the  
25 person who requested the health risk review and evaluation.

#### 26 §2253. Community health information project

27 The department, through the program, shall undertake a  
28 community health information project. The project shall respond,  
29 subject to this subchapter, to requests made by state agencies,  
30 municipalities or individuals for information on potential health  
31 hazards posed by the use of hazardous chemicals. To meet these  
32 requests, the director shall establish a community health  
33 information clearinghouse that contains information on the health  
34 implications of chemicals in use in the home and the workplace.

#### 35 §2254. Response to requests

36 When requested under this subchapter, the director shall  
37 provide, at a minimum, the identity of chemical substances in use  
38 or present at a specific location, unless the substance has been  
39 designated as a trade secret under Title 26, chapter 22. The  
40 director may provide information on the chronic and acute health  
41 hazards posed by the substance, potential routes of exposure,  
42

2 emergency procedures and other subjects as appropriate. Annually  
3 by January 1st, the director shall submit a report to the joint  
4 standing committee of the Legislature having jurisdiction over  
5 human resource matters on the number and type of requests  
6 received and on the bureau's response to those requests.

7 In the case of a request for information from a municipality  
8 or individual concerning chemicals in use or present at a  
9 specific site, the director shall provide information pursuant to  
10 this subchapter only if the specific site is within a 50-mile  
11 radius of the municipality or within a 50-mile radius of a  
12 residence of the individual requesting the information.

#### 13 §2255. Noncommercial fishing and public health

14 The director shall assess regularly whether any health  
15 threats exist for persons consuming freshwater and anadromous  
16 fish caught in state waters by noncommercial anglers. The  
17 assessment must be based on appropriate technical and scientific  
18 data and public health analyses and must include, but is not  
19 limited to, the risk of carcinogenic, mutagenic, teratogenic and  
20 reproductive effects and infectious disease. In preparing the  
21 assessment, the director shall consult with the Commissioner of  
22 Marine Resources, the Commissioner of Environmental Protection  
23 and the Commissioner of Inland Fisheries and Wildlife.

24 If, in the professional judgment of the director, conditions  
25 exist in which consumption of fish caught in state waters poses a  
26 threat to public health, the director shall prepare an advisory  
27 of the public health threat. The advisory must be in a form  
28 suitable for posting in places frequented by noncommercial  
29 anglers, included in the abstract of fish and wildlife laws  
30 prepared under Title 12, section 7034, subsection 5 and  
31 distributed to all holders of sport fishing licenses. The  
32 director has final authority regarding the content of the  
33 advisory, including the exact language used in the advisory. The  
34 Commissioner of Inland Fisheries and Wildlife shall print and  
35 post verbatim copies of the advisory and incorporate the verbatim  
36 health advisory in the abstract of fish and wildlife laws.

#### 37 CHAPTER 207

#### 38 COMMUNICABLE DISEASES

#### 39 SUBCHAPTER I

#### 40 GENERAL PROVISIONS

#### 41 §2301. Definitions

2 As used in this chapter, unless the context otherwise  
3 indicates, the following terms have the following meanings.

4 1. Communicable disease. "Communicable disease" means an  
5 illness or condition due to a specific infectious agent or its  
6 toxic products that arises through transmission of that agent or  
7 its products from a reservoir to a susceptible host.

8 2. Contact notification program. "Contact notification  
9 program" means a program coordinated by the department to  
10 encourage any person infected with a communicable disease to  
11 identify others who may be at risk as a result of contact with  
12 the infected person; or to permit the department to notify those  
13 persons who may be at risk to inform them of the risk if the  
14 infected person refuses to cooperate.

15 3. Infected person. "Infected person" means a person who  
16 is diagnosed as having a communicable disease or who, after  
17 appropriate medical evaluation or testing, is determined to  
18 harbor an infectious agent.

19 4. Local health officer. "Local health officer" means a  
20 person who is appointed as local health officer pursuant to  
21 section 2101 and who is authorized by the department to enforce  
22 this chapter.

23 5. Occupational disease. "Occupational disease" has the  
24 same meaning as in section 2601.

25 6. Property. "Property" means animals, inanimate objects,  
26 vessels, public conveyances, buildings and all other real or  
27 personal property.

28 7. Public health threat. "Public health threat" means any  
29 condition or behavior that can reasonably be expected to place  
30 others at significant risk of exposure to infection with a  
31 communicable disease.

32 A. A condition is a "public health threat" if an infectious  
33 agent is present in the environment under circumstances that  
34 would place persons at significant risk of becoming infected  
35 with a communicable disease.

36 B. Behavior by an infected person is a "public health  
37 threat" if:

38 (1) The infected person engages in behavior that has  
39 been demonstrated epidemiologically to create a  
40 significant risk of transmission of a communicable  
41 disease;

2 (2) The infected person's past behavior indicates a  
3 serious and present danger that the infected person  
4 will engage in behavior that creates a significant risk  
5 of transmission of a communicable disease to another;

6 (3) The infected person fails or refuses to cooperate  
7 with a departmental contact notification program; or

8 (4) The infected person fails or refuses to comply  
9 with any part of either a cease and desist order or a  
10 court order issued to the infected person to prevent  
11 transmission of a communicable disease to another.

12 C. Behavior described in paragraph B, subparagraphs (1) and  
13 (2) is not a "public health threat" if the infected person  
14 demonstrates that any other person placed at significant  
15 risk of becoming infected with a communicable disease was  
16 informed of the risk and consented to it.

#### 27 §2302. Authority of department

28 1. Authority. To carry out this chapter and chapter 209,  
29 the department may:

30 A. Designate and classify communicable and occupational  
31 diseases;

32 B. Establish requirements for reporting and other  
33 surveillance methods for measuring the occurrence of  
34 communicable diseases, occupational diseases and the  
35 potential for epidemics;

36 C. Investigate cases, epidemics and occurrences of  
37 communicable and occupational diseases; and

38 D. Establish procedures for the control, detection,  
39 prevention and treatment of communicable and occupational  
40 diseases, including public immunization and contact  
41 notification programs.

42 2. Health emergency. In the event of an actual or  
43 threatened epidemic or outbreak of a communicable or occupational  
44 disease, the department may declare that a health emergency  
45 exists and may adopt emergency rules for the protection of the  
46 public health relating to:

47 A. Procedures for the isolation and placement of infected  
48 persons for purposes of care and treatment or infection  
49 control;

2 B. Procedures for the disinfection, seizure or destruction  
4 of contaminated property; and

6 C. The establishment of temporary facilities for the care  
8 and treatment of infected persons, subject to the  
10 supervision and rules of the department and to the  
12 limitations set forth in section 2401.

14 3. Rules. The department may adopt rules to carry out its  
16 duties as specified in this chapter and in chapter 209. If rules  
18 are adopted, they must be adopted in accordance with the Maine  
20 Administrative Procedure Act.

#### 22 §2303. Inspection

24 If the department has reasonable grounds to believe that  
26 there exists, on public or private property, any communicable  
28 disease that presents a public health threat, an authorized agent  
30 of the department may enter any place, building, vessel, aircraft  
32 or common carrier with the permission of the owner, agent or  
34 occupant where the communicable disease is reasonably believed to  
36 exist and may inspect and examine the property. If entry is  
38 refused, that agent shall apply for an inspection warrant from  
40 the District Court pursuant to Title 4, section 179 prior to  
42 conducting the inspection.

#### 44 §2304. Confidentiality

46 Any person who receives information pursuant to this chapter  
48 shall treat as confidential the names of individuals having or  
suspected of having a notifiable communicable disease, as well as  
any other information that may identify those individuals. This  
information may be released to the department or the Department  
of Children and Families for adult or child protection purposes  
in accordance with chapter 1413 or Title 22-A, chapter 401, or to  
other public health officials, agents or agencies or to officials  
of a school where a child is enrolled, for public health  
purposes, but that release of information must be made in  
accordance with Title 5, chapter 501, where applicable. In a  
public health emergency, as declared by the state health officer,  
the information may also be released to private health care  
providers and agencies for the purpose of preventing further  
disease transmission. All information submitted pursuant to this  
chapter that does not name or otherwise identify individuals  
having or suspected of having a notifiable communicable disease  
may be made available to the public.

2 Any person receiving a disclosure of identifying information  
4 pursuant to this chapter may not further disclose this  
6 information without the consent of the infected person.

#### 8 §2305. Privileged or confidential communications

10 1. Privileges abrogated. Subject to the limitations  
12 imposed by 42 United States Code, Sections 290dd-3 and 290ee-3,  
14 the physician-patient and psychotherapist-patient privileges  
16 under the Maine Rules of Evidence and those confidential  
18 communications described under Title 5, section 19203, Title  
20 24-A, section 4224, Title 32, section 7005 and Title 34-B,  
22 section 1207 are abrogated to the extent necessary to permit  
24 reporting to the bureau any incidents of notifiable disease;  
26 cooperating with the bureau or an intervention team appointed by  
28 the bureau in investigating a case of a notifiable disease or  
30 suspected epidemic or taking preventive action in such a case; or  
32 giving evidence in a proceeding pursuant to this chapter.  
34 Information released to the bureau pursuant to this section is  
36 confidential and may not be disclosed by the bureau except as  
38 provided in section 2304 and Title 5, section 19203, subsection 8.

2 2. Limitation. Statements made to a licensed mental health  
4 or medical professional in the course of counseling, diagnosis,  
6 therapy, treatment or evaluation when the privilege is abrogated  
8 under this section may not be used against the client in a  
10 criminal proceeding.

#### 12 §2306. Immunity

14 1. For private institutions. Any private institution, its  
16 employees or agents are immune from civil liability to the extent  
18 provided in Title 14, chapter 741, as if that institution were a  
20 state agency and its employees and agents were state employees,  
22 for any acts taken to provide for the confinement or restraint of  
24 a person committed pursuant to this chapter or for participating  
26 in reporting under this chapter.

28 2. Reporting and proceedings. Any person participating in  
30 reporting under this chapter or participating in a related  
32 communicable disease investigation or proceeding, including, but  
34 not limited to, any person serving on or assisting a  
36 multidisciplinary intervention team or other investigating or  
38 treatment team, is immune from civil liability for the act of  
40 reporting or participating in the investigation or proceeding in  
42 good faith. Good faith does not include instances when a false  
44 report is made and the reporting person knows or should know the  
46 report is false.

2 3. For public institutions or employees. Immunity for  
3 public institutions and employees is governed by Title 14,  
4 chapter 741.

5 §2307. Penalties

6 1. Rules enforced. All agents of the department, municipal  
7 health officers, sheriffs, state and local law enforcement  
8 officers and other officials designated by the department shall  
9 enforce the rules of the department made pursuant to section 2302  
10 to the extent that enforcement is authorized in those rules.

11 2. Refusal to obey rules. Any person who neglects,  
12 violates or refuses to obey the rules or who willfully obstructs  
13 or hinders the execution of the rules may be ordered by the  
14 department, in writing, to cease and desist. This order may not  
15 be considered an adjudicatory proceeding within the meaning of  
16 the Maine Administrative Procedure Act. In the case of any  
17 person who refuses to obey a cease and desist order issued to  
18 enforce the rules adopted pursuant to section 2302, the  
19 department may bring an action in District Court to obtain an  
20 injunction enforcing the cease and desist order or to request a  
21 civil fine not to exceed \$500, or both. Alternatively, the  
22 department may seek relief pursuant to section 2404 or 2406. The  
23 District Court has jurisdiction to determine the validity of the  
24 cease and desist order whenever an action for injunctive relief  
25 or civil penalty is brought before it under this subsection.

26 3. Court orders. Upon complaint made to any judge of the  
27 District Court, the judge may issue any order enforcing a  
28 subpoena, warrant or prior order necessary for the proper  
29 enforcement of this chapter and of the rules adopted pursuant to  
30 this chapter.

31 4. Failure to report. Any person who knowingly and  
32 willfully fails to comply with reporting requirements for  
33 notifiable diseases commits a civil violation for which a  
34 forfeiture of not more than \$250 may be adjudged. A person who  
35 knowingly or recklessly makes a false report under section 2352  
36 or who knowingly violates section 2304 is civilly liable for  
37 actual damages suffered by a person reported upon and for  
38 punitive damages and commits a civil violation for which a  
39 forfeiture of not more than \$500 may be adjudged.

40 SUBCHAPTER II

41 REPORTING REQUIREMENTS

42 §2351. Authority of department

2 The department shall adopt rules pursuant to section 2302  
3 and establish procedures to carry out the rules to provide a  
4 uniform system of reporting, recording and collecting information  
5 and maintaining confidentiality concerning communicable  
6 diseases. The department may designate any communicable disease  
7 as a notifiable disease. Every notifiable disease must be  
8 reported to the department in accordance with this subchapter and  
9 the rules established by the department.

10 §2352. Reporting

11 Whenever any physician knows or has reason to believe that  
12 any person whom the physician examines or cares for has or is  
13 afflicted with any notifiable disease, that physician shall  
14 notify the department in accordance with rules of the  
15 department. The department shall provide forms for making  
16 required reports.

17 §2353. Time requirements

18 The reporting of a notifiable disease must be made by  
19 telephone to the department immediately upon determination that a  
20 person has that disease and must be followed by a written report  
21 mailed to the department within 48 hours.

22 SUBCHAPTER III

23 CONTROL MEASURES

24 §2401. Control of communicable diseases

25 The department may establish procedures for agents of the  
26 department to use in the detection, contacting, education,  
27 counseling and treatment of individuals having or reasonably  
28 believed to have a communicable disease. The procedures must be  
29 adopted in accordance with the requirements of this chapter and  
30 with the rules adopted under section 2302.

31 For purposes of carrying out this chapter, the department  
32 may designate facilities for the confinement and treatment of  
33 infected persons posing a public health threat. The department  
34 may designate any such facility in any hospital or other public  
35 or private institution, other than a jail or correctional  
36 facility. Designated institutions must have necessary clinic,  
37 hospital or confinement facilities as may be required by the  
38 department. The department may enter into arrangements for the  
39 conduct of these facilities with public officials or persons,  
40 associations or corporations in charge of or maintaining and  
41 operating these institutions.

2 **§2402. Investigations**

4 **1. Investigative team.** The department shall establish an  
6 investigative team and procedures for the detection and treatment  
8 of individuals known or reasonably believed to pose a public  
10 health threat, as defined in section 2301. Team members  
12 designated by the department have access to medical and  
14 laboratory records relevant to the investigation of the public  
16 health threat, according to the procedure set forth in subsection  
18 2. Team members also have access to medical and laboratory  
20 records in the possession of the department when relevant to the  
22 investigation of the public health threat. Team members  
24 designated by the department shall follow the procedures  
26 developed by the department for detection and treatment pursuant  
28 to this subsection.

16 **2. Subpoenas.** After notice to the subject of the  
18 information or records, the department, with the approval of the  
20 Attorney General, may issue subpoenas requiring persons to  
22 disclose or provide to the department information or records in  
24 their possession that are relevant to an investigation of a  
26 report of a public health threat. The Attorney General may grant  
28 approval when there is clear evidence of substantial public  
30 health need for the information sought. A person who complies  
32 with a subpoena is immune from civil or criminal liability that  
34 might otherwise result from the act of turning over or providing  
36 information or records to the department.

30 **§2403. Examination**

32 If, based on epidemiologic evidence or medical evaluation,  
34 the department finds probable cause to believe that an individual  
36 has a communicable disease and that the individual is unwilling  
38 to submit to a physical examination, which may include x-ray  
40 studies or other diagnostic studies, as requested by the  
42 department, or that the individual refuses to make the results of  
44 that examination available to the department, the department may  
46 petition the District Court of the district in which the  
48 individual resides or is found for an order directing that  
examination, or the release of the results, under conditions to  
prevent the conveyance of the disease or infectious agent to  
other individuals. The petition must be accompanied by an  
affidavit or affidavits based upon the investigation of the  
department supporting the allegations in the petition.

46 If, following a hearing as provided in section 2405, the  
48 District Court finds by a preponderance of the evidence that  
there is probable cause to believe that an individual has a  
communicable disease and that the individual has willfully

2 refused the department's request, the District Court shall order  
4 the examination of the individual.

4 **§2404. Emergency temporary custody**

6 Upon the department's submission of an affidavit showing by  
8 clear and convincing evidence that the person or property that is  
10 the subject of the petition requires immediate custody in order  
12 to avoid a clear and immediate public health threat, a judge of  
14 the District Court or justice of the Superior Court may grant  
16 temporary custody of the subject of the petition to the  
18 department and may order specific emergency care, treatment or  
20 evaluation.

16 **1. Orders; ex parte proceedings.** Orders under this section  
18 may be issued in an ex parte proceeding upon an affidavit that  
20 sets forth specific facts of the reasons that prior notice can  
22 not or should not be given, upon which the order is sought. An  
24 ex parte order may not include orders for emergency care,  
26 treatment or evaluation unless the court finds by clear and  
28 convincing evidence that the care, treatment or evaluation is  
30 immediately necessary. An ex parte order must be served on the  
32 subject of the petition immediately upon apprehension.

26 **2. Hearing within time certain.** Unless waived in writing  
28 by the individual, after opportunity to consult with an attorney,  
30 a hearing must be held within 72 hours of apprehension, exclusive  
32 of Saturdays, Sundays and legal holidays, to determine whether  
34 the individual remains in the department's custody.

30 **3. Notice of hearing.** Notice of the hearing must be served  
32 upon the individual held under this section at least 24 hours  
34 before the hearing and the notice must specify: the time, date  
36 and place of the hearing; the grounds and underlying fact upon  
38 which the emergency hold is sought; the individual's right to  
40 appear at the hearing and to present and cross-examine witnesses;  
42 and the individual's right to counsel pursuant to section 2405.

38 **4. Duration.** In no event may the emergency hold continue  
40 longer than 5 days following the hearing, unless a petition for  
42 court-ordered commitment is filed under section 2406, subsection  
44 1, paragraph F; if a petition is filed, the limitations imposed  
46 by the court under this subsection may continue until a hearing  
48 on the petition for commitment is held; that hearing must occur  
within 10 days of the filing of the petition, excluding  
Saturdays, Sundays and legal holidays.

48 **§2405. Court procedures**

1. Subject of petition. As used in this section or in section 2404, "subject of the petition" means the person or the property upon which a public health measure is sought to be imposed pursuant to section 2406.

2. Filing of petition. Proceedings for imposing a public health measure are initiated by the department filing a petition in the District Court for the district in which the subject of the petition is located. The petition must name as the respondent the person who is the subject of the petition or the person who possesses the property that is the subject of the petition. The petition must contain a summary statement of the facts that the petitioner believes constitute the grounds for granting relief pursuant to this chapter.

3. Receipt of petition. Upon the receipt of a petition filed pursuant to this section or section 2403, the District Court shall set a hearing date. Pending hearing on the petition, the court may make orders as it deems necessary to protect other individuals from the dangers of infection.

4. Notice of hearing; waiver. Notice of the petition and the time and place of the hearing as well as the opportunity to be represented by counsel as set forth in subsection 6, paragraph C must be served personally, not less than 3 days before the hearing, on the subject of the petition. The subject of the petition may waive notice of hearing, after opportunity to consult with an attorney, and upon filing of the waiver in writing, the District Court may hear the petition immediately. The hearing must occur within 10 days of the filing of the petition, excluding Saturdays, Sundays and legal holidays, unless waived in writing by the subject of the petition.

5. Notice to facility. Whenever a petition requests that an individual be ordered to be tested in or committed to a hospital, notice of the petition and the time and place of the hearing must be sent to the hospital that will be requested to provide the proposed care and treatment. A hospital may not be required to provide care and treatment to or to admit the individual named in the petition without the consent of the hospital.

6. Hearings. Hearings under this chapter are governed by the Maine Rules of Civil Procedure and the Maine Rules of Evidence.

A. The subject of the petition, the petitioner and all other persons to whom notice is required to be sent must be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

B. The court may, in its discretion, receive the testimony of any other person and may subpoena any witness.

C. The subject of the petition must be afforded an opportunity to be represented by counsel and, if the subject is indigent and requests counsel, the court shall appoint counsel.

D. An electronic recording must be made of the proceedings and all hearings under this section. The record and all notes, exhibits and other evidence are confidential.

E. The hearing is confidential and a report of the proceedings may not be released to the public, except by permission of the subject of the petition or the subject's counsel and with approval of the presiding District Court judge, except that the court may order a public hearing on the request of the subject of the petition or the subject's counsel.

7. Equitable relief. The District Court has original jurisdiction to grant equitable relief in proceedings brought pursuant to this chapter.

#### §2406. Court orders of public health measures

1. Court order. If, based upon clear and convincing evidence, the court finds that a public health threat exists, the court shall issue the requested order for treatment or other order that directs the least restrictive measures necessary to effectively protect the public health. These measures include, but are not limited to:

A. Participation in an education program designated or developed in accordance with rules adopted pursuant to section 2302 or 2401;

B. Participation in a counseling program designated or developed in accordance with rules adopted pursuant to section 2302 or 2401;

C. Participation in a treatment program designated or developed in accordance with rules adopted pursuant to section 2302 or 2401;

D. Appearance before designated health officials for purposes of monitoring measures set out in paragraph A, B or C;



2 E. Part or full-time supervision or monitoring for a period  
3 and under conditions set by the court;

4 F. Commitment to a facility that will provide appropriate  
5 diagnosis, care, treatment or isolation of the individual  
6 without undue risk to the public health, for a period not to  
7 exceed 30 days and under conditions set by the court;

8 G. Undergoing a comprehensive medical assessment by the  
9 State Forensic Service. The court, in selecting the  
10 examination site, shall consider proximity to the court,  
11 availability of an examiner and the need to protect the  
12 public health. A person may not be presented for  
13 examination under this subsection without arrangements for  
14 examination having first been made by the court, clerk of  
15 the court or the petitioner with the State Forensic  
16 Service. The opinion of the State Forensic Service must be  
17 reported to the court immediately following the examination.

18 The court shall order the individual to be further examined  
19 by a psychiatrist, neurologist and any additional expert if,  
20 based on the report of the State Forensic Service, it  
21 appears that:

22 (1) The individual suffers from a mental disease or  
23 defect that causes the individual to act in a manner  
24 that endangers others with risk of infection with a  
25 communicable disease; or

26 (2) Further observation or examination is required.

27 If, based on the examinations, the department determines  
28 that admission to an appropriate institution for people with  
29 mental illness or mental retardation is necessary, it shall  
30 petition for involuntary hospitalization pursuant to Part  
31 5. If the District Court orders the involuntary  
32 hospitalization of the individual pursuant to Part 5, the  
33 petition brought pursuant to section 2405 is dismissed  
34 without prejudice. If it is determined that admission to an  
35 appropriate institution for people with mental illness or  
36 mental retardation is not necessary, the head of the  
37 institution where the examinations have taken place shall  
38 notify the commissioner or the commissioner's designee prior  
39 to discharging the respondent.

40 In no event may the period of examination pursuant to this  
41 subsection exceed 60 days without further order by the  
42 court, which may extend commitment for further observation  
43 or examination for an additional 60 days, if the court finds  
44 facts sufficient to show that the individual suffers from a

2 mental disease or defect that causes the individual to act  
3 in a manner that endangers others with risk of infection  
4 with a communicable disease; and

5 H. Compliance with any combination of measures outlined in  
6 paragraphs A to G, or other measures considered just by the  
7 court.

8 2. Time limits. Orders issued pursuant to subsection 1,  
9 paragraphs A to E may not exceed 180 days without further review  
10 as provided by section 2407, subsection 1. If commitment  
11 pursuant to subsection 1, paragraph F is sought by the department  
12 beyond the original 30 days, the department shall file a motion  
13 for review pursuant to section 2407, subsection 2.

14 3. Appeals. Orders issued pursuant to this chapter may be  
15 appealed to the Superior Court.

16 A. The order of the District Court remains in effect  
17 pending appeal, unless stayed by the Superior Court.

18 B. The Supreme Judicial Court shall, by rule, provide for  
19 expedited appellate review of cases appealed under this  
20 chapter.

## 21 §2407. Review

22 1. Treatment orders. If the department determines that it  
23 is necessary to continue a treatment order issued pursuant to  
24 section 2406, subsection 1, paragraphs A to E, it shall petition  
25 the District Court that ordered the disposition for review of the  
26 original order. The court shall hold a hearing in accordance  
27 with section 2405, and if the court finds that a public health  
28 threat would continue in the absence of a public health measure,  
29 it shall issue additional orders that it deems necessary,  
30 provided that no treatment order exceeds 180 days in duration  
31 without further review by the court.

32 2. Commitment orders. If the department determines that it  
33 is necessary to continue a commitment order issued pursuant to  
34 section 2406, subsection 1, paragraph F beyond the original 30  
35 days, it shall petition the District Court that ordered the  
36 disposition for review of the original order. The court shall  
37 hold a hearing in accordance with section 2405 and if the court  
38 finds that a public health threat would continue in the absence  
39 of a public health measure and that commitment is the least  
40 restrictive measure necessary to effectively protect the public  
41 health, it shall issue additional orders as it deems necessary,  
42 provided that an order of commitment does not exceed 90 days  
43 without further review by the court.

2 The committed patient may request the appointment of a medical  
3 review board. Upon motion of the patient, the committing court  
4 shall appoint a medical review board to determine whether the  
5 patient's medical status permits termination of the commitment.  
6 The medical review board must consist of 3 physicians appointed  
7 by the court who have training and experience in the treatment of  
8 the communicable disease. Upon the request of the patient, the  
9 court shall appoint as one member of the board a physician who  
10 has training and experience in the treatment of communicable  
11 diseases who is selected by the patient. Upon receipt of the  
12 findings of the medical review board and any other evidence, the  
13 court, after a hearing pursuant to this subsection, may continue  
14 or terminate the commitment.

16 **§2408. Court orders; additional requirements**

18 If commitment or a supervised living arrangement is ordered,  
19 the court shall require the head of the institutional facility or  
20 the person in charge of supervision to submit:

22 1. Plan of treatment. A plan of treatment within 10 days  
23 of the commencement of the commitment or supervision; and

24 2. Written report. A written report, with a copy to both  
25 the department and the individual, at least 20 days, but not more  
26 than 25 days, from the start of the commitment or supervision,  
27 setting forth the following:

30 A. The types of support or therapy groups, if any, that the  
31 individual is attending and how often the individual attends;

32 B. The type of care or treatment the individual is  
33 receiving and what future care is necessary;

34 C. Whether the individual has been cured or made  
35 noninfectious or otherwise has ceased to pose a threat to  
36 public health;

37 D. Whether continued supervision or commitment is  
38 necessary; and

39 E. Any other information the court considers necessary.

41 **§2409. Exclusion from school**

42 1. Dismissal. In the event of an actual or threatened  
43 outbreak of a communicable disease, the department may order that  
44 any or all persons attending or working in any school or day care

2 facility be excluded until the department determines that a  
3 public health threat no longer exists.

4 2. Exclusion. The department may exclude any infected  
5 person from attending or working in a school or day care facility  
6 if that infected person poses a public health threat. An  
7 individual excluded pursuant to this subsection must be permitted  
8 to return to the school or day care facility after the  
9 department, in consultation with the physician responsible for  
10 the individual's care, determines that return is permissible and  
11 will not pose a threat to the public health. The department  
12 shall notify the superintendent or day care facility  
13 administrator of that determination.

14 **§2410. Discharge**

15 An individual committed to a hospital or institution  
16 pursuant to section 2406 may be discharged whenever the physician  
17 responsible for that individual's treatment and the department  
18 determine that the individual may be discharged without danger to  
19 other individuals. The department shall immediately report the  
20 discharge, with a full statement of the reasons for the  
21 discharge, to the court that ordered the commitment.

22 If an individual committed to a hospital pursuant to section  
23 2406 leaves the hospital prior to discharge in accordance with  
24 this section, the hospital shall immediately report this to the  
25 department. An arrest warrant must be issued upon application by  
26 the department to the District Court.

27 **§2411. Liability for expenses**

28 1. Financial liability; individual. An individual is  
29 financially liable for any care provided to the individual  
30 pursuant to this subchapter to the extent that the individual has  
31 public or private insurance or otherwise has the ability to pay  
32 for that care. An individual may not be denied the care because  
33 of inability to pay for that care.

34 2. Liability. The department shall pay, on certification  
35 by the commissioner, the expenses for care of an individual  
36 receiving care under this chapter who is not a resident of a  
37 municipality in this State.

38 3. Subrogation. The department is subrogated to the rights  
39 of recovery that the individual may have against a liable 3rd  
40 party for the cost of care provided for the individual under this  
41 subchapter to the extent that the department has spent money for  
42 that care.

2 **§2412. Exercise of rights**

4 Any individual subject to a court order issued pursuant to  
6 section 2406, subsection 1, paragraph F or G has the rights set  
8 forth in Title 34-B, section 3803, unless the exercise of any of  
10 those rights poses a threat to the health or safety of other  
12 individuals. Any restriction imposed upon the exercise of an  
14 individual's rights as stated in Title 34-B, section 3803, and  
16 the reasons for that restriction, must be made a part of the  
18 clinical record of that individual.

20 **SUBCHAPTER IV**

22 **IMMUNIZATION**

24 **§2451. Definitions**

26 As used in this subchapter, unless the context otherwise  
28 indicates, the following terms have the following meanings.

30 1. Clinic. "Clinic" means any place, establishment or  
32 institution that operates for the purpose of dispensing  
34 immunizing agents to persons who are not confined in that place.

36 2. Immunizing agent. "Immunizing agent" means a vaccine,  
38 antitoxin or other substance used to increase an individual's  
40 immunity to a disease.

42 **§2452. Distribution of immunizing agents**

44 The department may offer immunization to the public for  
46 protection in case of an epidemic or threatened epidemic as  
48 ordered by the commissioner. The department may purchase or  
50 receive by gift and dispense immunizing agents and other  
pharmaceuticals for use in the prevention and control of diseases  
and disabilities. The department shall provide and distribute  
immunizing agents throughout the State when necessary to protect  
the public health.

42 **§2453. Clinics**

44 1. Establishment by department. The department may  
46 conduct free immunization clinics for the public subject to rules  
48 adopted by the department. The department shall notify the public  
50 of free immunization clinics, publicize the time and place of the  
clinics and require that a record be kept of those immunized.

2. Municipal immunization programs. The department may  
cooperate with the local health officer of a municipality  
offering immunization to or conducting free clinics for persons

2 within its jurisdiction. Municipal immunization programs are  
4 subject to rules adopted by the department.

6 3. Immunity. Notwithstanding any inconsistent provision of  
8 law, a person who works as a volunteer in a clinic established by  
10 the department pursuant to subsection 1 without the expectation  
12 or receipt of monetary compensation for any aspect of the  
14 program, is not liable for:

16 A. Damages or injuries alleged to have been sustained by a  
18 person immunized at the clinic; or

20 B. Damages for the death of a person immunized at the  
22 clinic, unless it is established that the injuries or the  
24 death were caused willfully, wantonly, recklessly or by  
26 gross negligence by the volunteer.

28 **§2454. Immunization of health care workers**

30 Except as otherwise provided in this chapter, each hospital  
32 in the State, and any other health facility in the State  
34 designated by the department, shall require for all employees  
36 born after 1956 either proof of immunization or serologic  
38 evidence of immunity against Rubeola measles and Rubella, or  
40 German measles. The personnel records of each employee born  
42 after 1956 must include a copy of the documentation of the  
44 vaccine history, showing month, day and year or the serologic  
46 history of immunity. For purposes of this section, "employee"  
48 means a person who performs a service for wages or other  
50 remuneration for a hospital or designated health facility under a  
contract of hire, written or oral, expressed or implied.  
Immunization required by this section does not apply to any  
employee who:

30 1. Physician's statement. Provides a physician's written  
32 statement that immunization against one or more of the diseases  
34 may be medically inadvisable; or

36 2. Religious objection. States in writing a sincere  
38 religious belief that is contrary to the immunization requirement  
40 of this section.

42 **SUBCHAPTER V**

44 **SEXUALLY TRANSMITTED DISEASES**

46 **§2501. Blood sample for laboratory test**

48 Whenever a physician attends to a pregnant woman in the  
50 State, the physician shall, with the woman's consent, take or

2 cause to be taken a sample of blood and submit the sample for a  
3 standard serological test for syphilis and Rh factors to the  
4 department or to a laboratory approved by the department.  
5 Laboratory tests required by this subchapter must be made on  
6 request without charge by the department.

#### 8 **§2502. Standard tests approved by department**

10 The department may approve one or more tests for syphilis  
11 and Rh factor and designate them as standard tests, and may  
12 approve and appoint other laboratories in addition to the  
13 department's laboratory to perform the tests. Whenever a  
14 laboratory performs a test for syphilis that reveals the  
15 possibility of syphilitic infection, it shall report this finding  
16 and the name, address, age and sex of the person from whom the  
17 specimen was taken to the department.

#### 18 **§2503. Blood specimens accompanied by information blank; report**

20 Blood specimens sent to a laboratory in compliance with  
21 section 2501 must be accompanied by an information blank that  
22 contains the initials of the person whose blood is submitted or a  
23 number or other suitable means of identification, and the word  
24 "Prenatal" to indicate the purpose of the examination.

26 If the person in question is found to be infected with  
27 syphilis, the physician in charge shall report to the department  
28 on a regular blank, supplied by the department for the reporting  
29 of venereal diseases, adding the word "Prenatal" in addition to  
30 other information requested on the blank.

32 Reports made under this section are confidential and must be  
33 kept in a special file by the department. The reports may be  
34 produced in any court procedure where they may be material and  
35 relevant on an order of the court.

#### 36 **§2504. Civil action not maintainable**

38 A civil action may not be maintained for failure to comply  
40 with this subchapter.

### 42 **SUBCHAPTER VI**

#### 44 **RABIES OR HYDROPHOBIA**

#### 46 **§2551. Killing or impounding of dogs**

48 The department may, in the case of an emergency or  
49 threatened epidemic of rabies or hydrophobia when in its opinion  
50 the health and safety of the people in a community are

2 endangered, issue orders to the mayor of any city or the  
3 municipal officers of any town or plantation to have killed any  
4 dogs found loose in violation of quarantine rules and impounded  
5 for a period of 72 hours without being claimed by their owner.

6 The mayor of any city or the municipal officers of any town  
7 or plantation shall immediately direct that the dogs be killed by  
8 a police officer or constable.

#### 10 **§2552. Procedures for the transportation, quarantine, euthanasia** 11 **and testing of animals suspected of having rabies**

12 1. Establishment of procedures. The commissioner, in  
13 consultation with the Commissioner of Agriculture, Food and Rural  
14 Resources and the Commissioner of Inland Fisheries and Wildlife,  
15 shall adopt rules, in accordance with the Maine Administrative  
16 Procedure Act, establishing procedures for responding to a report  
17 of an animal suspected of having rabies. The procedures must  
18 include provisions for the transportation, quarantine, euthanasia  
19 and testing of an animal suspected of having rabies. The  
20 procedures may differ based on the perceived public health threat  
21 detected in part by consideration of the following factors:

24 A. Whether the animal is a domesticated animal for which a  
25 known effective vaccine exists and, if so, whether the  
26 animal's vaccination status can be verified; and

28 B. Whether the animal has bitten a person or exhibited  
29 other aggressive behavior.

30 2. Role of animal control officer; game warden. An animal  
31 control officer appointed in accordance with Title 7, section  
32 3947, receiving a report of an animal suspected of having rabies  
33 shall ensure that the procedures established pursuant to this  
34 section and section 2553 are carried out. If the animal is an  
35 undomesticated animal, a game warden shall assist the animal  
36 control officer.

38 3. Costs associated with transportation, quarantine,  
39 testing and euthanasia. The Department of Inland Fisheries and  
40 Wildlife shall pay all costs for transportation, quarantine,  
41 euthanasia and testing of an undomesticated animal suspected of  
42 having rabies. The owner of a domesticated animal suspected of  
43 having rabies shall pay all costs for transportation, quarantine,  
44 euthanasia and testing of the animal. If a domesticated animal  
45 is a stray or the owner is unknown, the municipality in which the  
46 animal was apprehended is responsible for transportation,  
47 quarantine, euthanasia and testing costs.

#### 48 **§2553. Provisions for immediate destruction of certain animals**

2 If an undomesticated animal or a domesticated ferret,  
4 domesticated wolf or domesticated wolf hybrid suspected of having  
6 rabies bites a person, an animal control officer, a local health  
8 officer or a game warden may immediately kill or order killed  
10 that animal without destroying the head. The Department of  
12 Inland Fisheries and Wildlife shall arrange for the  
14 transportation of the head to the State Health and Environmental  
16 Testing Laboratory; except that the animal control officer shall  
18 make the arrangements if the animal is a domesticated ferret,  
20 domesticated wolf or domesticated wolf hybrid.

22 The Department of Inland Fisheries and Wildlife shall pay  
24 transportation and testing costs for undomesticated animals. The  
26 owner of a domesticated ferret, domesticated wolf or domesticated  
28 wolf hybrid shall pay transportation and testing costs for that  
30 animal.

#### 22 CHAPTER 209

#### 24 OCCUPATIONAL DISEASES

#### 26 §2601. Occupational disease defined

28 As used in this chapter the term "occupational disease"  
30 means any abnormal condition or disorder, including an  
32 occupational injury, caused by exposure to environmental factors  
34 associated with employment. Occupational diseases include the  
36 following: asbestosis, mesothelioma, silicosis, exposure to  
38 heavy metals and any other occupational disease defined by the  
40 department though the adoption of rules.

#### 32 §2602. Occupational disease reporting system

34 The department shall establish, maintain and operate a  
36 statewide occupational disease reporting system. The data  
38 collected must be analyzed and interpreted in order better to  
40 identify risk factors associated with occupational diseases and  
42 strategies to prevent or reduce these risks. The results of this  
44 analysis must be made available to the public. The department  
46 shall share and discuss this information with the Department of  
48 Labor.

#### 44 §2603. Duties of physicians and hospitals

46 All physicians or hospitals shall report to the department  
48 all persons diagnosed as having an occupational disease no later  
50 than 30 days from the date of diagnosis or from discharge from a  
hospital. The report must include any factor known to the  
physician that is suspected of being a contributing factor to the

2 disease, including, but not limited to, whether or not the person  
4 smokes and, if so, the frequency of smoking.

6 A physician, upon notification by the department, shall  
8 report to the department any further information requested by the  
10 department concerning any person now or formerly under the  
12 physician's care diagnosed as having or having had an  
14 occupational disease.

16 A physician or hospital complying with the reporting  
18 requirements of this section is not liable for any civil damages  
20 as a result of those acts.

#### 22 §2604. Confidentiality

24 Names and related information that may identify individuals  
26 having an occupational disease are confidential and may be  
28 released only to other public health officials, agents or  
30 agencies, or by court order or by written authorization of the  
32 individual who is identified. All other information submitted  
34 pursuant to this chapter may be made available to the public.

#### 36 §2605. Training

38 The department shall establish a program to train health  
40 care providers in the recognition of occupational diseases and on  
42 the appropriate case management of selected occupational  
44 illnesses occurring in the State.

#### 46 CHAPTER 211

#### 48 HEALTH AND ENVIRONMENTAL TESTING LABORATORY

#### 50 §2701. Health and Environmental Testing Laboratory

2 The Health and Environmental Testing Laboratory is  
4 established within the department for the chemical and  
6 microbiological testing and examination of water supplies, food  
8 products, drinking water, environmental and forensic samples and  
10 the testing and examination of cases and suspected cases of  
12 infectious and communicable diseases.

14 1. Coordination with the Department of Environmental  
16 Protection. In coordination with the Department of Environmental  
18 Protection, the department shall also provide laboratory services  
20 for environmental testing and analysis as necessary to implement  
22 the programs and duties of the Department of Environmental  
24 Protection, pursuant to Title 38, section 342, subsection 4. The  
26 commissioner and the Commissioner of Environmental Protection  
28 shall enter into joint agreements and establish joint policies as  
30 required.

necessary to ensure the provision of appropriate laboratory services.

2. Director; duties. The director of the bureau shall appoint the Director of the Health and Environmental Testing Laboratory, subject to the Civil Service Law and in this chapter known as the "laboratory director." The laboratory director shall administer the laboratory to safeguard the public health and environment.

3. Fees for services. The department shall adopt rules establishing a schedule of charges for services rendered by the Health and Environmental Testing Laboratory based on the average costs for those services. The department shall establish which services are essential to the public health and shall provide those services free to residents of the State.

#### §2702. Certification program

The laboratory director shall establish a laboratory certification program to ensure that all generated data is of known and appropriate quality of precision and accuracy when utilized for departmental programs and programs administered by the Department of Environmental Protection.

1. Acceptable data. Six months after the initial adoption of rules specified in subsection 2, certification is required of any commercial, industrial, municipal, state or federal laboratory that analyzes water, soil, air, solid or hazardous waste, or radiological samples for the use of programs of the department or the Department of Environmental Protection, except as provided under chapter 213, the Maine Medical Laboratory Act; Title 26, chapter 7, subchapter III-A, Substance Abuse Testing; and Title 29, section 1312, subsection 6, administration of tests to determine blood-alcohol level or drug concentration.

2. Certification program requirements. The department and the Department of Environmental Protection shall adopt rules specifying program requirements, standards and criteria for the evaluation and certification of laboratories.

3. Certificate issued. A laboratory must be issued a certificate when the laboratory director determines that the laboratory has the capability to analyze samples with known and appropriate quality of precision and accuracy and is in compliance with other certification requirements. Certificates are effective for one year from date of issuance.

4. Certification fees. The department shall adopt rules establishing a certification fee schedule based on the cost of

certifying laboratories. Certification fees are payable upon application for certification and must be deposited in the Health and Environmental Testing Laboratory Special Revenue Account.

#### §2703. Health and Environmental Testing Laboratory Special Revenue Account

The Health and Environmental Testing Laboratory Special Revenue Account is established as a dedicated account for the operation of the laboratory's analytical and certification programs. Funds deposited to the account include, but are not limited to, appropriations made to the account, funds transferred to the account from within the department and revenues received from analytical services and the certification of laboratories.

### CHAPTER 213

#### MAINE MEDICAL LABORATORY ACT

##### SUBCHAPTER I

##### GENERAL PROVISIONS

#### §2801. Short title

This chapter may be known and cited as the "Maine Medical Laboratory Act."

#### §2802. Purpose

The proper operation of medical laboratories within the State is a matter of vital concern, because they provide essential health services by aiding medical practitioners in the diagnosis and treatment of disease. It is the purpose of this chapter to develop, establish and enforce minimum standards for the licensure of medical laboratories and to provide for qualifications for the director of those laboratories. This chapter must be liberally construed to carry out these objectives and purposes.

#### §2803. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commission. "Commission" means the Maine Medical Laboratory Commission established under subchapter II.

2. Director of medical laboratory. "Director of medical laboratory" means an individual who is responsible for the

professional, technical and scientific operation of a medical laboratory, including the reporting of the findings of medical laboratory tests.

3. Medical laboratory. "Medical laboratory" or "laboratory" means any institution, building or place that provides through its ownership or operation an organization that employs methods and instruments for the examination of blood, tissues, secretions and excretions of the human body or any function of the human body in order to diagnose disease, follow the course of disease, aid in the treatment of disease or detect drugs or toxic substances or that produces information used as a basis for health advice or that purports to offer those examinations unless otherwise provided by law.

4. Person. "Person" means any individual, corporation, partnership or association.

#### §2804. Applicability

This chapter applies to all medical laboratories and directors of medical laboratories operating in the State unless specifically exempted.

1. Exemptions. The following entities are exempted from the provisions of this chapter under the following circumstances:

A. Medical laboratories operated by the United States Government, the State or municipalities of the State;

B. Laboratory facilities and laboratory services operated in a hospital licensed by the State;

C. Physicians and medical staff pursuant to this paragraph:

(1) Physicians, physician assistants, family nurse practitioners, Medicare-certified rural health clinics, professional associations or group practices performing only tests acceptable to the department and the commission, as defined by rule, exclusively for the examination of their own patients; and

(2) Physicians, physician assistants, family nurse practitioners, Medicare-certified rural health clinics, professional associations or group practices performing tests, other than those listed in subparagraph (1), exclusively for the examination of their own patients are subject only to sections 2958, 2959 and 2809.

Notwithstanding subparagraphs (1) and (2), laboratories incorporated for the mutual use of physician or group practice owners are subject to all provisions of this chapter:

D. Medical laboratories in a school, college, university or industrial plant that are under the direct supervision of, and the services of which are used exclusively by, a duly licensed physician and that perform only tests acceptable to the department and the commission; otherwise, only sections 2958, 2959 and 2809 apply;

E. Laboratories operated and maintained for research and teaching purposes that are recognized by the department after consultation with the commission or involve no patient or public health service;

F. The practice of radiology by a radiologist; and

G. Laboratory services performing health screening tests as defined and regulated by rule adopted by the department and the commission. Services exempted under this paragraph include, but are not limited to, the performance of screening tests for cholesterol and colon cancer.

2. Maternal serum alpha-fetoprotein testing. Notwithstanding subsection 1, all medical laboratories and directors of medical laboratories are subject to all provisions of this chapter that govern the performance of maternal serum alpha-fetoprotein testing.

#### §2805. Rules

The department with the approval of the commission shall adopt rules for medical laboratories. The rules must include:

1. Qualifications of directors and technical personnel. The qualifications of directors and technical personnel of medical laboratories:

2. Location and construction of laboratory. The location and construction of the laboratory, including plumbing, heating, lighting, ventilation, electrical services and similar conditions that ensure the conduct and operation of the laboratory in a manner that protects the public health;

3. Sanitary conditions. All sanitary conditions within the laboratory and its surroundings, including water supply, sewage, the handling of specimens and general hygiene that ensure the protection of the public health;

2 4. Equipment. Equipment essential in the opinion of the  
3 department and the commission to proper conduct and operation of  
4 a medical laboratory; and

6 5. Standards of performance. Standards of performance  
7 essential to the achievement of accurate, reliable results and  
8 the protection of public health, including standards for maternal  
9 serum alpha-fetoprotein testing, covering, at a minimum, volume  
10 of testing, population-based reference data, adjustment for  
11 variables affecting interpretation of results, confirmatory  
12 analyses, reports, review and follow-up and procedures to ensure  
13 that patients and physicians are provided adequate and reliable  
14 follow-up testing and counseling services and that the department  
15 is provided with data on test results and pregnancy outcomes.

#### §2806. Fees

17 The department shall adopt rules that establish a schedule  
18 of fees to implement provisions of this chapter.

#### §2807. Violations

21 It is unlawful for any person to:

22 1. Unlicensed. Operate, maintain, direct or engage in the  
23 business of operating a medical laboratory unless the person has  
24 obtained a medical laboratory license from the department; or

25 2. Unsupervised. Conduct, maintain or operate a medical  
26 laboratory unless the medical laboratory is under the direct and  
27 responsible supervision and direction of the person possessing  
28 those qualifications required by subchapter III.

#### §2808. Penalties

29 A person who violates this chapter commits a misdemeanor  
30 punishable, upon conviction, by a fine of not less than \$50 nor  
31 more than \$500, or by imprisonment for not more than one year, or  
32 by both.

#### §2809. Injunction

33 The operation or maintenance of a medical laboratory in  
34 violation of this chapter is a nuisance inimical to the public  
35 health, welfare and safety. The department, in the name of the  
36 people of the State, through the Attorney General, may, in  
37 addition to other remedies provided, bring an action for an  
38 injunction to restrain the violation or to enjoin the future

2 operation or maintenance of any medical laboratory unless  
3 compliance with this chapter has been obtained.

#### §2810. Appeal

6 Any person aggrieved by a decision of the department or the  
7 commission may appeal to the Administrative Court under Title 5,  
8 chapter 375.

### SUBCHAPTER II

#### MAINE MEDICAL LABORATORY COMMISSION

#### §2851. Membership

16 1. Members. The Maine Medical Laboratory Commission,  
17 established by Title 5, section 12004-G, subsection 18, consists  
18 of 11 members who are residents of the State, as follows:

19 A. The commissioner or the commissioner's designee, who is  
20 the chair;

21 B. Two persons appointed by the Governor, one of whom must  
22 be a nominee of the Maine Osteopathic Association and one of  
23 whom must be a nominee of the Maine Medical Association;

24 C. Four persons appointed by the Governor, 3 of whom must  
25 be certified by the American Board of Pathology and one who  
26 must be certified by the American Osteopathic Board of  
27 Pathology. If persons possessing these qualifications are  
28 unavailable or unable to serve, the Governor may substitute  
29 any allopathic physician licensed in the State in lieu of an  
30 individual certified by the American Board of Pathology and  
31 any osteopathic physician licensed by the State in lieu of  
32 the individual certified by the American Osteopathic Board  
33 of Pathology;

34 D. One person appointed by the Governor who is a  
35 technologist as defined in 42 Code of Federal Regulations,  
36 Chapter IV, Part 405.1315, Subpart M; and

37 E. Three persons appointed by the Governor who represent  
38 the public and who do not derive any significant part of  
39 their income from the medical care industry.

40 2. Terms. Each member must be appointed for a term of 3  
41 years. No member, except the chair, may be appointed to more  
42 than 3 consecutive terms and any appointment to fill a vacancy  
43 must be for the unexpired portion of the term. The Governor may  
44 remove any member for cause, after notice and hearing, at any  
45 time.



time prior to expiration of the member's term. A vacancy in the membership of the commission does not impair the right of the members to exercise all the rights and perform all the duties of the commission.

3. Expenses. Members of the commission are eligible to receive reimbursement for expenses in accordance with Title 5, chapter 379.

#### §2852. Consultation and meetings

The commission shall consult with the department on matters of policy affecting the administration of this chapter and in the adoption and enforcement of the rules. The commission shall meet as frequently as the department deems necessary. Upon request of 3 members, the chair shall call a meeting of the commission.

### SUBCHAPTER III

#### QUALIFICATIONS OF A DIRECTOR OF A MEDICAL LABORATORY

##### §2901. Director

Every medical laboratory shall have a director who is a legal resident of the State, except under certain conditions specified by the commission and department. The director is not merely nominal, but is responsible for the laboratory's operation to the extent necessary to ensure compliance with the objects and purposes of this chapter. The director must have one of the following qualifications.

1. Certification. The director is a physician licensed to practice medicine in the State, certified by the American Board of Pathology or the American Osteopathic Board of Pathology, or who possesses qualifications acceptable to the department and the commission and equivalent to that certification.

2. Special qualifications. The director is a physician licensed to practice medicine with special qualifications acceptable to the department and the commission.

3. Qualified persons other than physicians. The director has an earned doctorate degree in a chemical, physical or biological science from an accredited institution and is certified in at least one laboratory specialty by the American Board of Clinical Chemistry, American Board of Medical Microbiology or other national accrediting board acceptable to the department and the commission. Medical laboratories directed by persons qualified under this subsection may only perform those

examinations within the scientific area in which members of the staff are trained and certified.

### SUBCHAPTER IV

#### LICENSES

##### §2951. License

The department, with the approval of the commission, shall issue a medical laboratory license to any medical laboratory that has applied for the license on forms provided by the department and that is found to be in compliance with this chapter.

##### §2952. Application

Application must be made on a form prescribed by the department.

1. Categories. Licenses must be issued to perform testing in one or more of the following categories or specialties:

A. Histocompatibility;

B. Microbiology, including subcategories bacteriology, mycology, parasitology, virology;

C. Immunology or serology, including subcategories syphilis and nonsyphilis;

D. Chemistry, including subcategories routine, clinical microscopy or urinalysis and other, including toxicology;

E. Hematology, including coagulation;

F. Immunohematology, including subcategories blood group and Rh typing, Rh titers, cross matching, antibody detection and identification;

G. Pathology, including subcategories tissue, oral, diagnostic cytology; and

H. Radiobiassay.

2. Contents. The application must be notarized and must contain the following information:

A. The name and location of the medical laboratory;

2 B. The name of the director of the laboratory and the name  
3 of the owner or owners;

4 C. A description of the services provided by the medical  
5 laboratory; and

6 D. Other information the department deems necessary or  
7 expedient in carrying out its powers and duties under this  
8 chapter.

10 **§2953. Renewal**

12 A license expires 3 years from the date of issuance unless  
13 renewed. Licenses may be renewed in the same manner and subject  
14 to the same conditions as the issuance of the original license  
15 and upon payment of a renewal application fee of \$200 for the  
16 first category and \$60 for each additional category.

18 **§2954. Terms**

20 A license to conduct a medical laboratory when the owner is  
21 not the director must be issued jointly to the owner and the  
22 director for the premises stated in the application, and they are  
23 severally and jointly responsible to the department for the  
24 maintenance and conduct of the laboratory and for any violations  
25 of this chapter and rules adopted under this chapter. A separate  
26 license must be obtained for each location. A license is valid  
27 only in the hands of the persons to whom it is issued and may not  
28 be voluntarily or involuntarily sold, assigned or transferred,  
29 nor is a license valid for any premises other than those for  
30 which it was issued. A new license, for the unexpired length of  
31 time of the original license, may be secured, without the payment  
32 of any additional fee, for the new location, director or owner  
33 prior to the actual change, if the contemplated change is in  
34 compliance with this chapter and rules adopted under this  
35 chapter. A licensee may obtain a duplicate copy of the license  
36 upon payment of \$2 to the department.

38 This section does not limit the ownership of laboratories to  
39 persons who qualify under the provisions of this chapter as a  
40 director, but rather is intended to require that a director is  
41 necessary in order for a laboratory to obtain a license.

42 **§2955. Display**

44 Any person maintaining, conducting or operating a medical  
45 laboratory shall display, in a prominent place in the medical  
46 laboratory, the license issued by the department. A medical  
47 laboratory may not in any advertisement, announcement, letter,  
48 circular, poster, sign or any other manner include any statement  
49

2 expressly or by implication to the effect that it is approved or  
3 endorsed by the department.

4 **§2956. Denial; revocation**

6 A license may be denied or revoked or the renewal of a  
7 license may be denied for any of the following reasons:

8 1. Violation of chapter. Violation of any of the provisions  
9 of this chapter or the rules adopted under this chapter;

12 2. Assignment from unauthorized person. Knowingly accepting  
13 an assignment for medical laboratory tests or specimens from and  
14 rendering a report to persons not authorized by law to submit the  
15 specimens;

16 3. Conviction. A conviction of a felony or of any crime  
17 involving moral turpitude under the laws of any state or of the  
18 United States arising out of or in connection with the operation  
19 of a medical laboratory. The record of conviction or a certified  
20 copy of the record is conclusive evidence of the conviction; or

22 4. Lending name. Knowingly lending the use of the name of a  
23 licensed medical laboratory or its director to an unlicensed  
24 medical laboratory.

26 **§2957. Hearing**

28 Before suspension or revocation of its license, if requested  
29 by the revokee, a hearing must be held before the commission to  
30 show cause why a license should not be suspended or revoked.

32 **§2958. Inspection**

34 The department may inspect the premises and operations of  
35 all medical laboratories subject to licensure or any provisions  
36 of this chapter.

38 **§2959. Performance evaluation**

40 The department shall require the demonstration of  
41 proficiency in the performance of the tests offered by  
42 laboratories subject to licensure or the provisions of this  
43 chapter through successful participation in a proficiency testing  
44 program acceptable to the department and the commission covering  
45 all categories or subcategories in which testing is offered.  
46 Evaluated copies of results must be forwarded to the department.

48 **§2960. Fees**

2 All applications must be accompanied by a license  
3 application fee established by the department. Fees required  
4 under this chapter may not be returned to the applicant or  
5 licensee under any circumstances.

6 All fees charged and collected by the department must be  
7 deposited by it in the State Treasury to the credit of the  
8 department. All such money is appropriated to be used by the  
9 department in carrying out this chapter. The expenditures of the  
10 department and commission may be paid from this money.

#### 12 SUBCHAPTER V

#### 14 ACCEPTANCE, COLLECTION, IDENTIFICATION AND 15 EXAMINATION OF SPECIMENS AND REPORTS OF FINDINGS

#### 16 §3001. Requested

18 1. Request from authorized person. Except as otherwise  
19 provided, a medical laboratory shall examine specimens only at  
20 the request of a licensed physician or other person authorized by  
21 law to use the findings of laboratory examinations.

24 2. Exceptions. Notwithstanding this section, a medical  
25 laboratory may examine specimens without a physician referral for  
26 a limited number of laboratory services to be determined by rules  
27 adopted by the department and the commission. Those services  
28 include testing for:

30 A. Glucose for patients who have been previously diagnosed  
31 as having diabetes;

32 B. Pregnancy;

34 C. Colon cancer; and

36 D. Cholesterol.

38 3. Testing without referral. This section does not require  
39 any medical laboratory to perform laboratory services without a  
40 physician referral.

#### 42 §3002. Limitation on laboratories sending specimens

44 A medical laboratory licensed under this chapter may not  
45 send specimens to any laboratory within the State unless the  
46 laboratory is in compliance with this chapter. When a specimen  
47 has been referred for examination to an out-of-state laboratory,  
48 the report must bear or be accompanied by a clear statement that

2 the findings were obtained in an out-of-state laboratory, which  
3 must be identified.

#### 4 §3003. Tests reported

6 The result of a test must be reported directly to the  
7 licensed physician or other person authorized by law who  
8 requested it. A report of results issued from a medical  
9 laboratory must clearly identify that medical laboratory and the  
10 director.

#### 12 §3004. Specimens

14 A person other than a licensed physician or one authorized  
15 by law may not manipulate a person for the collection of  
16 specimens or process or submit or act as an agent for the  
17 transmittal of specimens, except that technical personnel of a  
18 licensed medical laboratory may collect blood or remove stomach  
19 contents or collect material for smears and cultures under the  
20 direction or upon the request of a physician or dentist.

#### 22 §3005. Limitation

24 A medical laboratory may not perform examinations in the  
25 field of pathologic anatomy, including exfoliative cytology,  
26 unless the director or an employee of the laboratory is a  
27 diplomate of the American Board of Pathology certified in  
28 pathologic anatomy or the American Osteopathic Board of Pathology  
29 certified in pathologic anatomy, or unless the director or an  
30 employee is a physician licensed to practice medicine in the  
31 State who possesses special qualifications acceptable to the  
32 department and the commission, or is a dentist licensed in the  
33 State and is certified by the American Board of Oral Pathology.

#### 34 §3006. Rebates or fee splitting prohibited

36 An owner or director of a laboratory licensed under this  
37 chapter, either personally or through an agent, may not practice  
38 in any manner that offers or implies to offer rebates to persons  
39 submitting specimens or other fee splitting inducements, or  
40 participate in any fee splitting arrangement. This applies to  
41 contents of fee schedules, billing methods or personal  
42 solicitation. The contractual provision of laboratory services  
43 for a fixed fee independent of the number of specimens submitted  
44 for those services is a violation of this section. A copy of an  
45 itemized statement must be sent to the patient.

#### 48 §3007. Records

Records involving laboratory services and copies of reports of laboratory tests must be kept in a manner satisfactory to the department and must be available at all times for inspection by the department or its representative.

## CHAPTER 215

### WATER FOR HUMAN CONSUMPTION

#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### §3101. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Contaminant. "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

2. Feasible. "Feasible" means capable of being done within the current limitation of economics and technology, as determined by the commissioner.

3. Maximum contaminant level. "Maximum contaminant level" means the maximum concentration of a contaminant allowed under the state primary drinking water rules in water supplied for human consumption.

4. National Drinking Water Regulations. "National Drinking Water Regulations" means the drinking water regulations promulgated by the Administrator of the United States Environmental Protection Agency under the authority of the United States Safe Drinking Water Act, Public Law 93-523.

5. Operator. "Operator" means the individual who has direct management responsibility for the routine supervision and operation of a public water system or of a water treatment plant or collection, treatment, storage or distribution facility or structure that is a part of a system. Shift operators or other employees under the supervision of the operator in the performance of their duties are not operators.

6. Person. "Person" means any individual, partnership, company, public or private corporation, political subdivision or agency of the State, department, agency or instrumentality of the United States or any other legal entity.

7. Political subdivision. "Political subdivision" means any municipality, county, district or any portion or combination of 2 or more thereof.

8. Public water system. "Public water system" means any publicly or privately owned system of pipes, structures and facilities through which water is obtained for or sold, furnished or distributed to the public for human consumption, if the system has at least 15 service connections, regularly serves an average of at least 25 individuals daily at least 60 days out of the year or bottles water for sale. Any publicly or privately owned system that only stores and distributes water, without treating or collecting it; obtains all its water from, but is not owned or operated by, a public water system; and does not sell water or bottled water to any person, is not a "public water system." The term "public water system" includes any collection, treatment, storage or distribution pipes, structures or facilities under the control of the supplier of water and used primarily in connection with such a system, and any collection or pretreatment storage facilities not under that control that are used primarily in connection with such a system. The system does not include the portion of service pipe owned and maintained by a customer of the public water system.

9. Supplier of water. "Supplier of water" means any person who controls, owns or generally manages a public water system.

10. Water treatment plant. "Water treatment plant" means that portion of the public water system that is designed to alter the physical, chemical, biological or radiological quality of the water or to remove any contaminants.

##### §3102. Administration

To carry out this chapter, the commissioner may:

1. Agreements. Enter into agreements, contracts or cooperative arrangements under terms and conditions the commissioner deems appropriate with other state, federal or interstate agencies, municipalities, education institutions, local health departments or other organizations or individuals;

2. Assistance. Receive financial and technical assistance from the Federal Government and other public or private agencies;

3. Program participation. Participate in related programs of the Federal Government, other states, interstate agencies or other public agencies or organizations;

2 4. Fiscal control and accounting. Establish adequate  
3 fiscal controls and accounting procedures to ensure proper  
4 disbursement of and accounting for funds;

6 5. Procedures. Adopt and implement adequate rules and  
7 procedures to ensure compliance with this chapter, including  
8 rules and procedures for the monitoring and inspection of public  
9 water systems; and

11 6. Advising other agencies. Advise other regulatory  
12 agencies of the department's rules adopted under this chapter.

14 §3103. Plumbing and subsurface waste water disposal

16 1. Rules. The department shall adopt minimum rules  
17 relating to plumbing and subsurface sewage disposal systems. All  
18 rules, including installation and inspection rules, must be  
19 consistent with Title 30-A, chapter 185, subchapter III and Title  
20 32, chapter 49, but this does not preempt the authority of  
21 municipalities under Title 30-A, section 3001 to adopt more  
22 restrictive ordinances. The department shall hold hearings on  
23 the first Tuesday of February of each year for the purpose of  
24 considering changes in the rules pertaining to plumbing and  
25 subsurface sewage disposal systems and the installation and  
26 inspection thereof. These rules may regulate the location of  
27 water supply wells to provide minimum separation distances from  
28 subsurface sewage disposal systems. The department may require a  
29 deed covenant or deed restriction when determined necessary.

31 2. Violation. Any person who violates the rules adopted  
32 under this subsection, or who violates a municipal ordinance  
33 adopted pursuant to Title 30-A, sections 4201 and 4211 or uses a  
34 subsurface waste water disposal system not in compliance with  
35 rules applicable at the time of installation or modification must  
36 be penalized in accordance with Title 30-A, section 4452.  
37 Enforcement of the rules is the responsibility of the  
38 municipalities rather than the department. The department or a  
39 municipality may seek to enjoin violations of the rules or  
40 municipal ordinances. In the prosecution of a violation by a  
41 municipality, the court shall award reasonable attorney's fees to  
42 a municipality if that municipality is the prevailing party,  
43 unless the court finds that special circumstances make the award  
44 of these fees unjust.

46 §3104. Licensing of persons to evaluate subsurface waste water  
47 disposal systems

49 The department shall adopt rules providing for  
50 qualification, licensing and relicensing of persons to evaluate  
51 soils for subsurface waste water disposal. The hearings provided

2 for in section 3103 must include consideration of the adoption or  
3 change of those rules.

5 The department may charge applicants no more than \$60 for  
6 examination to become a licensed site evaluator. The department  
7 shall charge a biennial site evaluator license fee of \$40. A  
8 licensed site evaluator who is employed by the department to  
9 administer this section and does not practice for the public is  
10 exempt from the licensee fee requirement. Rules must be adopted  
11 by the department defining the appropriate financial procedure.  
12 The fees must be paid to the Treasurer of State to be maintained  
13 as a permanent fund and used by the department for carrying out  
14 its plumbing and subsurface waste water disposal rules and site  
15 evaluation program.

17 The department may grant or amend, modify or refuse to issue  
18 or renew a license in accordance with the Maine Administrative  
19 Procedure Act, Title 5, chapter 375, subchapter V. The  
20 Administrative Court has exclusive jurisdiction to suspend or  
21 revoke the license of any person who is found guilty of  
22 noncompliance with or violation of the rules adopted pursuant to  
23 this section or section 3103.

25 The department shall investigate or cause to be investigated  
26 all cases or complaints of noncompliance with or violations of  
27 this section and the rules adopted pursuant to this section.

28 §3105. Inspection of plumbing and subsurface waste water  
29 disposal systems

31 The department shall adopt rules providing for the  
32 inspection of plumbing and subsurface waste water disposal  
33 systems. In municipalities, the municipal officers shall provide  
34 for the appointment of one or more plumbing inspectors. In  
35 plantations, the assessors shall appoint plumbing inspectors in  
36 accordance with Title 30-A, section 4221. In the unorganized  
37 areas of the State, the department shall appoint plumbing  
38 inspectors or act in the capacity of a plumbing inspector until a  
39 person is appointed.

41 §3106. Fees for testing

43 The department shall charge the average cost of the analysis  
44 for any examination, testing or analysis required under this  
45 chapter and performed in the departmental diagnostic laboratory.  
46 Fees must be recalculated and deposited according to sections  
47 2701 and 2703.

49 §3107. Fees for testing private water supplies

1. Purpose. The Legislature finds that there is a growing threat to the State's drinking water from a variety of contaminants and that testing of private residential water supplies may be necessary under certain circumstances to protect the public health. The Legislature recognizes that certain testing may be prohibitively expensive and accordingly provides for state-funded testing as set forth in this section.

2. Fees. The department shall charge the average cost of the analysis for an examination, testing or analysis of private residential water supplies requested under this chapter. These fees must be recalculated and deposited according to sections 2701 and 2703, provided that the fee charged for testing a private residential water supply may not exceed \$150 when:

A. In the opinion of the department, initial testing or screening performed at the expense of the owner indicates the need for additional testing at a cost in excess of \$150 to determine whether that water supply contains contaminants potentially hazardous to human health and that additional testing is essential to the maintenance of public health; or

B. In the opinion of the department, there is reason to suspect that a private residential water supply may be affected by contamination potentially hazardous to human health and that additional testing is essential to the maintenance of public health. In making such a determination, the department shall consider the following:

(1) The proximity of the private residential water supply to a known or suspected source of contamination;

(2) The proximity of the private residential water supply to another private well or water supply known to be contaminated;

(3) Information provided in writing to the department by a physician who has seen or treated a person and who has identified contaminated drinking water as a possible cause of the person's condition or symptoms; or

(4) Information provided by the owner or a user of the private residential water supply voluntarily or in response to questions asked by personnel of the department.

3. Recovery of testing costs. Whenever the cost of testing a private residential water supply under this section exceeds \$150, the department shall seek to recover the costs of the testing above \$150 from the person responsible for contaminating

the water supply, or from the recipient of any compensation for the contamination of the well.

4. Waiver. The department may waive all fees incurred in connection with the testing of a private residential water supply upon a showing of indigency.

#### §3108. Shipping costs

Any person required under this chapter to submit samples of water to the department for analysis shall pay the shipping charges.

#### §3109. Schools, sampling and examination of water

Any school that takes water from a source other than a public water system and uses the water for drinking or culinary purposes shall submit samples of the water to the department for analysis at least once during each school year. The samples must be analyzed by the department. If the water is found to violate the state primary drinking water rules, the department shall issue an order prohibiting the use of the water for drinking or culinary purposes by the school, and the order must remain in force until the water conforms to the state primary drinking water rules.

Violation of this section is punishable by a fine of not more than \$500.

#### §3110. Approved laboratories

The department shall approve the facilities, techniques, testing methods and training of personnel of any laboratories that analyze water samples to determine compliance with state primary drinking water rules. Approval must be based on the capability of the laboratory to accurately and reliably analyze samples to determine their contaminant levels under the state primary drinking water rules, and may be limited to approval of only certain tests or contaminant level determinations. A sample analysis performed by a laboratory not approved by the department may not be considered in determining the compliance of a public water system with the state primary drinking water rules.

#### §3111. Record of tests for water samples

A person requesting a water sample test shall indicate the source of the water sample. A state agency that tests any water supply shall forward a copy of the test results to the department.

#### §3112. Information on private water supply contamination:

interagency cooperation

1. Information on private water supply contamination. The department shall provide information and consultation to citizens who:

A. Report potential contamination of private water supplies; and

B. Request information on potential ground water contamination at or near the site of a private water supply.

2. Interagency cooperation. The department shall coordinate with the Department of Environmental Protection to:

A. Assess the public health implications of reports or requests made by citizens under subsection 1; and

B. Determine the appropriate response to those reports or requests, which may include, but is not limited to, on-site investigation, well water testing and ground water monitoring.

3. Cooperation with local health officer. The department and the Department of Environmental Protection, to the extent possible, shall notify and utilize the services of local health officers in collecting and evaluating information relating to actual or potential ground water contamination.

§3113. Emergency planning

The department shall develop plans, with the advice and assistance of the Maine Emergency Management Agency and of the public water systems of the State, for emergency conditions and situations that may endanger the public health or welfare by contamination of drinking water. The plans must include potential sources of contaminants and situations or conditions that could place them in the sources of public drinking water, techniques and methods to be used by public water systems to reduce or eliminate the dangers to public health caused thereby, methods and times for analysis or testing during emergency conditions or situations, alternate sources of water available to public water systems and methods of supplying drinking water to consumers if a public water system cannot supply water.

SUBCHAPTER II

SAFE DRINKING WATER ACT

§3151. Drinking water rules

1. State primary drinking water rules. The commissioner shall adopt and enforce primary drinking water rules that are necessary to protect the public health and that apply to all public water systems. The rules may not be less stringent than the most recent National Primary Drinking Water Regulations in effect, as promulgated by the United States Environmental Protection Agency. The rules may be amended from time to time, as necessary. At a minimum, the rules must:

A. Identify contaminants that may have an adverse effect on the health of persons;

B. Specify for each contaminant either:

(1) A maximum contaminant level that is acceptable in water for human consumption, if it is feasible to ascertain the level of the contaminant in water in public water systems; or

(2) One or more treatment techniques or methods that lead to a reduction of the level of the contaminant sufficient to protect the public health, if it is not feasible to ascertain the level of the contaminant in water in the public water system; and

C. Establish criteria and procedures to ensure compliance with the levels or methods determined under paragraph B, including quality control and testing procedures to ensure compliance with those levels or methods and to ensure proper operation and maintenance of the system, and requirements as to the minimum quality of water that may be taken into the system and the siting for new facilities.

2. State secondary drinking water rules. The commissioner shall adopt secondary drinking water rules that are necessary to protect the public welfare. The rules may apply to any contaminant in drinking water that adversely affects the color, odor or appearance of the water, potentially causing a substantial number of persons to discontinue using a public water system, or that otherwise adversely affects the public welfare. The rules may vary according to geographic, economic, technical or other relevant circumstances. The rules must reasonably ensure the protection of the public welfare and the supply of aesthetically adequate drinking water; and must be based upon the National Secondary Drinking Water Regulations promulgated by the United States Environmental Protection Agency. Rules adopted under this subsection may be amended from time to time, as necessary.

2 §3152. Approval of construction or alteration, training,  
3 inspection, rules and records

4 1. Construction or alteration of public water systems. No  
5 new construction, addition or alteration involving the source,  
6 treatment or storage of water in any public water system may be  
7 commenced until the plans and specifications have been submitted  
8 to and approved by the department; except, if the construction,  
9 addition or alteration is exempted by the commissioner because it  
10 will have no effect on public health or welfare, then submission  
11 and approval is not required. The department shall consult with  
12 and advise persons planning or operating a public water system as  
13 to the most appropriate source of supply and the best methods of  
14 assuring its purity. In granting approval of plans and  
15 specifications, the department may require modifications,  
16 conditions or procedures to ensure, as far as feasible, the  
17 protection of the public health. The department may adopt and  
18 enforce rules governing the construction or alteration of public  
19 water systems to ensure the protection of the public health, and  
20 may require the submission of water samples for analysis to  
21 determine the extent of treatment required. Records of  
22 construction, including, where feasible, plans and descriptions  
23 of existing public water systems, must be maintained by the  
24 systems and must be made available to the department upon  
25 request. The supplier of water shall promptly comply with these  
26 requests.

27 2. Operation and maintenance of public water systems. The  
28 department shall monitor the operation and maintenance of any  
29 public water system in the State. The monitoring must include all  
30 aspects of operation and maintenance that affect the quality of  
31 the water supply. The department may adopt rules relating to  
32 operation and maintenance of public water systems to ensure the  
33 purity of water and the protection of public health. The rules  
34 may apply to all aspects of operation and maintenance that affect  
35 the quality of water supplied to the public, including feasible  
36 purification methods, equipment and systems. The department may  
37 require any public water system to submit water samples for  
38 analysis on a regular basis, as often as necessary to ensure the  
39 public health. Records of operation and maintenance of public  
40 water systems must be kept on forms approved or specified by the  
41 department and this data must be submitted to the department at  
42 the times and in the manner as the department directs. The  
43 supplier of water shall promptly comply with those department  
44 directions.

45 3. Inspection. Any officer or employee duly designated by  
46 the commissioner, upon presenting appropriate credentials and a  
47 written notice of authority to inspect signed by the  
48 commissioner, may enter any part of a public water system in  
49 order to determine whether the supplier is complying with this  
50 chapter. The inspection may include any portion of a public water

2 system, including the sources of supply, treatment facilities and  
3 materials, pumping facilities, distribution and storage  
4 facilities, records, files and reports on operation. The  
5 inspection may also include the testing of any portion of a  
6 public water system affecting water quality, including raw and  
7 processed water, and the taking of any samples necessary to  
8 ensure compliance with this chapter. Each inspection must take  
9 place at a reasonable time and be commenced and completed with  
10 reasonable promptness. The supplier must be promptly notified of  
11 the results of the inspection.

12 4. Engineering studies. The commissioner may order a  
13 public water supplier to carry out an engineering study of the  
14 water works system or any portion of the system, if the study is  
15 required to identify potential threats to the public health and  
16 remedies that will remove the threats. The purpose of each study  
17 must be to ascertain the best methods of complying with this  
18 chapter. The department may further order a public water system  
19 to implement the feasible recommendations of the study required  
20 to protect the public health. Prior to issuing any order under  
21 this subsection, the commissioner shall provide written notice to  
22 the public water system and public notice in a newspaper of  
23 general circulation in the area served by the public water  
24 system, and shall also provide the opportunity for a public  
25 hearing on the proposed order.

26 5. Cross connections. The department may adopt and enforce  
27 rules governing the connection of any public water systems to any  
28 pipes, facilities or structures that carry, store or distribute  
29 water that has not been analyzed for compliance or can not comply  
30 with the state primary drinking water rules, or any connection  
31 that may introduce contamination into the system, in order to  
32 protect the system from contamination.

33 6. Training. The department may provide training for  
34 suppliers of water and operators and employees of public water  
35 systems regarding operations and maintenance of public water  
36 systems, techniques and methods of testing and analysis of water,  
37 and the requirements of this chapter.

38 §3153. Variances and exemptions

39 1. Variances. The commissioner may grant one or more  
40 variances from the state primary drinking water rules to a public  
41 water system, if the variance will not result in an unreasonable  
42 risk to the public health, and if:



2 A. Because of the characteristics of the raw water sources  
3 reasonably available to the systems, the system can not meet  
4 the maximum contaminant levels allowed by the rules despite  
5 application of the best feasible technology, treatment  
6 techniques or other means; or

7 B. Where a specified treatment technique for a contaminate  
8 is required by the rules, the system demonstrates to the  
9 commissioner's satisfaction that the treatment technique is  
10 not required to protect the public health because of the  
11 nature of the raw water source.

12 Prior to granting a variance, the commissioner shall provide an  
13 opportunity for public hearing pursuant to the Maine  
14 Administrative Procedure Act on the proposed variance. Variances  
15 may be conditioned on monitoring, testing, analyzing or other  
16 requirements to ensure the protection of the public health; and  
17 variances granted under paragraph A must include a compliance  
18 schedule under which the public water system will meet each  
19 contaminant level for which a variance is granted as  
20 expeditiously as is feasible.

21 2. Exemptions. The commissioner may grant one or more  
22 exemptions from the state primary drinking water rules to a  
23 public water system, if:

24 A. The exemption will not result in an unreasonable risk to  
25 the public health;

26 B. The public water system is unable to comply with the  
27 rules due to compelling factors, including economic factors;  
28 and

29 C. The public water system was in operation on the earliest  
30 effective date under present or prior law of the contaminant  
31 level or treatment technique requirement.

32 Prior to implementation of a schedule for compliance with  
33 contaminant level or treatment technique requirements and for  
34 implementation of control measures, the commissioner shall  
35 provide notice and opportunity for public hearing pursuant to the  
36 Maine Administrative Procedure Act. Each exemption must be  
37 conditioned on monitoring, testing, analyzing or other  
38 requirements to ensure the protection of the public health, and  
39 must include a compliance schedule under which the public water  
40 system will meet each contaminant level for which an exemption is  
41 granted as expeditiously as is feasible and in any event not  
42 later than 7 years after the adoption of the exempted rule.

2 3. Exemption for water distillers in retail stores. A  
3 retail store that distills and bottles water from a public water  
4 system and sells the water on the premises is exempt from state  
5 water rules except:

6 A. The distiller must be inspected annually by the  
7 Department of Agriculture, Food and Rural Resources; and

8 B. A bacteriological sample of the distilled water must be  
9 submitted to the department at least every 3 months. If the  
10 distiller has a one-year history of no coliform bacteria  
11 contamination, the department may reduce the frequency of  
12 sampling to one sample per year.

13 §3154. Imminent hazards to public health

14 1. Determination of imminent hazard. An imminent hazard  
15 exists when there is a violation of the state primary drinking  
16 water rules, or when, in the judgment of the commissioner, a  
17 condition exists in a public water system or water supply that  
18 causes a violation and results in a serious risk to public health.

19 2. Elimination of imminent hazard. In order to eliminate  
20 an imminent hazard, the commissioner may, without a prior  
21 hearing, issue an emergency order requiring the supplier of water  
22 to immediately take any action required under the circumstances  
23 to protect the public health. Actions required under the  
24 emergency order may include:

25 A. The prohibition of transportation, sale, distribution or  
26 supplying of water;

27 B. The repair, installation or operation of feasible  
28 purification equipment or methods;

29 C. The notification of all potential users of the system,  
30 including travelers, of the nature, extent and possible  
31 health effects of the imminent hazard and precautions to be  
32 taken by users; or

33 D. The testing, sampling or other analytical operations  
34 required to determine the nature, extent, duration or  
35 termination of the imminent hazard.

36 A copy of the emergency order must be served in the same manner  
37 as the service of notice of the commencement of a civil action in  
38 Superior Court. An emergency order issued by the commissioner is  
39 effective immediately and remains in effect for no more than 90  
40 days unless sooner revoked, reviewed by the department at a  
41 public hearing or modified or rescinded by the Superior Court. At  
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2 the written request of the supplier of water, a public hearing  
3 must be held on the emergency order within 15 days of receipt of  
4 the request.

6 **§3155. Notification of noncompliance to regulatory agencies and  
7 users**

8 **1. Notification.** A public water supply system shall, as  
9 soon as practicable, notify the local health officer, the  
10 department, and through the department, the Administrator of the  
11 United States Environmental Protection Agency and the  
12 communications media serving the area served by the system, of  
13 the presence, nature, extent and possible health effects of any  
14 of the following conditions:

16 **A. The system is not in compliance with the state primary  
17 drinking water rules:**

18 **B. The system fails to perform monitoring, testing or  
19 analyzing, or fails to provide samples as required by the  
20 department:**

22 **C. The system is subject to a variance granted under  
23 section 3153:**

26 **D. The system is subject to an exemption granted under  
27 section 3153; or**

30 **E. The system is not in compliance with the requirements  
31 prescribed by a variance or exemption.**

32 **As long as the noncompliance, failure, variance or exemption  
33 continues, notification must be given of that fact at least once  
34 every 90 days by publication in a newspaper of general  
35 circulation within the area served by the system. In addition,  
36 the supplier of water shall directly notify the users by mail and  
37 renotify them regularly as required by the department. The  
38 department shall adopt rules for direct mail notification of  
39 users to ensure that the users are aware of potential public  
40 health dangers, and to ensure their continued awareness during  
41 the continuation of the noncompliance, failure, variance or  
42 exemption.**

44 **2. Certain uses of notification prohibited.** Notification  
45 received pursuant to this section or information obtained by the  
46 exploitation of the notification may not be used against any  
47 person or system providing the notice in any criminal case,  
48 except for prosecutions for perjury or for giving false  
49 statements.

2 **§3156. Prohibited acts**

3 Performing or causing the following acts is prohibited:

4 **1. Failure to comply with section 3155 or dissemination of  
5 certain misleading information.** Failure by a supplier of water  
6 to comply with the requirements of section 3155, or dissemination  
7 by the supplier of any false or misleading information with  
8 respect to remedial actions being undertaken to achieve  
9 compliance with state primary drinking water rules:

12 **2. Failure to comply with rules and actions under sections  
13 3151, 3152, 3153 and 3154.** Failure by a supplier of water to  
14 comply with the rules for water quality, monitoring, maintenance,  
15 operations, reporting and corrective actions pursuant to sections  
16 3151, 3152, 3153 and 3154; and

18 **3. Refusal to allow entry under section 3152.** The refusal  
19 of a supplier of water to allow entry and inspection of  
20 establishments, facilities or other property pursuant to section  
21 3152.

22 **§3157. Penalties and remedies**

24 **1. Violation of section 3156.** Any person willfully  
25 violating section 3156 or subchapter VII, on conviction, must be  
26 punished by a fine of not more than \$500. Each day of operation  
27 in violation of section 3156 or subchapter VII constitutes a  
28 separate offense. The District Court or the Superior Court has  
29 jurisdiction over violations of section 3156 or subchapter VII.

32 **2. Injunctive relief.** The commissioner may commence or  
33 cause to be instituted a civil action in the Superior Court of  
34 either Kennebec County or of the county in which the principal  
35 place of business of the supplier of water is located, to convict  
36 and punish a person under subsection 1, to seek injunctive relief  
37 to prevent the violation of any rule issued pursuant to this  
38 chapter, to prevent the violation of any order issued pursuant to  
39 section 3152, 3153 or 3154, or to require a public water system  
40 or supplier of water to take other action necessary to protect  
41 the public health, with or without a prior order from the  
42 commissioner or department.

44 **SUBCHAPTER III**

46 **LICENSURE OF OPERATORS**

48 **§3201. Definitions**

2 As used in this subchapter, unless the context otherwise  
3 indicates, the following terms have the following meanings.

4 1. License. "License" means a license issued by the  
5 commissioner stating that the applicant has met the requirements  
6 for the specified operator classification.

8 §3202. Classification of public water systems

10 The commissioner shall classify all public water systems and  
11 the water treatment plants or collection, treatment or storage  
12 facilities or structures that are part of a system with due  
13 regard to the size and type of facilities, the character of water  
14 to be treated and any other physical conditions affecting the  
15 system and specify the qualifications the operator of the system  
16 or of a part of a system must have to supervise successfully the  
17 operation of the system so as to protect the public health or  
18 prevent nuisance conditions.

20 The commissioner shall establish the criteria and conditions  
21 for the classification of public water systems and water  
22 treatment plants or collection, treatment or storage facilities  
23 or structures that are part of a system.

24 The commissioner may establish classes of public water  
25 supply systems that do not require licensed individuals as  
26 operators.

28 §3203. Applicability

30 It is unlawful for any person to perform the duties of an  
31 operator without being duly licensed under this subchapter,  
32 except as provided in section 3209.

34 §3204. Licenses

36 1. Applications. Except as otherwise provided in this  
37 subchapter, applicants for an operator license must pass an  
38 examination established by the department. Applications for a  
39 first examination must be received by the department at least 5  
40 days prior to the examination. The passing grade on any portion  
41 of the examination may not be less than 70%. A candidate failing  
42 one examination may apply for reexamination, which is granted  
43 upon payment of a fee established by rule. Any applicant having  
44 an average grade of less than 50% may not apply for reexamination  
45 for 6 months.

48 2. Issuance. The commissioner shall issue biennial licenses  
49 to individuals who pass the examination to become operators. The  
50 license must indicate the classification level of the systems or

2 parts of systems for which the individual is qualified to act as  
3 an operator.

4 3. Renewals. All licenses expire on December 31st of each  
5 biennial period and may be renewed thereafter for 2-year periods  
6 without further examination, upon the payment of the proper  
7 renewal fee as set forth in the rules. Except as provided in  
8 subsection 5, no person who fails to renew a license within the  
9 6-month grace period following the expiration date may be issued  
10 a license without reexamination. The commissioner shall notify  
11 everyone licensed under this subchapter of the date of expiration  
12 of the license and the fee required for its renewal for a 2-year  
13 period. The notice must be mailed to the person's last-known  
14 address at least 30 days in advance of the expiration date of the  
15 license.

16 4. Revocation. The commissioner may file a complaint with  
17 the Administrative Court to revoke a license of an operator when  
18 the commissioner determines that the operator has practiced fraud  
19 or deception; has been negligent in that reasonable care,  
20 judgment or the application of the operator's knowledge or  
21 ability was not used in the performance of duties; or is  
22 incompetent or unable to perform duties properly.

24 5. Renewability for operators who terminate employment.  
25 The licenses of operators who terminate their employment at a  
26 public water system are renewable for 3 years. After 3 years, the  
27 licenses are invalid. Operators whose licenses are invalidated  
28 under this subsection may be issued new licenses of the same  
29 classification provided appropriate proof of competency is  
30 presented to the commissioner.

32 6. Application. This section does not affect or prevent  
33 the practices of any other legally recognized profession.

36 §3205. License from outside of Maine

38 The commissioner may issue a license without examination, in  
39 a comparable classification, to any person who holds a license in  
40 any state, territory or possession of the United States or any  
41 country, if the requirements for licensure of operators under  
42 which the person's license was issued do not conflict with this  
43 chapter and in the opinion of the commissioner are of a standard  
44 not lower than that specified by rules adopted under this chapter.

46 §3206. License from owner of particular system

48 Licenses may be issued without examination to the person or  
49 persons certified by the governing body or owner of a system to  
50 have been in direct responsible charge of a water treatment plant

2 or a water distribution or public water system between October 1,  
4 1966 and October 1, 1969. A license issued under this section is  
6 valid only for that particular classification level of treatment  
8 plant or system.

10 **§3207. Rules**

12 The commissioner shall adopt rules reasonably necessary to  
14 carry out the intent of this subchapter. The rules must include,  
16 but are not limited to, provisions establishing requirements for  
18 licensure and procedures for examination of candidates.

20 **§3208. Fees**

22 The application fees, biennial renewal fees and  
24 reinstatement fees must be established by the commissioner by  
26 rule and must be based upon different classifications of water  
28 treatment systems and the levels of competence to operate various  
30 water systems. The application fee may not exceed \$35, and the  
32 biennial renewal fee may not exceed \$30. Application fees are  
34 nonrefundable.

36 **§3209. Licensure; temporary conditional waiver**

38 If a supplier of water loses its licensed operator, it shall  
40 secure a new licensed operator or enter into a contractual  
42 agreement with a licensed operator of proper classification until  
44 a new operator has been employed for the supplier of water.

46 The commissioner may, in the event of extenuating  
48 circumstances, issue a waiver of the licensure requirements for a  
50 period not exceeding 13 months. In granting the waiver, the  
commissioner may impose any terms, conditions or requirements as,  
in the commissioner's judgment, are necessary to protect the  
public health and interest.

**§3210. Violations**

**1. Violation.** Any person violating any provision of this  
subchapter or the rules adopted under this subchapter commits a  
civil violation for which a forfeiture of not more than \$500 may  
be adjudged. Each day of operation in violation of this  
subchapter or any rules adopted under this subchapter is a  
separate violation.

**2. Injunctive relief.** The commissioner may commence or  
cause to be instituted a civil action in the Superior Court to  
seek injunctive relief to prevent the violation of this  
subchapter, to prevent the violation of any rule adopted pursuant  
to this subchapter or to require a public water system or

supplier of water to take other action necessary to comply with  
this subchapter, with or without a prior order from the  
commissioner or department. In addition to the county in which  
the principal place of business of the supplier of water is  
located, the action may be instituted in the Superior Court of  
Kennebec County.

**SUBCHAPTER IV**

**PUBLIC WATER SUPPLIES**

**§3251. Public water supply defined**

As used in this subchapter, unless the context otherwise  
indicates, "public water supply" means any natural or man-made  
impoundment, pond or lake or ground water aquifer whose waters  
are transported or delivered by a public water system, whether  
the water is taken directly from the impoundment, pond, lake or  
groundwater aquifer or from an outlet of the impoundment, pond or  
lake.

**§3252. Municipal regulation authorized; penalty**

**1. Municipal regulations authorized.** The municipal  
officers of each municipality may, after notice and public  
hearing, adopt rules governing the surface uses of public water  
supplies, portions of public water supplies, or land overlying  
ground water aquifers and their recharge areas used as public  
water supplies, located within that municipality in order to  
protect the quality of the public water supplies or the health,  
safety or welfare of persons dependent upon the supplies.

At least 15 days prior to a public hearing held under this  
subsection, notice of the hearing must be published in a  
newspaper of general circulation in the county in which the  
municipality is located and must be mailed by registered mail to  
each owner of land bordering the public water supply within that  
municipality. Rules adopted pursuant to this section become void  
one year from the date of the adoption unless ratified by vote of  
the legislative body of the municipality within that year.

**2. Penalty.** Whoever willfully violates any rule adopted  
under this section must be penalized in accordance with Title  
30-A, section 4452.

**§3253. Protection of public water source**

Any water utility or municipality and the department may  
take reasonable steps to protect a public water supply from  
pollution.

2 1. Right of entry for water utility. Employees or agents  
3 of a water utility may enter upon land within 1,000 feet of a  
4 public water supply or upon land used for commercial or  
5 industrial purposes having a facility, structure or system  
6 draining into or suspected of flowing or seeping into a public  
7 water supply and inspect the facility, structure or system,  
8 including any building or structure on that land. Entry onto  
9 property under this subsection is not a trespass. The power of  
10 entry and inspection may be exercised only after the water  
11 utility has made a reasonable effort to obtain permission from  
12 the landowner for the inspection.

14 2. Right of entry for department and consumer-owned water  
15 utility. Employees or agents of the department or of a  
16 consumer-owned water utility as defined in Title 35-A, section  
17 6101 may enter any property at reasonable hours or enter any  
18 building with the consent of the owner, occupant or agent to  
19 inspect a wastewater disposal system draining into or suspected  
20 of flowing or seeping into a public water supply. Entry onto  
21 property under this subsection is not a trespass. An employee or  
22 agent of the department or consumer-owned utility may seek an  
23 administrative inspection warrant pursuant to the Maine Rules of  
24 Civil Procedure, Rule 80E to carry out the purposes of this  
25 subsection.

26 3. Remedy. In addition to rights granted to municipal  
27 officers under Title 30-A, section 3428, any local or state  
28 health inspector or officer may order the owner of any facility,  
29 structure or system flowing or seeping into and contaminating a  
30 public water supply, if the contamination may result in risk to  
31 the public health, to remedy the situation. The order must be  
32 served in writing and state a time in which the order must be  
33 complied with. An order made pursuant to this subsection is not  
34 considered an adjudicatory proceeding within the meaning of the  
35 Maine Administrative Procedure Act. Any person aggrieved by an  
36 order may appeal to the Superior Court within 30 days.

38 4. Court-ordered remedies. The water utility, municipality  
39 or department may petition the Superior Court upon failure of the  
40 person named in an order served under subsection 3 to comply with  
41 that order. The court, after hearing, may order that appropriate  
42 measures be taken.

44 5. Remedy ordered by water district or consumer-owned  
45 utility. If the municipal officers have failed to act on a  
46 malfunctioning wastewater disposal unit under Title 30-A, section  
47 3428 and have notified a consumer-owned water utility as defined  
48 in Title 35-A, section 6101 in writing of their failure to do so,  
49 the consumer-owned water utility may assume the rights of

2 municipal officers under Title 30-A, section 3428, except that it  
3 may not assess a special tax under Title 30-A, section 3428,  
4 subsection 4, paragraph B.

6 6. Effect on other law. Nothing in this section limits in  
7 any way any private and special or other law granting a water  
8 utility or municipality greater controls than those set forth in  
9 this section for protecting its public water source.

#### 10 §3254. Protection of intake of public water supply

12 Any water utility or municipality is authorized to designate  
13 by buoys in water or markers on the ice in an area on a lake or  
14 pond from which water is taken, with a radius commencing at its  
15 point of intake. The radius may not exceed 200 feet and within  
16 that area a person may not anchor or moor a boat or carry on ice  
17 fishing. Buoys placed in the water must be plainly marked as  
18 required by the Director of the Bureau of Parks and Recreation  
19 under Title 38, section 323. Any person violating this section  
20 must, on conviction, be penalized in accordance with Title 30-A,  
21 section 4452.

22 Nothing in this section limits in any way any private and  
23 special law granting a water utility or municipality greater  
24 controls than those set forth in this section for protecting the  
25 intake of its public water supply.

#### 28 §3255. Protection of public water supplies over winter

30 1. Petition for rules. Any water utility, water district  
31 or municipality that relies on surface water for its water supply  
32 may petition the Commissioner of Inland Fisheries and Wildlife to  
33 adopt rules to regulate the size and range of motor vehicles that  
34 may be permitted on the ice of any reservoir or surface water  
35 that is used as a public water supply. The petitioner shall  
36 supply the technical information in support of the decision. The  
37 commissioner shall adopt only rules that are reasonable and  
38 necessary to protect the public water supply. These rules must be  
39 adopted in accordance with the Maine Administrative Procedure Act  
40 after a public hearing in the affected area.

42 2. Existing rules. Any rules that are adopted must be at  
43 least as strict as those already in existence for that body of  
44 water. Nothing in this section limits in any way the authority  
45 of the municipal officers to enact ordinances under Title 30-A,  
46 section 3009, subsection 1, paragraph E, or any private and  
47 special law granting a water utility or municipality greater  
48 controls than those set forth in this section for protecting its  
49 public water supply.

2 3. Violation. Any violation of the rules adopted under  
3 this section is a civil violation for which a forfeiture of not  
4 more than \$100 may be adjudged for each violation.

6 **SUBCHAPTER V**

8 **FLUORIDATION**

10 **§3301. Definitions**

12 As used in this subchapter, unless the context otherwise  
13 indicates, the following terms have the following meanings.

14 1. Multiple community water district. "Multiple community  
15 water district" means that area comprising all municipalities  
16 served in whole or part by a single public water system and those  
17 public water system zones within multiservice municipalities  
18 served by the same public water system.

20 2. Multiple community water system district-wide election.  
21 "Multiple community water system district-wide election" means an  
22 election held in each municipality within a multiple community  
23 water district to determine whether or not to fluoridate the  
24 water supply of that system.

26 3. Multiservice municipality. "Multiservice municipality"  
27 means any municipality served in whole or in part by more than  
28 one public water system.

30 4. Municipality. "Municipality" means a city, town or  
31 plantation.

32 5. Public water system. "Public water system" means the  
33 public water agency, company, utility, district or other entity  
34 servicing one or more municipalities in whole or in part.

36 6. Public water system zone. "Public water system zone"  
37 means any one of the 2 or more zones of a multiservice  
38 municipality established pursuant to section 3307 served by a  
39 single public water system.

42 7. Registered petitioners. "Registered petitioners" means  
43 those registered voters residing in a single community water  
44 district or, in the case of a multiple community water system  
45 district-wide election, those registered voters residing in the  
46 multiple community water district who have accepted the  
47 responsibility of receiving notice concerning the filing of  
48 petitions pursuant to section 3305, subsection 3.

2 8. Single community water district. "Single community  
3 water district" means a municipality served in whole or in part  
4 by a water system that serves no other municipalities.

6 9. Single-service municipality. "Single-service  
7 municipality" means any municipality served in whole or in part  
8 by a single public water system.

10 **§3302. Department approval required to fluoridate**

12 No public water system may add any fluoride to its water  
13 supply without written approval of the department.

14 **§3303. Authorization of fluoridation; general provisions**

16 1. Requirement for authorization. No public water system  
17 may add any fluoride to any water supply without first having  
18 been authorized to do so by the affected single or multiple  
19 community water district served by it. Any public water system  
20 duly authorized to add fluoride to any water supply shall do so  
21 within 9 months after being notified in accordance with this  
22 section. The municipal clerk shall, within 10 days after a vote,  
23 notify the public water system of the vote favoring or not  
24 favoring the addition of fluoride to the public water supply.

26 2. Form of question. Any time the issue of whether to  
27 fluoridate a public water supply is submitted to voters, the  
28 question must be phrased as follows: "Shall fluoride be added to  
29 the public water supply for the intended purpose of reducing  
30 tooth decay?"

32 3. Prohibition. Whenever a single community water district  
33 has approved fluoridation, it may not again vote on the matter  
34 for a minimum period of 2 years from the date of installation of  
35 fluoride. Whenever a single community water district has  
36 disapproved fluoride, it may not vote again on the matter for a  
37 minimum period of 2 years. Whenever a multiple community water  
38 district has approved fluoridation, it may not vote again on the  
39 matter until the first general election after 2 years from the  
40 date of installation of fluoride. Whenever a multiple community  
41 water district disapproves fluoride, it may not vote again on the  
42 matter until the next general election.

44 4. Authorization not required. The authorization required  
45 by subsection 1 may not apply to any public water supply that  
46 receives or purchases less than 50% of its total annual water  
47 supply from another public water supply authorized to add  
48 fluoride to its water supply.

50 **§3304. Procedure for elections**

2 1. Single community water districts. In a single community  
4 water district, the vote on the issue of fluoridation must be  
6 called by a majority vote of the municipal officers acting on  
8 their own initiative or pursuant to a petition meeting the  
10 requirements established for a referendum vote by the  
12 municipality's home rule charter or, if the municipality has no  
14 home rule charter, as provided by Title 30-A, section 2522.

16 2. Multiple community water districts. In the case of a  
18 multiple community water district, authorization must be by a  
20 majority vote of those voting at a multiple community water  
22 system district-wide election. A valid request for an election on  
24 whether to authorize the addition of fluoride may be made in  
26 either of the following ways.

28 A. A valid request for an election has been made when a  
30 majority of municipal officers, in a majority of  
32 municipalities within a multiple community water system  
34 district, vote to call an election. All the votes must be  
36 taken at least 90 days before the general election. Each  
38 voting municipality shall certify within 5 days to all other  
40 municipalities within the public water system district the  
42 results of its vote.

44 A multiple community water system district-wide election  
46 must take place in each municipality within the district if,  
48 on the basis of the certificates, a majority of municipal  
50 officers within a majority of the municipalities in the  
district have called for an election.

B. A valid request for election has been made when a number  
of registered voters within a multiple community water  
district equal to at least 10% of the total number of votes  
cast for Governor at the last gubernatorial election in all  
municipalities, wholly or partially within the multiple  
community water district, file a petition in accordance with  
section 3305.

### §3305. Petitions in multiple community water districts

Petitions for an election are governed by the following  
provisions.

1 1. Circulation. Any time the issue of whether to fluoridate  
2 a public water supply is submitted to the voters in multiple  
3 community water districts pursuant to petition, the petition or  
4 petitions must be circulated and signed in the manner prescribed  
5 by Title 30-A, section 2503, subsection 3, paragraph B,  
6 subparagraphs (2) and (3), and must be dated and gathered within

7 the time frame prescribed by the Constitution of Maine, Article  
8 IV, Part Third, Section 18, Subsection 2.

9 2. Forms; instructions. On request of a voter, the  
10 Secretary of State shall furnish petition forms to that voter  
11 within 10 days of the request. The Secretary of State may charge  
12 a reasonable fee for the petitions.

13 If a voter, at the voter's own expense, wishes to have the forms  
14 printed and furnished by the voter rather than by the Secretary  
15 of State, the voter may do so if the petition blanks are first  
16 approved by the Secretary of State as to form and content. The  
17 Secretary of State has 10 days in which to approve the forms. If  
18 the forms are found to be unsatisfactory, the Secretary of State  
19 shall indicate the manner in which the forms are deficient.  
20 Corrected petition forms may be submitted in accordance with the  
21 terms in this paragraph.

22 The Secretary of State shall prepare complete instructions to  
23 advise the signers, circulators, registered petitioners,  
24 municipal clerks and election officials as to any statutory and  
25 constitutional requirements. The instructions must specify the  
26 conditions that have been held to invalidate either individual  
27 signatures or complete petitions. The instructions must be  
28 printed in bold type or capital letters on the petition.

29 3. Signing; filing. In multiservice municipalities,  
30 petitions may be signed by any registered voter residing within  
31 the affected public water system zone of the municipality. All  
32 the petitions must be filed with the appropriate municipality at  
33 least 120 days before the next general election. In each  
34 municipality in which petitions are filed, the petition or  
35 petitions must be accompanied by the name and address of at least  
36 one, but not more than 5, registered voters who are the  
37 registered petitioners for the purpose of subsection 4. The  
38 registered petitioners must reside in the multiple community  
39 water district, but need not reside in the municipality in which  
40 a petition is filed.

41 4. Certification. Within 20 days after a petition is  
42 filed, the municipal clerk shall complete a certificate that  
43 states the number of valid signatures on the petition and  
44 identifies the relevant multiple community water district or  
45 districts involved. The certificate must be sent by registered  
46 mail to the registered petitioners, who are responsible for  
47 transmitting them to the Secretary of State.

48 The Secretary of State shall total the number of valid signatures  
49 as certified by the municipal clerk. As soon as the total number  
50 of certified valid signatures is found to be equal to at least

10% of the total number of votes cast for Governor at the last gubernatorial election in all municipalities that are wholly or partially within the multiple community water district, the Secretary of State shall certify that fact to each municipality that is wholly or partially in the multiple community water district within 48 hours.

**§3306. Elections in multiple community water districts**

**1. Multiple community water system district-wide elections.** In the case of public systems serving more than one municipality, in whole or in part, elections must be held simultaneously in all municipalities served by the water system at the first general election following the certification of a request for an election on the issue of whether to fluoridate the water supply. Those eligible to vote are all registered voters within affected single-service municipalities and all registered voters within the affected public water system zone of multiservice municipalities. The following provisions apply to all multiple community water system district-wide elections.

**A. Each municipality is responsible for posting a warrant according to the following requirements.**

(1) It must specify the voting place and the time of opening and closing of polls.

(2) It must specify that the purpose of the election is to determine the following question: "Shall fluoride be added to the public water supply for the intended purpose of reducing tooth decay?"

(3) It must specify that a public hearing will be held by the municipal officers of each municipality at least 10 days before the election date.

(4) It must be signed by a majority of the municipal officers of the municipality and directed personally to a constable or any resident ordering the constable or resident to announce the election.

(5) The person to whom the warrant is directed shall post an attested copy of it in a conspicuous public place in each voting district of the municipality at least 7 days immediately before the date of the public hearing. The person shall make a return on the warrant stating the manner of announcement and the time it was given and return the warrant to the municipal officers.

(6) The municipal officers shall then deliver the warrant to the clerk who shall record it.

**B. Elections must be held by secret preprinted ballots.**

**C. Each municipality shall provide for absentee ballots in a manner that substantially complies with Title 21-A, chapter 9, subchapter IV.**

**2. Elections in single community water districts.** Elections in single community water districts must be conducted in the same manner as other municipal elections.

**3. Reporting election results.** Each municipal clerk shall certify in writing the results of the election within 72 hours of the vote to the Secretary of State. The results must be certified as to the number of eligible voters voting in favor of fluoridation and the number of eligible voters voting in opposition to fluoridation. The municipality shall also certify to the Secretary of State the identity of the relevant public water district or districts involved.

**4. Vote tabulation.** The Secretary of State shall, within 48 hours of receiving the last written certification, tabulate the votes from each municipality and immediately make public the results of the multiple community water system district-wide election by mailing to each affected municipality and public water system the results of the election, including the submitted votes from that municipality and public water system zone and the total multiple community water system district-wide vote.

**§3307. Establishment of public water system zones**

**1. Division into zones.** In order to facilitate elections in multiservice municipalities, each municipality shall divide itself into as many zones as there are public water services supplying the municipality. The zones must be structured to ensure that:

**A. All residents served by a given public water service fall within the same zone;**

**B. Each registered voter within the municipality is within one of the zones; and**

**C. The size of the zone bears a rational relationship to the area of the municipality being served by a given public water system.**



2 2. Map. Upon request by a municipality, a public water  
4 system shall provide to the municipality within 14 days a map  
6 that clearly delineates the boundaries of the service area of the  
8 public water system and any other requested information  
10 reasonably necessary to enable the municipality to determine the  
12 precise area of service in the municipality of the public water  
14 system.

16 3. Description; map; files. Each multiservice municipality  
18 shall keep on file, as a public document, a precise description  
20 and accompanying map of its public water system zones.

#### §3308. Allocation of costs

22 The Public Utilities Commission, upon application, shall  
24 determine and allocate the cost of fluoridation among the  
26 customers of a public water system and shall from time to time  
28 review that determination and allocation as required. In the  
30 event that a community water district that has approved  
32 fluoridation votes to discontinue fluoridation, the public water  
34 system may amortize the remaining cost of its investment in these  
36 facilities and allocate the cost of that amortization among its  
38 customers, over a period of time approved by the Public Utilities  
40 Commission.

#### §3309. Rules

42 The department shall adopt rules, pursuant to the Maine  
44 Administrative Procedure Act, Title 5, chapter 375, subchapter  
46 II, necessary to carry out the purposes of this subchapter,  
48 including, but not limited to, rules regarding the time and  
50 manner in which municipalities shall establish public water  
system zones.

### SUBCHAPTER VI

#### TRANSPORT OF WATER

#### §3351. Legislative findings

42 The Legislature finds that the transport of water for  
44 commercial purposes in large quantities away from its natural  
46 location constitutes a substantial threat to the health, safety  
48 and welfare of persons who live in the vicinity of the water and  
50 rely on it for daily needs. If the transportation occurs,  
persons who relied on the presence of water when establishing  
residences or commercial establishments may find themselves with  
inadequate water supplies. In addition, the Legislature finds  
that the only practicable way in which to prevent the depletion  
of the water resources is to prohibit the transport of water in

2 large quantities away from the vicinity of its natural location.  
4 The purpose of this prohibition is, however, not to prevent the  
6 use of water supplies for drinking and other public purposes in  
8 the vicinity of the natural location of the water.

#### §3352. Restrictions on transport of water

10 1. Prohibition. Except as otherwise provided in this  
12 section, no person may transport water for commercial purposes by  
14 pipeline or other conduit or by tank truck or in a container,  
16 greater in size than 10 gallons, beyond the boundaries of the  
18 municipality or township in which the water is naturally located  
20 or any bordering municipality or township.

22 2. Exceptions. The prohibition in this section does not  
24 apply to:

26 A. Any water utility as defined in Title 35-A;

28 B. Water transported for use in well drilling, construction  
30 activities, concrete mixing, swimming pool filling,  
32 servicing portable toilets, firefighting, hospital  
34 operations, aquaculture, agricultural applications or civil  
36 emergencies;

38 C. Water distilled as a by-product of a manufacturing  
40 process; and

42 D. Water transported from a water source that, before July  
44 1, 1987, was used to supply water for bottling and sale, and  
46 that is used exclusively for bottling and is sold in its  
48 pure form or as a carbonated or flavored beverage product.

50 3. Appeal. The commissioner, after consultation with the  
Public Utilities Commission, the State Geologist and the State  
Planning Office, may authorize transport of water for commercial  
purposes if the commissioner finds that:

A. Transport of the water will not constitute a threat to  
public health, safety or welfare;

B. The water is not available naturally in the location to  
which it will be transported; and

C. Failure to authorize transport of the water would create  
a substantial hardship to the potential recipient of the  
water.

Any authorization under this subsection may not exceed 3 years,  
but may be renewed subject to the same criteria.

2 4. Conditions of authorization. Notwithstanding Title 1,  
3 section 302, the exceptions authorized in subsection 2 and any  
4 authorization granted under subsection 3 is subject to future  
5 legislative limitations of the right to transport water.

6 5. Emergencies. In case of an emergency, any person may  
7 transport water as necessary for the duration of the emergency,  
8 but the person transporting the water must inform the  
9 commissioner within 3 days and the commissioner may determine  
10 when the emergency is over.

11 6. Penalty. Any person who transports water in violation  
12 of this section is guilty of illegal transport of water. Illegal  
13 transport of water is a Class D crime. Each shipment or day of  
14 transport, if by pipeline, is a separate offense.

15 SUBCHAPTER VII

16 MAINE PUBLIC DRINKING WATER COMMISSION

17 §3401. Definitions

18 As used in this subchapter, unless the context otherwise  
19 indicates, the following terms have the following meanings.

20 1. Commission. "Commission" means the Maine Public  
21 Drinking Water Commission established by Title 5, section  
22 12004-I, subsection 47-A.

23 2. Community water system. "Community water system" means  
24 a public water system that serves at least 15 service connections  
25 used by year-round residents or regularly serves at least 25  
26 year-round residents.

27 3. Fund. "Fund" means the Public Drinking Water Fund  
28 established by section 3405.

29 4. Noncommunity water system. "Noncommunity water system"  
30 means a public water system that is not a community water  
31 system. A noncommunity water system is either nontransient or  
32 transient, as follows.

33 A. A nontransient, noncommunity water system serves at  
34 least 25 of the same persons for 6 months or more per year  
35 and may include, but is not limited to, a school, factory,  
36 industrial park or office building.

37 B. A transient, noncommunity water system serves at least 25  
38 persons, but not necessarily the same persons, for at least

39 60 days per year and may include, but is not limited to, a  
40 highway rest stop, seasonal restaurant, seasonal motel, golf  
41 course, park or campground. A bottled water company is a  
42 transient, noncommunity water system.

43 5. Primacy. "Primacy" means the federally delegated primary  
44 enforcement authority to adopt, implement and enforce federally  
45 mandated drinking water standards promulgated pursuant to the  
46 federal Safe Drinking Water Act as amended.

47 6. Program. "Program" means the Maine Public Drinking  
48 Water Control Program.

49 §3402. Maine Public Drinking Water Commission

50 The Maine Public Drinking Water Commission as established by  
51 Title 5, section 12004-I, subsection 47-A, is created within the  
52 department.

53 1. Membership. The commission consists of the commissioner  
54 or the commissioner's designee and 8 other members appointed by  
55 the Governor in accordance with the following provisions.

56 A. Four of the members must represent the water purveying  
57 community and must be employed by public water systems. One  
58 of the 4 must be employed by a public water system serving a  
59 population of less than 500 people, one must be employed by a  
60 public water system serving a population of at least 500  
61 but not more than 3,300 people, one must be employed by a  
62 public water system serving a population of at least 3,301  
63 but not more than 10,000 people, and one must be employed by a  
64 public water system serving a population greater than  
65 10,000 people.

66 B. Four of the members must represent the drinking water  
67 public. At least one of the 4 must be a user of a  
68 transient, noncommunity water system and at least one must  
69 be a user of a nontransient, noncommunity water system.

70 C. All members appointed by the Governor must have  
71 demonstrated interest, knowledge, experience and expertise  
72 regarding public drinking water concerns. The Governor  
73 shall seek to appoint members who, to the greatest extent  
74 possible, are qualified by interest, education, training or  
75 experience to provide, assess and evaluate scientific and  
76 technical information regarding public drinking water  
77 concerns, financial and staffing requirements and the  
78 adoption of policies, standards and rules.

2 D. The term of office for members appointed by the Governor  
3 is 4 years except that, of the original members appointed, 4  
4 must be appointed for 2 years and 4 must be appointed for 4  
5 years. The Governor shall make all original appointments by  
6 September 29, 1993. Members may remain in office until  
7 their successors are appointed. A member may not serve more  
8 than 2 consecutive terms. If a vacancy occurs, the Governor  
9 shall appoint a replacement to fill the remaining portion of  
10 the unexpired term created by the vacancy.

11 2. Chair; vice-chair. At the first meeting of the  
12 commission, the members shall elect from among themselves a chair  
13 and a vice-chair. The chair and vice-chair serve for one-year  
14 terms. The chair and vice-chair may continue to hold those  
15 offices until their successors are elected. The chair calls  
16 meetings of the commission and presides over meetings. The  
17 vice-chair serves as the chair in the absence of the chair. The  
18 commissioner shall call the first meeting of the commission as  
19 soon as all initial appointments to the commission have been made.

20 3. Meetings. The commission shall hold at least 2 regular  
21 meetings each year and may hold additional regular meetings.  
22 Special meetings may be called by the chair, by the commissioner  
23 or the commissioner's designee or by at least 3 members of the  
24 commission. Five members constitute a quorum.

25 4. Duties. The commission shall:

26 A. Determine the proportion of program effort dedicated to  
27 each type of public water system served by the program;

28 B. Evaluate existing and projected program workloads;

29 C. Evaluate existing program resources and project future  
30 staffing and resource requirements;

31 D. Determine funding requirements necessary to meet  
32 projected workloads and staffing and resource requirements;

33 E. Determine an equitable program funding share for each  
34 type of public water system that reflects the level of  
35 program effort required for that public water system;

36 F. Determine fee formulas and collection and transfer  
37 schedules for each type of public water system;

38 G. Determine revenue levels to be retained by each type of  
39 public water system as reimbursement for costs incurred in  
40 the collection and transfer of fees; and

41 H. Submit to the department annually by August 1st a report  
42 that must include, but is not limited to, a performance  
43 evaluation of the program and commission recommendations  
44 regarding, but not limited to, program operations, funding  
45 and staffing requirements, funding formulas and fee  
46 collection and transfer schedules.

47 5. Compensation. Members of the commission are entitled to  
48 reimbursement by the department for expenses as authorized by  
49 Title 5, chapter 379.

#### 50 §3403. Annual work plan on primacy

Annually, by January 1st, the department shall submit to the  
commission a work plan and budget, listing all funding sources  
including but not limited to appropriations from the General Fund  
and allocations from the United States Environmental Protection  
Agency that are used for the purpose of complying with federal  
requirements for maintaining primacy.

#### §3404. Fees related to primacy

In addition to fees authorized under section 708, the  
commissioner may impose a fee upon each public water system in  
the State for the purpose of retaining primacy.

1. Rules. The department shall establish fee formulas by  
rules adopted in accordance with the Maine Administrative  
Procedure Act. The department shall consult with and consider  
the advice of the commission in preparing the rules. Proposed  
rules issued by the department under this section must include  
the fee formulas and collection and transfer schedules developed  
by the commission. Fee formulas adopted under this section must  
be equitable. Fees may be based on, but are not limited to, the  
population served, service connections, volume of water pumped or  
available seats, campsites, rooms or lots, and may include fixed  
or graduated fee formulas or combinations of the fee formulas.  
Fees may be no less than \$50 per year per public water system and  
no more than \$30,000 per year per public water system.

2. Collection and disposition of fees. Fees adopted under  
this section cover the period beginning July 1, 1993 and must be  
collected by each public water system in monthly, quarterly or  
annual increments. Fees collected by public water systems under  
this section are state fees and must be enumerated by the public  
water systems separately from all other charges. The department  
shall establish schedules for the collection and transfer of fees  
to the State with the advice of the commission. With the advice  
of the commission, the department shall establish a reasonable  
percentage of the fees, not to exceed 2%, that may be retained by

2 each public water system as reimbursement for expenses incurred  
3 in the collection of the fees.

4 3. Suspension and reinstatement of fees. Fees imposed  
5 under this section are suspended on the first day of the calendar  
6 quarter following any calendar quarter in which primacy is  
7 withdrawn by the Federal Government. Fees suspended under this  
8 subsection may be reinstated on the first day of the calendar  
9 quarter following the quarter in which the State regains primacy.

10 **§3405. Public Drinking Water Fund**

11 The Public Drinking Water Fund is established as an  
12 interest-bearing dedicated revenue account. All interest earned  
13 by the account becomes part of the fund. All fees collected by  
14 the department under this subchapter must be deposited into the  
15 fund. Any balance remaining in the fund at the end of the fiscal  
16 year does not lapse but is carried forward into subsequent fiscal  
17 years. The department may use the fund only to support the  
18 program, including the cost of salaries, benefits, travel,  
19 capital equipment and other allowable expenses incurred by the  
20 program.

21 **§3406. Enforcement**

22 This subchapter must be enforced by the department in  
23 accordance with section 3157.

24 **§3407. Repeal**

25 This subchapter is repealed on June 30, 1997.

26 **SUBCHAPTER VIII**

27 **MAINE WATER WELL DRILLING PROGRAM**

28 **§3451. Program established**

29 The Maine Water Well Drilling Program, referred to in this  
30 subchapter as the "program," is established to provide the public  
31 with the highest quality drinking water possible by ensuring that  
32 water wells are drilled, constructed, altered or abandoned in a  
33 manner that protects ground water from contamination.

34 **§3452. Administrative authority**

35 The Maine Water Well Drilling Commission, as established in  
36 Title 5, section 12004-G, subsection 13-B, shall administer the  
37 program. The commission has the powers and duties set forth in  
38 Title 32, chapter 69-C.

2 **§3453. Enforcement**

3 This subchapter is enforced by the department.

4 **CHAPTER 217**

5 **SAFE FOODS**

6 **SUBCHAPTER I**

7 **GENERAL PROVISIONS**

8 **§3501. Short title**

9 This chapter may be known and cited as the "Maine Food Law."

10 **§3502. Definitions**

11 As used in this chapter, unless the context otherwise  
12 indicates, the following terms have the following meanings.

13 1. Advertisement. "Advertisement" means all  
14 representations disseminated in any manner or by any means, other  
15 than by labeling, for the purpose of inducing, or that are likely  
16 to induce, directly or indirectly, the purchase of food.

17 2. Contaminated with filth. "Contaminated with filth"  
18 applies to any food not securely protected from dust, dirt, and  
19 as far as may be necessary by all reasonable means, from all  
20 foreign or injurious contaminations.

21 3. Federal Act. "Federal Act" means the Federal Food, Drug  
22 and Cosmetic Act (21 United States Code 301 et seq.; 52 Stat.  
23 1040 et seq.).

24 4. Food. "Food" means articles used for food or drink for  
25 humans or other animals, chewing gum and articles used for  
26 components of any such article.

27 5. Food establishment. "Food establishment" means a  
28 factory, plant, warehouse or store in which food and food  
29 products are manufactured, processed, packed, held for  
30 introduction into commerce or sold. Eating establishments, as  
31 defined in section 3701, subsection 5, fish and shellfish  
32 processing establishments inspected under Title 12, section 4682,  
33 6101, 6102 or 6856, storage facilities for one kind of native  
34 produce, such as apple warehouses, potato warehouses or carrot  
35 warehouses, and establishments, such as farm stands primarily  
36 selling fresh produce, not including dairy and meat products, are

not "food establishments" required to be licensed under section 3601.

6. Food salvage establishment. "Food salvage establishment" means a food establishment engaged in reconditioning or by other means salvaging distressed merchandise and includes any food establishment that sells, buys, warehouses or distributes any salvaged merchandise.

7. Immediate container. "Immediate container" means a container holding food. "Immediate container" does not include the package liners but in the case of bottles includes crowns or caps.

8. Irradiated food. "Irradiated food" means:

A. Any food that has been treated with gamma radiation or other ionizing radiation; or

B. Any food that contains any ingredient that has been treated with gamma radiation or other ionizing radiation.

Spices that have been treated with gamma radiation or other ionizing radiation and are sold as spices are irradiated food, but another food that contains as an ingredient spices that have been irradiated are not irradiated food solely because of the presence of those spices.

9. Label. "Label" means a display of written, printed or graphic matter upon the immediate container of any article.

10. Labeling. "Labeling" means all labels and other written, printed or graphic matter upon an article or any of its containers or wrappers, or accompanying the article.

11. Retail food establishment. "Retail food establishment" means a food establishment where food and food product are offered for sale to the consumer and intended for off-premise consumption.

12. Salvage broker. "Salvage broker" means a person, firm or corporation, that does not operate a food salvage establishment, engaged in buying, selling, distributing or warehousing any distressed merchandise, whether or not in combination with other merchandise.

13. Selling of food. "Selling of food" means the manufacture, production, processing, packing, exposure, offer, possession and holding of any food for sale; or the sale,

dispensing and giving of any food; or the supplying or applying of any food in the conduct of any food establishment.

### §3503. Powers of commissioner

The Commissioner of Agriculture, Food and Rural Resources may adopt rules in accordance with the Maine Administrative Procedure Act for the efficient enforcement of this chapter. The Commissioner of Agriculture, Food and Rural Resources may make the rules adopted under this chapter conform in so far as practicable with those promulgated under the Federal Act.

Hearings authorized or required by this chapter must be conducted by the Commissioner of Agriculture, Food and Rural Resources or by that commissioner's designee.

### §3504. Rules

The Commissioner of Agriculture, Food and Rural Resources shall adopt rules fixing and establishing for any food or class of food a reasonable definition and standard of identity, or reasonable standard of quality or fill of container whenever in the judgment of the commissioner that action will promote honesty and fair dealing in the interest of consumers. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the commissioner shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients that must be named on the label. The definitions and standards so designated must conform so far as practicable to the definitions and standards promulgated under authority of the Federal Act.

### §3505. Commissioner's obligation to enforce

Nothing in this chapter requires the Commissioner of Agriculture, Food and Rural Resources to initiate enforcement proceedings in response to minor violations of this chapter if the commissioner believes that the public interest will be adequately served by sending the violator a suitable written notice or warning.

### §3506. Access to buildings

The Commissioner of Agriculture, Food and Rural Resources or the commissioner's designee has free access at all reasonable hours to any factory, warehouse or establishment in which foods are manufactured, processed, packed or held for introduction into commerce, or to enter any vehicle being used to transport or hold those foods in commerce in order to:

1. Inspection. Inspect the factory, warehouse, establishment or vehicle to determine if any of the provisions of this chapter are being violated; and

2. Examination of samples. Secure samples or specimens of any food after paying or offering to pay for the sample, provided that whenever a sample or specimen of food is removed from any vehicle of transport, the Commissioner of Agriculture, Food and Rural Resources shall notify the consignor, consignee and the carrier of the action taken and of the amount and kind of sample or specimen taken. The Commissioner of Agriculture, Food and Rural Resources shall examine or cause to be examined samples secured under this section to determine whether any provision of this chapter is being violated.

**§3507. Departmental enforcement measures**

1. Authorization. The Department of Agriculture, Food and Rural Resources, referred to in this section as the "department," may take one or more of the following actions if a violation of this chapter, or rules adopted pursuant to this chapter, occurs and the department determines that action is necessary and appropriate to ensure compliance with state licensing rules or to protect the public health.

A. The department may impose penalties for violations of this chapter, or the rules adopted pursuant to this chapter, on any food establishment or food salvage establishment. The penalties may not be greater than \$50 for each violation. Each day that the violation remains uncorrected may be counted as a separate offense. Penalties may be imposed for each violation of the rules.

B. The department may direct a food establishment or food salvage establishment to correct any violations in a manner and within a time frame that the department determines is appropriate to ensure compliance with state rules or to protect the public health. Failure to correct violations within the time frame constitutes a separate violation for which a fine may be imposed.

2. Schedule of penalties. The department shall establish a schedule of penalties according to the nature and duration of the violation.

3. Enforcement and appeal. Enforcement and appeal of this section is as follows.

A. The department may impose any fine in conformity with the Title 5, chapter 375, subchapter IV, if the department

has provided the licensee with the opportunity for an administrative hearing.

B. Licensees that are fined pursuant to this chapter are required to pay the department the amount of the penalties. If a licensee has not paid any collectible fine by the time of license renewal, the department may collect the fine by requiring payment prior to the processing of any license renewal application. An appeal of the department's decision to fine a licensee stays the collection of the fine. Interest accrues on a fine at the rate specified in Title 14, section 1602 prior to the completion of any appeal. After the completion of any appeal process or after any appeal period has passed, interest accrues pursuant to Title 14, section 1602-A.

**§3508. Attorney General's authority**

In the event of any violation of this chapter or any rule adopted pursuant to this chapter, the Attorney General may seek to enjoin a further violation, in addition to any other remedy.

**SUBCHAPTER II**

**FOOD REQUIREMENTS**

**§3551. Prohibitions**

The following acts within this State are prohibited:

1. Adulterated or misbranded food. The manufacture, sale or delivery, holding or offering for sale of any food that is adulterated or misbranded;

2. Adulteration or misbranding. The adulteration or misbranding of any food;

3. Receipt in commerce or delivery. The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery of adulterated or misbranded food for pay or otherwise;

4. False advertisement. The dissemination of any false advertisement;

5. Inspection refusal. The refusal to permit entry or inspection, or to permit the taking of a sample as authorized in section 3506;

2 6. False guaranty. The giving of a guaranty or undertaking  
4 that is false, except by a person who relied on a guaranty or  
6 undertaking to the same effect signed by, and containing the name  
8 and address of the person residing in the United States from whom  
10 the food was received in good faith;

12 7. Removal of embargoed article. The removal or disposal of  
14 a detained or embargoed article in violation of section 3558;

16 8. Alteration of label. The alteration, mutilation,  
18 destruction, obliteration or removal of the whole or any part of  
20 the labeling of a food, or the doing of any other act with  
22 respect to a food, if the act is done while the article is held  
24 for sale and results in the article being misbranded;

26 9. Forging of label. Forging, counterfeiting, simulating or  
28 falsely representing, or without proper authority using any mark,  
30 stamp, tag, label or other identification device authorized or  
32 required by rules adopted under this chapter; or

34 10. Irradiated food. For any person to knowingly sell  
36 irradiated food or to treat any food for human or animal  
38 consumption with gamma radiation or other ionizing radiation,  
40 except as part of a research project at any college, university  
42 or research institution.

#### 34 §3552. Injunctions against prohibited acts

36 In addition to other remedies provided, the Commissioner of  
38 Agriculture, Food and Rural Resources may apply to the Superior  
40 Court and the court may, upon hearing and for cause shown, grant  
42 a preliminary or permanent injunction restraining any person from  
44 violating any provision of section 3551.

#### 36 §3553. Adulteration

38 A food is adulterated:

##### 40 1. Poisonous or deleterious substance. If it:

42 A. Bears or contains any poisonous or deleterious substance  
44 that may render it injurious to health; but in case the  
46 substance is not an added substance, the food is not  
48 considered adulterated under this paragraph if the quantity  
50 of the substance in the food does not ordinarily render it  
injurious to health;

B. Bears or contains any added poisonous or added  
deleterious substance that is unsafe within the meaning of  
section 3557;

2 C. Consists in whole or in part of a diseased,  
4 contaminated, filthy, putrid or decomposed substance or if  
6 it is otherwise unfit for food;

8 D. Has been produced, prepared, packed or held under  
10 unsanitary conditions whereby it may have become  
12 contaminated with filth, or whereby it may have been  
14 rendered diseased, unwholesome or injurious to health;

16 E. Is the product of a diseased animal or an animal that  
18 has died otherwise than by slaughter or that has been fed  
20 upon the uncooked offal from a slaughterhouse; or

22 F. Its container is composed, in whole or in part, of any  
24 poisonous or deleterious substance that may render the  
26 contents injurious to health;

##### 28 2. Substances added or omitted. If:

30 A. Any valuable constituent has been in whole or in part  
32 omitted or abstracted from the food;

34 B. Any substance has been substituted wholly or in part for  
36 the food;

38 C. Damage or inferiority has been concealed in any manner;  
40 or

42 D. Any substance has been added to the food or mixed or  
44 packed with the food so as to increase its bulk or weight,  
46 or reduce its quality or strength or make it appear better  
48 or of greater value than it is;

50 3. Substances in confectionery. If it is confectionery and  
it bears or contains any alcohol or nonnutritive article or  
substance except harmless coloring, harmless flavoring, harmless  
resinous glaze not in excess of 4/10 of 1%, harmless natural wax  
not in excess of 4/10 of 1%, or harmless natural gum and pectin.  
This subsection does not apply to any confectionery by reason of  
its containing less than 1/2 of 1%, by volume of alcohol derived  
solely from use of flavoring extracts, or to any chewing gum by  
reason of its containing harmless nonnutritive masticatory  
substances; or

4. Coal-tar color. If it bears or contains a coal-tar color  
other than one from a batch that has been certified under  
authority of the Federal Act.

#### 50 §3554. Penalties

2 1. Fines. Any person who violates any of the provisions of  
4 section 3551 must be punished by a fine of not more than \$1,000  
6 for the first offense and a fine of not more than \$2,000 for each  
8 subsequent offense, except that any intentional violation of  
10 section 3551, subsections 1, 2, 3, 6, 7 and 8 that involves  
12 adulterated food, except as adulterated according to section  
14 3553, subsection 2, must be punished by a fine of not more than  
\$10,000 for the first offense and a fine of not more than \$20,000  
for each subsequent offense. Carriers subject to jurisdiction of  
the Maine Public Utilities Commission or the Interstate Commerce  
Commission are not subject to section 3551, subsection 3, by  
reason of their receipt, carriage, holding or delivery of foods  
in the usual course of business as carriers.

16 2. Exceptions. The following exceptions to subsection 1  
18 apply.

20 A. No person is subject to the penalties prescribed in  
22 subsection 1 for having violated section 3551, subsection 1  
24 or 3, if the person establishes a guaranty or undertaking,  
26 signed by and containing the name and address of the person  
28 residing in this State from whom the person received in good  
30 faith the article, to the effect that the article is not  
32 adulterated or misbranded within the meaning of this chapter.

34 B. No publisher, radio-broadcast licensee or agency or  
36 medium for the dissemination of an advertisement, except the  
38 manufacturer, packer, distributor or seller of the article  
40 to which a false advertisement relates, is liable under  
42 subsection 1 for the dissemination of a false advertisement,  
44 unless the person has refused or neglected a request of the  
46 Commissioner of Agriculture, Food and Rural Resources to  
48 furnish the commissioner the name and post-office address of  
50 the manufacturer, packer, distributor, seller or advertising  
agency residing in this State who caused the person to  
disseminate the advertisement.

#### §3555. Misbranded food

2 A requirement made by or under authority of this chapter  
4 that any word, statement or other information appear on the label  
6 is not met unless the word, statement or other information  
8 appears on the outside container or wrapper, if there is one, of  
10 the retail package of the article, or is easily legible through  
12 the outside container or wrapper.

14 If an article is alleged to be misbranded because the  
16 labeling is misleading or if an advertisement is alleged to be  
18 false because it is misleading, then in determining whether the

2 labeling or advertisement is misleading, there must be taken into  
4 account, among other things, not only representations made or  
6 suggested by statement, word, design, device, sound or any  
8 combination thereof, but the extent to which the labeling or  
10 advertisement fails to reveal facts material in the light of the  
12 representations or material with respect to consequences that may  
14 result from the use of the article to which the labeling or  
16 advertisement relates under the conditions of use prescribed in  
18 the labeling or advertisement or under customary or usual  
20 conditions of use.

22 A food is misbranded:

24 1. False or misleading label. If its labeling is false or  
26 misleading in any particular:

28 2. Sale under another name. If it is offered for sale under  
30 the name of another food or under a name not permitted by Title  
32 12, section 6112, for products containing or consisting of surimi:

34 3. Imitation of another food. If it is an imitation of  
36 another food, unless its label bears, in type of uniform size and  
38 prominence, the word "imitation" and, immediately thereafter the  
40 name of the food imitated:

42 4. Misleading container. If its container is so made,  
44 formed or filled as to be misleading:

46 5. Label for package form. If in package form, unless it  
48 bears a label containing:

50 A. The name and place of business of, or sufficient  
information to identify, the manufacturer, packer or  
distributor; and

B. An accurate statement of the quantity of the contents in  
terms of weight, measure or numerical count. Reasonable  
variations must be permitted, and exemptions for small  
packages must be established by rules adopted by the  
Commissioner of Agriculture, Food and Rural Resources;

6. Statements on label placed conspicuously. If any word,  
statement or other information, required by or under authority of  
this subchapter to appear on the label or labeling, is not  
prominently placed on the package with conspicuousness, as  
compared with other words, statements, designs or devices in the  
labeling, and in terms that render it likely to be read and  
understood by the ordinary individual under customary conditions  
of purchase and use:



2 7. Conformity with prescribed definition and standard. If  
3 it purports to be or is represented as a food for which a  
4 definition and standard of identity has been prescribed by rules  
5 adopted pursuant to section 3504, unless it conforms to that  
6 definition and standard, and, in so far as may be required by the  
7 rules, the common names of optional ingredients, other than  
8 spices, flavoring and coloring, present in the food:

9 B. Quality below standard. If it purports to be or is  
10 represented as:

11 A. A food for which a standard of quality has been  
12 prescribed by rules adopted pursuant to section 3504 and its  
13 quality falls below the standard, unless its label bears, in  
14 the manner and form specified by rules, a statement that it  
15 falls below the standards; or

16 B. A food for which a standard or fill of container has  
17 been prescribed by rules adopted pursuant to section 3504,  
18 and it falls below the standard or fill of container  
19 applicable to the food, unless its label bears, in the  
20 manner and form specified by rules, a statement that it  
21 falls below the standard:

22 9. Name of food and ingredients. If it is not subject to  
23 subsection 7, unless it bears labeling clearly giving:

24 A. The common or usual name of the food, if any; and

25 B. In case it is fabricated from 2 or more ingredients, the  
26 common or usual name of each ingredient, except that spices,  
27 flavoring and colorings, other than those sold as spices,  
28 flavoring and colorings, may be designated as spices,  
29 flavoring and colorings without naming each. To the extent  
30 that compliance with the requirements of this paragraph is  
31 impractical or results in deception or unfair competition,  
32 exemptions must be established by rules adopted by the  
33 Commissioner of Agriculture, Food and Rural Resources. The  
34 requirements of this paragraph do not apply to a carbonated  
35 beverage, the ingredients of which have been fully and  
36 correctly disclosed in an affidavit subscribed and sworn to  
37 by the manufacturer or bottler of the carbonated beverage  
38 and filed with the commissioner;

39 10. Dietary properties. If it purports to be or is  
40 represented for special dietary uses, unless its label bears  
41 information concerning its vitamin, mineral and other dietary  
42 properties determined by the Commissioner of Agriculture, Food  
43 and Rural Resources, and by rules adopted as necessary, to fully  
44 inform purchasers as to the food's value for those uses:

45 11. Artificial flavoring and coloring. If it bears or  
46 contains any artificial flavoring, artificial coloring or  
1 chemical preservative, unless it bears labeling stating the fact.  
2 If the artificial flavoring and artificial coloring declaration  
3 does not refer to the entire contents of the package, the words  
4 "artificial flavoring" and "artificial coloring" must follow  
5 immediately each of the ingredients of the package containing one  
6 or more of these substances. The common or usual name of any  
7 chemical preservative must be immediately followed by the words  
8 "chemical preservation". To the extent that compliance with the  
9 requirements of this subsection is impracticable, exemptions must  
10 be established by rules adopted by the Commissioner of  
11 Agriculture, Food and Rural Resources. This subsection, and  
12 subsections 7 and 9, with respect to artificial coloring, do not  
13 apply to butter, cheese or ice cream:

14 12. Monosodium glutamate, MSG. If a person sells, offers  
15 for sale or serves in any retail store, hotel, restaurant or  
16 other public eating place any food or food product, whether or  
17 not in package form, to which that person has added monosodium  
18 glutamate directly in crystal form, unless:

19 A. The package in which that food or food product is  
20 offered for sale conspicuously bears a label or stamp  
21 indicating that the food or food product contains monosodium  
22 glutamate;

23 B. When the food or food product is offered for consumption  
24 and is not packaged, a conspicuous label or sign is placed  
25 on the food, immediately next to the food, immediately next  
26 to the food's listing on the menu, or in an open manner  
27 where the food order or food product is obtained, indicating  
28 that the food or food product contains monosodium glutamate;  
29 or

30 C. There is a conspicuously displayed directory to which  
31 customers can refer for information on the contents of  
32 unpackaged products offered for sale; or

33 13. Post-harvest treatments. If it is fresh produce that  
34 is sold or offered for sale at a retail outlet, whether or not it  
35 is packaged or in a container, and has been treated with a  
36 post-harvest treatment, without meeting the requirements in  
37 paragraphs A to C.

38 For purposes of this section, "post-harvest treatment" means a  
39 treatment added or applied to fresh produce after harvest and  
40 identified by rule as a post-harvest treatment and waxes that  
41 contain one or more post-harvest treatments.

2 A. The owner or manager of a retail outlet shall ensure  
4 that one conspicuous sign is displayed that reads: "Produce  
6 in this store may have been treated after harvest with one  
8 or more post-harvest treatments."

10 B. The owner or manager of a retail outlet shall ensure  
12 that information identifying the specific post-harvest  
14 treatments used, and the specific items of produce that were  
16 treated, is available to the public within 48 hours of a  
18 request.

20 C. The owner or manager of a retail outlet shall ensure  
22 that produce without post-harvest treatment, as determined  
24 by the commissioner, is identified by a sign contiguous to  
26 the specific produce.

28 **§3556. MSG violation**

30 Notwithstanding other penalties provided in this chapter, a  
32 person who violates section 3555, subsection 12 for the first  
34 time must be issued a warning only. A person who violates  
36 section 3555, subsection 12 for a 2nd or subsequent time commits  
38 a civil violation for which a forfeiture not to exceed \$100 may  
40 be adjudged.

42 **§3557. Addition of certain substances limited**

44 Any poisonous or deleterious substance added to any food,  
46 except if the substance is required in the production of the food  
48 or can not be avoided by good manufacturing practice, is deemed  
50 unsafe for purposes of the application of section 3553,  
subsection 1, paragraph B; but if the substance is required or  
can not be avoided, the Commissioner of Agriculture, Food and  
Rural Resources shall adopt rules limiting the quantity in or on  
the food or to the extent the commissioner finds necessary for  
the protection of public health, and any quantity exceeding the  
limits adopted is deemed unsafe for purposes of the application  
of section 3553, subsection 1, paragraph B. While such a rule is  
in effect limiting the quantity of a substance in the case of any  
food, the food may not, by reason of bearing or containing any  
added amount of the substance, be considered to be adulterated  
within the meaning of section 3553, subsection 1, paragraph A. In  
determining the quantity of the added substance to be tolerated  
in or on different articles of food, the Commissioner of  
Agriculture, Food and Rural Resources shall take into account the  
extent to which the use of the substance is required or can not  
be avoided in the production of each article and the other ways  
in which the consumer may be affected by the same or other  
poisonous or deleterious substances.

2 **§3558. Articles detained, embargoed and condemned**

4 Whenever a duly authorized agent of the Commissioner of  
6 Agriculture, Food and Rural Resources finds or has reason to  
8 believe that any food is adulterated, or so misbranded as to be  
10 dangerous or fraudulent, within the meaning of this chapter, the  
12 commissioner may issue an order detaining or embargoing that food,  
14 and may affix or require the person or persons to whom the order  
16 is directed to affix to the article a tag or other appropriate  
18 marking, giving notice that the article is or is suspected of  
20 being adulterated or misbranded and has been detained or  
22 embargoed, and warning all persons not to remove or dispose of  
24 the article by sale or otherwise until permission for removal or  
disposal is given by the agent or the court. It is unlawful for  
any person to remove or dispose of a detained or embargoed  
article by sale or otherwise without permission of the agent or  
the court. Orders relating to detention and embargo issued  
pursuant to this chapter may not be considered licensing or an  
adjudicatory proceeding, as those terms are defined by the Maine  
Administrative Procedure Act.

26 When an article detained or embargoed under the preceding  
28 paragraph has been found by an agent to be adulterated or  
30 misbranded, the agent shall petition the proper officer of the  
32 District Court or Superior Court in whose jurisdiction the  
article is detained or embargoed for a libel for condemnation of  
the article. When the agent has found that an article so detained  
or embargoed is not adulterated or misbranded, the agent shall  
remove the tag or other marking.

34 If the court finds that a detained or embargoed article is  
36 adulterated or misbranded, the article must, after entry of the  
38 decree, be destroyed at the expense of the claimant of the  
40 article, under the supervision of the agent, and all court costs  
42 and fees, and storage and other proper expenses, must be taxed  
44 against the claimant of the article or the claimant's agent. When  
46 the adulteration or misbranding can be corrected by proper  
48 labeling or processing of the article, the court, after entry of  
the decree and after costs, fees and expenses have been paid and  
a good and sufficient bond, conditioned that the article is so  
labeled or processed, has been executed, may by order direct that  
the article be delivered to the claimant for labeling or  
processing under the supervision of an agent of the Commissioner  
of Agriculture, Food and Rural Resources. The expense of the  
supervision must be paid by the claimant. The bond must be  
returned to the claimant of the article on representation to the  
court by the Commissioner of Agriculture, Food and Rural

Resources that the article is no longer in violation of this chapter, and that the expenses of supervision have been paid.

If the Commissioner of Agriculture, Food and Rural Resources or any of the commissioner's authorized agents find in any room, building, vehicle of transportation or other structure any meat, sea food, poultry, vegetable, fruit or other perishable articles that are unsound or contain any filthy, decomposed or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the same being declared to be a nuisance, the commissioner or the commissioner's authorized agent shall immediately condemn or destroy the article, or in any other manner render the article unsaleable as human food. In the event that any food found on any vehicle of transportation is detained, embargoed, condemned or destroyed under any of the provisions of this section by the commissioner or the commissioner's authorized agents, the commissioner shall immediately notify the consignor, consignee and the carrier of the action taken and the amount and kind of goods detained, embargoed, condemned or destroyed.

#### §3559. Storage and transportation of frozen foods

No person, firm or corporation engaged in the business of freezing, storing or transporting frozen foods may store or transport those foods within this State unless they are stored or transported under suitable refrigeration that ensures good keeping qualities and under temperatures and holding conditions approved by the Commissioner of Agriculture, Food and Rural Resources.

The commissioner may, in a manner consistent with the Maine Administrative Procedure Act, after public hearings, adopt reasonable rules for the storing and transportation of frozen foods, including temperature control, sanitation and other matters in accordance with recognized standards necessary for the protection of public health and the preservation of those foods in wholesome condition.

Any person, firm or corporation who violates this section or any rules adopted under this section must be punished by a fine of not more than \$100 for the first offense, and by a fine of not less than \$100 nor more than \$500 for each subsequent offense.

Nothing in this section applies to delivery by a retailer to the home of the purchaser.

#### §3560. Packing of food; permit; inspection

The Commissioner of Agriculture, Food and Rural Resources shall, upon application for permit and receipt of a fee the

commissioner deems necessary from any food packer or processor, inspect all operations of the packer or processor for compliance with this chapter and diligently enforce the law. Each permit must cover one group of buildings constituting a packing plant in one location.

Only the holder of a permit under this section may mark or label any food so inspected as packed or processed or inspected and passed under this chapter.

The Commissioner of Agriculture, Food and Rural Resources may, in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, refuse to renew, and the Administrative Court, in a manner consistent with the Maine Administrative Procedure Act, may revoke the permit if there is a lack of compliance with this chapter. The commissioner shall adopt rules to implement this section. The rules must include charges as are reasonable and cover the cost of the service rendered. All fees and all money collected under this section for services rendered by the commissioner must be paid to the Treasurer of State. The fees and money are appropriated for the purposes of this section.

The Commissioner of Agriculture, Food and Rural Resources may employ agents and assistants, subject to the Civil Service Law, and make purchases necessary to carry out this section.

#### §3561. Sale of horsemeat

No person, firm, corporation or officer, agent or employee of a person, firm or corporation within the State may transport, receive for transportation, sell or offer for sale or distribution any equine meat or food products of equine meat unless the equine meat is plainly and conspicuously labeled, marked, branded and tagged "horsemeat" or "horsemeat products"; or may serve, expose or offer for sale or distribution in any public place or elsewhere, any equine meat or products containing equine meat unless the equine meat is conspicuously branded and labeled and a notice containing the words "horsemeat and horsemeat products sold here" is conspicuously displayed in the place of business so that the purchaser may have knowledge of the facts of the article purchased.

Whenever any person, firm or corporation within the State sells, ships or delivers to a purchaser within the State any equine meat or food products of equine meat, that person, firm or corporation shall deliver to the purchaser an invoice or bill showing the character of the meat. This paragraph does not apply to sales made at retail.

2 The Commissioner of Agriculture, Food and Rural Resources  
3 shall by adequate inspection see that the requirements of this  
4 section are carried out.

5 Any person, firm or corporation who violates any of the  
6 provisions of this section must be punished by a fine of not more  
7 than \$100 for the first offense and by a fine of not more than  
8 \$200 for each subsequent offense, and the District and Superior  
9 Courts have concurrent jurisdiction over the offense.

### 10 SUBCHAPTER III

#### 11 LICENSING

#### 12 §3601. License required

13 No person, firm or corporation may operate a food  
14 establishment, food salvage establishment or act as a salvage  
15 broker unless licensed for that purpose by the Commissioner of  
16 Agriculture, Food and Rural Resources. In the case of retail food  
17 establishments, licenses issued must be displayed in a place  
18 visible to customers or other persons using a licensed  
19 establishment.

20 In addition to the sanctions authorized in section 3507 and  
21 3508, any person, firm or corporation who violates this licensing  
22 requirement or any condition placed on any license required under  
23 this section commits a civil violation for which a forfeiture of  
24 not less than \$10 or more than \$500 must be adjudged for the  
25 first offense and not less than \$100 or more than \$500 must be  
26 adjudged for subsequent offenses, and the commissioner may  
27 suspend, revoke or refuse to renew any license required under  
28 this section in accordance with Title 5, chapter 375, subchapter  
29 V. Each day any person, corporation, firm or copartnership  
30 operates without obtaining a license constitutes a separate  
31 offense.

#### 32 §3602. Fees

33 1. Application and renewal. Each application for, or  
34 renewal of, a license to operate a food establishment must be  
35 accompanied by a fee, based on the number of employees as follows:

36 A. For 0 to 10 employees, \$10;

37 B. For 11 to 25 employees, \$30; and

38 C. For 26 or more employees, \$100.

39 2. Food salvage. Each application for, or renewal of, a  
40 license to operate a food salvage establishment or to act as a  
41 salvage broker must be accompanied by a fee, not to exceed \$30,  
42 determined by the Commissioner of Agriculture, Food and Rural  
43 Resources.

44 3. Refunds and transfers: General Fund. No fee is  
45 refundable. A license is not assignable or transferable. Fees  
46 collected by the commissioner pursuant to this section must be  
47 deposited in the General Fund.

48 4. Reinspection required for violations. If, upon  
49 inspection, the Commissioner of Agriculture, Food and Rural  
50 Resources finds a licensee under this chapter to be in violation  
51 of requirements of this chapter or rules adopted under this  
52 chapter, the commissioner shall issue a written citation  
53 describing the violation, the required corrective action to be  
54 taken by the licensee and the date by which the correction must  
55 be made. If the corrective action has not been taken within the  
56 specified period and a 3rd inspection is required in any one  
57 year, the commissioner may charge the licensee a reinspection fee  
58 not to exceed \$50. The commissioner shall notify the licensee in  
59 writing about the reinspection fee at the time the original  
60 citation is issued.

#### 61 §3603. Issuance of licenses

62 The Commissioner of Agriculture, Food and Rural Resources  
63 shall, within 30 days following receipt of application for a  
64 license to operate a food establishment or a food salvage  
65 establishment or to act as a salvage broker, issue the  
66 appropriate license if the applicant is in compliance with this  
67 chapter and any rules adopted by the commissioner. If any  
68 applicant, upon inspection by the commissioner, is found not to  
69 meet the requirements of this chapter or rules adopted under this  
70 chapter, the commissioner may issue either a temporary license  
71 for a specified period not to exceed 90 days, during which time  
72 corrections specified by the commissioner must be made by the  
73 applicant for compliance, or a conditional license setting forth  
74 conditions that must be met by the applicant to the satisfaction  
75 of the commissioner.

76 A full license is valid for one year from date of issuance  
77 and the prescribed fee must accompany the application for  
78 license. Licenses may be renewed upon application and payment of  
79 the annual fee, subject to the commissioner's rules. Licenses  
80 erroneously issued by the commissioner are void and must be  
81 returned to the commissioner on demand.

2 The commissioner shall notify license holders not less than  
3 30 days prior to the expiration of their licenses and provide  
4 them with any necessary relicensure forms.

6 **§3604. Exception**

8 Any establishment subject to this chapter and chapter 219 is  
9 required to have only one license and that license must be issued  
10 on the predominate portion of the establishment's business.

12 **§3605. Licensing conditions**

14 Notwithstanding any other provisions of this chapter, the  
15 Commissioner of Agriculture, Food and Rural Resources may issue a  
16 license required under section 3601 on the basis of an inspection  
17 performed by an inspector who works for and is compensated by the  
18 municipality in which the establishment is located, but only if  
19 the following conditions have been met.

21 1. **Adopted rules; code of standards.** The municipality  
22 involved has adopted a set of rules, ordinances or other code of  
23 standards for the establishments that has been approved by the  
24 commissioner and that is consistent with the rules used by the  
25 commissioner for the issuance of the licenses in effect at the  
26 time of inspection.

28 2. **Inspection to ascertain intent.** The commissioner may  
29 from time to time inspect the municipally inspected  
30 establishments to ascertain that the intent of these statutes is  
31 being followed.

32 3. **Inspection reports.** The municipality shall furnish the  
33 commissioner copies of its inspection reports relating to the  
34 inspection on a monthly basis.

36 4. **Charge.** Municipalities may not charge the commissioner  
37 for performing the inspections.

39 5. **License fee.** When a license is issued on the basis of a  
40 municipal inspection as specified in this section, the  
41 requirement for payment of a license fee to the commissioner as  
42 set forth in section 3602 is waived. The licensee shall pay the  
43 commissioner a sum not to exceed \$5 to support the costs of  
44 mailing and handling.

46 6. **Licenses.** Licenses issued under this section must be  
47 displayed, renewed and in every other way treated the same as  
48 licenses issued under this chapter on the basis of inspection by  
49 the commissioner.

2 **CHAPTER 219**

4 **EATING ESTABLISHMENTS AND CAMPING AREAS**

6 **§3701. Definitions**

8 As used in this chapter, unless the context otherwise  
9 indicates, the following terms have the following meanings.

11 1. **Camping area.** "Camping area" means, in addition to the  
12 generally accepted interpretations, seashore resorts, lakeshore  
13 places, picnic and lunch grounds or other premises where tents or  
14 recreational vehicles are permitted to be parked for compensation  
15 either directly or indirectly.

17 2. **Catering establishments.** "Catering establishments"  
18 means any kitchen, commissary or similar place in which food or  
19 drink is prepared for sale or service elsewhere or for service on  
20 the premises during special catered events.

22 3. **Cottage.** "Cottage" means a single structure where  
23 sleeping accommodations are furnished to the public as a business  
24 for a day, week or month, but not for more than the entire summer  
25 season.

27 4. **Eating and lodging places or lodging place.** "Eating and  
28 lodging place or lodging place" means every building or structure  
29 or any part of a building or structure kept, used as, maintained  
30 as, advertised as or held out to the public to be a place where  
31 eating and sleeping or sleeping accommodations are furnished to  
32 the public as a business, including hotels, motels, guest homes  
33 and cottages.

35 5. **Eating establishment.** "Eating establishment" means any  
36 place where food or drink is prepared and served, or served to  
37 the public for consumption on the premises, or catering  
38 establishments, or establishments dispensing food from vending  
39 machines, or establishments preparing foods for vending machines  
40 dispensing foods other than in original sealed packages,  
41 including hotels, motels, boarding homes, restaurants, mobile  
42 eating places, coffee shops, cafeterias, short order cafes,  
43 luncheonettes, grills, tearooms, sandwich shops, soda fountains,  
44 bars, cocktail lounges, night clubs, roadside stands, industrial  
45 feeding establishments, private or public institutions routinely  
46 servicing foods, retail frozen dairy product establishments,  
47 airports, parks, theaters, vacation camps or any other catering  
48 or nonalcoholic drinking establishments or operations where food  
49 is prepared and served or served for consumption on the premises,  
50 or catering establishments where food is prepared, or where foods

are prepared for vending machines dispensing food other than in original sealed packages.

6. Mobile eating place. "Mobile eating place" means a mobile vehicle designed and constructed to transport, prepare, sell or serve food at a number of sites and capable of being moved from its serving site at any time.

7. Recreational camp. "Recreational camp" means and includes day camps, boys' and girls', family, hunting, fishing and similar camps.

8. Retail frozen dairy product establishment. "Retail frozen dairy product establishment" means any place, premise or establishment and any part thereof where frozen dairy products, such as ice cream, frozen custard, ice milk, sherbet, ices and related food products are prepared for consumption on or off premises.

9. Sanitarian. "Sanitarian" means a person whose education and experience in the biological and sanitary sciences qualify the person to engage in the promotion and protection of the public health. A sanitarian applies technical knowledge to solve problems of a sanitary nature and develops methods and carries out procedures for the control of those factors in the environment that affect health, safety and well-being.

10. Vending machine. "Vending machine" means any self-service device offered for public use that, upon insertion of a coin, coins or token or by other similar means, dispenses unit servings of food without the necessity of replenishing the device between vending operations.

11. Vending machine establishment. "Vending machine establishment" means any establishment preparing foods for vending machines dispensing foods other than in original sealed packages.

**§3702. License required**

No person, corporation, firm or copartnership may conduct, control, manage or operate, for compensation, directly or indirectly, any eating establishment, eating and lodging place, lodging place, recreational camp or camping area, unless it is licensed by the department. Licenses issued must be displayed in a place readily visible to customers or other persons using a licensed establishment.

If a camping area consists of 5 or more tents or recreational vehicles on a commercial lot it is presumed that the

owner or renter of the lot is receiving compensation for the use of a camping area. The presumption is negated if the owner or renter presents a preponderance of evidence to the contrary.

**§3703. Applicant**

Any person, corporation, firm or copartnership desiring a license shall submit satisfactory evidence of ability to comply with the minimum standards of this chapter and rules adopted under this chapter.

**§3704. Licensing procedures**

1. Annual license. The department shall, within 30 days following receipt of application, issue an annual license to operate any eating establishment, eating and lodging place, lodging place, recreational camp or camping area that complies with this chapter and the rules adopted by the department.

2. Conditional license. When any applicant is found, based upon an inspection by the department or by municipal inspection made according to section 3711, not in compliance with the requirements of this chapter or departmental rules adopted and approved pursuant to section 3706 or section 3711, subsection 1, the department may refuse issuance of the initial license, but shall issue a conditional license, except when conditions are found that present a serious danger to the health and safety of the public. A conditional license may not exceed 90 days. Failure by the conditional licensee to meet the conditions specified by the department permits the department to void the conditional license. The conditional license becomes void when the department has delivered in hand or by certified mail a written notice to the conditional licensee or, if the licensee can not be reached for service in hand or by certified mail, has left notice of its action at the facility.

3. Expiration dates. The department may redistribute expiration dates for new and renewed licenses to provide for comparable distribution of licenses on a quarterly basis throughout the year and shall prorate the fees for licenses with a term less or more than one year. The prescribed fee must accompany the application for a new license, or the renewal of a license.

4. Renewals. Licenses must be renewed upon application for renewal and upon payment of the prescribed fee and subject to compliance with rules of the department and with this chapter. The department shall provide licensees with notice of the need for renewal and necessary forms no less than 30 days prior to the expiration of the license.

2 5. Other laws apply. The issuance of the license provided  
4 for in this section does not provide exemption from other state  
6 or local laws, ordinances or rules.

8 6. Erroneous issuance. Licenses erroneously issued by the  
10 department are void and must be returned to the department on  
12 demand in a notice delivered by hand or by certified mail to the  
14 licensee.

16 7. Revocation. For cause, the department may revoke or  
18 suspend any license issued under this chapter. When the  
20 department believes a license should be suspended or revoked, it  
22 shall file a complaint with the Administrative Court in  
24 conformity with the Maine Administrative Procedure Act. A person  
26 aggrieved by the refusal of the department to issue a license may  
28 request a hearing in conformity with the Maine Administrative  
30 Procedure Act.

32 If, upon inspection, conditions are found that violate this  
34 chapter or rules adopted under this chapter, or that may endanger  
36 the life, health or safety of persons living in or attending any  
38 licensed establishment under this chapter, the department may  
40 request an emergency suspension of license of the Administrative  
42 Court pursuant to Title 4, section 1153, and the court may grant  
44 suspension subject to reinstatement following a hearing before  
46 the court if cause is not shown.

#### 30 §3705. Fees

32 Each application for, or for renewal of, a license to  
34 operate an eating establishment, eating and lodging place,  
36 lodging place, recreational camp or camping area must be  
38 accompanied by a fee, appropriate to the size of the  
40 establishment, place, camp or area of the licensee, determined by  
42 the department and not to exceed the fees listed below. All fees  
44 collected by the department must be deposited in the General  
46 Fund. No fee may be refunded. No license may be assigned or  
48 transferred. The fees may not exceed:

#### 42 1. Schools. For the following, \$40:

44 A. Public schools governed by a school board of an  
46 administrative unit:

48 B. Private secondary schools approved for tuition when  
50 school enrollments are at least 60% publicly funded students  
as determined by the previous school year's October to April  
average enrollment; and

2 C. Schools operated by an agency of State Government for  
4 the education of children in unorganized territories:

6 2. Certain eating establishments. For each inspection for  
8 any eating establishment that is located in a municipality that  
10 requires local inspections of eating establishments, \$10; and

12 3. Other establishments, places or camps. For all other  
14 establishments, places and camps not included in subsection 1 or  
16 2, \$125.

18 All fees under subsections 1 to 3 are for the license, 2  
20 licensure inspections and one follow-up inspection. When  
22 additional inspections are required to determine an applicant's  
24 eligibility for licensure, the department may establish by rule  
26 an additional \$20 fee to cover the costs of each additional  
28 inspection or visit. Failure to pay charges within 30 days of  
30 the billing date is grounds for revocation of the license, unless  
32 an extension for a period not to exceed 60 days is granted in  
34 writing by the commissioner.

#### 30 §3706. Rules

32 The department may adopt and enforce all necessary rules for  
34 the administration of this chapter, and may rescind or modify the  
36 rules from time to time as may be in the public interest, and not  
38 in conflict with any of the provisions of this chapter.

#### 30 §3707. Right of entry and inspection

32 The department and any duly designated officer or employee  
34 of the department have the right, without an administrative  
36 inspection warrant, to enter upon and into the premises of any  
38 establishment licensed pursuant to this chapter at any reasonable  
40 time in order to determine the state of compliance with this  
42 chapter and any rules in force pursuant to this chapter. The  
44 department shall inspect the premises of any establishment  
46 licensed under this chapter at least annually. The right of  
48 entry and inspection extends to any premises that the department  
has reason to believe is being operated or maintained without a  
license but no entry and inspection of any premises may be made  
without the permission of the owner or person in charge unless a  
search warrant is obtained authorizing entry and inspection. The  
department and any duly designated officer or employee of the  
department do not have the right to enter, for inspection under  
this chapter, upon and into the premises of any establishment  
that is licensed under chapter 217.

#### 50 §3708. Departmental enforcement

1. Authorization. The department may impose one or more of the following sanctions when a violation of this chapter, or rules adopted pursuant to this chapter, occurs and the department determines that a sanction is necessary and appropriate to ensure compliance with state licensing rules or to protect the public health.

A. The department may impose penalties for violations of this chapter, or the rules adopted pursuant to this chapter, on any eating establishment, eating and lodging place, lodging place, recreational camp or camping area. The penalties may not be greater than \$50 for each violation. Each day that the violation remains uncorrected may be counted as a separate offense. Penalties may be imposed for each violation of the rules.

B. The department may direct an eating establishment, eating and lodging place, lodging place, recreational camp or camping area to correct any violations in a manner and within a time frame that the department determines is appropriate to ensure compliance with state rules or to protect the public health. Failure to correct violations within the time frames constitutes a separate violation.

2. Schedule of penalties. The department shall establish a schedule of penalties according to the nature and duration of the violation.

3. Enforcement and appeal. Enforcement and appeal of this section is as follows.

A. The department may impose any fine in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, providing the licensee the opportunity for an administrative hearing.

B. Licensees that are fined pursuant to this section are required to pay the department the amount of the penalties. If a licensee has not paid any collectible fines by the time of its license renewal, the department may collect the fines by requiring their payment prior to the processing of any license renewal application. An appeal of the department's decision to fine a licensee stays the collection of any fine. Interest accrues on fines at a rate described in Title 14, section 1602 prior to the completion of any appeal. After the completion of any appeal process or after any appeal period has passed, interest accrues pursuant to Title 14, section 1602-A.

#### §3709. Penalty

Any person, corporation, firm or copartnership that operates any eating establishment, eating and lodging place, lodging place, recreational camp or camping area without first obtaining a license as required by this chapter must be punished, upon conviction, by a fine of not less than \$10 nor more than \$100, and upon 2nd or subsequent conviction, must be punished by a fine of not less than \$100. Each day a person, corporation, firm or copartnership operates without obtaining a license constitutes a separate offense.

#### §3710. Attorney General's authority

In the event of any violation of this chapter or any rule adopted pursuant to this chapter, the Attorney General may seek to enjoin a further violation, in addition to any other remedy.

#### §3711. Municipal inspections

Notwithstanding any other provision of this chapter, the department may issue a license to an eating establishment, eating and lodging place, lodging place, recreational camp or camping area on the basis of an inspection performed by an inspector who works for and is compensated by the municipality in which the establishment is located, but only if the following conditions are met.

1. Adopted rules; code of standards. The municipality involved has adopted a set of rules, ordinances or other code of standards for eating establishments, eating and lodging places, lodging places, recreational camps or camping areas that has been approved by the department and that is consistent with the rules used by the department for the issuance of licenses in effect at the time of inspection.

2. Qualified to make inspections. No municipally employed sanitarians may perform inspections under the provisions of this chapter unless certified as qualified by the commissioner.

3. Inspection to ascertain intent. The department may from time to time inspect the municipally inspected establishments to ascertain that the intent of these statutes is being followed.

4. Inspection reports. The municipality shall furnish the department copies of its inspection reports relating to inspections under this section on a monthly basis.

5. Charge. Municipalities may not charge the department for performing inspections under this section.



2 6. License fee. When a license is issued on the basis of a  
4 municipal inspection as specified in this section, the  
6 requirement for payment of a license fee to the department as set  
8 forth in section 3705 is waived. The licensee shall pay the  
10 department a sum not to exceed \$10 to support the costs of  
12 mailing and handling.

8 7. Licenses. Licenses issued under this section must be  
10 displayed, renewed and in every other way treated the same as  
12 licenses issued under this chapter on the basis of inspection by  
14 the department.

14 8. Certification. Certification of municipally employed  
16 sanitarians must be in accordance with standards set by the  
18 commissioner and must be for a period of 3 years.

#### §3712. Exceptions

20 Private homes are not lodging places nor are they subject to  
22 a license if not more than 3 rooms are let.

22 A license is not required for dormitories of charitable,  
24 educational or philanthropic institutions, fraternity and  
26 sorority houses affiliated with educational institutions, nor for  
28 private homes used in emergencies for the accommodation of  
30 persons attending conventions, fairs or similar public  
32 gatherings, nor for temporary eating and lodging places for the  
34 those persons, nor for railroad dining or buffet cars, nor for  
36 construction camps, nor for boarding houses and camps conducted  
38 in connection with wood cutting and logging operations, nor for  
40 any boarding care facilities or children's homes that are  
42 licensed under section 8951 or under Title 22-A, section 6151.

34 Cottages are not lodging places nor are they subject to a  
36 license if not more than 3 cottages are let.

38 Stores or other establishments where bottled soft drinks or  
40 ice cream is sold for consumption from the original containers  
42 only and where no tables, chairs, glasses or other utensils are  
44 provided in connection with the sale, are not eating places  
46 within the meaning of this chapter. At these establishments,  
48 straws or spoons may be provided to aid in the consumption of the  
50 bottled soft drinks or ice cream, if they are supplied in  
original individual single service sterile packages.

46 Nonprofit organizations including, but not limited to, 4-H  
48 Clubs, scouts and agricultural societies are exempt from  
50 department rules relating to dispensing foods and nonalcoholic  
beverages if they hold 12 or fewer public events or meals within  
one calendar year.

## CHAPTER 221

### MASS GATHERINGS

#### §3801. Permit required

8 1. Hazard. The Legislature finds that mass outdoor  
10 gatherings frequently create a hazard to the public health,  
12 safety and peace. Accordingly, it is deemed to be appropriate and  
14 in the interest of the public welfare to regulate the conduct of  
16 those gatherings in order to protect the public health and safety.

14 2. Mass outdoor gatherings. For the purposes of this  
16 chapter, a mass outdoor gathering means any gathering held  
18 outdoors with the intent to attract the continued attendance of  
20 2,000 or more persons for 12 or more hours.

20 3. Permit required. No person, corporation, partnership,  
22 association or group of any kind may sponsor, promote or conduct  
24 a mass outdoor gathering unless a permit has been obtained from  
26 the commissioner.

#### §3802. Permit issuance

26 1. Written application. The commissioner shall issue a  
28 permit for a mass outdoor gathering upon receipt of a written  
30 application unless, after the consideration of the factors listed  
32 in subsection 2, it appears to the commissioner within a  
34 reasonable certainty that the gathering will present a grave and  
36 imminent danger to the public health or to the public safety.

34 2. Commissioner's determination. In determining whether  
36 there exists a reasonable certainty that the gathering will  
38 present a grave and imminent danger to the public health or  
40 safety, the commissioner shall consider the nature of the  
42 gathering and the availability of:

38 A. An adequate and satisfactory water supply and facilities;

40 B. Adequate refuse storage and disposal facilities;

42 C. Sleeping areas and facilities;

44 D. Wholesome and sanitary food service;

46 E. Adequate medical supplies and care;

48 F. Adequate fire protection;

2 G. Adequate police protection;

4 H. Adequate traffic control; and

6 I. Any other matters that affect the security of the public health or safety.

8 3. Plans; cooperation. In its review of applications for permits for the holding or promoting of a mass outdoor gathering, the department may require any plans, specifications and reports necessary for a proper review. In its review of applications, as well as in carrying out its other duties and functions in connection with a gathering, the department may request, and must receive from all public officers, departments and agencies of the State and its political subdivisions any cooperation and assistance that is necessary and proper. No permit may be issued by the department until the commissioner or the commissioner's designee has discussed the application with the municipal officers of the municipality in which the event is intended to be held.

22 4. Permit denied; appeal. An applicant who has been aggrieved by the department's decision to deny a permit under this chapter may file within 5 days of the notice of the denial, a complaint with the Administrative Court, as provided in Title 5, chapter 375. The applicant must be granted a prompt hearing before the Administrative Court for reconsideration of the denial.

28 5. Municipal ordinances. The requirements of this chapter and of the rules adopted under this chapter are minimum requirements. Nothing in this chapter precludes a municipality from enforcing any ordinance or rule that is more stringent than the requirements of this chapter or of the rules adopted under this chapter.

34 **§3803. Permit, bond**

38 The department may require, prior to the issuance of a permit, that the applicant furnish to the department a bond of a surety company qualified to do business in this State in an amount as the department determines, but in no event more than \$5,000, to ensure the public peace, safety and compensation of damage to property, public or private. Cash or negotiable securities of equivalent value may be furnished in lieu of the bond. The bond must guarantee cleanup by the applicant of the area used for the mass gathering, compliance by the applicant with any applicable state or local law or rule, and payment by the applicant of all proper claims against the applicant for damage to real or personal property in the municipality for which the permit is issued and arising out of facts done or omitted to

2 be done by the applicant, the applicant's agents or employees. Any person having a claim may bring an action upon the bond in the Superior Court of the county in which the municipality is located within one year of the occurrence of the act complained of. In furnishing a bond, the applicant is deemed to have appointed the surety company as agent for the service of process upon the applicant or if cash or securities are supplied in lieu of a bond, the applicant shall in writing appoint an agent for the service of process, irrevocably, for the term within which action may be brought before any permit is issued.

12 **§3804. Permit fee**

14 The fee for a permit issued under this chapter is \$100 and must accompany the application. All money received under this chapter must be used to help defray the costs administering this chapter.

18 **§3805. Penalty**

22 Any person violating any provision of this chapter, or any rule adopted under this chapter must be punished by a fine of not more than \$5,000 or by imprisonment for not more than 11 months, or by both.

26 **§3806. Exclusions**

28 This chapter does not apply to fairs, exhibitions and similar events held by agricultural societies and associations, pomological societies or poultry associations as defined and regulated under Title 7, chapter 3, or military activities. It does not apply to persons, associations, corporations, trusts or partnerships licensed under Title 8, chapters 11 and 19.

34 **CHAPTER 223**

36 **STATE NUCLEAR SAFETY PROGRAM**

38 **§3901. Public policy**

42 In the interests of the public health and welfare of the people of this State, it is the declared public policy of this State that the operation of nuclear power facilities licensed to operate in the State must be accomplished in a manner consistent with protection of the public health and safety and in compliance with the environmental protection policies of this State. It is the purpose of this chapter, in conjunction with chapter 225, subchapter I; Title 25, sections 51 and 52; Title 37-B, chapter 17; and Title 35-A, sections 4331 to 4393, to exercise the jurisdiction of the State to the maximum extent permitted by the

2 United States Constitution and federal law and to establish in  
3 cooperation with the Federal Government a State Nuclear Safety  
4 Inspector Program for the on-site monitoring, regulatory review  
5 and oversight of the operations of commercial nuclear power  
6 facilities within the State that hold an operating license issued  
7 by the United States Nuclear Regulatory Commission. Nothing in  
8 this chapter is an attempt by the State to regulate radiological  
9 health and safety reserved to the Federal Government by reason of  
10 the United States Atomic Energy Act of 1954, as amended.

11 **§3902. Definitions**

12 As used in this chapter, unless the context otherwise  
13 indicates, the following terms have the following meanings.

14 1. Commercial nuclear power facility or facility. A  
15 "commercial nuclear power facility" or "facility" means a  
16 utilization facility situated in this State which holds an  
17 operating permit or license issued by the United States Nuclear  
18 Regulatory Commission.

19 **§3903. State Nuclear Safety Inspector**

20 There is established within the department the State Nuclear  
21 Safety Inspector Office administered by a State Nuclear Safety  
22 Inspector. The State Nuclear Safety Inspector is a classified  
23 employee, subject to the Civil Service Law.

24 1. Qualifications. The State Nuclear Safety Inspector must  
25 be knowledgeable in the field of nuclear power production and  
26 must possess, at a minimum:

27 A. A bachelor's degree in a relevant science and 5 years of  
28 related experience;

29 B. A master's degree in a relevant science and 3 years of  
30 related experience; or

31 C. Any equivalent combination of education and experience.

32 2. Duties. The State Nuclear Safety Inspector shall serve  
33 as an on-site nuclear safety inspector of commercial nuclear  
34 power facilities and on-site storage and transportation of  
35 nuclear waste.

36 3. Staff. The State Nuclear Safety Inspector shall employ  
37 other personnel as necessary to carry out the purposes of this  
38 chapter.

39 **§3904. Responsibility of nuclear power plant licensees**

40 The responsibility of nuclear power plant licensees is as  
41 follows.

42 1. Records. Each nuclear power plant licensee shall permit  
43 the inspection and copying, for the purposes of this chapter, of  
44 its books and records, maintained in any form, provided that  
45 books and records that are privileged as a matter of law,  
46 proprietary, security-related, or restricted by federal law, are  
47 not open to inspection. Subject to the approval of the Nuclear  
48 Regulatory Commission and of the nuclear power plant licensee,  
49 access to books and records that are proprietary,  
50 security-related or restricted by federal law may be granted, if  
the State Nuclear Safety Inspector, on behalf of the State,  
enters into a nondisclosure agreement. For purposes of this  
section, proprietary information includes personnel records,  
manufacturers' proprietary information, licensee proprietary  
information and trade secrets, as defined by Title 26, section  
1711, subsection 12.

2. Monitoring. Each nuclear power plant licensee shall  
permit monitoring, for the purposes of this chapter, of the  
premises, equipment and materials, including source, special  
nuclear and by-product materials, in its possession or use, or  
subject to its control. For the purposes of this subsection,  
"monitoring" means observing the conduct of operations, including  
maintenance, quality assurance activities, the preparation,  
transportation and handling of radioactive waste, emissions  
monitoring, radiation protection and the observation of emergency  
preparedness tests and drills. Nothing in this chapter prohibits  
the State Nuclear Safety Inspector from participating in licensee  
training activities that are scheduled for licensee personnel.

3. Access. The licensee shall provide the State Nuclear  
Safety Inspector with unescorted access to the plant at all times  
and on an identical basis as that provided to licensee personnel  
with unescorted access clearance, provided that the State Nuclear  
Safety Inspector complies with the licensee's applicable access  
control measures for security, radiological protection, personal  
safety and fitness for duty. The State Nuclear Safety Inspector  
is subject to and shall comply with continuing security  
procedures and periodic medical testing applicable to all  
licensee employees as required to retain unrestricted facility  
access.

4. On-site facilities. Any nuclear power plant licensee,  
upon the request of the commissioner, shall provide rent-free  
space, including all necessary utility and janitorial services,  
for the exclusive use of the State Nuclear Safety Inspector. The  
office must be convenient to and have full access to the nuclear

power facility and must provide the State Nuclear Safety Inspector with privacy.

5. Fees. Each nuclear power plant licensee whose operations are monitored under this chapter shall pay a fee to the State Nuclear Safety Inspector to the permanent fund established in section 4008, subsection 7. The fee must take the form of a yearly payment indicated in this subsection for the fiscal year from the fund established in section 4008, subsection 7, for the full cost of the on-site inspection program, including the cost to the State for personnel and fringe benefits. The State Nuclear Safety Inspector fee is \$80,000 annually.

#### §3905. United States Nuclear Regulatory Commission activities

The State Nuclear Safety Inspector shall take all reasonable steps to cooperate with any on-site resident inspectors employed by the United States Nuclear Regulatory Commission in a manner that enables these employees to fulfill their responsibilities under federal law and regulation. Subject to the approval of the United States Nuclear Regulatory Commission and of the licensee, and pursuant to Title 25, section 51, the State Nuclear Safety Inspector shall observe United States Nuclear Regulatory Commission inspections, meetings and audits as they pertain to the safety of the licensee's operations and procedures.

#### §3906. Responsibilities of the State Nuclear Safety Inspector

The responsibilities of the State Nuclear Safety Inspector are as follows.

1. Damages to public health and safety. In the event the State Nuclear Safety Inspector has reason to believe that any activity poses a danger to public health and safety, and after notifying the operator of the facility and the United States Nuclear Regulatory Commission, the inspector shall immediately notify the Governor, the commissioner and the State Nuclear Safety Advisor within the State Planning Office. This provision does not preclude the State Nuclear Safety Inspector from discussing concerns with the United States Nuclear Regulatory Commission or others before making a determination that any activity poses a danger to public health and safety.

2. Reports. The State Nuclear Safety Inspector, with the cooperation of the bureau, shall prepare a report of activities under this chapter to be submitted July 1st of each year to the State Nuclear Safety Advisor and the Legislature. The State Nuclear Safety Inspector shall prepare monthly reports for the State Nuclear Safety Advisor, the President of the Senate and the

Speaker of the House, with copies to the United States Nuclear Regulatory Commission and the licensee.

3. Confidential and privileged information. The State Nuclear Safety Inspector shall keep confidential and privileged the identity of any person providing communications that, in the opinion of the State Nuclear Safety Inspector, support a presumption of unsafe operation of a commercial nuclear power facility or that indicate any violation of the licensee's operating license issued by the United States Nuclear Regulatory Commission, unless the request for confidentiality is waived or withdrawn by that person. The safety inspector shall make all prudent efforts to investigate the basis for any related allegation of unsafe or improper operation and shall cooperate to the extent feasible with the United States Nuclear Regulatory Commission personnel in this effort. Any information brought to the attention of the state inspector that involves the safety of the plant or a possible violation of United States Nuclear Regulatory Commission regulations must be immediately brought to the attention of the United States Nuclear Regulatory Commission and the licensee.

#### §3907. Liability

Notwithstanding the immunities set forth in Title 14, section 8103, the State is liable for the negligent acts or omissions of the State Nuclear Safety Inspector, or any personnel under the Inspector's direct supervision and control, that occur on the site of a commercial nuclear power facility. All other provisions of Title 14, chapter 741, including notice requirements, defense and indemnification of employees and limitations on damage amounts, applies.

### CHAPTER 225

### RADIATION

### SUBCHAPTER I

### RADIATION PROTECTION ACT

#### §4001. Declaration of policy

It is the policy of this State in furtherance of its responsibility to protect the public health, safety and the environment:

1. Compatible regulatory program. To institute and maintain a regulatory program for sources of ionizing and nonionizing radiation so as to provide for compatibility and

equivalency with the standards and regulatory programs of the Federal Government; an integrated effective system of regulation within the State and a system consonant insofar as possible with those of other states;

2. Safe use of sources. To institute and maintain a program to permit development and utilization of sources of radiation for peaceful purposes consistent with the health and safety of the public; and

3. State authority. Nothing in this subchapter limits the authority of the State to regulate radioactive materials, or the facilities in which they are used or stored, to the fullest extent consistent with federal law.

#### §4002. Purpose

It is the purpose of this subchapter to effectuate the policies set forth in section 4001 by providing for:

1. Public health and safety. A program of effective regulation of sources of radiation for the protection of the public health and safety;

2. Orderly regulatory program. A program to promote an orderly regulatory pattern within the State, among the states and between the Federal Government and the State, and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation so that duplication of regulation may be minimized;

3. Assumption of responsibilities. A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source and special nuclear materials and radiation-generating equipment; and

4. Use of sources. A program to permit utilization of sources of radiation consistent with the health and safety of the public.

#### §4003. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. By-product material. "By-product material" means:

A. Any radioactive material except special nuclear material yielded in or made radioactive by exposure to the radiation

incident to the process of producing or utilizing special nuclear material; and

B. The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

2. Civil penalty. "Civil penalty" means any monetary penalty levied on a licensee or registrant because of violations of statutes, regulations, licenses or registration certificates, but does not include criminal penalties.

3. Closure or site closure. "Closure or site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to ensure that the site is in a stable condition so that only minor custodial care, surveillance and monitoring are necessary at the site following termination of licensed operation.

4. Commercial nuclear power facility or facility. "Commercial nuclear power facility" or "facility" means a utilization facility situated in this State that holds an operating permit or license issued by the United States Nuclear Regulatory Commission.

5. Decommissioning. "Decommissioning" means the series of activities undertaken beginning at the time of closing of a nuclear power plant or other facility licensed by the United States Nuclear Regulatory Commission or the department to ensure that the final disposition of the site or any radioactive components or material, but not including spent fuel, associated with the plant is accomplished safely in compliance with all applicable state and federal laws. Decommissioning includes activities undertaken to prepare a nuclear power plant or other facility for final disposition, to monitor and maintain it after closing and to effect final disposition of any radioactive components of the nuclear power plant or facility.

6. Disposal of low-level radioactive waste. "Disposal of low-level radioactive waste" means the isolation of low-level waste from the biosphere inhabited by people and their food chains.

7. High-level radioactive waste. "High-level radioactive waste" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from that liquid waste that contains fission products in sufficient concentrations; and other highly radioactive material that the United States Nuclear Regulatory Commission, consistent

with existing law, determines by rule to require permanent isolation.

8. License. "License" means a license, issued to a named person upon application filed pursuant to the rules adopted pursuant to this subchapter, to use, manufacture, produce, transfer, receive, acquire or possess quantities of, or devices or equipment utilizing, radioactive material.

9. Low-level radioactive waste. "Low-level radioactive waste" means radioactive material that:

A. Is not high-level radioactive waste, spent nuclear fuel, transuranic waste or by-product material as defined in the United States Code, Title 42, Section 2014(e)(2), the Atomic Energy Act of 1954, Section 11e(2); and

B. The United States Nuclear Regulatory Commission, consistent with existing law and in accordance with paragraph A, classifies as low-level radioactive waste.

10. Person. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency of this State, political subdivision of this State, any other state or political subdivision or agency of a state or political subdivision and any legal successor, representative, agent or agency of the state or political subdivision or agency, but not including Federal Government agencies.

11. Radiation. "Radiation" means ionizing radiation and nonionizing radiation.

A. "Ionizing radiation" means gamma rays and x rays; alpha and beta particles, high-speed electrons, neutrons, protons and other nuclear particles; but not sound or radio waves, or visible, infrared or ultraviolet light.

B. "Nonionizing radiation" means any electromagnetic radiation, other than ionizing electromagnetic radiation, and any sonic, ultrasonic or infrasonic wave.

12. Radiation generating equipment. "Radiation generating equipment" means any manufactured product or device, or component part of a product or device, or any machine or system that during operation can generate or emit radiation, except those that emit radiation, only from radioactive material.

13. Radioactive material. "Radioactive material" means any material that emits ionizing radiation spontaneously. It

includes accelerator-produced, by-product, naturally occurring, source and special nuclear materials.

14. Registration. "Registration" means registration with the department in accordance with rules adopted pursuant to this subchapter.

15. Source material. "Source material" means:

A. Uranium or thorium, or any combination of uranium or thorium, in any physical or chemical form; or

B. Ores that contain by weight 1/20th of 1% or more of uranium, thorium or any combination thereof. Source material does not include special nuclear material.

16. Source material mill tailings. "Source material mill tailings" means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by those solution extraction processes.

17. Source material milling. "Source material milling" means any processing of ore, primarily for the purpose of extracting or concentrating uranium or thorium from the ore and that results in the production of source material mill tailings.

18. Sources of radiation. "Sources of radiation" means, collectively, radioactive material and radiation generating equipment.

19. Special nuclear material. "Special nuclear material" means:

A. Plutonium, uranium 233 and uranium enriched in the isotope 233 or in the isotope 235, but does not include source material; or

B. Any material artificially enriched by any of the material listed in paragraph A, but does not include source material.

20. Spent nuclear fuel. "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

21. Transuranic waste. "Transuranic waste" means radioactive waste containing alpha emitting transuranic elements, with radioactive half-lives greater than 5 years, in excess of 10 nanocuries per gram.

§4004. State Radiation Control Agency

1. Designated. The department is designated as the State Radiation Control Agency.

2. Commissioner. The commissioner shall perform the functions vested in the department pursuant to this subchapter.

3. Employees. In accordance with the laws of this State, the department may employ, compensate and prescribe the powers and duties of individuals necessary to carry out the provisions of this subchapter.

4. Authority. The department, for the protection of the public health and safety:

A. Shall develop programs:

(1) For the evaluation and control of hazards associated with use of sources of radiation;

(2) With due regard for compatibility with federal programs for regulation of by-product, source and special nuclear materials; and

(3) With due regard for consistency with federal programs for regulation of radiation generating equipment;

B. Shall formulate, adopt, and repeal rules appropriate to carry out the purposes of this subchapter, with due regard for compatibility with the regulatory programs of the Federal Government. The rules may include, but are not limited to:

(1) Provisions for licensing or registration relating to control of sources of radiation; and

(2) Provisions concerning acquisition, ownership, possession and use of radioactive materials or devices or equipment utilizing radioactive material;

C. Shall issue orders or modifications of orders necessary in connection with proceedings under section 4006;

D. Shall advise, consult and cooperate with other agencies of the State, Federal Government, other states and interstate agencies, political subdivisions and other organizations concerned with control of sources of radiation;

E. May accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the Federal Government and from other sources, public or private;

F. Shall encourage, participate in, or conduct studies, investigations, training, research and demonstrations relating to control of sources of radiation;

G. Shall collect and disseminate information relating to control of sources of radiation, including maintenance of files of:

(1) All license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

(2) Registrants possessing sources of radiation requiring registration under this subchapter and any administrative or judicial action pertaining to this subchapter; and

(3) All of the department's rules relating to regulation of sources of radiation, pending or adopted, and any connected proceedings;

H. May investigate and sample sites where radioactive substances or devices are stored or handled to identify uncontrolled radioactive substance sites;

I. May take whatever action is necessary to abate, clean up or mitigate the threats or hazards posed or potentially posed by radioactive material or radiation-generating equipment to protect the public health, safety or welfare or the environment, including administering or carrying out measures to abate, clean up or mitigate the threats or hazards and implementing remedies to remove, store, treat, dispose of or otherwise handle radioactive material, including soil and water contaminated by the material;

J. Shall establish and maintain a continuous radiation monitoring system to record the radioactive levels of gaseous and liquid discharges from any commercial nuclear power facility operating in the State;

2 K. Shall establish and maintain an off-site monitoring  
4 network to provide continuous monitoring of gamma radiation  
6 levels within the vicinity of any commercial nuclear power  
8 facility operating in the State. Portable off-site  
10 monitoring devices must be made available to members of the  
12 public to establish a network of volunteer monitors who  
14 shall report to the department their findings. For this  
16 purpose, the department shall make Geiger Rate meters  
18 available to 50 volunteer monitors. In addition to the  
20 placement of Geiger Rate meters, the department shall  
22 procure 20 Gamma Scintillation Detection Devices and place  
24 16 of them in homes of members of the public who volunteer  
26 to participate in the program. The 4 additional devices  
28 must be maintained by the department in reserve. The  
30 volunteers with Gamma Scintillation Detection Devices must  
32 also be provided with 2-way radios so they can report their  
34 findings in the case of emergency. All volunteers shall  
36 assist the department in its continuous monitoring network.  
38 All off-site monitoring devices must be geographically  
40 distributed throughout the surveillance area to provide the  
42 most effective monitoring network. The department shall  
44 adopt rules to provide for the selection of the volunteers,  
46 the appropriate and accurate use of the meters and devices  
48 and the method and frequency of reporting to the department  
50 and other procedures necessary to implement the program; and

L. Shall provide 24-hour-per-day coverage of existing  
radiation monitors through the use of a dialer-server  
computer system and the use of pagers.

5. Coordination. In consultation with the State Nuclear  
Safety Advisor in fulfillment of the advisor's duties pursuant to  
Title 25, sections 51 and 52, the commissioner shall serve as the  
coordinator of radiation activities among the department, the  
Maine Emergency Management Agency, the Department of Public  
Safety, and the Department of Environmental Protection. The  
commissioner shall:

A. Consult with and review rules and procedures of the  
agencies and federal law to assure consistency and to  
prevent unnecessary duplication, inconsistencies or gaps in  
regulatory requirements; and

B. Review, prior to adoption, the proposed rules of all  
agencies of the State relating to use of control of  
radiation, to ensure that these rules are consistent with  
the Maine Administrative Procedure Act, Title 5, chapter  
375, and rules of other agencies of the State. The review  
must be completed within 15 days.

If the commissioner determines that proposed rules are  
inconsistent with rules of other agencies of the State or federal  
law, the commissioner shall consult with the agencies involved in  
an effort to resolve these inconsistencies. If no inconsistency  
is reported within 15 days, the proposed rules are presumed  
consistent for the purposes of this subsection. Upon  
notification by the commissioner that the inconsistency has not  
been resolved, the Governor may find that the proposed rules or  
parts of rules are inconsistent with rules of other agencies of  
the State or the Federal Government and may issue an order to  
that effect, in which event the proposed rules or parts of rules  
do not become effective. In the alternative, upon a similar  
determination, the Governor may direct the appropriate agency or  
agencies to amend or repeal existing rules to achieve consistency  
with the proposed rules.

6. Information. The involved agencies of the State shall  
keep the commissioner fully and currently informed as to their  
activities relating to regulation of sources of radiation.

#### §4005. Coordination and liaison with federal agencies

The following agencies shall serve as liaison with federal  
agencies and coordinate administration of the issues indicated.

1. Health and safety. The department shall coordinate  
monitoring of radiation and health and safety in medical and  
industrial use of radiation, and shall serve as liaison with the  
United States Food and Drug Administration and the United States  
Nuclear Regulatory Commission, except as specified in subsection  
4.

2. Emergency procedures. The Maine Emergency Management  
Agency shall coordinate off-site emergency procedures for nuclear  
facilities, and shall serve as liaison with the federal agencies  
with jurisdiction over defense activities and emergency response  
management.

3. Transportation. The Department of Public Safety shall  
coordinate transportation of radioactive materials.

4. Radioactive waste. The Department of Environmental  
Protection shall coordinate management of and shall serve as  
point of contact with the United States Nuclear Regulatory  
Commission for high-level and low-level radioactive wastes, in  
consultation with the State Nuclear Safety Advisor in fulfillment  
of duties pursuant to Title 25, sections 51 and 52, and the State  
Nuclear Safety Inspector in fulfillment of duties pursuant to  
chapter 223.



2 5. Geology. The Maine Geological Survey shall provide  
3 technical assistance for waste management.

4 6. Energy. The State Planning Office shall serve as  
5 liaison with the United States Department of Energy.

6 7. Environment. The Department of Environmental Protection  
7 shall serve as liaison with the United States Environmental  
8 Protection Agency.

10 §4006. Licensing and registration of sources of radiation

11 1. Radioactive material, devices or equipment. The  
12 department shall provide by rule for licensing of radioactive  
13 material or devices or equipment utilizing those materials except  
14 where prohibited by federal law. The rules must provide for  
15 amendment, suspension and revocation of licenses.

16 2. Other sources. The department may require registration  
17 or licensing of other sources of radiation.

18 3. Exemptions. The department may exempt certain sources of  
19 radiation or kinds of uses or users from the licensing or  
20 registration requirements set forth in this section if the  
21 department makes a finding that the exemption of these sources of  
22 radiation or kinds of uses or users will not constitute a  
23 significant risk to the health and safety of the public.

24 4. Recognition of other licenses. Rules adopted pursuant to  
25 this subchapter may provide for recognition of other state or  
26 federal licenses as the department considers desirable, subject  
27 to registration requirements as the department prescribes.

28 5. Federal license or permit required. No person may  
29 manufacture, construct, produce, transfer, acquire or possess any  
30 special nuclear material, source material, by-product material,  
31 production facility or utilization facility, or act as an  
32 operator of a production or utilization facility wholly within  
33 this State, unless the person has first obtained a license or  
34 permit for the activity in which the person proposes to engage  
35 from the United States Nuclear Regulatory Commission if, pursuant  
36 to federal law, the commission requires a license or permit to be  
37 obtained by persons proposing to engage in activities of the same  
38 type over which it has jurisdiction.

39 §4007. Jurisdiction over source material processing and low-level  
40 radioactive waste disposal

41 As specified in Title 38, the Department of Environmental  
42 Protection has primary jurisdiction over state regulation of

2 source material processing and low-level radioactive waste  
3 disposal.

4 §4008. Radiation user fees

5 1. Nuclear power plants. The annual registration fee for  
6 operating nuclear power plants is \$100,000 per fiscal year.

7 2. Radiation protection services. The department shall  
8 prescribe and collect fees established by rule for radiation  
9 protection services provided under this subchapter. Services for  
10 which fees may be established include, but are not limited to:

11 A. Registration of radiation generating equipment and other  
12 sources of radiation;

13 B. Issuance, amendment and renewal of licenses for  
14 radioactive materials;

15 C. Inspections of registrants or licensees;

16 D. Environmental surveillance activities to assess the  
17 radiological impact of activities conducted by licensees; and

18 E. Off-site monitoring network activities of licensed  
19 nuclear power production facilities conducted pursuant to  
20 section 4004, subsection 4, paragraph K.

21 3. Fees. In determining rates of these fees, the department  
22 shall obtain sufficient funds to reimburse the State for the  
23 direct and indirect costs of the radiation protection services  
24 specified in subsection 2. The department shall take into  
25 account any special arrangements between the State and a  
26 registrant, licensee, another state or a federal agency whereby  
27 the cost of the service is otherwise partially or fully recovered.

28 4. Report. The department shall report annually, before  
29 January 31st, to the joint standing committee of the Legislature  
30 having jurisdiction over natural resources on the fee schedule  
31 established and the justification for those fees.

32 5. Exemptions. The department may, upon application by an  
33 interested person, or on its own initiative, grant exemptions  
34 from the requirements of this section that it determines are in  
35 the public interest. Applications for exemption under this  
36 subsection may include activities such as, but not limited to,  
37 the use of licensed materials for educational or noncommercial  
38 displays or scientific collections.

6. Penalties. When a registrant or licensee fails to pay the applicable fee, the department may take action in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

7. Permanent fund. All fees must be paid to the Treasurer of State to be maintained in a permanent fund and used to carry out the purposes of this subchapter and chapter 223.

#### §4009. Surety requirements

Licensees shall pay to the department for deposit by the Treasurer of State, into a fund called the Radiation Materials Recovery Fund, adequate funds to permit the department to complete the requirements established by the department for the decontamination, decommissioning, closure and reclamation of sites, structures and equipment used in conjunction with the licensed activity. Instead of the deposit of funds, the licensee may provide an adequate surety. The condition of the surety must be to account for the completion of the requirements according to standards established by the department by rule. All sureties forfeited must be paid to the department for deposit by the Treasurer of State to the fund established in this section. Money in the fund may not be used for normal operations of the department. The department shall adopt by rule the standards for determining the amount of financial responsibility required by each licensee and the procedures for the payment of funds or provision of surety.

The funds or sureties required in this section must be in amounts necessary to comply with standards established by the United States Nuclear Regulatory Commission or the State.

The department may accept gifts or transfers from another agency or individual of land or appurtenances necessary to fulfill the purposes of this section.

#### §4010. Inspections

1. Authorized. The department or its duly authorized representatives may enter at all reasonable times upon any private or public property for the purpose of determining whether there is compliance with the provisions of this subchapter and the rules issued under this subchapter, except that entry into areas under the jurisdiction of the Federal Government or its duly designated representative may be made only with the concurrence of the Federal Government or its duly designated representative.

2. Equipment inspection. The department shall adopt rules requiring periodic inspection, certification and calibration of

equipment, capable of emitting ionizing radiation, by certified technicians.

3. Technician certification. The department shall adopt rules providing for the qualifications and certification of technicians to inspect, certify and calibrate equipment capable of emitting ionizing radiation. The rules must also provide for the standardization of calibration equipment, inspection and calibration methodology and reporting procedures. The department may grant, modify or refuse to issue a certification in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter V. The Administrative Court has exclusive jurisdiction to suspend or revoke a certification of any person found guilty of noncompliance with the rules pertaining to inspection, certification and reporting procedures or misrepresentation of inspection findings.

4. Failure to comply. Persons failing to have their equipment inspected, certified and calibrated, as required in subsection 2, are subject to the penalties of section 4018.

#### §4011. Records

The department may require by rule, or order, the keeping of any records with respect to activities under licenses and registration certificates issued pursuant to this subchapter necessary to effectuate the purposes of this subchapter. These records must be made available for inspection by, or copies must be submitted to, the department.

#### §4012. Federal, state agreements

1. General agreements and contracts. The Governor, on behalf of this State, may enter into agreements with the United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, Section 274b, as amended, providing for discontinuance of certain of the commission's licensing and related regulatory authority with respect to by-product, source and special nuclear materials and the assumption of regulatory authority by this State.

2. Limited agreements. The Governor, on behalf of this State, may enter into an agreement with the United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, Section 274i, as amended, other federal government agencies, if authorized by law, or other states or interstate agencies, whereby this State will perform on a cooperative basis inspections or other functions relating to control of sources of radiation.

2 3. Contracts with federal agencies. The Governor may,  
3 subject to the conditions of Title 5, section 1669 and any other  
4 provision of law, execute contracts with appropriate federal  
5 officers or agencies relating to radiation hazards.

6 **§4013. Training programs**

8 The department may institute training programs for the  
9 purpose of qualifying personnel to carry out the provisions of  
10 this subchapter, and may make the personnel available for  
11 participation in any program or programs of the Federal  
12 Government, other states or interstate agencies in furtherance of  
13 the purposes of this subchapter.

14 **§4014. Conflicting laws**

16 Ordinances, resolutions or rules, now or hereafter in  
17 effect, of the governing body of a municipality or county or of  
18 state agencies other than the department relating to by-product,  
19 source and special nuclear materials, except as provided in  
20 section 4007, are not superseded by this subchapter, if the  
21 ordinances or rules are and continue to be consistent with this  
22 subchapter, amendments and rules under this subchapter.

24 **§4015. Administrative procedure and judicial review**

26 Administrative procedure and judicial review are as provided  
27 in the Maine Administrative Procedure Act, Title 5, chapter 375.

28 **§4016. Injunction proceedings; impounding**

30 1. Injunctions. If, in the judgment of the department, any  
31 person has engaged in or is about to engage in any acts or  
32 practices that constitute or will constitute a violation of this  
33 subchapter, or any rule or order issued under this subchapter, at  
34 the request of the department, the Attorney General may apply to  
35 the Superior Court for an order enjoining those acts or  
36 practices, or for an order directing compliance, and, upon a  
37 showing by the department that the person has engaged or is about  
38 to engage in any of those acts or practices, a permanent or  
39 temporary injunction, restraining order or other order may be  
40 granted.

42 2. Impounding. In accordance with all applicable statutes  
43 and rules, the department may, in the event of an emergency,  
44 impound or order the impounding of sources of radiation in the  
45 possession of any person who is not equipped to observe or fails  
46 to observe the provisions of this subchapter or any rules issued  
47 under this subchapter.

2 **§4017. Prohibited uses**

3 Except for consumer products, it is unlawful for any person  
4 to use, manufacture, produce, distribute, sell, transport,  
5 transfer, install, repair, receive, acquire, own or possess any  
6 source of radiation, unless licensed by or registered with the  
7 department in conformance with rules, if any, adopted in  
8 accordance with this subchapter. Notwithstanding this section,  
9 licensing or registration of specific consumer products may be  
10 required by the department by rule in specified circumstances.

12 **§4018. Penalties**

14 1. Criminal penalties. Any person who willfully violates  
15 any of the provisions of this subchapter, or rules or orders of  
16 the department in effect pursuant to this subchapter, is guilty  
17 of a Class D crime.

18 Any person who willfully violates any term, condition or  
19 limitation of any license or registration certificate issued  
20 under this subchapter, or commits any violation for which a  
21 license or registration certificate may be revoked under rules  
22 issued pursuant to this subchapter, is guilty of a Class D crime.

24 2. Civil penalties. Civil penalties must be assessed and  
25 enforced as follows.

28 A. Any person who violates any licensing or registration  
29 provision of this subchapter or any rule or order issued  
30 under this subchapter, or any term, condition or limitation  
31 of any license or registration certificate issued under this  
32 subchapter, or any person who commits any violation for  
33 which a license or registration certificate may be revoked,  
34 suspended or modified under rules issued pursuant to this  
35 subchapter is subject to a civil penalty, to be imposed by  
36 the department, not to exceed \$10,000 for each violation or  
37 \$100,000 for any willful and wanton violation. If any  
38 violation is a continuing violation, each day of the  
39 violation constitutes a separate violation for the purpose  
40 of computing the applicable civil penalty. The department  
41 may compromise, mitigate or remit the penalties.

42 B. When the department has reason to believe that a person  
43 has become subject to the imposition of a civil penalty  
44 under the provisions of this section, the department may  
45 notify the Attorney General or hold a public hearing. If a  
46 hearing is scheduled, the commissioner shall give at least  
47 30 days' written notice to the alleged violator of the date,  
48 time and place of that hearing. The notice must specify the  
49 act done or omitted to be done that is claimed to be in

violation of law; identify the particular provisions of the section, rule, order or license involved in the violation; and advise of each penalty the department proposes to impose and its amount. The notice must be sent by registered or certified mail by the department to the last known address of the person.

Any hearing conducted under this subsection must be in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375.

At the hearing, the alleged violator may appear in person or by attorney and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by the alleged violator to comply with this subchapter and present any evidence that is pertinent and relevant to the alleged violation.

C. On the request of the department, the Attorney General may institute a civil action to collect a penalty imposed pursuant to this subsection. Only the Attorney General may compromise, mitigate or remit civil penalties as are referred to the Attorney General for collection.

D. All money collected from civil penalties must be paid to the Treasurer of State for deposit in the General Fund. Money collected from civil penalties may not be used for normal operating expenses of the department, except as appropriations made from the General Fund in the normal budgetary process.

#### SUBCHAPTER II

#### NEW ENGLAND COMPACT ON RADIOLOGICAL HEALTH PROTECTION

#### §4051. Purposes -- Article I

The purposes of this compact are to:

1. Promote protection. Promote the radiological health protection of the public and individuals within the party states;

2. Mutual aid. Provide mutual aid and assistance in radiological health matters including, but not limited to, radiation incidents; and

3. Personnel and equipment. Encourage and facilitate the efficient use of personnel and equipment by furthering the

orderly acquisition and sharing of resources useful for programs of radiation protection.

#### §4052. Enactment -- Article II

This compact becomes effective when enacted into law by any 2 or more of the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. Thereafter it becomes effective with respect to any other aforementioned state upon its enacting this compact into law. Any state not mentioned in this Article that is contiguous to any party state may become a party to this compact by enacting the compact.

#### §4053. Duties of states -- Article III

1. Plan. It is the duty of each party state to formulate and put into effect an intrastate radiation incident plan that is compatible with the interstate radiation incident plan formulated pursuant to this compact.

2. Aid. Whenever the compact administrator of a party state requests aid from the compact administrator of any other party state pursuant to this compact, it is the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people. The compact administrator of a party state may delegate any or all of the compact administrator's authority to request aid or respond to requests for aid pursuant to this compact to one or more subordinates, in order that requests for aid and responses thereto are not impeded by reason of the absence of unavailability of the compact administrator. Any compact administrator making such a delegation shall inform all the other compact administrators thereof, and shall inform them of the identity of the subordinate or subordinates to whom the delegation has been made.

3. Personnel and equipment. Each party state shall maintain adequate radiation protection personnel and equipment to meet normal demands for radiation protection within its borders.

#### §4054. Liability -- Article IV

Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of that state have, under the direction of the authorities of the state to which they are rendering aid, the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

2 No party state or its officers or employees rendering  
4 outside aid pursuant to this compact is liable on account of any  
6 act or omission on their part while so engaged, or on account of  
8 the maintenance or use of any equipment or supplies in connection  
10 therewith.

12 All liability that may arise either under the laws of the  
14 requesting state or under the laws of the aiding state or under  
16 the laws of a 3rd state, on account of or in connection with a  
18 request for aid, must be assumed and borne by the requesting  
20 state.

22 Any party state rendering outside aid to cope with a  
24 radiation incident must be reimbursed by the party state  
26 receiving the aid for any loss or damage to, or expense incurred  
28 in the operation of any equipment answering a request for aid,  
30 and for the cost of all materials, transportation and maintenance  
32 of officers, employees and equipment incurred in connection with  
34 the request, provided that nothing herein contained prevents any  
36 assisting party state from assuming the loss, damage, expense or  
38 other cost or from loaning the equipment or from donating the  
40 services to the receiving party state without charge or cost.

42 Each party state shall provide for the payment of  
44 compensation and death benefits to injured officers and employees  
46 and the representatives of deceased officers and employees in  
48 case officers or employees sustain injuries or are killed while  
rendering outside aid pursuant to this compact, in the same  
manner and on the same terms as if the injury or death were  
sustained within the state for or in which the officer or  
employee was regularly employed.

#### §4055. Facilities, equipment and personnel --- Article V

36 Whenever a department, agency or officer of a party state  
38 responsible for and having control of facilities or equipment  
40 designed for or useful in radiation control, radiation research,  
42 or any other phase of a radiological health program or programs,  
44 determines that the facility or item of equipment is not being  
46 used to its full capacity by that party state, or that  
48 temporarily it is not needed for current use by that state, a  
department, agency or officer may, upon request of an appropriate  
department, agency or officer of another party state, make the  
facility or item of equipment available for use by the requesting  
department, agency or officer. Unless otherwise required by law,  
the availability and use resulting therefrom may be with or  
without charge, at the discretion of the lending department,  
agency or officer.

2 Any personal property made available pursuant to this  
4 section may be removed to the requesting state, but no such  
6 property may be made available, except for a specified period and  
8 pursuant to written agreement. Except when necessary to meet an  
10 emergency, no supplies or materials intended to be consumed prior  
12 to return may be made available pursuant to this section.

14 In recognition of the mutual benefits, in addition to those  
16 resulting from Article IV, accruing to the party states from the  
18 existence and flexible use of professional or technical personnel  
20 having special skills or training related to radiation  
22 protection, those personnel may be made available to a party  
24 state by appropriate departments, agencies and officers of other  
26 party states, provided that the borrower reimburses the party  
28 state regularly employing the personnel in question for any cost  
30 of making the personnel available, including a prorated share of  
32 the salary or other compensation of the personnel involved.

34 Nothing in this Article may be construed to limit or to  
36 modify in any way Article IV of this compact.

#### §4056. Compact administrators -- Article VI

38 Each party state shall have a compact administrator who must  
40 be the head of the state agency having principal responsibility  
42 for radiation protection, and who:

44 1. Coordinate activities. Shall coordinate activities  
46 pursuant to this compact in and on behalf of the compact  
48 administrator's state; and

50 2. Incident plan. Serving jointly with the compact  
administrators of the other party states, shall develop and keep  
current an interstate radiation incident plan, consider any other  
matters as may be appropriate in connection with programs of  
cooperation in the field of radiation protection and allied areas  
of common interest, and formulate procedures for claims and  
reimbursement under Article IV.

#### §4057. Other responsibilities and activities -- Article VII

Nothing in this compact may be construed to:

44 1. Protection program. Authorize or permit any party state  
46 to curtail or diminish its radiation protection program,  
48 equipment, services or facilities;

50 2. Health protection. Limit or restrict the powers of any  
state ratifying the compact to provide for the radiological  
health protection of the public and individuals, or to prohibit

2 the enactment or enforcement of state laws, rules or regulations  
3 intended to provide for radiological health protection; or

4 3. Existing arrangements. Affect any existing or future  
5 cooperative relationship or arrangement between federal, state or  
6 local governments and a party state or states.

8 **§4058. Withdrawal -- Article VIII**

10 Any party state may withdraw from this compact by enacting a  
11 statute repealing the same, but no withdrawal may take effect  
12 until one year after the governor of the withdrawing state has  
13 given notice in writing of the withdrawal to the governors of all  
14 other party states. No withdrawal may affect any liability  
15 already incurred by or chargeable to a party state prior to the  
16 time of withdrawal.

18 **§4059. Construction and severability -- Article IX**

20 It is the legislative intent that the provisions of this  
21 compact be reasonably and liberally construed. The provisions of  
22 this compact are severable and if any phrase, clause, sentence or  
23 provision of this compact is declared to be unconstitutional or  
24 the applicability thereof, to any state, agency, person or  
25 circumstance is held invalid, the constitutionality of the  
26 remainder of this compact and the applicability thereof, to any  
27 other state, agency, person or circumstance is not affected  
28 thereby.

30 **§4060. Radiation incident plan**

32 The commissioner shall formulate and keep current a  
33 radiation incident plan for this State, in accordance with the  
34 duty assumed pursuant to Article III, subsection 1 of the compact.

36 **§4061. Compact administrator for Maine**

38 The compact administrator for this State, as required by  
39 Article VI of the compact, is the commissioner.

41 **SUBCHAPTER III**

42 **RADON REGISTRATION ACT**

44 **§4101. Short title**

46 This subchapter may be known and cited as the "Radon  
47 Registration Act."

50 **§4102. Definitions**

2 As used in this subchapter, unless the context otherwise  
3 indicates, the following terms have the following meanings.

4 1. Associated radiological concerns. "Associated  
5 radiological concerns" means radioactive elements other than  
6 radon, including, but not limited to, radium, thorium, uranium  
7 and their respective decay products.

8 2. Authorized radon testing device. "Authorized radon  
9 testing device" means a device that:

10 A. Collects radon or its decay products;

11 B. Requires analysis by an independent measuring facility or  
12 is a continuous monitoring device; and

13 C. Has been determined to be acceptable by the United States  
14 Environmental Protection Agency under the Radon Measurement  
15 Proficiency Program conducted under 15 United States Code,  
16 Section 2661, et seq.

17 3. Listed facility. "Listed facility" means a radon testing  
18 facility that is designated as a primary company by the Radon  
19 Measurement Proficiency Program of the United States  
20 Environmental Protection Agency under 15 United States Code,  
21 Section 2661, et seq.

22 4. Radon. "Radon" means the radioactive gaseous element and  
23 its decay products produced by the disintegration of the element  
24 radium in air, water, soil or other media.

25 5. Radon testing services. "Radon testing services" means  
26 providing, for remuneration, determination of radon levels or  
27 analysis of an authorized radon testing device. This term  
28 includes those services provided by listed facilities.

29 **§4103. Lead agency**

30 The bureau is the lead agency having primary responsibility  
31 for programs related to radon and associated radiological  
32 concerns. The bureau shall register firms, including listed  
33 facilities, and individuals who test for the presence of radon or  
34 associated radiological concerns or who provide consulting,  
35 construction or other remedial services for reducing the levels  
36 of radon or associated radiological concerns. The bureau may  
37 facilitate functions, including, but not limited to, education,  
38 funding, liaison, technology transfer and training with the  
39 United States Environmental Protection Agency or other federal or  
40 state agencies. The bureau also serves as an information

clearinghouse for radon and associated radiological concerns by maintaining records and disseminating information to educate the public about radon, describing technical assistance programs and interpreting test results as appropriate.

#### §4104. Radon testing; registration required

A person may not perform, evaluate or advertise to perform or evaluate tests for the presence of radon in buildings or on building lots unless registered with the bureau. This registration requirement includes without limitation a person whose place of business is located in the State, or in another state, who offers radon testing services to residents of the State either directly or through the mail.

#### §4105. Radon mitigation; registration required

No person may offer advice or plans to reduce the level of radon or contract to modify an existing structure in a manner intended to reduce the level of radon unless registered with the bureau.

#### §4106. Exemptions

The requirements of sections 4104 and 4105 do not apply to any of the following:

1. Personal use. A person performing testing or mitigation on a building owned or inhabited by that person;

2. New construction. A builder utilizing preventive or safeguarding measures in new construction as recommended in "Radon-resistant Residential New Construction" EPA/60018-881087 published by the United States Environmental Protection Agency or an equivalent publication as determined by the department;

3. Department employees. Employees of the department in the course of their assigned duties; or

4. Authorized personnel. A person performing testing with the written approval of the department. Registration under section 4104 or 4105 does not constitute written approval for the purposes of this subsection.

#### §4107. Use of listed facilities

Any person who is required to register under section 4104 or 4105 shall use only authorized radon testing devices and shall have these devices analyzed by a listed facility. When disclosing test results, any person registered under section 4104

or 4105 shall provide in writing the name and address of the listed facility that performed the analysis.

#### §4108. Reports

A person registered under section 4104 or 4105 shall, within 45 days of the date the services are provided, notify the department in writing of the zip code of the client and the results of any tests performed. The department may, by rule, specify an alternative notification procedure and notification period.

#### §4109. Advertising

No person may advertise any radon testing device as "State-approved," "approved by the State of Maine" or by use of any phrases with similar meaning or content. This restriction also applies to any reference denoting municipal approval.

#### §4110. Fees

The department shall determine a schedule of fees to defray the costs of the registration programs established in sections 4104 and 4105. Fees may not exceed \$150 for registrants under section 4105 or \$75 for registrants under section 4105. The fees collected must be placed in the Radon Relief Fund established in section 4114. The fee schedule must provide for initial registration and biennial registration fees.

#### §4111. Rules

The department shall adopt rules, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, necessary to administer and enforce this subchapter. Rules must address, but are not limited to, minimal training requirements for registration, periodic reregistration, performance standards, reports, truth-in-advertising requirements and criteria and procedures for revoking registrations.

#### §4112. Penalties

Any person failing to register pursuant to section 4104 or 4105 commits a civil violation for which a forfeiture not to exceed \$500 may be adjudged. Any person in violation of section 4107, 4108 or 4109 commits a civil violation for which a forfeiture not to exceed \$250 per violation may be adjudged. Any person who engages in radon testing, advertising or mitigation in violation of this subchapter is also in violation of Title 5, chapter 10.

2 **§4113. Registration revoked**

4 The department may revoke, in accordance with the Maine  
6 Administrative Procedure Act, Title 5, chapter 375, the  
8 registration of any person found in violation of this subchapter.

8 **§4114. Radon Relief Fund**

10 The Radon Relief Fund is established as a nonlapsing fund to  
12 support the radon-related research, testing, educational and  
14 mitigation activities of the bureau. Funds received from  
16 registrations under sections 4104 and 4105 and any other  
18 miscellaneous sources of income are deposited in the fund. The  
20 bureau shall administer the fund. Funds in the Radon Relief Fund  
22 must be deposited with the Treasurer of State to the credit of  
24 the fund and may be invested as provided by law. Interest on  
26 these investments must be credited to the fund.

20 **CHAPTER 227**

22 **PESTICIDES CONTROL**

24 **§4201. Purpose and policy**

26 For the purpose of assuring to the public the benefits to be  
28 derived from the safe, scientific and proper use of chemical  
30 pesticides while safeguarding the public health, safety and  
32 welfare, and for the further purpose of protecting natural  
34 resources of the State, it is declared to be the policy of the  
36 State of Maine to regulate the sale and application of chemical  
38 insecticides, fungicides, herbicides and other chemical  
40 pesticides, and to regulate the return and disposal of limited  
42 and restricted use pesticide containers.

36 **§4202. Definitions**

38 As used in this chapter, the following words have the  
40 following meanings.

42 1. **Agricultural commodity.** "Agricultural commodity" means  
44 any plant, or part thereof, or animal or animal product produced  
46 by a person, including farmers, ranchers, vineyardists, plant  
48 propagators, Christmas tree growers, aquaculturists,  
50 floriculturists, orchardists, foresters or other comparable  
persons, primarily for sale, consumption, propagation or other  
use by humans or animals.

2. **Aircraft.** "Aircraft" means any machine or device used  
or designed for navigation of, or flight in, the air.

2 3. **Board.** "Board" means the State Board of Pesticides  
4 Control as established in section 4203.

6 4. **Certified applicator.** "Certified applicator" means any  
8 person who is certified pursuant to section 4206 and authorized  
10 to use or supervise the use of any pesticides.

12 5. **Commercial applicator.** "Commercial applicator" means  
14 any person, except a government pesticide supervisor, whether or  
16 not the person is a private applicator with respect to some uses,  
18 who uses or supervises the use of any limited or restricted-use  
20 pesticides on any property other than as provided by subsection  
22 30, or who uses general-use pesticides in custom application on  
24 such property. "Commercial applicator" also includes individuals  
26 who apply any pesticides in connection with their duties as  
28 officials or employees of federal, state or local governments.

30 6. **Custom application.** "Custom application" means any  
32 application of any pesticide under contract or for which  
34 compensation is received or any application of a pesticide to a  
36 property open to use by the public.

38 7. **Defoliant.** The term "defoliant" means any substance or  
40 mixture of substances intended for causing the leaves or foliage  
42 to drop from a plant, with or without causing abscission.

44 8. **Desiccant.** The term "desiccant" means any substance or  
46 mixture of substances intended for artificially accelerating the  
48 drying of plant tissue.

50 9. **Distribute.** "Distribute" means to offer for sale, hold  
for sale, sell, barter, ship, deliver for shipment or receive  
and, having so received, deliver or offer to deliver pesticides  
in this State.

10. **FIFRA.** "FIFRA" means the Federal Insecticide,  
Fungicide and Rodenticide Act, as amended by the Federal  
Environmental Pesticide Control Act of 1972, Public Law 92-516.

11. **Fungi.** "Fungi" means all nonchlorophyll-bearing  
thallophytes, that is, all nonchlorophyll-bearing plants, of a  
lower order than mosses and liverworts, including but not limited  
to rusts, smuts, mildews and molds, except those on or in living  
humans or other animals or those on or in processed food,  
beverages or pharmaceuticals.

12. **Fungicide.** "Fungicide" means any substance or mixture  
of substances intended for destroying or repelling any fungi or  
mitigating or preventing damage by any fungi.



2 13. Government pesticide supervisor. "Government pesticide  
3 supervisor" means any federal, state or local government agency,  
4 official or employee, whether or not the person is a private  
5 applicator with respect to some uses, who, in the course of that  
6 person's duties, responsibilities or employment, supervises the  
7 use of any pesticides. For the purposes of this subsection,  
8 "supervise" means any and all activity other than the direct  
9 application of pesticides.

10 14. General use pesticide. "General use pesticide" means  
11 any pesticide that has been registered by the United States  
12 Environmental Protection Agency as evidenced by a registration  
13 number on the label and that is not a restricted use or limited  
14 use pesticide, as defined in this section. Pesticides restricted  
15 by the United States Environmental Protection Agency are so  
16 identified on the label. Pesticides restricted or limited by the  
17 Board of Pesticides Control are listed by the board.

18 15. General use pesticide dealer. "General use pesticide  
19 dealer" means any person who distributes general use pesticides.

20 16. Ground equipment. "Ground equipment" means any machine  
21 or device, other than aircraft, for use on land or water,  
22 designed for, or adaptable to, use in applying pesticides as  
23 sprays, dusts, aerosols, fogs, or in other forms.

24 17. Herbicides. "Herbicides" means any substance or  
25 mixture of substances intended for preventing, destroying,  
26 repelling or mitigating any weed.

27 18. Household use pesticide product. "Household use  
28 pesticide product" means any general use pesticide product that  
29 contains no more than 3% active ingredients and that is applied  
30 undiluted by homeowners to control pests in and around the family  
31 dwelling and associated structures. For the purposes of this  
32 definition and section 4217, subsection 4, petroleum solvents are  
33 not active ingredients.

34 19. Insect. "Insect" means any of the numerous small  
35 invertebrate animals generally having the body more or less  
36 obviously segmented, for the most part belonging to the class  
37 insecta, comprising 6-legged, usually winged forms, including but  
38 not limited to beetles, bugs, bees, flies and other allied  
39 classes of arthropods whose members are wingless and usually have  
40 more than 6 legs, including but not limited to mites, ticks,  
41 centipedes and wood lice.

2 20. Insecticide. "Insecticide" means any substance or  
3 mixture of substances intended for destroying or repelling any  
4 insect, or mitigating or preventing damage by any insects.

5 21. Limited use pesticide. "Limited use pesticide" means  
6 any pesticide or pesticide use classified for limited use by the  
7 board.

8 22. Major forest insect aerial spray application. "Major  
9 forest insect aerial spray application" means a project to apply  
10 pesticides against a forest insect pest by aerial application  
11 over an area containing at least 1,000 acres in the aggregate.

12 23. Minor forest insect aerial spray application. "Minor  
13 forest insect aerial spray application" means a project to apply  
14 pesticides against a forest insect pest by aerial application  
15 over an area containing less than 1,000 acres in the aggregate.

16 24. Monitor. "Monitor" means a person working on a public  
17 or private forest insect aerial spray application project whose  
18 primary responsibilities are to observe and record meteorological  
19 conditions during spray operations, observe and record spray  
20 deposition, and prepare the spray period report and who has the  
21 authority to cease spray applications when conditions require it.

22 25. Person. "Person" means any individual, partnership,  
23 association, fiduciary, corporation, governmental entity or any  
24 organized group of persons whether incorporated or not.

25 26. Pest. The term "pest" means any insect, rodent,  
26 nematode, fungus, weed, or any other form of terrestrial or  
27 aquatic plant or animal life or virus, bacteria or other  
28 micro-organism, except viruses, bacteria or other micro-organisms  
29 on or in living humans or other living animals, that the  
30 Commissioner of Agriculture, Food and Rural Resources declares to  
31 be a pest.

32 27. Pesticide. The term "pesticide" means any substance or  
33 mixture of substances intended for preventing, destroying,  
34 repelling or mitigating any pest, and any substance or mixture of  
35 substances intended for use as a plant regulator, defoliant or  
36 desiccant.

37 28. Pesticide dealer. "Pesticide dealer" means any person  
38 who distributes limited or restricted use pesticides.

39 29. Plant regulator. The term "plant regulator" means any  
40 substance or mixture of substances intended, through  
41 physiological action, for accelerating or retarding the rate of  
42 growth or rate of maturation, or for otherwise altering the  
43 rate of growth or maturation of a plant.

behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments. Also, the term "plant regulator" does not include any of those nutrient mixtures or soil amendments commonly known as vitamin hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants, and that are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

**30. Private applicator.** "Private applicator" means any person who uses or supervises the use of any pesticide that is classified for restricted or limited use for purposes of producing any agricultural commodity on property owned or rented by the person or the person's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

**31. Restricted use pesticide.** "Restricted use pesticide" means any pesticide or pesticide use classified for use only by or under the direct supervision of a certified applicator by the Administrator of the United States Environmental Protection Agency or by the Commissioner of Agriculture, Food and Rural Resources.

**32. Spotter.** "Spotter" means a person working on a public or private forest insect aerial spray application project who is responsible for ordering the cessation of spraying over water bodies and other nontarget areas.

**33. Spray contracting firm.** "Spray contracting firm" means a person employed or contracted to conduct a public or private pesticide application. This term does not include the owner or lessee of land to be sprayed, employees of that landowner or lessee, the Bureau of Forestry, the employees of the Bureau of Forestry or individuals who are certified as commercial applicators.

**34. Spray period.** "Spray period" means any period of a forest insect aerial spray application project during which pesticides are applied and that is demarcated from another spray period by at least a 2-hour cessation in pesticide application.

**35. Under the direct supervision of a certified applicator.** "Under the direct supervision of a certified applicator," unless otherwise prescribed by its labeling, means the act or process by which a pesticide is applied by a competent person acting under the instructions and control of a certified

applicator who is available, if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied. In the case of an application made by a commercial applicator, the certified applicator must be physically present at the time and on the site of the application.

**36. Weed.** "Weed" means any plant that grows where not wanted.

#### **§4203. Board of Pesticides Control**

**1. Board established.** The Board of Pesticides Control is established by Title 5, section 12004-D, subsection 3, within the Department of Agriculture, Food and Rural Resources. Except as provided in this chapter, the board must be composed of 7 members, appointed by the Governor, subject to approval by the joint standing committee of the Legislature having jurisdiction over agricultural matters and confirmation by the Legislature. To provide the knowledge and experience necessary for carrying out the duties of the board, the board must consist of the following members: one person with practical experience and knowledge regarding the agricultural use of chemicals; one person who has practical experience and knowledge regarding the use of chemicals in forest management; one person from the medical community; a scientist from the University of Maine System specializing in agronomy or entomology having practical experience and knowledge of integrated pest management; one commercial applicator; and 2 persons appointed to represent the public. The 2 members appointed to represent the public must have a demonstrated interest in environmental protection and represent different geographic areas of the State. The term must be for 4 years. Any vacancy must be filled by an appointment for the remainder of the unexpired term.

**2. Organization of the board.** The board shall elect a chair and any other officers it determines necessary from among the membership. The board shall meet at the call of the chair or at the request of any 3 members. Four members constitute a quorum and, except as otherwise provided in this subsection, any action requires the affirmative vote of the greater of either a majority of those present and voting or at least 2 members. Any action by the board requesting that the Attorney General pursue a court action against an alleged violator of any law or rule requires an affirmative vote by 3 members or a majority of those present and voting, whichever is greater. The chair and any other officers serve in those capacities for a period of one year following their elections.

**3. Compensation of the board.** Each public member must be compensated according to the provisions of Title 5, chapter 379.

2 4. Director. The Commissioner of Agriculture, Food and  
4 Rural Resources shall appoint a director, with the approval of  
6 the board. The director is the principal administrative,  
8 operational and executive employee of the board. The director  
10 shall attend and participate in all meetings of the board, but  
12 may not vote. The director, with the approval of the  
commissioner and the board, may hire whatever competent  
professional personnel and other staff the director deems  
necessary. All employees of the board are subject to Title 5,  
Part 2. The director may obtain office space, goods and services  
as required.

14 5. Staff. The board shall establish standards for the  
16 delegation of its authority to the director and staff. Any  
18 person aggrieved by a decision of the director and staff has a  
20 right to a review of the decision by the board. The Commissioner  
22 of Agriculture, Food and Rural Resources shall provide the board  
with administrative services of the department, including  
assistance in the preparation of the board's budget. The  
commissioner may require the board to reimburse the department  
for these services.

24 6. State contracts. Notwithstanding any other provisions  
26 of law, members of the board may contract with the State where  
28 the contracts are awarded consistent with normal bidding  
30 procedures of the Department of Administrative and Financial  
32 Services. Members may also receive grants where grants are  
awarded consistent with normal state procedures. In no case may  
any member vote on the award of a contract or grant for which the  
member has submitted a bid or proposal.

34 7. Meetings. The board shall periodically meet in various  
36 geographic regions of the State. When considering an enforcement  
38 action, the board shall attempt to meet in the geographic region  
where the alleged violation occurred.

#### §4204. Powers of board

40 1. Establishment of categories and standards. The board  
42 shall adopt rules in accordance with Title 5, chapter 375,  
subchapter II that:

44 A. Establish categories, and where applicable  
46 subcategories, of commercial applicators and government  
48 pesticide supervisors depending upon the nature and extent  
50 of the pesticide use, the type of pesticide equipment, the  
degree of knowledge or skill required in their application  
and any other factors the board considers relevant, provided  
that the categories are consistent with, but not limited to,

2 the categories established by the United States  
3 Environmental Protection Agency;

4 B. Establish competency standards for the established  
6 categories for the certification and renewal of  
8 certification of commercial applicators. The standards must  
10 require, as a minimum, that the applicant demonstrate, by  
12 written examination and, as appropriate, performance  
testing, knowledge of pests, formulation and labeling of  
pesticides, equipment and application techniques, safety  
precautions, potential harmful effects on the environment,  
and applicable federal and state laws and regulations;

14 C. Establish standards for the certification and renewal of  
16 certification of private applicators. The standards must  
18 require that the private applicator indicate satisfactory  
20 knowledge of pest problems and pest control practices,  
22 including as a minimum the ability to recognize common pests  
24 and the damage they cause, to understand the pesticide  
26 label, to apply pesticides in accordance with label  
instructions and warnings, to recognize local environmental  
situations that must be considered to avoid contamination,  
to recognize poisoning symptoms and corrective procedures,  
and to understand applicable federal and state laws and  
regulations;

28 D. Establish the standards for issuance and renewal of  
30 licenses of pesticide dealers. These standards must  
32 include, but are not limited to, requirements concerning  
34 transportation of pesticides, the applicant's knowledge of  
applicable federal and state statutes, rules and  
regulations, and the applicant's understanding of the  
dangers involved and the precautions necessary for the safe  
storage and distribution of pesticides;

36 E. Establish guidelines and requirements for reporting of  
38 information by commercial applicators, pesticide dealers,  
spray contracting firms and monitors to the board;

40 F. Establish standards for the certification and renewal of  
42 certification of government pesticide supervisors. These  
44 standards may require that the applicant demonstrate, by  
46 written examination and, as appropriate, performance  
48 testing, knowledge of pests, formulation and labeling of  
50 pesticides, equipment and application techniques, safety  
precautions, potential harmful effects on the environment  
and applicable federal and state laws and regulations;

G. Establish standards for the certification and renewal of  
certification of spotters and monitors; and

2 H. Establish standards for the certification and renewal of  
4 certification of spray contracting firms.

6 **2. Cooperation; adoption of rules. The board may:**

8 A. Cooperate with any other agency of this State or its  
10 subdivisions, or with any agency of any other state or the  
12 Federal Government for the purpose of administering this  
14 chapter and of securing uniformity of regulations;

16 B. On its own or in cooperation with other agencies or  
18 persons, publish information it considers appropriate,  
20 including information concerning injury that might result  
22 from improper application or handling of pesticides, and  
24 methods and precautions designed to prevent the injury; and

26 C. Adopt other rules and take other actions as it considers  
28 appropriate to control the use and distribution of  
30 pesticides within the State and to otherwise provide that  
32 the purposes and policies of this chapter are carried out.

34 **3. Chemical substance identification. To the extent**  
36 **permitted under federal law, the board has primary enforcement**  
38 **responsibility for inspection of any workplace subject to the**  
40 **provisions of Title 26, chapter 22, solely because of the**  
42 **presence of a pesticide. The board has primary enforcement**  
44 **responsibility for training programs to be provided by employers**  
46 **under Title 26, chapter 22, in those instances where the employer**  
48 **is subject to the provisions of that law solely because of the**  
50 **presence or use of a pesticide.**

The board shall assist the Director of the Bureau of Labor  
Standards in providing education and training in accordance with  
Title 26, section 1720, to aid agricultural employers in  
complying with the federal requirements for hazard communication  
and shall assist the responsible state agencies in providing  
education and training to aid agricultural employers in complying  
with the federal requirements for emergency and hazardous  
chemical inventory forms and community right-to-know reporting.

42 **4. Designation of critical areas. The board may designate**  
44 **critical areas which may include, but are not limited to, areas**  
46 **where pesticide use would jeopardize endangered species or**  
48 **critical wildlife habitat, present an unreasonable threat to**  
50 **quality of the water supply, be contrary to a master plan for the**  
**area where the area is held or managed by an agency of the State**  
**or Federal Government, or would otherwise result in unreasonable**  
**adverse effects on the public health, welfare or the environment**  
**of the area. The designation of a critical area may prohibit**

2 pesticide use or may include limitations on pesticide use as the  
4 board considers appropriate. The proceedings to designate a  
6 critical area under this section must conform to Title 5, chapter  
8 375, subchapter II.

10 The board, by rule, shall establish criteria for designation of  
12 critical areas.

14 In addition to the provisions of the Maine Administrative  
16 Procedure Act, Title 5, section 8001, any municipality and, for  
18 the purpose of representing unorganized territory, any county may  
20 petition the board for establishment of a critical area within  
22 their boundaries. If the board designates a critical area, the  
24 board shall develop a pesticide management plan for that area  
26 after receiving comments from the municipality or, for  
28 unorganized territory, the county; the volunteer medical advisory  
30 panel as established through the board; local applicators; owners  
32 of land within the critical area; and other interested parties  
34 and agencies.

36 **5. Disclosure of rights. When issuing a license, the board**  
38 **shall provide to each licensee a written statement outlining the**  
40 **enforcement process and the process of negotiating agreements in**  
42 **lieu of court action that may occur in the event enforcement**  
44 **action is pursued. The Department of the Attorney General and**  
46 **the Department of Agriculture, Food and Rural Resources shall**  
48 **assist the board in developing an appropriate written statement.**

50 **6. Notification. Whenever the board or its staff**  
**investigates a complaint alleging a violation of rules adopted**  
**pursuant to Title 7, section 606, subsection 2, paragraph G, the**  
**staff shall make all reasonable efforts to notify the alleged**  
**violator, if identity is known, prior to collecting samples.**

**§4205. Exercise of powers by Board of Pesticides Control**

The powers established under the Maine Pesticide Control Act  
of 1975, Title 7, chapter 103, subchapter II-A, must be exercised  
by the Board of Pesticides Control established by section 4203.

**§4206. Certification and licenses**

42 **1. Certification required; commercial applicators and spray**  
44 **contracting firms. Certification is required for commercial**  
46 **applicators and spray contracting firms as follows.**

48 A. No commercial applicator may use or supervise the use of  
50 any pesticide within the State without prior certification  
from the board, except that a competent person who is not  
certified may use a pesticide under the direct supervision

2 of a certified applicator, and except as provided in  
3 paragraph C.

4 B. No spray contracting firm may use or supervise the use  
5 of any pesticide within the State without prior  
6 certification from the board.

8 C. The board may by rule provide for exemptions from  
9 certification requirements and for reduced certification  
10 requirements for classes of commercial applicators of  
11 general use pesticides applied by hand or nonpowered  
12 equipment, provided that the board finds that applications  
13 by those classes do not pose a significant risk to health or  
14 the environment and the requirement of certification does  
15 not serve a meaningful public purpose.

16 2. Certification required, private applicators. No private  
17 applicator may use or supervise the use of any limited or  
18 restricted use pesticide without prior certification from the  
19 board, except that a competent person who is not certified may  
20 use such a pesticide under the direct supervision of a certified  
21 applicator.

24 3. Certification required; government pesticide supervisor.  
25 No government pesticide supervisor may supervise the use of any  
26 pesticide without prior certification from the board, provided  
27 that the person who actually uses the pesticide must be certified.

30 4. Certification required; spotters and monitors. No  
31 person may:

32 A. Act as a spotter without prior certification from the  
33 board; or

34 B. Act as a monitor without prior certification from the  
35 board.

38 5. License required, pesticide dealers. No pesticide dealer  
39 may:

40 A. Distribute any limited or restricted use pesticide  
41 without a distributor's license from the board; or

44 B. Distribute limited or restricted use pesticides to any  
45 person who is not licensed or certified by the board.

48 6. Application. Application for licenses or certification  
49 must be accompanied by a reasonable fee established by the board.  
50 The applicant shall provide any information regarding the  
applicant's qualifications and proposed operations and other

2 relevant matters required by the board. Commercial applicators  
3 and spray contracting firms must be required by the board to  
4 provide proof of financial responsibility in custom application  
5 in amounts designated by the board by rule. The board may also  
6 require private applicators to provide proof of financial  
7 responsibility. All applicants to the board for certification or  
8 licensing must be required to comply with standards of competency  
9 established by the board concerning adequate knowledge of  
10 pesticide distribution or use and the related dangers and  
11 necessary precautions; provided that, in the case of applicants  
12 for commercial certification and pesticide dealers' licenses,  
13 compliance must be demonstrated by written examination in  
14 addition to other criteria, including performance testing,  
15 established by the board.

16 7. Issuance. No license or certification may be issued by  
17 the board, unless the board determines that the standards for  
18 licensing and certification have been met as to those categories  
19 for which the applicant has applied and qualified. In the case  
20 of the spotter and monitor, the board shall set minimal  
21 proficiency requirements with the understanding that the board  
22 may choose to change these standards from time to time. The  
23 enforcement personnel of the Board of Pesticides Control must be  
24 certified to meet at least the minimal proficiency requirements  
25 required of spotters and monitors. If a license or certification  
26 is not issued as applied for, the board shall provide written  
27 notice to the applicant of the reasons therefor. The license or  
28 certificate may be issued upon terms and conditions the board  
29 considers necessary for the protection of the public health,  
30 safety and welfare, and for enforcement and administration of  
31 this chapter and the rules adopted pursuant to this chapter.

32 8. Renewal. Certification of commercial applicators,  
33 government pesticide supervisors, spotters, monitors, spray  
34 contracting firms and licenses of pesticide dealers are valid for  
35 one year from the date of issuance. Certification of private  
36 applicators are valid for the period prescribed by the board by  
37 rule. Application for renewal must be accompanied by a reasonable  
38 fee as the board establishes by rule. The board may, by rule,  
39 require that the renewal application include reexamination or  
40 other procedures designed to ensure a continuing level of  
41 competence to distribute, use or supervise the use of pesticides  
42 safely and properly.

44 If the board fails to renew a license upon application of the  
45 licensee or certificate holder, it shall afford the licensee or  
46 certificate holder an opportunity for a hearing in conformity  
47 with Title 5, chapter 375, subchapter IV.

50 9. Suspension. The following provisions govern suspensions.

2 A. If the board determines that there are grounds for  
4 revocation of a license or certificate, it may temporarily  
6 suspend the license or certificate pending inquiry and  
8 opportunity for hearing. No suspension may extend for longer  
10 than 45 days.

12 B. The board shall notify the licensee or certificate  
14 holder of the temporary suspension, indicating the basis for  
16 the temporary suspension and informing the licensee or  
18 certificate holder of the right to request a public hearing.

20 C. If the licensee or certificate holder fails to request a  
22 hearing within 20 days of the date of suspension, the right  
24 is waived. If the licensee or certificate holder requests a  
26 hearing, notice must be given at least 20 days prior to the  
28 hearing to the licensee or certificate holder and to  
30 appropriate federal and state agencies. In addition, public  
32 notice must be given by publication in a newspaper of  
34 general circulation in the State and any other publications  
36 the board considers appropriate.

38 D. The provisions of Title 4, chapter 25 or Title 5,  
40 chapter 375 do not apply to this subsection.

42 10. Revocation. The Administrative Court may suspend or  
44 revoke the certification or license of a licensee or certificate  
46 holder upon a finding that the applicant:

48 A. Is no longer qualified;

50 B. Has engaged in fraudulent business practices in the  
application or distribution of pesticides;

C. Used or supervised the use of pesticides applied in a  
careless, negligent or faulty manner or in a manner that is  
potentially harmful to the public health, safety or welfare  
or the environment;

D. Has stored, transported or otherwise distributed  
pesticides in a careless, faulty or negligent manner or in a  
manner that is potentially harmful to the environment or to  
the public health, safety or welfare;

E. Has violated the provisions of this chapter or the rules  
adopted under this chapter;

F. Has made a pesticide recommendation, use or application,  
or has supervised a use or application, inconsistent with  
the labeling or other restrictions imposed by the board;

2 G. Has made false or fraudulent records or reports required  
4 by the board under this chapter or under rules adopted under  
6 this chapter;

8 H. Has been subject to a criminal conviction under section  
10 14 (b) of the amended FIFRA or a final order imposing a  
12 civil penalty under section 14 (a) of the amended FIFRA; or

14 I. Has had the license or certificate, that supplied the  
16 basis for the Maine license or certification pursuant to  
18 subsection 12, revoked or suspended by the appropriate  
20 federal or other state government authority.

22 11. State, federal and local government employees.  
24 Individuals who apply pesticides in connection with their duties  
26 as officials or employees of federal, state or local governments  
28 are subject to the provisions of this chapter concerning licenses  
30 and certification, but are exempt from the payment of any fee.

32 12. Nonresident licenses. The board may issue a license or  
34 certificate without examination to nonresidents who are licensed  
36 or certified by another state or the Federal Government  
38 substantially in accordance with the provisions of this chapter.  
40 Licenses or certificates issued pursuant to this subsection may  
42 be suspended or revoked in the same manner and on the same  
44 grounds as other licenses or certificates issued pursuant to this  
46 chapter. Licenses and certificates issued pursuant to this  
48 subsection may be suspended or revoked pursuant to subsection 10,  
50 paragraph I.

13. Arborists. In the case of persons licensed under Title  
32 32, chapter 29, subchapter II, the board may waive the  
34 application fee and may consider the arborist license as prima  
36 facie evidence of qualification to use pesticides in the  
38 categories of use provided by Title 32, chapter 29.

#### §4207. General use pesticide dealers

40 1. License required. Unless exempted under subsection 4,  
42 no person may distribute general use pesticides without a license.

44 2. Issuance of license. The board shall issue a license to  
46 distribute general use pesticides to any person upon payment of a  
48 fee of \$20 for a calendar year or any part of a calendar year.  
50 Any person licensed to distribute restricted use pesticides must  
be considered licensed to distribute general use pesticides  
without any additional fee. All fees collected under this  
section must be deposited in the Board of Pesticides Control  
Special Fund.

2 3. Records; reporting. Any person licensed to distribute  
4 general use pesticides shall keep and maintain records of annual  
6 pesticide sales for all liquid products sold in containers of one  
8 quart or more or solid products weighing 5 pounds or more. Those  
10 records must include the name of the pesticide, the concentration  
12 of active ingredients and the quantity sold, and must be kept on  
14 a calendar year basis. The records must be kept for 2 years  
16 after the end of the calendar year. The board may not require  
18 record keeping on the sale of household use pesticide products.  
20 All general use pesticide dealers shall submit annually a report  
22 to the board showing total sales volumes and weights of each  
24 pesticide required to be recorded under this subsection.

26 4. Exemptions. The following situations are exempt from  
28 the provisions of this section.

30 A. Any person may distribute the following products without  
32 a general use pesticide dealer license:

34 (1) Household use pesticide products with no more than  
36 3% active ingredients;

38 (2) The following products, which have limited  
40 percentages of active ingredients:

42 (a) Dichlorovos, DDVP, impregnated strips with  
44 concentrations not more than 25% in resin strips  
46 and pet collars; and

48 (3) The following products with unlimited percentages  
50 of active ingredients:

(a) Pet supplies such as shampoos, tick and flea  
collars and dusts;

(b) Disinfectants, germicides, bactericides and  
virucides;

(c) Insect repellents;

(d) Indoor and outdoor animal repellents;

(e) Moth flakes, crystals, cakes and nuggets;

(f) Indoor aquarium supplies;

(g) Swimming pool supplies;

(h) Pediculocides and mange cure on humans;

2 (i) Aerosol products; and

4 (j) General use paints, stains and wood  
6 preservatives and sealants.

8 B. The board may adopt rules to exempt the sale of  
10 additional general use pesticide products from the dealer  
12 licensing provisions of this section.

#### 14 §4208. Aquatic application, permit required

16 No person may apply or cause to be applied a pesticide to  
18 the waters of the State without obtaining a waste discharge  
20 license from the Department of Environmental Protection pursuant  
22 to Title 38, chapter 3, subchapter I, Article 2.

#### 24 §4209. Critical areas

26 No person may apply pesticides to any area of the State that  
28 the board has determined to be a critical area, except to the  
30 extent the application is within the limits prescribed by the  
32 board in establishing the area.

#### 34 §4210. Reports

36 1. Pesticide dealers to maintain certain records. All  
38 pesticide dealers shall maintain records of pesticide  
40 distribution for a period of at least 2 years and shall provide  
42 reports and information the board, by rule, requires.

44 2. Applicators and firms to maintain certain records. All  
46 commercial applicators and spray contracting firms shall  
48 maintain, for a period of at least 2 years, records indicating  
the type and amount of pesticide used, the area of use and other  
information the board requires. Applicators and firms shall  
provide any information, notification and reports the board, by  
rule, requires.

#### 50 §4211. Chemical control of vertebrate animals

No person may use poisons to kill vertebrate land animals  
except as follows.

1. Chemical control of vertebrate animals. The board may  
grant permits to use poisons for chemical control of vertebrate  
animals to members of its staff and to agents of the United  
States Fish and Wildlife Service.

2 2. Use poisons to control wild dogs. The board, its staff  
or agents may in emergencies, use poisons to control wild dogs or  
4 other wild animals.

6 3. Control of rats and mice. The control of rats and mice  
on public and private property including buildings and municipal  
8 dumps, and the control of English sparrows, starlings and pigeons  
within buildings, is exempt from this section, provided that the  
control is performed in accordance with this chapter, the rules  
10 of the board and the directions on the label of the registered  
pesticide employed.

12 **§4212. Storage of illegal and obsolete pesticides**

14 1. Board to accept illegal and obsolete pesticides. Within  
the limits of resources made available to it for the storage or  
16 disposal of illegal and obsolete pesticides purchased for use in  
Maine, the board shall accept, store and dispose of pesticides  
18 from persons who purchased them with the intent of applying them.

20 2. Board may adopt rules and fees. The board may adopt any  
rules necessary to implement this section, including rules  
22 limiting the quantity and nature of pesticides it accepts for  
storage or disposal. The board may adopt and charge fees for  
24 storage or disposal of pesticides presented to it if the amount  
of pesticides, or special treatments necessary for safe storage  
26 or disposal, will require a substantial cost to the board. The  
fees charged must be close to the actual cost incurred by the  
28 board.

30 **§4213. Return and disposal of limited and restricted use**  
32 **pesticide containers**

34 1. Purpose. The purpose of this section is to ensure the  
triple rinsing or equivalent of limited and restricted use  
36 pesticide containers in accord with the board's rules, and  
provide an incentive through a deposit system for the return of  
triple rinsed pesticide containers. All limited and restricted  
38 use pesticide containers must have a sticker supplied by the  
board. That sticker must be used to identify those limited and  
40 restricted use pesticide containers for which a deposit is  
42 required.

44 2. Scope. This section applies to all limited and  
restricted use pesticide containers, excluding those packaged in  
46 a cardboard, fiberboard or paper container, that are sold,  
bartered or traded within the State, or that, though purchased  
48 out-of-state, are held for use or used within the State.

2 3. Deposit established. The board shall by rule establish  
a deposit for restricted and limited use pesticide containers  
4 within the scope of this section that are sold, bartered or  
traded within the State, or that, though purchased out-of-state,  
6 are held for use or used within the State. The deposit amount  
should be sufficient to promote the return of the limited and  
8 restricted use pesticide containers.

10 These rules adopted by the board in accordance with the Maine  
Administrative Procedure Act, Title 5, chapter 375, are  
thereafter in effect until 90 days after the date of adjournment  
of the next regular session of the Legislature, unless the next  
regular session adopts by legislative enactment those rules.

14 4. Deposits collected. For pesticide containers within the  
scope of this section and purchased within the State, pesticide  
16 dealers shall, at the time of purchase, collect the deposit  
established by the board for each pesticide container. For  
18 pesticide containers within the scope of this section that,  
though purchased out-of-state, are held for use or used within  
20 the State, deposits established by the board must be collected  
and held by the board or its agent, as provided by the board in  
22 its rules.

24 5. Stickers required. Upon the sale, trade or barter of any  
pesticide container subject to this section and purchased in the  
26 State, the pesticide dealer shall affix a sticker supplied by the  
board to identify those containers. For pesticide containers  
28 subject to this section that, though purchased out-of-state, are  
held for use or used within the State, the person who has  
30 ownership or control of the container within the State shall  
obtain and affix a sticker supplied by the board or its agent and  
32 shall pay a deposit to the board or its agent in accordance with  
procedures prescribed by the board by rule. The sticker must  
34 indicate that the deposit has been paid and must be designed in  
accordance with the board's rules.

36 The board may charge a reasonable fee, in addition to the  
required deposit, to pay for the cost of producing and  
distributing stickers.

38 No person may possess a limited or restricted use pesticide  
container subject to this section without a properly approved and  
affixed sticker, except pesticide dealers and distributors may  
hold containers if they are for sale and not for personal use.

42 6. Deposits refunded. Deposits must be refunded by  
44 pesticide dealers on all pesticide containers bearing the board's  
stickers at the place of business of the pesticide dealer who  
46 sold, bartered or traded the restricted or limited use pesticide,  
48  
50



2 or if purchased out-of-state, by the board or its agent, or at a  
4 place otherwise established by rule, provided that the containers  
6 have been triple rinsed or the equivalent in accord with the  
8 board's rules prior to return.

7. Authority to adopt rules. The board may adopt rules and  
take other actions it considers necessary to carry out the  
provisions of this section.

#### §4214. Notification and monitoring

1. Purpose. The purpose of this section is to protect the  
public health and safety by requiring a system of notification to  
the public and to the board for forest insect aerial spray  
projects and by improving the monitoring of these projects.

2. Scope. The requirements of this section apply to public  
and private forest insect aerial spray pesticide applications.

3. Notification to the public. Prior to the commencement of  
a forest insect aerial spray application, notice must be given to  
the public as follows.

A. If the project is a major forest insect aerial spray  
application the notification must be as follows.

(1) At least 14 days, but not more than 30 days, prior  
to spray application, notice must be published in a  
newspaper of general circulation in the area affected.  
The notice must describe the proposed spray activity,  
the area to be sprayed, the pesticide to be used, the  
date or dates on which the spraying is proposed to take  
place, any public precautions that appear on the  
pesticide label and the name, address and telephone  
number of persons responsible for the activity from  
whom more specific information regarding spray areas  
and times may be obtained.

(2) Any additions of spray blocks or changes in the  
choice of insecticides from the notification required  
pursuant to subparagraph (1) must be published in a  
newspaper of general circulation in the area affected  
at least 24 hours before the change is effected.

(3) Notice must be conspicuously posted at each point  
of major ingress and egress of the public into the area  
to be sprayed, including, without limitation, marked  
foot trails known to be used by the public and roads  
accessible to 4-wheeled vehicles and open to the  
public. The notice must contain the information

2 described in subparagraph (1). The board shall  
4 determine the time period the notice must be posted  
6 prior to the commencement and following the completion  
8 of the spray project.

B. If the project is a minor forest insect aerial spray  
application the notification must be as follows: Notice in a  
newspaper of general circulation in the areas affected at  
least 4 days, but not more than 10 days, before the  
commencement of spray application. The notice must contain  
the information required in paragraph A, subparagraph (1).

C. Notice must otherwise be provided, as required by rule  
or order of the board, when that board determines additional  
notification procedures to be necessary to reach the  
affected public.

4. Notification to the board. Written notice must be given  
to the board:

A. At least 15 days, but not more than 30 days, prior to  
the commencement of a major forest insect aerial spray  
application; or

B. At least 5 days prior to the commencement of a minor  
forest insect aerial spray application.

The notice must contain the information required under subsection  
3, paragraph A, subparagraph (1), and must also include any other  
information required by the board. The notice must be on the form  
prescribed by the board.

5. Reports. The following reports must be prepared.

A. Following the completion of each spray period, a written  
spray period report prepared by the monitor must be made  
available to the board within a reasonable time period  
established by the board.

The report must describe the spray activity, must certify  
the area actually sprayed and the pesticide used, weather  
conditions at the time, a map showing where spray booms were  
turned on and off and any nontarget areas that were sprayed,  
and the date and time on which spraying took place. The  
report must be on the form and filed in accordance with  
procedures prescribed by the board.

B. If a reportable spray incident occurs, a spray incident  
report must be telephoned to the board immediately following  
the completion of each spray period. A reportable spray

2 incident is a misapplication that may result in a potential  
3 threat to public health or the environment, including,  
4 without limitation: Failure to turn off spray booms over  
5 sensitive areas such as water bodies or human habitation;  
6 aircraft accidents involving chemical spills; and accidental  
7 discharge of insecticide, causing risk to human health. The  
8 report must be on the form and filed in accordance with  
9 procedures prescribed by the board.

10 The spray contracting firm or applicator is responsible for  
11 complying with the requirements of this section.

12 C. A project report as described in the board's rules must  
13 be filed in accordance with procedures prescribed by the  
14 board.

15 6. Responsibility. The following parties are responsible  
16 for complying with the requirements of this section, unless  
17 otherwise provided:

18 A. In the case of a forest insect aerial spray program  
19 administered pursuant to Title 12, chapter 803, the Bureau  
20 of Forestry; and

21 B. In the case of any other forest insect aerial spray  
22 activities, the landowner or the landowner's representative,  
23 or, if the land is leased, the lessee.

#### 24 §4215. Requirement for spotters and monitors

25 Major public and private forest insect aerial spray projects  
26 shall employ spotters and monitors. These personnel must be  
27 certified pursuant to section 4206, subsection 4. At least one  
28 spotter and one monitor must be with each spray aircraft or spray  
29 aircraft team during all spray application activities. No spotter  
30 or monitor may serve as the pilot of any aircraft involved in the  
31 spray project.

#### 32 §4216. Exemption

33 The board may exempt a person from compliance with one or  
34 more of the requirements of sections 4214 and 4215, if the board  
35 finds that the exemption will not result in any unreasonable risk  
36 to the public's health, safety or general welfare and is  
37 otherwise in the public interest. Any request for exemption must  
38 be made in writing to the board and must state the reasons for  
39 the request. The board may not grant any exemption, except  
40 following notice to the public and opportunity for hearing.  
41 Notice and opportunity for hearing must be in a manner prescribed  
42 by the board and may be at variance with the requirements of the

2 Maine Administrative Procedure Act, Title 5, chapter 375, to the  
3 extent that the board considers necessary under the circumstances.

#### 4 §4217. Municipal ordinances

5 1. Centralized listing. The board shall maintain for  
6 informational purposes, for the entire State, a centralized  
7 listing of municipal ordinances that specifically apply to  
8 pesticide storage, distribution or use.

9 2. New ordinances. The clerk of the municipality shall  
10 provide the board with notice and a copy of any ordinance to be  
11 listed under subsection 1 at least 7 days prior to the meeting of  
12 the legislative body or the public hearing at which adoption of  
13 the ordinance will be considered. The clerk shall notify the  
14 board within 30 days after adoption of the ordinance.

15 3. Intent. It is the intent of this section to provide  
16 information on municipal ordinances. This section does not  
17 affect municipal authority to enact ordinances.

18 4. Failure to file. For any ordinance that is not filed  
19 with the board, with notice given to the board in accordance with  
20 this section, that is otherwise valid under the laws of this  
21 State, any provision that specifically applies to storage,  
22 distribution or use of pesticides is void and of no effect after  
23 the deadline for filing and until the board is given proper  
24 notice and the ordinance is filed with the board.

#### 25 §4218. Local participation

26 1. Representation. When the board, under section 4204,  
27 considers the designation of a critical area or the establishment  
28 of a pesticide management plan for a critical area, the municipal  
29 officers of any affected municipality, or county commissioners in  
30 the case of unorganized territories, must be given the  
31 opportunity to select a local representative to serve as an  
32 additional board member. For a given action, there must be only  
33 one local representative who represents the affected municipality  
34 or unorganized territory.

35 2. Participation and voting procedure. A local  
36 representative appointed under this section may participate  
37 officially and vote in deliberations on the designation of a  
38 critical area or on the establishment of a pesticide management  
39 plan only for a critical area that is in the municipality or  
40 unorganized territory represented. A local representative may  
41 participate on the board until final designation of the critical  
42 area or final establishment of the pesticide management plan,  
43 including any administrative or judicial appeals. When the board

2 considers a proposed critical area or pesticide management plan  
3 that affects more than one municipality, the board shall take  
4 separate action on the portion in each municipality.

5 3. Compensation. Local representatives are eligible to be  
6 reimbursed only for expenses as regular board members during the  
7 period of their service, to be paid by the board.

#### 8 §4219. Inspection

9 Upon presentation of appropriate credentials, the chair or  
10 any member of the board or any authorized employee or consultant  
11 of the board may enter upon any public or private premises at  
12 reasonable times for the purpose of inspecting any equipment,  
13 device or apparatus used in applying pesticides; inspecting  
14 storage and disposal areas; inspecting or investigating  
15 complaints of injury to persons or land from pesticides;  
16 observing the use and application of pesticides; sampling  
17 pesticides in use or storage; and sampling pesticide residues on  
18 crops, foliage, soil, water or elsewhere in the environment. Upon  
19 denial of access to the board or its agents, the board or its  
20 agents may seek an appropriate search warrant in a court of  
21 competent jurisdiction. Notwithstanding other provisions of this  
22 section, a board member or any authorized employee or consultant  
23 of the board may enter public or private premises without  
24 notification if an emergency exists. The need to take a residue  
25 sample in a timely manner constitutes an emergency under this  
26 section.

#### 27 §4220. Penalties

28 A person who violates any provision of this chapter or any  
29 order, rule, decision, certificate or license issued by the board  
30 or commits any act constituting a ground for revocation, except  
31 acts punishable under section 4206, subsection 10, paragraphs A  
32 and H, commits a civil violation subject to the penalties  
33 established in Title 7, section 616-A.

#### 34 §4221. Appeal

35 Any person aggrieved by any action of the board may obtain a  
36 review of that action by filing in the Superior Court, within 30  
37 days of notice of the action, a written petition asking that the  
38 action of the board be set aside. A copy of the petition must  
39 immediately be delivered to the board, and within 30 days  
40 thereafter the board shall certify and file in the court a  
41 transcript of evidence received. The court may affirm, set aside  
42 or modify the action of the board, except that the findings of  
43 the board as to the facts, if supported by substantial evidence,  
44 are conclusive.

#### 2 §4222. Subpoenas

3 The board may issue subpoenas to compel the attendance of  
4 witnesses and production of any books, documents and records  
5 anywhere in the State in any hearing affecting the authority or  
6 privilege granted by a license or permit issued under this  
7 chapter, that are relevant to proceedings of the board. If any  
8 person refuses to obey a subpoena issued by the board under this  
9 section, the board may apply to any Justice of the Superior Court  
10 for an order compelling the person to comply with the  
11 requirements of the subpoena. The justice may issue an order  
12 compelling the person to comply with the requirements of the  
13 subpoena and may punish failure to obey the order as contempt.

### 14 CHAPTER 229

#### 15 SMOKING

#### 16 SUBCHAPTER I

#### 17 SMOKING GENERALLY

#### 18 §4301. Definitions

19 As used in this subchapter, unless the context otherwise  
20 indicates, the following terms have the following meanings.

21 1. Designated smoking area. "Designated smoking area"  
22 means an enclosed area designated as a place for smoking. A  
23 designated area must be designed to minimize smoke escaping from  
24 the designated area into a public place.

25 2. Enclosed area. "Enclosed area" means a space between a  
26 floor and a ceiling that is demarcated on all sides by  
27 floor-to-ceiling walls, windows, doors or passageways.  
28 Partitions, partial walls or office dividers that do not extend  
29 from the floor to the ceiling are not demarcations of enclosed  
30 areas.

31 3. Private office. "Private office" means an enclosed area  
32 that constitutes the work area for no more than one person.

33 4. Public place. "Public place" means any place not open  
34 to the sky into which the public is invited or allowed. Except  
35 as provided in section 4302, subsection 2, paragraph J, a private  
36 residence is not a public place.

37 5. Restaurant. "Restaurant" means a restaurant as defined  
38 in section 4402, subsection 1.

2 6. Smoking. "Smoking" includes carrying or having in one's  
3 possession a lighted cigarette, cigar, pipe or other object  
4 giving off tobacco smoke.

6 **§4302. Smoking prohibited in public places**

8 1. Prohibition. Smoking is prohibited in all enclosed  
9 areas of public places and all rest rooms made available to the  
10 public.

12 2. Limitations. The prohibition in subsection 1 is subject  
13 to the following limitations.

14 A. Smoking is not prohibited in an enclosed area of a  
15 public place during a period of time that the facility  
16 containing the enclosed area of the public place is not open  
17 to the public.

18 B. Smoking is not prohibited in theaters or other enclosed  
19 structures used for plays, lectures, recitals or other  
20 similar purposes if the smoking is solely by a performer and  
21 the smoking is part of the performance.

22 C. Smoking is not prohibited in any area where undertaken  
23 as part of a religious ceremony or as part of a cultural  
24 activity by a defined group.

25 D. Smoking in restaurants is governed by the provisions of  
26 section 4402.

27 E. Smoking in places of employment is governed by the  
28 provisions of subchapter II. If public employees' rights  
29 provided in collective bargaining agreements are affected by  
30 this section, the employees have the right to reopen  
31 negotiations for the purpose of bargaining for smoking areas  
32 in nonpublic areas of publicly owned buildings.

33 F. Smoking in hospitals is governed by the provisions of  
34 section 4404.

35 G. Smoking is not prohibited in taverns or lounges.

36 H. Smoking is not prohibited in motel or hotel rooms that  
37 are rented to members of the public.

38 I. Smoking is not prohibited in those portions of public  
39 places consisting of private offices when no member of the  
40 public is present, subject to the provisions of subchapter

2 II and provided that smoking may be allowed in a private  
3 office.

4 J. Smoking is not prohibited in a private residence unless  
5 the private residence is used as a licensed day care or  
6 baby-sitting service, in which case that portion of the  
7 private residence used to care for children is a public  
8 place for the period of time that children who are being  
9 cared for are present in that portion of the residence.

10 K. Smoking is not prohibited in public places when beano or  
11 bingo games are being conducted in accordance with the  
12 provisions of Title 17, sections 314 and 314-A.

13 L. Smoking is not prohibited in a retail store under 2,000  
14 square feet that primarily sells tobacco or tobacco-related  
15 products.

16 M. Smoking is not prohibited on privately chartered buses.

17 3. Location of designated smoking area. Nothing in this  
18 subchapter prohibits the location of a designated smoking area  
19 within a public area, as long as no sales, services or other  
20 commercial or public activities are conducted in that area.

21 **§4303. Posting signs**

22 Signs must be posted conspicuously in buildings where  
23 smoking is regulated by this subchapter. Designated areas must  
24 have signs that read "Smoking Permitted" with letters at least  
25 one inch in height. Places where smoking is prohibited must have  
26 signs that read "No Smoking" with letters at least one inch in  
27 height or the international symbol for no smoking.

28 **§4304. Retaliation prohibited**

29 A person may not discharge, refuse to hire, discipline or  
30 otherwise retaliate against an employee or applicant who pursues  
31 any remedy available to enforce the requirements of this  
32 subchapter.

33 **§4305. Penalty**

34 A person who violates any provision of this subchapter  
35 commits a civil violation for which a forfeiture not to exceed  
36 \$100 may be adjudged.

37 **SUBCHAPTER II**

38 **SMOKING IN THE WORKPLACE**

2 **§4351. Title**

4 This subchapter may be cited as the "Workplace Smoking Act  
6 of 1985."

8 **§4352. Definitions**

10 As used in this subchapter, unless the context indicates  
12 otherwise, the following terms have the following meanings.

14 1. Business facility. "Business facility" means a  
16 structurally enclosed location or portion thereof at which  
18 employees perform services for their employer. A business  
20 facility does not include any workplace or portion of a workplace  
22 that also serves as the employee's or employer's personal  
24 residence.

26 2. Employee. "Employee" means a person who performs a  
28 service for wages or other remuneration under a contract of hire,  
30 written or oral, expressed or implied. Employee includes a person  
32 employed by the State or a political subdivision of the State.

34 3. Employer. "Employer" means a person who has one or more  
36 employees. Employer includes an agent of an employer and the  
38 State or a political subdivision of the State.

40 4. Smoking. "Smoking" means carrying or having in one's  
42 possession a lighted cigarette, cigar, pipe or other object  
44 giving off or containing any substance giving off tobacco smoke.

46 **§4353. Policy; notice**

48 Each employer shall establish, or may negotiate through the  
50 collective bargaining process, a written policy concerning  
smoking and nonsmoking by employees in that portion of any  
business facility for which the employer is responsible. In  
order to protect the employer and employees from the detrimental  
effects of smoking by others, the policy must prohibit smoking  
except in designated smoking areas. The policy may prohibit  
smoking throughout the business facility. The employer shall  
post and supervise the implementation of the policy, and the  
employer shall provide a copy of this policy to any employee upon  
request. Nothing in this subchapter affects the right of any  
employer to establish policies concerning smoking and nonsmoking  
by members of the public who have access to the business  
facility. Nothing in this subchapter subjects an employer to any  
additional liability, other than liability that may exist by law,  
for harm to an employee from smoking by others in any business  
facility covered by this subchapter.

2 The bureau shall accept inquiries from employers and employees  
4 and shall, when requested, assist employers in developing a  
6 policy.

8 **§4354. Violations**

10 Failure to establish, post or supervise the implementation  
12 of a policy is a civil violation for which a fine of not more  
14 than \$100 may be adjudged. The bureau may enforce provisions of  
16 this subchapter.

18 **§4355. Civil remedies**

20 Nothing in this subchapter precludes any person from  
22 pursuing, in any court of competent jurisdiction, any civil  
24 remedy that person may have at law or in equity for harm  
26 occasioned to that person from smoking by others in any business  
28 facility covered by this subchapter.

30 **§4356. Discharge, discipline or discrimination against employees**

32 It is unlawful for any employer to discharge, discipline or  
34 otherwise discriminate against any of its employees because that  
36 employee has assisted in the supervision or enforcement of this  
38 subchapter.

40 **§4357. Application**

42 This subchapter does not apply to any business facility  
44 where policies concerning smoking have been mutually agreed upon  
46 by employer and all the employees.

48 **SUBCHAPTER III**

50 **SMOKING IN OTHER LOCATIONS**

**§4401. Tobacco use in elementary and secondary schools prohibited**

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

A. "Elementary or secondary school" means any public  
elementary or secondary school approved in accordance with  
Title 20-A, chapter 206, subchapter I.

B. "Principal" has the same meaning as defined in Title  
20-A, section 1, subsection 21.

2 C. "Student" means any elementary or secondary student  
enrolled in an elementary or secondary school as defined in  
4 Title 20-A, chapter 1.

6 D. "Tobacco use" includes smoking, which means carrying or  
having in one's possession a lighted cigarette, cigar, pipe  
8 or other object giving off or containing any substance  
giving off smoke, and the use of smokeless tobacco.

10 2. Prohibition. Except as provided in subsections 3 and 4,  
no student or school employee may use tobacco in the buildings or  
12 on the grounds of any elementary or secondary school while school  
is in session.

14 3. Exceptions. Tobacco use may be permitted in classrooms  
only as part of a bona fide demonstration during a class lesson,  
16 with prior notice being given to the school's administrator.

18 4. Employees. School employees are prohibited from tobacco  
use in school buildings or on school grounds, except that a local  
20 school board or school employees may establish through collective  
bargaining a designated smoking area or areas in accordance with  
22 section 4353. Any school employee smoking area must be located  
away from areas frequented by students.

24 5. Public. Tobacco use by any member of the public, other  
than an employee or student, in school buildings and on school  
26 grounds is governed by subchapter I.

28 6. Enforcement. The principal of the elementary or  
secondary school, or the principal's designee, shall enforce the  
30 law prohibiting and restricting tobacco use under this section.

32 **§4402. Smoking in restaurants**

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

38 A. "Restaurant" means any enclosed indoor restaurant or  
other enclosed indoor establishment which invites the public  
40 to be served food for consumption on the premises.

42 B. "Smoking" means carrying or having in one's possession a  
lighted cigarette, cigar, pipe or other object giving off or  
44 containing any substance giving off tobacco smoke.

46 2. Restaurants. Smoking in restaurants is governed by the  
following.

2 A. Restaurants shall provide for their patrons a no-smoking  
area reasonably calculated to address the needs of the  
4 nonsmoking public. The department shall, by rule adopted in  
accordance with Title 5, chapter 375, define "reasonably  
6 calculated."

8 B. Restaurants shall display prominently, at or near the  
entrance, a sign indicating their policy on seating smokers  
and nonsmokers and shall encourage customers to make their  
10 seating requests known. A sign need not be displayed if a  
host or hostess seats customers and indicates verbally at  
12 the time of seating the restaurant's policy and the location  
of the smoking and no-smoking areas in the restaurant.

14 C. Nothing in this subsection prohibits a restaurant from  
designating more than 50% of its indoor seating or all of  
16 its indoor seating as a no-smoking area.

18 3. Violations. Failure to post a sign or announce a  
policy, to provide a no-smoking area as required by subsection 2  
20 or to comply with rules adopted pursuant to subsection 2 is a  
civil violation for which a forfeiture of not less than \$100 nor  
22 more than \$500 may be adjudged.

24 4. Licensure requirement. The department shall adopt  
rules, pursuant to section 3706, that make the failure to provide  
26 for a no-smoking area under the provisions of subsection 2 a  
violation of the eating establishment licensure rules. Employees  
28 of the department inspecting restaurants pursuant to their  
authority under chapter 219 shall determine whether the  
30 restaurant is in compliance with and enforce this section.

32 **§4403. Smoking prohibited in jury rooms**

34 1. Smoking defined. "Smoking" includes carrying or having  
36 in one's possession a lighted cigarette, cigar, pipe or other  
object giving off or containing any substance giving off smoke.

38 2. Smoking prohibited. No person may smoke tobacco or any  
40 other substance in any room used for any meetings or  
deliberations of a jury, except as otherwise provided in this  
42 section.

44 3. Exception. Smoking may be permitted in jury rooms if  
all members present have given their consent for others to smoke.

46 **§4404. Smoking in hospitals**

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

5 A. "Hospital" means any hospital required to be licensed  
6 under chapter 807.

7 B. "Smoking" means carrying or having in one's possession a  
8 lighted cigarette, cigar, pipe or other object giving off or  
9 containing any substance giving off tobacco smoke.

10 2. Prohibition. No person may smoke tobacco or any other  
11 substance in any enclosed area of any hospital, except as  
12 otherwise provided in this section.

13 3. Exception. A patient or resident of a hospital may  
14 smoke in designated areas within the hospital if a licensed  
15 physician has written an order permitting the patient or resident  
16 to smoke or if the patient or resident is being treated in a  
17 psychiatric or substance abuse unit. Patients or residents in  
18 such a unit must have access to, and be permitted to smoke in, a  
19 designated smoking area. The smoking area for the patients or  
20 residents of a psychiatric or substance abuse unit must be  
21 enclosed and adequately ventilated.

22 Any patient or resident in a psychiatric or substance abuse unit  
23 who is allowed to smoke in a hospital under this subsection must  
24 be given access to a designated smoking area unless the patient's  
25 or resident's physician prescribes that having access to a  
26 designated smoking area presents an immediate danger to the  
27 patient or resident or to others.

28 4. Smoking in state mental health institutes. Residents of  
29 a state mental health institute may smoke in a designated smoking  
30 area. The designated smoking area must be enclosed and  
31 adequately ventilated. State mental health institutes shall  
32 design and implement smoking cessation programs for residents.  
33 Smoking by employees at state mental health institutes is  
34 governed by subchapter II.

#### 35 §4405. Smoking in nursing facilities

36 Residents, visitors and personnel in any nursing facility  
37 licensed pursuant to chapter 807 may smoke only in  
38 specifically-designated areas of the nursing facility.

#### 39 CHAPTER 231

#### 40 DISTRIBUTION OF TOBACCO PRODUCTS

#### 41 §4501. Tobacco may not be distributed to nor purchased by minors

42 1. Sale and distribution; penalty. No person may knowingly  
43 sell, furnish, give away or offer to sell, furnish or give away  
44 cigarettes, cigarette paper or any other tobacco product to any  
45 person under the age of 18 years. No person in the business of  
46 selling or otherwise distributing cigarettes, cigarette paper or  
47 other tobacco products for profit nor an employee or agent of  
48 that person may, in the course of that person's business,  
49 distribute free any cigarette, cigarette paper or other tobacco  
50 product to any person under the age of 18 years in any place,  
including, but not limited to, a public way or sidewalk, public  
park or playground, public school or other public building, or an  
entranceway, lobby, hall or other common area of a private  
building, shopping center or mall.

Any person who violates this subsection commits a civil violation  
for which a forfeiture of not less than \$25 nor more than \$200  
may be adjudged for any one offense. Any person who employs a  
person who violates this subsection commits a civil violation for  
which a forfeiture of not less than \$100 nor more than \$1,000 may  
be adjudged. In all cases of violations, the court shall impose  
a forfeiture that may not be suspended, except pursuant to Title  
15, section 3314.

It is an affirmative defense to prosecution under this subsection  
that the defendant sold cigarettes, cigarette paper or any other  
tobacco product to a person under the age of 18 years who  
furnished fraudulent proof of age.

2. Prohibition; purchase by minors; penalty. It is  
unlawful for any person under the age of 18 years to purchase  
cigarettes, cigarette paper or any other tobacco product.

Any person who violates this subsection commits a civil violation  
for which a forfeiture of not less than \$25 nor more than \$200  
may be adjudged for each violation. The judge, as an alternative  
to or in addition to the civil forfeitures permitted by this  
subsection, may assign the violator to perform specified work for  
the benefit of the State, the municipality or other public entity  
or a charitable institution.

3. Display of prohibition against sales to minors. All  
dealers and distributors of tobacco products shall post notice of  
this section prohibiting tobacco and cigarette paper sales to  
persons under the age of 18 years. Notices must be publicly and  
conspicuously displayed in the dealers' or distributors' places  
of business in letters at least 3/8 inches high. Signs required  
by this section may be provided at cost by the Bureau of Liquor  
Enforcement. Any person who violates this subsection commits a

civil violation for which a forfeiture of not less than \$50 nor more than \$200 may be adjudged for any one offense.

4. Cigarette paper defined. As used in this section, the term "cigarette paper" means those paper or paper-like products used to roll cigarettes, that by advertising, design or use facilitate the use of tobacco or other products for inhalation.

#### §4502. Vending machine sales of cigarettes limited to supervised areas

1. Definition. For purposes of this section, "vending machine" means any automated, self-service device that, upon insertion of money, tokens or any other form of payment, dispenses cigarettes.

2. Violation. It is unlawful for any person, firm or corporation to knowingly distribute or sell cigarettes:

A. From a vending machine to a person under the age of 18 years; or

B. From any vending machine except for a vending machine:

(1) From which only cigarettes are dispensed;

(2) On which is affixed to the front of the machine a conspicuously displayed sign with letters at least 1/2 inch in height stating: "WARNING: It is unlawful for a person under the age of 18 to purchase cigarettes in this State. (22 M.R.S.A. §1579)"; and

(3) That is in a location that is at all times under direct supervision of an adult during the hours the machine is accessible.

3. Penalty. Any person, firm or corporation, in control of a facility in which a vending machine is located, who violates this section commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged or for which the person, firm or corporation may be prohibited, for a period of not more than 6 months, from having a cigarette vending machine located on the premises, or both.

4. Application. This section does not apply to any vending machine located in an area where minors are not allowed by law or by policy of the owner of the premises.

#### §4503. Sale of unpackaged cigarettes

1. Prohibition. No person may sell cigarettes except in the original, sealed package in which they were placed by the manufacturer nor may any person sell cigarettes in smaller quantities than placed in the package by the manufacturer.

2. Penalty. Any person who violates this section commits a civil violation for which a forfeiture of not less than \$10 nor more than \$100 must be adjudged. Any person who employs a person who violates this section commits a civil violation for which a forfeiture of not less than \$100 nor more than \$1,000 must be adjudged. In all cases of violations the court shall impose a forfeiture that may not be suspended, except pursuant to Title 15, section 3314.

### CHAPTER 233

#### LEAD POISONING CONTROL ACT

#### §4601. Short title

This chapter may be cited as the "Lead Poisoning Control Act."

#### §4602. Goal

The goal of the State in the area of lead poisoning is to eradicate childhood lead poisoning by the year 2010 through the elimination of potential sources of environmental lead. By January 1, 1997, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over human resource matters regarding progress made toward this goal. The report must include any recommendations the department has to revise the goal, along with any necessary legislation.

#### §4603. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Child; children. "Child" or "children" means a person or persons up to 6 years of age.

2. Children's home. "Children's home" means a children's home as defined in Title 22-A, section 6201, which includes an emergency shelter, family foster home, residential child care facility and specialized children's home.

3. Dwelling. "Dwelling" means a structure, all or part of which is designed or used for human habitation, including a dwelling unit.



2 4. Dwelling unit. "Dwelling unit" means any room, group of  
4 rooms or other areas of a structure designed or used for human  
habitation.

6 5. Environmental lead hazard. "Environmental lead hazard"  
8 means the presence of lead in any form that exceeds the  
permissible concentration and that exists in an unacceptable  
10 condition. "Permissible concentration" and "unacceptable  
condition" are defined by rules adopted by the department.  
12 "Environmental lead hazard" includes, but is not limited to, lead  
in dust, paint, soil or water.

14 6. Environmental lead inspection. "Environmental lead  
inspection" means an assessment performed by a lead inspector to  
16 identify lead-based substances.

18 7. Environmental lead investigation. "Environmental lead  
investigation" means a detailed and extensive investigation to  
20 determine the cause of a confirmed case of lead poisoning in a  
child.

22 8. Health care provider. "Health care provider" means a  
24 physician, clinic, hospital, health maintenance organization,  
home health agency, private clinical laboratory and any other  
26 person or entity that provides primary health care services and  
is registered or licensed by the State.

28 9. Lead abatement. "Lead abatement" means the removal,  
30 renovation, enclosure, repair, encapsulation, handling,  
transportation or disposal of materials that contain lead.

32 10. Lead abatement contractor. "Lead abatement contractor"  
34 means a person who performs lead abatement for consideration and  
who employs or contracts with at least one lead abatement project  
36 supervisor or lead abatement design consultant.

38 11. Lead abatement design consultant. "Lead abatement  
design consultant" means a person who prepares and supervises the  
40 implementation of plans for lead abatement. The activities of a  
lead abatement design consultant include, but are not limited to,  
42 assessing air quality, advising dwelling owners, lead abatement  
contractors and lead abatement project supervisors regarding lead  
44 abatement and overseeing lead abatement training.

46 12. Lead abatement project supervisor. "Lead abatement  
project supervisor" means a person responsible for the  
48 supervision of lead abatement. A lead abatement project  
supervisor may supervise lead abatement workers.

2 13. Lead abatement worker. "Lead abatement worker" means  
an employee of a lead abatement contractor who is engaged in lead  
4 abatement.

6 14. Lead-based substance. "Lead-based substance" means any  
substance that contains lead at a level that constitutes or  
8 potentially constitutes an environmental lead hazard.

10 15. Lead-free. "Lead-free" means that a children's home,  
preschool facility, dwelling or premises contains no lead that is  
12 injurious or that could be injurious in the future.

14 16. Lead inspector. "Lead inspector" means a person  
licensed by the department to perform environmental lead  
16 inspections.

18 17. Lead poisoning. "Lead poisoning" means a confirmed  
elevated level of blood lead that is injurious, as defined in  
20 rules adopted by the department.

22 18. Lead-safe. "Lead-safe" means that a children's home,  
preschool facility, dwelling or premises does not contain lead at  
24 a level or in a condition that constitutes an environmental lead  
hazard.

26 19. Occupant. "Occupant" means a person who resides in or  
uses regularly a dwelling, children's home or preschool facility.

28 20. Owner. "Owner" means any person who individually,  
30 jointly or in common with others:

32 A. Has legal title to any dwelling or premises or, if the  
person having legal title can not be located through  
34 reasonable efforts, is the owner's agent, as described in  
Title 14, section 6023;

36 B. Is the guardian of the owner or is the executor,  
38 administrator or trustee of the estate of the owner;

40 C. Is the chief executive officer of the municipality,  
school administrative unit or state agency that controls the  
42 use of publicly owned property; or

44 D. Is a mortgagee who has taken actual possession in  
accordance with applicable law. A mortgagee who has not  
46 taken actual possession is not the owner.

48 21. Person. "Person" means any individual, firm,  
corporation, association or partnership and the State and any  
50 political subdivision of the State.

2 22. Premises. "Premises" means a plotted lot or part of a  
4 plotted lot, an unplotted lot or a parcel of land, including  
6 developed and undeveloped land and any structure that exists on  
8 the land, if the lot, parcel or structure is used by children.

10 23. Preschool facility. "Preschool facility" means a day  
12 care facility as defined in Title 22-A, section 6451, a home  
14 baby-sitting service as described in Title 22-A, section 6455 or  
16 a nursery school as defined in Title 22-A, section 6501.

18 24. State investigator. "State investigator" means a lead  
20 inspector who is employed or authorized by the department to  
22 conduct environmental lead investigations.

#### 24 §4604. Authority of the department

26 The commissioner may take any action that is in accordance  
28 with the purposes of this chapter and is within the powers  
30 granted in this Title to protect children from lead poisoning.  
32 That action may include, but is not limited to, the following:

34 1. Reduction and abatement program. The establishment of  
36 programs to reduce lead-based substances and abate environmental  
38 lead hazards; and

40 2. Interagency agreements. The development of interagency  
42 agreements with any pertinent federal, state or local agency,  
44 including, but not limited to, public housing authorities, energy  
46 efficiency programs and home maintenance and improvement programs.

#### 48 §4605. Restrictions on use of lead-based substances

50 No person may use or apply lead-based substances:

1. Interiors. In or upon any exposed surface of a  
dwelling, children's home or preschool facility:

2. Fixtures. In or upon any fixtures or other objects  
used, installed or located in or upon any exposed surface of a  
dwelling, children's home or preschool facility or intended to be  
so used, installed or located; nor

3. Toys and furniture. In nor upon toys or household  
furniture.

#### 52 §4606. Early diagnosis program

The commissioner shall establish a program for early  
54 screening and diagnosis of cases of lead poisoning. To the

2 extent that resources permit, the program must include at least  
4 the following:

6 1. Systematic examination. The systematic examination for  
8 lead poisoning of all children in the State. Examinations must  
10 be conducted in a manner and at intervals established in rules  
12 adopted by the department;

14 2. Inspections. Comprehensive environmental lead  
16 inspections and technical assistance and advice regarding the  
18 appropriate reduction of environmental lead hazards to families  
20 with children who have lead poisoning. The department shall  
22 adopt rules defining lead poisoning and establishing priorities  
24 for inspections and technical assistance based on the degree of  
26 lead poisoning; and

28 3. Funding. As resources permit and in accordance with  
30 rules adopted by the department, payment by the department for  
32 lead screening, screening-related services and diagnostic  
34 evaluations when a patient is unable to pay and is not covered by  
36 insurance.

38 Nothing in this chapter authorizes or requires the physical  
40 examination of any child whose parent or guardian objects on the  
42 grounds that the examination is contrary to the parent's or  
44 guardian's religious beliefs.

#### 46 §4607. Educational and publicity program

48 The commissioner shall institute an educational and  
50 publicity program in order to inform the general public, health  
care providers and other appropriate groups of the dangers,  
frequency and sources of lead poisoning; the methods of  
preventing lead poisoning; and methods to abate lead-based  
substances and other environmental lead hazards from dwellings  
and premises.

#### 52 §4608. Screening by health care providers

54 1. Screening. All health care providers shall advise  
56 parents of the availability and advisability of screening their  
children for lead poisoning. Any health care program that  
receives funds from the State and has a child health component  
shall provide screening of children for lead poisoning in  
accordance with rules adopted by the department.

58 2. Data. At least annually, the department shall analyze  
60 and summarize lead-screening information provided by health care  
providers, facilities and programs and provide the information to  
other state and local agencies involved in lead-poisoning

issues. The information must also be provided to interested parties on request in a format that is easily understood by the general public. The department may not release any information under this subsection if that information identifies or could lead to the identification of individuals.

#### §4609. Report by physicians of suspected lead poisoning

Whenever any physician knows or has reason to believe that any person the physician examines or treats has or is suspected of having lead poisoning, the physician shall within 5 days give notice of the poisoning to the department. The department shall adopt rules specifying the procedure to be followed in making the reports and shall provide necessary forms for use by physicians. When the reports are received, the department shall, by laboratory work and otherwise, assist the attending physician in determining whether the case is one of lead poisoning, and if so, the source of the poison.

#### §4610. Laboratory testing

Any blood sample taken from a child by a health care provider to test for blood lead level must be sent to the State Health and Environmental Testing Laboratory for analysis. The department shall adopt rules regarding lead-related testing conducted by the State Health and Environmental Testing Laboratory. Whenever possible, the laboratory shall bill 3rd-party payors for services provided under this chapter and shall deposit all fees received into the State Health and Environmental Testing Laboratory dedicated account. The laboratory shall use the funds to:

1. Lead testing program. Administer a child blood and environmental lead testing program that includes processing, analyzing and reporting child blood lead samples and materials that may contain lead; and

2. Data report. Gather data and report laboratory results.

#### §4611. Inspection of children's homes and preschool facilities

The department shall adopt rules that require all children's homes and preschool facilities to have environmental lead inspections at least every 3 years except that environmental lead inspections are not required if the children's home or preschool facility has been certified by a lead inspector as lead-safe within the previous 3 years or has been certified as lead-free. No children's home or preschool facility may be licensed, registered, certified or otherwise approved or receive any state funds unless it is in compliance with this section.

#### §4612. Inspection of dwelling units and child care facilities by department

Any authorized representative of the department, upon presenting the appropriate credentials to the owner and occupant, or their representatives, may inspect any dwelling unit at reasonable times for the purpose of ascertaining the presence of lead-based substances, and may remove samples or objects necessary for laboratory analysis. Inspections may be made only when there are reasonable grounds to suspect that there are lead-based substances in or upon the exposed surfaces of any dwelling unit, or upon the request of either the owner or the occupant with whom children reside, or when a case of lead poisoning has been reported.

#### §4613. Inspection of dwellings by department

The department shall within 30 days inspect all dwelling units in a dwelling when:

1. Lead poisoning found. A case of lead poisoning has been found in any dwelling unit within the dwelling; or

2. Lead base substances. Lead base substances have been found in any dwelling unit within the dwelling.

#### §4614. Notice and removal

If the department determines that an environmental lead hazard exists in or on any dwelling, premises, children's home or preschool facility:

1. Notice posted. The department shall post in or upon the dwelling, premises, children's home or preschool facility, in a conspicuous place or places, notice of the existence of environmental lead hazard. Notice may not be removed until the department states that the environmental lead hazard no longer exists;

2. Notice to persons. The department shall give notice of the existence of the environmental lead hazard to all occupants;

3. Notice to owner; removal. The department shall give notice of the existence of the environmental lead hazard to the owner and order that the lead-based substances be removed, replaced or securely and permanently covered within 30 days of receipt of the notice. The department shall adopt rules for removal, replacement or covering of the lead-based substance. If the lead-based substances can not be removed, replaced or

2 securely and permanently covered within 30 days, the department  
3 may grant an extension of reasonable time; and

4 4. Sale of dwelling, children's home or preschool facility.  
5 If, before the end of the 30-day period or extension, the owner  
6 sells the dwelling, premises, children's home or preschool  
7 facility, the owner shall notify the prospective buyer of the  
8 environmental lead hazard and the new owner is responsible for  
9 carrying out the requirements of this section within the  
10 specified time period.

12 §4615. Child occupants

14 A person may not knowingly rent a dwelling that has been  
15 posted and ordered cleared of harmful lead-based substances in  
16 accordance with section 4614 to be occupied by children. In  
17 circumstances where the presence of lead-based paint or building  
18 materials is unsuspected and becomes known when the dwelling is  
19 already rented to a family with children, the family of the  
20 children may not be evicted for that reason and the owner and  
21 occupant of the dwelling must be given written notice by the  
22 department advising of the existence of lead-based substances in  
23 the dwelling and ordering that within 30 days the lead-based  
24 substances be removed, replaced or securely and permanently  
25 covered.

26 §4616. Licensure of lead inspectors and lead abatement personnel

28 1. Prohibition. No person may conduct environmental lead  
29 inspections or lead abatement unless that person is licensed by  
30 the department under this chapter or unless the person is at  
31 least 18 years of age and is performing lead abatement on or in  
32 the dwelling unit of which the person is an occupant. This  
33 prohibition includes persons located in other states who offer  
34 lead-related services to residents of the State directly or  
35 through the mail.

36 2. Rules. The department shall adopt rules regarding the  
37 licensure of lead inspectors and lead abatement personnel. The  
38 rules must specify at least the following:

39 A. The qualifications, standards of conduct, tests and fees  
40 required to obtain or renew a license and the circumstances  
41 under which a license may be revoked; and

42 B. That the State may grant reciprocal licenses to  
43 applicants who hold valid licenses from other states with  
44 comparable licensing requirements.

2 3. Violations. The commissioner may order by written  
3 notice that any person violating this section cease that  
4 violation. The department may impose a fine not to exceed \$1,000  
5 for each violation of this section. The department may seek  
6 enforcement of this section in district court.

7 Any person who conducts lead inspections or lead abatement  
8 without a license in violation of this section commits a civil  
9 violation for which a penalty of up to \$1,000 may be adjudged.  
10 Any person who engages in lead testing or abatement or who  
11 advertises those services in violation of this chapter also  
12 violates Title 5, chapter 10.

13 Nothing in this subsection limits the authority of the department  
14 or any other state agency under any law.

15 §4617. Training program certification

16 The department shall adopt rules regarding the certification  
17 of training programs for lead abatement contractors, design  
18 consultants, project supervisors and workers, lead inspectors and  
19 other persons engaged in the reduction of environmental lead  
20 hazards. The rules must address at least the length of training  
21 programs, mandatory topics of instruction and qualifications of  
22 instructors and sponsoring programs.

23 §4618. Laboratory certification

24 The department shall adopt rules regarding the analysis of  
25 lead in environmental media, including, but not limited to, air,  
26 dust, soil, paint, pewter, pottery and water and shall establish  
27 a program to certify laboratories that perform lead analysis to  
28 ensure that those laboratories comply with the rules adopted  
29 under this section.

30 §4619. Reports and records

31 All lead inspectors shall report the results of their  
32 inspections to the department within 45 days of the inspections.  
33 Any records received or maintained by the department under this  
34 chapter that contain information that identifies, or could lead  
35 to the identification of, an individual are confidential.

36 §4620. Rules

37 The department shall adopt rules to carry out the purposes  
38 of this chapter. The rules may address, but are not limited to,  
39 the following:

2 1. Lead-based substances. Prohibiting the sale or use of  
3 lead-based substances:

4 2. Screening. Screening children for lead poisoning:

6 3. Inspections; tests; abatement. Inspecting, testing and  
7 abating lead in dwellings where children are at risk of lead  
8 poisoning, in children's homes and in preschool facilities:

10 4. Training programs. Certifying training programs for  
11 lead inspectors and lead abatement personnel:

12 5. Licenses. Licensing lead inspectors and lead abatement  
13 personnel and establishing fees for those licenses:

14 6. Laboratory certification. Certifying laboratories to  
15 conduct analysis of lead-based substances:

16 7. Notice. Notifying owners and occupants of environmental  
17 lead hazards and posting lead hazard warnings:

18 8. Records. Keeping records of lead poisoning  
19 investigations:

20 9. Fees. Establishing fees for services performed under  
21 this chapter; and

22 10. Advisory boards. Establishing boards or commissions to  
23 advise the department regarding lead poisoning.

24 **§4621. No impairment to civil damages; local ordinances**

25 Nothing in this chapter may be interpreted or applied in any  
26 manner to defeat or impair the right of any person, entity,  
27 municipality or other political subdivision to maintain an action  
28 or suit for damages sustained or equitable relief or for  
29 violation of an ordinance by reason of or in connection with any  
30 violation of this chapter.

31 This chapter does not prevent any municipality or other  
32 political subdivision from enacting any enforcing ordinances that  
33 establish a system of lead poisoning control that provide the  
34 same or higher standards than those provided in this chapter.

35 **§4622. Liability of owners; damages**

36 The owner of any dwelling, premises, children's home or  
37 preschool facility is liable for all damages caused by failure to  
38 perform the duties required under this chapter.

2 The owner of any dwelling, premises, children's home or  
3 preschool facility who has received notice under this chapter of  
4 an environmental lead hazard and who does not satisfactorily  
5 correct or remove the environmental lead hazard is in addition to  
6 the preceding paragraph subject to punitive damages, which are  
7 treble the actual damages found.

8 **§4623. Violation**

9 In addition to any other penalty imposed under this chapter,  
10 any person who violates any section of this chapter may be  
11 punished for each violation by a fine of not more than \$500 or by  
12 imprisonment for not more than 6 months, or by both. Violations  
13 existing within individual dwelling units are considered separate  
14 violations.

15 **§4624. Injunction requiring removal**

16 If the lead-based substance remains an environmental lead  
17 hazard at the expiration of 30 days or at the expiration of an  
18 extension given by the commissioner pursuant to section 4614, the  
19 State, in addition to any other remedies it has, may seek a  
20 mandatory injunction ordering the environmental lead hazard  
21 removed by a suitable 3rd party at the expense of the owner of  
22 the dwelling, premises, children's home or preschool facility.

23 **CHAPTER 235**

24 **MATERNAL AND CHILD HEALTH SERVICES**

25 **§4701. Definition of "child"**

26 For the purposes of this chapter, the word "child" means any  
27 person who has not attained the age of 18 years.

28 **§4702. Health improvement program**

29 The department, through the bureau, may administer a program  
30 to extend and improve its services for promoting the health of  
31 mothers and children, especially in rural areas and in areas  
32 suffering from severe economic distress. Nothing in this section  
33 authorizes any public official, agent or representative, in  
34 carrying out this section, to take charge of any child over the  
35 objections of either the father or the mother of the child, or of  
36 the person standing in loco parentis to the child, except  
37 pursuant to a proper court order.

38 **§4703. Women, Infants and Children Special Supplemental Food**  
39 **Program vendor penalties**

2 The department may assess a penalty against a vendor under  
3 the Women, Infants and Children Special Supplemental Food Program  
4 of the federal Child Nutrition Act of 1966 who the department  
5 determines, after an opportunity for a hearing in accordance with  
6 Title 5, chapter 375, subchapter IV, has violated the rules of  
7 the department that apply to that program. The amount of the  
8 penalty may not exceed the amount that may be assessed against a  
9 vendor under the food stamp program pursuant to 7 Code of Federal  
10 Regulations, Section 278.6(f) and (g).

#### 11 CHAPTER 237

#### 12 PUBLIC HEALTH NURSING

#### 13 §4801. Division of Public Health Nursing

14 There is established within the bureau, the Division of  
15 Public Health Nursing.

#### 16 §4802. Director

17 The commissioner shall appoint a Director of Public Health  
18 Nursing, subject to the Civil Service Law, who is licensed as a  
19 registered nurse in the State and has education and experience in  
20 community health nursing.

#### 21 §4803. Responsibilities of the Division of Public Health Nursing

22 The Division of Public Health Nursing has the following  
23 responsibilities:

24 1. Establish standards. To establish standards for  
25 programs carried out by the department pursuant to state or  
26 federal laws or regulations in the following areas:

27 A. Community nursing services in communicable diseases;

28 B. Promotion of the health of mothers and children; and

29 C. School health screening, in cooperation with the  
30 Department of Education;

31 2. Information. To inform community nursing agencies of  
32 the standards in subsection 1:

33 3. Provide nursing services. To provide, at the discretion  
34 of the director, nursing services in communities that lack those  
35 services or in which those services are inadequate according to  
36 established standards; and

37 4. Provide technical assistance. To provide technical  
38 assistance to school health nurses, prenatal clinics, community  
39 immunization clinics and child health conferences and groups  
40 seeking to establish those clinics and conferences.

#### 41 CHAPTER 239

#### 42 DENTAL HEALTH

#### 43 §4901. Definitions

44 For the purposes of this chapter, unless the content  
45 otherwise indicates, the following terms have the following  
46 meanings.

47 1. Dental health education. "Dental health education"  
48 means the provision of printed curricula, audio-visual aids,  
toothbrushes, floss, disclosing tablets, topical and systemic  
fluorides and necessary permanent equipment to maintain oral  
hygiene.

2. Director. "Director" means the Director, Division of  
Dental Health.

3. Division. "Division" means the Division of Dental  
Health within the bureau.

#### 49 §4902. Division of Dental Health

50 There is established within the bureau the Division of  
Dental Health.

#### 51 §4903. Director

52 1. Appointment. The division is administered by the  
53 director, who is appointed by the commissioner. The director  
54 serves in the unclassified service at the pleasure of the  
55 commissioner. Any vacancy must be filled by appointment as  
56 described in this subsection.

57 2. Qualifications. The director shall serve on a full-time  
58 basis and must be a person qualified by training and experience  
59 to carry out the responsibilities described in this chapter.

60 3. Responsibilities. The director possesses full authority  
61 and responsibility for administering all the powers and duties  
62 provided in this chapter. The director shall assume and  
63 discharge all responsibilities vested in the division.

2 4. Staff. The director may employ, subject to the Civil  
3 Service Law and within the limits of available funds, competent  
4 professional personnel and other staff necessary to carry out the  
5 purposes of this chapter. The director shall prescribe the  
6 duties of staff and assign a sufficient number of staff to the  
7 division to achieve the division's powers and duties.

8 **§4904. Powers and duties**

10 The division shall establish in accordance with the purposes  
11 and intent of this chapter, subject to the direction of the  
12 commissioner, the overall planning, policy, objectives and  
13 priorities for all functions and activities relating to dental  
14 health that are conducted by or supported by the State. It is  
15 the purpose and intent of this chapter that the division have the  
16 objectives of reducing dental disease in the State's residents to  
17 a minimal and acceptable level and of improving and expanding  
18 dental health services in the State. The division shall serve as  
19 the State's primary administrative, coordinating and planning  
20 unit for carrying out the provisions of this chapter. In order  
21 to achieve these purposes, the division has the power and duty to  
22 carry out, but is not limited to, the following:

24 1. Review of funding sources. Ongoing review of all  
25 possible sources of funding, public and private, for improving  
26 dental health and development of proposals to secure these funds  
27 when appropriate;

28 2. Technical assistance and consultation to agencies.  
29 Technical assistance and consultation to federal, state, county  
30 and municipal programs concerned with dental health;

31 3. Technical assistance and consultation to schools.  
32 Technical assistance and consultation to schools and to the  
33 Department of Education for the purposes of introducing into the  
34 State's schools dental health education programs;

35 4. Studies. Studies and development of primary data for  
36 the purposes of documenting specific dental problems in the State;

37 5. Consultation and program information to health  
38 profession. Consultation and program information to the health  
39 profession, health professional education institutions and  
40 volunteer agencies;

41 6. Annual reviews. Annual reviews of the statutes and  
42 guidelines governing use of dental auxiliaries, dentists and  
43 other dental personnel and recommendations to the Legislature for  
44 changes that would benefit the public's health;

2 7. Coordination. Coordination of all efforts to improve  
3 dental health that are in part or wholly supported by state funds;

4 8. Administer funds. Administration in accordance with the  
5 interest and objectives of this chapter or within any limitations  
6 that may apply from the sources of such funds, of any funds from  
7 any source for the benefit of the State's residents in need of  
8 dental health services. The commissioner may receive for the  
9 division all funds granted by any private, federal, state,  
10 county, local or other source and the director shall use the  
11 funds to carry out the provisions and purposes of this chapter;

12 9. Report. Preparation of an annual detailed report that  
13 must be submitted by the department. The report must describe  
14 the implementation of the responsibilities of the division as  
15 described in this section. The report must be submitted to the  
16 Governor in accordance with Title 5, sections 43, 44, 45 and 46  
17 and to the Legislature; and

18 10. Other activities. Any other activities designed to  
19 reduce dental disease in the State.

20 **§4905. Dental health education in schools**

21 The department, through a program of dental health  
22 education, shall provide to any public school system or private  
23 educational system financial reimbursement for the costs of  
24 providing dental health education to children. The division  
25 shall administer the program.

26 **§4906. Rules**

27 The department shall adopt rules that:

28 1. Dental health education. Establish procedures for prior  
29 approval for reimbursement of dental health education materials  
30 under section 4905; and

31 2. Carry out purposes of chapter. Are necessary to carry  
32 out the purposes of this chapter.

33 **§4907. State agencies to cooperate**

34 State agencies shall cooperate fully with the division in  
35 carrying out this chapter. The division may request personnel,  
36 financial assistance, facilities and data that are reasonably  
37 required to assist the division to fulfill its duties.

38 State agencies proposing to develop, establish, conduct or  
39 administer programs or to assist programs relating to this

chapter shall, prior to carrying out those actions, consult with the division. Each agency of State Government shall advise the division of its activities relating to this chapter.

Each state agency, in the implementation of the agency's activities relating to this chapter, shall keep the division fully informed of the agency's status.

#### CHAPTER 241

#### FAMILY PLANNING SERVICES

##### §5001. Legislative intent

The Legislature finds that family planning services are not sufficiently available as a practical matter to many persons in this State; that unwanted conception may place severe medical, emotional, social and economic burdens on the family unit and that it is desirable that inhibitions and restrictions to the delivery of family planning services be reduced so that all persons desiring and needing those services have ready and practicable access to them in appropriate settings sensitive to their needs and beliefs. The Legislature therefore declares that it is consistent with public policy to make available comprehensive medical knowledge, assistance and services relating to family planning.

##### §5002. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Contraceptive procedures. "Contraceptive procedures" means any medically accepted procedure to prevent conception when performed by or under the direction of a physician on a requesting and consenting patient.

2. Contraceptive supplies. "Contraceptive supplies" means those medically approved drugs, prescriptions, rhythm charts, devices and other items designed to prevent conception through chemical, mechanical, behavioral or other means.

3. Family planning. "Family planning" means informed and voluntary self-determination of desired family size and of the timing of child bearing based upon comprehensive knowledge of factors pertinent to this determination.

4. Family planning services. "Family planning services" means counseling with trained personnel regarding family planning, contraceptive procedures and the treatment of

infertility; distribution of literature relating to family planning, contraceptive procedures and the treatment of infertility; referral of patients to physicians or health agencies for consultation, examination, tests, medical treatment and prescription for the purposes of family planning, contraceptive procedures and treatment of infertility and provision of contraceptive procedures and contraceptive supplies by those qualified to do so under the laws of this State.

5. Physician. "Physician" means any doctor of medicine or doctor of osteopathy duly licensed to practice in this State.

6. Person. "Person" means any person regardless of sex, race, number of children, marital status, motive and citizenship.

##### §5003. Authority and policy

It is the policy and authority of this State that:

1. Availability. Family planning services must be readily and practicably available to all persons desiring and needing those services;

2. Consistent with public policy. The delivery of family planning services by duly authorized persons in all agencies and instrumentalities of this State is consistent with public policy;

3. Refusal. Nothing in this chapter inhibits a physician from refusing to furnish family planning services when the refusal is for medical reasons; and

4. Objections. No private institution, physician nor agent or employee of a private institution or physician may be prohibited from refusing to provide family planning services when that refusal is based upon religious or conscientious objection.

##### §5004. Availability

To the extent family planning funds are available, the department shall provide family planning services to medically indigent persons eligible for those services as determined by rules adopted by the commissioner. Family planning services must also be available to all others who are unable to reasonably obtain these services privately, at a reasonable cost to be determined by the rules adopted by the commissioner. Any funds so collected must be retained by the department for the support of these services.

##### §5005. Funds



2        The department may receive and disburse funds that are  
3 available to it for family planning services to any nonprofit  
4 organization, public or private, engaged in providing those  
5 services. Family planning programs administered by the department  
6 may be developed in consultation, coordination or on a  
7 contractual basis, with other family planning agencies in this  
8 State, including, but not limited to, the Family Planning  
9 Association of Maine, Inc., and its affiliates.

10       To the extent permitted by federal law, the department is  
11 the lead agency of State Government that administers funds for  
12 family planning services. Funds available for family planning  
13 services through other state agencies may be transferred annually  
14 from those agencies to the department and the department shall  
15 administer those funds in accordance with this chapter.

#### 16       **§5006. Refusal**

17       The refusal of any person to accept family planning services  
18 does not affect the right of that person to receive public  
19 assistance or public health services or to receive any other  
20 public benefit. The employees of agencies engaged in the  
21 administration of this chapter shall recognize that the right to  
22 make decisions concerning family planning is a fundamental  
23 personal right of the individual and nothing in this chapter in  
24 any way abridges that right and no individual may be required to  
25 state reasons for refusing the offer of family planning services.

#### 26       **§5007. Minors**

27       Family planning services may be furnished to any minor who  
28 is a parent or married or has the consent of the minor's legal  
29 guardian or who may suffer in the professional judgment of a  
30 physician probable health hazards if services are not provided.

#### 31       **§5008. Construction**

32       This chapter must be construed to protect the rights of all  
33 persons to pursue their religious beliefs, to follow the dictates  
34 of their own consciences, to prevent imposition upon any person's  
35 moral standards and to respect the right of every person to  
36 self-determination in respect to family planning.

#### 37       **§5009. Implementation**

38       The commissioner shall adopt rules and establish programs to  
39 enable the department, either directly or under contractual  
40 arrangements with other organizations, to promptly implement this  
41 chapter.

## 2       **CHAPTER 243**

### 3       **ABORTIONS**

#### 4       **§5101. Abortions generally**

5       1. Policy. It is the public policy of the State that the  
6 State not restrict a woman's exercise of her private decision to  
7 terminate a pregnancy before viability except as provided in  
8 section 5103. After viability an abortion may be performed only  
9 when it is necessary to preserve the life or health of the  
10 mother. It is also the public policy of the State that all  
11 abortions may be performed only by a physician.

12       2. Definitions. As used in this section, unless the context  
13 otherwise indicates, the following terms have the following  
14 meanings.

15       A. "Abortion" means the intentional interruption of a  
16 pregnancy by the application of external agents, whether  
17 chemical or physical or by the ingestion of chemical agents  
18 with an intention other than to produce a live birth or to  
19 remove a dead fetus.

20       B. "Viability" means the state of fetal development when  
21 the life of the fetus may be continued indefinitely outside  
22 the womb by natural or artificial life-supportive systems.

23       3. Persons who may perform abortions; penalties. Only a  
24 person licensed under Title 32, chapter 36 or chapter 48, to  
25 practice medicine in Maine as a medical or osteopathic physician,  
26 may perform an abortion on another person. Any person not so  
27 licensed who knowingly performs an abortion on another person or  
28 any person who knowingly assists a nonlicensed person to perform  
29 an abortion on another person is guilty of a Class C crime.

30       4. Abortions after viability; criminal liability. A person  
31 who performs an abortion after viability is guilty of a Class D  
32 crime if:

33       A. The person knowingly disregarded the viability of the  
34 fetus; and

35       B. The person knew that the abortion was not necessary for  
36 the preservation of the life or health of the mother.

#### 37       **§5102. Informed consent to abortion**

38       1. Consent by the woman. No physician may perform an  
39 abortion unless, prior to the performance, the attending  
40 physician has obtained the informed consent of the woman.

2 physician certifies in writing that the woman gave her informed  
3 written consent, freely and without coercion.

4 2. Informed consent. To ensure that the consent for an  
5 abortion is truly informed consent, the attending physician shall  
6 inform the woman, in a manner that in the physician's  
7 professional judgment is not misleading and that will be  
8 understood by the patient, of at least the following:

10 A. According to the physician's best judgment she is  
11 pregnant;

12 B. The number of weeks elapsed from the probable time of  
13 the conception;

14 C. The particular risks associated with her own pregnancy  
15 and the abortion technique to be performed; and

16 D. At the woman's request, alternatives to abortion such as  
17 childbirth and adoption and information concerning public  
18 and private agencies that will provide the woman with  
19 economic and other assistance to carry the fetus to term,  
20 including, if the woman so requests, a list of these  
21 agencies and the services available from each.

22 **§5103. Consent to a minor's decision to have an abortion**

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

26 A. "Abortion" means the intentional interruption of a  
27 pregnancy by the application of external agents, whether  
28 chemical or physical, or the ingestion of chemical agents  
29 with an intention other than to produce a live birth or to  
30 remove a dead fetus.

31 B. "Counselor" means a person who is:

32 (1) A psychiatrist;

33 (2) A psychologist licensed under Title 32, chapter 56;

34 (3) A social worker licensed under Title 32, chapter  
35 83;

36 (4) An ordained member of the clergy;

37 (5) A physician's assistant registered by the Board of  
38 Registration in Medicine, Title 32, chapter 48;

39 (6) A nurse practitioner registered by the Board of  
40 Registration in Medicine, Title 32, chapter 48;

41 (7) A certified guidance counselor;

42 (8) A registered professional nurse licensed under  
43 Title 32, chapter 31; or

44 (9) A practical nurse licensed under Title 32, chapter  
45 31.

46 C. "Minor" means a person who is less than 18 years of age.

47 2. Prohibitions; exceptions. Except as otherwise provided  
48 by law, no person may knowingly perform an abortion upon a  
49 pregnant minor unless:

50 A. The attending physician has received and will make part  
51 of the medical record the informed written consent of the  
52 minor and one parent, guardian or adult family member;

53 B. The attending physician has secured the informed written  
54 consent of the minor as prescribed in subsection 3 and the  
55 minor, under all the surrounding circumstances, is mentally  
56 and physically competent to give consent;

57 C. The minor has received the information and counseling  
58 required under subsection 4, has secured written  
59 verification of receiving the information and counseling and  
60 the attending physician has received and will make part of  
61 the medical record the informed written consent of the minor  
62 and the written verification of receiving information and  
63 counseling required under subsection 4; or

64 D. The Probate Court or District Court issues an order  
65 under subsection 6 on petition of the minor or the next  
66 friend of the minor for purposes of filing a petition for  
67 the minor, granting:

68 (1) To the minor majority rights for the sole purpose  
69 of consenting to the abortion and the attending  
70 physician has received the informed written consent of  
71 the minor; or

72 (2) To the minor consent to the abortion, when the  
73 court has given its informed written consent and the  
74 minor is having the abortion willingly, in compliance  
75 with subsection 7.

2 3. Informed consent: disallowance of recovery. No  
3 physician may perform an abortion upon a minor unless, prior to  
4 performing the abortion, the attending physician received the  
5 informed written consent of the minor.

6 A. To ensure that the consent for an abortion is informed  
7 consent, the attending physician shall:

8 (1) Inform the minor in a manner which, in the  
9 physician's professional judgment, is not misleading  
10 and which will be understood by the patient, of at  
11 least the following:

12 (a) According to the physician's best judgment  
13 the minor is pregnant;

14 (b) The number of weeks of duration of the  
15 pregnancy; and

16 (c) The particular risks associated with the  
17 minor's pregnancy, the abortion technique that may  
18 be performed and the risks involved for both;

19 (2) Provide the information and counseling described  
20 in subsection 4 or refer the minor to a counselor who  
21 will provide the information and counseling described  
22 in subsection 4; and

23 (3) Determine whether the minor is, under all the  
24 surrounding circumstances, mentally and physically  
25 competent to give consent.

26 B. No recovery may be allowed against any physician upon  
27 the grounds that the abortion was rendered without the  
28 informed consent of the minor when:

29 (1) The physician, in obtaining the minor's consent,  
30 acted in accordance with the standards of practice  
31 among members of the same health care profession with  
32 similar training and experience situated in the same or  
33 similar communities; or

34 (2) The physician has received and acted in good faith  
35 on the informed written consent to the abortion given  
36 by the minor to a counselor.

37 4. Information and counseling for minors. The provision of  
38 information and counseling by any physician or counselor for any  
39 pregnant minor for decision making regarding pregnancy must be in  
40 accordance with this subsection.

2 A. Any physician or counselor providing pregnancy  
3 information and counseling under this subsection shall, in a  
4 manner that will be understood by the minor:

5 (1) Explain that the information being given to the  
6 minor is being given objectively and is not intended to  
7 coerce, persuade or induce the minor to choose either  
8 to have an abortion or to carry the pregnancy to term;

9 (2) Explain that the minor may withdraw a decision to  
10 have an abortion at any time before the abortion is  
11 performed or may reconsider a decision not to have an  
12 abortion at any time within the time period during  
13 which an abortion may legally be performed;

14 (3) Clearly and fully explore with the minor the  
15 alternative choices available for managing the  
16 pregnancy, including:

17 (a) Carrying the pregnancy to term and keeping  
18 the child;

19 (b) Carrying the pregnancy to term and placing  
20 the child with a relative or with another family  
21 through foster care or adoption;

22 (c) The elements of prenatal and postnatal care;  
23 and

24 (d) Having an abortion;

25 (4) Explain that public and private agencies are  
26 available to provide birth control information and that  
27 a list of these agencies and the services available  
28 from each will be provided if the minor requests;

29 (5) Discuss the possibility of involving the minor's  
30 parents, guardian or other adult family members in the  
31 minor's decision making concerning the pregnancy and  
32 explore whether the minor believes that involvement  
33 would be in the minor's best interests; and

34 (6) Provide adequate opportunity for the minor to ask  
35 any questions concerning the pregnancy, abortion, child  
36 care and adoption, and provide the information the  
37 minor seeks or, if the person can not provide the  
38 information, indicate where the minor can receive the  
39 information.

2 B. After the person provides the information and counseling  
4 to a minor as required by this subsection, that person shall  
6 have the minor sign and date a form stating that:

8 (1) The minor has received information on prenatal  
10 care and alternatives to abortion and that there are  
12 agencies that will provide assistance:

14 (2) The minor has received an explanation that the  
16 minor may withdraw an abortion decision or reconsider a  
18 decision to carry a pregnancy to term:

20 (3) The alternatives available for managing the  
22 pregnancy have been clearly and fully explored with the  
24 minor:

26 (4) The minor has received an explanation about  
28 agencies available to provide birth control information:

30 (5) The minor has discussed with the person providing  
32 the information and counseling the possibility of  
34 involving the minor's parents, guardian or other adult  
36 family members in the minor's decision making about the  
38 pregnancy:

40 (6) The reasons for not involving the minor's parents,  
42 guardian or other adult family members are put in  
44 writing on the form by the minor or the person  
46 providing the information and counseling; and

48 (7) The minor has been given an adequate opportunity  
to ask questions.

The person providing the information and counseling shall  
also sign and date the form, and include that person's  
address and telephone number. The person shall keep a copy  
for that person's files and shall give the form to the minor  
or, if the minor requests and if the person providing the  
information is not the attending physician, transmit the  
form to the minor's attending physician.

5. Presumption of validity of informed written consent:  
rebuttal. An informed consent that is evidenced in writing  
containing information and statements provided in subsection 4  
and that is signed by the minor is presumed to be a valid  
informed consent. This presumption may be subject to rebuttal  
only upon proof that the informed consent was obtained through  
fraud, deception or misrepresentation of material fact.

2 5. Court order concerning consent to abortion. The court  
4 may issue an order for the purpose of consenting to the abortion  
6 by the minor under the following circumstances and procedures.

8 A. The minor or next friend of the minor for the purposes  
10 of filing a petition may make an application to the Probate  
12 Court or District Court which shall assist the minor or next  
14 friend in preparing the petition. The minor or the next  
16 friend of the minor shall file a petition setting forth:

18 (1) The initials of the minor;

20 (2) The age of the minor;

22 (3) That the minor has been fully informed of the  
24 risks and consequences of the abortion;

26 (4) That the minor is of sound mind and has sufficient  
28 intellectual capacity to consent to the abortion;

30 (5) That, if the court does not grant the minor  
32 majority rights for the purpose of consent to the  
34 abortion, the court should find that the abortion is in  
36 the best interest of the minor and give judicial  
38 consent to the abortion; and

40 (6) That, if the minor does not have private counsel,  
42 the court may appoint counsel.

44 The minor or the next friend must sign the petition.

46 B. The petition is a confidential record and the court  
48 files on the petition must be impounded.

50 C. A hearing on the merits of the petition must be held as  
soon as possible within 5 days of the filing of the  
petition. If any party is unable to afford counsel, the  
court shall appoint counsel at least 24 hours before the  
time of the hearing. At the hearing, the court shall hear  
evidence relating to:

(1) The emotional development, maturity, intellect and  
understanding of the minor;

(2) The nature, possible consequences and alternatives  
to the abortion; and

(3) Any other evidence that the court may find useful  
in determining whether the minor should be granted  
majority rights for the purpose of consenting to the

2 abortion or whether the abortion is in the best  
3 interest of the minor.

4 The hearing on the petition must be held as soon as possible  
5 within 5 days of the filing of the petition. The court  
6 shall conduct the hearing in private with only the minor,  
7 interested parties as determined by the court and necessary  
8 court officers or personnel present. The record of the  
9 hearing is not a public record.

10 D. In the decree, the court shall for good cause:

11 (1) Grant the petition for majority rights for the  
12 sole purpose of consenting to the abortion;

13 (2) Find the abortion to be in the best interest of  
14 the minor and give judicial consent to the abortion,  
15 setting forth the grounds for the finding; or

16 (3) Deny the petition only if the court finds that the  
17 minor is not mature enough to make her own decision and  
18 that the abortion is not in her best interest.

19 E. If the petition is allowed, the informed consent of the  
20 minor, pursuant to a court grant of majority rights or the  
21 judicial consent, bars an action by the parent or guardian  
22 of the minor on the grounds of battery of the minor by those  
23 performing the abortion. The immunity granted only extends  
24 to the performance of the abortion and any necessary  
25 accompanying services that are performed in a competent  
26 manner.

27 F. The minor may appeal an order issued in accordance with  
28 this section to the Superior Court. The notice of appeal  
29 must be filed within 24 hours from the date of issuance of  
30 the order. Any record on appeal must be completed and the  
31 appeal must be perfected within 5 days from the filing of  
32 notice to appeal. The Supreme Judicial Court shall, by  
33 court rule, provide for expedited appellate review of cases  
34 appealed under this section.

35 7. Abortion performed against the minor's will. No  
36 abortion may be performed on any minor against her will, except  
37 that an abortion may be performed against the will of a minor  
38 pursuant to a court order described in subsection 6 that the  
39 abortion is necessary to preserve the life of the minor.

40 8. Violation; penalties. Any person who knowingly performs  
41 or aids in the performance of an abortion in violation of this  
42 section commits a Class D crime. Any attending physician or  
43

2 counselor who knowingly fails to perform any action required by  
3 this section commits a civil violation for which a forfeiture of  
4 not more than \$1,000 may be adjudged for each violation.

5 9. Nonseverability. In the event that any portion of this  
6 section is held invalid, it is the intent of the Legislature that  
7 this entire section be invalid.

#### 8 §5104. Immunity and employment protection

9 No physician, nurse or other person who refuses to perform  
10 or assist in the performance of an abortion, and no hospital or  
11 health care facility that refuses to permit the performance of an  
12 abortion upon its premises, is liable to any person, firm,  
13 association or corporation for damages allegedly arising from the  
14 refusal, nor may the refusal constitute a basis for any civil  
15 liability to any physician, nurse or other person, hospital or  
16 health care facility nor a basis for any disciplinary or other  
17 recriminatory action against them or any of them by the State or  
18 any person.

19 No physician, nurse or other person, who refuses to perform  
20 or assist in the performance of an abortion, may, because of that  
21 refusal, be dismissed, suspended, demoted or otherwise prejudiced  
22 or damaged by a hospital, health care facility, firm,  
23 association, professional association, corporation or educational  
24 institution with which the person is affiliated or requests to be  
25 affiliated or by which the person is employed, nor may the  
26 refusal constitute grounds for loss of any privileges or  
27 immunities to which the physician, nurse or other person would  
28 otherwise be entitled nor may submission to an abortion or the  
29 granting of consent for an abortion be a condition precedent to  
30 the receipt of any public benefits.

#### 31 §5105. Discrimination for refusal

32 No person, hospital, health care facility, firm,  
33 association, corporation or educational institution, directly or  
34 indirectly, alone or through another, may discriminate against  
35 any physician, nurse or other person by refusing or withholding  
36 employment from or denying admittance, if the physician, nurse or  
37 other person refuses to perform, or assist in the performance of  
38 an abortion, nor may the refusal constitute grounds for loss of  
39 any privileges or immunities to which the physician, nurse or  
40 other person would otherwise be entitled.

#### 41 §5106. Sale and use of fetuses

42 Whoever uses, transfers, distributes or gives away any live  
43 human fetus, whether intrauterine or extrauterine, or any product  
44

2 of conception considered live born for scientific experimentation  
3 or for any form of experimentation must be punished by a fine of  
4 not more than \$5,000 and by imprisonment for not more than 5  
5 years and any person consenting, aiding or assisting is subject  
6 to the same punishment.

8 **§5107. Failure to preserve life of live born person**

10 Whenever an abortion procedure results in a live birth,  
11 failure to take all reasonable steps, in keeping with good  
12 medical practice, to preserve the life and health of the live  
13 born person subjects the responsible party or parties to Maine  
14 law governing homicide, manslaughter and civil liability for  
15 wrongful death and medical malpractice.

16 **§5108. Live born and live birth, defined**

18 "Live born" and "live birth," as used in this chapter, means  
19 a product of conception after complete expulsion or extraction  
20 from its mother, irrespective of the duration of pregnancy, that  
21 breathes or shows any other evidence of life such as beating of  
22 the heart, pulsation of the umbilical cord or definite movement  
23 of voluntary muscles, whether or not the umbilical cord has been  
24 cut or the placenta is attached. Each product of such a birth is  
25 considered live born and fully recognized as a human person under  
26 Maine law.

28 **§5109. Abortion and miscarriage data**

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

34 A. "Abortion" means the intentional interruption of a  
35 pregnancy by the application of external agents, whether  
36 chemical or physical, or the ingestion of chemical agents  
37 with an intention other than to produce a live birth or to  
38 remove a dead fetus, regardless of the length of gestation.

40 B. "Miscarriage" means an interruption of a pregnancy other  
41 than as provided in paragraph A of a fetus of less than 20  
42 weeks gestation.

44 2. Abortion reports. A report of each abortion performed  
45 must be submitted to the department on forms prescribed by the  
46 department. These report forms may not identify the patient by  
47 name or otherwise and must contain only the information requested  
48 on the United States Standard Report of Induced Termination of  
49 Pregnancy, published by the National Center for Health

2 Statistics, dated January 1978, or any more recent revision of a  
3 standard report form.

4 The form containing that information and data must be prepared  
5 and signed by the attending physician and transmitted to the  
6 department not later than 10 days following the end of the month  
7 in which the abortion is performed.

8 A physician who reports data on an abortion pursuant to this  
9 section is immune from any criminal liability for that abortion  
10 under section 5101.

12 3. Miscarriage reports. A report of each miscarriage must  
13 be submitted by the physician in attendance at or after the  
14 occurrence of the miscarriage to the department on forms  
15 prescribed by the department. These report forms must contain  
16 all of the applicable information required on the certificate of  
17 fetal death in current use.

18 The report form must be prepared and signed by the attending  
19 physician and transmitted to the department not later than 10  
20 days following the end of the month in which the miscarriage  
21 occurs.

22 The identity of any patient or physician reporting pursuant  
23 to this section is confidential and the department shall take the  
24 steps necessary to ensure the confidentiality of the identity of  
25 patients or physicians reporting pursuant to this section.

30 **CHAPTER 245**

32 **CANCER**

34 **§5201. Prevention and treatment**

36 The department may conduct investigations concerning cancer,  
37 the prevention and treatment of cancer, and the mortality from  
38 cancer, and may take action it considers will assist in bringing  
39 about a reduction in the mortality due to cancer.

40 **§5202. Duty of physicians and hospitals**

42 All hospitals shall report to the department all persons  
43 diagnosed as having a malignant tumor no later than 30 days from  
44 the date of diagnosis or from discharge from a hospital. The  
45 report must include information on the person's usual occupation  
46 and industry of employment.

48 A physician, upon notification by the department, shall  
49 report to the department any further information requested by the  
50

2 department concerning any person now or formerly under the  
3 physician's care, diagnosed as having or having had a malignant  
4 tumor.

6 No physician or hospital complying with the reporting  
7 requirements of this section is liable for any civil damages as a  
8 result of those acts.

#### 9 §5203. Cancer-incidence registry

10 The department shall establish, maintain and operate a  
11 statewide cancer-incidence registry.

#### 12 §5204. Cancer Prevention and Control Advisory Committee

13 The Cancer Prevention and Control Advisory Committee,  
14 established by Title 5, section 12004-I, subsection 36-B, serves  
15 as an advisory body to the department on the operation of the  
16 Cancer Registry Program and on the development and maintenance of  
17 a coordinated statewide approach to cancer prevention and control.

18 The committee is advisory in nature, except that the  
19 committee reviews and approves requests from outside the  
20 department for information from the Cancer Registry Program's  
21 data base.

22 The committee is composed of 14 members. One half of the  
23 members are appointed by the Governor and 1/2 of the members are  
24 appointed jointly by the President of the Senate and the Speaker  
25 of the House of Representatives. Members serve 3-year terms.  
26 Members must include individuals with training and experience in  
27 the following fields: Medicine, Doctor of Medicine or Doctor of  
28 Osteopathy; oncology; medical and biologic sciences; hospital  
29 administration; nursing; medical records administration; hospital  
30 tumor registry operations; health promotion and education;  
31 epidemiology; and biometry.

32 The committee shall meet at least once annually in Augusta.

### 33 CHAPTER 247

#### 34 HYPERTENSION

#### 35 §5301. Work-site high blood pressure programs

36 The bureau shall establish work-site high blood pressure  
37 programs at work sites that have not previously been providing  
38 regular high blood pressure programs to their employees in order  
39 to screen all employees, detect and confirm those who have  
40 elevated blood pressures, refer those with elevations to

2 physicians for diagnosis and treatment and continue contact  
3 through the year with employees to determine their progress  
4 toward blood pressure control. The bureau shall promote new  
5 work-site high blood pressure programs for workers, allocate  
6 funds for program operation and periodically evaluate program  
7 effectiveness. Any screening program must be voluntary for both  
8 employer and employee.

#### 9 §5302. Providers of work-site high blood pressure programs

10 The bureau shall actively seek health care providers  
11 throughout the State to participate in identifying workers with  
12 high blood pressure and helping them control their disease  
13 through physician-prescribed treatment regimen. Standards of  
14 quality and criteria for awarding service contracts to health  
15 care providers must be based on recommendations developed in  
16 partnership with the Maine High Blood Pressure Council, a  
17 statewide voluntary health council. The objective of these  
18 criteria must be to achieve high quality, cost-effective health  
19 programs that comply with state and federal standards.

#### 20 §5303. Community-based heart attack and stroke prevention programs

21 1. Heart attack and stroke prevention programs:  
22 establishment. The bureau shall establish a program to develop  
23 heart attack and stroke prevention programs in communities and  
24 regions throughout the State. The community programs shall:

25 A. Provide public education to schools, community groups  
26 and workplaces about cardiovascular risks;

27 B. Provide blood pressure and cholesterol screening,  
28 referral and follow-up to the general public and workforce  
29 populations; and

30 C. Provide smoking cessation programs for community members  
31 wishing to quit.

32 2. Training; funding. The bureau shall provide training  
33 for communities in program development, conduct a statewide  
34 public awareness program about cardiovascular risks, allocate  
35 matching funds for community program operation and periodically  
36 evaluate program effectiveness.

37 3. Rules. The bureau shall adopt rules in accordance with  
38 the Maine Administrative Procedure Act, Title 5, chapter 375, for  
39 distribution of funds to communities under this section. The  
40 rules must include a requirement that funded programs follow  
41 accepted quality control standards and be periodically reviewed

2 by organizations with experience in and knowledge of heart attack  
and stroke prevention.

4 CHAPTER 249

6 DISABILITIES AND DISABLING CONDITIONS

8 SUBCHAPTER I

10 PREVENTION OF DISABLING CONDITIONS

12 §5401. Prevention of developmental disabilities

14 1. Primary prevention. The department shall serve as the  
16 principal agency for the primary prevention of developmental  
18 disabilities in the State and shall provide services for pregnant  
20 women and new mothers to minimize the likelihood of their having  
22 a child with a developmental disability. In particular, the  
24 department shall conduct professional education to ensure that  
26 the best available prevention techniques are utilized by health  
28 care professionals in the State and shall ensure that access to  
30 prenatal services exists for all women of childbearing age in the  
32 State.

34 2. Counseling and support services; Department of Children  
36 and Families. The Department of Children and Families shall  
38 institute programs of family counseling and support services for  
40 families with children with developmental disabilities from birth  
42 to 5 years. The purpose of these counseling and support services  
44 is to increase the family's understanding of the child's special  
46 needs and to enhance family members' abilities to cope with the  
48 physical and emotional strains experienced by families.

34 3. Child development services; Department of Education.  
36 The Department of Education through the child development  
38 services system shall ensure the provision of comprehensive  
40 developmental services, including physical therapy, speech and  
42 language therapy and occupational therapy to preschool children  
44 who have handicaps or are developmentally delayed. To the  
46 maximum extent possible, these programs shall make use of  
48 existing 3rd party payors and coordinate services with local  
resources. In instances where needed services are not available,  
the Department of Education shall use authorized funds to enable  
child development services sites to work with local providers,  
including public and private agencies and school units to develop  
new or expand existing service to meet these needs.

In addition, the Department of Education shall ensure that  
comprehensive health educational programs are available in State

2 schools and that teacher training programs in the State include  
4 preparation in conduct of health educational programs.

4 4. Use of private agencies to deliver services. Private  
6 agencies must be used as appropriate to carry out the  
8 implementation of initiatives to prevent developmental  
10 disabilities in cooperation with the respective departments so  
12 that State Government agencies do not duplicate existing  
14 resources in the community and so that all available resources  
16 are used effectively to rapidly achieve the goal of preventing  
18 developmental disabilities in the State.

12 5. Report. Annually by January 1, the department, the  
14 Department of Children and Families and the Department of  
16 Education shall submit a joint report to the joint standing  
18 committee of the Legislature having jurisdiction over human  
20 resource matters regarding the prevention activities conducted  
22 over the past fiscal year, plans for the succeeding year and a  
24 report on the incidence rate of births of children with  
26 developmental disabilities in the State.

22 §5402. Care of infants after birth

24 Every physician, midwife or nurse in charge of a birth shall  
26 instill or cause to be instilled into the eyes of an infant upon  
28 its birth one or 2 drops of a prophylactic solution prescribed by  
30 the department and provided without cost by the department,  
32 except an infant whose parents object to this procedure on the  
34 grounds that it conflicts with their religious tenets and  
36 practices. If one or both eyes of an infant become reddened or  
38 inflamed at any time within 4 weeks after birth, the midwife,  
40 nurse or person having charge of the infant shall report the  
42 condition of the eyes at once to a physician licensed under Title  
44 32, chapter 36 or 48. Failure to comply with this section is  
46 punishable by a fine of not more than \$100 or by imprisonment for  
48 not more than 6 months.

38 §5403. Detection of mental disabilities

40 The department may require hospitals, maternity homes and  
42 other maternity services to test newborn infants, or to cause  
44 them to be tested, for the presence of metabolic abnormalities  
46 that may be expected to result in subsequent mental  
48 disabilities. The department shall adopt rules to define this  
50 requirement and the approved testing methods, materials,  
procedure and testing sequences. Reports and records of those  
making these tests may be required to be submitted to the  
department in accordance with departmental rules. The department  
may, on request, offer consultation, training and evaluation  
services to those testing facilities. The provisions of this



2 section do not apply if the parents of a child object to them on  
3 the grounds that the test conflicts with their religious tenets  
4 and practices.

6 **§5404. Advisory program for genetic conditions**

8 **1. Purpose: program.** A voluntary statewide genetics program  
9 is established, which offers testing, counseling and education to  
10 parents and prospective parents. The program includes, but is  
11 not limited to, the following services:

12 **A. Follow-up programs for newborn testing, with emphasis on**  
13 **the counseling and education of women at risk for maternal**  
14 **phenylketonuria, PKU:**

16 **B. Comprehensive genetic services to all areas of the State**  
17 **and all segments of the population:**

19 **C. Development of counseling and testing programs for the**  
20 **diagnosis and management of genetic conditions and metabolic**  
21 **disorders; and**

23 **D. Development and expansion of educational programs for**  
24 **physicians, allied health professionals and the public, with**  
25 **respect to:**

26 (1) The nature of genetic processes:

28 (2) The inheritance patterns of genetic conditions; and

30 (3) The means, methods and facilities available to  
31 diagnose, counsel and treat genetic conditions and  
32 metabolic disorders.

34 **2. Responsibility for the program.** The commissioner shall  
35 designate personnel within the bureau to administer the program.  
36 The bureau shall:

38 **A. Coordinate matters pertaining to detection, prevention**  
39 **and treatment of genetic conditions and metabolic disorders;**

41 **B. Cooperate with and stimulate public and private**  
42 **not-for-profit associations, agencies, corporations,**  
43 **institutions or other entities involved in developing and**  
44 **implementing eligible programs and activities designed to**  
45 **provide services for genetic conditions and metabolic**  
46 **disorders;**

2 **C. Administer any funds that are appropriated for the**  
3 **services and expenses of a genetic screening, counseling and**  
4 **education program;**

6 **D. Enter into agreements and contracts for the delivery of**  
7 **genetic services;**

8 **E. Establish, promote and maintain a public information**  
9 **program on genetic conditions and metabolic disorders and**  
10 **the availability of counseling and treatment services;**

12 **F. Publish, from time to time, the results of any relevant**  
13 **research, investigation or survey conducted on genetic**  
14 **conditions and metabolic disorders and, from time to time,**  
15 **collate those publications for distribution to scientific**  
16 **organizations and qualified scientists and physicians; and**

18 **G. Adopt rules necessary to carry out the purposes of this**  
19 **section.**

21 **3. Eligibility for contracts.** A public or private  
22 not-for-profit association, agency, corporation, institution or  
23 other entity is eligible to enter into contracts pursuant to this  
24 section if it satisfies the following requirements.

26 **A. The entity shall submit an application for a contract in**  
27 **the manner and on forms prescribed by the commissioner.**

28 **B. The project or activity to be carried out by the entity,**  
29 **either directly or through an integrated, coordinated**  
30 **arrangement, must include some or all of the following**  
31 **services:**

32 (1) Prenatal testing and diagnosis;

34 (2) Genetic diagnosis, treatment and counseling;

36 (3) Newborn metabolic testing, laboratory services and  
37 nutritional follow-up; or

39 (4) Genetics education programs for health  
40 professionals and the public.

42 **C. The project or activity must be consistent with the**  
43 **objectives of this section and must be coordinated with**  
44 **resources existing in the community in which it is located.**

48 **SUBCHAPTER II**

50 **CHILDREN WITH HANDICAPS**

2 §5451. Definition of "child"

4 For the purposes of this subchapter, the word "child" means  
6 any person who has not attained the age of 18 years.

8 §5452. Program of service

10 The department, through the bureau, may administer a program  
12 of services for children who have handicaps or who are suffering  
14 from conditions that lead to handicaps, and to supervise the  
16 administration of those services included in the program that are  
18 not administered directly by it. The purpose of an included  
20 program must be to develop, extend and improve services for  
22 locating children with handicaps and for providing for medical,  
24 surgical, corrective and other services and care, and for  
26 facilities for diagnosis, hospitalization and aftercare. Nothing  
28 in this subchapter authorizes any public official, agent or  
30 representative, in carrying out this subchapter, to take charge  
32 of any child over the objection of either the father or the  
34 mother of the child, or of the person standing in loco parentis  
36 to the child, except pursuant to a proper court order.

38 SUBCHAPTER III

40 PARKINSON'S SYNDROME

42 §5501. Parkinson's Syndrome

44 The department shall establish, maintain and operate an  
46 information and referral service for Parkinson's Syndrome to  
48 assist in promoting the general health and welfare of Maine's  
50 citizens, including, but not limited to, the following specific  
52 purposes:

54 1. Information. To provide educational materials to the  
56 medical community and other interested individuals relating to  
58 the nature and treatment of Parkinson's Syndrome; and

60 2. Referral. To maintain a referral service to make  
62 available, upon request, the names, addresses and phone numbers,  
64 when known, of:

66 A. Physicians who have an interest or expertise in  
68 Parkinson's Syndrome; and

70 B. Local or statewide support groups for Parkinson's  
72 Syndrome victims or their families and friends.

74 SUBCHAPTER IV

2 HEAD INJURY

4 §5551. Definitions

6 As used in this subchapter, unless the context otherwise  
8 indicates, the following terms have the following meanings.

10 1. Head injury. "Head injury" means an insult to the brain  
12 resulting directly or indirectly from trauma, anoxia, vascular  
14 lesions or infection, which:

16 A. Is not of a degenerative or congenital nature;

18 B. Can produce a diminished or altered state of  
20 consciousness resulting in impairment of cognitive abilities  
22 or physical functioning;

24 C. Can result in the disturbance of behavioral or emotional  
26 functioning;

28 D. Can be either temporary or permanent; and

30 E. Can cause partial or total functional disability or  
32 psychosocial maladjustment.

34 §5552. Registry

36 The bureau shall establish, maintain and operate a statewide  
38 registry of persons who sustain head injuries to assist in  
40 promoting the general health and welfare of the State's citizens,  
42 including, but not limited to, the following specific purposes:

44 1. Assessment needs, planning and coordination. To assess  
46 the needs of persons who sustain head injuries and to facilitate  
48 rehabilitation planning and coordination efforts;

50 2. Education and information. To provide educational  
52 material to the medical community including, but not limited to,  
54 emergency room physicians, psychiatrists, neurologists,  
56 neurosurgeons, neuropsychologists and other interested persons  
58 relating to diagnosis, evaluation and treatment of the sequelae  
60 of head injuries; and

62 3. Network. To provide a means for persons who have  
64 sustained head injuries or their family members or friends to  
66 contact each other or to contact local or statewide support  
68 groups for survivors of head injuries.

70 §5553. Reporting

2 The bureau shall encourage hospitals, physicians and  
4 neuropsychologists to report to the bureau all persons whom they  
6 diagnose as having sustained head injuries. They must be  
8 encouraged to submit a report within 7 days of the diagnosis  
10 which contains, but is not limited to, the following: The name,  
12 if released; age; and residence of the person; and the date and  
14 cause of the injury. No person's name may be released without  
16 that person's consent or the consent of the person's guardian or  
18 other person having legal responsibility for the person. A  
20 hospital, physician or neuropsychologist who submits a report  
22 under this section is not liable for any civil damages as a  
24 result of that act.

#### 14 §5554. Comprehensive rehabilitation service system

16 The department shall, within the limits of its available  
18 resources, develop a comprehensive rehabilitation service system  
20 specifically designed to train, educate and physically  
22 rehabilitate people with head injuries. The service programs  
24 must include, but need not be limited to, physical therapy,  
26 cognitive retraining, behavior modification, social skills,  
28 counseling, vocational rehabilitation and independent living.  
30 The department may increase the availability of adequate  
32 post-hospital residential facilities designed to meet the unique  
34 needs of persons who have sustained a head injury.

### 28 SUBCHAPTER V

#### 30 EXPOSURE TO DIETHYLSTILBESTROL

##### 32 §5601. Identification of exposed persons

34 For the purpose of identifying persons who have been exposed  
36 to the potential hazards and afflictions of diethylstilbestrol  
38 and for the purpose of educating the public concerning the  
40 symptoms and prevention of associated malignancies, the  
42 commissioner shall establish, promote and maintain a public  
44 information campaign on diethylstilbestrol. This campaign must be  
46 conducted throughout the State and must include, but is not  
48 limited to, a concerted effort at reaching those persons or the  
50 offspring of persons who have been exposed to diethylstilbestrol  
in order to encourage them to seek medical care for the  
prevention or treatment of any malignant condition.

##### 46 §5602. Providers of screening programs

48 The commissioner shall actively seek providers of health  
50 care to participate in regional programs that provide public  
information and screening for persons exposed to

2 diethylstilbestrol. In determining regional screening program  
4 providers, the commissioner shall consider the provider's  
6 compliance with state and federally mandated standards, the  
8 location in relation to the population to be served and the  
10 capacity of the provider to properly conduct these programs.

##### 8 §5603. Registry

10 The bureau shall establish and maintain a registry limited  
12 to women who took diethylstilbestrol during pregnancy, and their  
14 offspring who were exposed to diethylstilbestrol prenatally,  
16 solely for the purpose of follow-up care and treatment of  
18 long-term problems associated with diethylstilbestrol exposure.  
20 Enrollment in the registry is voluntary.

##### 16 §5604. Assistance

18 The commissioner may request and must receive from any  
20 department, division, board, bureau, commission or agency of the  
22 State, or of any political subdivision of the State, assistance  
24 and data that will enable the department to properly carry out  
26 its activities under this subchapter and effectuate the purposes  
28 set forth in this subchapter. The commissioner may also enter  
30 into any contract for services that the commissioner considers  
32 necessary with a private agency or concern upon terms and  
34 conditions the commissioner considers appropriate.

##### 28 §5605. Report

30 Annually by February 1, the department shall submit a report  
32 to the joint standing committee of the Legislature having  
34 jurisdiction over human resource matters regarding the  
36 effectiveness, impact and benefits derived from the special  
38 programs as provided for in this subchapter. The report must  
40 include evaluations of these special programs and recommendations  
42 in final draft form of any legislation recommended by the  
44 department.

### 40 CHAPTER 251

#### 42 MARIJUANA AND CERTAIN OTHER DRUGS

##### 44 §5701. Possession

46 1. Marijuana. Possession of a usable amount of marijuana is  
48 a civil violation for which a forfeiture of not less than \$200  
50 nor more than \$400 must be adjudged for the first offense. A  
forfeiture of \$400 must be adjudged for the 2nd and subsequent  
offenses within a 6-year period.

2 2. Butyl nitrite and isobutyl nitrite. Possession of a  
3 usable amount of butyl nitrite or isobutyl nitrite is a civil  
4 violation for which a forfeiture of not more than \$200 may be  
5 adjudged.

6 **§5702. Possession of imitation scheduled drugs**

8 Possession of fewer than 100 tablets, capsules or other  
9 dosage units of imitation scheduled drugs, as defined in Title  
10 17-A, section 1101, subsection 19, constitutes a civil violation  
11 for which a forfeiture of not more than \$200 may be adjudged. In  
12 determining whether the substance is an imitation scheduled drug,  
13 the court shall apply Title 17-A, section 1116, subsection 5. An  
14 imitation scheduled drug is declared to be contraband and may be  
15 seized by the State.

16 **§5703. Authorized possession by individuals; exemptions**

18 1. Lawfully prescribed drugs. A person to whom or for  
19 whose use any prescription drug has been prescribed, sold or  
20 dispensed by a physician, dentist, podiatrist, pharmacist or  
21 other person authorized to do so, and the owner or the person  
22 having the custody or control of any animal for which any  
23 prescription drug has been prescribed, sold or dispensed by a  
24 licensed veterinarian, may lawfully possess the drug, except when  
25 in use, only in the container in which it was delivered by the  
26 person selling or dispensing the drug.

28 2. Other lawfully in possession. The following are  
29 authorized to possess and have control of prescription drugs:

32 A. Common carriers or warehouse operators while engaged in  
33 lawfully transporting or storing prescription drugs, or any  
34 of their employees acting within the scope of their  
35 employment;

36 B. Employees or agents of persons lawfully entitled to  
37 possession who have temporary, incidental possession; and

38 C. Persons whose possession is for the purpose of aiding  
39 public officers in performing their official duties.

42 3. Definition. As used in this section, the term  
43 "prescription drug" has the same meaning as in Title 32, section  
44 13702, subsection 24, and includes so-called "legend drugs."

46 **CHAPTER 253**

48 **COMPRESSED AIR**

2 **§5801. Purpose**

3 The purpose of this chapter is to protect the public health;  
4 to regulate and license the suppliers of compressed air used in  
5 self-contained breathing apparatus; to establish the maximum  
6 permissible amount of all contaminants expressed either in  
7 percentages or in parts per million of volume, or both; to  
8 establish standards for the condition of the compression  
9 equipment; and to prescribe penalties for violations of this  
10 chapter.

12 **§5802. Definitions**

14 As used in this chapter, unless the context otherwise  
15 indicates, the following terms have the following meanings.

16 1. Breathing apparatus. "Breathing apparatus" means any  
17 breathing device, either high or low pressure, that is used to  
18 sustain human life under adverse conditions.

20 2. Supplier of compressed air. "Supplier of compressed  
21 air" means any organization, agency, individual, firm,  
22 partnership or corporation that provides compressed air to be  
23 used in self-contained breathing apparatus.

26 3. Tester of compressed air. "Tester of compressed air"  
27 means any organization, agency, individual, firm, partnership or  
28 corporation that is recognized by the department as qualified to  
29 inspect and test suppliers of compressed air.

30 **§5803. License**

32 It is unlawful for any supplier of compressed air to fill or  
33 supply any breathing apparatus with life supporting gases in the  
34 State unless licensed to do so by the department. The initial  
35 license fee and the annual renewal license fee are \$10, except  
36 that fire departments are exempt from the licensing requirements  
37 of this chapter, if the use of the apparatus is restricted to  
38 fire department use.

40 **§5804. Inspections**

42 1. Satisfactory inspection. To be eligible for an initial  
43 or renewal license, a supplier of compressed air shall provide  
44 certification from a tester of compressed air based on an  
45 inspection in the 6 months prior to application that the  
46 compressor equipment, air quality and compressor filling  
47 procedures are in compliance with rules of the department.

2 2. Unsatisfactory inspection. If any aspect of the  
3 supplier operation fails to meet department standards, the tester  
4 of compressed air shall notify the department of the nature of  
5 the deficiencies. The department shall evaluate the deficiencies  
6 and determine appropriate licensing action.

7 If the air provided by a supplier of compressed air exceeds the  
8 maximum permissible amount of any contaminant, the tester of  
9 compressed air shall notify the supplier that operations must  
10 cease and the supplier shall immediately cease operation until  
11 the reason is determined, corrections made and a retest conducted  
12 to confirm that the contaminant no longer exceeds the maximum  
13 permissible amount. The department shall take action to see that  
14 the supplier is not operating while this condition exists.

15 **§5805. Fees**

16 All fees established under this chapter must be collected by  
17 the department and remitted to the Treasurer of State and  
18 credited to the General Fund.

19 **§5806. Rules**

20 The department may adopt rules necessary to promptly and  
21 effectively enforce this chapter.

22 **§5807. Penalty**

23 Whoever violates any of the provisions of this chapter or  
24 any rules adopted thereunder must be punished by a fine of not  
25 less than \$100, nor more than \$500, or by imprisonment for not  
26 more than 6 months, or by both.

27 **CHAPTER 255**

28 **PUBLIC REST ROOMS**

29 **§5901. Definitions**

30 As used in this chapter, unless the context otherwise  
31 indicates, the following terms have the following meanings.

32 1. Eating establishment. "Eating establishment" means an  
33 eating establishment licensed by the department under chapter 219  
34 that prepares and serves food to the public for consumption  
35 inside the premises. "Eating establishment" does not include  
36 catering establishments, establishments dispensing food solely  
37 from vending machines, pushcarts and mobile eating places,  
38 roadside stands, retail frozen dairy product establishments or

39 any similar places where customers do not consume food inside the  
40 building where the food is prepared and served.

41 2. Shopping center. "Shopping center" means any building  
42 or facility containing 6 or more separate retail establishments  
43 that are planned, developed, owned or managed as a unit, with an  
44 off-street public parking area of not less than 2 acres.

45 **§5902. Public rest room facilities required**

46 Public rest rooms must be provided as follows.

47 1. Shopping centers. In any building or facility  
48 constructed specifically as a shopping center after September 19,  
49 1985, there must be installed a minimum of 2 toilets for the use  
50 of the public. There must be at least one separate toilet for  
51 each sex and the toilets provided must be clearly marked,  
52 maintained in a sanitary condition and in good repair. Lavatory  
53 facilities must be located within or immediately adjacent to all  
54 toilet rooms or vestibules. There may be no charge for their use.

55 2. Eating establishments with 13 or more seats. Unless it  
56 is licensed for fewer than 13 seats and is not licensed for  
57 on-premise consumption of alcoholic beverages, an eating  
58 establishment shall provide at least one toilet facility for the  
59 use of its customers. Toilet facilities that require access  
60 through the food preparation area or the use of which would in  
61 any way cause the establishment to be in violation of any state  
62 law or rule do not fulfill this requirement. The location of the  
63 toilets must be clearly marked, maintained in a sanitary  
64 condition, in good repair and their location identifiable from  
65 the eating area. There may be no charge for their use. Lavatory  
66 facilities must be located within or immediately adjacent to all  
67 toilet rooms or vestibules.

68 3. Eating establishments that allow alcohol.  
69 Notwithstanding subsection 2, any eating establishment regardless  
70 of the number of seats that permits on-premise consumption of  
71 alcoholic beverages shall provide at least one toilet facility  
72 for the use of its customers. Toilet facilities that require  
73 access through the food preparation area or the use of which  
74 would in any way cause the establishment to be in violation of  
75 any state law or rule do not fulfill this requirement. The  
76 location of the toilets must be clearly marked, maintained in a  
77 sanitary condition, in good repair and their location  
78 identifiable from the eating area. There may be no charge for  
79 their use. Lavatory facilities must be located within or  
80 immediately adjacent to all toilet rooms or vestibules.

2 4. Exemptions. Upon appeal, the Division of Health  
3 Engineering may exempt from the requirements of subsection 2  
4 eating establishments of 13 to 25 seats that are not licensed for  
5 on-premise consumption of alcoholic beverages, and that were in  
6 existence prior to September 30, 1985, and which:

7 A. Are part of an enclosed shopping center that provides  
8 customer toilet facilities that are part of the public  
9 portion of the center and not part of a business within the  
10 center;

11 B. Have submitted evidence of an agreement with a 2nd party  
12 that customers of the eating establishment may use toilet  
13 facilities that are on the premises owned or rented by the  
14 2nd party in cases where that use would not create a  
15 substantial inconvenience to the customer of the eating  
16 establishment;

17 C. Are housed in buildings of unique construction that makes  
18 installation of a toilet facility cost prohibitive; or

19 D. Would lose 1/4 or more of their existing seating space if  
20 required to provide a toilet facility of a minimum size of 3  
21 feet by 6 feet.

22 5. Notice. Any eating establishment that does not have a  
23 toilet facility available shall post a sign to that effect that  
24 can be seen upon entry to the eating establishment.

#### 25 §5903. Rules

26 The department may adopt, in accordance with the Maine  
27 Administrative Procedure Act, Title 5, chapter 375, rules to  
28 administer this chapter.

#### 29 §5904. Enforcement

30 This chapter must be enforced by the Division of Health  
31 Engineering. Anyone violating this chapter or rules under this  
32 chapter commits a civil violation for which a forfeiture of not  
33 more than \$200 may be adjudged. Each day of violation must be  
34 considered a separate offense.

### 35 CHAPTER 257

### 36 SWIMMING POOLS

### 37 SUBCHAPTER I

### 38 ENCLOSURE REQUIREMENTS

#### 40 §6001. Definitions

41 As used in this subchapter, unless the context otherwise  
42 indicates, the following terms have the following meanings.

43 1. Fence. "Fence" means a good quality fence or wall not  
44 less than 4 feet in height above ground surface and of a  
45 character to exclude children. The fence must be so constructed  
46 as not to have openings, holes or gaps larger than 4 square  
47 inches, except for fences constructed of vertical posts or  
48 louvers, in which case, the openings may not be greater than 4  
49 inches in width with no horizontal members between the top and  
50 bottom plates. Doors and gates are excluded from the minimum  
dimension requirements.

2. Swimming pool. "Swimming pool" means an outdoor  
artificial receptacle or other container, whether in or above the  
ground, used or intended to be used to contain water for swimming  
or bathing and designed for a water depth of 24 inches or more.

#### 51 §6002. Enclosure of swimming pool required

52 A fence must be erected and maintained around every swimming  
53 pool, except that portable above-ground swimming pools with  
54 sidewalls of at least 24 inches in height are exempted. A  
55 dwelling house or accessory building may be used as part of this  
56 enclosure. All gates or doors opening through this enclosure  
57 must be capable of being securely fastened at all times when not  
58 in actual use.

#### 59 §6003. Municipal ordinances

60 Nothing in this subchapter may be construed as a preemption  
61 by the State. Municipalities may adopt and enforce swimming pool  
62 enclosure ordinances, or enforce existing ordinances, that are  
63 either less restrictive or more restrictive than this subchapter,  
64 or that concern matters not dealt with by this subchapter.

#### 65 §6004. Penalty

66 Any person who does not comply with this subchapter within  
67 30 days, after receiving written notice that the person is in  
68 violation of its provisions, commits a civil violation for which  
69 a forfeiture of not more than \$500 may be adjudged. Each day a  
70 violation continues constitutes a separate violation.

### 71 SUBCHAPTER II

### 72 PUBLIC SWIMMING POOLS AND SPAS

2 **§6051. Purpose**

4 The purpose of this subchapter is to provide minimum  
6 requirements and standards for the protection of the public  
8 health, safety and welfare of persons using public swimming pools  
10 or spas.

12 **§6052. Definitions**

14 As used in this subchapter, unless the context otherwise  
16 indicates, the following terms have the following meanings.

18 1. Communicable disease. "Communicable disease" is a  
20 disease capable of being transmitted from one person to another.

22 2. Pool depth. "Pool depth" means the distance between the  
24 floor of the pool and the maximum operating water level.

26 3. Private spa. "Private spa" means any constructed spa  
28 that is used in connection with a single or multifamily residence  
30 and available only to the residents and private guests.

32 4. Private swimming pool. "Private swimming pool" means  
34 any constructed pool that is used as a swimming pool in  
36 connection with a single or multifamily residence and available  
38 only to the residents and private guests.

40 5. Public spa. "Public spa" means any constructed spa  
42 other than a private spa.

44 6. Public swimming pool. "Public swimming pool" means any  
46 constructed or prefabricated pool other than a private swimming  
48 pool.

50 7. Spa. "Spa" means a unit containing water primarily  
designed for nontherapeutic use that is not drained, cleaned or  
refilled for each individual. It may include, but is not limited  
to, hydrojet circulation, hot water, cold water, mineral baths,  
air induction bubbles or any combination thereof. The term spa  
includes, but is not limited to, hot tubs.

8. Swimming pool. "Swimming pool" means any basin, chamber  
or tank constructed of impervious material, located either  
indoors or outdoors containing an artificial body of water for  
swimming or recreational bathing and having a depth of 2 feet or  
more at any point. This includes any related equipment,  
structures, areas and enclosures that are intended for the use of  
persons using or operating the swimming pool such as equipment,  
dressing lockers, showers and toilet rooms.

2 **§6053. Health and safety**

4 1. Employment: communicable disease. No person having a  
6 communicable disease may be employed or work at a public swimming  
8 pool or spa.

10 2. Nuisance. Any public swimming pool or spa found to be  
12 unsanitary, as defined by the department's rules, is declared to  
14 be a nuisance.

16 3. Supervision. Every public swimming pool or spa must be  
18 under the supervision of a capable individual who is responsible  
20 for compliance with this subchapter relating to the safe and  
22 sanitary operation and maintenance of a public swimming pool or  
24 spa. Nothing in this subchapter requires a lifeguard to be on  
26 duty when a public swimming pool or spa is open to the public.

28 **§6054. Submission of plans**

30 No person may begin construction of a public swimming pool  
32 or spa or substantially alter or reconstruct any public swimming  
34 pool or spa without first having submitted plans and  
36 specifications to the department for review and approval. The  
38 department review must be limited to matters relating directly to  
40 safety and sanitation.

42 The design criteria to be followed by the department in the  
44 review and approval is the minimum standard for public swimming  
46 pools and the minimum standard for public spas published by the  
48 National Swimming Pool Institute.

50 **§6055. Existing installations**

1. Public pool or spa: existing use. Any public swimming  
pool or spa installed prior to September 19, 1985 may continue  
its existing use, maintenance or repair if the use, maintenance  
or repair is in accordance with the original design and location  
and no hazard to the public health, safety or welfare has been  
created by the installation.

2. Public pool or spa: maintenance. The owner or the  
owner's designated agent is responsible for the maintenance of  
the public swimming pool or spa in a safe and sanitary condition.

**§6056. Use of safety equipment in public pools**

No person may prohibit the use of a life jacket or similar  
device in a public swimming pool by any person who suffers, as  
evidenced by a signed statement of a licensed physician, from any

physical disability or condition that necessitates the use of a life jacket or similar device.

#### §6057. Inspections

The department may conduct inspections necessary to ensure compliance with the provisions of this subchapter and may enter at any reasonable hour public swimming pools or spas for this purpose.

#### §6058. Closure

The department may close any public swimming pool or spa for failure to comply with the provisions of this subchapter.

Before closing a public swimming pool or spa, the department shall issue a notice in writing enumerating instances of failure to comply with the law or rules. The owner must have an opportunity to request a fair hearing before the department pursuant to Title 5, sections 9052 to 9064.

Closed public swimming pools and spas may be reopened upon presentation of evidence that the deficiencies causing the closing have been corrected.

#### §6059. Penalties

The department may seek injunctive or other appropriate judicial relief for violations of any provisions of this subchapter.

#### §6060. Rules

The department may adopt and enforce rules necessary to protect public health and safety and carry out the provisions of this subchapter relating directly to the safe and sanitary design, construction and operation of public swimming pools and spas.

### PART 3

### HEALTH CARE

### CHAPTER 801

### GENERAL PROVISIONS

### SUBCHAPTER I

### MISCELLANEOUS PROVISIONS

#### §8001. Coordination of health services funded by state and federal funds

1. Findings and declaration of legislative intent. The Legislature finds that the costs of health care and services provided by health care facilities are matters of vital concern to the people of this State and have a direct relationship to the ability of the people to obtain necessary health care.

The Legislature further finds that the coordination of health services in a geographic area within an existing health facility, where practicable, increases both access and quantity of services provided and increases the likelihood that costs for these services will be reasonable.

It is the intent of the Legislature to define a policy for the department in order that health services paid for by state and federal funds be coordinated through existing health facilities whenever possible.

2. Coordination of health services. To assure equal access to and to avoid the unnecessary duplication of administrative systems, health services and health care facilities, the department shall, to the extent practicable, ensure that health services funded or provided under the United States Social Security Act, Title V, ESPDT of Title XIX and Title XX, as amended, the United States Public Health Services Act, Section 314 D of Title III, as amended, the Women, Infants and Children, Special Supplemental Food Program of the United States Child Nutrition Act of 1966, or its successor, the United States Older Americans Act, ASPDT of Title III, as amended, are provided through agreements with an existing health facility as long as quality of care is maintained.

#### §8002. Medical and social services referral service

The department shall establish and maintain an information and referral service for medically indigent persons who become pregnant as a result of rape, gross sexual misconduct, incest or sexual abuse. The information and referral service must include a list of medical and social services available from state and private sources, including, but not limited to, counseling services, shelter, maternal health care, a list of physicians who have voluntarily agreed to provide to Medicaid eligible victims, pro bono, medical services not available from Medicaid and other applicable medical or social services.



2 This information must also be made available to rape crisis  
3 centers, family planning agencies and other appropriate  
4 organizations.

5 In addition to the medical and social services information  
6 provided, the department shall strongly encourage and counsel  
7 each person receiving this information to report the rape, gross  
8 sexual misconduct, incest or sexual abuse to the appropriate  
9 authorities for criminal prosecution and shall assist that person  
10 in making the report, if requested.

11 §8003. State-wide plan; advisory council; duties

12 1. State-wide plan. Except where a single state agency is  
13 otherwise designated or established in accordance with any other  
14 state law, any state officer or state agency, designated by the  
15 Governor for that purpose, is authorized to be the sole agency of  
16 the State of Maine to establish and administer or supervise the  
17 administration of any state-wide plan for the construction,  
18 modernization, equipment, maintenance or operation of any  
19 facilities for the prevention of physical or mental illness or  
20 the provision of care, treatment, diagnosis, rehabilitation,  
21 training or related services, which plan is now, or may hereafter  
22 be, required as a condition to the eligibility for benefits under  
23 any federal law. Such officer or agency is authorized to receive,  
24 administer and expend any funds that may be available under any  
25 federal law or from any other source, public or private, for such  
26 purposes.

27 The state officer or state agency is authorized and  
28 empowered to do any and all things necessary or required to be  
29 done as a condition to receiving federal aid or grants with  
30 respect to the establishment, construction, modernization,  
31 maintenance, equipment or operation for all the people of the  
32 State of adequate facilities and services as specified in this  
33 section, including the authority:

34 A. To provide for an inventory of existing facilities of a  
35 particular category or categories thereof, and to survey the  
36 need for additional facilities;

37 B. To develop and administer a construction program or  
38 programs that, in conjunction with existing facilities, will  
39 afford adequate facilities to serve the people of the State;

40 C. To provide methods of administration, including  
41 personnel standards, on a merit basis, and to require  
42 reports, make investigations and prescribe regulations;

43 D. To provide for priority of projects or facilities;

2 E. To provide to applicants an opportunity for a hearing  
3 before the state officer or state agency; and

4 F. To prescribe and require compliance with standards of  
5 maintenance and operation applicable to the facilities as  
6 are reasonably necessary to protect the public health,  
7 welfare and safety.

8 2. Advisory council. The Governor shall appoint a state  
9 advisory council or councils with appropriate representatives,  
10 including representatives required as a condition of eligibility  
11 for benefits under any federal law, to consult with such state  
12 officer or state agency in carrying out the purposes of this  
13 section.

14 Each council member holds office for a term of 4 years, except  
15 that any member appointed to fill a vacancy occurring prior to  
16 the expiration of the term for which that member's predecessor  
17 was appointed must be appointed for the remainder of the term,  
18 and the term of office of the members first taking office expire,  
19 as designated at the time of appointment, 1/4 of the total number  
20 of members at the end of the first year, 1/4 at the end of the  
21 2nd year, 1/4 at the end of the 3rd year, and 1/4 at the end of  
22 the 4th year, after the date of appointment. The Governor shall  
23 designate the chair of each council. Council members, while  
24 servicing on council business, receive no compensation but are  
25 entitled to receive actual and necessary travel and subsistence  
26 expenses while serving away from their places of residence. The  
27 council or councils shall meet as frequently as the chair deems  
28 necessary but not less than once each year. Upon request of 4 or  
29 more members of a council, the chair shall call a meeting of the  
30 council.

31 §8004. Debts owed the department by providers

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

35 A. "Boarding home" means any facility that meets the  
36 definition of section 9101, subsection 4.

37 B. "Debt" means any amount of money that is owed to the  
38 department as a result of:

39 (1) Overpayments that have been determined by a  
40 department audit pursuant to the applicable principles  
41 of reimbursement, overpayments as reported by a

provider in an unaudited cost report or overpayments that have been discovered in any other manner;

(2) The department's authority to recapture depreciation;

(3) The assessment of fines and sanctions;

(4) Projected overpayments reported in an interim cost report. If an interim report is not filed at least 30 days prior to the transfer, "debt" also includes 5% of Medicaid reimbursement or cost reimbursement for the last fiscal year or \$50,000, whichever is less; or

(5) A final reconciliation decision and order by the Maine Health Care Finance Commission.

C. "Former provider" means the person reimbursed by the department for the provision of health care services at a nursing home, boarding home or hospital prior to its transfer.

D. "Hospital" means any facility licensed pursuant to sections 8801 and 8802.

E. "Interim cost report" means a cost report that covers the current fiscal year and any prior periods not covered by a previously filed cost report. Cost incurred in the 90 days prior to the transfer need not be covered in the interim cost report.

F. "Nursing home" means any facility that meets the definition of section 9001, including an intermediate care facility for people with mental retardation.

G. "Person" means any natural person, partnership, association, corporation or other entity, including any county, local or other governmental unit.

H. "Provider" means a person reimbursed by the department for the provision of health care services.

I. "Transfer" means any change in the ownership or control of a nursing home, boarding home or hospital, including, but not limited to, a sale, lease or gift of the land, building or operating entity, that results in:

(1) The department reimbursing a person other than the former provider for the provision of care or services; or

(2) The discontinuation of the provision of care or services.

J. "Transferee" means any person to whom a nursing home, boarding home or hospital is transferred.

2. Establishment of debt. A debt is established by the department when it notifies a provider of debt, or when the Maine Health Care Finance Commission notifies a hospital that the hospital owes the department pursuant to a final reconciliation decision and order. A debt is collectible by the department 31 days after exhaustion of all administrative appeals and any judicial review available under Title 5, chapter 375.

3. Notice of debt. Any notice of debt issued to a provider by the department must include the following:

A. A statement of the debt accrued;

B. A statement of the time period during which the debt accrued;

C. The basis for the debt;

D. The debtor's right to request a fair hearing within 30 days of receipt of the notice; and

E. A statement that after a debt is established, the department may proceed to collect that debt through administrative offset, lien and foreclosure, or other collection action.

4. Successor liability. Liability of transferees is governed by this subsection.

A. When a nursing home, boarding home or hospital is transferred, the transferee is liable for debts owed to the department by the former provider unless by the time of sale:

(1) All debts owed by the former provider to the department have been paid, except as stated in subparagraph (2);

(2) If the indebtedness is the subject of an administrative appeal, an escrow account has been created and funded in an amount sufficient to cover the debt as claimed by the department; or

(3) An interim cost report has:

2 (a) Been filed and an escrow account has been  
4 created and funded in an amount sufficient to  
6 cover any overpayment identified in the report; or

8 (b) Not been filed and an escrow account has been  
10 created and funded in an amount sufficient to  
12 cover 5% of Medicaid reimbursement or cost  
14 reimbursement for the last fiscal year or \$50,000,  
16 whichever is less.

18 B. Any person affected by this subsection may request that  
20 the department identify the amount of any debt owed by a  
22 nursing home, boarding home or hospital. When the  
24 department receives such a request, it shall identify the  
26 debt within 30 days. Failure to identify the amount of a  
28 debt when a request is made in writing at least 30 days  
30 prior to the transfer precludes the department from  
32 recovering that debt from the transferee.

34 C. The department shall provide written notice of the  
36 requirements of this section to the transferee in a letter  
38 acknowledging receipt of a request for a certificate of need  
40 or waiver of the certificate of need for a nursing home or  
42 hospital transfer or in response to a request for an  
44 application for a license to operate a boarding home.

46 D. If a transferee becomes liable for a debt pursuant to  
48 this subsection, the transferee succeeds to any defenses to  
50 the debt that could have been exercised by the former  
provider.

E. Nothing in this subsection limits the liability of the  
former provider to the department for any debts whether or  
not they are identified at the time of sale. In addition, a  
transferee has a cause of action against a former provider  
to the extent that debts of the former provider are paid by  
the transferee, unless the transferee has waived the right  
to sue the former provider for those debts.

F. The commissioner may waive all or part of a transferee's  
liability under this subsection if the commissioner finds  
that a waiver of liability is in the public interest.

5. Department may offset. The department may offset  
against current reimbursement owed to a provider or any entity  
related by ownership or control to that provider any debt it is  
owed by that provider after the debt becomes collectible.

6. Liens. Collection by lien is as follows.

2 A. After a debt is collectible, the amount stated in the  
4 notice of debt or overpayment is a lien in favor of the  
6 department against all real or personal property of the  
8 provider or any entity related by ownership or control to  
10 the provider.

12 B. The lien attaches to all real and personal property of  
14 the responsible party when the department files in the  
16 registry of deeds of any county, or with any office  
18 appropriate for a notice with respect to personal property,  
20 a certificate that states the name of the responsible party,  
22 that party's address, the amount of debt accrued, the date  
24 of the underlying audit or decision and the name and address  
26 of the authorized agent of the department who issues the  
28 lien.

30 C. When a lien has been filed and the person having notice  
32 of the lien possesses any property that may be subject to  
34 the lien, that property may not be paid over, released,  
36 sold, transferred, encumbered or conveyed unless:

38 (1) A release or waiver signed by the commissioner has  
40 been delivered to the person in possession of the  
42 property; or

44 (2) A court has ordered the release of the lien. A  
46 court may order a release only when alternative  
48 security has been provided for the debt owed the  
50 department.

D. The commissioner may hold title to real or personal  
property for the purpose of foreclosure on filed liens.  
Foreclosure must proceed as follows.

(1) Actions to foreclose liens on real property filed  
under this subsection may be brought in the county  
where the lien is filed pursuant to the procedures of  
Title 14, chapter 713, subchapter VI. For purposes of  
foreclosure by civil action as described in Title 14,  
chapter 713, subchapter VI, a lien filed in accordance  
with this subsection constitutes a mortgage claim of  
the department on any real property owned by the  
debtor. Failure to pay the debt owed the department  
constitutes a breach of condition in the mortgage.

(2) Actions to foreclose liens on personal property  
filed under this subsection may be brought, pursuant to  
Title 14, chapter 509, subchapter III, in the county  
where the lien is filed.

2 7. Other collection actions. In addition to the other  
remedies provided in this section, the department may seek  
4 collection of any debt established under subsection 2 pursuant to  
Title 14, chapter 502.

6 8. Rulemaking. The department may adopt or amend any rule  
as necessary to implement this section.

10 §8005. Access requirements applicable to certain health care  
providers

12 1. Access requirements. Any person, including, but not  
limited to an affiliated interest as defined in section 10813,  
14 that is subject to the requirements of this subsection, shall  
provide the services to individuals who are eligible for charity  
16 care in accordance with a charity care policy adopted by the  
affiliate or provider that is consistent with rules applicable to  
18 hospitals under section 10807. A person is subject to this  
20 subsection if that person:

22 A. Is either a direct provider of major ambulatory service,  
as defined in section 10602, subsection 8, or is or has been  
24 required to obtain a certificate of need under section 10351  
or its predecessors; and

26 B. Provides outpatient services as defined in section  
10602, subsection 9.

28 2. Enforcement. The requirements of subsection 1 are  
enforced through the following mechanisms.

30 A. Any person who knowingly violates any provision of this  
section or any valid order or rule made or adopted pursuant  
32 to section 10807, or who willfully fails, neglects or  
refuses to perform any of the duties imposed under this  
34 section, commits a civil violation for which a forfeiture of  
not less than \$200 and not more than \$500 per patient may be  
36 adjudged with respect to each patient denied access unless  
specific penalties are elsewhere provided. Any forfeiture  
38 imposed under this section may not exceed \$5,000 in the case  
of the first judgment under this section against the  
40 provider, \$7,500 in the case of a 2nd judgment against the  
provider or \$10,000 in the case of the 3rd or subsequent  
42 judgment against the provider. The Attorney General is  
authorized to prosecute the civil violations.

44 B. Upon application of the Attorney General or any affected  
patient, the Superior Court or District Court has full  
46 jurisdiction to enforce the performance by providers of

2 health care of all duties imposed upon them by this section  
and any valid rules adopted pursuant to section 10807.

4 C. In any civil action under this section, the court, in  
its discretion, may allow the prevailing party, other than  
6 the Attorney General, reasonable attorney's fees and costs  
and the Attorney General is liable for attorney's fees and  
8 costs in the same manner as a private person.

10 D. It is an affirmative defense to any legal action brought  
under this section that the person subject to this section  
12 denied access to services on the grounds that the economic  
viability of the facility or practice would be jeopardized  
14 by compliance with this section.

16 §8006. Maine Registry of Certified Nursing Assistants

18 1. Established. The Maine Registry of Certified Nursing  
Assistants is established in compliance with federal and state  
20 requirements. The department shall maintain the registry.

22 2. Contents. The Maine Registry of Certified Nursing  
Assistants must contain a listing of nursing assistants who have  
24 successfully completed a nursing assistant training program, hold  
a certificate of training and meet the eligibility requirements  
26 established by the State Board of Nursing. The listing must  
include, for any nursing assistant listed, a notation of:

28 A. Any convictions of abuse, neglect or misappropriation of  
property of an individual; and

30 B. Any specific documented findings by the state survey  
agency of abuse, neglect or misappropriation of property of  
32 a resident, client or patient. For purposes of this  
section, "state survey agency" means the agency specified  
34 under 42 United States Code, Sections 1395aa and 1396  
responsible for determining whether institutions and  
36 agencies meet requirements for participation in the State's  
Medicare and Medicaid programs.

38 3. Eligibility requirements for listing. The State Board  
of Nursing shall adopt rules pursuant to the Maine Administrative  
40 Procedure Act defining eligibility requirements for listing on  
the Maine Registry of Certified Nursing Assistants, including  
42 rules regarding temporary listing of nursing assistants who have  
received training in another jurisdiction.

44 §8007. Health care occupations manual

2 Annually by September 1, the Department of Labor shall  
3 prepare a health care occupations manual. The manual must  
4 provide the following information:

5 1. Listing. A listing of all health care occupations:

6 2. Description. A brief description of each occupation:

7 3. Education. Minimum education requirements:

8 4. Education opportunities. Schools throughout New England  
9 offering education in various health care occupations:

10 5. Salary information. Average starting salary for each  
11 occupation:

12 6. Future needs. Projected needs for the next 5 years; and

13 7. Financial aid. Financial aid available for education.

14 §8008. Department records; disclosure

15 The following provisions apply to records that are made,  
16 acquired or retained by the department in connection with the  
17 administration of the Medicaid program and the licensing or  
18 certification of hospitals, nursing homes and other medical  
19 facilities and entities.

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

23 A. "Confidential information" means any information that  
24 directly or indirectly identifies:

25 (1) Any person who makes a complaint to the department;

26 (2) A resident or a recipient of services of any  
27 facility or provider licensed or certified by the  
28 department;

29 (3) Any recipient of a public welfare program, such as  
30 the United States Social Security Act, Title XIX; or

31 (4) Any medical or personal information concerning the  
32 individuals listed in subparagraphs (2) and (3).

33 2. Prohibition. Except as provided in Title 5, section 9057  
34 and in subsections 3 and 4, confidential information may not be

35 released without a court order or a written release from the  
36 person whose privacy interest is protected by this section.

37 3. Optional disclosure. The department may disclose  
38 relevant confidential information to the extent allowed by  
39 federal law and regulation to the following persons or agencies:

40 A. Employees of the department and legal counsel for the  
41 department in carrying out their official functions;

42 B. Professional and occupational licensing boards pursuant  
43 to chapter 103;

44 C. An agency or person investigating a report of abuse or  
45 neglect when the investigation is authorized by law or by an  
46 agreement with the department;

47 D. A physician treating an individual whom the physician  
48 reasonably suspects may have been abused or neglected;

49 E. The resident or recipient of services on whose behalf  
50 the complaint was made; or

51 F. A parent, guardian, spouse or adult child of a resident  
52 or recipient of services or any other person permitted by  
53 the resident or recipient to participate in decisions  
54 relating to the resident's or recipient's care.

55 4. Mandatory disclosure. The department shall disclose  
56 relevant confidential information to the extent allowed by  
57 federal law and regulations to the following:

58 A. A law enforcement agency investigating a report of abuse  
59 or neglect or the commission of a crime by an owner,  
60 operator or employee of a facility or provider; or

61 B. Appropriate state or federal agencies when disclosure is  
62 necessary to the administration of the Medicaid program.

63 5. Further disclosure. Information released pursuant to  
64 subsections 3 and 4 may be used solely for the purpose for which  
65 it was provided and may not be further disseminated.

66 SUBCHAPTER II

67 LIMITATION ON PAYMENTS TO HEALTH CARE  
68 INSTITUTIONS

69 §8051. Limitation on payments to health care institutions  
70

2 The Legislature is concerned that certain health care  
3 institutions have engaged persons with the intent to interfere  
4 with, inhibit or disrupt the free exercise of the right of all  
5 employees to organize and choose representatives for the purpose  
6 of negotiating the terms and conditions of their employment or  
7 other mutual aid or protection as provided in Title 26, section  
8 931. The Legislature declares that it is consistent with public  
9 policy to prohibit the use of funds received from the State for  
10 the purpose of engaging those persons. The Legislature  
11 acknowledges the right of employers to communicate with employees  
12 concerning the issue of unionization and further recognizes that  
13 employers may obtain counsel for advice and assistance.

14 **§8052. Definitions**

15 As used in this subchapter, unless the context otherwise  
16 indicates, the following terms have the following meanings.

17 **1. Disallowed expenditure.** "Disallowed expenditure" means  
18 an amount paid to any person for those acts or services rendered,  
19 that result in:

20 **A. The commission of an unfair labor practice or prohibited**  
21 **practice as determined by:**

22 **(1) The National Labor Relations Board pursuant to the**  
23 **United States Code, Title 29, Section 158;**

24 **(2) The Maine Labor Relations Board pursuant to Title**  
25 **26, chapter 7, 9, 9-A or 9-B; or**

26 **(3) A court of competent jurisdiction pursuant to**  
27 **Title 26, section 911; and**

28 **B. Influencing employees respecting unionization, when**  
29 **costs for these activities are disallowed for reimbursement**  
30 **pursuant to Medicare law and regulation.**

31 **2. Health care institution.** "Health care institution"  
32 means any person, partnership, association or corporation,  
33 including county or local government unit, required to obtain a  
34 license pursuant to chapter 807.

35 **3. Person.** "Person" means any person, partnership,  
36 association or corporation engaged or employed by a health care  
37 institution.

38 **4. Proportional share.** "Proportional share" means the  
39 revenue received from the State during the previous 12 months.

40 divided by the sum of revenue received from the State, 3rd-party  
41 payors and patients during the corresponding 12 months.

42 **§8053. Recovery of state funds**

43 Upon notification that a health care institution has paid an  
44 amount for a disallowed expenditure, the department shall  
45 determine the amount of the disallowed expenditure. The  
46 department shall withhold an amount equal to a proportional share  
47 of the amount of the disallowed expenditure, according to a  
48 schedule determined by the department, from future payments of  
49 medical assistance reimbursements to be received by the health  
50 care institution. If an agency or court determination of a  
51 violation is under appeal, the withholding must be stayed pending  
52 a final adverse decision against the institution.

53 **§8054. Expenditures not included**

54 To the extent consistent with Medicare and Medicaid law and  
55 regulation, disallowed expenditures do not include amounts paid  
56 to any person for services rendered as follows:

57 **1. Unfair labor practice.** In the commission of any unfair  
58 labor practice out of necessity to obtain judicial review of a  
59 unit determination finding;

60 **2. Contract negotiations.** Reasonable expenses for contract  
61 negotiations or preparations for contract negotiations;

62 **3. Disputes concerning contracts.** Reasonable expenses  
63 associated with disputes concerning the interpretation of  
64 contracts;

65 **4. Attorneys' fees.** Expenses for attorneys' fees arising  
66 out of a court or agency proceeding or appeal or in preparation  
67 for the proceeding or appeal; or

68 **5. Educational instruction.** Reasonable expenses for  
69 educational instruction of supervisors or management employees  
70 concerning state or federal labor laws.

71 **§8055. Reporting requirement**

72 **1. Report.** Each health care institution that receives  
73 funds from the department shall annually report to the department  
74 the amount paid to any person for the purpose of influencing its  
75 employees respecting unionization or attempts to coerce employees  
76 to otherwise interfere with or restrain the exercise of employee  
77 rights to organize and choose representatives for the purpose of

negotiating the terms and conditions of their employment or other mutual aid or protection.

2. Violation. Violation of this section results in an administrative fine of up to \$500 for each offense, as determined pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375.

#### §8056. Rules

The department shall adopt rules to implement this subchapter, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375.

### SUBCHAPTER III

#### MUNICIPAL HEALTH FACILITIES

##### §8101. Municipal hospitals

A municipality may establish and maintain one or more hospitals, nursing facilities, boarding homes or any other institution, place, building or agency for the care, accommodation or hospitalization of the sick or injured or for the care of any aged or other persons requiring or receiving chronic or convalescent care. Any such facility is subject to all statutes and licensing requirements applicable to the particular type of facility.

##### §8102. Temporary facilities

Notwithstanding the provisions of section 8101; in the event of an outbreak of any disease or health problem dangerous to the public health, the municipal officers or local health officer, with the approval of the department, may establish temporary health care facilities, subject to the supervision of the department.

### SUBCHAPTER IV

#### TUBERCULOSIS SANATORIUMS

##### §8151. Establishment and maintenance

The department shall maintain by building, lease or by purchase one or more sanatoriums in such districts of the State as seems best to serve the needs of the people for the care and treatment of persons affected with tuberculosis. If at any time the number of persons requiring care and treatment in these sanatoriums decreases to a level that, in the judgment of the

commissioner, makes continued operation and maintenance of a sanatorium impracticable, the commissioner, with the advice and consent of the Governor, may close any or all sanatoriums. In the event that all sanatoriums are closed as provided, any funds from the sanatorium accounts and appropriations may, with the advice and consent of the Governor, be made available to the commissioner for the purpose of providing alternative treatment and care for those patients needing treatment and care. Where lease or purchase is made, the State has the right to enlarge or otherwise adapt the property to meet the needs of the situation. These additions or improvements must be considered permanent. At the expiration of the original lease of any property for use as a tuberculosis sanatorium, the State has the right of renewal or purchase.

Without regard to the matter of sanatorium closure, the commissioner also may purchase care for tuberculosis patients from private practitioners and private medical institutions. In making payments for care, the commissioner shall take into consideration payments that are available through insurance or other 3rd parties.

##### §8152. Admission; charges

Patients may be admitted to these sanatoriums upon application to the department, if found to be suffering from tuberculosis or if suspected of having tuberculosis. All patients in the sanatoriums, the parents of minor children or the spouse, shall pay to the State for treatment, including board, supplies and incidentals necessary to the prescribed medical and surgical treatment both for inpatient and outpatient services, the amount determined by the department. The department may, if it finds that the patient or relatives liable by law are unable to pay the amount determined, in whole or in part, waive payment, in whole or in part, as the circumstances appear to warrant.

All funds collected from this source must be credited to the General Fund. No pauper disabilities are created by reason of any aid or assistance given under this section.

This section does not apply to persons who are committed under section 2406.

### CHAPTER 803

#### MEDICAID

##### SUBCHAPTER I

#### GENERAL PROVISIONS

2 **§8201. Definitions**

4 As used in this chapter, unless the context otherwise  
6 indicates, the following terms have the following meanings.

8 1. Aid. "Aid" means money payments to, or in behalf of, or  
10 medical care or any type of remedial care or any related services  
12 to recipients who qualify for such assistance under this chapter.

14 2. Application. "Application" is the action by which an  
16 individual indicates in writing to the department the  
18 individual's desire to receive or to be recertified for aid. An  
20 application is distinguished from an inquiry, which is simply a  
22 request for information about eligibility requirements for aid.

24 3. Approved Medicaid service. "Approved Medicaid service"  
26 means a medical service that will be provided to Medicaid  
28 recipients under the provisions of the United States Social  
30 Security Act, Title XIX and successors to it and related rules of  
32 the department.

34 4. Home health care. "Home health care" means nursing  
36 services and other therapeutic services provided without a  
38 requirement that hospitalization should be an antecedent to care  
40 and provided on an intermittent visiting basis to individuals in  
42 their homes or other place of residence, excluding hospitals,  
44 extended care facilities, rehabilitation centers and skilled  
46 nursing homes. In addition to skilled nursing, these services may  
48 include physical therapy, speech therapy, occupational therapy,  
50 medical social services, home health aide services and other  
services and standards of care defined by the department that are  
pursuant to, consistent with and necessary to the administration  
of home health care within the intent of section 8306.

4. Medicaid. "Medicaid" means the medical assistance  
program administered by the department and authorized by the  
United States Social Security Act, Title XIX and successors to it.

5. Recipient. "Recipient" means a person who received aid  
under this chapter.

**§8202. Appropriations**

Appropriations for aid under this chapter when used in  
programs entitled to receive federal matching funds do not lapse  
but are a continuing account so long and as federal grants are  
available to match the State's contribution. No payments  
matchable by federal funds may be made out of the account if  
federal grants or state appropriations are withdrawn, except that

medical or remedial care or services contracted for before the  
date of withdrawal must be paid. Any money left in the fund in  
the event of withdrawal of federal grants or state appropriations  
must be divided between the State and the Federal Government in  
proportion to the amount contributed by each.

All money made available to fund programs authorized by this  
chapter must be expended under the direction of the department,  
and the department may direct the expenditures therefrom of sums  
necessary for purposes of administration.

**§8203. Moneys received; credit to General Fund; unencumbered balance**

1. Fund. All moneys received by the department or the  
Department of Children and Families under section 8201 that are  
generated by services rendered at any of the mental health and  
mental retardation institutions operated by either department  
must be credited to the General Fund.

2. Transfer of cash receipts. An amount equal to 100% of  
the total cash receipts in any fiscal year must be transferred to  
the General Fund.

3. Transfer of unencumbered balances. All unencumbered  
balances generated from revenues received in prior years must be  
transferred to the General Fund.

**§8204. Change of circumstances**

If at any time during the continuance of aid the recipient  
receives any property or income in excess of the amount last  
disclosed to the department, it is the duty of the recipient  
immediately to notify the department of the receipt or possession  
of the property or income, and the department may, after  
investigation, either cancel the aid or change the amount of the  
aid in accordance with the circumstances.

Any recipient of aid under this chapter whose categorical  
assistance benefits are terminated by the department must be sent  
a separate, timely and adequate notice of the effect that that  
termination will have on the recipient's medical assistance. The  
department shall develop procedures to ensure the continuation,  
without interruption, of medical assistance to persons who,  
despite the termination of their categorical assistance benefits,  
are eligible for continuing coverage through any program under  
this chapter.

**§8205. Fraudulent representations; penalty**



2 A person is guilty of a misdemeanor, and upon conviction  
3 thereof must be punished by a fine of not more than \$500, or by  
4 imprisonment for not more than 11 months, or by both, if:

5 1. Obtaining aid. That person by means of a willfully false  
6 statement or representation, or by impersonation or other  
7 fraudulent devices, obtains or attempts to obtain, or aids or  
8 abets any person to obtain:

9 A. Aid to which the person is not entitled:

10 B. A larger amount of aid than that to which that person is  
11 entitled; or

12 C. Payment of any forfeited installment of aid; or

13 2. Disposing of property. That person knowingly buys or  
14 aids or abets in buying or in any way disposing of property of a  
15 recipient in such a way as to constitute a fraud upon the  
16 department.

17 **§8206. Inalienability of aid**

18 All rights to aid are absolutely inalienable by any  
19 assignment, execution, pledge or otherwise, and do not pass, in  
20 case of insolvency or bankruptcy, to any trustee, assignee or  
21 creditor.

22 **§8207. Appeals**

23 1. Hearing. Any person who is denied aid, or who is not  
24 satisfied with the amount of aid allotted to that person, or is  
25 aggrieved by a decision of the department made under this  
26 chapter, or whose application is not acted upon with reasonable  
27 promptness, may appeal to the commissioner, who shall provide the  
28 appellant with reasonable notice and opportunity for a fair  
29 hearing. The commissioner or the commissioner's designee shall  
30 hear all evidence pertinent to the matter at issue and render a  
31 decision within a reasonable period after the date of the  
32 hearing. The hearing must be held in accordance with Title 5,  
33 chapter 375.

34 2. Notice. Any action relative to the grant, denial,  
35 reduction, suspension or termination of aid provided under this  
36 chapter must be communicated to the applicant or recipient in  
37 writing, must include the specific reason or reasons for the  
38 action and must state that the person affected has a right to a  
39 hearing.

40 **§8208. General penalty**

2 Any person who violates any of the provisions of this  
3 chapter for which no penalty is specifically provided must be  
4 punished by a fine of not more than \$500, or by imprisonment for  
5 not more than 11 months, or by both. If a recipient is convicted  
6 of an offense under this chapter, the department may cancel the  
7 aid.

8 **§8209. Recovery of illegal payments**

9 The department may recover the amount expended for aid in a  
10 civil action from a recipient or a former recipient who has  
11 failed to disclose assets that would have rendered the recipient  
12 or former recipient ineligible if the assets were disclosed.  
13 Actions under this section must be prosecuted by the Attorney  
14 General in the name of the State of Maine, and the amount  
15 recovered must be credited to the account for aid, medical or  
16 remedial care and services for the medically indigent.

17 **§8210. Action against parties liable for medical care rendered**  
18 **to assistance recipients: assignment of claims**

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

22 A. "3rd party" means any entity including, but not limited  
23 to, an insurance carrier that may be liable under a contract  
24 to provide health, automobile, workers' compensation or  
25 other insurance coverage that is or may be liable to pay all  
26 or part of the medical cost of injury, disease, disability  
27 or similar occurrence of an applicant or recipient of  
28 Medicaid or Maine Health Program benefits.

29 2. Recovery procedures. When benefits are provided or will  
30 be provided to a beneficiary under the Medicaid program  
31 administered by the department pursuant to the United States  
32 Social Security Act, Title XIX or under the Maine Health Program,  
33 section 8701, for the medical costs of injury, disease,  
34 disability or similar occurrence for which a 3rd party is, or may  
35 be, liable, the commissioner may recover from that party the  
36 reasonable value of the benefits provided. The Medicaid program  
37 and Maine Health Program are the payors of last resort and should  
38 provide medical coverage only when there are no other available  
39 resources. The Attorney General, or counsel for any fiscal  
40 intermediary with the permission of the Attorney General, may, to  
41 enforce this right, institute and prosecute legal proceedings  
42 against the 3rd party or, pursuant to this subsection, against  
43 the recipient, in the appropriate court, either in the name of  
44 the commissioner or 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 8.

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.

In any case in which 3rd-party liability is found under this section, the commissioner must be subrogated to the rights of the individual for whom medical assistance was made available.

3. Assignment of rights of recovery. The receipt of benefits 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 8701, constitutes an assignment by the recipient or any legally liable relative to the department of the right to recover from 3rd parties for the medical cost of injury, disease, disability or similar occurrence for which the recipient receives medical benefits. The department's assigned right to recover is limited to the amount of medical benefits received by the recipient and does not operate as a waiver by the recipient of any other right of recovery against a 3rd party that a recipient may have.

The recipient is also deemed to have appointed the commissioner as the recipient's attorney in fact to perform the specific act of submitting claims to insurance carriers or endorsing over to the department any and all drafts, checks, money orders or any other negotiable instruments connected with the payment of 3rd-party medical claims.

4. Direct reimbursement to health care provider. When an insured is eligible 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 8701, for the medical costs or injury, disease, disability or similar occurrence for which an insurer is liable, and the insured's claim is payable to a health care provider as provided or permitted by the terms of a health insurance policy or pursuant to an assignment of rights by an insured, the insurer shall directly reimburse the health care provider to the extent that the claim is honored.

5. Direct reimbursement to the department. When an insured is eligible 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 8701, for the medical costs of injury, disease, disability or similar occurrence for which an insurer is liable, and the claim is not payable to a health care provider under the terms of the health insurance policy, the insurer shall directly reimburse the department, upon request, for any medical services paid by the department on behalf of a Medicaid or Maine Health Program recipient to the extent that those medical services are payable under the terms of the health insurance policy.

6. Notification of claim. A Medicaid or Maine Health Program recipient, or any attorney representing a Medicaid or Maine Health Program recipient, who makes a claim to recover the medical cost of injury, disease, disability or similar occurrence for which the party received medical benefits under the Medicaid program, pursuant to the United States Social Security Act, Title XIX, or the Maine Health Program, section 8701, shall advise the department in writing with information as required by the department of the existence of the claim.

7. Notification of pleading. In any action to recover the medical cost of injury, disease, disability or similar occurrence for which the party received medical benefits under the Medicaid program or Maine Health Program, the party bringing the action shall notify the department of that action at least 10 days prior to filing the pleadings. Department records indicating medical benefits paid by the department on behalf of the recipient are prima facie evidence of the medical expenses incurred by the recipient for the related medical services.

8. 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 to the department of 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.

9. Honoring of assignments. The following provisions apply to claims for payment submitted by the department or a health care provider.

2 A. Whenever a participating health care provider or the  
4 department submits claims to an insurer, as defined in Title  
6 24-A, section 4, or to a health maintenance organization on  
8 behalf of a Medicaid or Maine Health Program recipient for  
10 whom an assignment of rights has been received, or whose  
12 rights have been assigned by the operation of law, the  
14 insurer or health maintenance organization doing business in  
16 the State must respond within 60 days of receipt of a claim  
18 by forwarding payment or issuing a notice of denial directly  
20 to the submitter of the claim.

22 B. Whenever a nonparticipating health care provider or the  
24 department on behalf of a nonparticipating provider submits  
26 claims to an insurer, as defined in Title 24-A, section 4,  
28 or a health maintenance organization that operates through a  
30 series of participation agreements on behalf of a Medicaid  
32 or Maine Health Program recipient for whom an assignment of  
34 rights has been received or whose rights have been assigned  
36 by the operation of law, the insurer or health maintenance  
38 organization doing business in the State must respond within  
40 60 days of receipt of a claim by forwarding payment, issuing  
42 a notice of denial or issuing a copy of the explanation of  
44 benefits directly to the submitter of the claim.

46 10. Claims against estates of Medicaid recipients. Claims  
48 against the estates of Medicaid recipients are governed by this  
subsubsection.

30 A. The department has a claim against the estate of a  
32 Medicaid recipient when, after the death of the recipient:

34 (1) Property or other assets are discovered that  
36 existed and were owned by the recipient during the  
38 period when Medicaid benefits were paid for the  
40 recipient and disclosure of the property or assets at  
42 the time benefits were being paid would have rendered  
44 the recipient ineligible to receive the benefits;

46 (2) It is determined that the recipient was 65 years  
48 of age or older when that person received Medicaid  
assistance and the recipient died on or after January  
1, 1993; or

46 (3) The recipient had been receiving institutional  
48 care in a nursing facility or intermediate care  
facility for the mentally retarded at the time of death  
on or after January 1, 1993.

2 B. The amount of Medicaid benefits paid and recoverable  
4 under this section is a claim against the estate of the  
6 deceased recipient pursuant to Title 18-A, Article III, Part  
8 B.

10 C. No claim may be enforced against the following:

12 (1) Real estate of a recipient used for the support,  
14 maintenance or comfort of the surviving spouse, a  
16 dependent child under 21 years of age or a dependent  
18 who is nonsupporting because of a disability, until  
20 that real estate is no longer used for those purposes;  
22 or

24 (2) Personal property necessary for the support,  
26 maintenance or comfort of the surviving spouse, a  
28 dependent child under 21 years of age or a dependent  
30 who is nonsupporting because of a disability, until the  
32 property is no longer used for those purposes.

#### 34 §8211. Interim assistance agreement

36 The department, with the approval of the Governor and on  
38 behalf of the State, may enter into an agreement with the United  
40 States Social Security Administration for the purpose of  
42 receiving reimbursement for interim assistance payments as  
44 provided by the United States Social Security Act.

### 36 SUBCHAPTER II

#### 38 POWERS AND DUTIES OF THE DEPARTMENT

#### 40 §8301. Authorization; designation

42 The department is authorized to administer programs of aid,  
44 medical or remedial care and services for medically indigent  
46 persons. It may employ, subject to the Civil Service Law,  
48 assistants necessary to carry out these programs and to  
coordinate their work with that of the other work of the  
department and with the work of the Department of Children and  
Families. The department shall administer these programs in  
accordance with the following provisions.

46 1. Designated agency. For the purposes of administering  
48 the Medicaid program in accordance with Title XIX of the federal  
50 Social Security Act, the department is the designated single  
state agency.

2. Eligibility. The Department of Children and Families  
shall perform eligibility functions in the Medicaid program in

2 accordance with a memorandum of understanding entered into with  
3 the department. The memorandum of understanding must include,  
4 but is not limited to, provisions that ensure access to Medicaid  
5 eligibility services for all eligible citizens.

6 3. SSI categorical eligibility. Relating to the  
7 determination of eligibility for medical care to be provided to a  
8 beneficiary of state or federal supplemental income for the  
9 blind, disabled and elderly, the department may enter into an  
10 agreement with the Secretary of the United States Department of  
11 Health and Human Services, whereby the secretary determines  
12 eligibility on behalf of the department.

#### 14 §8302. Rules

16 The department may adopt all necessary rules consistent with  
17 the laws of the State for the administration of aid including,  
18 but not limited to, the following:

20 1. Eligibility. Defining the term "medically indigent" and  
21 establishing conditions of eligibility; and

24 2. Aid. Establishing the types and amounts of aid to be  
25 provided.

#### 26 §8303. Records

28 The department shall adopt and enforce rules governing the  
29 custody, use and preservation of the records, papers, files and  
30 communications of the department related to carrying out the  
31 purposes of this chapter. The use of those records, papers, files  
32 and communications by any other agency or department of  
33 government to which they may be furnished is limited to the  
34 purposes for which they are furnished and by the law under which  
35 they are furnished.

#### 36 §8304. Applications

38 The following provisions relate to applications for aid.

40 1. Information. The department or its designee shall  
41 provide to all applicants for aid under this chapter information  
42 in written form, and verbally as appropriate or if requested,  
43 about coverage, conditions of eligibility, scope of programs,  
44 existence of related services and the rights and responsibilities  
45 of applicants for and recipients of aid.

48 2. Timely action: temporary aid. All applications for aid  
49 under this chapter must be acted upon and a decision made as soon  
50 as possible, but in no case may the department or its designee

2 fail to notify the applicant of its decision within 45 days after  
3 receipt of the application. Failure of the department to meet the  
4 requirements of this 45-day time standard, except where there is  
5 documented noncooperation by the applicant or the source of the  
6 applicant's medical information, must lead to the immediate and  
7 automatic issuance of a temporary medical card that is valid only  
8 until the applicant receives actual notice of a departmental  
9 denial of the application or until the applicant receives a  
10 replacement medical card. Notwithstanding an applicant's appeal  
11 of a denial of the application, the validity of the temporary  
12 medical card ceases immediately upon receipt of the notice of  
13 denial. Any benefits received by the applicant during the interim  
14 period when the applicant has actual use of a valid, temporary  
15 medical card are not recoverable by the department in any legal  
16 or administrative proceeding against the applicant.

18 3. Notice of denial. Whenever an applicant is determined  
19 by the department or its designee to be ineligible for a program  
20 for which an application has been submitted, the applicant must  
21 be immediately so notified in writing. Any notification of denial  
22 must contain a statement of the denial action, the reasons for  
23 denial, the specific rules supporting the denial, an explanation  
24 of the applicant's right to request a hearing and a  
25 recommendation to the applicant of any other program administered  
26 by the department for which the applicant may be eligible.  
27 Whenever an individual's application for Aid to Families with  
28 Dependent Children is denied by the Department of Children and  
29 Families, the notice of that denial must also include, in a clear  
30 and conspicuous manner, a statement that the applicant is likely  
31 to be eligible for medical assistance and must include  
32 information about the availability of applications for the  
33 program upon request in writing or through a toll-free telephone  
34 number.

#### 36 §8305. Outreach

38 The department shall initiate and monitor ongoing efforts  
39 performed cooperatively with other public and private agencies,  
40 religious, business and civic groups, pharmacists and other  
41 medical providers, professional associations, community  
42 organizations, unions, news media and other groups, organizations  
43 and associations to inform low-income households eligible for  
44 programs under this chapter of the availability and benefits of  
45 these programs and to ensure the participation of eligible  
46 households that wish to participate by providing those households  
47 with reasonable and convenient access to the programs.

#### 48 §8306. Prevention: home health

2 In administering programs of aid, the department shall,  
3 among other services, emphasize developing and providing  
4 financial support for preventive health care and home health care  
5 in order to assure that a comprehensive range of health care  
6 services is available to Maine citizens. Preventive health  
7 services include, but are not limited to, programs such as early  
8 periodic screening, diagnosis and treatment; public school  
9 nursing services; child and maternal health services; and dental  
10 health education services. To meet the expenses of emphasizing  
11 preventive health care and home health care, the department may  
12 expend for each type of care no less than 1.5% of the total sum  
13 of all funds available to administer medical or remedial care and  
14 services eligible for participation under the United States  
15 Social Security Act, Title XIX and amendments and successors to  
16 it.

17 **§8307. Prior authorization**

18 In all situations where prior authorization of the  
19 department or its designee is required before a particular  
20 medical service can be provided, the department or its designee  
21 shall authorize or deny the request for treatment within 30 days  
22 of the completion and presentation of the request to the  
23 department. The department's response to a request must be  
24 supplied to both the provider and the recipient. Whenever the  
25 provider is unable or unwilling to provide the service requested  
26 within a reasonable time after approval of the request by the  
27 department, the recipient has the right to locate another  
28 approved provider whose sole duty is to notify the department of  
29 the provider's intention to provide the service subject to the  
30 original approval. The department must vigorously assist any  
31 recipient in the recipient's search for an approved provider of a  
32 necessary medical service if, through reasonable effort, the  
33 recipient has been unable to locate a provider.

34 **§8308. Fee schedules**

35 The department may establish fee schedules governing  
36 reimbursement for services provided under this chapter. In  
37 establishing the fee schedules, the department shall consult with  
38 individual providers and their representative associations. The  
39 fee schedules must be reviewed annually.

40 During the annual review of fee schedules required by this  
41 section, the department shall consult with individual providers  
42 participating in the Medicaid program and their representative  
43 associations to consider, among other factors, the cost of  
44 providing specific services, the effect of inflation or other  
45 economic factors on the adequacy of the existing fee schedule and

2 its obligation under the federal Medicaid program to ensure  
3 sufficient provider participation in the program.

4 **§8309. Principles of reimbursement for intermediate care**  
5 **facilities for people with mental retardation**

6 The department shall meet annually with providers of  
7 community-based intermediate care facilities for people with  
8 mental retardation to review current principles of reimbursement  
9 under the federal Social Security Act, Title XIX and discuss  
10 necessary and appropriate changes.

11 Principles of reimbursement established for intermediate  
12 care facilities for people with mental retardation must:

13 1. Flexibility. Ensure maximum flexibility enabling  
14 facilities to shift variable cost funds within accounts  
15 established pursuant to the principles. These principles must  
16 not set any artificial limits on specific variable cost accounts  
17 as long as facility totals are met; and

18 2. Staff retention. Be amended, effective April 1, 1989,  
19 to implement the recommendations of the Advisory Committee on  
20 Staff Retention.

21 **§8310. Time standards**

22 Time standards established by sections 8304, 8307 and 8405  
23 may not be used as a waiting period before granting aid, or as a  
24 basis for denial of an application or for terminating assistance.

25 **§8311. Medicaid drug formulary**

26 1. Authority. The department may determine which  
27 prescription and over-the-counter drugs are subject to  
28 reimbursement and coverage under the Medicaid program.

29 2. Drug formulary committee. In order to make  
30 determinations under subsection 1, the department shall establish  
31 a drug formulary committee by rule adopted pursuant to the Maine  
32 Administrative Procedure Act.

33 A. The drug formulary committee must have at least 2  
34 nonvoting consumer members to be appointed by the Medicaid  
35 Advisory Committee established pursuant to 42 Code of  
36 Federal Regulations, Section 431.12 (1993).

37 B. A vote of 2/3 of the drug formulary committee members  
38 present is required to add or delete a drug from the list of

2 drugs that are subject to reimbursement and coverage under  
3 the Medicaid program.

4 C. A determination under rules adopted pursuant to  
5 subsection 3 that a drug or category of drug is not covered  
6 by the Medicaid program is a final agency action subject to  
7 review under the Maine Administrative Procedure Act.

8 3. Procedures; emergency. Drugs determined not covered by  
9 Medicaid pursuant to this section are subject to review and  
10 approval based upon a prior approval procedure established by  
11 rule by the department. Prior approval must be given  
12 retroactively if an emergency, as determined by a physician,  
13 requires that the drug be dispensed immediately for the patient's  
14 well-being. Any drug provided under this emergency procedure is  
15 considered a Medicaid-covered service pending departmental action.

16 4. Rulemaking. Rules adopted pursuant to Title 22, section  
17 3174-J prior to its repeal are effective as of the effective date  
18 of this section without the taking of any action pursuant to the  
19 Maine Administrative Procedure Act.

#### 20 §8312. Annual Medicaid report

21 The commissioner shall prepare an annual report detailing  
22 all receipts and expenditures in the Medicaid program for the  
23 prior year and proposals for the coming year, specifying amounts  
24 of federal funds, state funds, and combined totals for each  
25 category reported. The report must be submitted by January 15th  
26 each year to the joint standing committees of the Legislature  
27 having jurisdiction over appropriations and financial affairs and  
28 human resources matters. The report must include, but is not  
29 limited to, the following:

30 1. Services. Revenues and expenditures for every  
31 professional, institutional or other service provided in the  
32 Medicaid program. This must include levels of service, rates of  
33 reimbursement, and numbers of providers and recipients of  
34 service, and must specify areas where the State has discretion on  
35 the use of these funds;

36 2. Transfers. All transfers of funds between Medicaid line  
37 accounts or service reimbursements and the reasons for those  
38 transfers; and

39 3. Fee schedule review. Results of the annual review of  
40 fee schedules required under section 8308.

#### 41 SUBCHAPTER III

#### 2 ELIGIBILITY

#### 3 §8401. General eligibility provisions

4 The department shall adopt rules defining medical indigency  
5 and establishing conditions of eligibility for assistance under  
6 this chapter that are consistent with the requirements for the  
7 receipt of federal matching funds under Title XIX of the federal  
8 Social Security Act, as amended, and consistent with the  
9 following provisions.

10 1. Applicant. An applicant must be one of the following or  
11 the legal representative of one of the following:

12 A. An adult who requires care and assistance;

13 B. An adult legally responsible for the care of another  
14 adult; or

15 C. An adult who is legally responsible for the care of, and  
16 is applying on behalf of, one or more dependent minor  
17 children.

18 2. Criteria. The following criteria must be met before an  
19 applicant may be found eligible:

20 A. The applicant does not have sufficient income or other  
21 resources to provide a reasonable subsistence compatible  
22 with decency and health;

23 B. The applicant is living in the State at the date of the  
24 application; and

25 C. The applicant is not an inmate of any public  
26 institution, except as a patient in a medical institution or  
27 an inmate during the month in which the applicant becomes an  
28 inmate only to the extent permitted by federal law, but an  
29 inmate of such an institution may file application for aid  
30 and any allowance made on that application takes effect and  
31 must be paid upon the applicant ceasing to be an inmate of  
32 the institution.

33 3. Income factor. The income factor of eligibility is met  
34 if, after reducing all income received by or available to the  
35 applicant by the liabilities for the kinds of goods and services  
36 provided for in this section, the residual income does not exceed  
37 100% of an amount equal to the Aid to Families with Dependent  
38 Children payment standards applicable to the applicant in the  
39 case of a family of 2 or more, or does not exceed 100% of an  
40 amount equal to the Aid to Families with Dependent Children  
41 payment standards applicable to the applicant in the case of a  
42 family of 1.

amount equal to the Aid to Families with Dependent Children full-need standard for a unit of one in the case of an individual.

4. Application of other benefits. The application of any available insurance, other 3rd party liabilities or other benefits to which the applicant may be entitled or the determination of other eligibility factors must be in accordance with federal matching requirements.

§8402. Eligibility for certain elderly and disabled individuals, children and pregnant women

1. Delivery of services. The department shall provide for the delivery of federally approved Medicaid services to a qualified pregnant woman up to 60 days following delivery and an infant from birth to one year of age when the woman's or child's family income is below 185% of the nonfarm income official poverty line and a child under 5 years of age and qualified elderly or disabled person, when the child's or person's family income is below 100% of the nonfarm income official poverty line. The official poverty line is that applicable to a family of the size involved, as defined by the Federal Office of Management and Budget and revised annually in accordance with the United States Omnibus Budget Reconciliation Act of 1981, Section 673, Subsection 2.

2. Resource test. The department may not apply a resource test to those children and pregnant women who are made eligible under this section, unless those persons also receive Aid to Families with Dependent Children or United States Supplemental Security Income benefits.

3. Benefits authorized. The scope of medical assistance to be provided under this section must be that authorized by the Federal Sixth Omnibus Budget Reconciliation Act, Public Law 99-509.

§8403. Availability of income between married couples in determination of eligibility

Notwithstanding this chapter, for the purpose of determining medical indigency and eligibility for assistance for an individual residing or about to reside in an institution eligible for Medicaid participation under this section, there is a presumption, rebuttable by either spouse, that each spouse has a marital property interest in 1/2 of the total monthly income of both spouses at the time of application for medical assistance. Only the 1/2 interest of the applicant spouse is considered available to the spouse in determining eligibility for medical indigency and eligibility for assistance.

The marital property interest of the applicant spouse in the income of both spouses may be rebutted upon a showing of one of the following:

1. Court order. A court order allocating marital income pursuant to alimony, spousal support, equitable division of marital property or disposition of marital property;

2. Individual ownership. The establishing of sole individual ownership of income from current active employment; or

3. Supplementary allocation of spousal income. By applying to the department or the department's designee for a supplementary allocation of spousal income pursuant to this section.

The department shall establish standards for the reasonable and adequate support of the community spouse and the community residence of the couple. The standards must consider the cost of housing payments, property taxes, property insurance, utilities, food, medical expenses, transportation, other personal necessities and the presence of other dependent persons in the home.

The community spouse may apply to the department or the department's designee for a determination pursuant to the standards that the community spouse requires a larger portion of the marital income. Therefore, a smaller portion of the marital income will be available to the applicant spouse in determining medical indigency and eligibility for assistance.

As soon as authorized by federal law, the department shall implement this section.

§8404. Medical coverage program for certain boarding home residents

The department shall administer a program of medical coverage for persons residing in cost reimbursement boarding homes who, but for their income, would be eligible for supplemental security income benefits on account of blindness, disability or age, and who do not have sufficient income to meet the per resident payment rate for boarding home care, including an amount for personal needs of at least \$30 a month.

§8405. Provisions relating to medically needy program

The following provisions apply to the medically needy program.

2 1. Generally. Any applicant for benefits under the  
4 medically needy program whose countable income exceeds the  
6 applicable state protected income level maximum is eligible for  
8 the program when the applicant's incurred medical expenses are  
10 found to exceed the difference between the applicant's countable  
12 income and the applicable state maximum. Whenever the applicant  
14 incurs sufficient medical expenses to be eligible for the  
16 medically needy program and provides reasonable proof thereof to  
18 the department, a medical card must be issued within 10 days of  
20 the presentation of proof that eligibility has been met. Failure  
22 of the department to meet the requirements of this 10-day time  
24 standard, except where there is documented noncooperation by the  
26 applicant or the source of the applicant's medical information,  
28 must lead to the immediate and automatic issuance of a temporary  
30 medical card that is valid only until the applicant receives  
32 actual notice of a departmental denial of the application or the  
34 applicant receives a replacement medical card. Any benefits  
36 received by the applicant during the interim period when the  
38 applicant has actual use of a valid temporary medical card are  
40 not recoverable by the department in any legal or administrative  
42 proceeding against the applicant.

24 2. Certain individuals in intermediate care facilities. In  
26 determining what types of medical care must be provided to  
28 "medically indigent" individuals, the department shall provide  
30 that medically necessary care in an intermediate care facility is  
32 included under the provisions of the medically needy program.

30 §8406. Treatment of joint bank accounts in Medicaid eligibility  
32 determinations

34 When determining eligibility for Medicaid, the department  
36 shall establish ownership of joint bank accounts in accordance  
38 with Title 18-A, section 6-103, subsection (a). If the  
40 department determines that funds were withdrawn from a joint  
42 account without the consent of the applicant and the applicant  
44 owned the funds, the person to whom the funds were transferred is  
46 a liable 3rd party and the department shall pursue recovery of  
48 the funds in accordance with section 8210. The department shall  
50 adopt rules to implement this section.

44 SUBCHAPTER IV

46 SERVICES

46 §8501. Reimbursement for alcoholism and drug dependency treatment

48 The department shall provide reimbursement, to the maximum  
50 extent allowable, under the United States Social Security Act,

2 Title XIX, for alcoholism and drug dependency treatment.  
4 Treatment includes, but is not limited to, residential treatment  
6 and outpatient care as defined in Title 24-A, section 2842.

6 §8502. Coverage for inpatient hospital mental disease treatment  
8 services

8 If the federal maintenance-of-effort requirements are  
10 satisfied, the department shall provide reimbursement, under the  
12 United States Social Security Act, Title XIX, for inpatient  
14 psychiatric facility care and treatment of patients with mental  
16 diseases.

14 §8503. Services provided by the Governor Baxter School for the  
16 Deaf

16 The department may administer a program of Medicaid coverage  
18 for speech and hearing services, psychological services,  
20 occupational therapy and any other services provided by the  
22 Governor Baxter School for the Deaf that qualify for  
24 reimbursement under the United States Social Security Act, Title  
26 XIX. The Department of Education has fiscal responsibility for  
28 providing the State's match for federal revenues acquired under  
30 this section. An amount equal to the Medicaid reimbursement must  
32 be deposited into the General Fund undedicated revenue from the  
34 Governor Baxter School for the Deaf General Fund appropriation.

28 §8504. Coverage for adult dental services

30 1. Coverage provided. The department shall provide dental  
32 services, reimbursed under the United States Social Security Act,  
34 Title XIX, or successors to it, to individuals 21 years of age  
36 and over, limited to:

36 A. Acute surgical care directly related to an accident  
38 where traumatic injury has occurred. This coverage will  
40 only be provided for the first 3 months after the accident;

40 B. Oral surgical and related medical procedures not  
42 involving the dentition and gingiva;

42 C. Extraction of teeth that are severely decayed and pose a  
44 serious threat of infection during a major surgical  
46 procedure of the cardiovascular system, the skeletal system  
48 or during radiation therapy for a malignant tumor; and

48 D. Treatment necessary to relieve pain, eliminate  
infection, prevent imminent tooth loss.



2 2. Demonstration projects. The department shall promptly  
3 take all appropriate steps to obtain waivers, if necessary, from  
4 the federal Department of Health and Human Services that enable  
5 the State to provide within the limits of available funds, on a  
6 demonstration basis, comprehensive dental services to  
7 Medicaid-eligible individuals who are 21 years of age or older in  
8 public or private, nonprofit clinic settings. The department's  
9 goal in pursuing these waivers or demonstration projects not  
10 requiring waivers is to determine whether providing services in  
11 these settings promotes cost effectiveness or efficiency or  
12 promotes other objectives of the federal Social Security Act,  
13 Title XIX.

14 §8506. Counseling for certain children

15 By October 1, 1992, the department shall adopt rules to  
16 provide Medicaid coverage for crisis counseling for children up  
17 to 21 years of age who are in crisis as a result of their removal  
18 or imminent removal from their parents' homes. The rules must  
19 allow the counseling to be provided by licensed clinical social  
20 workers.

21 §8507. Parity among counselors

22 1. Licensed clinical social workers and licensed clinical  
23 professional counselors. Licensed clinical social workers must  
24 be eligible to receive Medicaid reimbursement for counseling  
25 services whenever licensed clinical professional counselors are  
26 eligible to be reimbursed for those services. Licensed clinical  
27 professional counselors must be eligible to receive Medicaid  
28 reimbursement for counseling services whenever licensed clinical  
29 social workers are eligible to be reimbursed for those services.

30 2. Licensed master social workers and licensed professional  
31 counselors. Licensed master social workers must be eligible to  
32 receive Medicaid reimbursement for counseling services whenever  
33 licensed professional counselors are eligible to be reimbursed  
34 for those services. Licensed professional counselors must be  
35 eligible to receive Medicaid reimbursement for counseling  
36 services whenever licensed master social workers are eligible to  
37 be reimbursed for those services.

38 §8508. Copayments

39 1. Authorization required. The department may not require  
40 any Medicaid recipient to make any payment toward the cost of a  
41 Medicaid service unless that payment is specifically authorized  
42 by this section.

2 2. Prescription drug services. Except as provided in  
3 subsections 3 and 4, a payment of \$2 for generic drugs and \$3 for  
4 brand-name drugs must be collected from the Medicaid recipient  
5 for each drug prescription that is an approved Medicaid service.  
6 For the purposes of this section, a brand-name drug is defined as  
7 a single-source drug, a cross-licensed drug or an innovator drug  
8 for which a lower-cost generic equivalent is available. If a  
9 recipient is prescribed a drug in a quantity specifically  
10 intended by the provider or pharmacist, for the recipient's  
11 health and welfare, to last less than one month, only one payment  
12 for that drug for that month is required.

13 3. Exemptions. A copayment may not be imposed with respect  
14 to the following services:

15 A. Family planning services:

16 B. Services furnished to individuals under 21 years of age:

17 C. Services furnished to an individual who is an inpatient  
18 in a hospital, nursing facility or other institution, if  
19 that individual is required, as a condition of receiving  
20 services in that institution, to spend for costs of care all  
21 but a minimal amount of income required for personal needs:

22 D. Services furnished to pregnant women, and services  
23 furnished during the post-partum phase of maternity care to  
24 the extent permitted by federal law:

25 E. Emergency services, as defined by the department:

26 F. Services furnished to an individual by a health  
27 maintenance organization, as defined in the United States  
28 Social Security Act, Section 1903(m), in which the  
29 individual is enrolled; and

30 G. Any other service or services required to be exempt  
31 under the provisions of the United States Social Security  
32 Act, Title XIX and successors to it.

33 4. Persons in state custody. Any copayment imposed on a  
34 Medicaid recipient in the custody of the State must be collected  
35 from the state agency having custody of the recipient.

36 5. Copayments. Notwithstanding any other provision of law,  
37 the following copayments per service per day are imposed and  
38 reimbursements are reduced, or both, to the following levels:

39 A. Outpatient hospital services, \$3:

2 B. Home health services, \$3:

4 C. Durable medical equipment services, \$3:

6 D. Private duty nursing and personal care services, \$5 per month:

8 E. Ambulance services, \$3:

10 F. Physical therapy services, \$2:

12 G. Occupational therapy services, \$2:

14 H. Speech therapy services, \$2:

16 I. Podiatry services, \$2:

18 J. Psychologist services, \$2:

20 K. Chiropractic services, \$2:

22 L. Laboratory and x-ray services, \$1:

24 M. Optical services, \$2:

26 N. Optometric services, \$3:

28 O. Mental health clinic services, \$2:

30 P. Substance abuse services, \$2; and

32 Q. Hospital inpatient services, \$3 per patient day.

34 The department may adopt rules to adjust the copayments set forth  
36 in this subsection. The rules may adjust amounts to ensure that  
38 copayments are deemed nominal in amount and may include monthly  
40 limits or exclusions per service category. The need to maintain  
42 provider participation in the Medicaid program to the extent  
44 required by 42 United States Code, Section 1392(a)(30)(A) or any  
46 successor provision of law must be considered in any reduction in  
48 reimbursement to providers or imposition of copayments.

42 CHAPTER 805

44 HEALTH CARE PROGRAMS

46 SUBCHAPTER I

48 LOW-COST DRUGS FOR THE ELDERLY

2 §8601. Program authorized

4 The department may conduct a program to provide low-cost  
6 prescription and nonprescription drugs, medication and medical  
8 supplies to disadvantaged, elderly individuals in accordance with  
10 this subchapter.

8 §8602. Definitions

10 As used in this subchapter, unless the context otherwise  
12 indicates, the following terms have the following meanings.

14 1. Program. "Program" means the Low-cost Drugs for the  
16 Elderly program conducted pursuant to this subchapter.

18 2. Wholesale price. "Wholesale price" means the average  
20 price paid by a wholesaler to a pharmaceutical manufacturer for a  
22 product distributed for retail sale. "Wholesale price" includes  
24 a deduction for any customary prompt payment discounts.

22 §8603. Benefits

24 In any year in which this program is conducted, it must  
26 include:

28 1. Chronic obstructive lung disease drugs. Any  
30 prescription drugs used for the treatment of chronic obstructive  
32 lung disease;

34 2. Antiarthritic drugs. Antiarthritic drugs; and

36 3. Anticoagulant drugs. Anticoagulant drugs.

34 §8604. Eligibility

36 Eligibility status of individuals must be determined by the  
38 State Tax Assessor pursuant to Title 36, chapter 905.

38 §8605. Copayments

40 The commissioner may establish the amount of payment to be  
42 made by recipients toward the cost of prescription or  
44 nonprescription drugs, medication and medical supplies furnished  
46 under this program provided that the total cost for any covered  
48 purchase of a prescription or nonprescription drug or medication  
does not exceed 20% of the price allowed for that prescription  
under program rules or \$2, whichever is greater. If a recipient  
is prescribed a drug in a quantity specifically intended by the  
provider or pharmacist, for the recipient's health and welfare.

2 to last less than one month, only one payment for that drug for  
3 that month is required.

4 **§8606. Administration**

6 The commissioner shall provide for sufficient personnel to  
7 ensure efficient administration of the program. The extent and  
8 the magnitude of the program must be determined by the  
9 commissioner on the basis of the calculated need of the recipient  
10 population and the available funds. The department may not spend  
11 more on this program than is available through appropriations  
12 from the General Fund, dedicated revenue, federal or other grants  
13 and other established and committed funding sources. The  
14 commissioner may accept, for the purposes of carrying out this  
15 program, federal funds appropriated under any federal law  
16 relating to the furnishing of free or low-cost drugs to  
17 disadvantaged, elderly individuals and may take any action  
18 necessary for the purposes of carrying out that federal law and  
19 may accept from any other agency of government, individual, group  
20 or corporation funds available to carry out this chapter.

22 Administrative and management issues to be determined by the  
23 commissioner include, but are not limited to, program objectives,  
24 accounting and handling practices, supervisory authority and  
25 evaluation methodology.

26 **§8607. Method of prescribing or ordering drugs**

28 The commissioner shall establish the method of prescribing  
29 or ordering drugs in the program, which may include, but is not  
30 limited to, the use of standard or larger prescription refill  
31 sizes so as to minimize operational costs and to maximize  
32 economy. Unless the prescribing physician indicates otherwise,  
33 the use of generic or chemically equivalent drugs is required,  
34 provided that these drugs are of the same quality and have the  
35 same mode of delivery as is provided to the general public,  
36 consistent with good pharmaceutical practice. Each prescription  
37 filled must be for a supply of 90 days unless the prescribing  
38 physician or the recipient requests otherwise.

40 **§8608. Drug rebates**

42 Effective May 1, 1992, payment must be denied for drugs from  
43 manufacturers that do not enter into a rebate agreement with the  
44 department for prescription drugs included in the list of  
45 approved drugs under this program. Each agreement must provide  
46 that the pharmaceutical manufacturer make rebate payments to the  
47 department according to the following schedule.

2 1. May 1, 1992 through September 30, 1992. For the period  
3 beginning May 1, 1992 and ending September 30, 1992, the rebate  
4 percentage is equal to 11% of the manufacturer's wholesale price  
5 for the total number of dosage units of each form and strength of  
6 a prescription drug that the department reports as reimbursed to  
7 providers of prescription drugs, provided payments are not due  
8 until 30 days following the manufacturer's receipt of utilization  
9 data supplied by the department, including the number of dosage  
10 units reimbursed to providers of prescription drugs during the  
11 period for which payment is due.

12 2. Quarters beginning October 1, 1992. For the quarters  
13 beginning October 1, 1992, the rebate percentage is equal to the  
14 percentage recommended by the federal Health Care Financing  
15 Administration of the manufacturer's wholesale price for the  
16 total number of dosage units of each form and strength of a  
17 prescription drug that the department reports as reimbursed to  
18 providers of prescription drugs, provided payments are not due  
19 until 30 days following the manufacturer's receipt of utilization  
20 data supplied by the department, including the number of dosage  
21 units reimbursed to providers of prescription drugs during the  
22 period for which payment is due.

24 Upon receipt of data from the department, the pharmaceutical  
25 manufacturer shall calculate the quarterly payment. If a  
26 discrepancy is discovered, the department may, at its expense,  
27 hire a mutually agreed-upon independent auditor to verify the  
28 pharmaceutical manufacturer's calculation. If a discrepancy is  
29 still found, the pharmaceutical manufacturer shall justify its  
30 calculation or make payment to the department for any additional  
31 amount due. The pharmaceutical manufacturer may, at its expense,  
32 hire a mutually agreed-upon independent auditor to verify the  
33 accuracy of the utilization data provided by the department. If  
34 a discrepancy is discovered, the department shall justify its  
35 data or refund any excess payment to the pharmaceutical  
36 manufacturer.

38 If the dispute over the rebate amount is not resolved, a request  
39 for a hearing with supporting documentation must be submitted to  
40 the Administrative Hearings Unit. Failure to resolve the dispute  
41 may be cause for terminating the drug rebate agreement and  
42 denying payment to the pharmaceutical manufacturer for any drugs.

44 All prescription drugs of a pharmaceutical manufacturer who  
45 enters into an agreement pursuant to this section that appear on  
46 the approved list of drugs must be immediately available and the  
47 cost of the drugs must be reimbursed and is not subject to any  
48 restrictions or prior authorization requirements. Any  
49 prescription drug of a manufacturer that does not enter into an  
50 agreement is not reimbursable unless the department determines

2 the prescription drug is essential. The department shall seek a  
3 manufacturer's rebate for pharmaceuticals used in the Maine  
4 Health Program.

6 **§8609. Rules**

8 The commissioner may adopt rules to implement the program.  
9 The rules must be adopted in accordance with the Maine  
10 Administrative Procedure Act, Title 5, chapter 375, and may  
11 include, but are not limited to, the following:

12 1. Prescription and nonprescription drugs. The kinds of  
13 prescription and nonprescription drugs, medications and medical  
14 supplies that are made available by the program; and

16 2. Other rules. Rules necessary to efficiently and  
17 effectively manage and operate a program within the intent of  
18 this subchapter.

20 **SUBCHAPTER II**

22 **MAINE MANAGED CARE INSURANCE PLAN**

24 **§8651. Maine Managed Care Insurance Plan Demonstration**

26 The department shall develop, implement and administer the  
27 Maine Managed Care Insurance Plan Demonstration for individuals  
28 without health insurance in one urban site, one rural site and  
29 one site as determined by the department. Expenditures may not  
30 be incurred relative to the development of the 3rd site unless  
31 resources other than the General Fund are received by the  
32 department for that purpose.

34 **§8652. Targeted enrollment**

36 The department shall target enrollment in this plan to  
37 low-income, non-Medicaid eligible individuals employed in groups  
38 of less than 15 and the self-employed. Individual or nongroup  
39 policies may not be offered through this program. Enrollment in  
40 this plan may not be offered to any group where there has been a  
41 health plan offered at any time within the past 12 months or to  
42 any self-employed individual who has been covered by health  
43 benefits coverage at any time within the past 12 months; except  
44 that groups and individuals who were covered through the Medicaid  
45 program or who had health benefits and lost that coverage  
46 involuntarily and who otherwise would be eligible for the Maine  
48 Managed Care Insurance Plan Demonstration are eligible for  
enrollment.

2 The intent of this demonstration is to provide access to  
3 health benefits to those for whom financial barriers preclude the  
4 purchase of the coverage. Eligibility criteria for the Maine  
5 Managed Care Insurance Plan Demonstration must be developed by  
6 the department based upon the advice of The Robert Wood Johnson  
Foundation's grant advisory committee.

8 **§8653. Confidentiality of records**

10 The following medical or financial information concerning  
11 applicants to the Maine Managed Care Insurance Plan Demonstration  
12 is confidential.

14 1. Information identifying individuals. All department  
15 records that contain information regarding the identity, medical  
16 status or financial resources of individuals applying for health  
17 insurance coverage under the Maine Managed Care Insurance Plan  
18 Demonstration are confidential and may be released only with the  
written authorization of the applicant.

20 2. Information identifying businesses. All department  
21 records that contain information regarding the identity or  
22 financial resources of a business or business owner applying for  
23 enrollment in the Maine Managed Care Insurance Plan Demonstration  
24 are confidential and may be released only with written  
25 authorization of an authorized representative of the applicant's  
26 business.

28 **SUBCHAPTER III**

30 **MAINE HEALTH PROGRAM**

32 **§8701. The Maine Health Program**

34 1. Program created; intent. The Maine Health Program is  
35 created to expand access of Maine citizens to basic health care  
36 services. The Maine Health Program is intended to meet, to the  
37 extent of available funds, the health care needs of uninsured  
38 Maine residents with the highest priority being those needs of  
39 residents who are financially needy and under the age of 18.  
40 After April 1, 1994, the Maine Health Program is a privately  
41 administered and funded program that may be governed by state law  
42 but there is no right or claim of entitlement to health care  
43 benefits under state law created by operation of the program.

44 2. Definitions. As used in this section, unless the  
45 context otherwise indicates, the following terms have the  
46 following meanings.

2 A. "Applicable premium" means the amount that a person is  
4 required to pay to participate in the Maine Health Program,  
6 as determined under subsection 5.

8 B. "Committee" means the Maine Health Program Advisory  
10 Committee created in subsection 4.

12 C. "Federal poverty level" means the federal poverty level  
14 established as required by the United States Omnibus Budget  
16 Reconciliation Act of 1981, Public Law 97-35, Sections 652  
18 and 673(2).

20 D. "Household income" means the income of a person or group  
22 of persons determined according to rules adopted by the  
24 department in accordance with subsection 9, provided that  
26 the rules do not include, in the definition of a household,  
28 persons other than those who reside together and among whom  
30 there is legal responsibility for support.

32 E. "Program" means the Maine Health Program described in  
34 this section.

36 F. "Work-related expense disregard" means the disregard  
38 applied to earned income of applicants or enrollees and, in  
40 determining the eligibility of adults, is \$90 per month plus  
42 actual dependent care expenses in an amount not to exceed  
44 \$200 per month per dependent under 2 years of age receiving  
46 dependent care and not to exceed \$175 per month per  
48 dependent 2 years of age or older receiving dependent care.

50 3. Eligibility. This subsection sets forth eligibility  
criteria for the program.

A. Except as provided in subsection 5 and in paragraph B of  
this subsection, the following persons are eligible to  
participate in the program and to receive benefits to the  
extent allowed by available appropriations and according to  
the enrollment process set forth in paragraph E:

(1) Any person who is under 20 years of age and whose  
household income is 125% or less of the federal poverty  
level;

(2) Any person who is age 20 or older and whose  
household income is 95% or less of the federal poverty  
level; and

(3) Beginning July 1, 1992, any person who is age 20  
or older and whose household income is 100% or less of  
the federal poverty level.

2 B. Notwithstanding paragraph A, the following persons are  
4 not eligible to participate in the program:

6 (1) Persons eligible for the full scope of Maine  
8 medical assistance program benefits;

10 (2) Persons who are confined to state correctional  
12 facilities, county jails or local or county detention  
14 centers or who reside in institutions operated by the  
16 Department of Health and Developmental Services;

18 (3) Persons 18 and 19 years of age who are considered  
20 part of the households of their parents in accordance  
22 with rules adopted by the department; and

24 (4) Persons who fail to meet other criteria  
26 established by this section.

28 C. The department shall adopt rules governing the effective  
30 date of eligibility and the application process. These  
32 rules must provide that persons are not eligible for  
34 coverage earlier than the first day of the month in which  
36 they apply and no later than the date upon which they  
38 apply. The department shall provide for individuals under  
40 the age of 20 to make preliminary application for Maine  
42 Health Program benefits at the site of a provider and other  
44 sites as designated by the department. The date of this  
46 preliminary application is considered the filing date of an  
48 application for purposes of establishing the individual's  
50 first day of eligibility, if the preliminary application is  
received within a reasonable time, as determined by  
department rules.

Individuals age 20 and older shall make application at  
designated sites, which must include but need not be limited  
to offices of the department, hospitals designated as  
disproportionate share for payment of Medicaid reimbursement  
and federally qualified health centers, during periods of  
open enrollment designated by the department.

D. The department shall adopt rules governing conditions of  
eligibility that must include the following conditions:

(1) The applicant must be a citizen or a lawfully  
admitted alien;

(2) The applicant must cooperate in obtaining medical  
benefits from a legally responsible parent; and

2 (3) The applicant must furnish the department with a  
4 social security number or provide verification that  
6 application for a number has been made.

8 E. The department shall each quarter redetermine the number  
10 of additional adults who may be enrolled in the program.  
12 Additional enrollment is required to the extent that  
14 quarterly appropriations and allocations to date and for the  
16 next quarter exceed expenditures to date and projected for  
18 the next quarter. The department shall review applications  
20 for individuals age 20 and older for the program during  
22 periods of open enrollment and make eligibility  
24 determinations in a manner that gives equal opportunity of  
26 enrollment to all state residents. The department shall set  
28 forth the process for determining the number of enrollees,  
30 as well as other aspects of the enrollment process, by  
32 rule. It is the intent of the Legislature that the  
34 appropriations and allocations will allow for the enrollment  
36 of approximately 1,600 new enrollees annually.

F. Notwithstanding paragraph E, enrollment in the program  
may not exceed 4,000 people at any one time.

G. Notwithstanding subsection 4, paragraph B, the  
department shall implement the following asset guidelines  
during any recertification and for new enrollees to  
determine eligibility.

(1) For adults under the age of 65, the asset limits  
are the same as those for medically needy Medicaid  
recipients except that there is a 2nd car exclusion for  
families with 2 wage earners when the 2nd car is  
necessary for work-related travel.

(2) For adults 65 and older, the asset limit is  
\$10,000 per household.

The department may adopt rules to implement these asset  
guidelines. The department may reassess and change these  
asset guidelines with approval from the Maine Health Program  
Advisory Committee.

4. Maine Health Program Advisory Committee. There is  
created the Maine Health Program Advisory Committee, as  
established in Title 5, section 12004-I, subsection 35-A.

A. The committee has the following powers and duties.

(1) The committee shall advise the department on an  
ongoing basis with respect to the development and

2 administration of the program, including reasonable  
4 opportunity for review and comment on proposed rules by  
6 the committee prior to the department's issuance of  
8 public notice of rulemaking.

(2) The committee may accept grants to be used for the  
committee's purposes under this section.

B. The committee may study issues relating to  
implementation of the program as it deems advisable. The  
committee shall study what asset limits, if any, are  
appropriate to determine eligibility for benefits under the  
program. The study of asset limits shall include  
consideration of:

(1) The treatment of assets in other federal and state  
medical programs serving the population with greater  
income than the Medicaid program, including the  
Hill-Burton program of hospital community care  
described in United States Code, Title 42, Chapter 6-A,  
Subchapter IV; the Medicaid expansion under the United  
States Omnibus Budget Reconciliation Act of 1986,  
Public Law 99-509; the United States Family Support Act  
of 1988, Public Law 100-482; and the treatment of  
assets under the charity care income guidelines adopted  
pursuant to section 10807, subsection 1;

(2) The needs of working and nonworking participants  
for funds to pay transportation and other work-related  
costs, noncovered medical costs and other emergencies  
and reasonable incentives for savings; and

(3) Program administrative costs.

The committee shall recommend a policy on assets to the  
department for review.

5. Program development and administration. The department  
shall develop and administer the program with advice from the  
committee and in accordance with this section.

A. The department, by rule adopted in accordance with  
subsection 9, shall determine the scope and amount of  
medical assistance to be provided to participants in the  
program provided that the rules meet the following criteria.

(1) The scope and amount of medical assistance must be  
the same as the medical assistance received by persons  
eligible for Medicaid, except that pregnancy-related  
services, nursing home benefits, case management

2 services and day health services covered under Medicaid  
4 may not be offered as services under the program. The  
6 department may by rule exclude services or extensions  
8 of services for adults that are added to state Medicaid  
10 to maximize federal revenues for services previously  
12 funded with state funds. In addition, coverage under  
14 this program for hospital inpatient stays for  
16 individuals age 20 and older may not exceed the cost of  
18 3 consecutive days in general or psychiatric hospitals  
20 if the primary diagnosis at the time of admission is a  
22 mental disorder, including a diagnosis of alcohol or  
24 substance abuse, until such time as the department  
26 adopts an alternative policy as described in divisions  
28 (a), (b) and (c), which must occur no later than the  
30 end of the 2nd quarter of fiscal year 1991-92.

32 (a) The department shall implement a new policy  
34 regarding hospital inpatient stays for mental  
36 disorders, including substance abuse, for  
38 individuals age 20 and older by no later than the  
40 end of the 2nd quarter of fiscal year 1991-92 that  
42 is consistent with the following guidelines:

44 (i) For detoxification services, payment for  
46 3 days per episode and up to 2 additional  
48 days with prior approval with a maximum of 3  
50 episodes in any one-year period; and

(ii) For rehabilitation services, payment  
for a maximum of one episode per year with up  
to 3 days without prior approval and  
additional days with prior approval up to a  
maximum total of 17 days, which includes any  
detoxification days immediately before the  
rehabilitation days.

(b) The department shall implement a new policy  
regarding inpatient psychiatric care by no later  
than the end of the 2nd quarter of fiscal year  
1991-92 that allows up to 3 days per episode with  
up to 21 additional days allowed with prior  
approval.

(c) The department shall adopt rules to implement  
this paragraph that allow the department to grant  
prior approval for inpatient psychiatric and  
substance abuse care only when medically  
necessary, which is limited to those circumstances  
when other treatment has failed, no other

alternative exists or the patient's medical  
condition requires 24-hour monitoring and care.

2 (2) Notwithstanding the requirements of this  
4 paragraph, if the department determines that available  
6 funds are inadequate to continue to provide the full  
8 scope and amount of medical assistance, the department,  
10 in accordance with paragraph G, may restrict the scope  
12 and amount of medical assistance to be provided to  
14 participants in the program by adoption of rules.

16 (3) The medical assistance to be provided may not  
18 require participants with household income below 100%  
20 of the federal poverty level to make out-of-pocket  
22 expenditures, such as requiring deductibles or  
24 copayments for any service covered, except to the  
26 extent out-of-pocket expenditures are required under  
28 state Medicaid rules. The department may study, in  
30 consultation with the committee, whether to require  
32 copayments from participants with household income  
34 above 100% of the federal poverty level. Copayments  
36 may be required of those persons only to the extent  
38 that the study finds that implementation of the  
40 proposed copayment will not significantly reduce access  
42 to necessary services, and will achieve appropriate  
44 reduction in the utilization of services and the cost  
46 of the program.

48 B. The department, in consultation with the council, shall  
50 develop plans to ensure appropriate utilization of  
services. The department's consideration must include, but  
is not limited to, preadmission screening, managed care, use  
of preferred providers and 2nd surgical opinions. In  
addition, the department may implement surveillance and  
utilization control review and quality control or management  
evaluation to the same extent such programs exist in the  
Medicaid program, including the establishment of a Maine  
Health Program formulary. The department may utilize any  
existing Medicaid formulary for these purposes except that  
the department is not bound by federal law in determining  
what to allow or not allow on the formulary.

C. The department shall adopt rules setting forth a sliding  
scale of premiums to be paid by persons eligible for the  
program provided that the rules meet the following criteria.

(1) The premium for a household whose household income  
does not exceed 100% of the federal poverty level is  
zero.

2 (2) The premium for a household whose household income  
4 exceeds 100% of the federal poverty level may not  
6 exceed 3% of that household income.

8 The department may, by rule, reduce or waive premiums for  
10 persons below the age of 20 years whose household income  
12 does not exceed 125% of the federal poverty level.

14 D. The department shall adopt rules to establish guidelines  
16 on:

18 (1) Provider eligibility for reimbursement for  
20 services under this section, provided that the criteria  
22 for providers may not be more stringent than those  
24 established in the state Medicaid rules; and

26 (2) Service provider fees, provided that the fees may  
28 not be less than service provider fees established in  
30 the Medicaid fee schedule for the applicable program  
32 year except for those fees that have been raised for  
34 the state Medicaid program after July 1, 1991 to  
36 maximize federal revenues in connection with  
38 assessments on the provider.

40 E. In each year of operation, the program's maintenance,  
42 reduction or expansion must be determined by the  
44 availability of funds. The department, in accordance with  
46 paragraphs F and G, shall adjust program criteria in order  
48 to keep costs within yearly appropriations.

50 The department shall make annual recommendations to the  
Governor and the Governor shall make annual recommendations  
to the Legislature to maintain, reduce or expand the program  
after consideration of expenditures and available projected  
revenues. In addition, the department shall make an annual  
report to the Governor and the Legislature regarding  
experience of the program.

F. Notwithstanding subsection 3, provided funds are  
available, the department may, by rule, provide for coverage  
of persons whose household income exceeds the income limits  
set forth in subsection 3, in accordance with statutory  
provisions.

G. Notwithstanding subsection 3, if at any time during the  
fiscal year the department determines that the funds  
available for the program are inadequate to continue the  
program pursuant to the requirements of subsection 3, the  
department, in accordance with this subsection, may take  
action to limit the program for the full or partial fiscal

year for which the department determines funding is  
inadequate. The reductions are taken from those listed in  
subparagraphs (1) to (5) in the order or combination  
necessary to keep spending within appropriations.

(1) With regard to new applicants only, the income  
limit for persons aged 20 or older may be reduced to a  
lower percentage of federal poverty level as the  
department determines appropriate.

(2) With regard to new applicants only, the income  
limits for persons under 20 years of age may be reduced  
to lower percentages of the federal poverty level as  
the department determines appropriate.

(3) The department may restrict the scope and amount  
of medical assistance to be provided.

(4) With regard to new applicants only, no persons  
aged 20 or older may be found eligible for the program.

(5) No new applicants may be found eligible for the  
program. For the purposes of this paragraph, an  
individual who has been enrolled in the Maine Health  
Program and who is required to recertify eligibility or  
an individual who has been enrolled in the Maine Health  
Program and is for a period of time eligible for  
Medicaid is not a new applicant to the Maine Health  
Program.

Sixty days prior to the effective date of any proposed  
reduction of benefits or eligibility recommended pursuant to  
this paragraph, the department shall provide copies of the  
proposed rule together with a concise statement of the  
principal reason for the rule, including the balance  
remaining in the account for the program, an analysis of the  
proposed rule and the savings anticipated by the adoption of  
the proposed rule to the Governor and to each member of the  
joint standing committees of the Legislature having  
jurisdiction over insurance matters and appropriation  
matters. This paragraph does not preclude emergency  
rulemaking when an emergency, as defined in Title 5, section  
8054, exists.

H. The Task Force to Evaluate and Revise the Maine Health  
Program shall make a recommendation to the joint standing  
committee of the Legislature having jurisdiction over  
appropriations and financial affairs concerning controls,  
restrictions and requirements to ensure the program  
expenditures do not exceed the supplemental appropriation.



2 Notwithstanding paragraph G, if the task force fails to make  
3 a recommendation to the committee by April 15, 1991 or makes  
4 a recommendation that in the judgment of the department  
5 fails to meet the objective of ensuring that projected  
6 expenditures from the General Fund for the balance of the  
7 fiscal year do not exceed the supplemental appropriation,  
8 the department may initiate emergency rulemaking to further  
9 reduce expenditures by reducing eligibility or scope and  
10 amount of benefits, or both, as necessary to stay within  
11 available appropriations. The department shall give  
12 immediate notice to the committee of the proposed rule and  
13 the factual basis for the proposed rule. The rule may not  
14 take effect for 10 days following notice to the committee.

15 I. The department shall maximize the use of federal funds  
16 in order to minimize expenditures under the Maine Health  
17 Program. Any person eligible for benefits under Medicaid or  
18 the United States Family Support Act of 1988, Public Law  
19 100-482 is ineligible to receive those benefits under the  
20 program. To maximize the use of federal funds, the  
21 department shall take all reasonable and necessary steps to  
22 apply for and seek federal Medicaid and other demonstration  
23 grants for children and adults, including, but not limited  
24 to, the grant programs pursuant to United States Public Law  
25 101-508, Sections 4745 and 4747, and explore Medicaid  
26 options and less restrictive income and resource  
27 methodologies for medically needy applicants in the Medicaid  
28 program. To the extent that the federal requirements for  
29 any demonstration grant impose upon the department more or  
30 different requirements affecting the program, the department  
31 shall comply with demonstration grant requirements. Any  
32 federal funds received for any demonstration grant or  
33 otherwise to provide health benefits for individuals  
34 previously covered by the Maine Health Program must be used  
35 to supplement and may not supplant state appropriations for  
36 additional enrollment in the Maine Health Program.

37 J. The department shall make available applications for  
38 participation in the program and shall assist persons in  
39 completing them. The department shall review those forms  
40 and notify persons of eligibility and the amount of premium  
41 due within 45 days of receipt of the form.

42 The department or its designee shall treat any application  
43 for aid to families with dependent children or for any  
44 medical assistance program administered by the department as  
45 an application for the program. If the applicant is not  
46 eligible for Medicaid, the department or its designee shall  
47 review the application for eligibility for the program.  
48 Prior to termination, the department or its designee shall

2 review and determine eligibility for the program of any  
3 person whose eligibility for Medicaid or any other medical  
4 services program is being terminated.

5 K. The department shall implement this section and commence  
6 coverage of eligible persons in the program no later than  
7 September 1, 1990, provided that the department has applied  
8 for and has received approval of participation in a  
9 demonstration project from the federal Department of Health  
10 and Human Services pursuant to the federal Omnibus Budget  
11 Reconciliation Act of 1989, Public Law 101-239, Section  
12 6407. If, as of September 1, 1990, the department has not  
13 received approval of participation in the federally approved  
14 demonstration project, the department shall implement this  
15 section and commence coverage of eligible persons in the  
16 program no later than October 1, 1990.

17 6. Use of available health coverage. To receive any  
18 benefits under the program, a person who is eligible to be  
19 covered by a medical plan for which an employer contributes to  
20 the cost shall, unless exempted in this subsection, enroll in the  
21 employer-supported plan.

22 A. If the person is required to contribute toward the cost  
23 of the employer-supported plan, the person shall pay only  
24 the amount the person would be required to pay as an  
25 applicable premium to be covered by the program. The  
26 department shall promptly pay the remainder of the person's  
27 required contribution to the employer-supported plan to the  
28 person, the person's employer or directly to the insurer.  
29 If the person's contribution is smaller than the applicable  
30 premium, the person is required to make the contribution and  
31 pay the difference between the contribution and the  
32 applicable premium to the department.

33 B. Any person who has enrolled in an available  
34 employer-supported plan but whose plan does not provide all  
35 of the benefits or the same level of benefits as provided by  
36 the program, shall be entitled to receive the remaining  
37 benefits from the program.

38 C. If the department determines that the employer-supported  
39 plan is not a cost-effective use of state funds to provide  
40 the services offered, the person need not enroll in that  
41 employer-supported plan as a condition of eligibility for  
42 the program and the department is not obligated to  
43 contribute toward the cost of the employer-supported plan as  
44 a benefit of the program.

2 D. The department shall adopt rules to implement this  
3 subsection. The department may adopt rules reducing or  
4 waiving the requirements of this subsection for persons  
5 under the age of 20 when the person's parents or other  
6 responsible adults are not participants in the program.

7 7. Coordination of benefits. Any participant who is  
8 covered by a health insurance policy including an  
9 employer-supported plan, in addition to coverage under the  
10 program, shall file with the department the name, address and  
11 policy number of that policy or plan. The department may  
12 request, from the insurer that provides the policy, information  
13 sufficient to permit the department to coordinate benefits  
14 between the program and the policy or plan. An insurer shall  
15 respond to the request from the department within 30 days. The  
16 department may also require the employer or the insurer to  
17 provide notice to the department of any changes in coverage and  
18 to provide notice to the department of any termination of the  
19 policy. The program is a secondary payor to all other payors to  
20 the extent permitted by federal and state law.

21 The department shall adopt rules to implement this subsection.

22 8. Transition period for participants losing eligibility.  
23 Any participant who ceases to be eligible to participate in the  
24 program because of household income exceeding the applicable  
25 percentage of the federal poverty level is entitled to continue  
26 to participate in the program for a period of 2 years following  
27 loss of eligibility, if the participant's income does not exceed  
28 the applicable income eligibility standard by more than 50% and  
29 the participant pays a premium established for such persons by  
30 the department by rule. Notwithstanding this subsection,  
31 transitional coverage for adult participants is one year as of  
32 July 1991.

33 9. Income redetermination. In order to redetermine  
34 eligibility for persons affected by the provisions of subsection  
35 2, paragraph F and subsection 8, the period of eligibility of all  
36 adult participants with gross income more than 95% of federal  
37 poverty guidelines is terminated effective May 1, 1991. The  
38 department shall redetermine the eligibility of those  
39 participants based upon the most recent information in the  
40 participant's file and shall notify the participant of the  
41 finding of eligibility or ineligibility, and in the case of a  
42 notice of ineligibility, also provide notice of the participant's  
43 right to request a hearing within 30 days of receipt of the  
44 notice to review the accuracy of the finding. Notification is  
45 presumed to occur within 3 days of mailing. Notwithstanding any  
46 request for hearing, benefits terminate May 1, 1991 and may not  
47 be reinstated except by administrative decision.  
48  
49  
50

2 10. Application. In applying the provisions of section  
3 8702, the Advisory Board to Privatize the Maine Health Program  
4 shall carry out the functions of the advisory committee provided  
5 in this section and the private contractor selected by the  
6 Advisory Board to Privatize the Maine Health Program under  
7 section 8702 shall carry out the functions of the department  
8 under this section. Any reference to appropriations in this  
9 section are deemed to mean available funds.

10 11. Legislative intent. It is the intent of the  
11 Legislature that the appropriation for the Maine Health Program  
12 end on April 1, 1994.

#### 13 §8702. Advisory Board to Privatize the Maine Health Program

14 There is created the Advisory Board to Privatize the Maine  
15 Health Program, referred to in this section as the "advisory  
16 board," as established in Title 5, section 12004-L, subsection  
17 37-B.

18 1. Membership. The advisory board consists of the  
19 following 5 members: the Governor, the President of the Senate,  
20 the Speaker of the House of Representatives, the Commissioner of  
21 Health and Developmental Services and the Commissioner of  
22 Professional and Financial Regulation, or their designees. The  
23 board shall undertake its duties by August 1, 1993.

24 2. Powers and duties. The advisory board has the following  
25 powers and duties.

26 A. The primary duty of the advisory board is to seek  
27 private or other alternative funding to fulfill the State's  
28 share of the cost of the Maine Health Program. The advisory  
29 board shall establish a successor to the Maine Health  
30 Program that has the authority to provide health benefits to  
31 current recipients under the Maine Health Program, if  
32 nonstate funding is secured.

33 B. The advisory board shall seek grants or donations from  
34 philanthropic individuals and organizations, the Federal  
35 Government and any other entity that is not a health care  
36 provider, as defined in Title 5, section 19201. Any funding  
37 source must satisfy the requirements of Title XIX of the  
38 Social Security Act and the Federal Demonstration Grant  
39 Program administered by the Health Care Financing  
40 Administration.

41 C. The advisory board shall solicit proposals from private  
42 entities to administer the Maine Health Program after March  
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2 31, 1994. The advisory board shall plan for the transition  
4 of program management from the Department of Human Services  
6 to a private contractor between August 1, 1993 and March 31,  
8 1994. The advisory board has full authority to effect the  
10 transition to the private entity, which shall commence  
12 administration of the Maine Health Program on April 1, 1994.

14 D. After notice and hearing, the advisory board shall  
16 establish guidelines for the administration of the Maine  
18 Health Program by the private contractor.

20 E. The advisory board shall draft any legislation it  
22 determines necessary to govern the Maine Health Program as  
24 it will operate after April 1, 1994 and present it for  
26 consideration by the Legislature as soon as practical after  
28 August 1, 1993.

30 3. Staff. The department, the Department of Professional  
32 and Financial Regulation, the State Planning Office and the  
34 Legislative Council shall supply staff and other assistance to  
36 the advisory board.

#### CHAPTER 807

#### LICENSING AND CERTIFICATION OF CERTAIN HEALTH CARE FACILITIES

#### §8801. License required; definition

30 No person, partnership, association or corporation, nor any  
32 state, county or local governmental units, may establish,  
34 conduct, maintain or continue to operate in the State any  
36 hospital, sanatorium, convalescent home, rest home, nursing  
38 facility, ambulatory surgical facility or other institution for  
40 the hospitalization or nursing care of human beings without a  
42 valid license from the department. As used in this chapter,  
44 "hospital, sanatorium, convalescent home, rest home, nursing  
46 facility, ambulatory surgical facility and other related  
48 institution" means any institution, place, building or agency in  
which any accommodation is maintained, furnished or offered for  
the hospitalization of the sick or injured or care of any aged or  
infirm persons requiring or receiving chronic or convalescent  
care. Nothing in this chapter applies to hotels or other similar  
places that furnish only board and room, or either, to their  
guests or to homes for the aged or blind that are subject to  
licensing under any other law.

#### §8802. Issuance of licenses

2 The department is authorized to issue licenses to operate  
4 hospitals, sanatoriums, convalescent homes, rest homes, nursing  
6 facilities, ambulatory surgical facilities or other related  
8 institutions, which, after inspection, are found to comply with  
10 this Part and any rules adopted by the department. When any  
12 institution, upon inspection by the department, is found not to  
14 meet all requirements of this Part or departmental rules, the  
16 department is authorized to issue either a temporary license for  
18 a specified period not to exceed 90 days, during which time  
20 corrections specified by the department must be made by the  
22 institution for compliance with this Part and departmental rules,  
24 if in the judgment of the commissioner the best interests of the  
26 public will be so served, or a conditional license setting forth  
28 conditions that must be met by the institution to the  
30 satisfaction of the department. Failure of the institution to  
32 meet any of these conditions immediately voids the conditional  
34 license by written notice by the department to the conditional  
36 licensee or, if the licensee cannot be reached for personal  
38 service, by notice left at the licensed premises. The fee for a  
40 temporary or conditional license is \$15 and is payable at the  
42 time of issuance of the license. A new application for a regular  
44 license may be considered by the department if the conditions set  
46 forth by the department at the time of the issuance of this  
48 temporary or conditional license have been met and satisfactory  
50 evidence of this fact has been furnished to the department. The  
department may amend, modify or refuse to renew a license in  
conformity with the Maine Administrative Procedure Act, Title 5,  
chapter 375, or file a complaint with the Administrative Court  
requesting suspension or revocation of a license on any of the  
following grounds: Violation of this chapter or the rules issued  
pursuant this chapter; permitting, aiding or abetting the  
commission of any illegal act in that institution; conduct of  
practices detrimental to the welfare of the patient. If, on  
inspection by the department, conditions are found to exist which  
violate this chapter or departmental regulations issued  
thereunder that, in the opinion of the commissioner, immediately  
endanger the health or safety of patients in any of the  
institutions or to such an extent as to create an emergency, the  
department by its duly authorized agents may, under the emergency  
provisions of Title 4, section 1153, request that the  
Administrative Court suspend or revoke the license.

#### §8803. Revocation or suspension of license after hearing

2 When the department believes a license should be suspended  
4 or revoked, it shall file a statement or complaint with the  
6 Administrative Court, designated in the Maine Administrative  
8 Procedure Act, Title 5, chapter 375. A person aggrieved by the  
10 refusal of the department to issue a license may file a statement  
12 or complaint with the Administrative Court.

2 **§8804. Inspections**

4 Every building, institution or establishment for which a  
6 license has been issued under this chapter must be periodically  
8 inspected by duly appointed representatives of the department  
10 under rules adopted by the department. No institution of any kind  
12 licensed pursuant to this chapter is required to be licensed or  
14 inspected under the laws of this State relating to hotels,  
16 restaurants, lodging houses, boardinghouses and places of  
18 refreshments. A license may not be issued until the applicant has  
20 furnished the department with a written statement signed by the  
22 Commissioner of Public Safety or the proper municipal official  
24 designated in Title 25, chapters 313 to 321 to make fire safety  
26 inspections that the home and premises comply with said chapters  
28 313 to 321 relating to fire safety. The department shall  
30 establish and pay reasonable fees to the municipal official or  
32 the Commissioner of Public Safety for each such inspection. The  
34 written statement must be furnished annually.

36 **§8805. Appeals**

38 Any person who is aggrieved by the decision of the  
40 department in refusing to issue a license or the renewal of a  
42 license may request a hearing as provided by the Maine  
44 Administrative Procedure Act, Title 5, chapter 375.

46 **§8806. Rules**

48 The department may adopt reasonable rules under this chapter  
50 that it finds to be necessary and in the public interest and may  
rescind or modify the rules from time to time as may be in the  
public interest, if that action is not in conflict with any of  
the provisions of this chapter. No rules may be adopted pursuant  
to this chapter that have the effect of denying a license to any  
hospital or other institution required to be licensed, solely by  
reason of the school or system of practice employed or permitted  
to be employed by physicians therein, provided the school or  
system of practice is recognized by the laws of this State.

54 **§8807. Application**

56 Any person, partnership, association or corporation,  
58 including state, county or local governmental units, desiring a  
60 license under this chapter shall file with the department a  
verified application containing the name of the applicant  
desiring the license; whether the persons so applying are at  
least 18 years of age; the type of institution to be operated;  
the location; and the name of the person in charge. Application  
on behalf of a corporation, association or governmental unit must

2 be made by any 2 officers thereof or by its managing agents. All  
4 applicants shall submit satisfactory evidence of their ability to  
6 comply with this chapter and with rules adopted under this  
8 chapter.

10 **§8808. Fees**

12 Each application for a license to operate a hospital,  
14 convalescent home or nursing home must be accompanied by a  
16 nonrefundable fee of \$10 for each bed contained within the  
18 facility. Each application for a license to operate an  
20 ambulatory surgical facility must be accompanied by the fee  
22 established by the department. The department shall establish  
24 the fee for an ambulatory surgical facility, not to exceed \$500,  
26 on the basis of a sliding scale representing size, number of  
28 employees and scope of operations. All licenses issued must be  
30 renewed annually upon payment of a like fee. The State's share of  
32 all fees received by the department under this chapter must be  
34 deposited in the General Fund. A license is not assignable or  
36 transferable. State-operated hospitals are not required to pay  
38 licensing fees.

40 **§8809. Nursing facility surcharge**

42 In addition to the fee in section 8808, an application for a  
44 license to operate a nursing facility must be accompanied by a  
46 nonrefundable surcharge of \$5 for each bed contained within the  
48 facility. The surcharge must be deposited in the General Fund.

50 **§8810. Licenses for state-operated mental health hospitals**

52 Notwithstanding any other provision of this Title, a  
54 state-operated mental health hospital subject to licensure may  
56 have its current conditional license extended until January 1,  
58 1993. By January 1, 1993, the department shall adopt rules that  
60 apply specifically to the licensure of psychiatric and mental  
health hospitals. Until those rules are adopted, the department  
shall apply existing hospital licensure rules to psychiatric and  
mental health hospitals.

64 **§8811. Licenses for private mental health hospitals**

66 The department may license any suitable person to establish  
68 and keep a private hospital or private house for the reception  
70 and treatment of patients who are mentally ill, in accordance  
with the following provisions.

1. Visitation. The hospital or private house must be  
subject to visitation by the department or any member thereof.  
Each of the licensed hospitals or houses must be visited at least

2 once a year, and more often if the commissioner so directs. The  
3 visitor shall carefully inspect every part of the hospital or  
4 house visited with reference to its cleanliness and sanitary  
5 conditions and shall report to the department with  
6 recommendations to improve conditions as the department deems  
7 necessary.

8 2. Prohibition; penalty. Whoever establishes or keeps the  
9 private hospital or private house without a license, or after  
10 revocation or during suspension of the license, must be fined not  
11 more than \$500.

#### 12 §8812. Right of entry and inspection of nursing facilities

13 The department and any duly designated officer or employee  
14 of the department has the right to enter upon and into the  
15 premises of any nursing facility licensed pursuant to this  
16 chapter at any reasonable time in order to determine the state of  
17 compliance with this chapter, chapter 811 and any rules adopted  
18 under those chapters. The right of entry and inspection extends  
19 to any premises that the department has reason to believe is  
20 being operated or maintained as a nursing facility without a  
21 license, but no entry or inspection of any premises may be made  
22 without the permission of the owner or person in charge of the  
23 premises, unless a warrant is first obtained from the District  
24 Court authorizing the entry or inspection. Any application for a  
25 nursing facility license made pursuant to this chapter  
26 constitutes permission for and complete acquiescence in any entry  
27 or inspection of the premises for which the license is sought in  
28 order to facilitate verification of the information submitted on  
29 or in connection with the application.

#### 30 §8813. Notice when facility voluntarily closed

31 Any person, including county or local government units, who  
32 is conducting, managing or operating any hospital, sanatorium,  
33 convalescent home, rest home, nursing home or institution within  
34 the meaning of this chapter, and who is properly licensed in  
35 accordance with this chapter shall give at least 30 days' advance  
36 notice of the voluntary closing of the facility to the patients  
37 in the facility and to those persons, governmental units or  
38 institutions who are primarily responsible for the welfare of  
39 those patients who are being cared for by the hospital,  
40 sanatorium, convalescent home, rest home, nursing home or  
41 institution so that adequate preparation may be made for the  
42 orderly transfer of patients to another qualified facility.

43 Failure to provide notice subjects the offender to the same  
44 penalties provided in chapter 819.

#### 2 §8814. Administration of medication

3 The administration of medication in facilities licensed  
4 under section 8801, except group home intermediate care  
5 facilities for people with mental retardation, may be delegated  
6 to unlicensed personnel if the personnel have received  
7 appropriate training and instruction and the programs of training  
8 and instruction have been approved by the State Board of Nursing.  
9 The administration of medication in group home intermediate care  
10 facilities for people with mental retardation may be performed by  
11 unlicensed personnel if the personnel have received appropriate  
12 training and instruction and the programs of training and  
13 instruction have been approved by the department. Delegation of  
14 the administration of medication does not require the personal  
15 presence of the delegating professional nurse at the place where  
16 this service is performed, unless that personal presence is  
17 necessary to assure that medications are safely administered. The  
18 State Board of Nursing shall adopt rules concerning delegation as  
19 it deems necessary to ensure the highest quality of health care  
20 to the patient. The department shall adopt rules as it deems  
21 necessary to ensure the highest quality of health care to  
22 residents of group home intermediate care facilities for people  
23 with mental retardation.

#### 24 CHAPTER 809

#### 25 LICENSING OTHER ADULT FACILITIES

#### 26 SUBCHAPTER I

#### 27 GENERAL PROVISIONS

#### 28 §8901. Definitions

29 As used in this chapter and in chapters 813, 815, 817, and  
30 819, unless the context otherwise indicates, the following terms  
31 have the following meanings.

32 1. Facility. "Facility" means any of the places defined in  
33 section 9101, subsection 3.

34 2. Abuse or neglect. "Abuse or neglect" have the same  
35 meaning as in section 14003, subsections 1 and 14, and also  
36 includes exploitation, as defined in section 14003, subsection 11.

#### 37 §8902. Violation; penalty

38 Whoever violates any provision of this chapter, chapter 813,  
39 815, 817, or 819, except section 8951, subsection 1, paragraph A,  
40 must be punished by a fine of not more than \$500 or by  
41 imprisonment for not more than 90 days.

2 imprisonment for not more than 11 months, or by both, except that  
3 anyone violating section 8903 must be punished only by a fine of  
4 not more than \$500.

6 §8903. Records; disclosure

8 1. Records. Except as otherwise provided by law, any  
9 records that are made, acquired or retained by the department in  
10 connection with its responsibilities under this chapter, chapter  
11 813, 815, 817, or 819 are available to the public as provided in  
12 this section.

14 2. Confidential information. Except as provided in  
15 subsections 3 and 4, confidential information may not be released  
16 without a court order or a written release from the person about  
17 whom the confidential information has been requested. The  
18 following information is confidential:

20 A. Any information that identifies, directly or indirectly,  
21 a recipient of services of a facility, a client of a  
22 facility or the client's family or custodian, except where  
23 the family member or custodian is an owner or operator of  
24 the facility;

26 B. Notwithstanding section 14604, any information gathered  
27 in the course of an investigation of neglect or abuse,  
28 except a statement indicating whether or not a report of  
29 abuse or neglect has been received, the nature of the  
30 alleged abuse or neglect and the conclusion reached by the  
31 department, if any;

32 C. Any information that identifies, directly or indirectly,  
33 a reference, complainant or reporter of suspected abuse or  
34 neglect;

36 D. Any information pertaining to the adoption of an  
37 individual;

39 E. Any information about the private life of any person,  
40 other than an owner, operator or employee of a facility, in  
41 which there is no legitimate public interest and which would  
42 be offensive to a reasonable person, if disclosed, except as  
43 provided in paragraph F; and

44 F. Any information about the private life of any person who  
45 has applied for a license or approval or is or has been  
46 licensed or approved as an adult foster home, as defined in  
47 section 9101, subsection 1, in which there is no legitimate  
48 public interest and which would be offensive to a reasonable  
49 person, if disclosed.

2 Within the department, confidential information must be available  
3 to and used by appropriate departmental personnel and legal  
4 counsel in carrying out their various functions. Nothing in this  
5 section prevents the release of statistical information regarding  
6 the population of the facility by diagnosis or other  
7 classification, if it does not directly or indirectly identify  
8 the clients or recipients of services of the facility.

10 3. Optional disclosure of confidential information.  
11 Relevant information made confidential by subsection 2 may be  
12 released to the following:

14 A. An agency investigating a report of child or adult abuse  
15 or neglect when the investigation is authorized by law or by  
16 an agreement with the department;

18 B. A physician treating a child or adult whom the physician  
19 reasonably suspects may be abused or neglected;

20 C. A person, the parent or guardian of a minor, or the  
21 guardian of an incapacitated adult named in a record,  
22 provided that the identity of any reference, complainant,  
23 reporter of suspected abuse or neglect or other person is  
24 protected when appropriate;

26 D. A person having the legal responsibility or  
27 authorization to educate, care for, evaluate, treat or  
28 supervise a client or recipient of services of the  
29 facility. This includes a member of a treatment team or  
30 group convened to plan for or treat a person named in a  
31 record, provided that the identity of any reference,  
32 complainant, reporter of suspected abuse or neglect or other  
33 person is protected, when appropriate;

34 E. Any person engaged in bona fide research, provided that  
35 no personally identifying information is made available,  
36 unless it is essential to the research and the commissioner  
37 or the commissioner's designee gives prior approval. If the  
38 researcher desires to contact a subject of a record, the  
39 subject's consent must be obtained by the department prior  
40 to the contact;

42 F. Any agency involved in approving homes for the placement  
43 of children, provided that the identity of any reference,  
44 complainant, reporter of suspected abuse or neglect or other  
45 person is protected, when appropriate;

46 G. An individual seeking to place a child or adult in a  
47 particular facility, provided that the identity of any  
48 person is protected, when appropriate;

reference, complainant, reporter of suspected abuse or neglect or other person is protected, when appropriate;

H. An owner or operator of a facility that is the subject of a record, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected, when appropriate; or

I. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 103.

4. Mandatory disclosure of confidential information. The department shall disclose relevant information in the records made confidential by subsection 2 to the following persons:

A. The guardian ad litem of a child or adult named in a record who is reported to be abused or neglected;

B. A law enforcement agency investigating a report of child or adult abuse or neglect or the commission of a crime by an owner, operator or employee of a facility against a client or recipient of services of the facility;

C. A court on its finding that access to those records may be necessary for the determination of any issue before the court. Access must be limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before it;

D. A grand jury on its determination that access to those records is necessary in the conduct of its official business;

E. An appropriate state executive or legislative official with responsibility for adult or child protection services in carrying out that person's official functions, provided that no personally identifying information may be made available unless necessary to those functions;

F. The Protection and Advocacy Agency for the Developmentally Disabled in Maine in connection with investigations conducted in accordance with Title 5, chapter 511. The determination of what information and records are relevant to the investigation must be made by agreement between the department and the agency; and

G. The Commissioner of Education, when the information concerns teachers and other professional personnel issued certificates under Title 20-A.

5. Dissemination of confidential information. Information released pursuant to subsections 3 and 4 may be used solely for the purpose for which it was provided and may not be further disseminated.

## SUBCHAPTER II

### LICENSES

#### §8951. License or approval required

1. License required. Except as otherwise provided in this section, no person, firm, corporation or association may operate any of the following without having, subject to this chapter, chapter 813, 815, 817, or 819, and to the rules adopted by the department under those chapters, a written license from the department:

A. A boarding care facility as defined in section 9101; or

B. An adult day care program as defined in section 14501.

2. Adult foster homes. An adult foster home, as defined in section 9101, that provides care to no more than 2 residents is not required to obtain a license under subsection 1, unless the license is required for the adult foster home to receive payment from available state funds.

3. Boarding homes. Notwithstanding section 9101, a boarding home licensed for 3 or 4 residents before July 16, 1986 may continue to be licensed as a boarding home or may apply for a license as an adult foster home, if it meets all the requirements for that license other than number of residents.

4. Residents under age of 18 years. Notwithstanding any age requirement, a person who is 17 years of age or older may be a resident in an adult foster home or boarding home without the home being required to be licensed as a children's home under Title 22-A if the department determines that the placement is in the best interests of that person.

#### §8952. Issuance of license or approval

1. Types of license or approval. The department shall issue the following types of licenses.

A. A provisional license or approval must be issued by the department to an applicant who:

2 (1) Has not previously operated the facility for which  
4 the application is made or is licensed or approved but  
6 has not operated during the term of that license or  
8 approval.

10 (2) Complies with all applicable laws and rules,  
12 except those which can only be complied with once  
14 clients are served by the applicant; and

16 (3) Demonstrates the ability to comply with all  
18 applicable laws and rules by the end of the provisional  
20 license or approval term.

22 B. The department shall issue a full license or approval to  
24 an applicant who complies with all applicable laws and rules.

26 C. A conditional license or approval may be issued by the  
28 department when the individual or agency fails to comply  
30 with applicable law and rules and, in the judgment of the  
32 commissioner, the best interest of the public would be so  
34 served by issuing a conditional license or approval. The  
36 conditional license or approval must specify when and what  
38 corrections must be made during the term of the conditional  
40 license or approval.

42 2. Term of license or approval; compliance visits. The  
44 term of license is governed by the following.

46 A. The provisional license or approval must be issued for a  
48 minimum period of 3 months or a longer period, as deemed  
50 appropriate by the department, not to exceed 12 consecutive  
months.

B. The terms of full licenses or approvals are as follows.

2 (1) The term of all full licenses and approvals issued  
4 pursuant to this chapter is for one year or the  
6 remaining period of a conditional or provisional  
8 license that has been issued for less than one year.

10 C. The conditional license must be issued for a specific  
12 period, not to exceed one year, or the remaining period of  
14 the previous full license, whichever the department  
16 determines appropriate based on the laws and rules violated.

18 D. Regardless of the term of the license or approval, the  
20 department shall monitor for continued compliance with  
22 applicable laws and rules on at least an annual basis.

2 3. Failure to comply with applicable laws and rules. In  
4 taking action pursuant to this subsection, the department shall  
6 notify the licensee of the opportunity to request an  
8 administrative hearing or shall file a complaint with the  
10 Administrative Court in accordance with the Maine Administrative  
12 Procedure Act, Title 5, chapter 375.

14 A. When an applicant fails to comply with applicable law  
16 and rules, the department may refuse to issue or renew the  
18 license or approval.

20 B. If, at the expiration of a full or provisional license  
22 or approval or during the term of a full license or  
24 approval, the facility fails to comply with applicable law  
26 and rules and, in the judgment of the commissioner, the best  
28 interest of the public would be served, the department may  
30 issue a conditional license or approval, or change a full  
32 license or approval to a conditional license or approval.  
34 Failure by the conditional licensee to meet the conditions  
36 specified by the department permits the department to void  
38 the conditional license or approval or refuse to issue a  
40 full license or approval. The conditional license or  
42 approval is void when the department has delivered in hand  
44 or by certified mail a written notice to the licensee or, if  
the licensee cannot be reached for service in hand or by  
certified mail, has left written notice at the agency or  
facility. For the purposes of this subsection the term  
"licensee" means the person, firm, corporation or  
association to whom a conditional license or approval has  
been issued.

46 C. Whenever, upon investigation, conditions are found that,  
48 in the opinion of the department, immediately endanger the  
50 health or safety of persons living in or attending a  
facility, the department may request the Administrative  
Court for an emergency suspension pursuant to Title 4,  
section 1153.

D. Any license or approval issued under this chapter or  
chapter 807 may be suspended or revoked for violation of  
applicable law and rules, committing, permitting, aiding or  
abetting any illegal practices in the operation of the  
facility or conduct or practices detrimental to the welfare  
of persons living in or attending the facility.

When the department believes that a license or approval  
should be suspended or revoked, it shall file a complaint  
with the Administrative Court as provided in the Maine  
Administrative Procedure Act, Title 5, chapter 375.



2 4. Subsequent application for a full license or approval.  
3 Subsequent to any of the following actions, an application for a  
4 full license or approval may be considered by the department when  
5 the deficiencies identified by the department have been corrected:

6 A. Issuance of a conditional license or approval;

8 B. Refusal to issue or renew a full license or approval;

10 C. Revocation or suspension of a full license or approval;  
11 or

12 D. Refusal to issue a provisional license or approval.

14 5. Appeals. Any person aggrieved by the department's  
15 decision to take any of the following actions, may request an  
16 administrative hearing, as provided by the Maine Administrative  
17 Procedure Act, Title 5, chapter 375:

20 A. Issue a conditional license or approval;

22 B. Amend or modify a license or approval;

24 C. Void a conditional license or approval;

26 D. Refuse to issue or renew a full license or approval; or

28 E. Refuse to issue a provisional license or approval.

30 §8953. Right of entry

32 The department has the right of entry to any facility  
33 licensed under this chapter, at any reasonable time in order to  
34 determine the state of compliance by the facility to applicable  
35 laws and rules.

36 To inspect any facility that the department knows or  
37 believes is operated without a license, the department may enter  
38 only with the permission of the owner or person in charge or with  
39 a search warrant from the District Court authorizing entry and  
40 inspection.

42 Any application for a license under this chapter constitutes  
43 permission for entry and inspection to verify compliance with  
44 applicable law and rules.

46 §8954. Medication  
48

2 The department shall adopt rules regarding the  
3 administration of medication in facilities governed by this  
4 chapter.

6 CHAPTER 811

8 NURSING FACILITIES

10 §9001. Nursing home or facility defined

12 "Nursing home" or "nursing facility" means a facility that  
13 is operated in connection with a hospital, or in which nursing  
14 care and medical services are prescribed by or performed under  
15 the general direction of persons licensed to practice medicine or  
16 surgery in the State, for the accommodation of convalescent or  
17 other persons who are not acutely ill and not in need of hospital  
18 care, but who do require skilled nursing care and related medical  
19 services. The term "nursing home" or "nursing facility" is  
20 restricted to those facilities, the purpose of which is to  
21 provide skilled nursing care and related medical services for a  
22 period of not less than 24 hours per day to individuals admitted  
23 because of illness, disease or physical or mental infirmity and  
24 to provide a community service.

26 §9002. Medicaid eligibility determinations for applicants to  
27 nursing facilities

28 1. Needs assessment. In order to determine the most  
29 cost-effective and clinically appropriate level of long-term care  
30 services, the department or its designee shall assess the medical  
31 and social needs of each applicant to a nursing facility who is  
32 reasonably expected to become financially eligible for Medicaid  
33 benefits within 180 days of admission to the nursing facility.  
34 If the department chooses a designee to carry out assessments  
35 under this section, it shall ensure that the designee does not  
36 have a pecuniary interest in the outcome of the assessment.

38 A. The assessment must be completed prior to admission or,  
39 if necessary for reasons of the person's health or safety,  
40 as soon after admission as possible.

42 B. The department shall determine whether the services  
43 provided by the facility are medically and socially  
44 necessary and appropriate for the applicant and, if not,  
45 what other services, such as home and community-based  
46 services, would be more clinically appropriate and cost  
47 effective.

48 C. The department shall inform both the applicant and the  
49 administrator of the nursing facility of the department's  
50

determination of the services needed by the applicant and shall provide information and assistance to the applicant in accordance with subsection 2.

D. Until such time as the applicant becomes financially eligible to receive Medicaid benefits, the department's determination is advisory only. If the advisory determination is that the applicant is not medically eligible for Medicaid reimbursement for nursing facility services, the applicant must be advised that the applicant may be required to leave the nursing facility when the applicant no longer has the resources to pay for the services and an appropriate placement has been identified.

E. The department shall perform a reassessment of the individual's medical needs when the individual becomes financially eligible for Medicaid benefits.

(1) If the individual, at both the admission assessment and any reassessment within 180 days of admission, is determined not to be medically eligible for the services provided by the nursing facility, and is determined not to be medically eligible at the time of the determination of financial eligibility, the nursing facility is responsible for providing services at no cost to the individual until such time as a placement at the appropriate level of care becomes available. After a placement becomes available at an appropriate level of care, the nursing facility may resume billing the individual for the cost of services.

(2) If the individual is initially assessed as needing the nursing facility's services, but reassessed as not needing them at the time the individual is found financially eligible, then Medicaid shall reimburse the nursing facility for services it provides to the individual in accordance with the Maine Medical Assistance Manual, chapter II, section 50.

F. Prior to performing assessments under this section, the department shall develop and disseminate to all nursing facilities and the public the specific standards the department will use to determine the medical eligibility of an applicant for admission to the nursing facility. A copy of the standards must be provided to each person for whom an assessment is conducted.

G. A determination of medical eligibility under this section is final agency action for purposes of the Maine Administrative Procedure Act, Title 5, chapter 375.

2. Information and assistance. If the assessment performed pursuant to subsection 1 finds nursing facility care clinically appropriate, the department shall determine whether the applicant also could live appropriately and cost-effectively at home or in some other community-based setting if home-based or community-based services were available to the applicant. If the department determines that a home or other community-based setting is clinically appropriate and cost-effective, the department shall:

A. Advise the applicant that a home or other community-based setting is appropriate;

B. Provide a proposed care plan and inform the applicant regarding the degree to which the services in the care plan are available at home or in some other community-based setting and explain the relative cost to the applicant of choosing community-based care rather than nursing facility care; and

C. Offer a care plan and case management services to the applicant on a sliding scale basis if the applicant chooses a home-based or community-based alternative to nursing facility care.

The department may provide the services described in this subsection directly or through private agencies.

3. Notification by hospitals. Whenever a hospital determines that a patient will require long-term care services upon discharge from the hospital, the hospital shall notify the department prior to discharge that long-term care services are indicated and that a preadmission assessment may be required under this section.

4. Assessment for mental illness or retardation. The department shall assess every applicant to a nursing facility to screen for mental retardation and mental illness in accordance with the Federal Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, Section 4211. Such assessments are intended to increase the probability that an individual who is mentally retarded or mentally ill will receive active treatment for that individual's mental condition.

5. Rules. The department shall adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to implement this section.

§9003. Notice to nursing facility applicants

2 If an applicant to a nursing facility has not received a  
4 preadmission assessment in accordance with section 9002, the  
6 nursing facility shall provide to the applicant and any relative  
8 or friend assisting the applicant a notice prepared by the  
10 department regarding the availability of preadmission  
12 assessment. The notice must indicate that preadmission  
14 assessment is available, that all applicants are urged to have a  
16 preadmission assessment, that prospective Medicaid recipients are  
18 required to have a preadmission assessment and that, if the  
20 applicant depletes the applicant's resources and applies for  
22 Medicaid in the future, the applicant may need to leave the  
24 nursing facility if an assessment conducted at that time finds  
26 that the applicant is not medically eligible for nursing facility  
28 services.

#### 29 §9004. Nursing facility admission contracts

30 All contracts or agreements executed at the time of  
32 admission or prior to admission by a resident or legal  
34 representative and by any nursing facility licensed pursuant to  
36 chapter 807 are subject to the requirements of this section.

38 1. Required contract provisions. Each contract or  
40 agreement must contain the following provisions.

42 A. A resident may obtain medical care from any qualified  
44 institution, agency or person of the resident's choice, as  
46 long as that health care provider complies with any  
48 applicable laws or rules concerning the provision of care to  
50 the resident.

B. A resident may obtain medication from any qualified  
pharmacy, as long as that pharmacy complies with any  
applicable state rules and federal regulations and with the  
reasonable policies of the facility concerning procurement  
of medication.

2. Contract requirements. Each contract or agreement is  
subject to the following requirements.

A. No contract or agreement may contain a provision for the  
discharge of a resident or the transfer of a resident to  
another facility or to another room within the same facility  
that is inconsistent with state law or rule.

B. Each contract or agreement must contain a complete copy  
of the department rules establishing residents' rights and  
must contain a written acknowledgement that the resident has  
been informed of those rights. In the case of a mentally

2 retarded or otherwise incompetent individual, the written  
4 acknowledgement of those rights must be made by a  
6 representative of the resident. No provision in the  
8 contract or agreement may negate, limit or otherwise modify  
10 any provision of the residents' rights.

C. No provision of a contract or agreement may require or  
imply a lesser standard of care or responsibility than is  
required by law or rule.

D. No provision in a contract or agreement may state or  
imply a lesser degree of responsibility for the personal  
property of a resident than is required by law or rule.

E. No contract or agreement may require the resident to  
sign a waiver of liability statement as a condition of  
discharge, even if the discharge is against medical advice.  
This does not prohibit a facility from attempting to obtain  
a written acknowledgement that the resident has been  
informed of the potential risk in being discharged against  
medical advice.

F. Each contract or agreement must contain a provision that  
provides for at least 30 days' notice prior to any changes  
in rates and charges, responsibilities, services to be  
provided or any other items included in the contract or  
agreement.

G. No contract or agreement may require the resident to  
authorize the facility or its staff to manage, hold or  
otherwise control the income or other assets of a resident.

H. No contract or agreement may contain any provisions that  
restrict or limit the ability of a resident to apply for and  
receive Medicaid or that require a specified period of  
residency prior to applying for Medicaid. The resident may  
be required to notify the facility when an application for  
Medicaid has been made. No contract or agreement may  
require a deposit or other prepayment from Medicaid  
recipients. No contract or agreement may refuse to accept  
retroactive Medicaid benefits.

I. No contract or agreement may contain a provision that  
provides for the payment of attorneys' fees or any other  
cost of collecting payments from the resident.

3. Other contract provisions. The contract or agreement  
may contain any other provisions that do not violate state law or  
rule or federal law or regulation.

2 **§9005. Photographs of nursing facility residents**

4 A nursing facility may require an identification photograph  
6 of each resident. Photographs may not be used for any other  
8 purpose without the permission of the resident for each specific  
10 use. The permission must indicate the specific purpose for which  
12 the pictures are to be used and, except for the identification  
14 photograph, may not be contained in the admission contract or  
16 agreement.

12 **§9006. Personal funds of residents**

14 The operator or agent of any nursing facility licensed  
16 pursuant to chapter 807 who manages, holds or deposits the  
18 personal funds of any resident of the facility is subject to all  
20 the procedures and provisions included in section 9105.

18 **§9007. Pharmaceutical services in nursing facilities**

20 Each nursing facility shall post a notice in a place within  
22 the nursing facility where notices for residents are ordinarily  
24 posted stating that each resident has the right to obtain  
26 medication from a pharmacy of the resident's choice as provided  
28 in section 9004, subsection 1.

26 **§9008. Reimbursement for nursing facilities**

28 1. Compensation for nursing facilities. A nursing  
30 facility, as defined in section 9001, or any portion of a  
32 hospital or institution operated as a nursing facility, when the  
34 State is liable for payment for care, must be reimbursed at a  
36 rate established by the department pursuant to this subsection.  
38 The department may not establish a so-called "flat rate." This  
40 subsection applies to all funds, including federal funds, paid by  
42 any agency of the State to a nursing facility for patient care.  
44 The department shall establish rules concerning reimbursement  
46 that:

40 A. Take into account the costs of providing care and  
42 services in conformity with applicable state and federal  
44 laws, rules, regulations and quality and safety standards;

44 B. Include a specific increment to take into account the  
46 increased cost of any excise, gross receipts or similar tax  
48 that is first imposed by the State on or after January 1,  
50 1993;

48 C. Are reasonable and adequate to meet the costs incurred  
50 by efficiently and economically operated facilities; and

2 D. Are consistent with federal requirements relative to  
4 limits on reimbursement under the federal Social Security  
6 Act, Title XIX.

6 2. Medicaid savings. Nursing facilities shall submit  
8 payment to the department equal to 50% of any Medicaid savings  
10 due the State pursuant to the principles of reimbursement and  
12 reported in an unaudited cost report for fiscal years ending  
14 December 31, 1991 and thereafter. Payment is due with the cost  
16 report. After audit, any amount submitted in excess of savings  
18 allocated to the facility pursuant to the principles of  
20 reimbursement must be returned to the facility.

14 **§9009. Reimbursement: geriatric training programs**

16 The department shall amend the principles of reimbursement  
18 for long-term care facilities in order that Medicaid-certified  
20 providers of service are reimbursed for fees charged for  
22 attendance at and materials for educational programs, as required  
24 by Title 37-B, section 602-A.

22 **§9010. Reimbursement for therapy**

24 When therapy is nonreimbursable under Title XVIII of the  
26 Social Security Act (Medicare), the department shall reimburse a  
28 nursing facility directly for the costs of physical and  
30 occupational therapy to individual residents or for professional  
32 consultants, or both, to the staff of the facility in accordance  
34 with professional standards of practice.

32 Reimbursement must be included either as an allowable cost  
34 of operation in determining the per diem rate or as a separate  
36 service for which the facility bills the Medical Assistance  
38 Program, whichever method is the less costly to that program  
40 while providing adequate and timely reimbursement to the  
42 therapist.

38 In adopting rules to administer this section, the department  
40 shall consult with the Maine Chapter of American Physical  
42 Therapists Association, the Maine Occupational Therapists  
44 Association and other groups as appropriate.

44 **§9011. Nursing staff in nursing facilities: reimbursement;**  
46 **delegation of duties; policies**

46 1. Reimbursement of nursing assistants. Nursing facilities  
48 are entitled to receive reimbursement under the department's  
50 principles of reimbursement, in accordance with approved staffing  
patterns, for nursing assistants enrolled in training programs.

2 2. Training program expenses. Nursing facilities are  
3 entitled to receive reimbursement under the department's  
4 principles of reimbursement for all reasonable expenses  
5 associated with carrying out a certified nursing assistant  
6 educational program, consistent with department rules governing  
the licensing and functioning of nursing facilities.

8 3. Delegation of nursing duties. A registered nurse in a  
9 nursing facility may delegate the following functions to nursing  
10 assistants enrolled in training programs:

12 A. Distributing clean linens;

14 B. Making unoccupied beds;

16 C. Distributing food trays, water and nourishments;

18 D. Escorting selected patients within the facility;

20 E. Assisting patients with clothing;

22 F. Combing hair;

24 G. Assisting with feeding; and

26 H. Other similar functions that may be safely performed by  
27 a nursing assistant enrolled in a training program, provided  
28 that the nursing assistant in training has satisfactorily  
29 demonstrated the ability to perform the delegated tasks.

30 These functions may be limited to selected residents.

32 4. Rules; supervision of and delegation to nursing  
33 assistants. The department shall revise its rules or adopt rules  
34 concerning supervision of and delegation of tasks to certified  
35 nursing assistants and nursing assistants in training. The rules  
36 must be developed and adopted jointly by the department and the  
37 State Board of Nursing and must be consistent with other relevant  
38 rules.

40 5. Rules; maintenance of approved staffing pattern. The  
41 department shall revise its rules or adopt rules to require  
42 documentation when any nursing facility receives reimbursement  
43 for an approved staffing pattern that exceeds the minimum  
44 staffing level and fails to meet that approved staffing level for  
45 one year. Failure to meet the minimum staffing requirements as  
46 set forth in the rules is cause for licensure sanctions permitted  
47 under law and rules.

50 §9012. Nursing facilities; staffing for social services and

patient activities

2 1. Minimum hours. The department shall approve at least  
3 the following number of hours for the following services in  
4 nursing facilities.

6 A. The department shall approve at least 1/2 hour per  
7 patient per week for social services.

10 B. The department shall approve at least 20 hours per week  
11 in nursing facilities of up to 30 beds, at least 30 hours  
12 per week in nursing facilities of 31 to 60 beds and at least  
13 40 hours per week in nursing facilities of 61 beds or more  
14 for patient activities.

16 2. Transfer of hours. The department shall approve the  
17 transfer of previously approved nonnursing hours to social  
18 service or patient activity hours if the transfer does not  
19 increase the nursing facility's per diem rate.

20 §9013. Distance restriction on placement of Medicaid recipients

22 The department may make Medicaid reimbursement for a nursing  
23 facility contingent on a maximum distance between a patient's  
24 home and the nursing facility if the maximum distance is not more  
25 than 60 miles; except that the distance restriction may not be  
26 applied to a Maine Veterans' Home.

28 §9014. Participation in the Medicare health insurance for the  
29 aged program

32 1. Medicare. Any nursing facility that participates in the  
33 Medicare program must participate in the Medicare health  
34 insurance for the aged program as a skilled nursing facility.

36 2. Compliance. Any nursing facility required to  
37 participate in the Medicare health insurance for the aged program  
38 shall:

40 A. File an application to become a Medicare provider by  
41 January 1, 1994;

42 B. Follow required federal procedures for certification and  
43 become certified within 90 days of the department's  
44 recommendation for certification;

46 C. Submit an annual application for Medicare participation  
47 at the same time applications for licensure and Medicaid  
48 certification are due; and

2 D. Participate in the Medicare program by billing Medicare  
4 for care provided to eligible recipients prior to billing  
6 Medicaid.

8 3. Rules. The department shall adopt rules to implement  
10 this section. The rules must consider the unique needs of  
12 different parts of the State. Nursing facilities in different  
14 parts of the State may be required to certify different numbers  
16 or percentages of beds depending on the number of Medicare  
18 recipients in those areas, the number of patients in hospitals  
20 who are waiting for nursing facility admission and other relevant  
22 demographic information. Nothing in this subsection prohibits  
24 the department from requiring all nursing facilities to certify  
26 all of their beds as Medicare skilled nursing facility beds.

28 4. Sanctions. Failure to comply with any of the provisions  
30 listed in this section may result in the imposition of a  
32 penalty. The department may impose a penalty of \$100 per bed for  
34 failure to comply with any of these provisions. This penalty  
36 must be imposed for each day a facility fails to comply with  
38 subsection 2, paragraph D. A repeated failure to comply with any  
40 provision results in fines of \$200 per bed. The imposition and  
42 collection of these penalties are governed by section 9406.

#### CHAPTER 813

#### BOARDING CARE FACILITIES

#### §9101. Definitions

32 As used in this chapter, unless the context otherwise  
34 indicates, the following terms have the following meanings.

36 1. Adult foster home. "Adult foster home" means a boarding  
38 care facility having fewer than 5 residents.

40 2. Boarding care. "Boarding care" means care that is  
42 greater than that necessarily attendant upon mere eating and  
44 lodging services, but that is less than that attendant upon  
46 nursing facility care or hospital care. "Boarding care" may  
48 include personal supervision, protection from environmental  
50 hazards, diet care, care concerning grooming, hand and foot care,  
skin care, mouth and teeth care, shampooing, bathing, assistance  
in ambulation, supervision and assistance in the administration  
of medications, diversional or motivational activities, and  
stimulation of, or assistance in, activities of daily living or  
physical exercise.

3. Boarding care facility. "Boarding care facility" means  
a house or other place classified as either an adult foster home

2 or a boarding home which, for consideration, is maintained wholly  
4 or partly for the purposes of providing residents with boarding  
6 care as defined in subsection 2. A "boarding care facility" does  
8 not include a licensed nursing facility or certified elderly  
10 congregate housing.

12 4. Boarding home. "Boarding home" means a boarding care  
14 facility having 5 or more residents and those facilities of fewer  
16 than 5 certified by the department as being eligible for cost  
18 reimbursement pursuant to section 9106.

20 5. Mobile nonambulatory. "Mobile nonambulatory," as  
22 applied to a resident of a boarding care facility, means being  
24 able to transfer independently and able to evacuate a facility in  
26 less than 2 1/2 minutes with the assistance of another person  
28 throughout the evacuation procedure.

30 6. Resident. "Resident" means any person 18 years of age  
32 or older who is not related by blood or marriage to the owner or  
34 person in charge of the boarding care facility in which the  
36 person lives.

#### §9102. Rules

38 The commissioner shall adopt rules for boarding care  
40 facilities, that must include but need not be limited to rules  
42 pertaining to administration, staffing, the number of residents,  
44 the quality of care, the quality of treatment, if applicable, the  
46 health and safety of staff and residents, the rights of  
48 residents, community relations, the administration of medication,  
criteria for placement of residents who are 17 years of age or  
older and under 18 years and licensing procedures. There must be  
separate rules promulgated for boarding homes and foster homes.  
The rules must be in accordance with the following provisions.

1. Administration of medication. In adopting rules for the  
administration of medication, the commissioner shall consider,  
among other factors, the general health of the persons likely to  
receive medication, the number of persons served by the facility  
and the number of persons employed by the facility. In the rules  
for the administration of medication established for boarding  
homes, the department shall require unlicensed personnel to have  
successfully completed a program of training and instruction  
approved by the department for the administration of medication  
that is not limited to in-service training.

#### §9103. Fees for licenses

2 The department shall charge an annual fee of \$10 per  
3 licensed bed for boarding homes and a flat fee of \$25 for foster  
4 homes.

6 **§9104. Fire safety inspection**

8 1. Inspection required. No license may be issued by the  
9 department to a boarding care facility until the department has  
10 received from the State Fire Marshal a written statement signed  
11 by one of the officials designated under Title 25, section 2360,  
12 2391 or 2392, to make fire safety inspections. This statement,  
13 which must indicate that the boarding care facility has complied  
14 with applicable fire safety provisions referred to in Title 25,  
15 section 2452, must be furnished annually by the State Fire  
16 Marshal to the department.

18 2. Fees. The department shall establish and pay reasonable  
19 fees to the State Fire Marshal or municipal official for each  
20 inspection.

22 3. Requirements for facilities with 17 or more beds. Any  
23 boarding care facility that has a capacity of 17 or more beds  
24 shall comply with the Life Safety Code, chapter 21, the  
25 residential board and care occupancies section for large  
26 facilities, adopted by the State Fire Marshal. In addition, the  
27 following requirement must be met.

28 A. Any building of 2 or more stories must be equipped with  
29 an approved automatic sprinkler system, unless the building  
30 is of fire resistive or protected noncombustible  
31 construction as defined in the current edition of the  
32 National Fire Protection Association's Standard Types of  
33 Building Construction.

34 4. Requirements for facilities with more than 6 but fewer  
35 than 17 beds. Any boarding care facility that has a capacity of  
36 more than 6 but fewer than 17 beds shall comply with the Life  
37 Safety Code, chapter 21, the residential board and care  
38 occupancies section for small facilities, adopted by the State  
39 Fire Marshal. In addition, the following requirements must be  
40 met.

41 A. Any building of 2 or more stories must be equipped with  
42 an approved automatic sprinkler system, unless the building  
43 is of fire resistive or protected noncombustible  
44 construction as defined in the current edition of the  
45 National Fire Protection Association's Standard Types of  
46 Building Construction.

2 B. Automatic emergency lights must be provided in the  
3 number and location required by the State Fire Marshal.

4 5. Requirements for boarding homes with 6 or fewer beds.  
5 The department may permit any boarding home having 6 or fewer  
6 ambulatory residents who can evacuate the facility without the  
7 assistance of another person in 2 or less minutes to comply with  
8 the one-family and 2-family dwelling requirements of the Life  
9 Safety Code adopted by the State Fire Marshal.

10 6. Adult foster homes with one to 4 ambulatory residents.  
11 Adult foster homes having one to 4 ambulatory residents who can  
12 evacuate the facility without the assistance of another person in  
13 2 or less minutes shall comply with the one-family and 2-family  
14 dwelling requirements of the Life Safety Code adopted by the  
15 State Fire Marshal.

16 7. Local regulations. Any local regulations that affect  
17 the life-safety requirements of any boarding care facility and  
18 that are more stringent than those referred to in this section  
19 take precedence.

20 **§9105. Personal funds of residents**

21 1. Permission to manage personal funds. No operator or  
22 agent of any boarding care facility may manage, hold or deposit  
23 in a financial institution the personal funds of any resident of  
24 the facility, unless the operator or agent has received written  
25 permission from:

26 A. The resident, if the resident has no guardian, trustee  
27 or conservator;

28 B. The resident's guardian, trustee or conservator, if that  
29 person exists and can be reached; or

30 C. The department, if a guardian, trustee or conservator  
31 exists, but can not be reached.

32 2. Itemized accounting. Any operator or agent who, after  
33 receiving written permission pursuant to subsection 1, manages or  
34 holds the personal funds of any resident shall maintain an  
35 account for these funds that must include for each resident a  
36 separate, itemized accounting for the use of the resident's  
37 personal funds, with supporting documentation for every  
38 expenditure in excess of \$2.

39 3. Depositing personal funds. The department may require  
40 an operator or agent of a boarding care facility to deposit in a  
41 financial institution the personal funds of a resident, if the  
42 operator or agent has received written permission from the  
43 department.

resident has a guardian, trustee or conservator who can not be reached.

4. Use of personal funds by operator prohibited. Under no circumstances may any operator or agent of a boarding care facility use the personal funds of any resident for the operating costs of the facility or for services or items that are reimbursable on a reasonable cost basis. The personal funds of a resident may not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, a member of the owner's family or an employee of the facility.

**§9106. Reimbursements to small boarding homes for persons with mental retardation**

No rule of the department may be adopted or enforced which would have the effect of denying, solely by reason of size, to any boarding home that was licensed before July 16, 1986 and has a capacity of 6 or fewer residents and serves only persons with mental retardation or related conditions, the opportunity to receive from the department reimbursements based on the reasonable costs of operating the facility. In no case may the maximum allowable costs be less than the ceilings set for boarding homes with a capacity of more than 6.

**§9107. Boarding care payments**

Except as otherwise provided in section 9106, the department shall:

1. Adult foster homes. Reimburse all approved adult foster homes at a rate of at least \$225 per month; and

2. Boarding care facilities. Reimburse all boarding care facilities of 6 or fewer beds, except as provided in section 9106, on a flat rate basis.

**§9108. Residents' records**

Whenever there are pertinent and available health and other records about a person who seeks admission as a resident to a boarding care facility, those records must be provided to the administrator of the facility at least 7 days prior to the date of admission, unless there are compelling reasons which make this impossible or impractical. If there are compelling reasons, including, but not limited to, emergency situations, the administrator must receive, by not later than the date of admission, a written note that:

1. Reasons explained. Explains the compelling reasons why the records could not be provided 7 days prior to the date of admission; and

2. When records will be provided. If the records have not yet been received, must state by when the records will be provided.

Nothing in this section means that a resident who is not a client of the Department of Health and Developmental Services or the Department of Children and Families is required, as a condition of admission, to provide records to the administrator of the facility.

**§9109. Assessment of and care planning for boarding care facility residents who receive state assistance**

Every individual who is eligible to receive state assistance for a portion of the costs of an adult boarding home or adult foster home and who is referred to or otherwise seeks admission to a boarding or foster home must have an assessment performed prior to admission in accordance with the following provisions.

1. Assessment. The department or its designee shall, using a form approved by the department, indicate the need for boarding or foster home placement, develop a plan of care that meets the requirements of the department when placement is sought in a boarding or foster home, and provide periodic follow-up as necessary.

2. Intake. The department shall develop an intake and referral system to assist persons who seek admission by referring them to the appropriate agency for assessment and development of a plan of care.

3. Biennial report. By January 15th of each even-numbered year, the department shall report to the joint standing committee of the Legislature having jurisdiction over human resources matters regarding the intake and referral system, the appropriateness of placements and the service needs that have been identified.

4. Rules. The department shall, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, adopt reasonable rules to carry out the purposes of this section.

**§9110. Nonambulatory and mobile nonambulatory residents: temporarily disabled**



2 A resident of a boarding care facility who becomes  
3 nonambulatory or mobile nonambulatory may remain in the facility  
4 if:

5 1. Reason for condition is temporary. The reason for the  
6 resident's nonambulatory or mobile nonambulatory condition is  
7 temporary, such as a short-term illness; and

8 2. Physician approved. The resident's attending physician  
9 has approved the appropriateness of the resident's continued stay  
10 in the boarding care facility.

11 §9111. Nonambulatory and mobile nonambulatory residents:  
12 permanently disabled

13 Except as provided in section 9110, a boarding care facility  
14 that has 8 or fewer beds may not have residents who are  
15 nonambulatory or mobile nonambulatory except as follows:

16 1. General requirements. The department may permit up to 2  
17 beds in the facility for nonambulatory or mobile nonambulatory  
18 residents if the following conditions are met.

19 A. The facility conforms to the residential board and care  
20 occupancy section for small facilities of the National Fire  
21 Protection Association Life Safety Code, chapter 21, as  
22 adopted by the State Fire Marshal. If there is an  
23 interconnected smoke detection system and a direct exit from  
24 the bedroom, the requirement for construction type or a  
25 sprinkler system may be waived.

26 B. There are no more than 2 mobile nonambulatory residents  
27 or one nonambulatory resident and one mobile nonambulatory  
28 resident. Any facility housing more than one nonambulatory  
29 resident must meet the requirements of subsection 2.

30 C. All nonambulatory and mobile nonambulatory residents  
31 must be housed on the first floor of the facility with  
32 direct egress to a common corridor with 2 exits leading  
33 directly to the exterior of the facility.

34 D. Facilities with 7 or 8 beds and facilities with 6 or  
35 fewer beds with a nonambulatory resident must be ramped to  
36 grade at both exits referred to in paragraph C. Other  
37 facilities with 6 or fewer beds must be ramped to grade at  
38 one exit.

39 E. There must be at least one staff person available on the  
40 premises of the facility when any resident is present.

2 Additional staff may be required at night at the direction  
3 of the Office of the State Fire Marshal.

4 F. If a facility with 7 or 8 beds is of new construction,  
5 any doorway in the path of egress for a nonambulatory or  
6 mobile nonambulatory resident must be at least 36 inches in  
7 width. If the facility is of existing construction, any  
8 doorway in the path of egress for a nonambulatory or mobile  
9 nonambulatory resident must be at least 34 inches in width;  
10 and

11 2. Requirements when number of nonambulatory or mobile  
12 nonambulatory residents exceed limits. Boarding care facilities  
13 may provide services to more residents who are nonambulatory or  
14 mobile nonambulatory than allowed under subsection 1 if, in  
15 addition to those requirements:

16 A. The structure meets all the requirements of the  
17 residential board and care occupancy section for small  
18 facilities of the National Fire Protection Association Life  
19 Safety Code, chapter 21. The structure must be of protected  
20 wood frame construction unless it is provided with either a  
21 National Fire Protection Association Standard No. 13 or a  
22 Life Safety sprinkler system. Additional staff may be  
23 required at the direction of the Office of the State Fire  
24 Marshal; and

25 B. A physician certifies that the nonambulatory resident  
26 does not require nursing care. This certification is  
27 required at least annually.

28 §9112. Conflict of interest prohibited

29 No physician or psychologist who certifies or recertifies a  
30 resident for a boarding care facility may be in the regular  
31 employ of or may have a financial interest in the boarding care  
32 facility for which the resident is being certified or recertified.

33 CHAPTER 815

34 RESIDENTS' RIGHTS

35 §9201. Intent

36 It is the intent of the Legislature to establish a mechanism  
37 for residents of long-term care facilities in this State to  
38 articulate their rights and to be responsible for the protection  
39 of those rights.

40 §9202. Definitions

2 As used in this chapter, unless the context indicates  
4 otherwise, the following terms have the following meanings.

6 1. Long-term care facility. "Long-term care facility"  
8 means any boarding home licensed pursuant to chapters 809 and  
10 813, and any nursing facility or unit licensed pursuant to  
12 chapter 807.

14 2. Resident. "Resident" means any person who lives in and  
16 receives services or care in a long-term care facility.

18 §9203. Residents' council

20 1. Establishment; composition. Each long-term care  
22 facility shall inform residents of their right to establish a  
24 council. This information must be given to all residents and a  
26 family member or designated representative for those residents on  
28 admission and must be posted prominently in the facility.

30 The administrator shall assist residents in establishing a  
32 residents' council, if the residents choose to establish one. If  
34 there is no council, at least once each year residents must be  
36 given the choice to establish one. A majority vote prevails.

38 The council shall draw up bylaws. The council may meet as often  
40 as specified in the bylaws, but at least quarterly. No employee  
42 or representative of the facility may be a member of the council.  
44 Family members may sit on the council, but may not be members.

46 2. Responsibilities. The council has, but is not limited  
48 to, the following responsibilities:

A. To review and make recommendations to strengthen the  
facility's policies and procedures relating to residents'  
rights;

B. To establish procedures for informing all residents  
about their rights;

C. To serve as a forum for obtaining and disseminating  
information, soliciting and adopting recommendations for  
facility programming and improvement, and early  
identification of and recommendations for orderly resolution  
of residents' problems;

D. To inform the administrator about the opinions and  
concerns of the residents;

2 E. To find ways of involving the families of residents in  
4 the facility; and

6 F. To notify the department when they are constituted.

8 Records of council meetings and decisions must be prepared and  
10 disseminated by the council, which may request the assistance of  
12 the designated staff member. The records must be kept on file in  
14 the facility and available at all times to residents and family  
16 members or designated representatives.

18 3. Assistance. Except as provided in this subsection, the  
20 administrator shall designate a staff member, not related to the  
22 administrator, to assist the residents' council. In small  
24 long-term care facilities in which no staff members are unrelated  
26 to the administrator or owner of the facility, the administrator  
28 may designate a staff member who is related to the administrator.

30 §9204. Reporting of violations

32 1. Alleged violations reported and investigated. Any  
34 person who believes that any rule governing the licensure of  
36 long-term care facilities adopted by the department pertaining to  
38 residents' rights and conduct of resident care has been violated  
40 may report the alleged violation to the protection and advocacy  
42 agency designated pursuant to Title 5, section 19502; the  
44 long-term care ombudsman designated pursuant to section 14102;  
46 the Office of Advocacy pursuant to section 301; and any other  
48 agency or person the commissioner designates.

50 2. Professionals to report. Any professional who provides  
health care, social services or mental health services or who  
administers a long-term care facility or program and who knows of  
or has reasonable cause to suspect that there has been a  
violation of any rules adopted by the department governing the  
licensure of long-term care facilities pertaining to residents'  
rights or conduct of resident care shall immediately report or  
cause a report to be made to an agency or person referred to in  
subsection 1.

3. Written report of findings. Any agency or person  
investigating a situation pursuant to subsection 1 or 2 shall  
submit a written report of the findings and results of the  
investigation to the administrator of the long-term care facility  
in which the residents' rights allegedly have been violated and  
to the commissioner.

4. Immunity from liability. No professional may be held  
liable for any report or action taken pursuant thereto if the  
professional acted in good faith pursuant to this section.

2 5. Ombudsman not limited. Nothing in this section limits  
4 the powers or responsibilities of the long-term care ombudsman  
designated pursuant to section 14102.

6 6. Notice of program. Each long-term care facility shall  
8 provide to each resident, guardian or personal representative, at  
10 the time of admission, information that the long-term care  
12 ombudsman program designated pursuant to section 14102 is a  
14 source of assistance with complaints and problems. At least 2  
16 posters must be mounted in prominent places in each long-term  
18 care facility to inform residents about the services of the  
program. The posters must also include the department's current  
rules regarding the rights of residents of long-term care  
facilities.

#### §9205. Discharges and transfers

Long-term care facilities that receive public funds may not  
discharge or transfer any person solely based on a change in  
their source of payment.

### CHAPTER 817

#### APPOINTMENT OF RECEIVERS FOR LONG-TERM CARE FACILITIES

##### §9301. Policy

It is the purpose of this chapter to develop a mechanism  
whereby receivership can be utilized for the protection of  
residents in long-term care facilities. It is the intent of the  
Legislature that receivership is a remedy of last resort when all  
other methods of remedy have failed or when the implementation of  
other remedies would be futile.

##### §9302. Definitions

As used in this chapter, unless the context indicates  
otherwise, the following terms have the following meanings.

1. Emergency. "Emergency" means a situation, physical  
condition or one or more practices, methods or operations that  
present imminent danger of death or serious physical or mental  
harm to residents, including, but not limited to, imminent or  
actual abandonment of an occupied facility.

2. Facility. "Facility" means any boarding home subject to  
licensure pursuant to chapters 809 and 813 and any nursing  
facility or unit subject to licensure pursuant to chapter 807.

3. Habitual violation. "Habitual violation" means a  
violation of state or federal law that, due to its repetition,  
presents a reasonable likelihood of serious physical or mental  
harm to residents.

4. Licensee. "Licensee" means any person or any other  
legal entity, other than a receiver appointed under section 9303,  
who is licensed or required to be licensed to operate a facility.

5. Owner. "Owner" means the holder of the title to the  
real estate in which the facility is maintained.

6. Resident. "Resident" means any person who lives in and  
receives services or care in a long-term care facility.

7. Substantial violation. "Substantial violation" means a  
violation of state or federal law that presents a reasonable  
likelihood of serious physical or mental harm to residents.

8. Transfer trauma. "Transfer trauma" means the  
combination of medical and psychological reactions to abrupt  
physical transfer that may increase the risk of grave illness or  
death.

##### §9303. Appointment of receiver

1. Grounds for appointment. Each of the following  
circumstances are grounds for the appointment of a receiver to  
operate a long-term care facility.

A. A facility intends to close but has not arranged at  
least 30 days prior to closure for the orderly transfer of  
its residents.

B. An emergency exists in a facility that threatens the  
health, security or welfare of residents.

C. A facility is in substantial or habitual violation of  
the standards of health, safety or resident care established  
under state rules or federal regulations to the detriment of  
the welfare of the residents.

2. Who may bring action. The commissioner may bring an  
action in Superior Court requesting the appointment of a receiver.

3. Procedure for hearing. The procedure for a hearing is  
as follows.

A. The court shall hold a hearing not later than 10 days  
after the action is filed, unless all parties agree to a

later date. Notice of the hearing must be served on both the owner and the licensee not less than 5 days before the hearing. If either the owner or the licensee can not be served, the court shall specify the alternative notice to be provided. The department shall post notice, in a form approved by the court, in a conspicuous place in the facility, for not less than 3 days before the hearing. After the hearing, the court may appoint a receiver if it finds that any one of the grounds for appointment set forth is satisfied.

B. A temporary receiver may be appointed with or without notice to the owner or licensee if it appears by verified complaint or affidavit that an emergency exists in the facility that must be remedied immediately to ensure the health, safety and welfare of the residents. The temporary appointment of a receiver without notice to the owner or licensee may be made only if the court is satisfied that the petitioner has made a diligent attempt to provide reasonable notice under the circumstances. Upon appointment of a temporary receiver, the department shall proceed forthwith to make service as provided in paragraph A, and a hearing must be held within 10 days, unless all parties agree to a later date. If the department does not proceed with the petition, the court shall dissolve the temporary receivership. On 2 days' notice to the receiver, all parties and the department, or on shorter notice as the court prescribes, the owner or licensee may appear and move the dissolution or modification of an order appointing a receiver that has been entered without notice, and in that event the court shall hear and determine the motion as expeditiously as the ends of justice require.

4. Who may be appointed receiver. The court may appoint any person deemed appropriate by the court to act as receiver, except any state employee. The court may remove a receiver for good cause.

5. Compensation of receiver. The court shall set a reasonable compensation for the receiver and may require the receiver to furnish a bond with surety. Any expenditures must be paid from the revenues of the facility.

6. Remedy not exclusive. This remedy is in addition to, and not in lieu of, the power of the department to revoke, suspend or refuse to renew a license under the Maine Administrative Procedure Act, Title 5, chapter 375.

#### §9304. Powers and duties of the receiver

1. Powers and duties. A receiver appointed pursuant to this chapter has such powers as the court may direct to operate the facility and to remedy the conditions that constituted grounds for the receivership, to protect the health, safety and welfare of the residents and to preserve the assets and property of the residents, the owner and the licensee. On notice and hearing, the court may issue a writ of possession in behalf of the receiver, for specified facility property.

The receiver shall make reasonable efforts to notify residents and family that the facility is placed in receivership. The owner and licensee are divested of possession and control of the facility during the period of receivership under the conditions specified by the court. With the court's approval, the receiver may:

A. Remedy violations of federal regulations and state rules governing the operation of the facility;

B. Hire, direct, manage and discharge any employees, including the administrator of the facility;

C. Receive and expend in a reasonable and prudent manner the revenues of the facility due during the 30-day period preceding the date of appointment and becoming due thereafter;

D. Continue the business of the home and the care of residents;

E. Correct or eliminate any deficiency of the facility that endangers the safety or health of the residents, if the total cost of the correction does not exceed \$3,000. The court may order expenditures for this purpose in excess of \$3,000 on application from the receiver; and

F. Exercise additional powers and perform additional duties, including regular accountings, as the court deems appropriate.

2. Revenues of the facility. Revenues of the facility must be handled as follows.

A. The receiver shall apply the revenues of the facility to current operating expenses and, subject to the following provisions, to debts incurred by the licensee prior to the appointment of the receiver. The receiver shall ask the court for direction in the treatment of debts incurred prior to appointment if the debts appear extraordinary, of questionable validity, or unrelated to the normal and

2 expected maintenance and operation of the facility, or if  
3 payment of the debts will interfere with the purposes of the  
4 receivership. Priority must be given by the receiver to  
5 expenditures for current direct resident care. Revenues  
6 held by or owed to the receiver in connection with the  
7 operation of the facility are exempt from attachment and  
8 trustee process, including process served before the  
9 institution of receivership proceedings.

10 B. The receiver may correct or eliminate any deficiency of  
11 the facility that endangers the safety or health of the  
12 resident, if the total costs of the correction do not exceed  
13 \$3,000. On application by the receiver, the court may order  
14 expenditures for this purpose in excess of \$3,000. The  
15 licensee or owner may apply to the court to determine the  
16 reasonableness of any expenditure over \$3,000 by the  
17 receiver.

18 C. In the event that the receiver does not have sufficient  
19 funds to cover expenses needed to prevent or remove jeopardy  
20 to the residents, the receiver may petition the court for  
21 permission to borrow for these purposes. Notice of the  
22 receiver's petition to the court for permission to borrow  
23 must be given to the owner, the licensee and the department.  
24 The court may, after hearing, authorize the receiver to  
25 borrow money on specified terms of repayment and to pledge  
26 security, if necessary, if the court determines that the  
27 facility should not be closed and that the loan is  
28 reasonably necessary to prevent or remove jeopardy or if it  
29 determines that the facility should be closed and that the  
30 expenditure is necessary to prevent or remove jeopardy to  
31 residents for the limited period of time that they are  
32 awaiting transfer. The purpose of this provision is to  
33 protect residents and to prevent the closure of facilities  
34 that, under proper management, are likely to be viable  
35 operations. This section does not authorize financing of  
36 major repair or capital improvements to facilities that have  
37 been allowed to deteriorate because the owner or licensee  
38 has been unable or unwilling to secure financing by  
39 conventional means.

40 3. Avoidance of preexisting leases, mortgages and  
41 contracts. A receiver may not be required to honor any lease,  
42 mortgage, secured transaction or other contract entered into by  
43 the owner or licensee of the facility if the court finds that:

44 A. The person seeking payment under the agreement has an  
45 ownership interest in the facility or was related to the  
46 licensee or the facility by any significant degree of common  
47 ownership or control at the time the agreement was made; or  
48

2 B. The rental, price or rate of interest required to be  
3 paid under the agreement is in excess of a reasonable  
4 rental, price or rate of interest.

5 If the receiver is in possession of real estate or goods subject  
6 to a lease, mortgage or security interest that the receiver is  
7 permitted to avoid and if the real estate or goods are necessary  
8 for the continued operation of the facility, the receiver may  
9 apply to the court to set a reasonable rental, price or rate of  
10 interest to be paid by the receiver during the term of the  
11 receivership. The court shall hold a hearing on the application  
12 within 15 days, and the receiver shall send notice of the  
13 application to any known owners and mortgagees of the property at  
14 least 10 days before the hearing. Payment by the receiver of the  
15 amount determined by the court to be reasonable is a defense to  
16 any action against the receiver for payment or for the possession  
17 of the goods or real estate by any person who received notice.

18 There may be no foreclosure or eviction during the receivership  
19 by any person if the foreclosure or eviction would, in view of  
20 the court, serve to defeat the purpose of the receivership.

21 4. Closing of the facility. The receiver may not close the  
22 facility without permission of the court. In ruling on the issue  
23 of closure, the court shall consider:

24 A. The rights and best interests of the residents;

25 B. The availability of suitable alternative placements;

26 C. The rights, interest and obligations of the owner and  
27 licensee;

28 D. The licensure status of the facility; and

29 E. Any other factors which the court deems relevant.

30 When a facility is closed, the receiver shall provide for the  
31 orderly transfer of residents to mitigate transfer trauma.

32 §9305. Termination of receivership

33 The receivership terminates when the court certifies that  
34 the conditions that prompted the appointment have been corrected  
35 or, in the case of a discontinuance of operation, when the  
36 residents are safely relocated. The court shall review the  
37 necessity of the receivership at least semiannually.  
38

2 A receivership may not be terminated in favor of the former  
3 or the new licensee, unless that person assumes all obligations  
4 incurred by the receiver and provides collateral or other  
5 assurances of payment deemed sufficient by the court.

6 **§9306. Liability of receiver**

8 No person may bring suit against a receiver appointed under  
9 section 9303 without first securing permission of the court.  
10 Except in cases of gross negligence or intentional wrongdoing,  
11 the receiver is liable in the receiver's official capacity only,  
12 and any judgment rendered must be satisfied out of receivership  
13 assets.

14 **§9307. Court order to have effect of license**

16 An order appointing a receiver under section 9303 has the  
17 effect of a license for the duration of the receivership. The  
18 receiver is responsible to the court for the conduct of the  
19 facility during the receivership, and any violation of  
20 regulations governing the conduct of the facility, if not  
21 promptly corrected, must be reported by the department to the  
22 court.

24 **§9308. Rule-making authority to implement receivership law**

26 The department may adopt rules as necessary, pursuant to the  
27 Maine Administrative Procedure Act, Title 5, chapter 375, to  
28 implement this chapter.

30 **CHAPTER 819**

32 **INTERMEDIATE SANCTIONS AND INCENTIVES FOR**  
33 **IMPROVING THE QUALITY OF CARE IN LONG-TERM**  
34 **CARE FACILITIES**

36 **§9401. Policy**

38 It is the purpose of this chapter to authorize the  
39 department to impose intermediate sanctions in order to improve  
40 the quality of care in long-term care facilities and to establish  
41 programs to reward long-term care facilities that provide the  
42 highest quality care. These intermediate sanctions will also  
43 provide an alternative to taking action to close facilities,  
44 which may cause great distress to the residents of those  
45 facilities.

48 **§9402. Definitions**

2 As used in this chapter, unless the context indicates  
3 otherwise, the following terms have the following meanings.

4 **1. Directed plan of correction.** "Directed plan of  
5 correction" means a plan of correction issued by the department  
6 that directs a long-term care facility how to correct a  
7 deficiency or deficiencies of state licensing rules and when the  
8 correction must be made.

10 **2. Long-term care facility.** "Long-term care facility"  
11 means any boarding care facility subject to licensure pursuant to  
12 chapters 809 and 813, and any nursing facility or unit subject to  
13 licensure pursuant to chapter 807, with the exception of adult  
14 foster homes.

16 **3. Person.** "Person" means any natural person, partnership,  
17 association or corporation or other entity, including any county,  
18 local or governmental unit.

20 **4. Plan of correction.** "Plan of correction" means a  
21 document executed by a long-term care facility in response to a  
22 statement of deficiencies issued by the department. A plan of  
23 correction must describe with specificity how and when  
24 deficiencies of state licensing rules will be corrected.

26 **5. Resident.** "Resident" means any person who lives in and  
27 receives services or care in a long-term care facility.

28 **6. State licensing rules.** "State licensing rules" refers  
29 to the department's rules governing the licensing and functioning  
30 of nursing facilities, intermediate care facilities for people  
31 with mental retardation and boarding care facilities.

34 **7. Statement of deficiencies.** "Statement of deficiencies"  
35 means a document issued by the department which describes a  
36 long-term care facility's deficiencies in complying with state  
37 licensing rules.

38 **§9403. Violations**

40 **1. License required.** It is a violation of this chapter for  
41 any person to manage or operate any long-term care facility or  
42 adult foster home as defined in section 9101 without first  
43 obtaining a license.

44 **2. Interference or false information.** It is a violation of  
45 this chapter for any person to impede or interfere with the  
46 enforcement of laws or rules governing the licensing of long-term  
47 care facilities, or for any person to give any false information  
48 in connection with the enforcement of laws or rules.  
50

2 3. Correction of deficiencies. It is a violation of this  
4 chapter to:

6 A. Fail to submit a plan of correction within 10 working  
8 days after receipt of a statement of deficiencies; and

10 B. Fail to take timely corrective action in accordance with  
12 a plan of correction or a directed plan of correction. Each  
14 failure to correct any deficiency may be considered a  
16 separate violation of this section.

18 4. Protection of residents. The following conduct is a  
20 violation of this chapter without regard to whether a plan of  
22 correction or directed plan of correction is followed by a  
24 facility:

26 A. Failure to comply with state licensing laws or rules  
28 when this failure poses an immediate threat of death or  
30 substantial probability of serious mental or physical harm  
32 to a resident. Each failure to comply with any law or rule  
34 may be considered a separate violation of this section; and

36 B. The occurrence of a repeated deficiency that poses a  
38 substantial risk to residents' health or safety or infringes  
40 upon residents' rights. For purposes of this section, a  
42 repeated deficiency is one that is found to exist in a  
44 long-term care facility during a current survey or  
46 investigation that has also been cited in a statement of  
48 deficiencies of that facility within the past 2 years. Each  
50 repeated deficiency may be considered a separate violation  
of this section.

5. Compliance with federal requirements. It is a violation  
of this chapter for any long-term care facility subject to the  
provisions of United States Code, Title 42, Section 1919 to fail  
to comply with the requirements of Section 1919, Subsection (b),  
(c) or (d). Each failure to comply with a requirement of United  
States Code, Title 42, Section 1919, Subsection (b), (c) or (d)  
may be considered a separate violation of this section.

§9404. Intermediate sanctions

1. Authorization. The department is authorized to impose  
one or more of the following sanctions when a violation of this  
chapter occurs and the department determines that a sanction is  
necessary and appropriate to ensure compliance with state  
licensing rules or to protect the residents of long-term care  
facilities or the general public.

2 A. The long-term care facility may be directed to stop all  
4 new admissions regardless of payment source or to admit only  
6 those residents the department approves until it is  
8 determined that corrective action has been taken.

10 B. The department may direct a long-term care facility to  
12 correct any deficiencies in a manner and within a time frame  
14 that the department determines is appropriate to ensure  
16 compliance with state licensing rules or to protect the  
18 residents of the long-term care facility.

20 C. The department may impose a penalty upon a long-term  
22 care facility. A penalty or combination of penalties  
24 imposed on a facility may not be greater than a sum equal to  
26 \$5 times the total number of residents residing in the  
28 facility per violation, up to a maximum of \$5,000 for each  
30 instance in which the department issues a statement of  
32 deficiency to a skilled nursing or intermediate care  
34 facility; or \$3 times the total number of residents residing  
36 in the facility per violation, up to a maximum of \$3,000 in  
38 each instance in which the department issues a statement of  
40 deficiency to any boarding care facility.

42 D. The department may direct a long-term care facility to  
44 transfer residents in that facility to other locations in an  
46 emergency that threatens the health, safety or welfare of  
48 the residents of the facility and shall assist the facility  
50 in making arrangements for transfers.

2. Schedule of penalties. The department shall establish a  
schedule of penalties according to the nature of the violation.  
In establishing the schedule, the department shall consider,  
among other factors, the immediacy and probability of physical or  
mental harm to residents caused by a particular type of violation  
and whether the facility in question has repeated deficiencies or  
a substantial number of deficiencies.

3. Reimbursement. Nothing in this chapter may limit the  
authority of the department to adjust the reimbursement due  
facilities for residents as stated in the departmental rules  
governing reimbursement.

§9405. Incentives for high quality care

The department shall establish programs to reward long-term  
care facilities that provide the highest quality care to  
residents, including, but not limited to, programs of public  
recognition.

§9406. Enforcement and appeal

2 1. Procedure. The department may impose any sanction in  
3 conformity with the Maine Administrative Procedure Act, Title 5,  
4 chapter 375, subchapter IV, providing the long-term care facility  
5 the opportunity for an administrative hearing, or file a  
6 complaint with the Superior Court requesting the imposition of  
7 any sanction authorized by this chapter.

8 2. Collection of penalties; interest. Long-term care  
9 facilities that are fined pursuant to this chapter shall pay the  
10 department the amount of the penalties. Penalties may be  
11 collected by the department by the offset of any reimbursement  
12 due the facility, or by any other method authorized by law. An  
13 appeal of the department's decision to penalize a long-term care  
14 facility stays the collection of any penalties. All penalties  
15 must be assessed for each day that the facility is or was out of  
16 compliance and must be collected with interest accruing at the  
17 rate set by Title 14, section 1602-A. An appeal of the  
18 department's decision to penalize a long-term care facility does  
19 not stay the assessment of any penalties or interest as long as  
20 the long-term care facility continues to be in violation of any  
21 requirement of section 9403.

22 3. Reduction or delay of penalties. The department may  
23 reduce the amount or delay the payment of a penalty if a facility  
24 shows that payment of the total amount due would result in  
25 inadequate funds to provide necessary services to residents. In  
26 making this determination, the department may consider, among  
27 other factors, the amount of any savings as calculated pursuant  
28 to the principles of reimbursement, overall profits or cash  
29 reserves and any extraordinary expenses experienced by the  
30 facility, as well as the necessity of providing an incentive to  
31 correct violations of this chapter.

32 4. Income from penalties. Any income from penalties must  
33 be placed in a special revenue account and be used if needed and  
34 available when a receiver is appointed pursuant to section 9303,  
35 or for other costs associated with the protection of health or  
36 property of residents of long-term care facilities that are fined  
37 or sanctioned pursuant to this chapter.

#### 38 §9407. Rules

39 The department shall adopt rules for intermediate sanctions  
40 in conformity with the Maine Administrative Procedure Act, Title  
41 5, chapter 375, subchapter II.

#### 42 §9408. Right of action

2 1. Generally. A resident whose rights have been violated  
3 as described in this section may commence a civil action in the  
4 Superior Court on that resident's own behalf for injunctive and  
5 declaratory relief against a long-term care facility that is  
6 alleged to be in violation of any rule described in section 9204  
7 or in violation of the rights enumerated in 42 United States  
8 Code, Section 1396r, Subsection (c). In order to grant a  
9 preliminary or permanent injunction under this section, the  
10 Superior Court must find that:

11 A. The plaintiff will suffer irreparable injury if the  
12 injunction is not granted;

13 B. The irreparable injury outweighs any harm that granting  
14 the injunctive relief would inflict on the defendant;

15 C. The plaintiff has exhibited a likelihood of success on  
16 the merits of the case; and

17 D. The public interest will not be adversely affected by  
18 granting the injunction.

19 2. Right of action limited. An action may not be commenced  
20 under this section until 15 days after the resident has given  
21 notice of the violation and an intention to bring suit under this  
22 chapter to the commissioner, the Attorney General and each party  
23 alleged to be violating the law or rule. The court may waive the  
24 15-day notice requirement and issue a temporary restraining order  
25 when the plaintiff shows that the alleged violation presents an  
26 immediate threat to the plaintiff's health or safety.

27 3. Parties may intervene. In any action brought by the  
28 Attorney General or the commissioner under this chapter, a  
29 resident who has a right of action under this section may  
30 intervene if that resident has a direct interest that is or may  
31 be adversely affected by the action and the disposition of the  
32 action may impair or impede the resident's ability to protect  
33 that interest. The Attorney General and the commissioner may  
34 intervene in an action brought by a resident under this section.  
35 This subsection does not affect the ability of a party to take  
36 action under Title 5, section 9054.

37 4. Service. A copy of the complaint and other pleadings  
38 must be delivered to the commissioner and the Attorney General at  
39 the time of service on the defendant. Copies of all answers and  
40 other documents accompanying the answers must be delivered to the  
41 commissioner and the Attorney General at the time of service on  
42 the plaintiff.



2 5. Dismissal of action. The court may, on the motion of a  
3 party or on its own motion, dismiss an action brought under this  
4 section that alleges a de minimis violation of section 9204 or of  
5 42 United States Code, Section 1396r, Subsection (c).

6 **§9409. No limitation on right of action**

8 The remedies provided under section 9408 are in addition to  
9 those otherwise available under state or federal law and do not  
10 limit any other remedies including any remedy available to an  
11 individual at common law. Exhaustion of any available  
12 administrative remedy is not required prior to commencement of an  
13 action under this section.

14 **CHAPTER 821**

15 **HOSPITALS**

16 **SUBCHAPTER I**

17 **MISCELLANEOUS PROVISIONS**

18 **§9501. Treatment of minors**

19 Any hospital licensed under chapter 807 or alcohol or drug  
20 treatment facility licensed under Title 5, section 20024 that  
21 provides facilities to a minor in connection with the treatment  
22 of that minor for venereal disease or abuse of drugs or alcohol  
23 is under no obligation to obtain the consent of the minor's  
24 parent or guardian or to inform the parent or guardian of the  
25 provision of facilities if the facilities have been provided at  
26 the direction of the person or persons referred to in Title 32,  
27 section 2595, 3292, 3817, 6221 or 7004. The hospital shall  
28 notify and obtain the consent of that minor's parent or guardian  
29 if hospitalization continues for more than 16 hours.

30 **§9502. Itemized bills**

31 A hospital licensed by the State under chapter 807 is  
32 subject to the following provisions.

33 1. Notice. The hospital shall inform each patient, or the  
34 patient's legal guardian, in writing, at the time of the  
35 patient's discharge, that it will provide an itemized bill upon  
36 request.

37 2. Request. A request may be made under this section by  
38 the patient or the patient's legal guardian at discharge or at  
39 any time within 7 years after discharge.

2 3. Response. The hospital shall provide an itemized bill  
3 to a person making a request in accordance with subsection 2  
4 within 30 days of the request.

5 4. Itemization of nursing services. A hospital shall  
6 itemize on the hospital bill of each patient the cost of nursing  
7 services provided to that patient.

8 **§9503. Investment of hospital trust funds**

9 Hospitals may treat any 2 or more trust funds as a single  
10 fund solely for the purpose of investment, if the investment is  
11 not prohibited by the instrument, judgment, decree or order  
12 creating the trust funds. Unless ordered by decree, the hospital  
13 investing the funds is not required to render a court accounting  
14 with regard to the funds, but it, as accountant, or any  
15 interested person, may by petition to the Superior Court or the  
16 probate court in the county where the hospital is located secure  
17 approval of the accounting on such conditions as the court may  
18 establish.

19 **§9504. Notice to medical utilization review entity**

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

23 A. "Medical utilization review entity" means a person,  
24 corporation, organization or other entity that provides  
25 medical utilization review services as defined in Title  
26 24-A, section 2773.

27 B. "Emergency treatment" means treatment of a case  
28 involving accidental bodily injury or the sudden and  
29 unexpected onset of a critical condition requiring medical  
30 or surgical care for which a person seeks immediate medical  
31 attention within 24 hours of the onset.

32 2. Notification requirement. If a hospital provides  
33 emergency treatment to a person who is insured or otherwise  
34 covered under a policy or contract that requires review of  
35 hospitalization by a medical utilization review entity, the  
36 hospital must notify the medical utilization review entity  
37 covering that person, unless the person is:

38 A. Released from the hospital no more than 48 hours after  
39 admission; or

2 B. Covered under an insurance policy or contract that is  
3 not subject to Title 24, section 2302-B, Title 24-A, section  
4 2749-A or Title 24-A, section 2848.

5 The notification must include the name of the person admitted,  
6 the general medical nature of the admission and the telephone  
7 number of the admitting physician or other health care provider  
8 treating the person.

9 3. Timing of notification. Notification must be made  
10 within 2 business days after the hospital determines the identity  
11 of the medical utilization review entity and receives written  
12 authorization to release the information by the patient or other  
13 person authorized to permit release of the information.

14 4. Exemption. The hospital is exempt from this requirement  
15 if:

16 A. The hospital receives a written confirmation from the  
17 admitting physician, the patient or a representative of the  
18 patient that the medical utilization review entity has been  
19 notified; or

20 B. The hospital is not able to obtain written authorization  
21 to release the information, following a good faith effort by  
22 the hospital to obtain that authorization.

23 5. Immunity from liability for notification. Neither the  
24 hospital nor any of its employees or representatives may be held  
25 liable for damages resulting from the notification required by  
26 this section.

## 27 SUBCHAPTER II

### 28 PAYMENTS TO HOSPITALS

#### 29 §9551. Hospital payments generally

30 Money appropriated by the Legislature in aid of public and  
31 private hospitals must be expended under the direction of the  
32 department, and the expense of administration must be charged to  
33 the appropriation of the department for general administration.  
34 The department is authorized to compensate hospitals located in  
35 the State of New Hampshire within 15 miles from the Maine - New  
36 Hampshire state line or hospitals located in the Provinces of  
37 Quebec or New Brunswick, Canada, within 5 miles of the  
38 international boundary, for cases where the hospital care is for  
39 persons resident in the State of Maine and, in the judgment of  
40 the commissioner, adequate local hospital facilities are not  
41 available. The department may compensate hospitals at rates it

2 establishes for hospital care of persons whose resources or the  
3 resources of whose responsible relatives are insufficient  
4 therefor, except as provided in section 9008. Bills itemizing  
5 the expenses of hospital care, if approved by the department and  
6 audited by the State Controller, must be paid by the Treasurer of  
7 State.

#### 8 §9552. Deferred revenue payments

9 The department may make a payment to each general hospital  
10 in the State that is certified for participation in the Medicaid  
11 Program, not to exceed the average amount paid to that hospital  
12 by the department during a 30-day period in the next preceding  
13 fiscal year. The payment is a deferred revenue obligation for the  
14 hospital. Any unliquidated balance of the obligation must be  
15 repaid to the department upon demand.

#### 16 §9553. Transitional hospital reimbursement

17 In determining the revenue limit to be assigned each  
18 hospital for its first payment year, the Health Care Finance  
19 Commission shall make an appropriate adjustment to the revenue  
20 deductions attributable to charity care and bad debts to reflect  
21 the amendment by the 111th Legislature of the catastrophic  
22 illness program established under Title 22, section 3185 before  
23 that section was repealed. It is the intent of this section  
24 solely to relieve hospitals of any hardships caused by the  
25 termination of the program. It is not intended to result in  
26 duplicative or "windfall" funding for any hospital.

## 27 CHAPTER 823

### 28 HOSPITAL COOPERATION ACT

#### 29 §9601. Short title

30 This chapter may be known and cited as the "Hospital  
31 Cooperation Act of 1992."

#### 32 §9602. Definitions

33 As used in this chapter, unless the context otherwise  
34 indicates, the following terms have the following meanings.

35 1. Cooperative agreement. "Cooperative agreement" means an  
36 agreement among 2 or more hospitals for the sharing, allocation  
37 or referral of patients, personnel, instructional programs,  
38 support services and facilities or medical, diagnostic or  
39 laboratory facilities or procedures or other services  
40 traditionally offered by hospitals.

2 2. Hospital. "Hospital" means:

4 A. Any acute care institution required to be licensed as a  
6 hospital under section 8801; or

8 B. Any nonprofit parent of a hospital, hospital subsidiary  
10 or hospital affiliate that provides medical or medically  
12 related diagnostic and laboratory services or engages in  
14 ancillary activities supporting those services.

12 §9603. Certification for cooperative agreements

14 1. Authority. A hospital may negotiate and enter into  
16 cooperative agreements with other hospitals in the State if the  
18 likely benefits resulting from the agreements outweigh any  
20 disadvantages attributable to a reduction in competition that may  
22 result from the agreements.

22 2. Application for certificate. Parties to a cooperative  
24 agreement may apply to the department for a certificate of public  
26 advantage governing that cooperative agreement. The application  
28 must include an executed written copy of the cooperative  
30 agreement and describe the nature and scope of the cooperation in  
32 the agreement and any consideration passing to any party under  
34 the agreement. A copy of the application and copies of all  
36 additional related materials must be submitted to the Attorney  
38 General and to the department at the same time.

30 3. Procedure for department review. The department shall  
32 review the application in accordance with the standards set forth  
34 in subsection 4 and may hold a public hearing in accordance with  
36 rules adopted by the department. The department shall grant or  
38 deny the application within 90 days of the date of filing of the  
40 application, and that decision must be in writing and set forth  
42 the basis for the decision. The department shall furnish a copy  
44 of the decision to the applicants, the Attorney General and any  
46 intervenor.

40 4. Standards for certification. The department shall issue  
42 a certificate of public advantage for a cooperative agreement if  
44 it determines that the applicants have demonstrated by clear and  
46 convincing evidence that the likely benefits resulting from the  
48 agreement outweigh any disadvantages attributable to a reduction  
50 in competition that may result from the agreement.

48 A. In evaluating the potential benefits of a cooperative  
50 agreement, the department shall consider whether one or more  
of the following benefits may result from the cooperative  
agreement:

2 (1) Enhancement of the quality of hospital and  
4 hospital-related care provided to Maine citizens;

6 (2) Preservation of hospital facilities in  
8 geographical proximity to the communities traditionally  
10 served by those facilities;

12 (3) Gains in the cost efficiency of services provided  
14 by the hospitals involved;

16 (4) Improvements in the utilization of hospital  
18 resources and equipment; and

20 (5) Avoidance of duplication of hospital resources.

22 B. The department's evaluation of any disadvantages  
24 attributable to any reduction in competition likely to  
26 result from the agreement may include, but need not be  
28 limited to, the following factors:

30 (1) The extent of any likely adverse impact on the  
32 ability of health maintenance organizations, preferred  
34 provider organizations, managed health care service  
36 agents or other health care payors to negotiate optimal  
38 payment and service arrangements with hospitals,  
40 physicians, allied health care professionals or other  
42 health care providers;

44 (2) The extent of any reduction in competition among  
46 physicians, allied health professionals, other health  
48 care providers or other persons furnishing goods or  
50 services to, or in competition with, hospitals that is  
likely to result directly or indirectly from the  
hospital cooperative agreement;

(3) The extent of any likely adverse impact on  
patients in the quality, availability and price of  
health care services; and

(4) The availability of arrangements that are less  
restrictive to competition and achieve the same  
benefits or a more favorable balance of benefits over  
disadvantages attributable to any reduction in  
competition likely to result from the agreement.

50 5. Review by Attorney General. The department shall  
consult with the Attorney General regarding its evaluation of any  
potential reduction in competition resulting from a cooperative  
agreement.

2 6. Certificate termination. If the department determines  
4 that the likely benefits resulting from a certified agreement no  
6 longer outweigh any disadvantages attributable to any potential  
8 reduction in competition resulting from the agreement, the  
department may initiate proceedings to terminate the certificate  
of public advantage in accordance with Title 5, chapter 375,  
subchapter IV.

10 7. Recordkeeping. The department shall maintain on file  
12 all cooperative agreements for which certificates of public  
14 advantage remain in effect. Any party to a cooperative agreement  
who terminates the agreement shall file a notice of termination  
with the department within 30 days after termination.

16 **§9604. Judicial review of department action**

18 Any applicant or intervenor aggrieved by a decision of the  
20 department in granting or denying an application, refusing to act  
22 on an application or terminating a certificate is entitled to  
judicial review of the decision in accordance with the Maine  
Administrative Procedure Act.

24 **§9605. Attorney General authority**

26 1. Investigative powers. The Attorney General, at any time  
28 after an application is filed under section 9603, subsection 2,  
may require by subpoena the attendance and testimony of witnesses  
and the production of documents in Kennebec County or the county  
30 in which the applicants are located for the purpose of  
investigating whether the cooperative agreement satisfies the  
32 standards set forth in section 9603, subsection 4. All documents  
produced and testimony given to the Attorney General are  
34 investigative records under Title 5, section 200-D. The Attorney  
General may seek an order from the Superior Court compelling  
36 compliance with a subpoena issued under this section.

38 2. Court action; time limits. The Attorney General may  
40 seek to enjoin the operation of a cooperative agreement for which  
an application for certificate of public advantage has been filed  
42 by filing suit against the parties to the cooperative agreement  
in Superior Court. The Attorney General may file an action  
44 before or after the department acts on the application for a  
certificate but, except as provided in subsection 5, the action  
46 must be brought no later than 40 days following the department's  
approval of an application for a certificate of public advantage.

48 3. Automatic stay. Upon the filing of the complaint in an  
50 action under subsection 2, the department's certification, if  
previously issued, must be stayed and the cooperative agreement

is of no further force unless the court orders otherwise or until  
the action is concluded. The Attorney General may apply to the  
court for any ancillary, temporary or preliminary relief  
4 necessary to stay the cooperative agreement pending final  
disposition of the case.

6 4. Standard for adjudication. In any action brought under  
8 subsection 2, the applicants for a certificate bear the burden of  
establishing by clear and convincing evidence that, in accordance  
10 with section 9603, subsection 4, the likely benefits resulting  
from the cooperative agreement outweigh any disadvantages  
12 attributable to a reduction in competition that may result from  
the agreement. In assessing disadvantages attributable to a  
14 reduction in competition likely to result from the agreement, the  
court may draw upon the determinations of federal and Maine  
16 courts concerning unreasonable restraint of trade under 15 United  
States Code, Sections 1 and 2 and Title 10, sections 1101 and  
18 1102.

20 5. Change of circumstances. If, at any time following the  
22 40-day period specified in subsection 2, the Attorney General  
determines that as a result of changed circumstances the benefits  
24 resulting from a certified agreement no longer outweigh any  
disadvantages attributable to a reduction in competition  
26 resulting from the agreement, the Attorney General may file suit  
in the Superior Court seeking to cancel the certificate of public  
28 advantage. The standard for adjudication for an action brought  
under this subsection is as follows.

30 A. Except as provided in paragraph B, in any action brought  
32 under this subsection the Attorney General has the burden of  
34 establishing by a preponderance of the evidence that, as a  
36 result of changed circumstances, the benefits resulting from  
the agreement and the unavoidable costs of canceling the  
agreement are outweighed by disadvantages attributable to a  
reduction in competition resulting from the agreement.

38 B. In any action under this subsection, if the Attorney  
40 General first establishes by a preponderance of the evidence  
42 that the department's certification was obtained as a result  
44 of material misrepresentation to the department or the  
46 Attorney General or as the result of coercion, threats or  
48 intimidation toward any party to the cooperative agreement,  
50 then the parties to the agreement bear the burden of  
establishing by clear and convincing evidence that the  
benefits resulting from the agreement and the unavoidable  
costs of canceling the agreement are outweighed by  
disadvantages attributable to any reduction in competition  
resulting from the agreement.

6. Fees and costs. If the Attorney General prevails in an action under this section, the Department of the Attorney General is entitled to an award of the reasonable costs of deposition transcripts incurred in the course of the investigation or litigation and reasonable attorney's fees, expert witness fees and court costs incurred in litigation.

7. Resolution by consent decree. The Superior Court may resolve any action brought by the Attorney General under this chapter by entering an order that with the consent of the parties, modifies the cooperative agreement. Upon the entry of such an order, the parties to the cooperative agreement have the protection specified in section 9606 and the cooperative agreement has the effectiveness specified in section 9606.

#### §9606. Effect of certification; applicability

1. Validity of certified cooperative agreements. Notwithstanding Title 10, section 1101 or any other provision of law, a cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. Notwithstanding Title 10, section 1102 or any other provision of law, if the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating and entering into a cooperative agreement is lawful conduct. Nothing in this subsection immunizes any person for conduct in negotiating and entering into a cooperative agreement for which an application for a certificate of public advantage is not filed.

2. Validity of cooperative agreements determined not in public interest. If the department or, in any action by the Attorney General, the Superior Court determines that the applicants have not established by clear and convincing evidence that the likely benefits resulting from a cooperative agreement outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the agreement is invalid and has no further force or effect.

3. Other laws specifically regulating hospitals. Nothing in this chapter exempts hospitals or other health care providers from compliance with laws governing certificates of need or hospital cost reimbursement.

4. Mergers and consolidations involving licensed hospitals. The provisions of this chapter do not apply to any agreement among hospitals by which ownership or control over substantially all of the stock, assets or activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital or hospitals.

5. Contract disputes. Any dispute among the parties to a cooperative agreement concerning its meaning or terms is governed by normal principles of contract law.

#### §9607. Assessment

Except for state-operated mental health hospitals, all hospitals licensed by the department are subject to an annual assessment under this chapter. The department shall collect the assessment. The amount of the assessment must be based upon each hospital's gross patient service revenue. For any fiscal year, the aggregate amount raised by the assessment must be equal to the amount allocated by law to carry out the purposes of this chapter in that fiscal year. The department shall deposit funds collected under this section into a dedicated revenue account. Funds remaining in the account at the end of each fiscal year do not lapse but carry forward into subsequent years. Funds deposited into the account must be allocated to carry out the purposes of this chapter.

#### §9608. Review

The department may not accept any application under this chapter after June 30, 1995. By January 1, 1995, the Attorney General and the department shall submit recommendations, along with any necessary legislation, to the joint standing committee of the Legislature having jurisdiction over human resources matters regarding whether this chapter should be amended.

### CHAPTER 825

#### MISCELLANEOUS HEALTH CARE SERVICES

##### SUBCHAPTER I

#### AMBULATORY SURGICAL FACILITIES

#### §9701. Ambulatory surgical facility

1. Definition. As used in this subchapter, unless the context otherwise indicates, "ambulatory surgical facility" means a facility with a primary purpose of providing elective surgical care to a patient who is admitted to and discharged from the facility within the same day. In order to meet this primary purpose, a facility must at least administer anesthetic agents, maintain a sterile environment in a surgical suite and charge a facility fee separate from the professional fee. "Ambulatory surgical facility" does not include:

2 A. A facility that is licensed as part of a hospital;

4 B. A facility that provides services or accommodations for patients who stay overnight;

6 C. A facility existing for the primary purpose of performing terminations of pregnancies; or

8 D. The private office of a physician or dentist in individual or group practice, unless that facility or office is certified as a Medicare ambulatory surgical center.

10 2. Standards. The department shall establish standards for the licensure of ambulatory surgical facilities. The standards must provide that ambulatory surgical facilities that are certified for the federal Medicare and Medicaid programs meet the requirements for state licensure.

12 3. Annual inspection. The department shall inspect annually ambulatory surgical facilities, except that state inspections need not be performed during a year when a Medicare inspection is performed.

14 SUBCHAPTER II

16 TEMPORARY NURSE AGENCIES

18 §9751. Temporary nurse agencies

20 1. Registration. Every temporary nurse agency shall register with the department. For purposes of this subchapter, unless the context otherwise indicates, "temporary nurse agency" means a business entity or subdivision thereof that provides nurses to another organization on a temporary basis within this State.

22 2. Exception. Entities that are licensed as home health agencies under chapter 827 and temporary nurses not affiliated with an agency are exempt from the registration requirements of this subchapter.

24 3. Fee. The fee for registration is \$25.

26 4. Penalty. Any person who operates a temporary nurse agency without registering commits a civil violation for which a forfeiture of \$100 may be adjudged. Each day constitutes a separate violation.

28 CHAPTER 827

2 HOME HEALTH SERVICES

4 SUBCHAPTER I

6 GENERAL PROVISIONS

8 §9801. Purpose and intent

10 The Legislature finds that licensure of all agencies and organizations providing home health services is desirable and it is the purpose of this chapter to protect the public and assure that home health services are provided under standards of safety, efficiency and quality.

12 It is the intent of this chapter to set forth the statutory authorization for home health care licensure, including the standards, start-up procedures and means by which licensure is established.

14 §9802. Definitions

16 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

18 1. Home health care provider. "Home health care provider" means any business entity or subdivision thereof, whether public or private, proprietary or not for profit, that is engaged in providing acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing or another therapeutic service, such as physical therapy, home health aides, nurse assistants, medical social work, nutritionist services, speech pathology services or personal care services, either directly or through contractual agreement, in a client's place of residence.

20 "Home health care provider" does not include a sole practitioner providing private duty nursing services or other restorative, rehabilitative, maintenance, preventive or health promotion services in a client's place of residence; municipal entities providing health promotion services in a client's place of residence; or a federally qualified health center or a rural health clinic as defined in 42 United States Code, Section 1395x, subsection (aa) (1993) that is delivering case management services or health education in a client's place of residence.

22 §9803. Exclusions

24 The following are exempt from the provisions of this chapter:

2 1. Hospice organizations; volunteer services. Hospice  
3 organizations in which services are provided substantially by  
4 volunteers;

5 2. Families, friends and neighbors. Families, friends and  
6 neighbors;

7 3. Sole practitioners. Sole practitioners otherwise  
8 licensed by the State;

9 4. Physicians. Services provided directly by physicians;

10 5. Elderly nutrition programs. Elderly nutrition programs;

11 6. Chore services. Chore services;

12 7. Pharmacy or medical supply company. Any pharmacy or  
13 medical supply company that furnishes no home health services to  
14 persons in their homes except supplies;

15 8. Persons or agencies contracting or arranging home health  
16 services. Anyone contracting or arranging for home health  
17 services provided by home health care providers licensed or  
18 excluded under this chapter;

19 9. Departments. Departments of State Government;

20 10. Facilities licensed pursuant to chapter 807.  
21 Hospitals, nursing facilities, or other facilities licensed  
22 pursuant to chapter 807 when the services are provided to clients  
23 residing in those facilities, or to 6 or fewer clients at any one  
24 time in their homes under a plan of care approved by the  
25 department or its designee when it is documented in the patient's  
26 record that the licensed home health care agency or agencies  
27 servicing the patient's area:

28 A. Have indicated that they are unable to provide those  
29 services; or

30 B. Agree that the plan of care is an acceptable plan.

31 The plan of care must meet standards for staff qualifications and  
32 supervision consistent with the standards required of licensed  
33 home health care providers;

34 11. Licensed boarding care facilities. Boarding care  
35 facilities licensed pursuant to chapters 809 and 813 when the  
36 services are provided to clients residing in those facilities; and

37 12. Municipal entities. Municipal departments or agencies  
38 or other municipal entities in their provision of nontherapeutic  
39 preventive and promotional health educational services when  
40 persons providing those services are employed by the municipality.

## 41 SUBCHAPTER II

### 42 LICENSING

#### 43 §9851. License required

44 A home health care provider may not provide home health  
45 services without having, subject to this chapter and to the rules  
46 adopted by the department under this chapter, a written license  
47 from the department.

#### 48 §9852. Licensure procedures

49 1. Types of licenses. The department shall issue licenses,  
50 as follows.

51 A. A provisional license must be issued by the department  
52 to an applicant who:

53 (1) Has not previously operated as a home health care  
54 provider or is licensed but has not operated during the  
55 term of that license;

56 (2) Complies with all applicable laws and rules,  
57 except those that can only be complied with once  
58 clients are served by the applicant; and

59 (3) Demonstrates the ability to comply with all  
60 applicable laws and rules by the end of the provisional  
61 license term.

62 B. The department shall issue a full license to an  
63 applicant who complies with all applicable laws and rules.

64 C. The department may issue a conditional license if the  
65 provider fails to comply with applicable laws and rules and  
66 in the judgment of the commissioner the best interest of the  
67 public would be served by issuing a conditional license.  
68 The conditional license must specify when and what  
69 corrections must be made during the term of the conditional  
70 license.

71 D. The commissioner may grant a full, provisional or  
72 conditional license under this chapter to those entities  
73 otherwise regulated by the State Government or the Federal

Government, if the commissioner determines that those regulations meet the purpose and intent of this chapter.

2. Licenses not assignable or transferable. No license is assignable or transferable. A license is immediately void if ownership or control of the provider changes.

3. Term of license; compliance visits. Licenses must be issued for the following terms.

A. The provisional license must be issued for a minimum period of 3 months or a longer period, as deemed appropriate by the department, not to exceed 12 consecutive months.

B. A full license must be issued for the following terms.

(1) Except as provided in subparagraph (2), the term of all full licenses is one year.

(2) The department shall stagger the terms of full licenses issued under this chapter so that the expiration dates of those licenses allow for distributing the work of relicensure evenly.

C. The conditional license must be issued for a specific period, not to exceed one year, or the remaining period of the previous full license, whichever the department determines appropriate based on the laws and rules violated.

D. Regardless of the term of the license, the department shall monitor for continued compliance with applicable laws and rules on at least an annual basis.

4. Failure to comply with applicable laws and rules. The following apply to failure to comply with applicable laws and rules.

A. When an applicant fails to comply with applicable laws and rules, the department may refuse to issue or renew the license.

B. If, at expiration of a full or provisional license, or during the term of a full license, the facility fails to comply with applicable laws and rules and, in the judgment of the commissioner, the best interest of the public will be served, the department may issue a conditional license or change a full license to a conditional license.

C. Any license issued under this chapter may be suspended or revoked for violation of applicable laws and rules,

committing, permitting, aiding or abetting any illegal practices in the operation of the provider of conduct or practices detrimental to the welfare of persons to whom home health care services are provided. When the department believes that a license should be suspended or revoked, it shall file a complaint with the Administrative Court in accordance with Title 4, section 1153 or the Maine Administrative Procedure Act, Title 5, chapter 375.

#### §9853. Appeals

Any person aggrieved by the department's decision to take any of the following actions may request an administrative hearing as provided by the Maine Administrative Procedure Act, Title 5, chapter 375:

1. Conditional license. Issue a conditional license;

2. Amend license. Amend or modify a license;

3. Refuse full license. Refuse to issue or renew a full license; or

4. Refuse provisional license. Refuse to issue a provisional license.

#### §9854. Standards

Standards must be developed as follows.

1. Standards for licensing of all home health care entities. The commissioner shall develop standards for the licensing of all home health care entities.

2. Variation in standards. Licensing standards may vary according to the varying means and methods of providing home health care services, but must be consistent with the purpose and intent of this chapter.

3. Areas to be addressed. Home health care licensing standards must address the following areas:

A. General requirements;

B. Qualifications for professional personnel;

C. Qualifications for paraprofessional personnel;

D. Treatment and services and their coordination;



2 E. Supervision of professional and nonprofessional  
3 personnel:

4 F. Organizational structure, including lines of authority:

6 G. Clinic records:

8 H. Business records; and

10 I. Other aspects of home health care services that may be  
11 necessary to protect the public.

12 4. Review of standards. All standards are subject to  
13 review by the joint standing committee of the Legislature having  
14 jurisdiction over human resources matters.

16 **§9855. Fees**

18 Each application for a license under this chapter must be  
19 accompanied by the fee established by the department. No fee may  
20 be refunded. The department shall establish fees on the basis of  
21 a sliding fee scale reflecting variations in size and scope of  
22 operations, but the fee may not exceed \$300. The department  
23 shall charge a nonrefundable fee of \$25 for any change to a  
24 license requiring reissuance of the full license during the term  
25 of the license. The change in status of a license to a  
26 provisional or conditional license requires an additional fee of  
27 \$100 payable at the time of issuance of the license. All fees  
28 received by the department under this chapter must be paid into  
29 the State Treasury to the credit of the department for the  
30 purpose of reducing the costs of carrying out this chapter.

32 **§9856. Right of entry and inspection**

34 The department and any duly designated officer or employee  
35 of the department has the right to enter upon and into the  
36 premises of any home health care provider who has applied for a  
37 license or who is licensed pursuant to this chapter at any  
38 reasonable time and, upon demand, has the right to inspect and  
39 copy books, accounts, papers, records and other documents in  
40 order to determine the state of compliance with this chapter and  
41 any rules adopted pursuant to this chapter. The right of entry  
42 and inspection extends to any premises and documents of providers  
43 whom the department has reason to believe are providing home  
44 health services without a license, but no entry or inspection may  
45 be unreasonable or made without the permission of the owner or  
46 person in charge thereof, unless a warrant is first obtained from  
47 the District Court authorizing that entry or inspection.

50 **§9857. Compliance**

2 A home health care provider that provides services for which  
3 a license is required without obtaining a license commits a civil  
4 violation and is subject to a civil penalty for which a  
5 forfeiture of \$100 may be adjudged. Each day constitutes a  
6 separate violation.

8 **SUBCHAPTER III**

10 **PAYMENTS TO HOME HEALTH CARE PROVIDERS**

12 **§9901. Compensation for home health care providers**

14 As used in this subchapter, unless the context otherwise  
15 indicates, the following terms have the following meanings.

16 1. Home health care provider. Notwithstanding section  
17 9802, "home health care provider" means an organization  
18 designated as a home health agency under rules of the department  
19 or certified by Medicare for delivery of home health services.

22 **§9902. Compensation**

24 In determining levels of reimbursement in rate structures  
25 established for home health care providers, the department shall:

26 1. Cost-based. Formulate payment rates for various types  
27 of care provided based on the service costs attributable to each  
28 home health care provider, as determined by standard methods  
29 established by the department;

32 2. Annual adjustments. Adjust rates accordingly, at least  
33 annually, for alternative programs to institutional care for  
34 optimal service delivery to eligible clients, but may not adjust  
35 rates so as to exceed the costs of nursing home care;

36 3. Staff costs. Recognize the provider's reasonable costs  
37 of recruiting, training and retaining qualified staff, including  
38 registered nurses, licensed practical nurses, certified nurse  
39 aides, home health aides and allied personnel; and

42 4. Limits. Implement this section in a manner that does  
43 not result in a decrease in numbers of clients or units of  
44 service. The monthly limits on costs per individual receiving  
45 in-home services as an alternative to institutional care must be  
46 at least \$1,878 for skilled level care and \$1,361 for  
47 intermediate level care.

50 **CHAPTER 829**

2 HOSPICE SERVICES

4 SUBCHAPTER I

6 MAINE HOSPICE COUNCIL

8 §10001. Maine Hospice Council established

10 The Maine Hospice Council is established to coordinate a  
12 statewide hospice program of training, education and advocacy as  
14 a body politic and a public instrumentality of the State. For  
16 the purposes of this chapter, "council" means the Maine Hospice  
18 Council.

20 §10002. Rule-making authority

22 The council may adopt rules as necessary in accordance with  
24 the Maine Administrative Procedure Act, Title 5, chapter 375, to  
26 carry out its responsibilities.

28 §10003. Meetings

30 The council shall meet at least once a year. Special  
32 meetings must be held as deemed necessary by the council. The  
34 minutes of all proceedings of the council are public records  
36 available and on file in the office of the council. Members of  
38 the council must be compensated according to the provisions of  
40 Title 5, chapter 379.

42 §10004. Council budget; financing; executive director

44 The council shall prepare and adopt a biennial budget for  
46 presentation to the Governor and the Legislature as a request for  
48 appropriations sufficient to carry out its statutory  
responsibilities. The council may accept contributions of any  
type from any source to assist it in carrying out its  
responsibilities and make arrangements regarding the  
administration of these funds as may be required as a condition  
precedent to the receipt of these funds by the Federal Government  
or any other source.

The council may employ an executive director who is the  
principal administrative and executive employee of the council.  
The executive director may hire staff as necessary to carry out  
the responsibilities for the coordination of all affairs of the  
council, including, but not limited to, the training and  
education of volunteers, health care professionals and the  
general public. The executive director is also responsible for  
advocacy on behalf of community hospices throughout the State.

2 The executive director may obtain office space, goods and  
4 services as required to carry out these responsibilities.

6 CHAPTER 831

8 MEDICAL RECORDS

10 §10101. Patient access to hospital medical records

12 1. Access. If a patient of a facility licensed as a  
14 hospital by the State, after discharge from the hospital, submits  
16 a written request for copies of the patient's medical records,  
18 the copies shall, if available, be made available within a  
20 reasonable time unless, in the opinion of the hospital, it would  
22 be detrimental to the health of the patient to obtain the  
24 records. If the hospital is of the opinion that release of the  
26 records to the patient would be detrimental to the health of the  
28 patient, the hospital shall advise the patient that copies of the  
30 records will be made available to the patient's authorized  
32 representative upon presentation of a proper authorization signed  
34 by the patient.

2. Representative. If an authorized representative for a  
patient requests, in writing, that a hospital provide the  
authorized representative with a copy of the patient's medical  
records and presents a proper authorization from the patient for  
the release of the information, copies must be provided to the  
authorized representative within a reasonable time.

3. Costs. Reasonable costs incurred by the hospital in  
making and providing copies of medical records must be borne by  
the requesting person and the hospital may require payment prior  
to responding to the request.

36 §10102. Patient access to treatment records; health care  
38 practitioners

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

46 A. "Health care practitioner" has the same meaning as in  
48 Title 24, section 2502. "Health care practitioner" also  
includes "licensed clinical social workers" as defined in  
Title 32, chapter 83 and "marriage and family therapists"  
and "professional counselors" as defined in Title 32,  
chapter 119.

2 B. "Treatment records" means all records relating to a  
4 patient's diagnosis and treatment, including x rays,  
6 performed by a health care practitioner.

8 2. Access. Upon written consent of the person to whom  
10 copies of records must be released pursuant to this section, a  
12 health care practitioner shall release copies of all treatment  
14 records of a patient or a narrative containing all relevant  
16 information in the treatment records. The health care  
18 practitioner may exclude from the copies of treatment records  
20 released any personal notes that are not directly related to the  
22 patient's past or future treatment. The copies or narrative must  
24 be released to the designated person within a reasonable time.

26 If the practitioner believes that release of the records is  
28 detrimental to the health of the patient, the practitioner shall  
30 advise the patient that copies of the treatment records or a  
32 narrative containing all relevant information in the treatment  
34 records will be made available to the patient's authorized  
36 representative upon presentation of a written authorization  
38 signed by the patient. The copies or narrative must be released  
40 to the authorized representative within a reasonable time.

42 3. Person receiving the records. Except as otherwise  
44 provided in this section, the copies or narrative specified in  
46 subsection 2 must be released to:

48 A. The person who is the subject of the treatment record,  
50 if that person is 18 years of age or older and mentally  
competent.

B. The parent, guardian ad litem or legal guardian of the  
person who is the subject of the record if the person is a  
minor, or the legal guardian if the person who is the  
subject of the record is mentally incompetent; or

C. The designee of a durable medical power of attorney, if  
the person who is the subject of the record is incompetent  
and executed such an instrument.

4. Minors. This section does not affect the right of  
minors to have their treatment records treated confidentially  
pursuant to the provisions of Title 19, chapter 18.

5. HIV test. Release of information regarding the HIV  
infection status of a patient is governed by Title 5, section  
19203-D.

6. Hospital records. Release of treatment records in a  
hospital is governed by the provisions of section 10101.

2 7. Retention of records. This section does not alter the  
4 existing law or ethical obligations of a health care practitioner  
6 with respect to retaining treatment records.

8 8. Costs. Whenever a health care practitioner furnishes  
10 requested copies of a patient's medical record or a medical  
12 report to the patient under this section, the charge for the  
14 copies or the report may not exceed the reasonable costs incurred  
16 by the health care practitioner in making and providing the  
18 copies or the report.

20 9. Violation. A person who willfully violates this section  
22 commits a civil violation for which a forfeiture of not more than  
24 \$25 may be adjudged. Each day that the treatment records or  
26 narrative is not released after the reasonable time specified in  
28 subsection 2 constitutes a separate violation, up to a maximum  
30 forfeiture of \$100.

#### CHAPTER 833

#### HEALTH CARE PRACTITIONER SELF-REFERRALS

#### §10201. Short title

This chapter may be known and cited as the "Health Care  
Practitioner Self-referral Act."

#### §10202. Legislative finding

The Legislature finds that referral of patients by a health  
care practitioner to a facility in which the referring health  
care practitioner has an investment interest may present a  
potential conflict of interest, that could be harmful to the  
public health or welfare.

#### §10203. Applicability

This chapter applies to referrals for health services made  
on or after January 1, 1994. However, if a health care  
practitioner acquired an investment interest in a facility before  
January 1, 1993, this chapter does not apply to referrals by that  
health care practitioner to that facility before January 1, 1997.

#### §10204. Definitions

As used in this chapter, unless the context otherwise  
indicates, the following terms have the following meanings.

1. Bureau. "Bureau" means the Bureau of Insurance.

2 2. Facility. "Facility" means any sole proprietorship,  
4 partnership, firm, corporation or other business that provides  
6 health services.

8 3. Group practice. "Group practice" means a group of 2 or  
10 more health care practitioners legally organized as a  
12 partnership, professional corporation, nonprofit corporation or  
14 similar association in which:

16 A. Each health care practitioner who is a member, an  
18 employee or an independent contractor of the group provides  
20 substantially the full range of services that the health  
22 care practitioner routinely provides, including  
24 consultation, diagnosis or treatment, through the use of  
26 office space, facilities, equipment or personnel of the  
28 group;

30 B. The services of the health care practitioners are  
32 provided through the group and payments received for health  
34 services are treated as receipts of the group; and

36 C. The overhead expenses and the income from the practice  
38 are distributed by methods previously determined by the  
40 group.

42 4. Health care practitioner. "Health care practitioner"  
44 means an individual regulated under the laws of this State to  
46 provide health services. "Health care practitioners" include,  
48 without limitation, acupuncturists, chiropractors, dentists,  
dental hygienists, nurses, occupational therapists, optometrists,  
pharmacists, physical therapists, physicians including allopathic  
and osteopathic physicians, physician assistants, podiatrists,  
psychologists, clinical social workers, speech therapists and  
audiologists or hearing aid dealers and examiners.

5. Health services. "Health services" means diagnosis,  
treatment and rehabilitative services for an injured, disabled or  
sick person.

6. Immediate family member. "Immediate family member"  
means a health care practitioner's parent, spouse, child or  
child's spouse.

7. Investment interest. "Investment interest" means an  
equity or debt security issued by a facility, including, without  
limitation, shares of stock in a corporation, units or other  
interests in a partnership, bonds, debentures, notes or other  
equity interests or debt instruments, except that investment

interest does not include interest in a hospital licensed under  
state law.

8 8. Investor. "Investor" means an individual who owns,  
10 whose immediate family owns or who directly or indirectly owns a  
12 controlling interest in another facility that owns an investment  
14 interest in a facility that provides health services.

16 9. Office practice. "Office practice" includes the  
18 facility or facilities at which a health care practitioner, on a  
20 regular basis, provides or supervises the provision of  
22 professional health services to individuals.

24 10. Referral. "Referral" means a referral of a patient for  
26 health services, including, without limitation:

28 A. The forwarding of a patient by one health care  
30 practitioner to another health care practitioner or a  
32 facility outside the health care practitioner's office  
34 practice or group practice that provides health services; or

36 B. The establishment by a health care practitioner of a  
38 plan of care outside the health care practitioner's office  
40 practice or group practice that includes the provision of  
42 any health services.

#### §10205. Prohibited referrals and claims for payment

44 1. Prohibited referrals. A health care practitioner may  
46 refer a patient to an outside facility in which that health care  
48 practitioner is an investor only if that health care practitioner  
directly provides health services within the facility and will be  
personally involved with the provision of care to the referred  
patient.

2. Exemption. Referrals by a health care practitioner are  
exempt from this chapter if the bureau determines that there is  
demonstrated need in the community for the facility and  
alternative financing is not available. Demonstrated need in the  
community for the facility exists when:

42 A. There is no facility of reasonable quality that provides  
44 appropriate service;

46 B. Use of existing facilities is onerous or creates too  
48 great a hardship for patients;

C. The facility is formed to own or lease medical equipment  
that replaces obsolete or otherwise inadequate equipment in

2 or under the control of a hospital located in a federally  
3 designated health manpower shortage area; or

4 D. The facility meets other standards established by rule  
5 by the bureau, including a standard allowing the bureau to  
6 determine whether the fees charged for the health services  
7 are competitive with fees charged for those services outside  
8 the community. "Community" must be defined by rule by the  
9 bureau. The following requirements must be met to be exempt  
10 under this section.

12 (1) Individuals who are not in a position to refer  
13 patients to a facility must be given a bona fide  
14 opportunity to invest in that facility on the same  
15 terms as those offered a referring health care  
16 practitioner.

18 (2) A health care practitioner who invests may not be  
19 required or encouraged to make referrals to the  
20 facility or otherwise generate business as a condition  
21 of becoming or remaining an investor.

22 (3) The facility must market or furnish its services  
23 to investors who are referring health care  
24 practitioners and to other investors on equal terms.

26 (4) The facility may not loan funds or guarantee loans  
27 for health care practitioners who are in a position to  
28 refer patients to that facility.

30 (5) The income on the health care practitioner's  
31 investment must be tied to the health care  
32 practitioner's equity in the facility rather than to  
33 the volume of referrals made.

36 (6) An investment contract between the facility and  
37 the health care practitioner may not include a covenant  
38 or noncompetition clause that prevents a health care  
39 practitioner from investing in other facilities.

42 (7) When making a referral, a health care practitioner  
43 shall disclose to the patient being referred to the  
44 facility that health care practitioner's investment  
45 interest in that facility. If alternative facilities  
46 are reasonably available, the health care practitioner  
47 shall provide the patient with a list of alternative  
48 facilities. The health care practitioner shall inform  
49 the patient that the patient has the option to use an  
50 alternative facility and the patient will not be  
treated differently by the health care practitioner if

2 the patient chooses to use another facility. This  
3 subparagraph applies to all investors who are health  
4 care practitioners, including those who provide direct  
5 care or services for their patients in facilities  
6 outside their office practice.

8 (8) If a 3rd-party payor requests information  
9 regarding a health care practitioner's investment  
10 interest, that information must be disclosed.

12 (9) The facility shall establish an internal  
13 utilization review program.

14 (10) If a health care practitioner's financial  
15 interest in a facility is incompatible with a referred  
16 patient's interest, the health care practitioner shall  
17 make alternative arrangements for that patient's care.

18 The bureau shall make its determination on a request for an  
19 exemption within 90 days of a completed written request.

22 3. Exception. It is not a violation of this chapter for a  
23 health care practitioner to refer a patient to a publicly traded  
24 facility in which that health care practitioner has an investment  
25 interest if:

26 A. The facility is listed for trading on the New York Stock  
27 Exchange or on the American Stock Exchange or is a national  
28 market system security traded under an automated interdealer  
29 quotation system operated by the National Association of  
30 Securities Dealers;

32 B. The facility, at the end of its most recent fiscal year,  
33 had total net assets of at least \$50,000,000 related to the  
34 furnishing of health services;

36 C. Investment interest obtained after the effective date of  
37 this chapter is traded on the exchanges listed in paragraph  
38 A;

40 D. The facility markets or furnishes its services to  
41 investors who are referring health care practitioners and to  
42 other health care practitioners on equal terms;

44 E. All stock held in that facility, including stock held in  
45 the predecessor privately held facility, is of one class  
46 without preferential treatment as to status or remuneration;

2 F. The facility does not loan funds or guarantee loans for  
4 health care practitioners who are in a position to make  
6 referrals to a facility;

8 G. The income on the health care practitioner's investment  
10 is tied to the health care practitioner's equity in the  
12 facility rather than to the volume of referrals made; and

14 H. The investment interest does not exceed 1/2 of 1% of the  
16 facility's total equity.

18 4. Compelling practitioner. A health care practitioner may  
20 not compel or coerce, or attempt to compel or coerce, any other  
22 health care practitioner to violate any provision of this chapter.

24 5. Third-party referrals. A health care practitioner may  
26 not participate in any arrangement or plan that is designed to  
28 evade the prohibitions in this chapter by using a 3rd party to  
30 redirect referrals that are prohibited under subsection 1 if the  
32 3rd party was not involved in the referral.

34 6. Alternate facilities. If compliance with the community  
36 need and alternative financing criteria is not practical, the  
38 health care practitioner shall identify to the patient reasonably  
40 available alternative facilities. The bureau, by rule, shall  
42 designate when compliance is not practical.

44 7. Bureau opinion. Health care practitioners may request  
46 that the bureau render an advisory opinion as to whether a  
48 referral to an existing or proposed facility under specified  
circumstances violates the provisions of this chapter. The  
bureau's opinion is presumptively correct as to whether the  
provisions of this chapter are violated.

8. Health organizations. Notwithstanding any other  
provision of this chapter, a health care practitioner may refer a  
patient who is a member of a health maintenance organization or a  
preferred provider organization licensed in this State for health  
services to a facility outside that health care practitioner's  
office or group practice in which that health care practitioner  
is an investor when the referral is made pursuant to a contract  
with the organization.

#### §10206. Penalties

A facility or a health care practitioner that makes or  
causes to be made a referral prohibited under section 10205 or  
presents or causes to be presented a bill or claim for service  
that the facility or health care practitioner knows or should

2 know is prohibited by section 10205 is subject to a civil penalty  
4 of no more than \$2,000 for each referral, bill or claim.

6 A violation of this chapter by a health care practitioner or  
8 a facility is grounds for disciplinary action by the applicable  
10 licensing body.

#### §10207. Rulemaking

12 The bureau shall implement this chapter pursuant to rules  
14 adopted in accordance with the Maine Administrative Procedure  
16 Act. The rules must include but are not limited to:

18 1. Administration. Standards and procedures for the  
20 administration of this chapter;

22 2. Exceptions. Procedures and criteria for exceptions to  
24 the prohibitions set forth in section 10205;

26 3. Compliance. Procedures and criteria for determining  
28 practical compliance with the community needs and alternative  
30 financing criteria in section 10205;

32 4. Complete opinion. Procedures and criteria for  
34 determining when a written request for an opinion set forth in  
36 section 10205 is complete; and

38 5. Applicability. Procedures and criteria for advising  
40 health care practitioners of the applicability of this chapter to  
42 practices pursuant to written requests.

#### CHAPTER 835

#### CERTIFICATE OF NEED

#### SUBCHAPTER I

#### GENERAL PROVISIONS

#### §10301. Short title

46 This chapter may be cited as the "Maine Certificate of Need  
48 Act of 1978."

#### §10302. Declaration of findings and purposes

1. Findings. The Legislature finds that unnecessary  
construction or modification of health care facilities and  
duplication of health services are substantial factors in the

2 cost of health care and the ability of the public to obtain  
3 necessary medical services.

4 2. Purposes. The purposes of this chapter are to:

6 A. Promote effective health planning:

8 B. Assist in providing quality health care at the lowest  
9 possible cost:

10 C. Avoid unnecessary duplication in health facilities and  
11 health services and ensure that only those facilities that  
12 are needed will be built or modified:

13 D. Ensure that state funds are not used to support  
14 unnecessary capital expenditures made by or on behalf of  
15 health care facilities:

16 E. Provide an orderly method of resolving questions  
17 concerning the need for health care facilities and health  
18 services that are proposed to be developed:

19 F. Permit consumers of health services to participate in  
20 the process of determining the distribution, quantity,  
21 quality and cost of these services; and

22 G. Provide for a certificate of need program that meets the  
23 requirements of the National Health Planning and Resources  
24 Development Act of 1974, Public Law 93-641 and its  
25 accompanying regulations.

26 §10303. Definitions

27 As used in this chapter, unless the context otherwise  
28 indicates, the following terms have the following meanings.

29 1. Ambulatory surgical facility. "Ambulatory surgical  
30 facility" means a facility, not part of a hospital, that provides  
31 surgical treatment to patients not requiring hospitalization.  
32 This term does not include the offices of private physicians or  
33 dentists, whether in individual or group practice.

34 2. Annual operating costs. For purposes of section 10351,  
35 subsection 6, paragraph B, "annual operating costs" means the  
36 total incremental costs to the institution that are directly  
37 attributable to the addition of a new health service.

38 3. Appropriately capitalized expenditures. "Appropriately  
39 capitalized expenditures" means those expenditures that would be  
40 capitalized if the project were implemented.

2 4. Capital expenditure. "Capital expenditure" means an  
3 expenditure, including a force account expenditure or  
4 predevelopment activities, that under generally accepted  
5 accounting principles is not properly chargeable as an expense of  
6 operation and maintenance and includes capitalized interest on  
7 borrowed funds and the fair market value of any property or  
8 equipment that is acquired under lease or comparable arrangement  
9 or by donation.

10 5. Commission. "Commission" means the Maine Health Care  
11 Finance Commission established pursuant to chapter 837.

12 6. Construction. "Construction," when used in connection  
13 with "health care facility," means the establishment, erection,  
14 building, purchase or other acquisition of a health care facility.

15 7. Department. "Department" means the Department of Health  
16 and Developmental Services, but does not include the Certificate  
17 of Need Advisory Committee within the department.

18 8. Development. "Development," when used in connection  
19 with "health services," means the undertaking of those activities  
20 that on their completion will result in the offering of a new  
21 health service to the public.

22 9. Expenditure minimum for annual operating costs. The  
23 "expenditure minimum for annual operating costs" is:

24 A. For services commenced between January 1 and December  
25 31, 1983, \$125,000 for the 3rd fiscal year, including a  
26 partial first year;

27 B. For services commenced between January 1 and December  
28 31, 1984, \$135,000 for the 3rd fiscal year, including a  
29 partial first year;

30 C. For services commenced between January 1 and December  
31 31, 1985, \$145,000 for the 3rd fiscal year, including a  
32 partial first year; and

33 D. For services commenced after December 31, 1985, \$155,000  
34 for the 3rd fiscal year, including a partial first year.

35 10. Generally accepted accounting principles. "Generally  
36 accepted accounting principles" means accounting principles  
37 approved by the American Institute of Certified Public  
38 Accountants.

2 11. Health care facility. "Health care facility" means any  
4 facility, whether public or private, proprietary or not for  
6 profit, required to obtain a certificate of need in accordance  
8 with federal laws and regulations under the National Health  
10 Planning and Resources Development Act of 1974, or any amendment,  
12 and includes hospitals, psychiatric hospitals, tuberculosis  
14 hospitals, skilled nursing facilities, kidney disease treatment  
16 centers including free standing hemodialysis units, intermediate  
18 care facilities, rehabilitation facilities, ambulatory surgical  
20 facilities, home health care providers and health maintenance  
22 organizations. The term does not apply to any facility operated  
24 by religious groups relying solely on spiritual means through  
26 prayer for healing.

14 12. Health maintenance organization. "Health maintenance  
16 organization" means a public or private organization that:

18 A. Provides or otherwise makes available to enrolled  
20 participants health care services, including at least the  
22 following basic health services: usual physician services,  
24 hospitalization, laboratory, x-ray, emergency and preventive  
26 health services and out-of-area coverage;

24 B. Is compensated, except for copayments, for the provision  
26 of the basic health services to enrolled participants on a  
28 predetermined periodic rate basis; and

28 C. Provides physicians' services primarily through  
30 physicians who are either employees or partners of the  
32 organization or through arrangements with individual  
34 physicians or one or more groups of physicians.

34 13. Health services. "Health services" means clinically  
36 related services that are diagnostic, treatment or rehabilitative  
38 services, and includes alcohol and drug abuse and mental health  
40 services.

38 14. Home health care provider. "Home health care provider"  
40 means any business entity or subdivision thereof, whether public  
42 or private, proprietary or not for profit, that is engaged in  
44 providing acute, restorative, rehabilitative, maintenance,  
46 preventive or health promotion services through professional  
48 nursing and at least one other therapeutic service, such as  
50 physical therapy, occupational therapy, speech pathology, home  
health aides, nurse assistants, medical social work and  
nutritionist services, either directly or through contractual  
agreement, in a client's place of residence. This term does not  
apply to any sole practitioner providing private duty nursing  
services or other restorative, rehabilitative, maintenance,  
preventive or health promotion services in a client's place of

2 residence. In addition, this term does not apply to hospitals,  
4 skilled nursing facilities or intermediate care facilities  
6 providing in-home services exempt from licensure under section  
8 9803, subsection 10.

6 15. Hospital. "Hospital" means an institution that  
8 primarily provides to inpatients by or under the supervision of  
10 physicians, diagnostic services and therapeutic services for  
12 medical diagnosis, treatment and care of injured, disabled or  
14 sick persons or rehabilitation services for the rehabilitation of  
16 injured, disabled or sick persons. This term also includes  
18 psychiatric and tuberculosis hospitals.

14 16. Intermediate care facility. "Intermediate care  
16 facility" means an institution that provides, on a regular basis,  
18 health-related care and services to individuals who do not  
20 require the degree of care and treatment that a hospital or  
22 skilled nursing facility is designed to provide, but who because  
24 of their mental or physical conditions require health related  
26 care and services above the level of room and board.

22 17. Major medical equipment. "Major medical equipment"  
24 means a single unit of medical equipment or a single system of  
26 components with related functions that is used to provide medical  
28 and other health services and that costs \$300,000 or more. This  
30 term does not include medical equipment acquired by or on behalf  
32 of a clinical laboratory to provide clinical laboratory services,  
34 if the clinical laboratory is independent of a physician's office  
36 and a hospital and has been determined under the United States  
38 Social Security Act, Title XVIII, to meet the requirements of  
40 Section 1861 (s), paragraphs 10 and 11 of that Act. In  
42 determining whether medical equipment costs more than \$300,000,  
44 the cost of studies, surveys, designs, plans, working drawings,  
46 specifications and other activities essential to acquiring the  
48 equipment must be included. If the equipment is acquired for  
50 less than fair market value, the term "cost" includes the fair  
market value.

38 18. Modification. "Modification" means the alteration,  
40 improvement, expansion, extension, renovation or replacement of a  
42 health care facility or health maintenance organization or  
44 portion thereof, including initial equipment thereof and the  
46 replacement of equipment or existing buildings.

46 19. Obligation. An "obligation" for a capital expenditure  
48 is considered to be incurred by or on behalf of a health care  
50 facility:

50 A. When a contract, enforceable under Maine law, is entered  
into by or on behalf of the health care facility for the



2 construction, acquisition, lease or financing of a capital  
3 asset:

4 B. When the governing board of the health care facility  
5 takes formal action to commit its own funds for a  
6 construction project undertaken by the health care facility  
7 as its own contractor; or

8 C. In the case of donated property, on the date on which  
9 the gift is completed under applicable Maine law.

12 20. Offer. "Offer," when used in connection with "health  
13 services," means that the health care facility or health  
14 maintenance organization holds itself out as capable of providing  
15 or having the means to provide a health service.

16 21. Person. "Person" means an individual, trust or estate,  
17 partnership, corporation, including associations, joint stock  
18 companies and insurance companies, the State or a political  
19 subdivision or instrumentality, including a municipal corporation  
20 of the State, or any other legal entity recognized by state law.

22 22. Predevelopment activities. "Predevelopment activities"  
23 means any appropriately capitalized expenditure by or on behalf  
24 of a health care facility made in preparation for the offering or  
25 development of a new health service for which a certificate of  
26 need would be required and arrangements or commitments made for  
27 financing the offering or development of the new health service,  
28 and includes site acquisitions, surveys, studies, expenditures  
29 for architectural designs, plans, working drawings and  
30 specifications.

32 23. Project. "Project" means any acquisition, capital  
33 expenditure, new health service, termination or change in a  
34 health service, predevelopment activity or other activity that  
35 requires a certificate of need under section 10351.

38 24. Rehabilitation facility. "Rehabilitation facility"  
39 means an inpatient facility that is operated for the primary  
40 purpose of assisting in the rehabilitation of disabled persons  
41 through an integrated program of medical and other services that  
42 are provided under competent professional supervision.

44 25. Secretary. "Secretary" means the United States  
45 Secretary of Health and Human Services and any other officer or  
46 employee of the United States Department of Health and Human  
47 Services to whom the authority involved may be delegated.

48 26. Skilled nursing facility. "Skilled nursing facility"  
49 means an institution or a distinct part of an institution that is

2 primarily engaged in providing to inpatients skilled nursing care  
3 and related services for patients who require medical or nursing  
4 care, or rehabilitation services for the rehabilitation of  
5 injured, disabled or sick persons.

6 27. State Health Coordinating Council. "State Health  
7 Coordinating Council" means the entity established by the  
8 Governor in accordance with the provisions of section 1524 of the  
9 National Health Planning and Resources Development Act of 1974.

12 28. State health plan. "State health plan" means the plan  
13 prepared annually by the State Health Coordinating Council after  
14 consideration of the preliminary state health plan prepared by  
15 the department.

#### 16 §10304. Remedy

18 Any person aggrieved by a final decision of the department  
19 made under the provisions of this chapter is entitled to review  
20 in accordance with Title 5, chapter 375, subchapter VII. A  
21 decision of the department to issue a certificate of need or to  
22 deny an application for a certificate of need is not considered  
23 final until the department has taken final action on a request  
24 for reconsideration under section 10360.

26 A decision by the department is not final where opportunity  
27 for reconsideration under section 10360 exists with respect to  
28 matters involving new information or changes in circumstances.  
29 Where new information or changes in circumstances are not alleged  
30 by the applicant or other person aggrieved by the decision, a  
31 person aggrieved by a decision of the department may, at its  
32 option, seek reconsideration under section 10360 or may seek  
33 direct judicial review under this section.

36 In civil actions involving competitive reviews of proposals  
37 to construct new nursing home beds, the court shall require the  
38 party seeking judicial review to give security in the amount the  
39 court deems proper, for the payment of costs and damages incurred  
40 or suffered by any other party who is found to have been  
41 wrongfully delayed or restrained from proceeding to implement the  
42 certificate of need, provided that for good cause shown and  
43 recited in the order, the court may waive the giving of security.  
44 A surety upon a bond or undertaking under this paragraph submits  
45 to the jurisdiction of the court and irrevocably appoints the  
46 clerk of the court as the surety's agent upon whom any papers  
47 affecting the surety's liability on the bond or undertaking may  
48 be served. The surety's liability may be enforced on motion  
49 without the necessity of an independent action. The motion and  
50 any notice of the motion the court prescribes may be served on

2 the clerk of the court who shall forthwith mail copies to the  
3 persons giving the security if their addresses are known.

4 **§10305. Rules**

6 The department shall adopt any rules, standards, criteria or  
7 plans that are necessary to carry out the provisions and purposes  
8 of this chapter. The department shall, to the extent applicable,  
9 take into consideration recommendations contained in the state  
10 health plan as approved by the Governor. The department shall  
11 provide public notice and hearing on all proposed rules,  
12 standards, criteria, plans or schedules pursuant to Title 5,  
13 chapter 375. The department may accept any federal funds to be  
14 used for the purposes of carrying out this chapter.

16 **§10306. Public information**

18 The general public may have reasonable access to all  
19 applications reviewed by the department and to all other written  
20 material pertinent to its review of these applications. The  
21 department shall prepare and publish at least annually a report  
22 on its activities conducted pursuant to this chapter.

24 **§10307. Conflict of interest**

26 In addition to the limitations of Title 5, section 18, a  
27 member or employee of the department or Certificate of Need  
28 Advisory Committee who has a substantial economic or fiduciary  
29 interest that would be affected by a recommendation or decision  
30 to issue or deny a certificate of need, or who has a close  
31 relative or economic associate whose interest would be so  
32 affected may not participate in the review, recommendation or  
33 decision-making process with respect to any application for which  
34 the conflict of interest exists.

36 **§10308. Withholding of license**

38 A new health care facility, as defined in section 10303, may  
39 not obtain a license under the applicable state law, if the  
40 facility has not obtained a certificate of need as required by  
41 this chapter. The license of a facility does not extend to  
42 include or otherwise allow the delivery of any services, the use  
43 of any equipment that has been acquired, the use of any portion  
44 of a facility or any other change for which a certificate of need  
45 as required by this chapter has not been obtained. Any  
46 unauthorized delivery of services, use of equipment or portion of  
47 a facility, or other change is a violation of the respective  
48 chapter under which the facility is licensed.

50 **§10309. Withholding of funds**

2 A health care facility or other provider is not eligible to  
3 apply for or receive any reimbursement, payment or other  
4 financial assistance from any state agency or other 3rd party  
5 payor, either directly or indirectly, for any capital expenditure  
6 or operating costs attributable to any project for which a  
7 certificate of need as required by this chapter has not been  
8 obtained. For the purposes of this section, the department shall  
9 determine the eligibility of a facility to receive reimbursement  
10 for all projects subject to the provisions of this chapter.

12 **§10310. Injunction**

14 The Attorney General, upon the request of the department,  
15 shall seek to enjoin any project for which a certificate of need  
16 as required by this chapter has not been obtained, and shall take  
17 any other action appropriate to enforce this chapter.

18 **§10311. Penalty**

20 Whoever violates any provision of this chapter or any rule,  
21 rule or regulation established under this chapter is subject to a  
22 civil penalty payable to the State of not more than \$5,000 to be  
23 recovered in a civil action. The department may hold these funds  
24 in a special revenue account which must be used only to support  
25 certificate of need reviews, including hiring expert analysts on  
26 a short-term consulting basis.

28 **SUBCHAPTER II**

30 **CERTIFICATE OF NEED PROCESS**

32 **§10351. Certificate of need required**

34 A person may not enter into any commitment for financing a  
35 project that requires a certificate of need or incur an  
36 obligation for the project without having sought and received a  
37 certificate of need, except that this prohibition does not apply  
38 to commitments for financing conditioned upon the receipt of a  
39 certificate of need or to obligations for predevelopment  
40 activities of less than \$150,000 for health care facilities other  
41 than hospitals or \$250,000 for hospitals.

44 Except as provided in sections 10353 and 10354, a  
45 certificate of need from the department is required for:

46 **1. Acquisition by lease, donation, transfer. Any**  
47 **acquisition by or on behalf of a health care facility under lease**  
48 **or comparable arrangement or through donation, that would have**  
49 **required review if the acquisition had been by purchase:**

2 2. Acquisitions of certain major medical equipment.  
3 Acquisitions of major medical equipment with a cost of \$1,000,000  
4 or more. There is a waiver for the use of major medical  
5 equipment on a temporary basis as provided in section 10358,  
6 subsection 4:

8 3. Acquisitions of major medical equipment with a cost in  
9 the aggregate of \$1,000,000 or more. Acquisitions of major  
10 medical equipment with a cost in the aggregate of \$1,000,000 or  
11 more by ambulatory surgical centers, independent cardiac  
12 catheterization centers, independent radiologic service centers  
13 and centers providing endoscopy, sigmoidoscopy, colonoscopy or  
14 other similar procedures associated with gastroenterology:

16 4. Capital expenditures. The obligation by or on behalf of  
17 a health care facility, except a skilled or intermediate care  
18 facility or hospital, of any capital expenditure of \$350,000 or  
19 more. Intermediate care and skilled nursing care facilities have  
20 a threshold of \$500,000, except that any transfer of ownership is  
21 reviewable:

23 5. Hospital capital expenditures. The obligation, by or on  
24 behalf of a hospital, of any capital expenditure of \$1,000,000 or  
25 more, except that:

27 A. A capital expenditure for the purpose of acquiring major  
28 medical equipment is reviewable only to the extent provided  
29 in subsection 2; and

31 B. Any transfer of ownership of a hospital is reviewable:

33 6. New health services. The offering or development of any  
34 new health service. For purposes of this section, "new health  
35 services" includes only the following:

37 A. The obligation of any capital expenditures by or on  
38 behalf of a health care facility that is associated with the  
39 addition of a health service that was not offered on a  
40 regular basis by or on behalf of the facility within the  
41 12-month period prior to the time the services would be  
42 offered:

44 B. The addition of a health service that is to be offered  
45 by or on behalf of a health care facility that was not  
46 offered on a regular basis by or on behalf of the facility  
47 within the 12-month period prior to the time the services  
48 would be offered, and that, for the 3rd fiscal year of  
49 operation, including a partial first year, following  
50 addition of that service, absent any adjustment for

inflation, is projected to entail annual operating costs of  
at least the expenditure minimum for annual operating costs;  
or

6 C. The addition of a health service that falls within a  
7 category of health services that are subject to review  
8 regardless of capital expenditure or operating cost and that  
9 the department has defined through rules adopted pursuant to  
10 section 10305, based on recommendations from the State  
11 Health Coordinating Council:

12 7. Termination of a health service. The obligation of any  
13 capital expenditure by or on behalf of a health care facility  
14 other than a hospital that is associated with the termination of  
15 a health service that was previously offered by or on behalf of  
16 the health care facility:

18 8. Changes in bed complement. Any change in the existing  
19 bed complement of a health care facility other than a hospital:

22 9. Increases in licensed bed capacity of a hospital. Any  
23 change in the existing bed complement of a hospital, in any  
24 2-year period, that:

26 A. Increases the licensed or certified bed capacity of the  
27 hospital by more than 10% or more than 5 beds, whichever is  
28 less; or

30 B. Increases the number of beds licensed or certified by  
31 the department to provide a particular level of care by more  
32 than 10% of that number or more than 5 beds, whichever is  
33 less:

34 10. Predevelopment activities. Any appropriately  
35 capitalized expenditure of \$150,000 or more or, in the case of  
36 hospitals, \$250,000 or more for predevelopment activities  
37 proposed to be undertaken in preparation for any project that  
38 would itself require a certificate of need:

40 11. New health care facilities. The construction,  
41 development or other establishment of a new health care facility,  
42 subject to the following limitations:

44 A. Except as provided in paragraph B, the department shall  
45 review certificate of need applications, including business  
46 plans, for home health care providers only to determine  
47 whether the provider is fit, willing and able to provide the  
48 proposed services at the proper standard of care as provided  
49 in section 10359, subsection 1, paragraph A. The department  
50 shall establish a reduced filing fee for home health care

providers whose applications are reviewed under this paragraph.

B. The department shall review an application for a home health care provider to determine its compliance with all the requirements of section 10359, subsection 1 if the application involves:

(1) A business plan that forecasts 3rd-year operating costs exceeding \$500,000; or

(2) A transfer of ownership of an existing home health care provider; and

12. Other circumstances. In the following circumstances:

A. Any proposed use of major medical equipment to serve inpatients of a hospital, if the equipment is not located in a health care facility and was acquired without a certificate of need, except acquisitions waived under section 10358, subsection 4; or

B. If a person adds a health service not subject to review under subsection 6, paragraph A or C and that was not deemed subject to review under subsection 6, paragraph B at the time it was established and that was not reviewed and approved prior to establishment at the request of the applicant, and its actual 3rd fiscal year operating cost, as adjusted by an appropriate inflation deflator adopted by the department, after consultation with the commission, exceeds the expenditure minimum for annual operating cost in the 3rd fiscal year of operation following addition of these services.

#### §10352. Subsequent review

If a certificate of need has been issued, and changes occur as specified in this section, a subsequent review is required.

1. Criteria for subsequent review. The following activities require subsequent review and approval, if the department has previously issued a certificate of need and if within one year after the approved activity is undertaken:

A. There is a significant change in financing;

B. There is a change affecting the licensed or certified bed capacity as approved in the certificate of need;

C. There is a change involving the addition or termination of the health services proposed to be rendered by the facility;

D. There is a change in the site or the location of the proposed facility; or

E. There is a substantial change proposed in the design of the facility or the type of construction.

2. Procedures for subsequent review. Any person proposing to undertake any activity requiring subsequent review and approval shall file with the department, within 30 days of the time that person first has actual knowledge of the circumstances requiring subsequent review, a notice setting forth the following information:

A. The nature of the proposed change;

B. The rationale for the change including, if appropriate, an explanation of why the change was not set forth in the original application or letter of intent; and

C. Other pertinent details subject to the procedures and criteria set forth in section 10359.

The department shall, within 30 days of receipt of the information, advise that person in writing whether the proposed change is approved. If not approved, the application must be treated as incomplete and reviewed in accordance with the application procedures in section 10356, subsection 4. If approved, the department shall amend the certificate of need as appropriate.

#### §10353. Waiver of certificate of need review for certain projects

1. Categories of projects eligible for waiver. A hospital may apply for a waiver of the certificate of need review requirements otherwise imposed by this chapter with respect to the following projects:

A. The offering or development of any new health services involving:

(1) No capital expenditure or a capital expenditure of less than \$300,000; and

(2) Third-year annual operating costs of less than \$250,000.

2 2. Conditions of waiver. As a condition of receipt of a  
3 waiver of certificate of need review under subsection 1, the  
4 hospital is not subject to any adjustments to its financial  
5 requirements pursuant to section 10805.

6 3. Waiver process for certain new health services. Any  
7 hospital may file a request for waiver under subsection 1,  
8 paragraph A, with the department describing the proposed project  
9 and its projected associated capital costs and projected  
10 operating costs, as appropriate. Within 15 days following  
11 receipt of the hospital's waiver request and other information,  
12 if requested, the department shall issue its waiver determination.

13 The department shall waive certificate of need review in all  
14 cases where the request demonstrates that:

15 A. The project meets the criteria of subsection 1; and

16 B. The hospital agrees to be bound by the conditions of  
17 subsection 2.

18 4. Treatment of project by the Maine Health Care Finance  
19 Commission. The total capital costs and operating costs  
20 associated with a project described in subsection 1, may not be  
21 debited against the Certificate of Need Development Account or  
22 the Hospital Development Account pursuant to section 10812.

23 §10354. Waiver of certificate of need review when review serves  
24 no public purpose

25 1. Request for waiver. An applicant for a project  
26 requiring a certificate of need, other than a project related to  
27 acute patient care or a project that could affect the financial  
28 requirements of a hospital under chapter 837, may request a  
29 waiver of the review requirements under this chapter. The  
30 applicant shall submit, with the request, sufficient written  
31 documentation to demonstrate that the proposed project meets the  
32 conditions of this section and that sufficient public notice of  
33 the proposed waiver has been given.

34 2. Public notice. The applicant shall give public notice,  
35 on a form provided by the department, of its intention to seek a  
36 waiver of full review. This notice must be given in the Kennebec  
37 Journal and in a daily newspaper of general circulation in the  
38 applicant's service area. The public must be given 10 days from  
39 the date of publication within which to submit to the department  
40 any comments concerning the proposed waiver of review.

41 3. Criteria for waiver. The department may waive the  
42 requirement for a full certificate of need review of a project,

2 if the department finds that the waiver, rather than full review,  
3 would best further the purposes of the Maine Certificate of Need  
4 Act, as set forth in section 10302, subsection 2. When making  
5 this determination, the department shall consider a number of  
6 factors including, but not limited to:

7 A. Whether the proposed project would incur no or minimal  
8 additional expense to the public or to the health care  
9 facility's clients;

10 B. Whether the proposed project is or will be in compliance  
11 with other state and local laws and regulations;

12 C. Whether the proposed project primarily involves the  
13 maintenance of a health care facility as is; and

14 D. Whether the health and welfare of any person the health  
15 care facility is already serving will be significantly  
16 adversely affected if a waiver is not granted.

17 4. Other action by department. If the department finds  
18 that the proposal is not clearly eligible for a waiver of the  
19 review requirements, it may choose to conduct an emergency  
20 review, a simplified review pursuant to section 10358, subsection  
21 1, or a full review.

22 5. Notification of decision. The department shall notify  
23 the applicant of its decision in writing as soon as it determines  
24 whether to grant or deny the request for a waiver or decides to  
25 conduct a different review in accordance with subsection 4. The  
26 notice must include a brief summary of the reasons for the  
27 department's decision.

28 6. Report to Legislature. By February 15th annually, the  
29 department shall submit a report to the joint standing committee  
30 of the Legislature having jurisdiction over human resources  
31 matters on the implementation and operation of this section.

32 §10355. Periodic reports

33 The department shall require health care facilities subject  
34 to the requirements of this chapter to maintain current health  
35 services and capital requirements plans on file with the  
36 department. The department, in its rules, shall prescribe the  
37 form and contents of the health services and capital requirements  
38 plans and shall require annual or other periodic reports updating  
39 the plans to be filed with the department. An application for a  
40 certificate of need made pursuant to this chapter may not be  
41 accepted from any health care facility for which the current  
42 health services and capital requirements plans are not on file.

2 §10356. Application process for a certificate of need

4 1. Letter of intent. Prior to filing an application for a  
6 certificate of need, an applicant shall file a letter of intent  
8 with the department. The letter of intent must form the basis  
10 for determining the applicability of this chapter to the proposed  
12 expenditure or action. A letter of intent is deemed withdrawn  
14 one year after receipt by the department, unless sooner  
16 superseded by an application; provided that the applicant is not  
18 precluded from resubmitting the same letter of intent.

20 2. Application filed. Upon a determination by the  
22 department that a certificate of need is required for a proposed  
24 expenditure or action, an application for a certificate of need  
26 must be filed with the department if the applicant wishes to  
28 proceed with the project. Prior to filing a formal application  
30 for a certificate of need, the applicant must meet with the  
32 department staff in order to assist the department in  
34 understanding the application and to receive technical assistance  
36 concerning the nature, extent and format of the documentary  
38 evidence, statistical data and financial data required for the  
40 department to evaluate the proposal. The department may not  
42 accept an application for review until the applicant has  
44 satisfied this technical assistance requirement unless waived in  
46 writing by both parties. The technical assistance meeting must  
48 take place within 30 days after receipt of the letter of intent,  
50 unless waived in writing by both parties.

3. Additional information required. Additional information  
may be required or requested as follows.

A. If, after receipt of an application, the department  
determines that additional information is necessary before  
the application can be considered complete, the department  
may:

(1) Require the applicant to respond to one set of  
requests for additional information from the  
department. Applicants must submit additional  
information requested by the department within 30  
business days or within a longer period of time, if the  
department and the applicant agree; and

(2) Request, but not require, the applicant to respond  
to additional sets of requests for information,  
provided that each request is directly related to the  
last request or to the information provided in response  
to the last request.

B. Within 15 business days after the filing of an  
application or response to any information request,  
whichever is applicable, with the department, the department  
shall notify the applicant in writing that:

(1) The application contains all necessary information  
required and is complete; or

(2) Additional information is required by the  
department. If, after receipt of the applicant's  
response to the first or any subsequent request, the  
department determines that additional information is  
required, the notification must also include a  
statement of the basis and rationale for that  
determination.

4. Review of incomplete application. Upon receipt of the  
2nd or any subsequent notice described in subsection 3, paragraph  
B, subparagraph 2, the applicant must notify the department in  
writing that:

A. It will provide the additional information requested by  
the department. Following completion, it must be entered  
into the next review cycle; or

B. It is not able to or does not intend to provide the  
information requested and requests the application be  
entered into the next appropriate review cycle. In that  
case, the applicant is prohibited from submitting the  
information it had declined to provide into the record after  
the 25th day of the review cycle and the information may not  
be considered in the determination to issue or to deny a  
certificate of need. If the applicant provides the  
information requested prior to the 25th day of the review  
cycle, the application may, at the discretion of the  
department, be returned to the beginning of the review  
cycle. Failure to submit additional information requested  
by the department may result in an unfavorable  
recommendation and may result in subsequent denial of the  
application by the department, if the denial is related to  
applicable criteria and standards.

5. Competitive reviews. In cases of competitive reviews,  
applicants must submit additional information requested by the  
department within 30 business days or within a longer period of  
time, if the department and all competing applicants agree.

6. Automatic withdrawal. Any incomplete application is  
deemed withdrawn if the applicant fails to respond to a request

for additional required information within one year of the date the request was forwarded by the department.

**§10357. Review process**

**1. Notice.** Upon determination that an application is complete, or upon receipt of a notice under section 10356, subsection 4, paragraph B, or upon grouping of the application with other pending applications, the department shall provide for written notification of the beginning of a review. Public notice must be given by publication in the Kennebec Journal and in a newspaper of general circulation in the area in which the proposed expenditure or other action will occur. The notice must be provided to all persons who have requested notification by means of asking that their names be placed on a mailing list maintained by the department for this purpose. This notice must include:

A. A brief description of the proposed expenditure or other action;

B. The proposed schedule for the review;

C. A statement that a public hearing will be held during the course of a review if requested by persons directly affected by the review and the date by which the requests must be received by the department;

D. A description of the manner in which public notice will be given of a public hearing if one is to be held during the course of the review; and

E. A statement of the manner and time in which persons may register as affected persons.

**2. Certificate of Need Advisory Committee.** The Certificate of Need Advisory Committee, established by Title 5, section 12004-I, subsection 38, and created within the department, shall participate with the department in the public hearing process.

A. The committee is composed of 10 members, 9 of whom are appointed by the Governor. The Commissioner of Human Services shall name a designee to serve as an ex officio nonvoting member of the committee. The 9 members appointed by the Governor must be selected in accordance with the following requirements.

(1) Four members must be appointed to represent the following.

(a) One member must represent the hospitals.

(b) One member must represent the nursing home industry.

(c) One member must represent major 3rd-party payors.

(d) One member must represent physicians.

In appointing these representatives, the Governor shall consider recommendations made by the Maine Hospital Association, the Maine Health Care Association, the Maine Medical Association, the Maine Osteopathic Association and other representative organizations.

(2) Five public members must be appointed as consumers of health care. One of these members must be designated on an annual basis by the Governor as chair of the committee. Neither the public members nor their spouses or children may, within 12 months preceding the appointment, have been affiliated with, employed by, or have had any professional affiliation with any health care facility or institution, health product manufacturer or corporation or insurer providing coverage for hospital or medical care, and provided that neither membership in or subscription to a service plan maintained by a nonprofit hospital and medical service organization, nor enrollment in a health maintenance organization, nor membership as a policyholder in a mutual insurer or coverage under such a policy, nor the purchase of or coverage under a policy issued by a stock insurer may disqualify a person from serving as a public member.

B. Appointed members of the committee serve for terms of 4 years. Members hold office until the appointment and confirmation of their successors.

C. Vacancies among appointed members must be filled by appointment by the Governor for the unexpired term. A vacancy in the office of the chair must be filled by the Governor, who must designate a new chair for the balance of the member's term as chair. The Governor may remove any appointed member who becomes disqualified by virtue of the requirements of paragraph A, or for neglect of any duty required by law, or for incompetency or dishonorable conduct.

D. Each appointed member of the committee is entitled to compensation according to Title 5, chapter 379.

2 E. Five members of the committee constitute a quorum.  
4 Actions of the committee are by majority vote.

6 3. Public hearing. A public hearing must be held during  
8 the course of a review by the Certificate of Need Advisory  
10 Committee if requested by persons directly affected by the review  
12 pursuant to subsection 1. Nothing in this section prevents the  
14 department from holding informational meetings with applicants  
16 and interested and affected persons prior to the conduct of the  
18 hearing. If no hearing has been requested prior to an  
20 informational meeting or receipt of the preliminary staff report,  
22 the applicant or any directly affected persons may request a  
24 hearing within 10 days of either circumstance. If a hearing is  
26 requested, the review period is extended by 60 days. In the case  
28 of grouped applications, the extension applies to all competing  
30 applications.

20 A. The committee or agency shall provide notice of its  
22 hearings in accordance with the procedure described in  
24 subsection 1.

24 B. Findings, recommendations, reports, analyses and related  
26 documents prepared by the staff of the agency must be in  
28 final form and be made available to affected persons at  
30 least 5 business days prior to its hearings. The department  
32 shall make its preliminary staff report available to the  
34 committee and affected persons at least 5 business days  
36 before a public hearing conducted by the committee.

32 C. In a hearing conducted by the committee, any person may  
34 be represented by counsel or present oral or written  
36 arguments and evidence relevant to the matter that is the  
38 subject of the hearing. Any person directly affected by the  
40 matter may conduct reasonable questioning of persons who  
42 make relevant factual allegations.

38 D. The chair shall serve as a voting presiding officer and,  
40 in consultation with the members of the committee, shall  
42 rule on the relevance of argument and evidence and make  
44 determinations as to reasonable questioning. Members of the  
46 committee may conduct reasonable questioning in the course  
48 of a hearing.

46 E. The department or agency shall record all hearings and  
48 any subsequent proceedings of the committee with respect to  
50 the application in a form susceptible to transcription. The  
department shall transcribe the recording if necessary for  
the prosecution of an appeal.

2 F. During the first 7 business days following the close of  
4 a public hearing conducted by the committee, interested or  
6 affected persons may submit written comments concerning the  
8 review under consideration. The department shall provide  
10 copies of comments submitted in that manner to all persons  
12 registered as affected persons and to appointed members of  
14 the committee. In reviews where no hearing is held,  
16 interested or affected persons may submit comments 10 days  
18 after the submission of the preliminary staff report, but no  
20 later than the 70th day of a 90-day review cycle or the  
22 130th day of a 150-day review cycle.

14 G. If circumstances require the department to obtain  
16 further information from any source or to otherwise contact  
18 registered affected persons following the public hearing and  
20 submission of comments under paragraph F or, if no hearing  
22 is held, following the 80th day of a 90-day review cycle or  
24 the 140th day of a 150-day review cycle, the department  
26 shall:

22 (1) Provide written notice to all registered affected  
24 persons who may have at least 3 business days to  
26 respond; or

26 (2) Convene a public meeting with reasonable notice  
28 with participation of the committee at its discretion  
30 and affording directly affected persons the opportunity  
32 to conduct reasonable questioning.

30 In either event, notwithstanding any other provision of this  
32 chapter, the time period in which a decision is required is  
34 extended 20 days. Any written comments must be forwarded to  
36 the committee.

36 H. At its next meeting following the receipt of comments  
38 pursuant to paragraph F or G, or in the case of a public  
40 hearing pursuant to paragraph G, the committee shall make a  
42 recommendation of approval or disapproval with respect to  
44 the application or applications under consideration. The  
46 recommendation must be determined by majority vote of the  
48 appointed members present and voting. Members of the  
committee may make additional oral comments or submit  
written comments, as they deem appropriate, with respect to  
the basis for their recommendations or their individual  
views. The committee recommendation and any accompanying  
comments must be forwarded to the commissioner.

48 I. At the time the staff submits its final report to the  
commissioner, a copy of the report must be sent to the



2 applicant and a notification must be sent to all registered  
3 affected persons. No further comments may be accepted.

4 J. After a hearing begins, no appointed members of the  
5 committee or the department may communicate directly or  
6 indirectly in connection with any application with any  
7 affected party or anyone acting in their behalf, except upon  
8 notice and opportunity for all affected parties to  
9 participate. This paragraph does not prohibit the  
10 department from communicating with any affected party or  
11 anyone acting on their behalf for the purpose of arranging a  
12 public meeting pursuant to paragraph G.

13 4. Reviews. To the extent practicable, a review must be  
14 completed and the department shall make its decision within 90  
15 days after the date of notification under subsection 1. The  
16 department shall establish criteria for determining when it is  
17 not practicable to complete a review within 90 days. If it is  
18 not practicable to complete a review within 90 days, the  
19 department may extend the review period up to an additional 60  
20 days.

21 Any review period may be extended with the written consent of the  
22 applicant. The request to extend the review period may be  
23 initiated by the applicant or the department. If the request is  
24 initiated by the department, it is not effective unless consented  
25 to by the applicant in writing. If the request is initiated by  
26 the applicant, the department shall agree to the requested  
27 extension if it determines that the request is for good cause.  
28 The department shall acknowledge the extension of the review  
29 period in writing.

30 5. Decision by the department. Decisions by the  
31 commissioner must be made in accordance with the following  
32 procedures.

33 A. The department shall prepare its final staff report  
34 based solely on the informational record developed in the  
35 course of review to date, as defined in paragraph C,  
36 subparagraphs (1) to (6).

37 B. After reviewing each application, the commissioner shall  
38 make a decision either to issue a certificate of need or to  
39 deny the application for a certificate of need. The  
40 decision of the commissioner must be based on the  
41 informational record developed in the course of review as  
42 specified in paragraph C. Notice of the decision must be  
43 sent to the applicant and the committee. This notice must  
44 incorporate written findings that state the basis of the  
45 decision, including the findings required by section 309.

2 subsection 1. If the decision is not consistent with the  
3 recommendations of the Certificate of Need Advisory  
4 Committee, the commissioner shall provide a detailed  
5 statement of the reasons for the inconsistency.

6 C. For purposes of this subsection, "informational record  
7 developed in the course of review" includes the following:

8 (1) All applications, filings, correspondence and  
9 documentary material submitted by applicants and  
10 interested or affected persons before the termination  
11 of the public comment period under subsection 3,  
12 paragraph F or, if no hearing is held, before the 80th  
13 day of a 90-day review cycle and before the 140th day  
14 of a 150-day review cycle;

15 (2) All documentary material reflecting information  
16 generated by the department before termination of the  
17 public comment period or, if no hearing is held, before  
18 the 80th day of a 90-day review cycle and before the  
19 140th day of a 150-day review cycle;

20 (3) Stenographic or electronic recording of any public  
21 hearing or meeting held during the course of review,  
22 whether or not transcribed;

23 (4) All material submitted or obtained in accordance  
24 with the procedures in subsection 3, paragraph G;

25 (5) The staff report of the agency, the preliminary  
26 staff report of the department and the recommendations  
27 of the committee;

28 (6) Officially noticed facts; and

29 (7) The final staff report of the department.

30 Documentary materials may be incorporated in the record by  
31 reference, provided that registered affected persons are  
32 afforded the opportunity to examine the materials.

33 In making a determination on any pending application under the  
34 certificate of need program, the department may not rely on the  
35 contents of any documents relating to the application when those  
36 documents are submitted to the department anonymously.

37 6. Review cycles. The department shall establish review  
38 cycles for the review of applications. There must be at least  
39 one review cycle for each type or category of project each  
40 calendar year, the dates for which must be published at least 3  
41 months before the start of the review cycle.

months in advance. An application must be reviewed during the next scheduled review cycle following the date on which the application is either declared complete or submitted for review pursuant to section 10356, subsection 4, paragraph B. Hospital projects that must be considered within the constraints established by the Certificate of Need Development Account established pursuant to section 10812 may be grouped for competitive review purposes at least once each year; provided that, for minor projects, as defined by the department through rules adopted pursuant to section 10305, the department shall allocate a portion of the Certificate of Need Development Account for the approval of those projects and shall establish at least 6 review cycles each year for the review of those projects. Nursing home projects that propose to add new nursing home beds to the inventory of nursing home beds within the State may be grouped for competitive review purposes consistent with appropriations made available for that purpose by the Legislature. A nursing home project that proposes renovation, replacement or other actions that will increase Medicaid costs and for which an application is filed after March 1, 1993 may be approved only if appropriations have been made by the Legislature expressly for the purpose of meeting those costs. The department may hold an application for up to 90 days following the commencement of the next scheduled review cycle if, on the basis of one or more letters of intent on file at the time the application is either declared complete or submitted for review pursuant to section 10356, subsection 4, paragraph B, the department expects to receive within the additional 90 days one or more other applications pertaining to similar types of services, facilities or equipment affecting the same health service area. Pertinent health service areas must be defined in rules adopted by the department pursuant to section 10305, based on recommendations by the State Health Coordinating Council.

**§10358. Waiver of requirements; emergency certificate of need**

1. Waiver of full review. The department may waive otherwise applicable requirements and establish a simplified review process for projects that do not warrant a full review. Procedures for conducting these reviews must be established by the department in its rules. These procedures must provide for a shortened review and for a public hearing to be held during the course of a review, if requested by any person directly affected by the review. In order to waive requirements for a full review, the department must find that the proposed project:

A. Meets an already demonstrated need as established by applicable state health plans or by the rules of the department;

B. Is a part of a minor modernization or replacement program that is an integral part of an institutional health care facility's health services or capital expenditures plans required by section 10355; and

C. Is required to meet federal, state or local life safety codes or other applicable requirements.

2. Waiver of other requirements. In order to expedite the review of an application submitted in response to an emergency situation, the department may:

A. Establish a schedule for the review of an application that commences on a day other than the first day of an established review cycle.

3. Emergency defined. The department shall determine that an emergency situation exists whenever it finds that an applicant has demonstrated:

A. The necessity for immediate or temporary relief due to natural disaster, fire, unforeseen safety consideration or other circumstances;

B. The serious adverse effect of delay on the applicant and the community that would be occasioned by compliance with the regular requirements of this chapter and the rules adopted by the department; and

C. The lack of substantial change in the facility or services that existed before the emergency situation.

4. Waiver of review of acquisitions of major medical equipment. The department may waive the review of an acquisition or proposed use of major medical equipment required pursuant to section 10351 if the equipment will be used to provide services to inpatients of a hospital only on a temporary basis in the case of:

A. A natural disaster;

B. A major accident; or

C. Equipment failure.

5. Provision for expedited administrative reviews. The department shall have a procedure for administrative reviews for at least the replacement of major medical equipment.

**§10359. Principles governing the review of applications**

2 1. Determinations for issue of certificate. A certificate  
4 of need must be issued whenever the department determines:

6 A. That the applicant is fit, willing and able to provide  
8 the proposed services at the proper standard of care;

10 B. That economic feasibility of the proposed services is  
12 demonstrated in terms of: effect on the existing and  
14 projected operating budget of the applicant; the applicant's  
16 ability to establish and operate the facility or services in  
18 accordance with licensure rules adopted under pertinent  
20 state laws; the projected impact on the facility's costs and  
22 rates; the total health care expenditures in the community  
24 and the State; and the availability of state funds;

26 C. That there is a public need for the proposed services;  
28 and

30 D. That the proposed services are consistent with the  
32 orderly and economic development of health facilities and  
34 health resources for the State, that the citizens of the  
36 State have the ability to underwrite the additional costs of  
38 the proposed services and that the proposed services are in  
40 accordance with standards, criteria or plans adopted and  
42 approved pursuant to the state health plan developed by the  
44 department and the findings of the commission under section  
46 10811 with respect to the ability of the citizens of the  
48 State to pay for the proposed services.

50 2. Criteria for certificate of need. In the determination  
to issue or deny a certificate of need under subsection 1, the  
department shall, among other criteria, consider the following:

A. The relationship of the health services being reviewed  
to the state health plan;

B. The relationship of the health services being reviewed  
to the health services and capital requirements' plans, if  
any, of the applicant;

C. The current and projected needs that the population  
served or to be served has for the proposed services;

D. The availability of less costly alternatives or more  
effective methods of providing the proposed services;

E. The relationship of the proposed services to the  
existing health care systems;

F. The availability of resources, including health  
personnel, management personnel and funds for capital and  
operating needs, for the provision of the proposed services  
and the availability of alternative uses of the resources  
for the provision of other health services;

G. The relationship, including the organizational  
relationship, of the proposed services to ancillary or  
support services;

H. The special needs and circumstances of health  
maintenance organizations;

I. The special needs and circumstances of those entities  
that provide a substantial portion of their services or  
resources, or both, to individuals not residing in health  
service areas in which the entities are located or in  
adjacent health service areas;

J. The importance of recognizing the public's choice of  
allopathic or osteopathic health services by considering the  
unique needs and circumstances of providers of allopathic  
and osteopathic health care;

K. The costs and methods of any proposed construction or  
modification of a facility, including the costs and methods  
of energy provisions;

L. The probable impact of the proposal being reviewed on  
the costs of providing health services;

M. The need for utilizing new technological developments on  
a limited experimental basis in the absence of sufficient  
data to establish the need for the services;

N. The gains that may be anticipated from innovative  
measures in the organization, financing and delivery of  
health care and the development of comprehensive services  
for the community to be served;

O. The special needs and circumstances of biomedical and  
behavioral research projects that are designed to meet a  
national need and for which local conditions offer special  
advantages; and

P. For any facility located within 30 miles of the state  
border, the gains that may be anticipated from the ability  
to attract health care consumers from out-of-state and the  
ability to provide health care for Maine citizens who  
formerly had to obtain that care out-of-state.

2 3. Health maintenance organizations. Notwithstanding  
4 subsections 1 and 2, if a health maintenance organization or a  
6 health care facility that is controlled, directly or indirectly,  
8 by a health maintenance organization applies for a certificate of  
10 need, the department shall issue a certificate of need if it  
12 finds that:

14 A. Approval of the application is required to meet the  
16 needs of the members of the health maintenance organization  
18 and of the new members that the organization can reasonably  
20 be expected to enroll; and

22 B. The health maintenance organization is unable to  
24 provide, through services or facilities that can reasonably  
26 be expected to be available to the organization, its  
28 institutional health services in a reasonable and  
30 cost-effective manner that is consistent with the basic  
32 method of operation of the organization and that makes the  
34 services available on a long-term basis through physicians  
36 and other health professionals associated with it. In  
38 assessing the availability of the proposed health services  
40 from other providers, the department shall consider only  
42 whether the services from these providers:

44 (1) Would be available under a contract of at least 5  
46 years' duration;

48 (2) Would be available and conveniently accessible to  
50 physicians and other health professionals associated  
with the health maintenance organizations;

(3) Would cost no more than if the services were  
provided by the health maintenance organization; and

(4) Would be available in a manner that is  
administratively feasible to the health maintenance  
organization.

2 4. Required approvals. Approval of proposed capital  
4 expenditures must comply with the following:

6 A. Except as provided in paragraph B, the department shall  
8 issue a certificate of need for a proposed capital  
10 expenditure if:

12 (1) The capital expenditure is required to eliminate  
14 or prevent imminent safety hazards, as defined by  
16 applicable fire, building or life-safety codes and  
18 regulations; to comply with state licensure standards;

2 or to comply with accreditation or certification  
4 standards that must be met to receive reimbursement  
6 under the United States Social Security Act, Title  
8 XVIII, or payments under a state plan for medical  
10 assistance approved under Title XIX of that Act; and

12 (2) The department has determined that the facility or  
14 service for which capital expenditure is proposed is  
16 needed; the obligation of the capital expenditure is  
18 consistent with the state health plan; and the  
20 corrective action proposed by the applicant is the most  
22 cost-effective alternative available under the  
24 circumstances; and

26 B. Those portions of a proposed project that are not  
28 required to eliminate or prevent safety hazards or to comply  
30 with licensure, certification or accreditation standards are  
32 subject to review in accordance with the criteria  
34 established under section 10305.

36 5. Standards applied in certificate of need. The  
38 commissioner shall, in issuing a certificate of need, make the  
40 decision, to the maximum extent practicable, directly related to  
42 criteria established under federal laws and standards or criteria  
44 prescribed in rules adopted by the department pursuant to  
46 subsections 1 to 4 and section 10305.

48 The commissioner may not deny issuance of a certificate of need,  
50 or make the decision subject to fulfillment of a condition on the  
part of the applicant, except if the denial or condition directly  
relates to criteria established under federal laws and standards  
or criteria prescribed in rules adopted by the department in  
accordance with subsections 1 to 4 and section 10305, that are  
pertinent to the application.

2 6. Hospital projects. Notwithstanding subsections 1, 4 and  
4 5, the department may not issue a certificate of need for a  
6 project that is subject to the provisions of section 10805,  
8 subsection 6, and section 10812, if the associated costs exceed  
10 the amount that the commission has determined will have been  
12 credited to the Certificate of Need Development Account pursuant  
14 to section 10812, after accounting for previously approved  
16 projects. A project may not be denied solely on the basis of  
18 exceeding the amount remaining in the Certificate of Need  
20 Development Account or Hospital Development Account in a  
22 particular payment year and must be held for further  
24 consideration by the department in the first appropriate review  
26 cycle beginning after the Certificate of Need Development Account  
28 or Hospital Development Account is credited with additional  
30 amounts. Projects that are carried forward must compete equally

with newly proposed projects. For the purposes of this subsection, a project may be held for a final decision beyond the time frames set forth in section 10357, subsection 4.

7. Intermediate care facilities. The department shall give preference when awarding a certificate of need for new nursing home facilities to those homes being proposed to be constructed in communities with populations of 4,000 or more and that do not currently have a nursing home.

#### §10360. Reconsideration

Any person directly affected by a review may, for good cause shown, request in writing a hearing for the purposes of reconsideration of the decision of the department to issue or to deny a certificate of need. The department, if it determines that good cause has been demonstrated, shall hold a hearing to reconsider its decision. A request for the hearing must be received within 30 days of the department's decision. If the department determines that good cause for a hearing has been demonstrated, the hearing shall commence within 30 days of receipt of the request. A decision must be rendered within 60 days of the commencement of the hearing. The decision may be rendered beyond this time period by mutual consent of the parties. For purposes of this section, a request for a hearing shows good cause if it:

1. New information. Presents significant, relevant information not previously considered by the department;

2. Changes in circumstances. Demonstrates that there have been significant changes in factors or circumstances relied upon by the department in reaching its decision;

3. Failure to follow procedures. Demonstrates that the department has materially failed to follow its adopted procedures in reaching its decision; or

4. Other bases. Provides other bases for a hearing that the department has determined constitute good cause.

#### §10361. Division of project to evade cost limitation prohibited

A health care facility or other party required to obtain a certificate of need may not separate portions of a single project into components, including, but not limited to, site facility and equipment, to evade the cost limitations or other requirements of section 10351.

#### §10362. Exemptions

Except as otherwise specifically provided, nothing in this chapter preempts, replaces or otherwise negates the requirements of any other laws, rules or regulations governing health care facilities. The requirements of this chapter do not apply with respect to:

#### 1. Health care facilities. Any health care facility:

A. Operated by religious groups relying solely on spiritual means through prayer for healing; or

B. For which any construction, modification or other change subject to this chapter has been reviewed and has received approval pursuant to the United States Social Security Act, Section 1122, from appropriate agencies prior to January 1, 1983;

2. Activities; acquisitions. Activities or acquisitions by or on behalf of a health maintenance organization or a health care facility controlled, directly or indirectly, by a health maintenance organization or combination of health maintenance organizations to the extent mandated by the National Health Planning and Resources Development Act of 1974, as amended and its accompanying regulations; and

3. Home health care services. Home health care services offered by a home health care provider before July 13, 1982.

#### §10363. Scope of certificate of need

1. Application determinative. A certificate of need is valid only for the defined scope, premises and facility or person named in the application and is not transferable or assignable.

2. Maximum expenditure. In issuing a certificate of need, the department shall specify the maximum capital expenditures that may be obligated under this certificate. The department shall, by rules adopted pursuant to section 10305, prescribe the method to be used to determine capital expenditure maximums, establish procedures to monitor capital expenditures obligated under certificates and establish procedures to review projects for which the capital expenditure maximum is exceeded or expected to be exceeded.

3. Periodic review. After the issuance of a certificate of need, the department shall periodically review the progress of the holder of the certificate in meeting the timetable for making the service or equipment available or for completing the project specified in the approved application. A certificate of need

2 expires if the project for which the certificate has been issued  
3 is not commenced within 12 months following the issuance of a  
4 certificate. The department may grant an extension of a  
5 certificate for an additional specified time not to exceed 12  
6 months if good cause is shown why the project has not commenced.  
7 The department may require evidence of the continuing feasibility  
8 and availability of financing for a project as a condition for  
9 extending the life of the certificate. In addition if on the  
10 basis of its periodic review of progress under the certificate,  
11 the department determines that the holder of a certificate is not  
12 otherwise meeting the timetable and is not making a good-faith  
13 effort to meet it, the department may, after a hearing, withdraw  
14 the certificate of need. The department shall in accordance with  
15 section 10305 adopt the necessary procedures for withdrawal of  
16 certificates of need.

17 **§10364. Implementation reports**

18 The holder of a certificate of need shall submit a written  
19 report at the end of each 6-month period following its issuance  
20 regarding implementation activities, obligations incurred and  
21 expenditures made and any other matters the department requires.  
22 A summary report must be made when the service or services for  
23 which the certificate of need was issued become operational. For  
24 a period of one year following the implementation of the service  
25 or services for which the certificate of need was granted, the  
26 provider shall file, at 6-month intervals, reports concerning the  
27 costs and utilization. The department, in its rules, shall  
28 prescribe the form and contents of the reports. Any holder of a  
29 certificate of need that has been issued for the construction or  
30 modification of a facility or portion of a facility shall file  
31 final plans and specifications with the department within 6  
32 months, or any other time that the department allows, following  
33 the issuance of the certificate for review by the department to  
34 determine that the plans and specifications are in compliance  
35 with the certificate of need that has been issued and are in  
36 compliance with applicable licensure, life safety code and  
37 accreditation standards. The department may revoke any  
38 certificate of need it has issued if the person to whom it has  
39 been issued fails to file reports or plans and specifications  
40 required by this section on a timely basis.

41 **§10365. Relationship to the United States Social Security Act.**  
42 **Section 1122**

43 **1. Administration of Section 1122 reviews.** The department  
44 shall, in reviewing those capital expenditures that require  
45 review under section 10351 and the United States Social Security  
46 Act, Section 1122, and regulations promulgated thereunder, allow

2 the maximum flexibility permitted under the United States Social  
3 Security Act, Section 1122, consistent with this chapter.

4 **2. Thresholds for review.** The department shall waive  
5 review of proposed capital expenditures by health care facilities  
6 under the United States Social Security Act, Section 1122, and  
7 regulations promulgated thereunder, unless those expenditures are  
8 subject to review under section 10351.

9 **CHAPTER 837**

10 **MAINE HEALTH CARE FINANCE COMMISSION**

11 **SUBCHAPTER I**

12 **GENERAL PROVISIONS**

13 **§10601. Findings and declaration of purpose**

14 **1. Findings.** The Legislature makes the following findings.

15 **A.** The cost of hospital care in Maine has been increasing  
16 much more rapidly than the ability of its citizens to  
17 support these increases. This disparity is detrimental to  
18 the public interest. It diminishes the accessibility of  
19 hospital services to the people of the State and materially  
20 compromises their ability to address other equally  
21 compelling needs.

22 **B.** The current system of financing hospital care is  
23 seriously deficient; has directly contributed to the rapid  
24 rise in costs and is in need of reform in that:

25 (1) The current system of financing hospital care  
26 fails to ensure that hospitals will charge those they  
27 serve no more than is needed to meet their reasonable  
28 financial requirements;

29 (2) The current system of financing hospital care  
30 fails to ensure or reward efficiency and restraint in  
31 hospital spending;

32 (3) The current system of financing hospital care is  
33 inequitable in that it permits hospitals to respond to  
34 the legitimate cost containment efforts of the Federal  
35 Government and the State by increasing their charges to  
36 other patients; and

37 (4) The current system of financing hospital care  
38 threatens the ability of some Maine hospitals to

2 generate sufficient revenues to meet their reasonable  
3 financial requirements and, consequently, will  
4 inevitably have an adverse impact on the accessibility  
5 and the quality of the care available to those whom  
6 they serve.

7 C. The informed development of public policy regarding  
8 hospital and other necessary health services requires that  
9 the State regularly assemble and analyze information  
10 pertaining to the use and cost of these services.

11 2. Purposes. The purposes of this chapter are as follows.

12 A. It is the intent of the Legislature to protect the  
13 public health and promote the public interest by  
14 establishing a hospital financing system that:

15 (1) Appropriately limits the rate of increase in the  
16 cost of hospital care from year to year;

17 (2) Protects the quality and the accessibility of the  
18 hospital care available to the people of the State by  
19 ensuring the financial viability of an efficient and  
20 effective state hospital system;

21 (3) Affords those who pay hospitals a greater role in  
22 determining their reasonable financial requirements  
23 without unduly compromising the ability of those who  
24 govern and manage hospitals to decide how the resources  
25 made available to them are to be used;

26 (4) Encourages hospitals to make the most efficient  
27 use of the resources made available to them in the  
28 provision of quality care to those whom they serve and  
29 the training and continuing education of physicians and  
30 other health professionals;

31 (5) Provides predictability in payment amounts for  
32 payors, providers and patients; and

33 (6) Assures greater equity among purchasers, classes  
34 of purchasers and payors.

35 B. It is further the intent of the Legislature that uniform  
36 systems of reporting health care information be established;  
37 that all health care facilities be required to file reports  
38 in a manner consistent with these systems; and that, using  
39 the least restrictive means practicable for the protection  
40 of privileged medical information, public access to those  
41 reports be ensured.

2 C. It is further the intent of the Legislature that nothing  
3 in this chapter be construed to prescribe the amounts  
4 hospitals may pay for particular goods and services,  
5 including professional services. Similarly, except as  
6 required by the specific provisions of this chapter and  
7 rules adopted under this chapter, the decisions made by  
8 hospitals regarding the amounts to be expended for  
9 particular goods and services may have no effect on the  
10 gross patient service revenue limits established by the  
11 commission.

12 D. It is further the intent of the Legislature that a  
13 uniform system of reporting outpatient health care data be  
14 established; that information be collected from both the  
15 hospital and nonhospital settings regarding specified  
16 procedures and diagnoses; that this information be collected  
17 in a manner that provides meaningful health care information  
18 to providers and consumers; that this information be  
19 collected in such a manner that consumer and provider  
20 utilization of services can be monitored; that the  
21 information be collected in such a manner that outpatient  
22 service charges can be monitored; and that the information  
23 collected be available as a basis of determining public  
24 health policy.

#### 25 §10602. Definitions

26 As used in this chapter, unless the context otherwise  
27 indicates, the following terms have the following meanings.

28 1. Board. "Board" means the Health Facilities Cost Review  
29 Board established pursuant to Public Law 1977, chapter 691,  
30 section 1.

31 2. Border hospital. "Border hospital" means a hospital  
32 located in this State within 10 miles of the New Hampshire border.

33 3. Commission. "Commission" means the Maine Health Care  
34 Finance Commission established by this chapter.

35 4. Direct provider of health care. "Direct provider of  
36 health care" means an individual whose primary current activity  
37 is the provision of health care to other individuals or the  
38 administrator of a facility in which that care is provided.

39 5. Health care facility. Except as provided in subsection  
40 13, "health care facility" means any health care facility  
41 required to be licensed under chapter 807, with the exception of  
42 the Cutler Health Center and the Dudley Coe Infirmary.

2 6. Hospital. "Hospital" means any acute care institution  
4 required to be licensed pursuant to chapter 807, with the  
6 exception of the Cutler Health Center and the Dudley Coe  
8 Infirmiry.

10 7. Independent data organization. Except as provided in  
12 section 10701, subsection 4, "independent data organization"  
14 means an organization of data users, a majority of whose members  
16 are not direct providers of health care services and whose  
18 purposes are the cooperative collection, storage and retrieval of  
20 health care information.

22 8. Major ambulatory service. "Major ambulatory service"  
24 means surgical procedures, chiropractic methodologies or medical  
26 procedures, including diagnostic procedures and therapeutic  
28 radiological procedures, that require special facilities such as  
30 operating rooms or suites, special equipment such as fluoroscopic  
32 equipment or computed tomographic scanners or special rooms such  
34 as a post-procedure recovery room or short-term convalescent room.

36 9. Outpatient services. "Outpatient services" means all  
38 therapeutic or diagnostic health care services rendered to a  
40 person who has not been admitted to a hospital as an inpatient.

42 10. Payment year. "Payment year" means any hospital fiscal  
44 year that begins, or is deemed to begin, on or after October 1,  
46 1984.

48 11. Payor. "Payor" means a 3rd-party payor.

50 12. Person. "Person" means an individual, trust or  
estate, partnership, corporation, including associations, joint  
stock companies and insurance companies, the State or a political  
subdivision or instrumentality, including a municipal corporation  
of the State, or any other legal entity recognized by state law.

13. Provider of health care. "Provider of health care"  
means:

A. A direct provider of health care;

B. A health care facility, as defined in section 10303,  
subsection 11; or

C. A health product manufacturer.

14. Purchaser. "Purchaser" means a natural person  
responsible for full or partial payment for health care services  
rendered by a hospital.

15. Revenue center. "Revenue center" means a functioning  
unit of a hospital which provides identifiable services to  
patients for a charge.

16. Revenue limit. "Revenue limit" means the revenue per  
case, the rate per unit of outpatient service, the total  
outpatient revenue or the total revenue approved by the  
commission under section 10801.

17. Secretary. "Secretary" means the Secretary of the  
United States Department of Health and Human Services.

18. Small hospital. "Small hospital" means a hospital  
having 55 or fewer licensed acute care beds.

19. Third-party payor. "Third-party payor" means any  
entity, other than a purchaser, that is responsible for payment,  
either to the purchaser or the hospital, for health care services  
rendered by a hospital. It includes, but is not limited to,  
federal governmental units responsible for the administration of  
the Medicare program, the department, insurance companies, health  
maintenance organizations and nonprofit hospital and medical  
service corporations. It does not include a state agency or  
subunit of a federal agency other than those directly  
administering programs under which payment is made to hospitals  
for health care services rendered to program beneficiaries.

20. Voluntary budget review organization. "Voluntary  
budget review organization" means a nonprofit organization  
established to conduct reviews of budgets and approved by the  
board pursuant to Public Law 1977, chapter 691, section 1.

#### §10603. Maine Health Care Finance Commission

1. Establishment. The Maine Health Care Finance  
Commission, established by Title 5, section 12004-E, subsection  
1, is defined as follows.

A. The Maine Health Care Finance Commission is an  
independent executive agency.

B. The commission is composed of 5 members, who are  
appointed by the Governor, subject to review by the joint  
standing committee of the Legislature having jurisdiction  
over human resource matters and confirmation by the  
Legislature.

Persons eligible for appointment to, or to serve on, the  
commission must be individuals conversant with the



2 organization, delivery or financing of health care. At least  
4 4 of the 5 members must be consumers. At least one of the 5  
6 members, whether or not a consumer member, must be an  
8 individual who, within the 10 years preceding appointment,  
10 has had at least 5 years' experience as either a hospital  
12 trustee or a hospital official. For purposes of this  
14 section, "consumer" means a person who is neither affiliated  
16 with nor employed by any 3rd-party payor, any provider of  
18 health care or any association representing these providers;  
20 provided that neither membership in nor subscription to a  
22 service plan maintained by a nonprofit hospital and medical  
24 service organization, nor enrollment in a health maintenance  
26 organization, nor membership as a policyholder in a mutual  
insurer or coverage under a policy issued by a stock  
insurer, nor service on a governmental advisory committee,  
nor employment by, or affiliation with, a municipality,  
disqualifies a person from serving as a consumer member of  
the commission.

20 C. All appointments are for a term of 4 years each, except  
22 that a member appointed to fill a vacancy in an unexpired  
24 term serves only for the remainder of that term. Members  
26 hold office until the appointment and confirmation of their  
successors. No member may be appointed to more than 2  
consecutive 4-year terms.

26 D. The Governor may remove any member who would no longer be  
28 eligible to serve on the commission by virtue of the  
30 requirements of paragraph B or who becomes disqualified for  
neglect of any duty required by law.

32 E. The Governor shall appoint a chair and a vice-chair, who  
34 serve in these capacities at the Governor's pleasure.

36 **2. Meetings. The commission meets as follows.**

36 A. The commission meets from time to time as required to  
38 fulfill its responsibilities. Meetings must be called by the  
40 chair or by any 3 members and, except in the event of an  
42 emergency meeting, must be called by written notice.  
44 Meetings must be announced in advance and open to the  
46 public, to the extent required by Title 1, chapter 13,  
48 subchapter I.

46 B. Three members of the commission constitute a quorum. No  
48 action of the commission is effective without the  
concurrence of at least 3 members.

2 3. Compensation. Each member of the commission is entitled  
4 to compensated according to the provisions of Title 5, chapter  
6 379.

6 **§10604. Executive director and staff**

6 The commission shall appoint an executive director, who has  
8 experience in the organization, financing or delivery of health  
10 care and who shall perform the duties delegated to the executive  
12 director by the commission. The executive director serves at the  
14 pleasure of the commission, and the salary of the executive  
16 director must be set by the commission within the range  
18 established by Title 2, section 6-B. The executive director shall  
20 appoint a deputy director, who shall perform the duties delegated  
22 by the executive director. The deputy director serves at the  
24 pleasure of the executive director at a salary level set by the  
26 executive director within the range established by Title 2,  
28 section 6-B. The commission may employ other staff it deems  
30 necessary. The appointment and compensation of other staff is  
32 subject to the Civil Service Law.

26 **§10605. Legal counsel**

26 The commission shall appoint, with the approval of the  
28 Attorney General, a general counsel and other staff attorneys it  
30 deems necessary. The general counsel serves at the pleasure of  
32 the commission at a salary level set by the commission within the  
34 range established by Title 2, section 6-B. Other staff attorneys  
36 serve at the pleasure of the commission and their salaries must  
38 be set by the commission. The general counsel and any other staff  
40 attorneys may represent the commission or its staff in any  
42 proceeding, investigation or trial. Private counsel may be  
44 employed, from time to time, with the approval of the Attorney  
46 General.

36 **§10606. Powers of commission generally**

38 In addition to the powers granted to the commission  
40 elsewhere in this chapter, the commission is granted the  
42 following powers.

42 1. Rulemaking. The commission may adopt, amend and repeal  
44 rules necessary for the proper administration and enforcement of  
46 this chapter, subject to the Maine Administrative Procedure Act,  
48 Title 5, chapter 375.

46 2. Committees. In addition to the committees required to  
48 be established under section 10817, the commission may create  
committees from its membership and appoint advisory committees

2 consisting of members, other individuals and representatives of  
4 interested public and private groups and organizations.

6 3. Receipt of grants, gifts and payments. The commission  
8 may solicit, receive and accept grants, gifts, payments and other  
10 funds and advances from any person, other than a provider of  
12 health care or a 3rd-party payor and enter into agreements with  
14 respect to those grants, payments, funds and advances, including  
16 agreements that involve the undertaking of studies, plans,  
18 demonstrations or projects. The commission may only accept funds  
20 from providers of health care or from 3rd-party payors in  
22 accordance with subsection 9 and section 10611.

24 4. Studies and analyses. The commission may conduct  
26 studies and analyses relating to health care costs, the financial  
28 status of any facility subject to this chapter and any other  
30 related matters it deems appropriate.

32 5. Grants. The commission may make grants to persons,  
34 other than hospitals, to support research or other activities  
36 undertaken in furtherance of the purposes of this chapter. The  
38 commission may only make grants to hospitals in accordance with  
40 section 10811.

42 6. Contract for services. The commission may contract with  
44 anyone other than commission members for any services necessary  
46 to carry out the activities of the commission. Any party entering  
48 into a contract with the commission is prohibited from releasing,  
50 publishing or otherwise using any information made available to  
it under its contracted responsibilities without the specific  
written authorization of the commission.

7. Audits. The commission may, during normal business  
hours and upon reasonable notification, audit, examine and  
inspect any records of any health care facility to the extent  
that the activities are necessary to carry out its  
responsibilities. To the extent feasible, the commission shall  
avoid duplication of audit activities regularly performed by  
payors.

8. Public hearings. The commission may conduct any public  
hearings necessary to carry out its responsibilities.

9. Fees. The commission may charge and retain fees to  
recover the reasonable costs incurred both in reproducing and  
distributing reports, studies and other publications and in  
responding to requests for information filed with the commission.

**\$10607. Public information**

2 1. Public access. Any information, except confidential  
4 commercial information obtained from a payor or privileged  
6 medical information, and any studies or analyses that are filed  
8 with, or otherwise provided to, the commission under this chapter  
10 must be made available to any person upon request, provided that  
12 individual patients or health care practitioners are not directly  
14 identified. The commission shall adopt rules governing public  
16 access in the least restrictive means possible to information  
18 that may indirectly identify a particular patient or health care  
20 practitioner.

22 2. Notice and comment period. The commission shall adopt  
24 rules establishing criteria for determining whether information  
26 is confidential commercial information or privileged medical  
28 information and establishing procedures to afford affected payors  
30 or hospitals, as applicable, notice and opportunity to comment in  
32 response to requests for information that are considered  
34 confidential or privileged.

36 3. Public health studies. The commission, by rule or  
38 order, may allow exceptions to the rules adopted pursuant to  
40 subsection 1 solely to the extent authorized in this subsection.

42 A. For purposes of this subsection, "identifying  
44 information" means information derived from data on file  
46 with the commission that may directly or indirectly identify  
48 patients or health care practitioners.

50 B. The commission may approve the use by the department of  
identifying information in a manner not otherwise permitted  
by the public access rules adopted under subsection 1, if  
the investigation in which the information will be used is  
consistent with the rules adopted by the commission under  
paragraph C.

C. The commission shall adopt rules governing the  
conditions under which and purposes for which the department  
may use identifying information in a manner that is  
inconsistent with subsection 1. These rules must ensure  
that:

(1) Identifying information is used only to gain  
access to medical records and other medical information  
pertaining to an investigation designed to accomplish  
public health research of substantial public importance;

(2) Medical information about any patient identified  
by name is not sought from any person without the  
consent of that patient except when the information  
sought pertains solely to verification or comparison

2 of health data that the department is otherwise  
4 authorized by law to collect and the commission finds  
6 that confidentiality can be adequately protected  
8 without patient consent:

10 (3) Those persons conducting the investigation do not  
12 disclose medical information about any patient  
14 identified by name to any other person without that  
16 patient's consent:

18 (4) Those persons gaining access to medical  
20 information about an identified patient use that  
22 information to the minimum extent necessary to  
24 accomplish the purposes of the investigation for which  
26 approval was granted. Information regarding patients  
28 identified by name may not be transferred by the  
30 investigators:

32 (5) The protocol for any investigation is designed to  
34 preserve the confidentiality of all medical information  
36 that can be associated with identified patients, to  
38 specify the manner in which contact is made with  
40 patients, and to maintain public confidence in the  
42 protection of confidential information; and

44 (6) An advisory body, independent of the department,  
46 is established and charged with responsibility for  
48 approving the protocol of the investigation, overseeing  
50 the conduct of the investigation to ensure consistency  
with the protocol and the commission's rules, and  
assessing both the scientific validity of the  
investigation and its effects upon patients. The  
advisory body must include a consumer representative, a  
practicing physician and a member of the Maine Medical  
Records Association.

D. The commission may not grant approval under this  
subsection if the proposed identification of or contact with  
patients or health care practitioners would violate any  
state or federal law or diminish the confidentiality of  
medical information or the public's confidence in the  
protection of that information in a manner that outweighs  
the expected benefit to the public of the proposed  
investigation.

#### §10608. Reports

1. Annual reports. The commission shall prepare the  
following annual reports.

A. Prior to January 1st, the commission shall prepare and  
transmit to the Governor and to the Legislature a report of  
its operations and activities during the previous year. This  
report must include the facts, suggestions and policy  
recommendations the commission considers necessary. The  
report must include:

(1) Data citations, to the extent possible, to support  
the factual statements in the report;

(2) The administrative requirements for compliance  
with the system by hospitals to the extent possible;

(3) The commission's view of the likely future impact  
on the health care financing system of trends in the  
use or financing of hospital care, including federal  
reimbursement policies, demographic changes,  
technological advances and competition from other  
providers;

(4) The commission's view of likely changes in  
apportionment of revenues among classes of payers and  
purchasers as a result of trends set out in  
subparagraph (3);

(5) The relationship of the advisory committees to the  
commission;

(6) Comparisons of the impact of the hospital care  
financing system with relevant regional and national  
data, to the extent that the data is available;

(7) To the extent available, information on trends in  
utilization; and

(8) Demonstration projects considered or approved by  
the commission.

B. The commission shall prepare a report of the annual  
savings to the payors as a result of this chapter and shall  
submit this report annually to the Bureau of Insurance. The  
Bureau of Insurance shall take this savings into account in  
approving health insurance rates. A copy of this report  
must be submitted to the joint standing committee of the  
Legislature having jurisdiction over human resource matters.

2. Reports to legislative committee. While the Legislature  
is in session, the commission or its staff shall, upon request of  
the joint standing committee of the Legislature having  
jurisdiction over human resource matters, appear before the

committee to discuss its annual reports and any other items requested by the committee.

3. Consumer reports. The commission shall, from time to time as it deems appropriate, publish and disseminate any information that would be useful to consumers in making informed choices in obtaining health care, including the results of any studies or analyses undertaken by the commission.

4. Review by health care facility. If any studies or analyses undertaken by the commission pursuant to section 10606, subsection 4, or if any consumer information developed pursuant to subsection 3 directly or indirectly identify a particular health care facility, the health care facility must be afforded a reasonable opportunity, before public release, to review and comment upon the studies, analyses or other information.

5. Review of exception threshold and variable adjustment factor. The basis for, and the commission's experience with, the threshold on exception requests in section 10805, subsection 14, and the variable adjustment factor in section 10805, subsection 2, must be reviewed after these provisions have been in operation for 2 years.

#### §10609. Penalties

Any person who knowingly violates any provision of this chapter or any valid order or rule adopted pursuant to this chapter, or who willfully fails, neglects or refuses to perform any of the duties imposed under this chapter, commits a civil violation for which a forfeiture of not more than \$1,000 a day may be adjudged, unless specific penalties are elsewhere provided. A forfeiture imposed under this section may not exceed \$25,000 for any one occurrence.

#### §10610. Enforcement

Upon application of the commission or the Attorney General, the Superior Court has full jurisdiction to enforce all orders of the commission and the performance by providers of health care of all duties imposed upon them by this chapter and any valid regulations adopted pursuant to this chapter.

#### §10611. Funding of the commission

1. Assessments. Every hospital subject to regulation under this chapter is subject to an assessment of not more than .15% of its gross patient service revenues. Notwithstanding any other provision of law, the commission shall reduce the assessment to hospitals by \$159,077 in fiscal year 1993-94 and by \$276,106 in

fiscal year 1994-95. The commission shall determine the assessments annually prior to July 1st and shall assess each hospital for its pro rata share. Each hospital shall pay the assessment charged to it on a quarterly basis, with payments due on or before July 1st, October 1st, January 1st and April 1st of each year.

2. Legislative approval of the budget. The assessments and expenditures provided in this section are subject to legislative approval in the same manner as the budget of the commission is approved. The commission shall also report annually, before February 1st, to the joint standing committee of the Legislature having jurisdiction over human resource matters on its planned expenditures for the year and on its use of funds in the previous year.

3. Deposit of funds. All revenues derived from assessments levied against the hospitals described in this section must be deposited with the Treasurer of State in a separate account to be known as the Health Care Finance Commission Fund.

4. Use of funds. The commission may use the revenues provided in this section to defray the costs incurred by the commission pursuant to this chapter, including salaries, administrative expenses, data system expenses, consulting fees and any other reasonable costs incurred to administer this chapter. The commission may not use the revenues provided in this section to make grants pursuant to section 10606, subsection 5, unless the allocation of revenues to this purpose has been approved in accordance with subsection 2.

5. Unexpended funds. Except as specified in this section, any amount of the funds that is not expended at the end of a fiscal year does not lapse, but must be carried forward to be expended for the purposes specified in this section in succeeding fiscal years. Any unexpended funds in excess of 7% of the total annual assessment authorized in subsection 1 must, at the option of the commission, either be presented to the Legislature in accordance with subsection 2 for reallocation and expenditure for commission purposes or used to reduce the hospital assessment in the following fiscal year.

6. Nonhospital data collection expenses. The funds required to support the collection, storage and analysis by the commission of data from providers of health care other than hospitals must be provided by means of the assessment provided for in subsection 1.

#### §10612. Program audit and evaluation

1. Sunset provisions. The commission is subject to review and termination or continuation by the Legislature in accordance with Title 3, chapter 33.

2. Evaluation. In addition to the requirements as to contents of justification reports under Title 3, section 924, the commission shall include in its report an evaluation of the impact of the hospital financing system established under this chapter on the quality of hospital care, access to hospital care and the financial stability of hospitals in the State.

## SUBCHAPTER II

### HEALTH FACILITIES INFORMATION DISCLOSURE

#### §10701. Uniform systems of reporting generally

1. Establishment. The commission shall, after consultation with appropriate advisory committees and after holding public hearings, establish uniform systems of reporting financial and health care information as required under this chapter.

2. Information required. In addition to any other requirements applicable to specific categories of health care facilities, as set forth in section 10702, and in subchapters III and IV and pursuant to rules adopted by the commission for form, medium, content and time for filing, each health care facility shall file with the commission the following information:

A. Financial information, including costs of operation, revenues, assets, liabilities, fund balances, other income, rates, charges, units of services, wage and salary data and any other financial information the commission deems necessary for the performance of its duties;

B. Scope of service information, including bed capacity, by service provided, special services, ancillary services, physician profiles in the aggregate by clinical specialties, nursing services and any other scope of service information the commission deems necessary for the performance of its duties; and

C. A completed uniform hospital discharge data set, or comparable information, for each patient discharged from the facility after June 30, 1983; and for each major ambulatory service listed pursuant to subsection 13.

3. Additional information on ambulatory surgery. Pursuant to rules adopted by the commission for form, medium, content and time for filing, each provider of health care shall file with the

commission a completed data set, comparable to data filed by health care facilities under subsection 2, paragraph C, for each ambulatory surgery listed pursuant to subsection 13. This subsection does not require duplication of information also required to be filed under subsection 2.

4. Storage of data. The commission may, subject to section 10606, subsection 6, contract with any entity, including an independent data organization, to store discharge data filed with the commission and comparable data filed with the commission with respect to major ambulatory services. For purposes of this subsection, "independent data organization" means an organization of data users, a majority of whose members are neither providers of health care, organizations representing providers of health care, nor individuals affiliated with those providers or organizations, and whose purposes are the cooperative collection, storage and retrieval of health care information.

5. Previously filed discharge data. The commission may direct the transfer to its possession and control of all discharge data required to have been filed with an independent data organization pursuant to the Health Facilities Information Disclosure Act prior to July 1, 1983. In the event that any such discharge data have not been filed with an independent data organization as of the effective date of this chapter, the commission shall direct such discharge data to be filed with the commission.

6. Previously filed financial data. The commission may direct the transfer to its possession and control of all financial reports and data required to have been filed with the Health Facilities Cost Review Board or with a voluntary budget review organization pursuant to the Health Facilities Information Disclosure Act prior to September 23, 1983. In the event that any such reports or data have not been filed as of September 23, 1993, the commission shall direct the reports or data to be filed with the commission. The commission may require the filing of financial reports and data that, during the period from July 1, 1983 to September 23, 1993, would have been required to be filed pursuant to the board's regulations in effect on June 30, 1983, had the Health Facilities Information Disclosure Act not been repealed effective July 1, 1983. Except for reports and data as have been made available to the Health Facilities Cost Review Board prior to July 1, 1983, the commission shall compensate any voluntary budget review organization for the reasonable costs incurred in transferring reports and data, provided that the voluntary budget review organization shall cooperate to the fullest extent possible in minimizing the costs incurred.

2 7. Consideration of other systems. To the extent feasible,  
3 the commission in establishing uniform systems shall take into  
4 account the data requirements of relevant programs and the  
5 reporting systems previously established by the Health Facilities  
6 Cost Review Board.

8 8. More than one licensed health facility operated. Where  
9 more than one licensed health facility is operated by the  
10 reporting organization, the information required by this chapter  
11 must be reported for each health facility separately.

12 9. More than one location. When a provider of health care  
13 operates in more than one location, the commission may require  
14 that information be reported separately for each location.

16 10. Certification required. The commission may require  
17 certification of financial reports as it may specify and may  
18 require attestation as to these statements from responsible  
19 officials of the facility that these reports have to the best of  
20 their knowledge and belief been prepared in accordance with the  
21 requirements of the commission.

22 11. Verification. If a further investigation is considered  
23 necessary or desirable to verify the accuracy of information in  
24 reports made under this chapter, the commission may examine  
25 further any records and accounts as the commission by rule  
26 provides. As part of the examination, the commission may conduct  
27 a full or partial audit of all those records and accounts.

30 12. Filing schedules. The information and data required  
31 pursuant to this chapter must be filed on an annual basis or more  
32 frequently as specified by the commission. The commission shall  
33 establish the effective date for compliance with the required  
34 uniform systems.

36 13. Data lists. The commission shall annually by rule  
37 prepare a list of major ambulatory services for which data is to  
38 be collected pursuant to subsection 2, paragraph C, and a list of  
39 ambulatory surgeries for which data is to be collected pursuant  
40 to subsection 3. The commission shall distribute the lists to  
41 those providers of health care that are required to file  
42 information under subsection 2 or 3.

#### 44 §10702. Hospital reporting; additional requirements

##### 46 1. Fiscal years. Hospital fiscal years are be as follows.

48 A. Unless otherwise approved by the commission, the fiscal  
49 year of each hospital subject to this chapter is the fiscal  
50 year on which it operated as of May 1, 1983.

2 B. For purposes of this chapter, a fiscal year that  
3 commences between September 20th and September 30th is  
4 deemed to be a fiscal year commencing October 1st of the  
5 same calendar year.

6 2. Hospital reporting. The commission shall, after  
7 consultation with appropriate advisory committees and after  
8 public hearing, direct hospitals to use a uniform system of  
9 financial reporting. Subject to the requirements of section  
10 10701, subsection 7, this system must include any cost allocation  
11 and revenue allocation methods the commission prescribes for use  
12 in reporting revenues, expenses, other income and other outlays,  
13 assets, liabilities and units of service.

16 3. Modification of systems. The commission may modify the  
17 financial and clinical reporting systems to allow for differences  
18 in the scope or type of services and in financial structure among  
19 the various sizes, categories or types of hospitals subject to  
20 this chapter.

22 4. Medical record abstract data. In addition to the  
23 information required to be filed under section 10701 and pursuant  
24 to rules adopted by the commission for form, medium, content and  
25 time of filing, each hospital shall file with the commission any  
26 medical record abstract data the commission prescribes.

28 5. Merged data. The commission may require the discharge  
29 data submitted pursuant to section 10701, subsection 2, and any  
30 medical record abstract data required pursuant to subsection 4,  
31 to be merged with associated billing data.

34 6. Authority to obtain information. Nothing in this  
35 subchapter limits the commission's authority to obtain  
36 information from hospitals that it deems necessary to carry out  
37 its duties under subchapter III.

#### 38 §10703. Health care information

40 1. Development of health care information systems. In  
41 addition to the commission's authority to obtain information to  
42 carry out the specific provisions of this subchapter, the  
43 commission may require providers of health care to furnish  
44 information with respect to the nature and quantity of services  
45 provided to the extent necessary to develop proposals for the  
46 modification, refinement or expansion of the systems of  
47 information disclosure established under this subchapter. The  
48 commission's authority under this subsection includes the design  
49 and implementation of pilot information reporting systems  
50 affecting selected categories of providers of health care or

representative samples of providers. Pilot information reporting systems established under this subsection may be implemented on a statewide basis.

2. Demonstration project. The commission may establish a demonstration project requiring the submission of data from all providers with respect to services listed in subsection 3 in nonhospital settings. The demonstration project may be implemented on a statewide basis. The demonstration project must be designed to test the usefulness of data to consumers, the value of the data in determining whether hospital-based health care costs and services are shifting to nonhospital-based settings, the feasibility of using standard claim forms for the submission of data, how the cost of data collection is balanced with the value of the data, whether patient-specific or aggregate data can best address the purposes for which the data is sought, and whether providers should be compensated for providing the data. By January 1, 1997, the commission shall submit to the joint standing committee of the Legislature having jurisdiction over human resource matters a report that addresses each of these criteria. The report must include the commission's recommendation regarding whether the demonstration program should continue, along with necessary implementing legislation.

3. Covered services. The services for which data may be required under subsection 2 are:

A. Computed tomography services;

B. Magnetic resonance imaging services;

C. Cardiac angiography;

D. Cardiac catheterization services; and

E. Thallium scanning.

4. Information on mandated services. The commission shall require hospital and nonhospital providers of mammography services to furnish information with respect to those services, for the purpose of assisting in the evaluation of the social and financial impact, and the efficacy of the mandated benefit for screening mammograms under Title 24, section 2320-A and Title 24-A, sections 2745-A and 2837-A. The information that may be collected includes the location of mammography units, purchase of new mammography units, the number of screening and diagnostic mammograms performed, the charge per mammogram and the method and amount of payment, and the number of cancers detected by screening mammograms.

### SUBCHAPTER III

#### HOSPITAL CARE FINANCING SYSTEM

##### §10801. Establishment of revenue limits and apportionment methods

1. Authority. The commission may establish and approve revenue limits and apportionment methods for individual hospitals.

2. Criteria. Subject to more specific provisions contained in this subchapter, the revenue limits and apportionment methods established by the commission must ensure that:

A. The financial requirements of a hospital are reasonably related to its total services;

B. A hospital's patient service revenues are reasonably related to its financial requirements; and

C. Rates are set equitably among all payors, purchasers or classes of purchasers of health care services without undue discrimination or preference.

3. Average revenue per case payment system. The commission shall establish an average revenue per case payment system.

The per case system must have 3 components.

A. The commission shall establish and approve limits on the average revenue per case mix adjusted inpatient admission, exclusive of the capital-related revenues subject to the component established under paragraph C.

B. Outpatient service revenue limits must be established pursuant to this paragraph. Nothing in this paragraph prohibits the commission from refining or modifying the method of adjusting for out-patient volume.

(1) For payment years beginning or deemed to begin before October 1, 1992, the commission shall establish revenue limits for outpatient services using methods consistent with those used in setting gross patient service revenue limits for payment years beginning prior to October 1, 1990, except that the capital-related revenues subject to the component established under paragraph C must be excluded.

(2) For payment years beginning or deemed to begin between September 30, 1992 and September 30, 1995, the commission may establish a method of regulating

2 outpatient service revenue that is consistent with  
3 subparagraph (3). Until a method consistent with  
4 subparagraph (3) takes effect, the commission shall use  
5 a method consistent with subparagraph (1).

6 (3) For payment years beginning or deemed to begin on  
7 or after October 1, 1995, the commission shall regulate  
8 outpatient services by setting the rate per unit of  
9 service or per classification, exclusive of the  
10 capital-related revenues subject to the component  
11 established under paragraph C.

12 C. The commission shall establish and approve a separate  
13 gross patient service revenue limit component for those  
14 revenues necessary to provide a reasonable opportunity for  
15 each hospital to recover its total allowance for facilities  
16 and equipment as determined under section 10805, subsection  
17 4. This component must limit total revenues rather than  
18 revenues per admission or unit of service.

19 D. For payment years beginning before October 1, 1992, the  
20 commission may combine all or part of the component  
21 established under paragraph C with the component established  
22 under paragraph B.

23 4. Total revenue system. The commission shall establish a  
24 total revenue system, that may be chosen by hospitals that are in  
25 relatively self-contained catchment areas, are not in direct  
26 competition with other hospitals and that meet certain criteria  
27 developed by the commission.

28 A. Criteria must include, but not be limited to:

29 (1) Distance of the hospital in miles and travel time  
30 from the nearest other hospital; and

31 (2) Utilization of existing hospital services by  
32 patients within the catchment area.

33 B. The commission shall establish a procedure by which, and  
34 time limits within which, an eligible hospital may initially  
35 elect to participate in the total revenue system. The  
36 commission shall also establish the procedures and  
37 conditions under which an eligible hospital may choose to be  
38 regulated under the per case or total revenue system after  
39 the period provided for the initial election. These  
40 conditions may include, but are not limited to, reasonable  
41 limits on the frequency with which an eligible hospital may  
42 choose to transfer from one regulatory system to the other.

2 C. A hospital that is not eligible to choose to participate  
3 in the total revenue system may request the commission's  
4 approval to participate in the total revenue system for a  
5 period of no more than 2 years. The commission may approve  
6 the request if it determines that the hospital is  
7 experiencing significant financial problems and is in the  
8 process of making a transition to a different scope or type  
9 of service. The commission shall require the hospital to  
10 establish that the approval of its request to participate in  
11 the total revenue system would be consistent with the  
12 orderly and economic development of the health care system.

13 D. The commission shall establish the total gross patient  
14 service revenue limit for inpatient and outpatient services  
15 for hospitals that apply for this system and meet the  
16 established criteria.

17 5. Excess charges prohibited. No hospital may charge for  
18 services at rates that are inconsistent with the revenue limits  
19 approved by the commission.

20 6. Specialty hospitals. The commission shall provide  
21 alternative regulatory options for hospitals defined by the  
22 commission as being specialty hospitals.

23 7. Return on investment. The revenue limits established by  
24 the commission under this chapter must, in the case of a  
25 proprietary, for-profit hospital, be established in a manner that  
26 provides a reasonable opportunity for the hospital to earn an  
27 amount that will provide a fair return to owners based on their  
28 investment in hospital resources.

29 **§10802. Definition of elements of base year financial**  
30 **requirements**

31 The commission shall define by rule the elements of base  
32 year financial requirements of hospitals.

33 1. Medicare costs. These elements must consist of acute  
34 patient care related costs exclusive of capital costs and must  
35 include those salaries and wages, fringe benefits, contracted  
36 services, supplies and other noncapital expenses which are  
37 defined as allowable costs under the Medicare program established  
38 pursuant to the United States Social Security Act, Title XVIII,  
39 including any offsets of operating revenues as prescribed by  
40 Medicare regulations.

41 2. Other costs. In addition, the following costs must be  
42 included:



2 A. Costs associated with community education programs;

4 B. Costs associated with the recruitment of  
6 nonhospital-based physicians;

8 C. Compensation paid to physicians for professional  
10 services to the extent that the compensation is included on  
12 a hospital's trial balance of expenses as reported in its  
14 Medicare cost report; and

16 D. Any other costs, exclusive of development activity  
18 costs, the commission deems necessary and appropriate.

20 All costs must be offset by operating revenues as prescribed by  
22 Medicare regulations.

24 §10803. Computation of base year financial requirements

26 1. Base year. The base year for each hospital is its most  
28 recent fiscal year ending on or before June 30, 1984, for which  
30 there is a budget that was approved prior to July 1, 1983, by a  
32 voluntary budget review organization. If a hospital failed to  
34 secure, prior to July 1, 1983, the approval by a voluntary budget  
36 review organization of its budget for its most recent fiscal year  
38 ending on or before June 30, 1984, the base year for the hospital  
40 is its most recent fiscal year ending on or before June 30, 1983.

42 2. Computation. The commission shall compute base year  
44 financial requirements for each hospital subject to this chapter  
46 that was in operation on December 31, 1982, as follows.

48 A. In computing base year financial requirements for each  
50 hospital whose base year is its most recent fiscal year  
ending on or before June 30, 1984, the commission shall  
adjust, or require to be adjusted, the budget approved by  
the voluntary budget review organization to conform to the  
definition of base year financial requirements established  
in accordance with section 10802. The commission shall make  
appropriate adjustments to the base year financial  
requirements to reflect increases or decreases in financial  
requirements occurring between the base year and the  
commencement of the hospital's first payment year resulting  
from the factors specified in section 10805, subsections 1,  
3, 5, 7 to 9 and subsection 10, paragraph B, provided that  
any rate of increase, on a per case basis, from the base  
year to the commencement of the hospital's first payment  
year, may not exceed the rate of increase for inpatient  
hospital costs allowed under the Tax Equity and Fiscal  
Responsibility Act of 1982.

2 B. In computing base year financial requirements for each  
4 hospital whose base year is its most recent fiscal year  
6 ending on or before June 30, 1983, the commission shall  
8 adjust, or require to be adjusted, the hospital's audited  
10 Medicare cost report to conform to the definition of base  
12 year financial requirements established in accordance with  
14 section 10802. The commission shall make appropriate  
16 adjustments to the base year financial requirements to  
18 reflect increases or decreases in financial requirements  
20 occurring between the base year and the commencement of the  
22 hospital's first payment year resulting from the factors  
24 specified in section 10805, subsections 1, 3, 5, 7 to 9 and  
26 subsection 10, paragraph B, provided that any rate of  
28 increase, on a per case basis, from the base year to the  
30 commencement of the hospital's first payment year, may not  
32 exceed the rate of increase for inpatient hospital costs  
34 allowed under the Tax Equity and Fiscal Responsibility Act  
36 of 1982.

38 3. New hospitals. The commission shall establish, by rule,  
40 a methodology for computing base year financial requirements for  
42 hospitals subject to this chapter that commence operations on or  
44 after January 1, 1983. This methodology may include reasonable  
46 limits based on the costs approved pursuant to the Maine  
48 Certificate of Need Act.

50 §10804. Computation of payment year financial requirements

The commission shall determine the payment year financial  
requirements of each hospital as follows.

1. Payment years. Subject to the provisions of section  
10702, subsection 1, payment years of each hospital must  
coincide with its fiscal years and the first payment year of each  
hospital must be its first fiscal year commencing on or after  
October 1, 1984.

2. First year. The payment year financial requirements for  
each hospital for the first payment year must be the base year  
financial requirements computed in accordance with section 10803  
and adjusted by the commission in accordance with section 10805.

3. Subsequent years. The payment year financial  
requirements for each hospital for the 2nd payment year and each  
subsequent payment year must be the payment year financial  
requirements determined for the immediately preceding payment  
year adjusted by the commission in accordance with section 10805.

§10805. Adjustments to financial requirements

2       The commission shall establish, by rule, methodologies and  
4       procedures for consideration and inclusion of the adjustments to  
6       hospital financial requirements set forth in this section. In  
8       addition to providing for the submission of information required  
10       by the commission, these rules must address the manner in which  
12       hospitals will be afforded an opportunity to submit information  
14       they wish to be considered in determining adjustments under this  
16       section.

18       1. Economic trend factor. In determining payment year  
20       financial requirements, the commission shall include an  
22       adjustment for the projected impact of inflation on the prices  
24       paid by hospitals for the goods and services required to provide  
26       patient care. In order to measure and project the impact of  
28       inflation, the commission shall establish and use the following  
30       data:

32       A. Homogeneous classifications of hospital costs for goods  
34       and services and of capital costs, called "cost components;"

36       B. Estimates or determinations of the proportion of  
38       hospital costs in each cost component; and

40       C. Identification or development of proxies that measure  
42       the reasonable increase in prices, by cost component, that  
44       the hospitals would be expected to pay for goods and  
46       services.

48       The proxy or proxies chosen by the commission to measure the  
50       reasonable increase in employee compensation must reflect the  
52       experience of workers in the Northeast and regions of this State  
54       who are reasonably representative of professional medical  
56       personnel and other hospital workers.

58       The commission may also consider the discrepancies, if any,  
60       between the projected and actual inflation experience of  
62       noncompensation proxies in preceding payment years.

64       The commission may, from time to time during the course of a  
66       payment year, in accordance with duly adopted rules, make further  
68       adjustments if it obtains substantial evidence that its initial  
70       projections for the current payment year will be in error.

72       The commission may, in accordance with rules, make a further  
74       positive or negative adjustment after the close of the payment  
76       year to the amount otherwise allowed for the impact of inflation,  
78       on the basis of the reasonable cost of liability insurance during  
80       that payment year.

2       2. Variable adjustment factor. In determining payment year  
4       financial requirements, the commission shall include an  
6       adjustment based upon a factor, fixed by the commission between  
8       0.5% and 2.0%, that must be added to the percentage adjustment  
10       for inflation determined pursuant to subsection 1. This factor  
12       must reflect the following:

14       A. Changes in technology not covered by certificate of need  
16       projects, including changes in drugs and supplies;

18       B. Changes in medical practice;

20       C. Increased severity of illness not accounted for by the  
22       case mix system and the aging of the population; and

24       D. Other changes specified by the commission that are  
26       expected to affect a substantial number of Maine hospitals.

28       3. Case mix. Adjustments may be made for changes in case  
30       mix as follows.

32       A. In determining payment year financial requirements, the  
34       commission shall include an adjustment for the projected  
36       impact on the hospital's financial requirements of changes  
38       in the acuity of illness of the hospital's patients.

40       In order to measure and project the impact of changes in  
42       acuity, the commission shall establish and use the following  
44       data:

46       (1) Classifications of hospital patient admissions,  
48       called "patient classification," that are medically  
50       meaningful and that have relatively similar resource  
52       requirements for their treatment;

54       (2) Estimates or determinations of the average patient  
56       care costs of treating patients, including nursing  
58       costs, in each patient classification, that may not  
60       include any costs that are fixed or largely independent  
62       of the volume of services provided; and

64       (3) Measurements of the reasonable impact on each  
66       hospital's costs of changes in the distribution of the  
68       hospital's patients over the patient classifications.

70       It may also consider discrepancies, if any, between the  
72       projected and actual changes in case mix in the preceding  
74       payment years.

2 B. The commission may, for hospitals regulated under the  
4 total revenue system, from time to time during the course of  
6 a payment year, in accordance with rules, make further  
8 adjustments, on an interim or final basis, in there are  
10 discrepancies between projected and actual case mix changes  
in the preceding payment years or if it obtains substantial  
evidence that its initial projections for the current  
payment year will be in error. In making the further  
adjustments, the commission shall consider the special needs  
and circumstances of small hospitals.

12 4. Facilities and equipment. In determining payment year  
14 financial requirements, the commission shall include an allowance  
for the cost of facilities and equipment.

16 A. An allowance for the cost of facilities and fixed  
18 equipment must include allowances for straight line  
20 depreciation and interest expense, less interest income on  
debt service reserve funds available to the hospital.

22 In determining payment year financial requirements, the  
24 commission shall include an adjustment in the allowance for  
26 facilities and fixed equipment to reflect changes in  
28 interest expense and to reflect any new increases or  
30 decreases in capital costs that result from the acquisition,  
32 replacement or disposition of facilities or fixed equipment  
and that are not related to projects for which an adjustment  
is required to be made under subsection 6. Any positive  
adjustments made to reflect such increases in capital costs  
are not effective until the facilities or fixed equipment  
have been put into use and the associated expenses would be  
eligible for reimbursement under the Medicare program.

34 B. An allowance for the cost of movable equipment must be  
36 calculated on the basis of straight line depreciation and  
interest consistent with paragraph A.

38 C. Hospitals shall fund depreciation and use their funded  
40 depreciation as a first source of funds for payment for  
42 capital projects, proportional to the ratio between the  
capital cost of the new project and the gross book value of  
the hospital assets.

44 D. The commission may, in accordance with rules, make a  
46 further adjustment after the close of any payment year for  
48 increases or decreases in the reasonable cost of facilities  
and equipment during that payment year.

50 5. Volume. Changes in a hospital's volume of services must  
be considered as follows.

2 A. In determining payment year financial requirements, the  
4 commission shall consider the reasonable expected impact on  
6 the hospital's financial requirements of changes in the  
8 volume of services required to be provided by the hospital.

10 B. In order to measure the impact of changes in the volume  
12 of service on hospital's costs, the commission shall  
14 establish schedules that must be completed and submitted by  
16 each hospital and that must include:

18 (1) Classifications of the services that must be used  
20 to measure volume changes;

22 (2) Statistical units of measure for each service  
24 classification; and

26 (3) Specified percentages of the variable costs of  
28 each center to be added to or subtracted from the  
30 approved revenues of the center as a result of  
32 specified changes in volume.

34 These schedules must be developed in a manner that  
36 introduces financial incentives for the efficient and  
38 effective delivery of services and gives due consideration  
40 to the special needs and circumstances of small hospitals.

42 C. The commission may, for hospitals regulated under the  
44 total revenue system, from time to time during the course of  
46 a payment year, in accordance with rules, make any further  
48 adjustments necessary in the event of discrepancies between  
projected and actual volume changes in preceding payment  
years or if it obtains substantial evidence that its initial  
projections for the current payment year will be in error.  
In making any further adjustments, the commission shall  
consider the special needs and circumstances of small  
hospitals.

50 6. Certificate of need projects. Adjustments to financial  
requirements for the impact on a hospital's costs of projects  
approved by the department pursuant to the Maine Certificate of  
Need Act must be determined as follows.

A. Except as provided in paragraph C, in determining  
payment year financial requirements, the commission shall  
include an adjustment to reflect any net increases or  
decreases in the hospital's costs resulting from projects  
that have been approved by the department in accordance with  
the Maine Certificate of Need Act and that otherwise meet  
the requirements of section 10812, subsection 2, paragraph

2 C. These adjustments may be made subsequent to the  
3 commencement of a fiscal year and shall take effect on the  
4 date that expenses associated with the project would be  
5 eligible for reimbursement under the Medicare program.

6 B. In determining payment year financial requirements, the  
7 commission shall include an adjustment to reflect any net  
8 increases or decreases in the hospital's costs resulting  
9 from projects approved by the department pursuant to the  
10 Maine Certificate of Need Act prior to September 23, 1983,  
11 but not reflected in the base year financial requirements;  
12 provided that any approved costs must be adjusted to be  
13 consistent with the definition of those costs established  
14 under subsection 4 and section 10802. An adjustment under  
15 this paragraph may not be effective prior to the date on  
16 which the expenses associated with the approved project  
17 would be eligible for reimbursement under the Medicare  
18 program.

19 C. In determining payment year financial requirements, if a  
20 project approved in accordance with the Maine Certificate of  
21 Need Act and section 10812 subsequent to October 1, 1985,  
22 involves an activity specified in subsection 9, the  
23 commission may determine an adjustment to reflect any net  
24 decrease resulting from that project in a manner consistent  
25 with its determination of adjustments under subsection 9.

26 7. Standard component. For payment years commencing on or  
27 after October 1, 1990, but no later than October 1, 1991, the  
28 commission shall establish reasonable standards of financial  
29 requirements or costs per case for hospitals. In determining  
30 financial requirements for payment years to which the standards  
31 apply, the commission shall include an adjustment to incorporate  
32 the standards into financial requirements as otherwise determined  
33 under this section.

34 A. The adjustment under this subsection applies to  
35 noncapital financial requirements and to the allowance for  
36 capital costs of movable equipment but excludes the  
37 allowance for the capital costs of facilities and fixed  
38 equipment determined under subsection 4.

39 B. The commission may exclude certain categories of  
40 operating costs in order to permit reasonable comparisons  
41 among hospitals.

42 C. The commission may exclude financial requirements  
43 associated with outpatient services from the adjustment  
44 under this subsection, either for all payment years or for  
45 some portion of the 5-year phase-in period.

2 D. The adjustment under this subsection must be phased in  
3 over a 5-year period, distributed as equally over the 5  
4 years as is practicable. At the end of the 5-year period,  
5 the standard component may not exceed 50% of those financial  
6 requirements to which the adjustment is applied.

7 E. The commission may waive or modify the standard  
8 component adjustment for a border hospital or a hospital  
9 regulated under the total revenue system if the commission  
10 finds that including the standard component in the  
11 hospital's financial requirements would impair the capacity  
12 of the hospital to provide needed services at acceptable  
13 levels of quality and the hospital could not avoid this  
14 impairment by management action.

15 8. Working capital. In determining payment year financial  
16 requirements, the commission shall include an adjustment to  
17 provide for financing reasonable increases in the hospital's  
18 accounts receivable, net of accounts payable and whatever  
19 additional working capital provisions the commission deems  
20 appropriate. The commission may, from time to time during the  
21 course of a payment year, make further adjustments with respect  
22 to working capital as may be necessary.

23 9. Change in services. In determining payment year  
24 financial requirements, the commission may include an offsetting  
25 adjustment to reflect the impact on the hospital's financial  
26 requirements of:

27 A. The termination or significant reduction of health  
28 services provided by the hospital;

29 B. The transfer or assignment to another entity of  
30 functions performed by the hospital;

31 C. A merger or consolidation with another hospital; or

32 D. A hospital restructuring, as defined pursuant to section  
33 10813.

34 Any adjustment under this subsection should be calculated in a  
35 manner that does not unreasonably discourage more efficient and  
36 effective delivery of services.

37 10. Other adjustments. Other adjustments are determined as  
38 follows.

39 A. In determining payment year financial requirements, the  
40 commission may include a positive adjustment for the support

of improvements in medical care management and information systems.

B. New regulatory costs are determined as follows.

(1) In determining payment year financial requirements, the commission shall include an adjustment to reflect the difference between the assessment for the fiscal year imposed pursuant to section 10611 and the total amount of dues and fees paid to a voluntary budget review organization in the hospital's base year.

(2) In determining financial requirements, the commission may include a positive adjustment to reflect the reasonable impact on a hospital's costs that is proven to have resulted from a hospital's conversion to a different fiscal year that has been approved pursuant to section 10702. In the case of a conversion to an October 1st fiscal year that the commission is required to approve pursuant to section 10702, subsection 1, the commission shall include an appropriate adjustment.

(3) In determining payment year financial requirements, the commission shall include an adjustment to reflect the impact on a hospital's costs of changes in hospital reporting requirements imposed by the commission.

C. In determining payment year financial requirements, the commission shall include an adjustment to reflect the reasonable costs, including reasonable attorneys' fees, incurred by a hospital to prosecute an appeal of a commission decision pursuant to section 10901, subsection 4. The adjustment must reflect only those reasonable costs that are associated with the issues on which the hospital has prevailed in court, including costs associated with presenting those issues to the commission in the case from which the appeal was taken. The commission shall make an adjustment under this paragraph only to the extent that the costs found to be reasonable are not otherwise included in financial requirements.

D. In determining payment year financial requirements, the commission shall include an adjustment to reflect the actual costs of the hospital's participation in the Health Occupations Training Project, Title 26, chapters 31 and 31-A. These costs shall be limited to actual payments made to lenders under the program. The commission shall make an adjustment under this paragraph only to the extent that the

costs found to be reasonable are not otherwise included in financial requirements.

E. In determining payment year financial requirements, the commission shall include an adjustment for the hospital's assessment under Title 36, section 2801-A.

11. Base-year budget adjustment. In determining financial requirements for the 3rd payment year, or any subsequent payment year, the commission upon application of a hospital, may make a base-year budget correction adjustment as follows:

A. An adjustment under this subsection must be based upon a determination of the excess of:

(1) The applicant hospital's actual audited Medicare allowable costs for its base year, adjusted to conform to the definition of base-year financial requirements established in accordance with section 10802; and

(2) Its base-year financial requirements determined in accordance with section 10803.

B. In determining the amount of the excess upon which an adjustment may be based, the commission:

(1) Shall consider the extent to which other adjustments have been made under this section for changes that occurred during the base year; and

(2) Shall adjust the amount determined under paragraph A to reflect the impact, determined by means of the economic trend factor established in accordance with subsection 1, of inflation from the base year through the payment year prior to the year for which an adjustment has been requested.

C. The commission shall make an adjustment for all or part of the excess determined in accordance with paragraphs A and B to the extent that the commission finds that the adjustment is in the public interest. In determining whether the adjustment is in the public interest and, if so, in what amount the adjustment should be made, the commission shall consider the following factors, as well as any other factors pertinent to the findings and purposes set forth in section 10601:

(1) The hospital's justification for exceeding its budget as approved by the voluntary budget review organization;

2 (2) The hospital's costs, volume and intensity of  
4 services as compared to other comparable hospitals;

6 (3) The hardship to the hospital in the absence of  
8 treatment under this section; and

10 (4) The impact on quality and accessibility to health  
12 care.

14 D. No hospital may receive more than one adjustment under  
16 this subsection, nor is any hospital eligible for such an  
18 adjustment if the commission, after hearing, has made a  
20 final decision denying the adjustment. An adjustment under  
22 this subsection becomes part of payment year financial  
24 requirements for purposes of computing subsequent payment  
26 year requirements pursuant to section 10804.

28 12. General considerations. General considerations must be  
30 determined as follows.

32 A. In its consideration of the factors enumerated in this  
34 section, the commission shall take into account the special  
36 needs and circumstances of small hospitals.

38 B. In its consideration of the factors enumerated in this  
40 section, the commission shall direct its professional staff  
42 to develop and utilize a data base and a series of  
44 analytical techniques to facilitate this consideration and  
46 to enhance the predictability and financial stability of  
48 hospital financing in the State.

50 13. Nature and effect of adjustments. The nature and  
effect of adjustments must be determined as follows.

A. Unless otherwise specified, adjustments may be positive  
or negative adjustments.

B. Adjustments made for a payment year for working capital,  
management support and those new regulatory costs specified  
in subsection 10, paragraph B, subparagraphs (1) and (2),  
may not be considered part of base year or payment year  
financial requirements for purposes of computing payment  
year financial requirements pursuant to section 10804 for a  
subsequent payment year. The payment year or years to which  
an adjustment for an exception request applies must be  
determined in accordance with subsection 14, paragraph C.

14. Exception requests. The commission shall provide for a  
special exception adjustment whereby a hospital may request an

adjustment to its financial requirements to reflect major,  
reasonable changes in expenses for which no adequate adjustment  
is otherwise provided under this chapter.

A. In determining whether and to what extent such an  
adjustment should be granted, the commission shall consider  
the following in addition to any more specific criteria that  
the commission establishes by rule:

(1) The nature and reasonableness of the changes in  
expenses for which an adjustment is under  
consideration, including any offsetting expense changes;

(2) The reasonableness and necessity of the hospital's  
total acute care operating expenses;

(3) The hospital's efficiency and its costs in  
comparison to other hospitals; and

(4) The effects on patients, purchasers and payors of  
any change in charges that would result from granting  
the adjustment.

After review of an exception request made pursuant to this  
subsection, the commission may, on the basis of the facts  
found, either increase or decrease the total financial  
requirements of a hospital.

B. A request that is not supported by proof of major  
reasonable increases in expenses, net of offsetting expense  
changes, that are equal to or greater than 1.5% of a  
hospital's financial requirements for the previous year or  
\$1,000,000, whichever is less, may not be granted, unless  
the applicant establishes either of the following:

(1) That the applicant's failure to receive the  
adjustment will immediately, seriously and irreparably  
impair its financial capacity to continue providing  
hospital services and that no alternative means of  
providing those services is available; or

(2) That denial of the adjustment would result in a  
groundless difference in regulatory treatment of  
similarly situated hospitals seeking relief under this  
subsection on the basis of essentially the same facts.

C. Except as provided in subparagraph (1), an adjustment  
pursuant to this subsection may be included in a hospital's  
financial requirements only for periods of operation after  
the date on which the application for interim adjustment is

2 deemed complete or the commencement of the payment year for  
3 which a timely notice of contest, requesting an adjustment  
4 under this subsection and containing supporting information  
5 specified by the commission, has been filed.

6 (1) An interim adjustment under this subsection may be  
7 applied to all or part of the period between the  
8 beginning of the payment year during which an  
9 application was filed and the date that the application  
10 was deemed complete if the commission finds that:

11 (a) The hospital would otherwise be unable to  
12 meet its cash requirements as a consequence of  
13 events beyond its control; or

14 (b) The relief is consistent with the public  
15 interest.

16 (2) The commission may determine from the nature of  
17 the expenses for which the adjustment is made whether  
18 it may become a part of financial requirements for  
19 purposes of computing financial requirements for  
20 subsequent payment years.

21 §10806. Application of available resources; reporting  
22 requirements

23 1. Criteria established. The commission shall establish  
24 criteria governing the application of a hospital's available  
25 financial resources to satisfy its financial requirements  
26 consistent with the following provisions.

27 A. Except as provided in paragraphs C and D, restricted and  
28 unrestricted gifts, grants, devises or income from  
29 investment thereof are considered available resources.

30 B. Except as provided in paragraph E, accumulated income  
31 from operations and income from investment thereof are not  
32 considered available resources.

33 C. Gifts and grants from federal, state and local  
34 governmental agencies are considered available resources.

35 D. Donor restricted gifts, grants, devises or restricted  
36 income from investment thereof are considered available  
37 resources only to the extent these funds are applied to the  
38 use for which they were donated, except that the purchase of  
39 movable equipment with any of these funds in years following  
40 the completion of a hospital's base year may not operate to

21 reduce the allowance for facilities and equipment otherwise  
22 determined under section 10805, subsection 4.

23 E. Accumulated income from operations and income from  
24 investment thereof must be offset against financial  
25 requirements in the first payment year to the extent that  
26 income resulted from a hospital exceeding, for its base year  
27 and the period between its base year and the commencement of  
28 its first payment year, combined, the following limits:

29 (1) For a hospital whose base year is its most recent  
30 fiscal year ending prior to July 1, 1984, the amount of  
31 its budgeted operating margin for the base year, as set  
32 forth in its approved base year budget, multiplied by  
33 the sum of one and a fraction of which the denominator  
34 is 12 and the numerator is the number of months which  
35 elapse between the base year and the commencement of  
36 its first payment year; or

37 (2) For a hospital whose base year is its most recent  
38 fiscal year ending prior to July 1, 1983, 2% of its  
39 expenses allowed under the Medicare program in its base  
40 year times the sum of one and a fraction of which the  
41 denominator is 12 and the numerator is the number of  
42 months which elapse between the base year and the  
43 commencement of its first payment year.

44 F. Financial resources of affiliated interests, as defined  
45 in section 10813, are considered as resources available to a  
46 hospital to the extent specified in section 10813.

47 G. Available financial resources do not include real  
48 estate, facilities, equipment, inventory or tangible  
49 personal property, except to the extent that the resources  
50 otherwise available pursuant to paragraphs A to F have been  
51 converted into such property.

52 2. Reporting. Each hospital shall file, on an annual basis  
53 and in accordance with rules adopted by the commission, the  
54 following information:

55 A. The source and amount of all gifts, grants, devises and  
56 income from investments; and

57 B. The amount of funds from gifts, grants, devises and  
58 investments expended and the purposes for which those funds  
59 were expended.

2 Notwithstanding the provisions of section 10607, the commission  
3 may not publicly disclose the individual identity of sources of  
4 gifts and grants.

5 3. No limitation. Nothing in this section or in section  
6 10813 limits any authority the department may have to require the  
7 use of any gifts, grants, devises or income from investments, to  
8 finance projects subject to the Maine Certificate of Need Act.

9 §10807. Revenue deductions

10 In establishing revenue limits for an individual hospital,  
11 the commission shall make provision for the revenue deductions  
12 determined in accordance with subsections 1 to 3, offset as  
13 appropriate by any distributions that the hospital will receive  
14 in the same payment year from the fund established in subsection  
15 4.

16 1. Charity care. The commission shall make provision for  
17 a reasonable amount of revenue deduction attributable to charity  
18 care. For purposes of this section, the amount of revenue  
19 deduction attributable to charity care is defined as the amount  
20 of revenue, net of recoveries, which is expected to be written  
21 off as a result of a determination that the patient is unable to  
22 pay for the hospital services received, provided that the  
23 hospital's determination is made pursuant to a policy that was  
24 adopted by the hospital and filed with the commission and that is  
25 consistent with reasonable guidelines established by the  
26 commission in accordance with this section. The commission shall  
27 adopt income guidelines that are consistent with the current  
28 guidelines of the Hill-Burton Program, at 42 Code of Federal  
29 Regulations, Section 124.506, as revised as of October 1, 1986.  
30 The guidelines and policies must include the requirement that  
31 upon admission, or in cases of emergency admission, before  
32 discharge of a patient, hospitals must investigate the coverage  
33 of the patient by any insurance or state or federal programs of  
34 medical assistance. If the hospital's services to the patients  
35 are not covered by insurance or a medical assistance program and  
36 the patient meets the financial guidelines established by the  
37 commission, the services must be provided as charitable care.  
38 This section does not prevent a hospital from establishing a  
39 policy of charitable care that includes services not included in  
40 this subsection, if permitted by the commission's guidelines. In  
41 no event may hospital services to a person who meets the  
42 financial eligibility guidelines, adopted pursuant to this  
43 section, be billed to the patient or to a municipality.

44 2. Bad debts. The commission shall make provision for a  
45 reasonable amount of revenue deduction attributable to bad  
46 debts. For purposes of this section, bad debts are defined as

1 the amount of revenue deduction, net of recoveries, that is  
2 expected to be attributable to patients who, after reasonable  
3 collection efforts, are determined to have uncollectible  
4 accounts, provided that the hospital's determination is made  
5 pursuant to a policy that was adopted by the hospital and filed  
6 with the commission and that is consistent with reasonable  
7 guidelines established by the commission.

8 3. Differentials. The commission shall provide for revenue  
9 deductions that reflect differentials established and approved  
10 pursuant to section 10808. In calculating revenue deductions to  
11 reflect differentials under the Medicare program, the commission  
12 shall exclude from its determination the following amounts:

13 A. Any amounts that the commission finds have been paid by  
14 the Medicare program for the following activities, to the  
15 extent that the activities have been approved under section  
16 10819, unless any costs of the activities have been added to  
17 a hospital's financial requirements:

18 (1) The expansion of a family practice residency  
19 program after June 30, 1992; and

20 (2) The provision of spaces in a residency program in  
21 internal medicine, pediatrics or obstetrics and  
22 gynecology, in any given year, for the number of  
23 first-year residents that is greater than the number of  
24 first-year residents in that program at the same  
25 hospital prior to June 30, 1992; and

26 B. Any amounts that the commission finds have reasonably  
27 been expended by a hospital in a reasonable appeal of a  
28 reimbursement decision made by the Medicare program. In  
29 order to allow hospitals to recover the full amount expended  
30 to secure increases or avoid decreases in Medicare  
31 reimbursement by pursuing appeals, the commission shall  
32 exclude from revenue deduction calculations for each payment  
33 year a total amount of Medicare payments equal to the total  
34 reasonably expended by the hospital on successful appeals in  
35 the most recent year for which data is available. In  
36 determining this adjustment, the commission shall take into  
37 account the amount of attorney's fees included in the  
38 hospital's base year budget. For purposes of this  
39 paragraph, "appeal" refers to any process of review of a  
40 Medicare reimbursement decision, formal or informal,  
41 conducted by a fiscal intermediary, government office,  
42 administrative agency or review board or by a court of law.

43 4. Hospital payments fund. There is established the  
44 Hospital Uncompensated Care and Governmental Payment Shortfall



2 Fund, which may be referred to as the "hospital payments fund,"  
3 administered by the commission. The assets of this fund must be  
4 derived from any appropriation that the Legislature makes or from  
5 any portion of the approved gross patient service revenue of each  
6 hospital designated as hospital payments fund revenue pursuant to  
7 section 10810, subsection 1, or from both of these sources.

8 A. The hospital payments fund must be administered as  
9 follows.

10 (1) Except as otherwise provided, the Treasurer of  
11 State is the custodian of the hospital payments fund.  
12 Upon receipt of vouchers signed by a person or persons  
13 designated by the commission, the State Controller  
14 shall draw a warrant on the Treasurer of State for the  
15 amount authorized. A duly attested copy of the  
16 resolution of the commission designating these persons  
17 and bearing on its face specimen signatures of these  
18 persons must be filed with the State Controller as  
19 authority for making payments upon these vouchers.

20 (2) The commission may cause funds to be invested and  
21 reinvested subject to its periodic approval of the  
22 investment program.

23 (3) The commission shall publish annually, for each  
24 fiscal year, a report showing fiscal transactions of  
25 funds for the fiscal year and the assets and  
26 liabilities of the funds at the end of the fiscal year.

27 B. The commission shall disburse amounts from the hospital  
28 payments fund to those hospitals most affected by bad debts,  
29 charity care and shortfalls in governmental payments. The  
30 commission shall develop standards for the distribution of  
31 the funds to individual hospitals. The standards must  
32 address the following factors:

33 (1) The impact of the proportion of Medicare and  
34 Medicaid payments;

35 (2) The special disadvantages of the Medicare payment  
36 system for rural hospitals;

37 (3) The proportion of charges to nonpaying patients;

38 (4) The efficiency of the hospital; and

39 (5) The financial distress of the hospital and the  
40 plan of the hospital to relieve that distress.

## 2 §10808. Differentials

3 1. Establishment of methodology. The commission shall  
4 establish by rule factors and methods to be used in computing a  
5 statewide differential. The differential may be allowed for only  
6 those activities and programs provided or conducted by payors  
7 that result in quantifiable savings to the hospitals or  
8 reductions in the payments of other payors. This differential may  
9 reflect only the cost savings to hospitals, rather than the cost  
10 to the payors of implementing these activities and programs. Each  
11 component utilized in determining the differential must be  
12 individually quantified so that the differential equals the total  
13 of the values assigned to each component.

14 The commission shall review and modify, as appropriate, the  
15 working capital component of the differential on an annual basis  
16 and all other components on at least a triennial basis.

17 2. Approval of differentials. For payment years commencing  
18 on and after October 1, 1985, differentials may be approved in  
19 accordance with the following provisions.

20 A. Any 3rd-party payor or purchaser may apply to the  
21 commission for a reduction in the payments it would  
22 otherwise be required to make and the commission shall grant  
23 a reduction in payments commensurate with one or more  
24 components of the differential on a prospective basis if it  
25 finds:

26 (1) That the applicant has implemented activities or  
27 programs that, pursuant to the commission's rules,  
28 qualify for a reduction; or

29 (2) That the applicant is willing and able to  
30 implement reasonable activities or programs that,  
31 pursuant to the commission's rules, qualify for a  
32 reduction, but that a hospital will not permit to be  
33 implemented.

34 B. The commission may establish rules under which any  
35 3rd-party payor or purchaser who makes prompt payments, as  
36 defined by the commission, will be entitled to a  
37 differential without the necessity of making individual  
38 application to the commission. The value of the differential  
39 must be established in accordance with subsection 1.

40 3. Differentials established. Notwithstanding any other  
41 provisions of this section, the commission shall establish  
42 differentials for payments under the United States Social  
43 Security Act, Title XVIII, required pursuant to contractual  
44 provisions.

2 limitations imposed on these payments and those differentials for  
4 payments under the Civilian Health and Medical Program of the  
6 Uniformed Services, CHAMPUS, that are required, with respect to  
8 hospital admissions on or after January 1, 1987, as a condition  
10 of continued participation in the Medicare program administered  
12 under the United States Social Security Act, Title XVIII. The  
14 differential established for payments by the department under the  
United States Social Security Act, Titles V and XIX, is the  
differential approved in accordance with subsection 2 unless  
another amount is required for the department to remain in  
compliance with the requirements of the United States Social  
Security Act, Titles V and XIX or a state plan approved by the  
Federal Department of Health and Human Services under the United  
States Social Security Act.

16 4. Differentials: Maine Health Program. The commission  
18 shall provide that the differential determined pursuant to this  
20 section for the Maine Health Program for charges incurred by the  
22 program is equal to 60%.

§10809. Establishment and adjustment of gross patient service  
revenue limits

24 The commission shall establish a gross patient service  
26 revenue limit or limits for each hospital for each payment year  
28 commencing on or after October 1, 1984. This limit must be  
established as follows.

30 1. General computation. The gross patient service revenue  
32 limit or limits must be computed to allow the hospital to charge  
34 an amount calculated to recover its payment year financial  
36 requirements, offset by its available resources pursuant to  
section 10806, taking into consideration the revenue deductions  
determined pursuant to section 10807 and the payment system  
applicable to the hospital.

38 2. Hospital payments fund adjustment. For payment years or  
40 partial payment years on or after October 1, 1990, the commission  
42 may include in the gross patient service revenue limit an  
44 adjustment, based on a uniform percentage to be applied to all  
hospitals, to provide revenue to be transmitted to the hospital  
payments fund in accordance with section 10810, subsections 1 and  
6. The adjustment may not exceed .75% of net patient service  
revenues annually.

46 §10810. Payments to hospitals

48 1. Components of revenue limits. The commission shall, for  
50 each payment year, apportion each hospital's approved revenue  
limit or limits into the following components, as applicable.

2 A. One component must be designated "management fund  
4 revenue" and must be equal to the adjustment, if any, for  
6 management support services determined under section 10805,  
8 subsection 10, paragraph A.

10 B. One component must be designated "hospital retained  
12 revenue" and must be equal to the approved gross patient  
14 service revenue limit less the "management fund revenue" and  
16 "hospital payments fund revenue."

18 C. One component must be designated "hospital payments fund  
20 revenue" and must be equal to the adjustment, if any,  
22 determined under section 10809, subsection 2, for the  
24 support of the hospital payments fund.

26 2. Apportionment among payors and purchasers. Based on  
28 historical or projected utilization data, the commission shall  
30 apportion, for each revenue center specified by the hospital  
32 subject to subsection 6, and for the hospital as a whole, the  
34 hospital's gross patient service revenue among the following  
36 categories:

40 A. The Medicare program administered under the federal  
42 Social Security Act, Title XVIII, and any payor acting as a  
44 fiscal intermediary for the Medicare program to the extent  
46 of the payor's obligations as a fiscal intermediary;

48 B. The Medicaid program administered by the department  
50 under the federal Social Security Act, Titles V and XIX; and

C. All other purchasers and payors, which together  
constitute one category.

3. Payments by payors and purchasers. Payments by payors  
and purchasers must be determined as follows.

A. Payments made by the department in accordance with its  
obligations under the Medicaid program, determined pursuant  
to subsection 2, paragraph B are made in accordance with the  
following procedures.

(1) The commission shall require the department to  
make biweekly periodic interim payments to hospitals.  
The department may, on its own initiative, make more  
frequent payments.

(2) After the close of each payment year, the  
commission shall adjust the apportionment of payments  
to the Medicaid program based on actual utilization

2 data for that year. Final settlement must be made  
3 within 30 days of that determination.

4 B. For hospitals regulated according to the total revenue  
5 system, payments made by payors other than Medicare and  
6 Medicaid and by purchasers are made in accordance with the  
7 following procedures.

8 (1) Payors, other than Medicare and Medicaid, and  
9 purchasers pay on the basis of charges established by  
10 hospitals, to which approved differentials are applied.  
11 A hospital shall establish these charges at levels that  
12 will reasonably ensure that its total charges, for each  
13 revenue center, or, at the discretion of the commission  
14 for groups of revenue centers and for the hospital as a  
15 whole, are equal to the portion of the gross patient  
16 service revenue apportioned to persons other than the  
17 Medicare and Medicaid programs.

18 (2) Except as otherwise provided in this subparagraph,  
19 subsequent to the close of a payment year, the  
20 commission shall determine the amount of overcharges or  
21 undercharges, if any, made to payors, other than  
22 Medicare and Medicaid and to purchasers and shall  
23 adjust, by the percentage amount of the overcharges or  
24 undercharges, the portion of the succeeding year's  
25 gross patient service revenue limit that would  
26 otherwise be allocated to purchasers and payors other  
27 than Medicare and Medicaid. Adjustments to the  
28 succeeding year's gross patient service revenue limit  
29 are not made for undercharges if the undercharges  
30 resulted from an affirmative decision by the hospital's  
31 governing body to undercharge. Any decision to  
32 undercharge must be disclosed to the commission in  
33 order that it may be taken into account in the  
34 apportionment of the hospital's approved gross patient  
35 service revenue among all payors and purchasers.

36 C. Payments to hospitals on the per case system are made on  
37 the basis of charges established consistent with limits set  
38 by the commission under that system. The commission shall  
39 establish by rule the necessary adjustments to approved  
40 revenues in subsequent payment years for hospitals  
41 determined to have overcharged or undercharged purchasers  
42 and payors other than Medicare and Medicaid.

43 D. In addition to any reductions in payments to hospitals  
44 under paragraphs A, B and C, if a hospital exceeds any  
45 revenue limit by an amount in excess of a margin equal to 5%  
46 for small hospitals and 3% for all other hospitals, the

2 commission may impose a penalty equal to 120% of the amount  
3 in excess of the margin times the rate of inflation. The  
4 amount of any penalty imposed must be applied prospectively,  
5 and in accordance with methods prescribed by the commission,  
6 to reduce charges applicable to the class or classes of  
7 payors or purchasers that were overcharged. In determining  
8 whether to impose a penalty on a hospital regulated  
9 according to the total revenue system, the commission shall  
10 consider whether the revenues received by a hospital met its  
11 approved financial requirements.

12 4. Negotiated discounts. Any hospital that is  
13 participating, has chosen to participate or must participate in  
14 the rate per case system may negotiate discounts to charges with  
15 payors or purchasers. Negotiated discounts may include  
16 capitation arrangements and other contracts in which an agreed  
17 payment amount may, in individual cases, be more or less than the  
18 established charge for the services rendered. Hospitals in the  
19 total revenue system may negotiate discounts with the approval of  
20 the commission according to standards adopted by rule of the  
21 commission. The revenue losses resulting from negotiated  
22 discounts may not be reflected in the computation of a hospital's  
23 revenue limit.

24 5. Transmittal of management fund revenue. No later than  
25 30 days after receipt of each payment, each hospital shall  
26 transmit to the Management Support Fund, established pursuant to  
27 section 10811, the portion, if any, of the payment that  
28 corresponds to the management fund revenue.

29 6. Review of allocations. Notwithstanding the provisions  
30 of subsection 2, the commission shall review the allocation of  
31 revenues to revenue centers specified by each hospital and shall  
32 ensure that the allocation, to the extent it results in internal  
33 departmental subsidies, is reasonable and does not result in  
34 undue price discrimination.

35 7. Transmittal of hospital payments fund revenue. No later  
36 than 30 days following the close of each quarter of each fiscal  
37 year, each hospital shall transmit to the hospital payments fund,  
38 established in section 10807, that portion of its revenues that  
39 corresponds to the hospital payments fund revenue determined  
40 under subsection 1.

41 **\$10811. Establishment and administration of Management Support**  
42 **Fund; disbursements from fund**

43 1. Establishment. There is established a statewide  
44 Management Support Fund administered by the commission. The  
45 assets of this fund are derived from the portion of the approved  
46 revenues received by a hospital that exceed the approved

2 gross patient service revenue of each hospital, if any, in a  
3 fiscal year designated as management fund revenue and transmitted  
4 to the Management Support Fund pursuant to section 10810,  
5 subsections 1 and 4.

6 2. Administration. The Management Support Fund must be  
7 administered as follows.

8 A. Except as otherwise provided, the Treasurer of State is  
9 the custodian of the Management Support Fund. Upon receipt  
10 of vouchers signed by a person or persons designated by the  
11 commission, the State Controller shall draw a warrant on the  
12 Treasurer of State of the amount authorized. A duly attested  
13 copy of the resolution of the commission designating these  
14 persons and bearing on its face specimen signatures of these  
15 persons must be filed with the State Controller as the  
16 authority for making payments upon these vouchers.

17 B. The commission may cause funds to be invested and  
18 reinvested subject to its periodic approval of the  
19 investment program.

20 C. The commission shall publish annually, for each fiscal  
21 year, a report showing fiscal transactions of funds for the  
22 fiscal year and the assets and liabilities of the funds at  
23 the end of the fiscal year.

24 3. Disbursements from fund. One or more hospitals may  
25 apply to the commission to receive disbursements from the  
26 Management Support Fund. The commission shall establish criteria  
27 governing the approval of disbursements from the fund that must,  
28 at a minimum:

29 A. Require a finding by the commission that the proposed  
30 use of funds will result in a significant improvement in  
31 medical care management and information systems; and

32 B. Take into consideration the special needs and  
33 circumstances of small hospitals.

34 Disbursements under this section may not be offset against  
35 payment year financial requirements in computing a hospital's  
36 gross patient service revenue limit under section 10809.

37 §10812. Establishment of Hospital Development Account

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

41 A. "Major project" means a hospital project subject to  
42 review under the Maine Certificate of Need Act that has  
43 incremental annual capital and operating costs in its 3rd  
44 year of implementation, including a partial first fiscal  
45 year, of \$150,000 or more.

46 B. "Minor project" means a hospital project subject to  
47 review under the Maine Certificate of Need Act that has  
48 incremental annual capital and operating costs in its 3rd  
49 fiscal year of implementation, including a partial first  
50 fiscal year, of less than \$150,000.

51 C. "Payment year cycle" means each annual period of October  
52 1st to September 30th.

53 2. Hospital Development Account. For the 3rd and  
54 subsequent payment year cycles, the commission shall establish a  
55 Hospital Development Account to support the development of  
56 hospital facilities and services. This account must be  
57 administered as follows.

58 A. The commission shall annually establish, by rule, the  
59 amount to be credited to the Hospital Development Account.  
60 In establishing the amount of the credit, the commission  
61 shall, at a minimum, consider:

62 (1) The State Health Plan;

63 (2) The ability of the citizens of the State to  
64 underwrite the additional costs;

65 (3) The limitations imposed on payments for new  
66 facilities and services by the Federal Government  
67 pursuant to the United States Social Security Act,  
68 Title XVIII and XIX;

69 (4) The special needs of small hospitals;

70 (5) The historic needs and experience of hospitals  
71 over the past 5 years;

72 (6) The amount in the account for the previous years  
73 and the level of utilization by hospitals in those  
74 years;

75 (7) Obsolescence of physical plants;

76 (8) Technological developments; and

2           (9) Management services or other improvements in the  
3           quality of care.

4           The commission shall report, no later than January 15th of  
5           each year, to the joint standing committee of the  
6           Legislature having jurisdiction over human resource matters  
7           regarding the rationale the commission used in establishing  
8           the amount credited to the Hospital Development Account in  
9           the previous year.

10           The amount to be credited in a particular payment year cycle  
11           will be deemed credited to the Hospital Development Account  
12           as of the first day of that payment year cycle.

13           B. On the basis of additional information received after an  
14           annual credit is established pursuant to paragraph A,  
15           including information provided by the department concerning  
16           the State Health Plan or projects then under review, the  
17           commission may increase or decrease the amount of the annual  
18           credit by the adoption of a rule change proposed during the  
19           course of the payment year cycle to which it applies. The  
20           commission may not act under this paragraph to decrease the  
21           credit below the amount that would, in combination with any  
22           amounts carried over from prior years, equal the total of  
23           any debits associated with projects approved on or before  
24           the date that the commission notifies the department of a  
25           proposed rule that would decrease the credit. For any  
26           payment year cycle in which the annual credit is apportioned  
27           to "statewide" and "individual hospital" components, the  
28           increase or decrease authorized by this paragraph applies  
29           solely to the "statewide" component of the credit.

30           C. The commission shall approve an adjustment to a  
31           hospital's financial requirements under section 10805,  
32           subsection 6, paragraph A, for a major or minor project if:

33           (1) The project was approved by the department under  
34           the Maine Certificate of Need Act; and

35           (2) The associated incremental annual capital and  
36           operating costs do not exceed the amount remaining in  
37           the Hospital Development Account as of the date of  
38           approval of the project by the department, after  
39           accounting for previously approved projects.

40           D. Debits and carry-overs are determined as follows.

41           (1) Except as provided in subparagraph (2), the  
42           commission shall debit against the Hospital Development  
43           Account the full amount of the incremental annual  
44           capital and operating costs associated with each  
45           project for which an adjustment is approved under  
46           paragraph C. Incremental annual capital and operating  
47           costs are determined in the same manner as adjustments  
48           to financial requirements are determined under section  
49           10805, subsection 6, for the 3rd year of implementation  
50           of the project.

2           capital and operating costs associated with each  
3           project for which an adjustment is approved under  
4           paragraph C. Incremental annual capital and operating  
5           costs are determined in the same manner as adjustments  
6           to financial requirements are determined under section  
7           10805, subsection 6, for the 3rd year of implementation  
8           of the project.

9           (2) In the case of a project that is approved under  
10           paragraph C and that involves extraordinary incremental  
11           annual capital and operating costs, the commission may,  
12           in accordance with rules, defer the debiting of a  
13           portion of the annual costs associated with the project  
14           until a subsequent payment year cycle or cycles.

15           (3) Amounts credited to the Hospital Development  
16           Account for which there are no debits are carried  
17           forward to subsequent payment year cycles as a credit.

18           **§10813. Affiliated interests**

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

22           A. "Affiliated interest" means:

23           (1) Any person who is a subsidiary of a hospital;

24           (2) Any person who is a parent entity of a hospital;

25           (3) Any person who is a subsidiary of a hospital's  
26           parent entity;

27           (4) Any person, other than an individual, that:

28           (a) Controls a hospital or that a hospital, or  
29           any of its affiliates as defined in subparagraphs  
30           (1) to (3), controls; and

31           (b) Is engaged directly or indirectly in the  
32           provision of a health care service or services,  
33           the costs of which would be considered elements of  
34           financial requirements if performed by a hospital.

35           B. "Available assets" means the sum of board-designated  
36           funds and current assets less inventories and net  
37           receivables.

38           C. For purposes of paragraph A, to "control" means both:

2 (1) To have power, alone or in concert with other  
4 hospitals or affiliated interests, to direct the  
6 management and policies of another person, other than  
8 an individual; and

10 (2) To have that power by means of any one of the  
12 following or any combination of the following:

14 (a) Common governing board members;

16 (b) Articles of incorporation, by-laws,  
18 partnership agreements, contracts, deeds, trust  
20 documents, assignments, leases or other legal  
22 documents; or

24 (c) In the case of a for-profit corporation,  
26 ownership of 10% or more of the corporation's  
28 voting securities, directly, indirectly or by a  
30 chain of successive ownership.

32 "Control" does not include the power to determine terms,  
34 conditions and prices only through an arms-length contract  
36 for the purchase of goods or services, such as a contract  
38 for professional services or the power to direct management  
40 and policies only through canonical or similar religious  
42 control.

44 D. "Hospital-capitalized affiliate" means any affiliated  
46 interest that was capitalized, in whole or in part, by  
48 transfers of assets from a hospital or another  
50 hospital-capitalized affiliate, unless one of the following  
applies:

(1) The affiliated interest has returned to the  
hospital, with interest at a market rate, all assets  
transferred to it by the hospital or another  
hospital-capitalized affiliate;

(2) All of the assets transferred to the affiliated  
interest by the hospital or hospital-capitalized  
affiliate were exempt under subsection 4, paragraph F;  
or

(3) The total assets received by the affiliated  
interest from the hospital or any hospital-capitalized  
affiliate do not exceed \$10,000.

E. "Hospital restructuring" means any one of the following:

2 (1) Transfer of any assets of a hospital or  
4 hospital-capitalized affiliate to any person, except  
6 that the transfer of assets to a title-holding company  
8 within the meaning of the United States Internal  
10 Revenue Code, Section 501, paragraph C, subparagraph  
12 (2), that holds property on behalf of the transferor is  
14 not considered a hospital restructuring;

16 (2) Pledge of a hospital's assets or credit or pledge  
18 of the assets or credit of a hospital-capitalized  
20 affiliate, to secure the financial obligation of  
22 another person;

24 (3) Transfer of an existing service or function,  
26 directly or indirectly, by a hospital to an affiliated  
28 interest or an entity that, as a result of the transfer  
30 would become an affiliated interest;

32 (4) Undertaking by an affiliated interest or an entity  
34 that as a result of the undertaking would become an  
36 affiliated interest of any health care service whose  
38 associated costs would be considered elements of  
40 financial requirements if performed by a hospital;

42 (5) Entry of a hospital or hospital-capitalized  
44 affiliate into a partnership as a general partner, or  
46 any similar act by means of which a hospital or  
48 hospital-capitalized affiliate assumes or acquires  
50 general liability or responsibility for the  
obligations, acts or omissions of a business venture  
other than one undertaken solely by the hospital;

(6) Creation, organization, acquisition or transfer,  
directly or indirectly, of a subsidiary of a hospital;

(7) Creation or organization, directly or indirectly,  
of a parent entity of a hospital by any means,  
including without limitation, the acquisition by any  
person of ownership or control of a hospital or its  
existing parent entity; and

(8) Merger of a hospital or its parent entity with any  
person or any transaction functionally equivalent to a  
merger.

F. "Related party" means any person, other than an  
affiliated interest as defined in paragraph A, that would be  
considered related to the hospital, as defined under the  
Medicare program established pursuant to the United States  
Social Security Act, Title XVIII.

2 G. "Significant transaction" means a transaction that has  
4 an actual or imputed value or worth in excess of \$10,000 or  
6 more for a fiscal year or if the total amount of the  
8 contract price, consideration and other advances by the  
10 institution on account of the transactions is \$10,000 or  
12 more for the fiscal year.

14 H. "Subsidiary" means a person over which another person  
16 exercises majority control by virtue of voting stock of a  
18 for-profit corporation or voting members of a not-for-profit  
20 corporation.

22 I. "Transfer of assets," for purposes of paragraphs D and  
24 E, means any transaction if, and to the extent that, the  
26 fair market value of any assets conveyed by the hospital or  
28 hospital-capitalized affiliate in that transaction exceeds  
30 the value of any consideration received by the hospital or  
32 hospital-capitalized affiliate. Transfers of assets under  
34 this definition include loans at interest rates below market  
36 levels.

38 2. Reporting and consideration of significant transactions;  
40 corporate plans. Statements of significant transactions and  
42 corporate plans must be submitted and considered as follows.

44 A. Each hospital shall annually submit to the commission a  
46 written statement of significant transactions, as defined in  
48 subsection 1, between itself and any person in which an  
50 officer, trustee or director of a hospital is an employee,  
partner, director, officer or beneficial owner of 3% or more  
of the capital stock, between itself and any affiliated  
interest, between itself and any auxiliary, or between  
itself and any related party.

B. In determining base year financial requirements pursuant  
to section 10803 or in establishing adjustments for  
productivity or other factors pursuant to section 10805, the  
commission may disregard unreasonable or unnecessary costs  
under significant transactions between a hospital and the  
persons specified in paragraph A.

C. As a result of its review of significant transactions  
reported pursuant to paragraph A, or its examination of  
significant transactions in the course of any proceeding to  
determine hospital financial requirements, the commission  
may, with respect to the significant transactions between  
hospitals and affiliated interests, establish reasonable  
limits on the actual prices paid by hospitals or charged by  
hospitals. The commission may not exercise this authority

with respect to transfers and pledges that are exempt from  
commission review under subsection 4, paragraph F.

D. Each hospital that has or will have affiliated  
interests, and that has not elected to determine the  
resources available from those affiliates under subsection  
5, paragraph C, shall file, at the time reasonably  
established by the commission, a 5-year corporate plan  
containing information as specified by the commission. At a  
minimum, the plan must set forth the manner in which  
financial resources of the affiliated interests will be  
applied to offset financial requirements of the hospital in  
accordance with subsection 5 and section 10806, subsection  
1, paragraph F. The commission shall review and approve or  
disapprove each corporate plan taking into account, at a  
minimum, the following factors as the commission deems  
appropriate in the interests of the people of the State:

(1) Long-term capital and operating needs of the  
affiliated interests to meet market conditions and  
achieve reasonable growth;

(2) Federal reimbursement and burdens imposed on other  
payors;

(3) The effect that the services of the affiliated  
interests would have on the quality and efficiency of  
health services; and

(4) Requirements associated with maintaining  
tax-exempt status.

The hospital shall submit annual updates of its corporate  
plan which do not require approval unless significant  
modifications are made to the plan. Notwithstanding the  
provisions of section 10607, confidential commercial  
information submitted by a hospital or its affiliates under  
this paragraph or under subsection 4 are not subject to  
public disclosure. The commission shall adopt rules  
establishing criteria for determining the confidentiality of  
that information and establishing procedures to afford  
hospitals and affiliated interests notice and opportunity to  
comment in response to requests for information that may be  
considered confidential.

3. Access to accounts and records. The commission may  
require the production of books, accounts, records, papers and  
memoranda of an auxiliary that is engaged in commercial  
activities or of an affiliated interest or related party that  
relate, directly or indirectly, to any of its dealings with a

hospital that affect the hospital's costs or charges. The commission may, in determining financial requirements of a hospital, disallow all or a portion of the payments under dealings, the account or record of which is not made available to the commission.

4. Hospital restructuring. Unless exempt by rule or order of the commission or by paragraph F or G, no hospital restructuring may take place without the approval of the commission. No hospital restructuring may be approved by the commission unless it is established by the applicant for approval that the hospital restructuring is consistent with the interests of the people of the State.

A. The following procedures apply to an application for approval of a hospital restructuring.

(1) Except as provided in subparagraph (2), the commission shall rule upon all requests for approval of a hospital restructuring within 90 days of the filing date. The filing date is the date when the commission notifies the applicant that the filing is complete.

(2) If the commission determines that the necessary investigation cannot be concluded within 90 days after the filing date, the commission may extend the period for a further period of no more than 90 days. If the commission fails to make a final ruling on or before the end of the 2nd 90-day period or a later date, if fixed by agreement of all parties, the application is deemed disapproved.

(3) Review of hospital restructurings that are also subject to review under the Maine Certificate of Need Act must, to the maximum extent practicable, be conducted simultaneously with the department's review under the Act.

B. In granting its approval, the commission shall impose the terms, considerations or requirements that, in its judgment, are necessary to protect the interests of payors and purchasers. These conditions must include provisions that ensure the following.

(1) The commission has reasonable access to books, records, documents and other information relating to the hospital or any of its affiliates.

(2) The commission has all reasonable powers to detect, identify, review and approve or disapprove

costs associated with transactions between affiliated interests.

(3) The hospital's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is not impaired.

(4) The ability of the hospital to provide reasonable and adequate care is not impaired.

(5) The hospital continues to be subject to applicable laws, principles and rules governing the regulation of hospitals.

(6) The hospital's credit is not impaired or adversely affected.

(7) The requirements of subsection 5 will be met.

C. The commission may adopt rules providing for the filing by hospitals of information by means of which the commission may verify that acts or events that require approval under this subsection are not occurring without that approval. This rule-making authority does not permit general review of the prudence of ordinary hospital investments of endowments.

D. For purposes of this subsection, the commission shall review a filing and, if additional information is necessary to determine the filing complete, shall make its initial request for the additional information within 30 days of its receipt of the filing and shall make any subsequent requests within 15 days of its receipt of the previously requested information.

E. Any hospital or affiliated interest of a hospital may apply to the commission for an advance determination as to the applicability of this subsection to a particular set of facts. The commission shall issue such an advance determination within 30 days of the filing of a complete request. A completed request is one containing the information the commission specifies by rule and with respect to which the requesting party has given reasonable notice to other affected persons as required by commission rule.

F. A hospital or hospital-capitalized affiliate may engage in a hospital restructuring without commission approval if:



2 (1) The hospital restructuring is a transfer or pledge  
4 that falls solely within subsection 1, paragraph E,  
6 subparagraph (1) or (2); and

8 (2) The aggregate value of all those transfers and  
10 pledges, as of the time immediately following the  
12 hospital restructuring, does not exceed 10% of the  
14 lesser of the net worth or the available assets of the  
16 hospital or hospital-capitalized affiliate, as  
18 determined as of the end of the most recent fiscal year  
20 for which a complete financial statement is available  
22 prior to the restructuring.

24 G. A hospital participating in the rate per case payment  
26 system or an affiliated interest of a hospital participating  
28 in the rate per case payment system may engage in a hospital  
30 restructuring without commission approval unless the  
32 restructuring involves any of the following:

34 (1) The transfer of an existing hospital patient care  
36 service;

38 (2) The undertaking by an affiliated interest of a  
40 hospital patient care service that is not an outpatient  
42 service; or

44 (3) A transfer of assets or a pledge of assets or  
46 credit that is not exempt from approval under paragraph  
48 F.

50 As a condition to the transfer of any hospital assets under  
this paragraph, and without regard to whether prior approval  
is necessary, the commission shall require that provision be  
made for a fair return on the hospital's investment. In  
cases of transfers when prior commission approval is not  
required, the hospital shall file a notice setting forth the  
nature of the transfer and documentation of the provision of  
a fair return to the hospital.

In cases when a hospital previously participating in the  
rate per case payment system seeks entry into the total  
revenue system, the commission may review those hospital  
restructurings carried out pursuant to this paragraph that  
have not been reviewed and approved previously by the  
commission. As a consequence of that review, the commission  
may attach conditions to the transfer of the hospital to the  
total revenue system that it determines consistent with the  
interest of the people of the State. These conditions may  
include a condition requiring divestiture of affiliated  
interests created in accordance with this paragraph or

2 reinclusion of services provided by those affiliated  
4 interests into the hospital corporation.

6 Nothing in this paragraph exempts from the requirement of  
8 commission approval any merger that results in any transfer,  
10 undertaking or pledge described in subparagraphs (1) to (3).

12 H. No less than 21 days prior to the effective date of any  
14 hospital restructuring that is exempt from approval under  
16 paragraph G, each affected hospital shall file with the  
18 commission a notice including a description of the  
20 contemplated restructuring, the date on which it is expected  
22 to occur and other information the commission may reasonably  
24 require about the characteristics and expected effects of  
26 the restructuring. No more than 30 days after each  
28 restructuring described in a notice under this subsection  
occurs, each affected hospital shall file with the  
commission a report of the date on which the restructuring  
took place, any differences between the restructuring that  
occurred and the description furnished in the notice and any  
corrections or amendments of the other information in the  
notice that are necessary to reflect the results of the  
restructuring that actually took place.

30 5. Determination of available resources; exemption from  
32 corporate plan requirement. Unless a hospital has elected to  
34 have available resources determined under paragraph C, those  
36 resources must be determined under paragraph B.

38 A. For purposes of this subsection, the "hospital's  
40 portion" is the proportion of the total capitalization of  
42 the affiliated interest that is owned by or was provided by  
44 the hospital and any hospital-capitalized affiliate.

46 B. After review of corporate plans submitted in accordance  
48 with subsection 2, the commission shall, consistent with the  
50 following provisions, determine the amount of financial  
resources of an affiliated interest to be applied to  
hospital financial requirements pursuant to section 10806.

(1) Gifts, grants and income from investments received  
by affiliated interests are not available resources.

(2) The hospital's portion of excess revenues of  
nonprofit affiliated interests and the hospital's  
portion of profits of for-profit affiliated interests  
must be offset, except to the extent that the retention  
of those funds by the affiliated interest is required  
to meet its capital and operating needs as defined in  
the plan submitted to and approved by the commission

2 pursuant to subsection 2. The amount of the excess  
3 revenues or profits must be determined without regard  
4 to any gifts, grants or other transfers of funds by the  
5 affiliated interest to the hospital or to other  
6 affiliates but must otherwise be determined on a  
7 consolidated after-tax basis.

8 (3) Of the amounts determined under subparagraph (2),  
9 50% must be offset generally against hospital financial  
10 requirements.

12 C. A hospital may elect not to file corporate plans and  
13 updates under subsection 2. A hospital that makes this  
14 election shall annually file complete financial statements  
15 of each of its affiliated interests and, if available,  
16 audited, consolidated financial statements with the  
17 commission. Available resources from the affiliated  
18 interests of a hospital that makes an election under this  
19 paragraph must be determined as follows: Fifty percent of  
20 the hospital's portion of all excess revenues of nonprofit  
21 affiliated interests and 50% of the hospital's portion of  
22 all profits of for-profit affiliated interests must be  
23 applied to hospital financial requirements. In determining  
24 total profits or excess revenues, the commission may  
25 consider the reasonableness of reported expenses. The  
26 amount of excess revenues or profits must be determined  
27 without regard to any gifts, grants or other transfers of  
28 funds by the affiliated interest to the hospital or to other  
29 affiliates but must otherwise be determined on a  
30 consolidated after-tax basis. Gifts, grants and income from  
31 investments received by affiliated interests may not be  
32 considered available resources.

34 6. Rules. The commission shall adopt rules governing  
35 hospital restructuring and significant transactions as defined in  
36 this chapter, including, but not limited to, rules addressing the  
37 following subjects:

38 A. The nature and format of applications for hospital  
39 restructuring;

42 B. The content of requests for advance determinations under  
43 subsection 4, paragraph E, and the procedure governing such  
44 determinations;

46 C. A mechanism for providing and updating a list of  
47 entities or corporations to which the significant  
48 transactions reporting requirements in subsection 2,  
49 paragraph A, apply;

2 D. The information filings referred to in subsection 4,  
3 paragraph C; and

4 E. The filing of corporate plans under subsection 2,  
5 paragraph D.

6 7. Cross-subsidy prohibited. Subsidy of affiliated  
7 interests by hospitals is limited in accordance with the  
8 following provisions.

9 A. No hospital or hospital-capitalized affiliate may  
10 transfer assets to or otherwise subsidize the operation of  
11 any affiliated interest, except to the extent that:

12 (1) The activities of the affiliated interest and any  
13 subsidiaries of them have been expressly approved by the  
14 commission in the course of a proceeding to approve an  
15 application for restructuring under subsection 4; or

16 (2) The transfer or pledge, as applicable, is exempt  
17 from commission review subject to subsection 4,  
18 paragraph F.

19 B. For purposes of this subsection, the term "otherwise  
20 subsidize" means:

21 (1) In the case of goods or services, leasehold  
22 interest, other property interests or other  
23 consideration provided by the affiliate to the  
24 hospital, that the payment or the consideration from  
25 the hospital to the affiliate exceeds the least of:

26 (a) The prices charged by the affiliate to other  
27 customers in arms-length transactions;

28 (b) The cost to the hospital of providing the  
29 goods or services directly; or

30 (c) The cost to the hospital of purchasing the  
31 goods, services, property interests or  
32 consideration from another entity; or

33 (2) In the case of goods or services, leasehold  
34 interests, other property interests or other  
35 consideration provided by the hospital to the  
36 affiliate, that the payment or other consideration from  
37 the affiliate to the hospital is less than the greater  
38 of:

2 (a) The prices charged by the hospital to other  
customers in arms-length transactions; or

4 (b) The cost to the hospital of providing the  
goods or services.

6 **8. Corporate purposes of holding company.** The corporate  
purposes of parent entities of hospitals are subject to the  
following provisions.

12 A. The corporate purposes of any parent entity of a  
hospital, as set forth in its articles of incorporation,  
must contain a statement that ensures that the primary  
14 purposes of the parent entity are to support the provision  
of health services by the hospital or hospitals controlled  
16 by the parent entity. The primary purposes may also include  
the support of other health care facilities and direct  
18 providers of health care serving the same communities as the  
hospitals controlled by the parent entity.

22 B. The commission may, upon application, grant a waiver or  
modification of the requirements of this subsection if the  
applicant shows that compliance would be impracticable and  
24 that a waiver is not inconsistent with the purposes of this  
section and the purposes set forth in section 10601. A  
26 corporation may deviate from the requirements of this  
subsection, without commission approval, to the extent  
28 necessary to remain in compliance with federal law governing  
exemption from income taxes.

30 **§10814. Medicare waiver**

32 The commission shall exercise its best efforts to design a  
program that qualifies for a waiver of hospital reimbursement  
34 requirements under the United States Social Security Act, Title  
XVIII, as authorized by Section 1886 of that Act, and shall apply  
36 to the Secretary for that waiver. Notwithstanding any other  
provisions of this chapter, the commission is further authorized  
38 to enter into agreements with the Secretary that are required to  
secure the waiver. Nothing in this section requires that a waiver  
40 be obtained in order for this subchapter to be implemented. The  
acceptance of any conditions under a waiver may not be  
42 detrimental to the interests of the people of the State.

44 **§10815. Coordination with department**

46 The commission and the department shall jointly undertake a  
study of the likely effects of the hospital care financing system  
48 established under this subchapter on hospitals that are also  
licensed to provide skilled nursing facility services or

2 intermediate care facility services and shall make any  
modifications to the rules implementing either the hospital care  
financing system or the prospective payment system for long-term  
4 care facilities administered by the department or both that are  
necessary to ensure that the revenue limits established for those  
6 hospitals will permit them to render effective and efficient  
services in the public interest. In carrying out the  
8 requirements of this section, the commission and the department  
shall consult with the affected hospitals.

10 **§10816. Experimental and demonstration projects**

12 The commission may, with the written agreement of any  
directly affected hospital, 3rd-party payor or purchaser,  
14 implement experimental or demonstration projects designed to  
assess methods of establishing revenue limits or payment  
16 methodologies other than those established generally under this  
chapter. The commission shall consult with appropriate advisory  
18 committees prior to initiating any experimental or demonstration  
project and shall include the results of any project as part of  
20 its annual report. These experimental or demonstration projects  
may include, but need not be limited to, the following:

24 1. Regional hospital corporations. Establishment of  
regional hospital corporations;

26 2. Diagnostic related groups. Payment on the basis of  
28 diagnostic related groups;

30 3. Capitation. Payment on a capitation basis; and

32 4. Preferred provider relationships. Preferred provider  
relationships.

34 The commission may waive any statutory requirements for  
hospital demonstration projects that further the goals described  
36 in section 10601. The commission shall review hospitals with  
approved demonstration projects and may collect data to monitor  
38 performance, and require compliance adjustments if the conditions  
of the demonstration are contravened. The commission may  
40 terminate a demonstration if it determines that the hospital has  
not substantially complied with the terms of the demonstration  
42 project.

44 **§10817. Advisory committees**

46 1. Establishment. The commission shall, after consultation  
48 with representative groups, appoint the following advisory  
committees.

2 A. The commission shall appoint a Professional Advisory  
4 Committee, authorized by Title 5, section 12004-I,  
6 subsection 47, consisting of 2 allopathic physicians, 2  
8 osteopathic physicians, 2 nurses and one hospital employee,  
10 other than a nurse or physician, directly involved in the  
12 provision of patient care. This committee shall advise the  
14 commission and its staff with respect to the effects of the  
16 health care financing system established under this  
18 subchapter on the quality of care provided by hospitals.

20 B. The commission shall appoint a Hospital Advisory  
22 Committee, authorized by Title 5, section 12004-I,  
24 subsection 45, consisting of 2 representatives of hospitals  
26 with 55 or fewer beds, 2 representatives of hospitals with  
28 56 to 110 beds and 2 representatives of hospitals with more  
30 than 110 beds. This committee shall advise the commission  
32 and its staff with respect to analytical techniques, data  
34 requirements, financial and other requirements of hospitals,  
36 and the effects of the health care financing system  
38 established under this subchapter on the hospitals of the  
40 State.

42 C. The commission shall appoint a Payor Advisory Committee,  
44 authorized by Title 5, section 12004-I, subsection 46,  
46 consisting of one representative of nonprofit hospital and  
48 medical service corporations, one representative of  
50 commercial insurance companies, one representative of  
52 self-insured groups and one representative of the  
54 department. This committee shall advise the commission and  
56 its staff with respect to analytical techniques, data  
58 requirements and other technical matters involved in  
60 implementing and administering the health care financing  
62 system established under this subchapter.

64 D. The commission shall appoint the Consumer Advisory  
66 Committee, authorized by Title 5, section 12004-I,  
68 subsection 44-A, consisting of 2 representatives of  
70 organizations or agencies concerned with the health care  
72 needs of the elderly, 2 representatives of employers who  
74 purchase hospital care benefits for their employees and 3  
76 representatives of organizations representing the interests  
78 of consumers or individual purchasers of hospital care.  
80 This committee shall advise the commission and its staff  
82 concerning the effects of the health care financing system  
84 on consumers of health care services and the views of  
86 consumers concerning the quality, cost and accessibility of  
88 the hospital care that consumers receive.

2 2. Chair. The chair of each committee must be appointed by  
4 the chair of the commission and must be rotated on an annual  
6 basis.

8 3. Consultation. The commission shall consult, on a  
10 regular basis, with the committees established pursuant to  
12 subsection 1 and shall consider their recommendations.

14 4. Meetings: assistance. Each committee established under  
16 subsection 1 may meet as it deems appropriate and the commission  
18 shall provide it staff assistance and information it reasonably  
20 requires in the performance of its functions.

22 5. Participation in rulemaking. The chair of each of the  
24 4 advisory committees or another committee member designated by  
26 the chair is entitled to participate, in the manner of an ex  
28 officio nonvoting member, solely with respect to deliberations  
30 and actions of the commission directly related to the formulation  
32 and adoption of rules, but including neither deliberations and  
34 actions that are properly conducted in executive session nor  
36 deliberations and actions with respect to which the commission  
38 determines that one or more of the advisory committee chairs have  
40 a conflict of interest. This section does not authorize  
42 participation in deliberations and actions of the commission  
44 related to the application or enforcement of rules.

#### 26 §10818. Quarterly report

28 The commission shall report on a quarterly basis to the  
30 Bureau of Taxation the amount of financial requirements for the  
32 most recently completed quarter of each hospital's payment year,  
34 determined by dividing the financial requirements for the  
36 applicable payment year by 4.

#### 36 §10819. Approval of primary care resident spaces

38 The commission, after seeking advice from the Advisory  
40 Committee on Medical Education described in Title 20-A, section  
42 12106, shall approve the addition of a primary care resident  
44 space by a hospital if the commission finds that the additional  
46 space is consistent with the comprehensive programs developed by  
48 the Finance Authority of Maine under Title 20-A, chapter 424 or,  
50 in the absence of any such comprehensive programs, with the  
52 orderly development of primary care training and recruitment  
54 programs in the State.

### 48 SUBCHAPTER IV

#### 50 PROCEDURES

2 §10901. Proceedings generally

4 1. Proceedings. Proceedings before the commission are  
6 subject to the provisions of the Maine Administrative Procedure  
8 Act, Title 5, chapter 375, that apply to each type of proceeding  
10 that the commission conducts under this chapter. All proceedings  
12 are also subject to any additional rules of practice the  
14 commission adopts consistent with the Maine Administrative  
16 Procedure Act, Title 5, chapter 375.

18 2. Substantial compliance. A substantial compliance with  
20 the requirements of this chapter is sufficient to give effect to  
22 all the rules, orders, and acts of the commission and, except as  
24 otherwise provided in Title 5, section 8057 with respect to  
26 rules, they may not be declared inoperative, illegal or void for  
28 any omission of a technical and immaterial nature in respect  
30 thereto.

32 3. Burden of proof. In all trials, actions and proceedings  
34 arising under this chapter, the burden of proof is upon the party  
36 seeking to set aside any determination, requirement, direction or  
38 order of the commission complained of as unreasonable, unjust or  
unlawful, as the case may be. In all original proceedings before  
the commission when approval of the commission is sought or a  
proposed revenue limit is contested, the burden of proof is on  
the person seeking the approval or contesting the revenue limit  
if, in the case of a proposed revenue limit, the executive  
director has furnished, reasonably in advance of the deadline  
established for notices of contest, a written explanation of the  
differences between the information timely filed with the  
commission by the hospital for the purpose of computing a revenue  
limit and the information relied upon in computing the proposed  
revenue limit.

40 4. Appeals. Any person aggrieved by a final determination  
42 of the commission may appeal therefrom to the Superior Court in  
44 accordance with the Maine Administrative Procedure Act, Title 5,  
46 chapter 375, subchapter VII.

48 §10902. Procedures for establishment of revenue limits and  
50 interim adjustments

In establishing procedures for the determination of revenue  
limits and interim adjustments, the commission shall provide for  
the following.

1. Revenue limits. At least 90 days prior to the start of  
each payment year of each hospital subject to this chapter, the  
executive director shall propose a gross patient service revenue  
limit and the apportionment thereof for approval by the

commission. If no notice of contest is filed within the period of  
time specified by the commission by an affected hospital,  
affiliated interest, 3rd-party payor or group of purchasers, and  
if the commission does not disapprove or modify the proposed  
limit or apportionment, the limit and apportionment takes effect  
on the first day of the applicable payment year; otherwise, the  
commission shall, after opportunity for hearing before the  
commission, an individual member of the commission or a duly  
appointed and sworn hearing examiner, issue a final order no  
later than the first day of the applicable payment year, except  
that, if the proposed limit or apportionment is timely contested,  
and the commission, after due diligence, is unable to issue a  
final order by the first day of the payment year, it shall issue  
a provisional order by the date which is superseded by a final  
order no later than 150 days after the start of the payment year.

2. Interim adjustments. Upon application by a hospital,  
affiliated interest, payor or group of purchasers for an interim  
adjustment to financial requirements permitted under section  
10805 or upon application by a payor or group of purchasers for a  
modification of its approved differential or of the apportionment  
of the gross patient service revenue, and after opportunity for  
hearing, a final order must be issued within 120 days from the  
date a completed application was filed, except that the  
commission may extend the 120-day period by an additional 90 days  
when the commission determines, after allowing an initial period  
for informal negotiation among the parties to the proceeding,  
that an opportunity for formal proceedings including a hearing  
should be provided before a decision is made. The parties may  
further extend the time by agreement. Any proposed change takes  
effect upon the date specified in the order. At any time during  
the period between the filing date and the commission's final  
decision on the request, the commission may extend provisional  
approval to any part of the request. This provisional approval  
is superseded by the commission's final decision on the request.  
The commission may establish reasonable limits on the frequency  
of requests filed under this subsection.

3. Commission to make adjustments. This section does not  
limit the authority of the commission to make adjustments during  
the course of a payment year, on its own initiative, with  
appropriate notice and opportunity for hearing for affected  
persons.

4. Informal participation in commission deliberations on  
rulemaking. The commission, in its discretion, may permit  
informal participation of members of the public and  
representatives of affected groups in its deliberations relating  
to rulemaking. This participation is limited solely to matters  
that clarify the deliberations.

2 §10903. Other powers

4 In addition to the powers granted to the commission  
6 elsewhere in this chapter, the commission may conduct  
8 investigations, require the filing of information, and subpoena  
10 witnesses, papers, records, documents and all other data sources  
12 relevant to the establishment and apportionment of gross patient  
14 service revenue limits and compliance with gross patient service  
16 revenue limits, reorganizations and significant transactions, and  
18 other matters regulated by the commission pursuant to subchapter  
20 III.

22 CHAPTER 839

24 HEALTH AND HIGHER EDUCATIONAL  
26 FACILITIES AUTHORITY

28 §11501. Title

30 This chapter may be known and cited as the "Maine Health and  
32 Higher Educational Facilities Authority Act."

34 §11502. Declaration of necessity

36 It is declared that for the benefit of the people of the  
38 State, the increase of their commerce, welfare and prosperity and  
40 the improvement of their health and living conditions, it is  
42 essential that health care facilities within the State be  
44 provided with appropriate additional means to expand, enlarge and  
46 establish health care facilities and other related facilities;  
48 that this and future generations of students be given the fullest  
50 opportunity to learn and to develop their intellectual  
capacities; and that it is the purpose of this chapter to provide  
a measure of assistance and an alternative method to enable  
health care facilities and institutions for higher education in  
the State to provide the facilities and structures needed to  
accomplish the purposes of this chapter, all to the public  
benefit and good, and the exercise of the powers, to the extent  
and manner provided in this chapter, is declared the exercise of  
an essential governmental function.

§11503. Definitions

As used in this chapter, unless the context otherwise  
indicates, the following terms have the following meanings.

1. Authority. "Authority" means the Maine Health and  
Higher Educational Facilities Authority created and established  
as a public body corporate and politic of the State by section

11504 or any board, body, commission, department or officer  
succeeding to the principal functions thereof or to whom the  
powers conferred upon the authority by this chapter are given by  
law.

2. Bonds and notes. "Bonds" and "notes" mean bonds and  
notes of the authority issued under this chapter, including  
refunding bonds, notwithstanding that the same may be secured by  
mortgage or the full faith and credit of the authority or the  
full faith and credit of a participating health care facility or  
of a participating institution for higher education, or any other  
lawfully pledged security of a participating health care facility  
or of a participating institution for higher education.

3. Community health center. "Community health center"  
means an incorporated nonprofit health facility that provides  
comprehensive primary health care to citizens in a community.

4. Community mental health facility. "Community mental  
health facility" means a community-based facility that renders  
mental health services to members of the general public, that is  
exempt from taxation under the United States Internal Revenue  
Code, Section 501 and that is licensed by the department.

5. Cost. "Cost" as applied to a project or any portion of  
a project financed under this chapter means the cost of  
construction, building, acquisition, equipping, alteration,  
enlargement, reconstruction and remodeling of a project and  
acquisition of all lands, structures, real or personal property,  
rights, rights-of-way, franchises, easements and interest  
acquired, necessary, used for or useful for or in connection with  
a project and all other undertakings that the authority deems  
reasonable or necessary for the development of a project,  
including but not limited to the cost of demolishing or removing  
any building or structures on land so acquired, the cost of  
acquiring any lands to which the building or structures may be  
moved, the cost of all machinery and equipment, financing  
charges, interest prior to and during construction, and if judged  
advisable by the authority, for a period after completion of the  
construction, the cost of financing the project, including  
interest on bonds and notes issued by the authority to finance  
the project; provisions for working capital; reserves for  
principal and interest and for extensions, enlargements,  
additions and improvements; cost of architectural, engineering,  
financial, legal or other special services, plans,  
specifications, studies, surveys, estimates of cost and revenues;  
administrative and operating expenses; expenses necessary or  
incident to determining the feasibility or practicability of  
constructing the project; and other expenses necessary or  
incident to the construction and acquisition of the project, the

2 financing of the construction, and acquisition and the placing of  
3 the project in operation.

4 6. Health care facility. "Health care facility" means a  
5 nursing home or boarding home that is, or will be upon  
6 completion, licensed under the laws of the State, a hospital, a  
7 community mental health facility or a community health center.

8 7. Hospital. "Hospital" means any private, nonprofit or  
9 charitable institution or organization that is either:

10 A. Engaged in the operation of, or formed for the purpose  
11 of operating, a hospital that is, or will be upon  
12 completion, licensed as a hospital under the laws of the  
13 State; or

14 B. Whose sole members are 2 or more institutions or  
15 organizations that are licensed as hospitals or nursing  
16 homes under the laws of the State.

17 8. Institution for higher education. "Institution for  
18 higher education" means any private, nonprofit or charitable  
19 institution or organization engaged in the operation of, or  
20 formed for the purpose of operating, an educational institution  
21 within this State which, by virtue of law or charter, is an  
22 educational institution empowered to provide a program of  
23 education beyond the high school level.

24 9. Participating health care facility. "Participating  
25 health care facility" means a health care facility that, pursuant  
26 to this chapter, undertakes the financing and construction or  
27 acquisition of a project or undertakes the refunding or  
28 refinancing of existing indebtedness as provided in and permitted  
29 by this chapter.

30 10. Participating institution for higher education.  
31 "Participating institution for higher education" means an  
32 institution for higher education that, pursuant to this chapter,  
33 undertakes the financing and construction or acquisition of a  
34 project or undertakes the refunding or refinancing of obligations  
35 or of a mortgage or of advances as provided in and permitted by  
36 this chapter.

37 11. Project. "Project" means:

38 A. In the case of a participating health care facility, the  
39 acquisition, construction, improvement, reconstruction or  
40 equipping of, or construction of an addition or additions  
41 to, a structure designed for use as a health care facility,  
42 congregate housing facility, laboratory, laundry, nurses or  
43 interns residence or other multi-unit housing facility for  
44 staff, employees, patients or relatives of patients admitted  
45 for treatment in the health care facility, doctors office  
46 building, administration building, research facility,  
47 maintenance, storage or utility facility or other structures  
48 or facilities related to any of the foregoing or required or  
49 useful for the operation of the project, or the refinancing  
50 of existing indebtedness in connection with any of the  
foregoing, including parking and other facilities or  
structures essential or convenient for the orderly conduct  
of the health care facility. "Project" also includes all  
real and personal property, lands, improvements, driveways,  
roads, approaches, pedestrian access roads, rights-of-way,  
utilities, easements and other interests in land, parking  
lots, machinery and equipment, and all other appurtenances  
and facilities either on, above or under the ground that are  
used or usable in connection with the structures mentioned  
in this paragraph, and includes landscaping, site  
preparation, furniture, machinery and equipment and other  
similar items necessary or convenient for the operation of a  
particular facility or structure in the manner for which its  
use is intended, but does not include such items as food,  
fuel, supplies or other items that are customarily  
considered as a current operating charge. In the case of a  
hospital, as defined in subsection 7, paragraph B, a  
community health center or a community mental health  
facility, "project" does not include any facilities,  
structures or appurtenances, the use of which is not  
directly related to the provision of patient care by its  
members; and  
B. In the case of a participating institution for higher  
education, the acquisition, construction, improvement,  
reconstruction or equipping of, or construction of an  
addition or additions to, any structure designed for use as  
a dormitory or other housing facility, dining facility,  
student union, academic building, administrative facility,  
library, classroom building, research facility, faculty  
facility, office facility, athletic facility, health care  
facility, laboratory, maintenance, storage or utility  
facility or other building or structure essential, necessary  
or useful for instruction in a program of education provided  
by an institution for higher education, or any multi-purpose  
structure designed to combine 2 or more of the functions  
performed by the types of structures enumerated in this  
paragraph, "Project" includes all real and personal  
property, lands, improvements, driveways, roads, approaches,  
pedestrian access roads, rights-of-way, utilities, easements  
and other interests in land, machinery and equipment, and  
all appurtenances and facilities either on, above or under

2 the ground that are used or usable in connection with any of  
4 the structures mentioned in this paragraph, and also  
6 includes landscaping, site preparation, furniture,  
8 machinery, equipment and other similar items necessary or  
10 convenient for the operation of a particular facility or  
12 structure in the manner for which its use is intended, but  
14 does not include such items as books, fuel, supplies or  
16 other items that are customarily considered as a current  
18 operating charge.

20 12. Refinancing of existing indebtedness. "Refinancing of  
22 existing indebtedness" means liquidation, with the proceeds of  
24 bonds or notes issued by the authority, of an indebtedness of a  
26 health care facility or institution for higher education incurred  
28 to finance or aid in financing a lawful purpose of that health  
30 care facility or institution for higher education not financed  
32 pursuant to this chapter that would constitute a project had it  
34 been undertaken and financed by the authority, or consolidation  
36 of such indebtedness with indebtedness of the authority incurred  
38 for a project related to the purpose for which the indebtedness  
40 of the health care facility or institution for higher education  
42 was incurred.

24 §11504. Health Facilities Authority; executive director

26 1. Authority. The Maine Health and Higher Educational  
28 Facilities Authority, established by Title 5, chapter 379, is  
30 constituted a public body corporate and politic and an  
32 instrumentality of the State, and the exercise by the authority  
34 of the powers conferred by this chapter is deemed and held to be  
36 the performance of an essential public function. The authority  
38 consists of 12 members, one of whom must be the Superintendent of  
40 Banking, ex officio; one of whom must be the Commissioner of  
42 Health and Developmental Services, ex officio; one of whom must  
44 be the Commissioner of Education, ex officio; one of whom must be  
46 the Treasurer of State, ex officio; and 8 of whom must be  
48 residents of the State appointed by the Governor. Not more than  
50 4 of the appointed members may be members of the same political  
party. Three of the appointed members must be trustees,  
directors, officers or employees of health care facilities and  
one of these appointed members must be a person having a  
favorable reputation for skill, knowledge and experience in state  
and municipal finance, either as a partner, officer or employee  
of an investment banking firm that originates and purchases state  
and municipal securities, or as an officer or employee of an  
insurance company or bank whose duties relate to the purchase of  
state and municipal securities as an investment and to the  
management and control of a state and municipal securities  
portfolio. Members serve for a term of 5 years. Annually, the  
Governor shall appoint, for a term of 5 years, a successor to the

2 member whose term expires. Members shall continue in office  
4 until their successors have been appointed and qualified. The  
6 Governor shall fill any vacancy for the unexpired terms. A  
8 member of the authority is eligible for reappointment. Any  
10 non-ex officio member of the authority may be removed by the  
12 Governor, after hearing, for misfeasance, malfeasance or willful  
14 neglect of duty. Each member of the authority before entering  
16 upon the member's duties must take and subscribe the oath or  
18 affirmation required by the Constitution of Maine, Article IX. A  
20 record of each oath must be filed in the office of the Secretary  
22 of State, The Superintendent of Banking, the Treasurer of State,  
24 the Commissioner of Health and Developmental Services and the  
26 Commissioner of Education may designate their deputies to  
28 represent them with full authority and power to act and vote in  
30 their behalf or, in the case of the Superintendent of Banking,  
32 the Commissioner of Health and Developmental Services and the  
34 Commissioner of Education, any member of their staffs to  
36 represent them as members at meetings of the authority with full  
38 power to act and, in the case of the Superintendent of Banking,  
40 the Commissioner of Health and Developmental Services and the  
42 Commissioner of Education, to vote in their behalf.

24 2. Chair, vice-chair; executive director. The authority  
26 shall annually elect one of its members as chair and one as  
28 vice-chair, and shall also appoint an executive director who may  
30 not be a member of the authority and who serves at the pleasure  
32 of the authority and receive the compensation fixed by the  
34 authority.

30 3. Duties of executive director. The executive director  
32 shall keep a record of the proceedings of the authority and is  
34 custodian of all books, documents and papers filed with the  
36 authority and of the minute book or journal of the authority and  
38 of its official seal. The executive director may cause copies to  
40 be made of all minutes and other records and documents of the  
42 authority and may give certificates under the official seal of  
44 the authority to the effect that such copies are true copies, and  
46 all persons dealing with the authority may rely upon such  
48 certificates.

42 4. Powers of authority. The powers of the authority are  
44 vested in the members thereof in office from time to time, and 5  
46 members of the authority constitute a quorum at any meeting of  
48 the authority. A vacancy in the membership of the authority does  
50 not impair the right of members to exercise all the rights and  
perform all the duties of the authority. Any action taken by the  
authority under this chapter may be authorized by resolution  
approved by a majority of the members present at any regular or  
special meeting, which takes effect immediately or by a  
resolution circularized or sent to each member of the authority.



2 which takes effect when a majority of the members have signed an  
3 assent to the resolution. Resolutions of the authority need not  
4 be published or posted. The authority may delegate by resolution  
5 to one or more of its members or its executive director the  
6 powers and duties it deems proper.

7 5. Bond. Each member of the authority shall execute a  
8 surety bond in the penal sum of \$50,000 and the executive  
9 director shall execute a surety bond in the penal sum of  
10 \$100,000, or, in lieu thereof, the chair of the authority shall  
11 execute a blanket position bond covering each member, the  
12 executive director and the employees of the authority, each  
13 surety bond to be conditioned upon the faithful performance of  
14 the duties of the office or offices covered, to be executed by a  
15 surety company authorized to transact business in this State as  
16 surety and to be approved by the Attorney General and filed in  
17 the office of the Secretary of State. The cost of each bond must  
18 be paid by the authority.

19 6. Expenses. The members of the authority must be  
20 compensated according to the provisions of Title 5, chapter 379.

21 7. Conflict of interest. Notwithstanding any other law to  
22 the contrary, it does not constitute a conflict of interest for a  
23 trustee, director, officer or employee of a health care facility  
24 or for a trustee, member of a corporation or board of governors,  
25 officer or employee of an institution for higher education to  
26 serve as a member of the authority, if the trustee, director,  
27 member of a corporation or board of governors, officer or  
28 employee abstains from deliberation, action and vote by the  
29 authority under this chapter in specific respect to the health  
30 care facility or institution for higher education of which that  
31 member is a trustee, director, member of a corporation or board  
32 of governors, officer or employee.

### 33 §11505. Powers of authority

34 The purpose of the authority is to assist participating  
35 health care facilities and participating institutions for higher  
36 education in the undertaking of projects and the refinancing of  
37 existing indebtedness that are declared to be public purposes and  
38 for the purposes of this chapter the authority is authorized and  
39 empowered:

40 1. Bylaws. To have perpetual succession as a body politic  
41 and corporate and to adopt bylaws for the regulation of its  
42 affairs and the conduct of its business.

43 2. Seal. To adopt an official seal and alter the seal at  
44 pleasure:

2 3. Office. To maintain an office at the place or places it  
3 designates:

4 4. Sue. To sue and be sued in its own name, and plead and  
5 be impleaded:

6 5. Projects. To determine the location and character of  
7 any project to be financed under this chapter, and to acquire,  
8 construct, reconstruct, renovate, improve, replace, maintain,  
9 repair, extend, enlarge, operate, lease, as lessee or lessor, and  
10 regulate the project, to enter into contracts for any or all of  
11 those purposes, to enter into contracts for the management and  
12 operation of a project, and to designate a participating health  
13 care facility or a participating institution for higher education  
14 as its agent to determine the location and character of a project  
15 undertaken by the participating health care facility or  
16 participating institution for higher education under this chapter  
17 and as the agent of the authority, to acquire, construct,  
18 reconstruct, renovate, improve, replace, maintain, repair,  
19 extend, enlarge, operate, lease, as lessee or lessor, and  
20 regulate the project, and, as the agent of the authority, to  
21 enter into contracts for any or all of those purposes, including  
22 contracts for the management and operation of a project:

23 6. Bonds. To borrow money and issue bonds, notes, bond  
24 anticipation notes and other obligations of the authority for any  
25 of its corporate purposes, and to fund or refund them as provided  
26 in this chapter:

27 7. Rates and fees. Generally, to fix and revise from time  
28 to time and charge and collect rates, rents, fees and charges for  
29 the use of and for the services furnished or to be furnished by a  
30 project or any portion thereof and to contract with any person,  
31 partnership, association or corporation or other body public or  
32 private in respect thereof:

33 8. Rules. To establish rules for the use of a project or  
34 any portion of a project and to designate a participating health  
35 care facility or a participating institution for higher education  
36 as its agent to establish rules for the use of a project  
37 undertaken by the participating health care facility or  
38 participating institution for higher education:

39 9. Consultants and agents. To employ consulting engineers,  
40 architects, attorneys, accountants, construction and financial  
41 experts, superintendents, managers and other employees and agents  
42 necessary in its judgment, and to fix their compensation:

10. Grants. To receive and accept from the Federal Government or the State or any other public agency loans or grants for or in aid of the construction of a project or any portion thereof, and to receive and accept loans, grants, aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which the loans, grants, aid and contributions are made:

11. Mortgages. To mortgage any project and the site of the project for the benefit of the holders of bonds or notes or other obligations issued to finance the project:

12. Loans. To make loans to a participating health care facility, participating institution for higher education, other entity eligible to use the authority or consortium of entities eligible to use the authority for the cost of a project in accordance with an agreement between the authority and the participating entity or entities, except that a loan may not exceed the total cost of the project as determined by the participating entity or entities and approved by the authority:

13. Refund. To make loans to a participating health care facility or a participating institution for higher education to refund outstanding obligations, mortgages or advances issued, made or given by the participating health care facility or participating institution for higher education for the cost of the project:

14. Apportionment. To charge to and equitably apportion among participating health care facilities and participating institutions for higher education its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter; and

15. Other acts. To do all things necessary or convenient to carry out the purposes of this chapter. In carrying out the purposes of this chapter, the authority may undertake a project for 2 or more participating health care facilities jointly or 2 or more participating institutions for higher education jointly, and, upon undertaking the project, all other provisions of this chapter apply to and for the benefit of the authority and the joint participants.

#### §11506. Payment of expenses

All expenses incurred in carrying out this chapter are payable solely from funds provided under the authority of this chapter and no liability or obligation may be incurred by the

authority beyond the extent to which money has been provided under this chapter.

#### §11507. Acquisition of property by authority

The authority is authorized and empowered, directly or by and through a participating health care facility or a participating institution for higher education, as its agent, to acquire by purchase or by gift or devise lands, structures, property, real or personal, rights and air rights, rights-of-way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, and air rights, that are located inside or outside the State, as it determines necessary or convenient for the construction or operation of a project, upon the terms and at the prices considered by it to be reasonable and that can be agreed upon between it and the owner of lands, including lands lying under water and riparian rights, and air rights, that are located inside or outside the State, and to take title to lands, including lands lying under water and riparian rights, and air rights, that are located inside or outside the State in the name of the authority or in the name of a participating health care facility or a participating institution for higher education as its agent.

#### §11508. Conveyance of title to participating institutions

When the principal of and interest on bonds of the authority issued to finance the cost of a particular project or projects for a participating health care facility or a participating institution for higher education, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution or trust agreement authorizing and securing the same have been satisfied and the lien of the resolution or trust agreement has been released in accordance with the provisions of the bonds, the authority shall promptly do the things and execute the deeds and conveyances that are necessary and required to convey title to the project or projects to the participating health care facility or participating institution for higher education, free and clear of all liens and encumbrances, all to the extent that title to the project or projects is not, at the time, vested in the participating health care facility or participating institution for higher education.

#### §11509. Notes of the authority

The authority is authorized from time to time to issue its negotiable notes for any corporate purpose, including the payment of all or any part of the cost of any project, and renew from

time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions that the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority or any issue thereof, and the authority may include in any notes any terms, covenants or conditions that it is authorized to include in any bonds. All such notes must be payable from the proceeds of bonds or renewal notes or from the revenues of the authority or other moneys available therefor and not otherwise pledged, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

#### §11510. Bonds of the authority

1. Negotiable. The authority is authorized from time to time to issue its negotiable bonds for the purpose of financing all or a part of the cost of any projects authorized hereby. In anticipation of the sale of the bonds, the authority may issue negotiable bond anticipation notes and may renew those notes from time to time. The notes must be paid from any revenues of the authority or other moneys available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. The notes must be issued in the same manner as the bonds. The notes and the resolution or resolutions authorizing them may contain any provisions, conditions or limitations that a bond resolution of the authority may contain.

2. General obligations. Except as may otherwise be expressly provided by the authority, every issue of its bonds, notes or other obligations is a general obligation of the authority payable from revenues or money of the authority available for the payment of the obligation and not otherwise pledged, subject only to agreements with the holders of particular bonds, notes or other obligations pledging particular revenues or money and subject to any agreements with a participating health care facility or participating institution for higher education. Notwithstanding that bonds, notes or other obligations may be payable from a special fund, they are and must be deemed to be for all purposes negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, Article 8, subject only to the provisions of the bonds, notes or other obligations for registration.

3. Issuance. The bonds may be issued as serial bonds or as term bonds, or the authority, in its discretion, may issue bonds of both types. The bonds must be authorized by resolution of the members of the authority and must bear the date or dates, mature at the time or times, not exceeding 50 years from their respective dates, bear interest at the rate or rates, be payable at the time or times, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in lawful money of the United States of America at the place or places, and be subject to the terms of redemption, as the resolution or resolutions provide. The bonds or notes may be sold at public or private sale for the price or prices the authority determines. The power to fix the date of sale of bonds, to receive bids or proposals, to award and sell bonds, and to take all other necessary action to sell and deliver bonds may be delegated to the executive director of the authority by resolution of the authority. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates that will be exchanged for the definitive bonds.

4. Provisions. Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, that constitute a part of the contract with the holders of the bonds to be authorized, as to:

A. Pledging the full faith and credit of the authority, the full faith and credit of a participating health care facility or a participating institution of higher education, all or a part of the revenues of a project or a revenue-producing contract or contracts made by the authority with an individual, partnership, corporation or association or other body, public or private, to secure the payment of the bonds or of a particular issue of bonds, subject to such agreements with bondholders as may then exist;

B. The rentals, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

C. The setting aside of reserves or sinking funds, and the regulation and disposition thereof;

D. Limitations on the right of the authority or its agent to restrict and regulate the use of the project;

E. Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be

2 applied and pledging the proceeds to secure the payment of  
4 the bonds or any issue of the bonds;

4 F. Limitations on the issuance of additional bonds, the  
6 terms upon which additional bonds may be issued and secured  
8 and the refunding of outstanding bonds;

8 G. The procedure, if any, by which the terms of any  
10 contract with bondholders may be amended or abrogated, the  
12 amount of bonds the holders of which must consent thereto,  
14 and the manner in which that consent may be given;

14 H. Limitations on the amount of moneys derived from the  
16 project to be expended for operating, administrative or  
18 other expenses of the authority;

18 I. Defining the acts or omissions to act that constitute a  
20 default in the duties of the authority to holders of its  
22 obligations and providing the rights and remedies of the  
24 holders in the event of a default;

24 J. The mortgaging of a project and the site of the project  
26 for the purpose of securing the bondholders; and

26 K. Any other additional covenants, agreements and  
28 provisions judged advisable or necessary by the authority  
30 for the security of the holders of such bonds.

30 5. Personal liability. Neither the members of the  
32 authority nor any person executing the bonds or notes is liable  
34 personally on the bonds or notes or subject to any personal  
36 liability or accountability by reason of the issuance thereof.

34 6. Purchase. The authority has power out of any funds  
36 available therefor to purchase its bonds or notes. The authority  
38 may hold, pledge, cancel or resell the bonds, subject to and in  
40 accordance with agreements with bondholders.

40 §11511. Procedure before issuance of bonds

42 Notwithstanding any other provisions of this chapter, the  
44 authority is not empowered to undertake any project authorized by  
46 this chapter unless, prior to the issuance of any bonds or notes  
48 hereunder, the authority has determined that:

46 1. Assistance. The project will enable or assist a health  
48 care facility to fulfill its obligation to provide health care  
50 facilities or an institution for higher education to provide  
educational facilities within the State;

2 2. Review. Each project for a health care facility has  
4 been reviewed and approved to the extent required by the agency  
6 of the State that serves as the Designated Planning Agency of the  
8 State or by the department in accordance with the provisions of  
10 chapter 835, as amended, or, in the case of a project for a  
12 hospital, has been reviewed and approved by the Maine Health Care  
14 Finance Commission to the extent required by chapter 837;

12 3. Lease. The project will be leased to, or owned by, a  
14 health care facility or institution for higher education inside  
16 the State; and

16 4. Payment. Adequate provision has been or will be made  
18 for the payment of the project and that under no circumstances  
20 will the State be obligated for the payment of the project, or  
22 for the payment of the principal of, or interest on, any  
24 obligations issued to finance the project.

20 §11512. Trust agreement to secure bonds

22 In the discretion of the authority, any bonds issued under  
24 this chapter may be secured by a trust agreement by and between  
26 the authority and a corporate trustee or trustees, which may be  
28 any trust company or bank having the powers of a trust company  
30 within or without the State. The trust agreement or the  
32 resolution providing for the issuance of the bonds may pledge or  
34 assign the revenues to be received or proceeds of any contract or  
36 contracts pledged and may convey or mortgage the project or any  
38 portion thereof. The trust agreement or resolution providing for  
40 the issuance of the bonds may contain reasonable and proper  
42 provisions not in violation of law for protecting and enforcing  
44 the rights and remedies of the bondholders, including  
46 particularly provisions specifically authorized to be included in  
48 any resolution or resolutions of the authority authorizing bonds  
thereof. Any bank or trust company incorporated under the laws of  
this State, that may act as depository of the proceeds of bonds  
or of revenues or other moneys, may furnish indemnifying bonds or  
pledge securities as required by the authority. The trust  
agreement may set forth the rights and remedies of the  
bondholders and of the trustee or trustees, and may restrict the  
individual right of action by bondholders. In addition, the trust  
agreement or resolution may contain other provisions the  
authority deems reasonable and proper for the security of the  
bondholders. All expenses incurred in carrying out the trust  
agreement or resolution may be treated as a part of the cost of  
the operation of a project.

48 §11513. Credit of State not pledged

2 Bonds and notes issued under this chapter do not constitute  
3 or create a debt or debts, liability or liabilities on behalf of  
4 the State or of a political subdivision of the State other than  
5 the authority or a loan of the credit of the State or a pledge of  
6 the faith and credit of the State or of any political subdivision  
7 other than the authority, but are payable solely from the funds  
8 provided for the bonds and notes. All bonds and notes must  
9 contain on the face of the bonds and notes a statement to the  
10 effect that neither the State nor a political subdivision of the  
11 State is obligated to pay the bonds or notes or the interest on  
12 the bonds and notes, except from revenues of the project or the  
13 portion of the project for which they are issued and that neither  
14 the faith and credit nor the taxing power of the State or of a  
15 political subdivision of the State is pledged to the payment of  
16 the principal of or the interest on the bonds or notes. The  
17 issuance of bonds or notes under this chapter does not directly  
18 or indirectly or contingently obligate the State or a political  
19 subdivision of the State to levy or to pledge any form of  
20 taxation whatever for the bonds and notes or to make an  
21 appropriation for their payment. This section does not prevent  
22 the authority from pledging its full faith and credit or the full  
23 faith and credit of a participating health care facility or  
24 participating institution for higher education to the payment of  
25 bonds or notes or issue of notes or bonds authorized pursuant to  
26 this chapter.

27 **§11514. Rents and charges**

28 The authority is authorized to fix, revise, charge and  
29 collect rates, rents, fees and charges for the use of and for the  
30 services furnished or to be furnished by each project and to  
31 contract with a person, partnership, association or corporation,  
32 or other body, public or private, in respect of rates, rents,  
33 fees and charges. Rates, rents, fees and charges must be fixed  
34 and adjusted in respect of the aggregate of rates, rents, fees  
35 and charges from the project so as to provide funds sufficient  
36 with other revenues or money available for the project, if any,  
37 to pay the cost of maintaining, repairing and operating the  
38 project and each and every portion of the project, to the extent  
39 that the payment of the cost has not otherwise been adequately  
40 provided for, to pay the principal of and the interest on  
41 outstanding bonds or notes of the authority issued in respect of  
42 the project as they become due and payable, and to create and  
43 maintain reserves required or provided for in a resolution  
44 authorizing, or trust agreement securing, the bonds or notes of  
45 the authority. The rates, rents, fees and charges are not  
46 subject to supervision or regulation by a department, commission,  
47 board, body, bureau or agency of this State other than the  
48 authority. A sufficient amount of the revenues derived in  
49 respect of a project, except the part of revenues necessary to  
50

2 pay the cost of maintenance, repair and operation and to provide  
3 reserves and for renewals, replacements, extensions, enlargements  
4 and improvements as are provided for in the resolution  
5 authorizing the issuance of bonds or notes of the authority or in  
6 the trust agreement securing the same, must be set aside at  
7 regular intervals as provided in the resolution or trust  
8 agreement in a sinking or other similar fund that is pledged to,  
9 and charged with, the payment of the principal of and the  
10 interest on the bonds or notes as they become due, and the  
11 redemption price or the purchase price of bonds retired by call  
12 or purchase as therein provided. The pledge is valid and binding  
13 from the time when the pledge is made; the rates, rents, fees and  
14 charges and other revenues or other money so pledged and later  
15 received by the authority are immediately subject to the lien of  
16 the pledge without any physical delivery of the revenues or money  
17 or further act, and the lien of any pledge is valid and binding  
18 as against all parties having claims of any kind in tort,  
19 contract or otherwise against the authority, irrespective of  
20 whether the parties have notice of the lien. Neither the  
21 resolution nor a trust agreement nor a other agreement nor any  
22 lease by which a pledge is created need be filed or recorded  
23 except in the records of the authority. The use and disposition  
24 of money to the credit of a sinking or other similar fund are  
25 subject to the resolution authorizing the issuance of the bonds  
26 or notes or of the trust agreement. Except as may otherwise be  
27 provided in the resolution or trust agreement, the sinking or  
28 other similar fund may be a fund for all bonds or notes issued to  
29 finance projects at a particular participating health care  
30 facility or participating institution for higher education  
31 without distinction or priority of one over another, provided the  
32 authority in any resolution or trust agreement provides that the  
33 sinking or other similar fund is the fund for a particular  
34 project at a participating health care facility or participating  
35 institution for higher education and for the bonds issued to  
36 finance a particular project and may, additionally, permit and  
37 provide for the issuance of bonds having a subordinate lien in  
38 respect of the security authorized in this chapter to other bonds  
39 of the authority, and, in such case, the authority may create  
40 separate sinking or other similar funds in respect of the  
41 subordinate lien bonds.

42 **§11515. Trust funds**

43 All money received pursuant to the authority of this  
44 chapter, whether as proceeds from the sale of bonds or notes or  
45 as revenues, are trust funds to be held and applied solely as  
46 provided in this chapter. Any officer with whom, or any bank or  
47 trust company with which, that money is deposited shall act as  
48 trustee of the money and shall hold and apply the money for the  
49 purposes of this chapter, subject to the provisions of rules  
50

2 under this chapter and the resolution authorizing the bonds or  
4 notes of any issue or the trust agreement securing the bonds or  
6 notes.

8 **§11516. Enforcement of rights and duties**

10 Any holder of bonds, notes, bond anticipation notes, other  
12 notes or other obligations issued under this chapter or any of  
14 the coupons appertaining thereto, and the trustee or trustees  
16 under any trust agreement, except to the extent the rights herein  
18 given may be restricted by any resolution authorizing the  
20 issuance of, or any trust agreement securing, the bonds, may,  
22 either at law or in equity, by suit, action, mandamus or other  
24 proceedings, protect and enforce any and all rights under the  
26 laws of the State or granted under this chapter or under the  
28 resolution or trust agreement, and may enforce and compel the  
30 performance of all duties required by this chapter or by the  
32 resolution or trust agreement to be performed by the authority or  
34 by any officer, employee or agent thereof, including the fixing,  
36 charging and collecting of the rates, rents, fees and charges  
38 herein authorized and required by the resolution or trust  
40 agreement to be fixed, established and collected.

42 **§11517. Exemption from taxation**

44 The exercise of the powers granted by this chapter is in all  
46 respects for the benefit of the people of the State, for the  
48 increase of their commerce, welfare and prosperity, and for the  
50 improvement of their health and living conditions, and  
constitutes the performance of an essential governmental  
function, and neither the authority nor its agent is required to  
pay any taxes or assessments upon or in respect of a project or  
projects or any property acquired, used by the authority or its  
agent or under the jurisdiction, control, possession or  
supervision of the of the authority or its agent or upon the  
activities of the authority or its agent in the operation or  
maintenance of a project or projects under this chapter, or upon  
income or other revenues received therefrom, and any bonds, notes  
and other obligations issued under this chapter, their transfer  
and the income therefrom, including any profit made on the sale  
thereof, as well as the income and property of the authority, are  
at all times exempt from taxation of every kind by the State and  
by the municipalities and all other political subdivisions of the  
State.

52 **§11518. Bonds declared legal investments**

54 Bonds and notes issued by the authority under this chapter  
56 are hereby made securities in which all public officers and  
public bodies of the State and its political subdivisions, all

2 insurance companies and associations and other persons carrying  
4 on an insurance business, trust companies, banks, bankers,  
6 banking associations, savings banks and savings associations,  
8 including savings and loan associations, credit unions, building  
10 and loan associations, investment companies, executors,  
12 administrators, trustees and other fiduciaries, pension,  
14 profit-sharing, retirement funds and other persons carrying on a  
16 banking business, and all other persons whatsoever, who are now  
18 or may hereafter be, authorized to invest in bonds or other  
20 obligations of the State, may properly and legally invest funds,  
22 including capital in their control or belonging to them. The  
24 bonds and notes are hereby made securities that may properly and  
26 legally be deposited with and received by any state or municipal  
28 or public officer or any agency or political subdivision of the  
30 State for any purpose for which the deposit of bonds or other  
32 obligations of the State is now or may hereafter be authorized by  
34 law.

36 **§11519. Annual report**

38 Within 4 months after the close of each fiscal year of the  
40 authority, the executive director of the authority shall prepare  
42 and submit a complete financial report to the Governor, duly  
44 audited and certified by the auditor of accounts of the  
46 operations and activities of the authority during the preceding  
48 fiscal year to be distributed in the same way as state  
50 departmental reports.

52 **§11520. Refunding bonds**

54 1. Refunding. The authority is authorized to provide for  
56 the issuance of bonds of the authority for the purpose of  
refunding any bonds of the authority then outstanding, including  
the payment of any redemption premium on the bonds and any  
interest accrued or to accrue to the earliest or subsequent date  
of redemption, purchase or maturity of the bonds, and, if deemed  
advisable by the authority, for the additional purpose of paying  
all or any part of the cost of constructing and acquiring  
additions, improvements, extensions or enlargements of a project  
or any portion of a project.

58 2. Use of proceeds. The proceeds of any bonds issued for  
60 the purpose of refunding outstanding bonds may, in the discretion  
of the authority, be applied to the purchase or retirement at  
maturity or redemption of those outstanding bonds either on their  
earliest or any subsequent redemption date or upon the purchase  
or at the maturity thereof and may, pending that application, be  
placed in escrow to be applied to the purchase or retirement at  
maturity or redemption on the date determined by the authority.

2 3. Escrow proceeds. Any proceeds escrowed under this  
3 section, pending use, may be invested and reinvested in  
4 obligations of, or guaranteed by, the United States of America,  
5 or in certificates of deposit or time deposits secured by  
6 obligations of, or guaranteed by, the United States of America,  
7 maturing at the time or times that are appropriate to assure the  
8 prompt payment, as to principal, interest and redemption premium,  
9 if any, of the outstanding bonds to be refunded. The interest,  
10 income and profits, if any, earned or realized on any such  
11 investment may also be applied to the payment of the outstanding  
12 bonds to be refunded. After the terms of the escrow have been  
13 fully satisfied and carried out, any balance of proceeds and  
14 interest, income and profits, if any, earned or realized on the  
15 investments thereof may be returned to the authority for use by  
16 it in any lawful manner.

18 4. Investments. The portion of the proceeds of any bonds  
19 issued under this section for the additional purpose of paying  
20 all or any part of the cost of constructing and acquiring  
21 additions, improvements, extensions or enlargements of a project  
22 may be invested and reinvested in obligations of, or guaranteed  
23 by, the United States of America, or in certificates of deposit  
24 or time deposit secured by obligations of, or guaranteed by, the  
25 United States of America, maturing not later than the time or  
26 times when the proceeds will be needed for the purpose of paying  
27 all or any part of the cost. The interest, income and profits, if  
28 any, earned or realized on such investment may be applied to the  
29 payment of all or any part of the cost or may be used by the  
30 authority in any lawful manner.

32 5. Conditions. All bonds issued under this section are  
33 subject to this chapter in the same manner and to the same extent  
34 as other bonds issued pursuant to this chapter.

36 §11521. Source of payment of expenses

38 All expenses incurred in carrying out this chapter are  
39 payable solely from funds provided under the authority of this  
40 chapter and no liability or obligation may be incurred by the  
41 authority under this chapter beyond the extent to which money has  
42 been provided under this chapter.

44 §11572. Agreement of the State

46 The State pledges to and agrees with the holders of bonds,  
47 notes and other obligations issued under this chapter, and with  
48 those parties who may enter into contracts with the authority  
49 pursuant to this chapter, that the State will not limit, alter,  
50 restrict or impair the rights hereby vested in the authority and  
the participating health care facilities and the participating

2 institutions for higher education to acquire, construct,  
3 reconstruct, maintain and operate a project as defined in this  
4 chapter or to establish, revise, charge and collect rates, rents,  
5 fees and other charges as may be convenient or necessary to  
6 produce sufficient revenues to meet the expenses of maintenance  
7 and operation of the project and to fulfill the terms of any  
8 agreements made with the holders of bonds, notes or other  
9 obligations authorized and issued by this chapter, and with the  
10 parties who may enter into contracts with the authority pursuant  
11 to this chapter, or in any way impair the rights or remedies of  
12 the holders of the bonds, notes or other obligations of those  
13 parties until the bonds, notes and other obligations, together  
14 with interest on the bonds, notes and other obligations, with  
15 interest on any unpaid installment of interest and all costs and  
16 expenses in connection with an action or proceeding by or on  
17 behalf of the bondholders, are fully met and discharged and such  
18 contracts are fully performed on the part of the authority.  
19 Nothing in this chapter precludes such limitation or alteration  
20 if and when adequate provision is made by law for the protection  
21 of the holders of the bonds, notes or other obligations of the  
22 authority or those entering into such contracts with the  
23 authority. The authority is authorized to include this pledge and  
24 undertaking for the State in the bonds, notes or other  
25 obligations or contracts.

26 §11523. Act cumulative; no notice required

28 Neither this chapter nor anything contained in this chapter  
29 restricts or limits any powers that the Maine Health and Higher  
30 Educational Facilities Authority might otherwise have under any  
31 laws of this State, and this chapter is cumulative of any such  
32 powers. This chapter provides a complete, additional and  
33 alternative method for the doing of the things authorized thereby  
34 and must be regarded as supplemental and additional to powers  
35 conferred by other laws. Neither the making of contracts nor the  
36 issuance of bonds, notes, refunding bonds and other obligations  
37 pursuant to the provisions of this chapter need comply with the  
38 requirements of any other state law applicable to the making of  
39 contracts and the issuance of bonds, notes and other obligations,  
40 for the construction and acquisition of any project undertaken  
41 pursuant to this chapter. No proceedings, notice or approval is  
42 required for the issuance of any bonds, notes and other  
43 obligations or any instrument as security therefor, except as  
44 provided in this chapter.

46 §11524. Act liberally construed

48 This chapter, being necessary for the welfare of the State  
49 and its inhabitants, must be liberally construed so as to effect  
50 its purposes.



2 §11525. Maine Health Facilities' Reserve Fund

4 1. Maine Health Facilities' Reserve Fund. The authority  
6 shall establish and maintain a reserve fund called the "Maine  
8 Health Facilities' Reserve Fund" in which is deposited all money  
10 appropriated by the State for the purpose of that fund, all  
12 proceeds of bonds required to be deposited in the fund by terms  
14 of any contract between the authority and its bondholders or any  
resolution of the authority with respect to the proceeds of bonds  
and any other money or funds of the authority that the authority  
determines to deposit in the fund and any other money made  
available to the authority only for the purposes of the fund from  
any other source or sources.

16 A. Money in the reserve fund is held and applied solely to  
18 the payment of the interest on and principal of bonds  
20 secured by the reserve fund and sinking fund payments  
22 referred to in this chapter with respect to bonds secured by  
24 the reserve fund as the interest, principal and sinking fund  
26 payments become due and payable; and for the retirement of  
28 bonds, including the payment of any redemption premium  
required to be paid when any bonds are redeemed or retired  
before maturity. Money may not be withdrawn from the fund  
if the withdrawal reduces the amount in the reserve fund to  
an amount less than the required debt service reserve,  
except for:

30 (1) Payment of interest then due and payable on bonds;

32 (2) Payment of the principal of bonds then maturing  
and payable;

34 (3) Sinking fund payments referred to in this chapter  
with respect to bonds;

36 (4) The retirement of bonds in accordance with the  
38 terms of any contract between the authority and its  
40 bondholders; or

42 (5) The payment for which other money of the authority  
44 is not then available for payment of interest,  
principal or sinking fund payments or the retirement of  
bonds in accordance with the terms of any contract.

46 B. As used in this chapter, "required debt service reserve"  
48 means, as of any date of computation, the amount or amounts  
50 required to be on deposit in the reserve fund as provided by  
resolution of the authority. The required debt service  
reserve is, as of any date of computation, an aggregate

2 amount equal to at least the largest amount of money  
4 required by the terms of all contracts between the authority  
and holders of bonds secured by the reserve fund to be  
raised in the current or any succeeding calendar year for:

6 (1) The payment of interest on and maturing principal  
8 of that portion of outstanding bonds secured by the  
reserve fund; and

10 (2) Sinking fund payments required by the terms of any  
12 contracts to sinking funds established for the payment  
or redemption of those bonds.

14 C. To ensure the maintenance of the required debt service  
16 reserve in the reserve fund, there must be annually  
18 appropriated and paid to the authority for deposit in the  
20 fund the sum, if any, certified by the executive director of  
22 the authority to the Governor, required to restore the  
24 reserve fund to an amount equal to the required debt service  
reserve. On or before December 1st of each year, the  
executive director shall make and deliver to the Governor a  
certificate stating the sum and the sum or sums so certified,  
must be appropriated and paid to the authority during the  
current state fiscal year.

26 To ensure the maintenance of the required debt service  
28 reserve in any capital reserve fund to which, at the  
30 direction of the authority pursuant to the resolution or  
32 resolutions establishing a capital reserve fund, this  
34 provision applies, there is annually appropriated and paid  
to the authority for deposit in the fund the sum, if any,  
certified by the executive director of the authority to the  
Governor, required to restore the reserve fund to an amount  
equal to the required debt service reserve. On or before  
December 1st of each year, the director shall make and  
deliver to the Governor a certificate stating the sum and  
the sum or sums so certified must be appropriated and paid  
to the authority during the current state fiscal year.

40 2. Capital reserve fund. This subsection applies to  
42 capital reserve funds.

44 A. The authority may establish and maintain one or more  
46 special funds called "capital reserve funds" in which must  
48 be deposited:

(1) All money appropriated by the State for the  
purpose of those funds;



2 (2) All proceeds of bonds required to be deposited in  
4 those funds by the terms of any contract between the  
6 authority and its bondholders or any resolution of the  
8 authority with respect to the proceeds of bonds;

10 (3) Any other money or funds of the authority that the  
12 authority determines to deposit in those funds; and

14 (4) Any other money made available to the authority  
16 only for the purposes of the fund from any other source  
18 or sources.

20 B. Money in any capital reserve fund is held and applied  
22 solely:

24 (1) To pay the interest on and principal of bonds  
26 secured by the capital reserve fund and sinking fund  
28 payments referred to in this chapter with respect to  
30 bonds secured by the capital reserve fund as the  
32 interest and principal becomes due and payable; and

34 (2) To retire bonds secured by the capital reserve  
36 fund, including the payment of any redemption premium  
38 required to be paid when any bonds are redeemed or  
40 retired before maturity.

42 C. The minimum amount of any capital reserve fund must be  
44 equal to the amounts required under the resolutions pursuant  
46 to which the bonds secured by the capital reserve fund are  
48 issued. These amounts are referred to in this chapter as  
50 the "required minimum reserve." With respect to bonds  
secured by a capital reserve fund for which the resolution  
authorizing the issuance of those bonds states that the  
provisions of subsection 1, paragraph C apply, the required  
minimum reserve is, as of any date of computation, an  
aggregate amount equal to at least the largest amount of  
money required by the terms of all contracts between the  
authority and its bondholders of the bonds to be raised in  
the current or any succeeding calendar year for the payment  
of interest on and maturing principal of that portion of the  
outstanding bonds or sinking fund payments required by the  
terms of any such contracts to sinking funds established for  
the payment or redemption of the bonds, all calculated on  
the assumption that the bonds will cease to be outstanding  
after the date of the computation because of the payment of  
the bonds at their respective maturities and the payments of  
the required money to sinking funds and the application of  
the sinking funds in accordance with the terms of all  
contracts to the retirement of the bonds.

2 D. Money in any capital reserve fund may not be withdrawn  
4 if the withdrawal reduces the amount in the capital reserve  
6 fund to an amount less than the required minimum reserve for  
8 all bonds issued and to be issued that are secured by the  
10 capital reserve fund, except for:

12 (1) Payment of interest then due and payable on bonds  
14 secured by the capital reserve fund then maturing and  
16 payable;

18 (2) Sinking fund payments required by the terms of any  
20 contracts to sinking funds established for the payment  
22 of redemption of the bonds;

24 (3) The retirement of bonds secured by the capital  
26 reserve fund in accordance with the terms of any  
28 contract between the authority and its bondholders; and

30 (4) The payments for which other money of the  
32 authority is not then available for payment of interest  
34 or principal or sinking fund payments or retirement of  
36 bonds secured by the capital reserve fund in accordance  
38 with the terms of any contract.

40 §11526. Authority to intercept federal and state aid

42 1. Treasurer to withhold funds. When the authority  
44 notifies the Treasurer of State in writing that an entity  
46 eligible to use the authority is in default as to the payment of  
48 principal or interest on any securities of that entity sold  
50 through or by the authority, or that the authority has reasonable  
grounds to predict that the entity will not be able to make a  
full payment when that payment is due, the Treasurer of State  
shall withhold any funds in the Treasurer of State's custody that  
are due or payable to the eligible entity until the amount of the  
principal or interest due or anticipated to be due has been paid  
to the authority or the trustee for the bondholders, or the  
authority notifies the Treasurer of State that satisfactory  
arrangements have been made for the payment of the principal and  
interest. Funds subject to withholding under this subsection  
include, but are not limited to, federal and state grants,  
contracts, allocations or appropriations.

2. Withheld funds to be made available to authority. If  
the authority further notifies the Treasurer of State in writing  
that no other arrangements are satisfactory, the Treasurer of  
State shall deposit in the General Fund and make available to the  
authority any funds withheld from the eligible entity under this  
section. The authority shall apply the funds to the costs  
incurred by the eligible entity, including payments required to

2 be made to the authority or trustee for any bondholders of debt  
3 service on any debt issued by the authority for the eligible  
4 entity or required by the terms of any other law or contract to  
5 be paid to the holders or owners of debt issued on behalf of the  
6 eligible entity upon failure or default, or reasonable  
7 expectation of failure or default, of the eligible institution to  
8 pay the principal or interest on its securities when due.

9 3. Other agencies to be notified. Concurrent with any  
10 notice from the authority to the Treasurer of State under this  
11 section, the authority shall notify any other agency, department  
12 or authority of State Government that exercises regulatory,  
13 supervisory or statutory control over the operations of the  
14 eligible entity. Upon notification, the agency, department or  
15 authority shall immediately undertake reviews to determine what  
16 action, if any, that agency, department or authority should  
17 undertake to assist in the payment by the eligible entity of the  
18 money due or steps that the agencies of the State other than the  
19 Treasurer of State or the authority should take to assure the  
20 continued prudent operation of the eligible entity or provision  
21 of services to the people served by the eligible entity.

#### 22 PART 4

#### 23 AGING AND ADULT PROTECTIVE SERVICES

#### 24 CHAPTER 1401

#### 25 GENERAL PROVISIONS

#### 26 §14001. Declaration of a people

27 This declaration of a people serves as a credo of the  
28 elderly offering a philosophy that serves as a general state of  
29 policy and basic tenets to guide the administration and  
30 implementation of this Part. The declaration of a people:

31 We older Americans place great emphasis on leading a life of  
32 value to our nation, states, communities, friends, families and  
33 to ourselves. America's elderly want to and are able to  
34 contribute to the good of our fellow human beings, even if that  
35 contribution lies outside the traditional realms of employment  
36 and productivity. We want to help improve the quality of life of  
37 each citizen of the United States regardless of the citizen's  
38 age. Our personal experiences, knowledge and skills are our  
39 qualifications. We are a strong, vital segment of society. We  
40 possess the power of a people.

41 We older Americans believe that attaining the status of  
42 senior citizen is merely beginning another stage in the life of

2 each person and is not a signal to withdraw from life. Each  
3 person ages from birth to death. We are all aging.

4 While our particular page in the history of humankind is the  
5 choice of our Creator, it is our place in history which surrounds  
6 us with the consequences of American society. Aging people have  
7 been transformed by the events of American society. America's  
8 elderly now gain sustenance and meet social needs outside our  
9 homes, and have no family under our roof. Once we were dependent  
10 on our family, now we are dependent on impersonal organizations,  
11 systems and our society as a whole. America's exiling of us as  
12 the unwanted generation is its loss -- its economic, its human,  
13 its moral, its spiritual loss.

14 We do not want to be taken from the mainstream of life, away  
15 from the everyday activities of society, and put on the shelf.  
16 We do not want a dole, but rather help in our times of crisis.  
17 We wish to live with minimum dependence on other people and  
18 government.

19 To achieve this credo, we older Americans believe the United  
20 States must provide us a full and equal opportunity for meeting  
21 sustenance and social needs -- the same opportunity that is  
22 enjoyed by our fellow citizens. To continue fulfilling our role  
23 in history, to continue helping our fellow human beings and to  
24 enrich our society: the elderly must be provided an opportunity  
25 to attain the basic essentials of life.

26 To achieve this credo, we believe older Americans must plan,  
27 establish, direct and operate our own programs and services. We  
28 also believe we must participate in the administration and  
29 operation of programs conducted by others for our benefit.  
30 Through our programs, we intend to bring benefits not just to  
31 ourselves, but to all generations in fulfillment of our personal  
32 responsibility to help improve the quality of life of all human  
33 beings.

34 To assist us, our families -- children, brothers, sisters,  
35 nieces and nephews -- must care about us. Is it too much to  
36 seek, that the people to whom we devoted ourselves, devote  
37 themselves to us?

38 To assist us, the government of the United States of America  
39 and each State of the Union must conduct programs which are  
40 mutually acceptable to us. The programs must be fostered by  
41 units on aging located at the highest echelons of government and  
42 charged with ultimate line authority and responsibility for any  
43 government program serving the elderly.

2 Government should not do all for the elderly, but rather  
3 challenge and help citizens to grasp their personal  
4 responsibilities. Government should not be the sole keeper of  
5 America's elderly, but rather a help in times of crisis. Programs  
6 must help us care for ourselves. They must encourage all people,  
7 especially our families to care about us. Programs must provide  
8 a strong advocacy of America's elderly, unencumbered by the  
9 restrictions of partisan politics and the pressures of special  
10 interests, except those interests inherent to this credo of the  
11 elderly.

12 Programs we operate must be distinct and clearly identified  
13 as intended to benefit older people, or be identified as the  
14 elderly's way of helping humankind. Government programs  
15 benefiting America's elderly must be distinct and visibly  
16 separate from other government services. This distinctness must  
17 be maintained in legislation, sources of funds and generally in  
18 operation of programs and services. We believe our policy  
19 provides that programs serving older people may be integrated  
20 with programs serving broader populations in those instances  
21 where gross duplication of identical programs would otherwise  
22 result. We also believe that programs with features specifically  
23 needed by older people must not be integrated with programs  
24 serving broader populations -- even though the programs may be  
25 similar -- except where it is conclusively demonstrated that such  
26 specific features will be retained or that greater benefits will  
27 accrue to the elderly from the integration of programs.

28 First, older people must receive income adequate to obtain  
29 the basic essentials of life from the market place, like our  
30 fellow Americans; rather than be given income supplement  
31 programs, such as food stamps, Old Age Assistance, subsidized  
32 housing and property tax relief. Secondly, the elderly with a  
33 time of crisis because of age, physical condition or social  
34 status must be assisted by appropriations providing services  
35 directly to them, such as homemakers, meals on wheels, home  
36 health care and nursing homes.

37 AMERICA MUST CONSIDER AND DECIDE HOW TO ACHIEVE PURPOSEFUL,  
38 PRIMARY GOALS TO GIVE AGING PEOPLE THE OPPORTUNITY OF RETURNING  
39 TO A FULLER EXISTENCE OR AMERICA WILL CONTINUE TO RELEGATE AGING  
40 PEOPLE TO THE BACK DOOR STOOP OF HISTORY WHERE WE WILL SLIDE  
41 INVISIBLY AND UNNOTICED INTO EXTINCTION. THE LAST CHOICE IS NOT  
42 ACCEPTABLE.

43 Responsibility for achieving this credo rests on the  
44 shoulders of all Americans, but especially our own. We will  
45 attain a life of greater value if each American accepts that  
46 American's personal responsibility for that American's fellow  
47 human beings. We shall reestablish our role in society by  
48 operating services to help all generations. We shall resurrect  
49 our independence by redirecting the country's resources.

2 operating services to help all generations. We shall resurrect  
3 our independence by redirecting the country's resources.

4 We shall express the status of our survival to all  
5 Americans. We shall carry our call to all the sources of help,  
6 to all the seats of power. We shall wield our power as a people.  
7 Through our own groups, we shall shatter the bondage of our  
8 geriatric shackles.

9 As older Americans, we grasp the gauntlet of this credo. We  
10 pledge ourselves to it. We shall achieve it. We accept the  
11 credo's challenge, not with the intent of personal gain, but  
12 rather remembering that, what we achieve today will benefit those  
13 who follow, for we will soon be gone.

#### 14 §14002. Declaration of objectives

15 I. Objectives. It is declared that, in keeping with the  
16 traditional American concept of the inherent dignity of the  
17 individual in our society, the older people of our State are  
18 entitled to, and it is the joint and several duty of the  
19 individual, the individual's family, relatives and friends; the  
20 community and private agencies of the community; and the  
21 governments of the political subdivisions of this State, the  
22 State of Maine and the United States of America to assist our  
23 older people to secure equal opportunity to full and free  
24 enjoyment of the following objectives:

25 A. An adequate income in retirement in accordance with the  
26 American standard of living;

27 B. The best possible physical and mental health that  
28 science can make available without regard to economic status;

29 C. Suitable housing, independently selected, designed and  
30 located with reference to special needs and available at  
31 costs that older citizens can afford;

32 D. Full restorative services for those who require  
33 institutional care;

34 E. Opportunity for employment with no discriminatory  
35 personnel practices because of age;

36 F. Retirement in health, honor and dignity after years of  
37 contribution to the economy;

38 G. Pursuit of a meaningful life within the widest range of  
39 civic, cultural, and recreational opportunities;

2 H. Efficient community services, including access to  
4 low-cost transportation, that provide social assistance in a  
6 coordinated manner and that are readily available when  
8 needed;

10 I. Immediate benefit from proven research knowledge that  
12 can sustain and improve health and happiness;

14 J. Freedom, independence and the free exercise of  
16 individual initiative in planning and managing their own  
18 lives.

20 2. Purpose. It is further declared that thousands of older  
22 people in this State are suffering unnecessary harm from the lack  
24 of adequate services. It is therefore the purpose of this Part,  
26 in support of the above objectives, to:

28 A. Make available programs that include a full range of  
30 health, education and social services to our older citizens  
32 who need them;

34 B. Give full and special consideration to older citizens  
36 with special needs in planning those programs and, pending  
38 the availability of those programs for all older citizens,  
40 give priority to the elderly with the greatest economic and  
42 social need;

44 C. Provide programs that will ensure the coordinated and  
46 effective delivery of a full range of essential services to  
48 our older citizens and, where applicable, also furnish  
50 meaningful employment opportunities for many individuals,  
including older persons, young persons and volunteers from  
the community; and

D. Ensure that the planning and operation of programs will  
be undertaken as a partnership of older citizens, families,  
community leaders, private agencies and community, state and  
local governments, with appropriate assistance as available  
from the Federal Government.

#### §14003. Definitions

For the purposes of this Part, unless the context otherwise  
indicates, the following terms have the following meanings.

1. Abuse. "Abuse" means the infliction of injury,  
unreasonable confinement, intimidation or cruel punishment with  
resulting physical harm or pain or mental anguish; sexual abuse  
or exploitation; or the willful deprivation of essential needs.

2. Agreement. "Agreement" means a legally binding document  
between 2 parties including documents that are commonly referred  
to as accepted application, proposal, prospectus, contract,  
grant, joint or cooperative agreement or purchase of service.

3. Adult. "Adult" means any person who has attained the  
age of 18 years or who is a legally emancipated minor.

4. Aging, elderly or older person. "Aging, elderly or  
older person" are synonymous terms, and mean any person 60 years  
of age or older or any person otherwise described as elderly or  
older for the purpose of eligibility for assistance or services  
under specific federal or state laws and programs.

5. Bureau. "Bureau" means the Bureau of Adults in Need of  
Special Services within the department.

6. Caretaker. "Caretaker" means any individual or  
institution who has or assumes the responsibility for the care of  
an adult.

7. Dependent adult. "Dependent adult" means any adult who  
is wholly or partially dependent upon one or more other persons  
for care or support, either emotional or physical, and who would  
be in danger if that care or support were withdrawn.

8. Director. "Director" means the director of the bureau.

9. Emergency. "Emergency" refers to a situation where:

A. The incapacitated or dependent adult is in immediate  
risk of serious harm;

B. The incapacitated or dependent adult is unable to  
consent to services that will diminish or eliminate the  
risk; and

C. There is no guardian to consent to emergency services.

10. Emergency services. "Emergency services" refer to  
those services necessary to avoid serious harm.

11. Exploitation. "Exploitation" means the illegal or  
improper use of an incapacitated or dependent adult or that  
adult's resources for another's profit or advantage.

12. Extended city. "Extended city" means a city containing  
one or more areas, each of at least 5 square miles in extent and  
with a population density of less than 100 persons per square  
mile according to the 1970 census. The area or areas must

2 constitute at least 25% of the land area of the legal city or  
3 total 5 square miles or more.

4 13. Incapacitated adult. "Incapacitated adult" means any  
5 adult who is impaired by reason of mental illness, mental  
6 deficiency, physical illness or disability to the extent that the  
7 adult lacks sufficient understanding or capacity to make or  
8 communicate responsible decisions concerning that individual's  
9 person, or to the extent the adult can not effectively manage or  
10 apply that individual's estate to necessary ends.

12 14. Neglect. "Neglect" means a threat to an adult's health  
13 or welfare by physical or mental injury or impairment,  
14 deprivation of essential needs or lack of protection from these.

16 15. Nonprofit organization. "Nonprofit organization" means  
17 any agency, institution or organization that is, or is owned and  
18 operated by, one or more corporations or associations no part of  
19 the net earnings of which inures, or may lawfully inure, to the  
20 benefit of any private shareholder or individual and that has a  
21 territory of operations that may extend to a neighborhood or  
22 community region or the State.

24 16. Protective services. "Protective services" means  
25 services that will separate incapacitated or dependent adults  
26 from danger. Protective services include, but are not limited  
27 to, social, medical and psychiatric services necessary to  
28 preserve the incapacitated or dependent adult's rights and  
29 resources and to maintain the incapacitated or dependent adult's  
30 physical and mental well-being.

32 Protective services may include seeking guardianship or a  
33 protective order under Title 18-A, Article V.

34 17. Public. "Public" means municipal, county and other  
35 governmental bodies that are political subdivisions within the  
36 State.

38 18. Rural area. "Rural area" means a geographical area or  
39 place of less than 10,000 inhabitants. "Rural population"  
40 consists of all persons living in places of less than 10,000  
41 inhabitants incorporated as cities, villages, boroughs and towns,  
42 including those persons living in the rural portions of extended  
43 cities, unincorporated places of less than 10,000 inhabitants and  
44 other territory, incorporated or unincorporated.

46 19. Serious harm. "Serious harm" means:

48 A. Serious physical injury or impairment:

2 B. Serious mental injury or impairment, that now or in the  
3 future is likely to be evidenced by serious mental,  
4 behavioral or personality disorder, including, but not  
5 limited to, severe anxiety, depression or withdrawal,  
6 untoward aggressive behavior or similar serious  
7 dysfunctional behavior; or

8 C. Sexual abuse or exploitation.

10 20. Sexual abuse or exploitation. "Sexual abuse or  
11 exploitation" means contact or interaction of a sexual nature  
12 involving an incapacitated or dependent adult without that  
13 adult's consent.

14 21. State agency. "State agency" means the Bureau of  
15 Adults in Need of Special Services within the department.

18 §14004. State departments to cooperate

20 State departments shall cooperate fully with the bureau in  
21 carrying out this Part. The bureau is authorized to request  
22 personnel, financial assistance, facilities and data reasonably  
23 required to assist the bureau to fulfill its powers and duties.

24 State departments proposing to develop, establish, conduct  
25 or administer programs or to assist programs relating to this  
26 Part shall, prior to carrying out those actions, consult with the  
27 bureau.

30 All agencies of State Government shall advise the bureau of  
31 their proposed administrative fiscal and legislative activities  
32 relating to this Part.

34 State departments, in the implementation of their activities  
35 relating to this Part, shall keep the bureau fully informed of  
36 their progress.

38 **CHAPTER 1403**

40 **DEPARTMENT RESPONSIBILITIES**

42 §14101. Powers and duties

44 The department, through the bureau, shall establish, in  
45 accordance with the purposes and intent of this Part, subject to  
46 the direction of the commissioner, the overall planning, policy,  
47 objectives and priorities for all functions and activities  
48 conducted or supported in the State that relate to Maine's aging  
49 population and incapacitated and dependent adults. In order to  
50 carry out the above, the bureau has the power and duty to:

2 1. Encourage and assist development. Encourage and assist  
4 development of more coordinated use of existing and new resources  
6 and services relating to Maine's aging population and  
8 incapacitated and dependent adults;

10 2. Information system. Develop and maintain an up-to-date  
12 information system related to Maine's aging population and  
14 incapacitated and dependent adults. The information must be  
16 available for use by the people of Maine, the political  
18 subdivisions, public and private nonprofit agencies and the  
20 State. Educational materials must be prepared, published and  
22 disseminated. Objective devices and research methodologies must  
24 be continuously developed. Statistical information must be  
26 maintained through uniform methods that are reasonably feasible  
28 and economically efficient and must be made available for use by  
30 public and private agencies, organizations and individuals.  
32 Existing sources of information must be used to the fullest  
34 extent possible, while maintaining confidentiality safeguards of  
36 state and federal law. Information may be requested from any  
38 State Government or public or private agency. To the extent  
40 reasonable and feasible, information must maintain compatibility  
42 with federal information sharing standards.

44 Functions of this information system include, but are not limited  
46 to:

48 A. Conducting research on the causes and nature of problems  
relating to Maine's aging population and incapacitated and  
dependent adults;

B. Collecting, maintaining and disseminating knowledge,  
data and statistics related to Maine's aging population and  
incapacitated and dependent adults that will enable the  
bureau to fulfill its responsibilities;

C. Determining through a detailed survey the extent of  
problems relating to Maine's aging population and  
incapacitated and dependent adults and the needs and  
priorities for solving those problems in the state and  
political subdivisions;

D. Maintaining an inventory of the types and quantity of  
facilities, programs and services operated under public or  
private auspices for Maine's aging population and  
incapacitated and dependent adults. This function  
includes: the unduplicated count, location and  
characteristics of people served by each facility, program  
or service; and the amount, type and source of resources

supporting functions related to Maine's aging population and  
incapacitated and dependent adults; and

E. Conducting a continuous evaluation of the impact,  
quality and value of facilities, programs and services,  
including their administrative adequacy and capacity.  
Activities operated by or with the assistance of the State  
and Federal Governments must be evaluated. Activities to be  
included, but to which the bureau may not be limited, are  
those relating to education, employment and vocational  
services, income, health, housing, transportation,  
community, social, rehabilitation, protective services and  
public guardianship or conservatorship for older people and  
incapacitated and dependent adults and programs such as the  
supplemental security income program, Medicare, Medicaid,  
property tax refunds and the setting of standards for the  
licensing of nursing, intermediate care and boarding homes.  
Included are activities as authorized by this Part and the  
several Acts and amendments to them enacted by the people of  
the State, and those authorized by United States Acts and  
amendments to them such as the:

(1) Chapter 470 of the public laws of 1969 creating  
the Maine State Housing Authority;

(2) United States Social Security Act of 1935;

(3) United States Housing Act of 1937;

(4) United States Older Americans Act of 1965;

(5) United States Age Discrimination Act of 1967;

(6) Home Based Care Act of 1981;

(7) Congregate Housing Act of 1979;

(8) Adult Day Care Licensing Act of 1987;

(9) Adult Protective Services Act of 1981; and

(10) The Uniform Probate Code, Title 18-A;

3. Coordination of efforts. Assist the legislative and  
executive branches of State Government, especially the Governor,  
commissioner and the Bureau of the Budget to coordinate all State  
Government efforts relating to Maine's aging population and  
incapacitated and dependent adults, by:

2 A. Submitting to each branch of State Government no later  
4 than September 1st of each year an annual report covering  
6 its activities for the immediately past fiscal year and  
8 future plans, including recommendations for changes in state  
10 and federal laws;

12 B. Reviewing all proposed legislation, fiscal activities,  
14 plans, policies and other administrative functions relating  
16 to Maine's aging population and incapacitated and dependent  
18 adults made by or requested of all state agencies. The  
20 bureau may submit to those bodies findings, comments and  
22 recommendations, that are advisory. The findings and  
24 comments must recommend what modification in proposals or  
26 actions must be taken to make proposed legislation, fiscal  
28 activities and administrative activities consistent with  
30 such policies and priorities; and

32 C. Making recommendations to the respective branches of  
34 State Government related to improving the quality of life of  
36 Maine's aging population and incapacitated and dependent  
38 adults. The bureau shall consult with and must be consulted  
40 by all responsible state agencies regarding the policies,  
42 priorities and objectives of functions related to Maine's  
44 aging population and incapacitated and dependent adults;

46 4. Comprehensive state plan. Prepare and administer a  
48 comprehensive state plan relating to Maine's aging population and  
incapacitated and dependent adults, developed by the bureau of the committee and subject to the direction of the commissioner. The comprehensive state plan must be implemented for the purpose of coordinating all activities and of assuring compliance with applicable state and federal laws and regulations relating to Maine's aging population and incapacitated and dependent adults. Implementation of this duty means that the bureau has the authority, through a review process, to advise on the preparation and administration of any portion of any state plan relating to Maine's aging population and incapacitated and dependent adults, prepared and administered by any agency of State Government for submission to the Federal Government to obtain federal funding under federal legislation. These state plans, or portions of plans, include, but are not limited to, all state plans dealing with education, employment and vocational services, income, health, housing, protective services, public guardianship and conservatorship, rehabilitation, social services, transportation and welfare. The bureau shall advise the commissioner and Governor on preparation of and provisions to be included in these plans relating to Maine's aging population and incapacitated and dependent adults;

2 5. Programs. Plan, establish and maintain necessary or  
4 desirable programs for individuals or groups of individuals. The  
6 bureau may use the full range of its powers and duties to serve  
8 Maine's aging population and incapacitated and dependent adults  
10 through indirect services provided by agreement and through  
12 direct services provided by state employees;

14 6. Organizational unit. Function as the organizational  
16 unit of State Government with sole responsibility for conducting  
18 and coordinating, and subject to the direction of the  
20 commissioner, programs authorized by this Part and the several  
22 Acts, amendments and successors to them enacted by the people of  
24 the State and those authorized by the United States Acts,  
26 amendments and successors to them that relate to Maine's aging  
28 population and incapacitated and dependent adults;

30 A. The 1973 Act of Maine's Elderly;

32 B. The United States Older Americans Act of 1965; and

34 C. Adult Protective Services Act of 1981;

36 The bureau is designated as the single agency of State Government  
38 solely responsible for administering, subject to the direction of  
40 the commissioner, any state plans required by the above Acts, and  
42 for administering programs of Acts of the State or United States  
44 relating to Maine's aging population and incapacitated and  
46 dependent adults that are not the specific responsibility of  
48 another state agency under state or federal law;

50 7. Mobilize resources. Help communities mobilize their  
resources to benefit Maine's aging population and incapacitated and dependent adults. The bureau shall provide or coordinate the provision of information, technical assistance and consultation to state, regional and local governments, and to public and private nonprofit agencies, institutions, organizations and individuals. The help is for the purpose of encouraging, developing and assisting with the initiation, establishment and administration of any plans, programs or services with a view to the establishment of a statewide network of comprehensive, coordinated services and opportunities for Maine's aging population and incapacitated and dependent adults. Included in this duty is authority to coordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in Maine's aging population and incapacitated and dependent adults;

52 8. Funds. Seek and receive funds from the Federal  
54 Government and private sources to further its activities.  
56 Included in this function is authority to solicit, accept,

2 administer, disburse and coordinate for the State in accordance  
with the intent, objectives and purposes of this Part; and within  
4 any limitation that applies from the sources of those funds, the  
efforts to obtain and the use of any funds from any source to  
6 benefit Maine's aging population and incapacitated and dependent  
adults. Any gift of money or property made by will or otherwise,  
8 and any grant or other funds appropriated, services or property  
available from the Federal Government, the State or any political  
10 subdivision of the State and from all other sources, public or  
private, may be accepted and administered. The bureau may do all  
12 things necessary to cooperate with the Federal Government or any  
of its agencies in making application for any funds. Included in  
14 this duty is authority to advise regarding the disbursement of  
all state funds, or funds administered through agencies of State  
16 Government, appropriated or made available to benefit Maine's  
aging population and incapacitated and dependent adults;

18 9. Agreements. Enter into agreements necessary or  
incidental to the performance of its duties. Included is the  
20 power to make agreements with qualified community, regional and  
state level, private nonprofit and public agencies, organizations  
22 and individuals in this and other states to develop or provide  
facilities, programs and services for Maine's aging population  
24 and incapacitated and dependent adults. Agreements with these  
agencies, organizations and individuals must be executed only  
26 with agencies reviewed by the area agency pursuant to section  
14204, subsection 1, paragraph B. The bureau may engage expert  
28 advisors and assistants, who may serve without compensation or  
may be compensated to the extent funds are available by  
30 appropriation, grant or allocation from a state department. The  
bureau may pay for the expert advisors or assistants;

32 10. Rules and regulations. Prepare, adopt, amend, rescind  
and administer, subject to the direction of the commissioner,  
34 policies, priorities, procedures and rules to govern its affairs  
and the development and operation of facilities, programs and  
36 services. The bureau may adopt rules to carry out the powers and  
duties pursuant to this Part and in accordance with the purpose  
38 and objectives of this Part. The bureau shall especially adopt  
rules that are necessary to define contractual terms, conditions  
40 of agreements and all other rules necessary for the proper  
administration of this Part. Adoption, amendment and rescission  
42 of rules must be made as provided under the Maine Administrative  
44 Procedure Act, Title 5, chapter 375;

46 11. Educational program. Develop and implement, as an  
integral part of programs, an educational program. Assist in the  
48 development of, and cooperation with, educational programs for  
employees of state and local governments and businesses and  
50 industries in the State. Convene and conduct conferences of

2 public and private nonprofit organizations concerned with the  
development and operation of programs for Maine's aging  
4 population and incapacitated and dependent adults;

6 12. Elderly Legal Services Program. Support and maintain  
an Elderly Legal Services Program, by agreement with the  
8 nonprofit organization that the bureau finds best able to provide  
direct services to those of Maine's elderly in greatest economic  
and social need throughout the State;

10 13. Adult protective services. Administer a program of  
protective services as provided in chapter 1413 designed to  
12 protect incapacitated and dependent adults from abuse, neglect,  
exploitation and physical danger;

14 14. Long-term care ombudsman program. Support and maintain  
a long-term care ombudsman program, in accordance with the  
18 federal 1987 Older Americans Act, 42 United States Code, as  
amended, by agreement with the nonprofit organization that the  
20 bureau finds best able to provide the services;

22 15. Training programs. Foster, develop, organize, conduct  
or provide for the conduct of training programs for persons in  
24 the field of serving Maine's aging population and incapacitated  
and dependent adults;

26 16. Coordinate activities. Coordinate activities and  
cooperate with programs in this and other states for the common  
28 advancement of programs for Maine's aging population and  
incapacitated and dependent adults;

30 17. Establish and maintain an office. Establish and  
maintain an office; and

32 18. Duties. Do any other acts and exercise any other  
34 powers necessary or convenient to execute and carry out the  
purposes and authority expressly granted in this Part.

36 §14102. Long-term care ombudsman program

38 1. Powers and duties. In accordance with the program  
40 established pursuant to section 14101, subsection 14, the  
ombudsman:

42 A. May enter onto the premises of any boarding care  
44 facility licensed according to section 8951 and any nursing  
home facility licensed according to section 8802 to  
46 investigate complaints concerning those facilities or to  
48 perform any other functions authorized by this section or  
50 other applicable law or rules;



2 B. Shall investigate complaints received on behalf of  
4 individuals receiving long-term care services provided by  
6 home-based care programs, the Medicaid waiver program,  
8 licensed home health agencies, certified homemaker agencies  
10 and licensed adult day care agencies. To carry out this  
12 function, any staff member or volunteer authorized by the  
14 ombudsman may enter onto the premises of any adult foster  
16 care facility, boarding care facility or nursing home during  
18 the course of an investigation, speak privately with any  
20 individual in the facility or home who consents to the  
22 conversation and inspect and copy all records pertaining to  
24 a resident if the resident or the legal representative of  
26 the resident consents in writing to that inspection. The  
28 consent, when required and not obtainable in writing, may be  
30 conveyed orally or otherwise to the staff of the facility or  
32 home. When a resident is not competent to grant consent and  
34 has no legal representative, the ombudsman may inspect the  
36 resident's records and may make copies without the written  
38 consent of a duly appointed legal representative. The  
40 ombudsman may authorize as many individuals as necessary, in  
42 addition to staff, to carry out this function except that  
44 these individuals may not make copies of confidential client  
46 information. Appropriate identification must be issued to  
48 all persons authorized. In accordance with the federal 1987  
50 Older Americans Act, 42 United States Code, as amended, a  
person may not serve as an ombudsman without training as to  
the rights and responsibilities of an ombudsman or without a  
specific plan of action under direction of the ombudsman.  
The ombudsman shall renew the authorization and issue  
identification annually. The findings of the ombudsman must  
be available to the public upon request; and

34 C. With volunteers, shall visit, talk with and make  
36 personal, social and legal services available to residents;  
38 inform residents of their rights, entitlements and  
40 obligations under federal and state laws by distributing  
42 education materials and meeting with groups or individuals;  
44 assist residents in asserting their legal rights regarding  
46 claims for public assistance, medical care and social  
48 security benefits or in actions against agencies responsible  
for those programs, as well as in all other matters in which  
residents are aggrieved, including, but not limited to,  
advising residents to litigate; investigate complaints  
received from residents or concerned parties regarding care  
or other matters concerning residents; and participate as  
observer and resource in any on-site survey or other  
regulatory review performed by state agencies pursuant to  
state or federal law.

2 2. Disclosure of information. Information or records  
4 maintained by the ombudsman concerning complaints may not be  
6 disclosed unless the ombudsman authorizes the disclosure. The  
8 ombudsman may not disclose the identity of any complainant or  
10 resident unless the complainant, the resident or a legal  
12 representative of either consents in writing to the disclosure or  
14 a court orders the disclosure.

16 A complainant, a resident or a legal representative of either, in  
18 providing the consent, may specify to whom the identity may be  
20 disclosed and for what purposes, in which event no other  
22 disclosure is authorized.

24 3. Good faith registration or investigation of complaints.  
26 Any person, official or institution that in good faith  
28 participates in the registering of a complaint pursuant to this  
30 section or in good faith investigates that complaint or provides  
32 access to those persons carrying out the investigation about an  
34 act or practice in any boarding care facility licensed according  
36 to section 8951 or 14304 or any nursing home licensed according  
38 to section 8802 or that participates in a judicial proceeding  
40 resulting from that complaint is immune from any civil or  
42 criminal liability that otherwise might result from these  
44 actions. For the purpose of any civil or criminal proceedings,  
46 there is a rebuttable presumption that any person acting pursuant  
48 to this section did so in good faith.

#### CHAPTER 1405

#### COORDINATED COMMUNITY PROGRAMS FOR MAINE'S ELDERLY

#### §14201. Purpose

2 It is the purpose of this chapter to encourage and assist  
4 community and regional agencies to concentrate resources in order  
6 to develop greater capacity and foster the development of  
8 coordinated community programs to help older people by entering  
10 into new cooperative arrangements with each other and with  
12 providers of social services for planning for the provision of,  
14 and providing, social services and, where necessary, to  
16 reorganize or reassign functions, in order to secure and maintain  
18 maximum independence and dignity in a home environment for older  
20 people capable of self-care with appropriate supportive services  
22 and remove individual and social barriers to economic and  
24 personal independence for older persons.

#### §14202. Definitions

2 As used in this chapter, unless the context otherwise  
3 indicates, the following words have the following meanings:

4 1. Coordinated community program. "Coordinated community  
5 program" means a system for providing all necessary social  
6 services in a manner designed to:

8 A. Facilitate accessibility to and utilization of all  
9 social services provided within the geographic area served  
10 by the system by any public or private agency or  
11 organization;

12 B. Develop and make the most efficient use of social  
13 services in meeting the needs of older persons; and

14 C. Use available resources efficiently and with a minimum  
15 of duplication.

16 2. Social services. "Social services" means any of the  
17 following services that meet standards prescribed by the director:

18 A. Health services, including health aides, home care,  
19 homemakers, home repair and chore service and community care  
20 including counseling, information and referral services,  
21 continuing education, recreation and volunteer services;

22 B. Transportation, where necessary to facilitate access to  
23 social services, with priority given to health services  
24 including hospitals, physician care, bona fide clinics,  
25 prescription drugs and other essential medications, meals  
26 programs and food distribution centers; and with priority  
27 given to income producing and supplement programs including  
28 social security, supplemental security and tax refunds;

29 C. Meals programs that provide at least one hot meal per  
30 day and any additional meals, hot or cold, that the  
31 recipient of a grant or contract may elect to provide, each  
32 of which assures a minimum of 1/3 of the daily recommended  
33 dietary allowances as established by the Food and Nutrition  
34 Board of the National Academy of Science -- National  
35 Research Council, and which provides the meals programs for  
36 individuals aged 60 and over and their spouses at sites  
37 close to the individual's residence; and where appropriate  
38 to furnish transportation to the site or home-delivered  
39 meals to homebound older people; and to administer the meals  
40 programs in accordance with the appropriate and pertinent  
41 portions of the "nutrition and other program requirements"  
42 of the National Nutrition Program for the Elderly;

2 D. Services designed to encourage and assist older persons  
3 to use facilities and services available to them;

4 E. Services designed to assist older persons to obtain  
5 adequate housing;

6 F. Services designed to assist older persons in avoiding  
7 institutionalization, including evaluation and screening and  
8 home health services; or

9 G. Any other services; if the services are necessary for  
10 the general well-being of older persons.

11 **§14203. Coordinated community programs**

12 Coordinated community programs are authorized to be provided  
13 by the bureau through grants to each area agency with a plan  
14 approved under section 5118 for paying part of the cost, pursuant  
15 to the last 2 paragraphs of this section, of the preparation,  
16 development and administration of a plan by each area agency  
17 designated pursuant to section 5116, subsection 1, paragraph B  
18 for a coordinated community program consistent with section 5118  
19 and the evaluation of activities carried out under the plan; and  
20 the development and provision of coordinated community programs  
21 for the delivery of social services.

22 From the sums appropriated for any fiscal year, each area  
23 agency must be allotted an amount that bears the same ratio to  
24 the sum as the population aged 60 or over in the geographical  
25 boundaries of the area served by the area agency bears to the  
26 population aged 60 or over in the entire State.

27 The director shall determine the number of persons aged 60  
28 or over in the geographical boundaries of the area served by any  
29 area agency and in the entire State on the basis of the most  
30 recent and satisfactory data available.

31 Whenever the director determines that any amount allotted to  
32 an area agency for a fiscal year under this section will not be  
33 used by that agency for carrying out the purpose for which the  
34 allotment was made, the director shall make the amount available  
35 for carrying out the purpose to one or more other area agencies  
36 to the extent the director determines the other area agencies  
37 will be able to use that additional amount for carrying out the  
38 purpose. Any amount made available to an area agency from an  
39 appropriation for a fiscal year pursuant to the preceding  
40 sentence must, for purposes of this section, be regarded as part  
41 of the agency's allotment, as determined under the preceding  
42 provisions of this section, for that year.

2 From that agency's allotment under this section for a fiscal  
3 year, an amount the state agency determines, but not more than  
4 15% of the allotment, must be available for paying the percentage  
5 the state agency determines, but not more than 75% of the cost of  
6 administration of area plans; and an amount the state agency  
7 determines, but not more than 20% of the allotment, may be  
8 available for paying a percentage the state agency determines,  
9 but not more than 50%, of the cost of social services that are  
10 not provided as a part of a coordinated community program in  
11 program areas for which there is an area plan approved by the  
12 state agency.

13 The remainder of the allotment must be available to the area  
14 agency only for paying the percentage the state agency  
15 determines, but not more than 75% of the cost of social services  
16 provided in the area as a part of a coordinated community program  
17 in a service area in which there is an area plan approved by the  
18 state agency.

#### 20 §14204. State organization

21 1. Organization. In order for an area of the State to be  
22 eligible to participate in the program of grants to area agencies  
23 from allotments under section 5115:

24 A. The State must be divided into distinct coordinated  
25 community program areas, in this chapter referred to as an  
26 area, after considering the geographical distribution of  
27 individuals aged 60 and older in the area, the incidence of  
28 the need for social services, including the number of older  
29 persons with low incomes residing in the areas, the  
30 distribution of resources available to provide services and  
31 the location of units of general purpose county and  
32 municipal government within the State:

33 B. The State agency shall, in accordance with rules of the  
34 director, designate an area agency as the sole area agency  
35 to:

36 (1) Develop the area plan to be submitted to the  
37 director for approval under section 5118;

38 (2) Administer the area plan within the area;

39 (3) Be primarily responsible for the coordination of  
40 all area activities related to the purposes of this  
41 chapter;

42 (4) Review and comment on, under its own initiative or  
43 at the request of any state or federal department or

2 agency, any application from any agency or organization  
3 within the area to the state or federal department or  
4 agency for assistance related to meeting the needs of  
5 older persons; and

6 (5) Develop and provide, or ensure the provision of,  
7 coordinated community programs for the delivery of  
8 social services; and

9 C. The area agency designated pursuant to paragraph B shall:

10 (1) Determine which portions of its area will be  
11 included in the area plan to be developed in accordance  
12 with section 14206; and

13 (2) Provide assurances satisfactory to the director  
14 that the area agency will take into account, in  
15 connection with matters of general policy arising in  
16 the development and administration of the area plan for  
17 any fiscal year, the recommendations of older people in  
18 need of or served by social services provided under the  
19 plan.

#### 20 §14205. Area organization

21 An area agency designated under section 14204, subsection 1,  
22 paragraph B must be an established office of aging that is  
23 operating within an area designated pursuant to section 14204,  
24 subsection 1, paragraph A, or any public or nonprofit private  
25 agency in an area that is able to operate under grants authorized  
26 by this chapter and that is able to engage in the planning or  
27 provision of a broad range of social services within an area and  
28 must provide assurance, found adequate by the state agency, that  
29 it will have the ability to develop an area plan and to carry  
30 out, directly or through contractual or other arrangements, a  
31 program pursuant to the plan within the area. In designating an  
32 area agency, the state agency shall give preference to an  
33 established office on aging, unless the state agency finds that  
34 no such office within the area has the capacity to carry out the  
35 area plan.

#### 36 §14206. Area plans

37 1. Plans. In order to be approved by the state agency, an  
38 area plan must be developed by the area agency designated with  
39 respect to the area under section 14204, subsection 1, paragraph  
40 B and must:

41 A. Provide for the establishment of a coordinated community  
42 program for the delivery of social services within the area

2 covered by the plan, including determining the need for  
3 social services in the area, taking into consideration,  
4 among other things, the number of older persons with low  
5 incomes residing in the area, the extent to which existing  
6 public or private programs meet the need, evaluating the  
7 effectiveness of the use of resources in meeting the need,  
8 and entering into agreements with providers of social  
9 services in the area, for the provision of services to meet  
10 the need;

11 B. In accordance with criteria established by the director  
12 by rule relating to priorities, provide for the initiation,  
13 expansion or improvement of social services in the area  
14 covered by the area plan;

15 C. Provide for the establishment and maintenance of  
16 information and referral sources in sufficient numbers to  
17 ensure that all older persons within the planning and  
18 service area covered by the plan will have reasonably  
19 convenient access to the sources. For purposes of this  
20 paragraph, an information and referral source is a location  
21 where a public or private agency or organization;

22 (1) Maintains current information with respect to the  
23 opportunities and services available to older persons,  
24 and develops current lists of older persons in need of  
25 services and opportunities; and

26 (2) Employs a specially trained staff to inform older  
27 persons of the opportunities and services that are  
28 available, and assists these persons to take advantage  
29 of these opportunities and services;

30 D. Provide that the area agency will;

31 (1) Conduct periodic evaluations of activities carried  
32 out pursuant to the area plan;

33 (2) Render appropriate technical assistance to  
34 providers of social services in the planning and  
35 service area covered by the area plan;

36 (3) Where necessary and feasible, enter into  
37 arrangements, consistent with the area plan, under  
38 which funds under this Title may be used to provide  
39 legal services to older persons in the area carried out  
40 through federally assisted programs or other public or  
41 nonprofit agencies;

2 (4) Take into account, in connection with matters of  
3 general policy arising in the development and  
4 administration of the area plan, the recommendations of  
5 older people in need of or served by social services  
6 provided under the plan;

7 (5) Where possible, enter into arrangements with  
8 organizations providing children's services so as to  
9 provide opportunities for older persons to aid or  
10 assist, on a voluntary basis, in the delivery of those  
11 services to children; and

12 (6) Establish an advisory council, which may be the  
13 board of directors or a subcommittee of a board of  
14 directors, of the area agency consisting of at least  
15 65% older people representatives of the target  
16 population and the general public, to advise the area  
17 agency on all matters relating to the administration of  
18 the plan and operations conducted under the plan.

19 E. Provide for the use of methods of administration  
20 necessary for the proper and efficient administration of the  
21 plan;

22 F. Provide that the area agency will make reports, in the  
23 form and containing the information the director requires,  
24 and comply with requirements the director imposes to ensure  
25 the correctness of these reports;

26 G. Establish objectives consistent with the purposes of  
27 this Title, toward which activities under the plan will be  
28 directed, identify obstacles to the attainment of those  
29 objectives and indicate how it proposes to overcome those  
30 obstacles;

31 H. Provide that no social service will be directly provided  
32 by the state agency or an area agency, except where, in the  
33 judgment of the state agency, provision of that service by  
34 the state agency or an area agency is necessary to ensure an  
35 adequate supply of that service; and

36 I. Provide that preference be given to persons aged 60 or  
37 over for any staff positions, full time or part-time, in  
38 area agencies for which these persons qualify.

39 2. Approval of area plan. The director shall approve any  
40 area plan that the director finds fulfills the requirements of  
41 subsection 1.

2 3. Notice and opportunity for hearing. The director may  
4 not make a final determination disapproving any area plan, or any  
6 modification of an area plan, or make a final determination that  
an area agency is ineligible under section 14204, without first  
affording the area agency reasonable notice and opportunity for a  
hearing.

8 4. Findings. If the director, after reasonable notice and  
10 opportunity for hearing to the area agency, finds that:

12 A. The area agency is not eligible under section 14204:

14 B. The area plan has been so changed that it no longer  
complies with subsection 1; or

16 C. In the administration of the plan, there is a failure to  
18 comply substantially with any provision of subsection 1,  
the director shall notify the area agency that no further  
20 payments from its allotments under sections 10356 and 14203  
will be made to the agency or, in the director's discretion,  
22 that further payments to the agency will be limited to  
projects under or portions of the area plan not affected by  
the failure, until the director is satisfied that there will  
24 no longer be any failure to comply. Until the director is  
so satisfied, no further payments may be made to the agency  
26 from its allotments under section 14203, or payments may be  
limited to projects under or portions of the area plan not  
28 affected by the failure. The director shall, in accordance  
with rules the director prescribes, disburse funds withheld  
30 directly to any public or nonprofit private organization or  
agency of the area, submitting an approved plan in  
32 accordance with section 14204. Any payment or payments must  
be matched in the proportions specified in section 14204.

34 5. Final action; dissatisfaction. An agency that is  
36 dissatisfied with a final action of the director under subsection  
2, 3 or 4 may appeal to the commissioner by filing a petition  
38 with the commissioner within 60 days after final action. The  
commissioner shall transmit a copy of the petition to the  
40 director. The director shall then file with the commissioner the  
record of the proceedings on which the director based the  
42 action. Upon the filing of the petition, the commissioner has  
jurisdiction to affirm the action of the director or to set it  
44 aside, in whole or in part, temporarily or permanently, but until  
the filing of the record the director may modify or set aside the  
46 order. The findings of the director as to the facts, if  
supported by substantial evidence, are conclusive, but the  
48 commissioner, for good cause shown, may remand the case to the  
50 director to take further evidence, and the director may thereupon  
make new or modified findings of fact and may modify the

2 director's previous action, and shall file with the commissioner  
4 the record of the further proceedings. The new or modified  
6 findings of fact are likewise conclusive if supported by  
substantial evidence. The judgment of the commissioner affirming  
or setting aside, in whole or in part, any action of the director  
is final.

#### 8 CHAPTER 1407

#### 10 CONGREGATE HOUSING FOR MAINE'S ELDERLY

#### 12 §14301. Policy

14 It is declared to be the policy of the State to make  
16 resources available to ensure maximum independence and dignity in  
18 a home environment for older people capable of self care with  
20 appropriate supportive services. It is the purpose of this  
chapter to develop a system to create and implement a funding  
mechanism for the supportive services component of congregate  
housing that provides a housing alternative to older people.

22 This housing is greatly needed by those older people who  
24 experience difficulty in maintaining themselves in their own  
26 homes and apartments yet do not require or desire the level of  
28 support provided by care facilities. Congregate housing makes  
available, as needed, meals, housekeeping and personal services,  
transportation and other services which provide assistance with  
the activities of daily living.

#### 30 §14302. Definitions

32 As used in this section, unless the context otherwise  
34 indicates, the following terms have the following meanings.

36 1. Congregate housing. "Congregate housing" means  
38 residential housing consisting of private apartments and central  
40 dining facilities and within which a congregate housing  
42 supportive services program serves functionally impaired elderly  
44 occupants who are unable to live independently yet do not require  
46 the constant supervision or intensive health care available at  
48 intermediate care or skilled nursing facilities.

2. Congregate housing services program. "Congregate  
housing services program" means a comprehensive program of  
supportive services, including meals, housekeeping and chore  
assistance, personal care assistance, case management and other  
services that are delivered on the site of congregate housing and  
assist occupants to manage activities of daily living.

2 3. Eligible elderly clients. "Eligible elderly clients"  
3 means an individual 60 years of age or over who has been  
4 determined through an approved assessment by the department to be  
5 functionally impaired and in need of congregate housing  
6 supportive services.

8 §14303. Administration of congregate housing services programs

10 The bureau, with advice from the Maine State Housing  
11 Authority, the Farmers' Home Administration or other housing  
12 agency financing the congregate housing facility, shall  
13 administer state funded congregate housing services programs for  
14 the elderly. Administration must include, but is not limited to:

16 1. Rules: operations of congregate housing services  
17 programs. Proposing and adopting rules governing the operation  
18 of congregate housing services programs;

20 2. Compliance with standards and guidelines. Certifying  
21 and reviewing the compliance of congregate housing services  
22 programs with standards and guidelines established for the  
23 program; and

24 3. Awarding of grants. Awarding of grants, when available  
25 and necessary, to subsidize the cost of congregate housing  
26 services programs.

28 §14304. Voluntary certification of congregate housing services  
29 programs

31 The bureau may adopt rules for a voluntary certification  
32 program for all congregate housing services programs operating in  
33 the State, regardless of their funding source. The rules must  
34 include:

36 1. Certification standards and guidelines. Establishing  
37 standards and guidelines for certification;

39 2. Decertification standards and guidelines. Establishing  
40 standards and guidelines for decertification;

42 3. Annual review. Conducting an annual review of  
43 participating congregate housing services programs to determine  
44 whether a certification should be awarded or renewed;

46 4. Issuance of certificates. Issuing certificates to  
47 participating programs that meet the standards and guidelines; and  
48

2 5. Informing consumers. Informing consumers of programs  
3 that meet certification criteria and annually publishing a  
4 listing of all certified programs operating in this State.

6 CHAPTER 1409

8 IN-HOME AND COMMUNITY SUPPORT SERVICES  
9 FOR ADULTS WITH LONG-TERM CARE NEEDS

11 SUBCHAPTER I

13 GENERAL PROVISIONS

15 §14401. Legislative intent

17 1. Findings. The Legislature finds that:

19 A. In-home and community support services have not been  
20 sufficiently available to many adults with long-term care  
21 needs;

23 B. Many adults with long-term care needs are at risk of  
24 being or already have been placed in institutional settings,  
25 because in-home and community support services or funds to  
26 pay for these services have not been available to them;

28 C. In some instances placement of adults with long-term  
29 care needs in institutional settings can result in emotional  
30 and social problems for these adults and their families; and

32 D. For many adults with long-term care needs, it is less  
33 costly for the State to provide in-home and community  
34 support services than it is to provide care in institutional  
35 settings.

37 2. Policy. The Legislature declares that it is the policy  
38 of this State:

40 A. To increase the availability of in-home and community  
41 support services for adults with long-term care needs;

43 B. That the priority recipients of in-home and community  
44 support services, pursuant to this chapter, are the elderly  
45 and disabled adults who are at the greatest risk of being,  
46 or who already have been, placed inappropriately in an  
47 institutional setting; and

49 C. That a variety of agencies, facilities and individuals  
50 are encouraged to provide in-home and community support  
51 services.

2 **§14402. Definitions**

4 As used in this chapter, unless the context otherwise  
6 indicates, the following terms have the following meanings.

8 1. Adults with long-term care needs. "Adults with  
10 long-term care needs" means adults who have physical or mental  
12 limitations that restrict their ability to carry out activities  
14 of daily living and impede their ability to live independently,  
16 or who are at risk of being, or who already have been, placed  
18 inappropriately in an institutional setting.

20 2. Agreement. "Agreement" means a contract, grant or other  
22 method of payment.

24 3. In-home and community support services. "In-home and  
26 community support services" means health and social services and  
28 other assistance required to enable adults with long-term care  
30 needs to remain in their places of residence. These services  
32 include, but are not limited to, medical and diagnostic services;  
34 professional nursing; physical, occupational and speech therapy;  
36 dietary and nutrition services; home health aide services;  
38 personal care assistance services; companion and attendant  
40 services; handyperson, chore and homemaker services; respite  
42 care; counseling services; transportation; small rent subsidies;  
44 various devices that lessen the effects of disabilities; and  
46 other appropriate and necessary social services.

48 4. Institutional settings. "Institutional settings" means  
50 boarding care facilities, licensed pursuant to chapter 813;  
nursing facilities and units and hospitals, licensed pursuant to  
chapter 807; and state institutions for individuals who are  
mentally ill or mentally retarded or who have related conditions.

5. Personal care assistance services. "Personal care  
assistance services" means services that are required by an adult  
with long-term care needs to achieve greater physical  
independence, which may be consumer directed and that include,  
but are not limited to:

A. Routine bodily functions, such as bowel or bladder care;

B. Dressing;

C. Preparation and consumption of food;

D. Moving in and out of bed;

E. Routine bathing;

F. Ambulation; and

G. Any other similar activity of daily living.

6. Personal care assistant. "Personal care assistant"  
means an individual who has completed a training course of at  
least 40 hours that includes, but is not limited to, instruction  
in basic personal care procedures, such as those listed in  
subsection 5, first aid and handling of emergencies; or an  
individual who meets competency requirements, as determined by  
the department or its designee. Nothing in Title 32, chapter 31,  
may be interpreted to require that a personal care assistant be  
licensed under that chapter or supervised by a person licensed  
under that chapter.

7. Provider. "Provider" means any entity, agency, facility  
or individual who offers or plans to offer any in-home or  
community support services.

8. Severe disability. "Severe disability" means a  
disability that results in persons having severe, chronic  
physical, sensory or cognitive limitations that restrict their  
ability to carry out the normal activities of daily living and to  
live independently.

**§14403. Programs; rules**

1. Programs required. The department shall establish and  
administer, pursuant to this chapter, programs of in-home and  
community support services for adults with long-term care needs,  
by itself or in cooperation with the Federal Government.

An adult with long-term care needs, who applies for services  
under any such program, is entitled to receive the services, if  
the department has determined that the adult is eligible and if  
sufficient funds are available pursuant to this chapter to pay  
for the services.

2. Rules. The department shall adopt such rules, including  
rules that specify the criteria to be used in ranking proposals,  
as may be necessary for the effective administration of any  
programs of in-home and community support services pursuant to  
this chapter, in accordance with the Maine Administrative  
Procedure Act, Title 5, chapter 375. In the development of such  
rules, the department shall consult with consumers,  
representatives of consumers or providers of in-home and  
community support services.

**§14404. Delivery of services**

2 1. Staff; providers. In order to provide in-home and  
4 community support services, the department may use its own staff  
and its designees and enter into agreements with providers.

6 2. Agreement. Each agreement must specify, among other  
8 things, the types of in-home and community support services to be  
provided, the cost of the services, the method of payment and the  
10 criteria to be used for evaluating the provisions of services.

12 3. Proposals. The department shall solicit proposals from  
14 providers who would like to provide in-home and community support  
services, pursuant to this chapter. Providers shall submit  
16 proposals in the form and manner required by the department. The  
department shall select proposals according to rankings based on  
18 the criteria developed pursuant to section 14403, subsection 2.

#### 18 §14405. Funds

20 1. Federal and private funds. The department may apply for  
22 and use any federal or private funds and other support that  
become available to carry out any program of in-home and  
24 community support services.

26 2. Fee scale. The department shall develop, whenever  
28 practicable, sliding fee scales for in-home and community support  
services provided pursuant to this chapter.

30 3. Vouchers. The department may, through the use of  
32 vouchers, make payments directly to adults with long-term care  
needs to enable them to purchase in-home and community support  
34 services pursuant to this chapter.

36 4. Distribution. The department shall disburse funds,  
38 pursuant to this chapter, in a manner that ensures, to the extent  
practicable, equitable distribution of services among adults with  
40 long-term care needs and among the various regions of the State.

#### 40 §14406. Demonstration projects

42 The department may initiate demonstration projects to test  
new ways of providing in-home and community support services,  
44 including, but not limited to, projects that test the ability of  
hospitals, skilled nursing facilities or intermediate care  
46 facilities to provide these services.

#### 48 §14407. Relatives as providers

50 The department may not refuse to pay a relative of an adult  
with long-term care needs for the provision of in-home and

2 community support services or personal care assistance services  
if the relative is qualified to provide the service and the  
4 payment is not prohibited by federal law or regulation.

#### 6 §14408. Respite Care Fund

8 The department shall administer the Respite Care Fund for  
the specific purpose of providing short-term respite care for  
10 victims of Alzheimer's disease. This respite care must include  
short-term nursing or boarding home stays, hospital, adult day or  
12 temporary in-home care.

### 14 SUBCHAPTER II

#### 16 IN-HOME AND COMMUNITY SUPPORT SERVICES 18 FOR THE ELDERLY AND OTHER ADULTS AT RISK OF 20 INAPPROPRIATE PLACEMENT IN INSTITUTIONAL 22 SETTINGS

#### 24 §14451. Program established

26 The department shall establish and administer a program of  
in-home and community support services for adults with long-term  
28 care needs who are eligible for these services pursuant to  
section 14452.

#### 30 §14452. Eligibility

32 An adult with long-term care needs is eligible for in-home  
and community support services under this chapter if the  
34 department or its designee determines that the adult:

36 1. Inappropriate placement. Is at risk of being or already  
38 has been placed inappropriately in an institutional setting;

40 2. Need for services. Has a need for in-home and community  
42 support services; and

44 3. Income and support. Has no or insufficient personal  
46 income or other support from public services, family members and  
neighbors.

#### 48 §14453. Multidisciplinary teams

1. Team designation. The commissioner shall designate  
several multidisciplinary teams throughout the State to assist  
the department with evaluations of adults with long-term care  
needs.



2 2. Membership. Each multidisciplinary team must include at  
3 least one social services' professional, one health care  
4 professional and, whenever possible, the adult with long-term  
5 care needs and a family or designated representative.

6 3. Duties. For each adult with long-term care needs  
7 evaluated by a multidisciplinary team, the team shall assist the  
8 department to:

9 A. Determine the eligibility of the adult for in-home and  
10 community support services;

11 B. Develop a plan of services for the adult, in cooperation  
12 with the probable providers of the services, whenever the  
13 providers are not members of the team;

14 C. Arrange for the provision of the needed services;

15 D. Reevaluate the adult periodically to determine the  
16 continuing need for the services; and

17 E. Consult when possible with the adult's attending  
18 physician, if any.

19 CHAPTER 1411

20 ADULT DAY CARE PROGRAM

21 §14501. Definition

22 As used in this chapter, the term "adult day care program"  
23 means a program of care, activities and protection maintained or  
24 carried out on a regular basis by a person or combination of  
25 persons in a private dwelling or other facility, for  
26 consideration, for any part of a day for 3 or more adults, 18  
27 years of age or older, who are not blood relatives and are coming  
28 to the facility for the express purpose of participating in this  
29 program.

30 The term does not include:

31 1. Adult program. Any program for adults provided by a  
32 licensed residential facility; or

33 2. Any day activity program. Any day activity program  
34 licensed by the department.

35 §14502. Rules

36 The department, in consultation with adult day care  
37 providers and consumers, shall adopt rules for licensing adult  
38 day care programs that must include, but are not limited to,  
39 rules pertaining to the health and safety of the adult clients  
40 and staff, the quality of the program provided, the  
41 administration of medication and licensing procedures.

42 Different standards may be developed for different types of  
43 adult day care programs with differences based on number of  
44 participants or other factors affecting programming.

45 §14503. License

46 No person or combination of persons may operate an adult day  
47 care program in this State without having obtained a license to  
48 operate an adult day care program from the department pursuant to  
49 chapter 809.

50 §14504. Fee for license

51 The department shall charge a reasonable fee for a license.  
52 There may be differential fees charged to programs based on  
53 numbers of participants, type of license or other considerations.

54 §14505. Fire safety

55 1. Inspection required. No license may be issued by the  
56 department for an adult day care program until the department has  
57 received from the State Fire Marshal a written statement signed  
58 by one of the officials designated under Title 25, section 2360,  
59 2391 or 2392 to make fire safety inspections. This statement,  
60 which must indicate that a facility has complied with the  
61 applicable fire safety provisions referred to in subsection 2 and  
62 Title 25, section 2452, must be furnished annually by the State  
63 Fire Marshal to the department.

64 2. Life safety code. The written statement that must be  
65 furnished annually by the State Fire Marshal to the department  
66 must indicate that the adult day care program has complied with  
67 at least the requirements of the Life Safety Code of the National  
68 Fire Protection Association as adopted by the State Fire Marshal  
69 that are specified in:

70 A. The family day care homes section, if the adult day care  
71 program has no more than 6 adults per session;

72 B. The group day care homes section, if the adult day care  
73 program has at least 7 but no more than 12 adults per  
74 session; or

2 C. The child day care section, if the adult day care  
3 program has more than 13 adults per session.

4 3. Fees. The department shall establish and pay reasonable  
5 fees to the State Fire Marshal or municipal official for each  
6 inspection.

8 §14506. Illegal operation of an adult day care program

10 A person who operates an adult day care program without a  
11 valid license issued by the department commits a violation for  
12 which a forfeiture of not more than \$500 may be adjudged.

14 CHAPTER 1413

16 ADULT PROTECTIVE SERVICES ACT

18 SUBCHAPTER I

20 GENERAL PROVISIONS

22 §14601. Title

24 This chapter may be known and cited as the Adult Protective  
25 Services Act.

26 §14602. Declaration of policy and legislative intent

28 The Legislature recognizes that many adult citizens of the  
29 State, because of incapacitation or dependency, are unable to  
30 manage their own affairs or to protect themselves from abuse,  
31 neglect or exploitation. Often these persons can not find others  
32 able or willing to render assistance. The Legislature intends,  
33 through this chapter, to establish a program of protective  
34 services designed to fill this need and to ensure its  
35 availability to all incapacitated and dependent adults who are  
36 faced with abuse, neglect, exploitation or the substantial risk  
37 of abuse, neglect or exploitation. It is also the intent of the  
38 Legislature to authorize only the least possible restriction on  
39 the exercise of personal and civil rights consistent with the  
40 person's need for services and to require that due process be  
41 followed in imposing those restrictions.

42 §14603. Authorizations

44 1. General. The department shall act to:

46 A. Protect abused, neglected or exploited incapacitated and  
47 dependent adults and incapacitated and dependent adults in

2 circumstances that present a substantial risk of abuse,  
3 neglect or exploitation;

4 B. Prevent abuse, neglect or exploitation;

6 C. Enhance the welfare of these incapacitated and dependent  
7 adults; and

8 D. Promote self-care wherever possible.

10 2. Reports. The department shall:

12 A. Receive, promptly investigate and determine the validity  
13 of reports of alleged abuse, neglect or exploitation or the  
14 substantial risk of abuse, neglect or exploitation;

16 B. Take appropriate action, including providing or  
17 arranging for the provision of appropriate services; and

20 C. Petition for guardianship or a protective order under  
21 Title 18-A, Article 5, when all less restrictive  
22 alternatives have been tried and have failed to protect the  
23 incapacitated adult.

24 3. Appearance of designated employees in Probate Court.  
25 The commissioner may designate employees of the department to  
26 represent the department in Probate Court in:

28 A. Matters relating to the performance of duties in  
29 uncontested guardianship, conservatorship or termination of  
30 guardianship or conservatorship proceedings; and

32 B. Requests for emergency guardianships arising from the  
33 need for emergency medical treatment or placement in adult  
34 foster homes, boarding homes or nursing homes or for orders  
35 necessary to apply for or preserve an estate in emergency  
36 situations.

38 §14604. Records; confidentiality, disclosure

40 1. Confidentiality of adult protective records. All  
41 department records that contain personally identifying  
42 information and are created or obtained in connection with the  
43 department's adult protective activities and activities related  
44 to an adult while under the jurisdiction of the department are  
45 confidential and subject to release only under the conditions of  
46 subsections 2 and 3. Within the department, the records must be  
47 available only to and used by authorized departmental personnel  
48 and legal counsel for the department in carrying out their  
49 functions.

2 2. Optional disclosure of records. The department may  
4 disclose relevant information in the records to the following  
6 persons:

8 A. An agency investigating a report of adult abuse, neglect  
10 or exploitation when the investigation is authorized by  
12 statute or by an agreement with the department;

14 B. An advocacy agency conducting an investigation under  
16 Title 5, chapter 511; United States Public Law 88-164, Title  
18 I, Part C; or United States Public Law 99-319, except as  
20 provided in subsection 3, paragraph D;

22 C. A physician treating an incapacitated or dependent adult  
24 whom the physician reasonably suspects may be abused,  
26 neglected or exploited;

28 D. An incapacitated or dependent adult named in a record  
30 who is reported to be abused, neglected or exploited, or the  
32 caretaker of the incapacitated or dependent adult, with  
34 protection for identity of reporters and other persons when  
36 appropriate;

38 E. A person having the legal responsibility or  
40 authorization to care for, evaluate, treat or supervise an  
42 incapacitated or dependent adult;

44 F. Any person engaged in bona fide research, provided that  
46 no personally identifying information is made available,  
48 unless it is essential to the research and the commissioner  
50 or the commissioner's designee gives prior approval. If the  
researcher desires to contact a subject of a record, the  
subject's consent must be obtained by the department prior  
to the contact;

G. Persons and organizations pursuant to Title 5, section  
9057, subsection 6, and pursuant to chapter 103; and

H. A relative by blood, marriage or adoption of an  
incapacitated or dependent adult named in a record.

3. Mandatory disclosure of records. The department shall  
disclose relevant information in the records to the following  
persons:

A. The guardian ad litem of an incapacitated or dependent  
adult named in a record who is reported to be abused,  
neglected or exploited;

B. A court on its finding that access to those records may  
be necessary for the determination of any issue before the  
court. Access must be limited to in camera inspection,  
unless the court determines that public disclosure of the  
information is necessary for the resolution of an issue  
pending before it;

C. A grand jury on its determination that access to those  
records is necessary in the conduct of its official  
business; and

D. An advocacy agency conducting an investigation under  
Title 5, chapter 511; United States Public Law 88-164, Title  
I, Part C; or United States Public Law 99-319 regarding a  
developmentally disabled person or mentally ill person who  
is or who, within the last 90 days, was residing in a  
facility rendering care or treatment, when a complaint has  
been received by the agency or there is probable cause to  
believe that individual has been subject to abuse or  
neglect, and that person does not have a legal guardian or  
the person is under public guardianship. The determination  
of which information and records are relevant to the  
investigation is made by agreement between the department  
and the agency.

#### §14605. Penalty for violations

A person who knowingly violates a provision of this chapter  
commits a civil violation for which a forfeiture of not more than  
\$500 may be adjudged. Any licensed, registered, accredited or  
certified professional who has been adjudged to have violated a  
provision of this chapter must, in addition to any financial  
penalty, be reported by the court to the appropriate professional  
licensing, registration board, accrediting unit or facility.

#### §14606. Spiritual treatment

1. Treatment not considered abuse, neglect or  
exploitation. An incapacitated or dependent adult may not be  
considered to be abused, neglected or exploited solely because  
treatment is by spiritual means by an accredited practitioner of  
a recognized religious organization.

2. Treatment to be considered if requested. When medical  
treatment is authorized, under this chapter, treatment by  
spiritual means by an accredited practitioner of a recognized  
religious organization may also be considered if requested by the  
incapacitated or disabled adult or that person's caretaker.

#### SUBCHAPTER II

2    REPORTING OF ABUSE, NEGLECT  
4    OR EXPLOITATION

6    §14651. Persons mandated to report suspected abuse, neglect or  
8    exploitation

10      1. Reasonable cause to suspect. When, while acting in a  
12      professional capacity, an allopathic or osteopathic physician,  
14      medical intern, medical examiner, physician's assistant, dentist,  
16      chiropractor, podiatrist, registered or licensed practical nurse,  
18      certified nursing assistant, Christian Science practitioner,  
20      social worker, psychologist, pharmacist, physical therapist,  
22      speech therapist, occupational therapist, mental health  
24      professional, law enforcement official, coroner, emergency room  
26      personnel, ambulance attendant or emergency medical technician  
28      suspects that an adult has been abused, neglected or exploited,  
30      and has reasonable cause to suspect that the adult is  
32      incapacitated, then the professional shall immediately report or  
34      cause a report to be made to the department.

36      Whenever a person is required to report in the capacity as a  
38      member of the staff of a medical, public or private institution,  
40      agency or facility, the staff person shall immediately notify the  
42      person in charge of the institution, agency or facility, or the  
44      designated agent of the person in charge, who shall then cause a  
46      report to be made. The staff person shall also make a report  
48      directly to the department.

50      2. Reports. Reports regarding abuse, neglect or  
1      exploitation must be made immediately by telephone to the  
2      department and must be followed by a written report within 48  
3      hours if requested by the department. The reports must contain  
4      the name and address of the involved adult; information regarding  
5      the nature and extent of the abuse, neglect or exploitation; the  
6      source of the report; the person making the report; the person's  
7      occupation; and where the person can be contacted. The report  
8      may contain any other information that the reporter believes may  
9      be helpful.

10     3. Confidentiality in case of treatment. This section does  
11     not require any person acting in their professional capacity to  
12     report when:

13     A. The factual basis for knowing or suspecting abuse,  
14     neglect or exploitation of an adult covered under this  
15     subchapter derives from the professional's treatment of the  
16     individual suspected of causing the abuse, neglect or  
17     exploitation;

2    B. The treatment was sought by the individual for a problem  
3    relating to the abuse, neglect or exploitation; and

4    C. In the opinion of the person required to report, the  
5    abused, neglected or exploited adult's life or health is not  
6    immediately threatened.

7    §14652. Mandatory reporting to medical examiner for post-mortem  
8    investigation

9      A person required to report cases of known or suspected  
10     abuse or neglect, who knows or has reasonable cause to suspect  
11     that an adult has died as a result of abuse or neglect, shall  
12     report that fact to the appropriate authority as provided in  
13     section 20415. An adult may not be considered to be abused or  
14     neglected solely because that adult was provided with treatment  
15     by spiritual means by an accredited practitioner of a recognized  
16     religious organization.

17   §14653. Optional reporting

18      Any person may make a report if that person knows or has  
19      reasonable cause to suspect abuse, neglect or exploitation of an  
20      incapacitated or dependent adult, or has reasonable cause to  
21      suspect that an adult is incapacitated.

22   §14654. Immunity from liability

23      1. Reporting and proceedings. A person participating in  
24      good faith in reporting under this subchapter, or in a related  
25      adult protection investigation or proceeding, is immune from any  
26      civil liability that might otherwise result from these actions.

27      2. Presumption of good faith. In a proceeding regarding  
28      immunity from liability, there is a rebuttable presumption of  
29      good faith.

30    SUBCHAPTER III

31    INVESTIGATIONS AND PROTECTIVE SERVICES

32   §14701. Investigations

33      1. Subpoenas and obtaining criminal history. The  
34      commissioner, the commissioner's delegate or the legal counsel  
35      for the department may:

36      A. Issue subpoenas requiring persons to disclose or provide  
37      to the department information or records in their possession  
38

2 that are necessary and relevant to an investigation of a  
3 report of suspected abuse, neglect or exploitation or to a  
4 subsequent adult protective proceeding.

6 (1) The department may apply to the District Court and  
7 Probate Court to enforce a subpoena.

8 (2) A person who complies with a subpoena is immune  
9 from civil or criminal liability that might otherwise  
10 result from the act of turning over or providing  
11 information or records to the department; and

12 B. Obtain nonconviction data and other criminal history  
13 record information under Title 16, section 611, that is  
14 relevant to a case of alleged abuse, neglect or exploitation.

16 2. Confidentiality. Information or records obtained by  
17 subpoena must be treated in accordance with section 14604.

20 **§14702. Providing for protective services with the consent of  
21 the person; withdrawal of consent; care taker refusal**

22 When it has been determined that an incapacitated or  
23 dependent adult is in need of protective services, the department  
24 shall immediately provide or arrange for protective services, if  
25 the adult consents.

28 1. Consent. If an incapacitated or dependent adult does  
29 not consent to the receipt of protective services, or if the  
30 adult withdraws consent, the service may not be provided.

32 2. Consent refused. When a private guardian or conservator  
33 of an incapacitated adult who consents to the receipt of  
34 protective services refuses to allow those services to be  
35 provided to the incapacitated adult, the department may petition  
36 the Probate Court for removal of the guardian pursuant to Title  
37 18-A, section 5-307, or for removal of the conservator pursuant  
38 to Title 18-A, section 5-415. When a caretaker or guardian of an  
39 incapacitated adult who consents to the receipt of protective  
40 services refuses to allow those services to be provided to the  
41 incapacitated adult, the department may petition the Probate  
42 Court for temporary guardianship pursuant to Title 18-A, section  
43 5-310 or for a protective arrangement pursuant to Title 18-A,  
44 section 5-409.

46 **§14703. Providing for protective services to incapacitated  
47 adults who lack the capacity to consent**

48 If the department reasonably determines that an  
49 incapacitated adult is being abused, neglected or exploited and

2 lacks capacity to consent to protective services, the department  
3 may petition the Probate Court for guardianship or  
4 conservatorship, in accordance with Title 18-A, section 5-601.  
5 The petition must allege specific facts sufficient to show that  
6 the incapacitated adult is in need of protective services and  
7 lacks capacity to consent to them.

8 **§14704. Emergency intervention; authorized entry of premises;  
9 immunity of petitioner**

10 1. Action. When the court has exercised the power of a  
11 guardian or has appointed the department temporary guardian  
12 pursuant to Title 18-A, section 5-310, and the ward or a  
13 caretaker refuses to relinquish care and custody to the court or  
14 to the department, then at the request of the department, a law  
15 enforcement officer may take any necessary and reasonable action  
16 to obtain physical custody of the ward for the department.  
17 Necessary and reasonable action may include entering public or  
18 private property with a warrant based on probable cause to  
19 believe that the ward is there.

22 2. Liability. A petitioner may not be held liable in any  
23 action brought by the incapacitated adult if the petitioner acted  
24 in good faith.

26 **§14705. Payment for protective services**

28 At the time the department makes an evaluation of the case  
29 reported, it must be determined, according to rules set by the  
30 commissioner, whether the incapacitated or dependent adult is  
31 financially capable of paying for the essential services. To the  
32 extent that assets are available to incapacitated or dependent  
33 adults, or wards, the cost of services must be borne by the  
34 estate of persons receiving those services.

36 **§14706. Reporting abuse**

38 Upon finding evidence indicating that a person has abused or  
39 neglected an incapacitated or dependent adult, resulting in  
40 serious harm, or has exploited an incapacitated or dependent  
41 adult, the department shall notify the district attorney.

42 **§14707. Cooperation**

44 All other state and local agencies as well as private  
45 agencies receiving public funds shall cooperate with the  
46 department in rendering protective services on behalf of  
47 incapacitated and dependent adults.

50 **§14708. Adoption of standards**

2 The department shall adopt standards and other procedures  
4 and guidelines with forms to ensure the effective implementation  
6 of this chapter.

#### 8 SUBCHAPTER IV

#### 10 PLACEMENT AND THERAPEUTIC SERVICES FOR 12 DEPENDENT AND INCAPACITATED ADULTS WHO DO 14 NOT HAVE MENTAL RETARDATION

#### 16 §14751. Placement

18 When it has been determined, as a part of the adult  
20 protective services process, that an incapacitated or dependent  
22 adult who does not have mental retardation is in need of  
24 placement in a nonmedical licensed or approved facility and the  
26 cost of placement, in whole or in part, is state funded, the  
28 adult must be assessed prior to placement for the purpose of  
30 identifying the needed level of care.

#### 32 §14752. Levels

34 There are 4 levels of care available for dependent or  
36 incapacitated adults who are adult protective services clients  
38 and who do not have mental retardation.

40 1. Level one. At level one the adult presents no  
42 significant management problems but has activity of daily living  
44 needs beyond care and maintenance to preserve or improve physical  
46 and intellectual functioning and independence.

48 2. Level 2. At level 2 the adult may exhibit signs and  
50 symptoms of mental illness controlled by appropriate treatment or  
have diagnosed problems in social or emotional functioning that  
require activities aimed at maintaining or improving levels of  
functioning to achieve maximum independence and accepted  
participation in community life.

3. Level 3. At level 3 the adult may exhibit inappropriate  
social and emotional behavior and may intermittently present  
self-abusive, destructive or aggressive behavior requiring  
specialized care and supervision.

4. Level 4. At level 4 the adult presents significant  
mental health, substance abuse or multiple problems and is in  
need of intensive services or intervention to stabilize placement.

#### 50 §14753. Therapeutic services

In addition to basic care and maintenance, a group of  
alternative care services, including therapeutic services  
provided by the facility staff to level 3 and level 4 clients,  
may be purchased, that will implement specific objectives to  
maximize self-care and independence appropriate to each resident  
according to a case plan. Rates for therapeutic services must be  
established by rule.

#### 50 §14754. Training team

There must be a multidisciplinary training team for the  
purpose of providing ongoing training for the facility staff and  
placement workers.

#### 50 §14755. Rules

The department may adopt rules in accordance with the Maine  
Administrative Procedure Act, Title 5, chapter 375, subchapter  
II, to carry out this chapter.

### 50 PART 5

#### 50 MENTAL HEALTH

#### 50 CHAPTER 1601

#### 50 GENERAL PROVISIONS

#### 50 §16001. Definitions

As used in this Part, unless the context otherwise  
indicates, the following terms have the following meanings.

1. Bureau. "Bureau" means the Bureau of Mental Health  
within the department.

2. Chief administrative officer. "Chief administrative  
officer" means the head of a state institution or the head of any  
other facility licensed or funded by the department to provide  
services.

3. Client. "Client" means a person receiving services  
pursuant to this Part from the department or from any agency  
licensed or funded by the department to provide services.

4. Director. "Director" means the director of the bureau.

5. Resident. "Resident" means a person residing in a state  
institution or in any other facility licensed or funded by the  
department to provide services.

2 **§16002. Mental Health Rights Advisory Board**

4 **1. Establishment.** The Mental Health Rights Advisory Board  
as established pursuant to Title 5, section 12004-I, subsection  
6 63, consists of 11 members as follows:

8 **A. Six persons who are consumers of mental health services,**  
including clients, at least 3 of whom have received services  
10 from a state institution or a community mental health  
agency, and their families; and

12 **B. Five persons concerned with the quality of the delivery**  
of mental health services, at least 4 of whom are providers  
14 of services in a hospital pursuant to chapter 1609 or in a  
program or facility administered or licensed by the  
16 department under section 16004.

18 The commissioner shall appoint members for staggered terms not to  
20 exceed 2 years.

22 At least 3 nominations to the commissioner must be made by  
majority vote of the board 30 days before the expiration of a  
24 member's term. If the initial nominations are unacceptable, the  
board shall submit 3 alternative nominations. If a member's term  
26 expires and the commissioner has not appointed a successor, the  
member may be reelected by majority vote to continue as a member  
28 until the commissioner appoints a successor.

30 **2. Chair.** The members of the board shall elect a chair.

32 **3. Meetings.** The board shall meet at least quarterly. A  
representative of the department shall act as liaison between the  
34 board and the department and has the right to attend all meetings  
of the board.

36 **4. Functions.** The primary function of the board is to  
38 advise the department in the implementation of its rules adopted  
pursuant to this Part, concerning rights of recipients of mental  
40 health services.

42 **5. Responsibilities.** The board's responsibilities include  
monitoring the implementation of the rules and making  
44 recommendations concerning improving the substantive content and  
implementation of the rules. Board members must have access to  
46 all living and program areas and to all grievance records and  
other records directly relevant to monitoring the implementation  
48 of the rules, provided that the access is in conformity with the  
law regarding confidentiality of mental health information.

2 **6. Duties.** The board shall prepare a yearly report for the  
commissioner of its observations and recommendations regarding  
4 the department's implementation of its rules.

6 **§16003. State mental health plan**

8 Annually the commissioner shall prepare a state mental  
health plan that meets the requirements of federal Public Law  
99-660, as amended, while serving the broader interests of the  
10 State. The commissioner shall appoint a committee to assist in  
the preparation of the state mental health plan. In addition to  
12 meeting the requirements of federal Public Law 99-660, the  
committee must include members who represent the interests of  
14 people with low income, and at least 51% of the members must be  
current or former consumers of mental health services. The state  
16 mental health plan must include, but is not limited to, the  
following:

18 **1. Five-year forecast.** A 5-year forecast of mental health  
20 service needs in the State by region and statewide;

22 **2. Assessment.** An assessment of the current status of  
mental health services in the State, including strengths and  
24 weaknesses and an evaluation of performance in relation to the  
objectives of the previous year;

26 **3. Goals.** Mental health service goals for the State,  
28 including public and private sectors for the 5-year period;

30 **4. Objectives.** Objectives for state mental health services  
32 in the next biennium; and

34 **5. Plan.** A plan that includes resource requirements,  
timetables, the expected outcome of the stated objectives in each  
36 year of the biennium and criteria for evaluating the outcome.

38 The commissioner shall review and report on the  
implementation of this section and submit a report to the joint  
standing committee of the Legislature having jurisdiction over  
40 human resource matters by December 15, 1995. This section is  
repealed on April 1, 1996.

42 **§16004. Licenses**

44 Licenses to operate, conduct or maintain an agency or  
46 facility for the provision of mental health services as defined  
in section 16301, or for the provision of treatment as defined in  
48 Title 22-A, section 2001 are governed as follows.

50 **1. Full license.** Full licenses are governed as follows.

2 A. The commissioner shall issue a full license to an  
4 applicant agency or facility that has complied with:

6 (1) All applicable laws and rules; and

8 (2) All conditions imposed by the commissioner at the  
10 time of issuance of a conditional license, refusal to  
12 issue or renew a full license or revocation of a full  
14 license.

16 B. The commissioner shall issue a full license for a  
18 specified period of time appropriate to the type of agency  
20 or facility, but not to exceed 2 years.

22 C. When a full licensee fails to comply with applicable  
24 laws and rules, the commissioner may:

26 (1) File a complaint with the Administrative Court to  
28 have the license revoked, in accordance with the Maine  
30 Administrative Procedure Act, Title 5, chapter 375; or

32 (2) Modify the full license to a conditional license  
34 in accordance with subsection 2.

36 2. Conditional license. Conditional licenses are governed  
38 as follows.

40 A. The commissioner may issue a conditional license to an  
42 agency or facility reapplying for a full license, if:

44 (1) The applicant fails to comply with applicable laws  
46 and rules; and

48 (2) In the judgment of the commissioner, the best  
interests of the public would be served by issuance of  
a conditional license.

B. The commissioner may modify an existing full license to  
a conditional license, after affording the full licensee an  
opportunity for hearing in conformity with the Maine  
Administrative Procedure Act, Title 5, chapter 375, if:

(1) The applicant fails to comply with applicable laws  
and rules; and

(2) In the judgment of the commissioner, the best  
interests of the public would be served.

2 C. A conditional license must be issued for a specified  
4 period of time, not to exceed one year, or the remaining  
6 period of the previous full license, whichever the  
8 commissioner determines appropriate based on the nature of  
10 the violation of laws or rules.

12 D. A conditional license must specify the conditions  
14 imposed by the commissioner and must specify when those  
16 conditions must be complied with during the term of the  
18 conditional license.

20 E. During the period of the conditional license, the  
22 licensee shall comply with all conditions imposed by the  
24 commissioner.

26 F. If the conditional licensee fails to comply with  
28 conditions imposed by the commissioner, the commissioner may  
30 initiate proceedings to revoke, suspend or refuse to renew  
32 the conditional license in accordance with the Maine  
34 Administrative Procedure Act, Title 5, chapter 375.

36 3. Provisional license. Provisional licenses are governed  
38 as follows.

40 A. The commissioner may issue a provisional license to an  
42 agency or facility that:

44 (1) Has not been previously licensed for the type of  
46 service for which application is made;

48 (2) Is temporarily unable to comply with all  
applicable laws and rules; and

(3) Is in compliance with specific laws and rules  
determined by the commissioner as essential for the  
protection of the residents or clients of the agency or  
facility.

B. To obtain a provisional license, an applicant must  
demonstrate the ability to comply with all applicable laws  
and rules by the end of the term of the provisional license.

C. A provisional license must be issued for a specified  
period of time, that is at least 3 months but no longer than  
12 months, as determined appropriate by the commissioner.

48 4. Fees. The fee for all types of licenses is \$25, except  
50 for those facilities defined in Title 22-A, section 6201,  
subsection 4 and licensed in accordance with Title 22-A, section  
6210.



2 5. Monitoring for compliance. Regardless of the term of  
4 the license, the commissioner shall monitor the licensee, at  
6 least once a year, for continued compliance with applicable laws  
and rules.

8 6. Appeals. Any person aggrieved by a final action of the  
10 commissioner under this section may obtain judicial review in  
accordance with the Maine Administrative Procedure Act, Title 5,  
chapter 375.

12 7. Prohibited acts. Prohibited acts under this section are  
governed as follows.

14 A. An agency is guilty of unlicensed operation of a mental  
16 health service facility if it operates, conducts or  
18 maintains such a facility, not otherwise licensed as a  
hospital or medical care facility, without a license from  
the commissioner.

20 B. Notwithstanding Title 17-A, sections 4-A and 1301,  
22 unlicensed operation of a mental health service facility is  
24 punishable by a fine of not more than \$500 or by  
imprisonment for not more than 60 days.

26 §16005. Rules

28 1. Adoption. The commissioner shall adopt rules, subject  
30 to the Maine Administrative Procedure Act, Title 5, chapter 375,  
for the enhancement and protection of the rights of clients  
32 receiving services from the department, from any hospital  
pursuant to chapter 1609 or from any program or facility  
34 administered or licensed by the department under section 16004.

36 2. Requirements. The rules must include, but are not  
limited to:

38 A. Establishment of the right to provision of treatment and  
40 related services in the least restrictive appropriate  
setting;

42 B. Establishment of the right to an individualized  
44 treatment or service plan, to be developed with the  
participation of the client;

46 C. Standards for informed consent to treatment, including  
48 reasonable standards and procedural mechanisms for  
determining when to treat a client absent the client's  
50 informed consent, consistent with applicable law;

2 D. Standards for participation in experimentation and  
research;

4 E. Standards pertaining to the use of seclusion and  
restraint;

6 F. Establishment of the right to appropriate privacy and to  
8 a humane treatment environment;

10 G. Establishment of the right to confidentiality of records  
12 and procedures pertaining to a person's right to access to  
the person's mental health care records;

14 H. Establishment of the right to receive visitors and to  
16 communicate by telephone and mail;

18 I. Procedures to ensure that clients are notified of their  
rights;

20 J. The right to assistance in protecting a right or  
22 advocacy service in the exercise or protection of a right;

24 K. Provisions for a fair, timely and impartial grievance  
26 procedure for the purpose of ensuring appropriate  
administrative resolution of grievances with respect to  
infringement of rights; and

28 L. To the extent that state and community resources are  
30 available, establishment of the rights of long-term mentally  
ill clients containing the following requirements:

32 (1) The right to a service system that employs  
34 culturally normative and valued methods and settings;

36 (2) The right to coordination of the disparate  
components of the community service system;

38 (3) The right to individualized developmental  
40 programming that recognizes that each long-term  
mentally ill individual is capable of growth or slowing  
42 of deterioration;

44 (4) The right to a continuum of community services  
46 allowing a gradual transition from a more intense level  
of service; and

48 (5) The right to the maintenance of natural support  
50 systems, such as family and friends of the long-term  
mentally ill individual and formal and informal  
networks of mutual help and self-help.

2 3. Public hearing. The director shall hold a public  
4 hearing before adopting these rules and shall give notice of the  
6 public hearing pursuant to the Maine Administrative Procedure  
8 Act, Title 5, section 8053.

10 A. Legislative review. When a rule is proposed or adopted  
12 under this section, a copy of the proposed or adopted rule must  
14 be sent to the legislative committee having jurisdiction over  
16 human resource matters.

18 A. The committee may review the rule and, if it determines  
20 that an adopted rule should be stricken or amended, the  
22 committee may prepare legislation to accomplish that purpose  
24 and submit the legislation to the full Legislature in  
26 accordance with legislative rules.

28 B. The adopted rule must remain in effect unless the full  
30 Legislature acts to strike or amend it, or it is repealed or  
32 amended by the department in accordance with the Maine  
34 Administrative Procedure Act, Title 5, chapter 375.

#### 36 §16006. Application of consent decree

38 It is the intent of the Legislature that the principles of  
40 the consent decree issued on August 2, 1990 by the Superior  
42 Court, Kennebec County, in Civil Action Docket No. 89-88 as they  
44 relate to the development of a comprehensive mental health system  
46 apply to all persons with severe and prolonged mental illness.  
48 The individualized support plan process as contained in the  
50 decree in paragraphs 49 through 74, to the extent possible and  
within available resources, must be applicable to current and  
future patients of the Bangor Mental Health Institute. In  
addition, patient assessments must be provided to Bangor Mental  
Health Institute patients beginning July 1, 1991 and must be  
completed quarterly until individualized support plan  
implementation is developed.

#### CHAPTER 1603

#### BUREAU OF MENTAL HEALTH

#### §16101. Establishment

There is established within the department the Bureau of  
Mental Health that is responsible for the direction of the mental  
health programs in the state institutions and for the promotion  
and guidance of mental health programs within the communities of  
the State.

#### §16102. Division of Community Services

2 1. Definition. As used in this section, unless the context  
4 otherwise indicates, the term "community support system" means  
6 the entire complex of mental health, rehabilitative, residential  
8 and other support services in the community to ensure community  
10 integration and the maintenance of a decent quality of life for  
12 persons with chronic mental illness.

14 2. Establishment. There is created within the bureau the  
16 Division of Community Services to:

18 A. Promote and support the development and implementation  
20 of comprehensive community support systems to ensure  
22 community integration and the maintenance of a decent  
24 quality of life for persons with chronic mental illness in  
26 each of the mental health service areas in the State; and

28 B. Strengthen the capacity of families, natural networks,  
30 self-help groups and other community resources in order to  
32 improve the support for persons with chronic mental illness.

34 3. Duties. The Division of Community Services shall:

36 A. Provide technical assistance for program development,  
38 promote effective coordination with health and other human  
40 services and develop new resources in order to improve the  
42 availability and accessibility of comprehensive community  
44 support services to persons with chronic mental illness;

46 B. Assess service needs, monitor service delivery related  
48 to these needs and evaluate the outcome of programs designed  
50 to meet these needs in order to enhance the quality and  
effectiveness of community support services;

C. Prepare a report that describes the system of community  
support services in each of the mental health service  
regions and statewide.

(1) The report must include both existing service  
resources and deficiencies in the system of services.

(2) The report must include an assessment of the roles  
and responsibilities of mental health agencies, human  
services agencies, health agencies and involved state  
departments and must suggest ways in which these  
agencies and departments can better cooperate to  
improve the service system for people with chronic  
mental illness.

2 (3) The report must be prepared biennially and must be  
3 submitted to the joint standing committee of the  
4 Legislature having jurisdiction over human resource  
5 matters by December 15th of every even-numbered year.

6 (4) The committee shall review the report and make  
7 recommendations with respect to administrative and  
8 funding improvements in the system of community support  
9 services to persons with chronic mental illness; and

10 D. Participate in the coordination of services for persons  
11 with chronic mental illnesses with local transitional  
12 services coordination projects for handicapped youth, as  
13 established in Title 20-A, chapter 308, assigning  
14 appropriate regional staff and resources as available and  
15 necessary in each region to be served by a project.

16 **§16103. Services to persons who are deaf or hearing-impaired**

17 I. Accommodations and services. The bureau shall provide  
18 accommodations and services for persons who are deaf or  
19 hearing-impaired providing access to mental health programs  
20 funded or licensed by the department. These accommodations must  
21 include, but are not limited to, the following:

22 A. Appropriate mental health assessments for clients who  
23 are deaf;

24 B. Provision of interpreter services for treatment;

25 C. Education and training for mental health staff providing  
26 treatment to persons who are deaf;

27 D. Placement of telecommunication devices for the deaf in  
28 comprehensive community mental health facilities;

29 E. Support and training for families with members who are  
30 deaf who experience a mental health problem; and

31 F. Establishment of a therapeutic residence program for  
32 persons who are deaf and in need of residential mental  
33 health treatment. The therapeutic residence program must be  
34 operated in conjunction with existing rehabilitation,  
35 education, mental health treatment and housing resources.  
36 The therapeutic residence program must be staffed by  
37 individuals trained in mental health treatment and  
38 proficient in deaf communication.

39 2. Report. The bureau shall prepare a biennial report that  
40 describes accommodations and services available and identifies

41 additional service needs and a plan to address these needs. The  
42 commissioner shall include representatives from deaf communities,  
43 families and public and private service agencies in the  
44 preparation of the report. The report must be submitted to the  
45 joint standing committee of the Legislature having jurisdiction  
46 over human resource matters by January 15th of every  
47 even-numbered year.

48 **§16104. Teenage Suicide Prevention Program**

49 The bureau shall, in cooperation with the Department of  
50 Education, the Department of Children and Families and the "local  
51 action councils" funded in Public Law 1987, chapter 349, Part A  
52 under the heading "Human Services, Department of," develop a  
53 teenage suicide prevention strategy and a model suicide  
54 prevention program to be presented in the secondary schools of  
55 the State. Development of such a program must include  
56 preparation of relevant educational materials that must be  
57 distributed in the schools.

58 **CHAPTER 1605**

59 **STATE MENTAL HEALTH INSTITUTES**

60 **§16201. Maintenance**

61 The commissioner shall maintain 2 state mental health  
62 institutes for the mentally ill, one at Bangor called the Bangor  
63 Mental Health Institute and the other at Augusta called the  
64 Augusta Mental Health Institute.

65 **§16202. Superintendent**

66 1. Chief administrative officer. The chief administrative  
67 officer of each state mental health institute is called the  
68 superintendent.

69 2. Qualifications. To be eligible to be appointed  
70 superintendent, a person must be a qualified psychiatrist,  
71 qualified hospital administrator, qualified psychologist or a  
72 person with a master's degree in social work, public  
73 administration or public health.

74 3. Appointment. The commissioner shall appoint the  
75 superintendent of each state mental health institute. The  
76 Governor shall establish the salary of each superintendent.

77 A. The commissioner shall give due consideration to the  
78 appointee's qualifications and experience in administration

2 and to the appointee's qualifications and experience in  
3 health matters.

4 B. The appointments are at the pleasure of the commissioner.

6 4. Duties. The superintendents of the state mental health  
7 institutes have the following duties.

8 A. The Superintendent of the Bangor Mental Health Institute  
9 has general superintendence of the Bangor Mental Health  
10 Institute and its grounds under the supervision of the  
11 director, and shall receive all persons legally sent to the  
12 Bangor Mental Health Institute who are in need of special  
13 care and treatment, if accommodations permit.

14 B. The Superintendent of the Augusta Mental Health  
15 Institute has general superintendence of the Augusta Mental  
16 Health Institute and its grounds under the supervision of  
17 the director and shall receive all persons legally sent to  
18 the Augusta Mental Health Institute who are in need of  
19 special care and treatment, if accommodations permit.

22 CHAPTER 1607

24 COMMUNITY MENTAL HEALTH SERVICES

26 SUBCHAPTER I

28 GENERAL PROVISIONS

30 §16301. Definitions

32 As used in this chapter, unless the context otherwise  
33 indicates, the following terms have the following meanings.

34 1. Agency. "Agency" means a person, firm, association or  
35 corporation, but does not include the individual or corporate  
36 professional practice of one or more psychologists or  
37 psychiatrists.

38 2. Case management services. "Case management services"  
39 means those services that assist an individual in gaining access  
40 to and making effective use of the range of medical,  
41 psychological and other related services available to them.

42 3. Long-term mentally ill. "Long-term mentally ill" means  
43 persons who suffer certain mental or emotional disorders, such as  
44 organic brain syndrome, schizophrenia, recurrent depressive and  
45 manic-depressive disorders, paranoid and other psychoses, plus  
46 other disorders that may become chronic, that erode or prevent

2 the capacities in relation to 3 or more of the primary aspects of  
3 daily life, such as personal hygiene and self-care,  
4 self-direction, interpersonal relationships, social transactions,  
5 learning, recreation and economic self-sufficiency. While these  
6 persons may be at risk of institutionalization, there is no  
7 requirement that these persons are or have been residents of  
8 institutions providing mental health services.

9 4. Mental health services. "Mental health services" means  
10 out-patient counseling, other psychological, psychiatric,  
11 diagnostic or therapeutic services and other allied services.

12 §16302. Purpose

13 The purpose of this chapter is to expand community mental  
14 health services, encourage participation in a program of  
15 community mental health services by persons in local communities,  
16 obtain better understanding of the need for those services and  
17 secure aid for programs of community mental health services by  
18 state aid and local financial support.

20 §16303. Commissioner's duties

21 The commissioner shall promulgate rules, according to the  
22 Maine Administrative Procedure Act, Title 5, chapter 375,  
23 relating to the administration of the services authorized by this  
24 chapter and to licensing under this chapter.

26 §16304. Commissioner's powers

27 1. Provision of services. The commissioner may provide  
28 mental health services throughout the State and for that purpose  
29 may cooperate with other state agencies, municipalities, persons,  
30 unincorporated associations and nonstock corporations.

31 2. Funding sources. The commissioner may receive and use  
32 for the purpose of this chapter money appropriated by the State,  
33 grants by the Federal Government, gifts from individuals and  
34 gifts from any other sources.

35 3. Grants. The commissioner may make grants of funds to  
36 any state or local governmental unit, or branch of a governmental  
37 unit, or to a person, unincorporated association or nonstock  
38 corporation, which applies for the funds, to be used in the  
39 conduct of its mental health services.

40 A. The programs administered by the person or entity must  
41 provide for adequate standards of professional services in  
42 accordance with state statutes.

2 B. The commissioner may require the person or entity  
4 applying for funds to produce evidence that appropriate  
6 local, governmental and other funding sources have been  
8 sought to assist in the financing of its mental health  
10 services.

12 C. After negotiation with the person or entity applying for  
14 funds, the commissioner may execute a contract or agreement  
16 for the provision of mental health services that reflects  
18 the commitment by the person or entity of local,  
20 governmental and other funds to assist in the financing of  
22 its mental health services.

24 D. Beyond the commissioner's ensuring through program  
26 monitoring and auditing activities that an equitable  
28 distribution of the funds committed by contract or agreement  
30 to assist in the financing of mental health services are  
32 actually provided, it is the prerogative of the person or  
34 entity providing services to apportion other nonstate funds  
36 in an appropriate manner in accordance with its priorities,  
38 service contracts and applicable provisions of law.

40 E. Any new contract must be awarded through a  
42 request-for-proposal procedure and any contract of \$150,000  
44 per year or more that is renewed must be awarded through a  
46 request-for-proposal procedure at least every 6 years.

48 F. The commissioner shall establish a procedure to obtain  
assistance and advice from consumers of mental health  
services regarding the selection of contractors when  
requests for proposals are issued.

## SUBCHAPTER II

### CRISIS INTERVENTION PROGRAM

#### §16350. Crisis Intervention Program established

The department shall establish the Crisis Intervention Program to serve Penobscot, Hancock, Piscataquis and Washington Counties. This is a community-based program to provide counseling, consultation, evaluation, treatment and referral, education and training services, delivered by a crisis intervention team. The program must provide the following services:

1. Emergency room services. Crisis intervention and psychiatric emergency services based in a hospital emergency room;

2. Outreach services. Outreach services and crisis intervention beyond the hospital setting; and

3. Telephone hot-line services. A community-based telephone crisis intervention hot-line offering 24-hour, 7-days-a-week counseling, consultation, evaluation, treatment and referral services.

#### §16351. Crisis intervention team

1. Established. A community-based crisis intervention team is established to provide crisis intervention on a 24-hour, 7-days-a-week basis to persons with mental illness and to provide crisis intervention training for emergency room personnel.

2. Qualifications. The team must be comprised of qualified mental health professionals with training and experience in assessment and intervention with persons with mental illness in a crisis. In addition, the team members must have a working knowledge of case management, the mental health system and area resources.

#### §16352. Region II Crisis Intervention Program Advisory Board

1. Definition. As used in this section, "program" means the crisis intervention program established pursuant to section 16350.

2. Duties. The Region II Crisis Intervention Program Advisory Board, as established by Title 5, section 12004-G, subsection 28, advises the program.

3. Members. The board consists of 12 members as follows:

A. The superintendent of the Bangor Mental Health Institute, or the superintendent's designee;

B. The chief executive officer of the hospital that participates in the program, or the chief executive officer's designee;

C. The director of community support services for the community mental health center serving Region II;

D. An individual providing services to persons who are homeless in Region II, appointed by the commissioner;

E. Four consumers or family members of consumers nominated by the Alliance for the Mentally Ill of Maine and appointed by the commissioner. Members appointed under this paragraph must represent a geographical balance within Region II;

2 F. One private mental health practitioner and 2 consumers  
4 of services for the mentally ill selected by a majority of  
6 the other members; and

8 G. The coordinator of the project, who is an ex officio  
10 member who may vote only in case of a tie.

12 **CHAPTER 1609**

14 **HOSPITALIZATION**

16 **SUBCHAPTER I**

18 **GENERAL PROVISIONS**

20 **§16451. Definitions**

22 As used in this chapter, unless the context otherwise  
24 indicates, the following terms have the following meanings.

26 **1. Hospital.** "Hospital" means:

28 **A.** A state mental health institute; or

30 **B.** A nonstate mental health institution.

32 **2. Licensed physician.** "Licensed physician" means a person  
34 licensed under the laws of the State to practice medicine or  
36 osteopathy or a medical officer of the Federal Government while  
38 in this State in the performance of official duties.

40 **3. Licensed clinical psychologist.** "Licensed clinical  
42 psychologist" means a person licensed under the laws of the State  
44 as a psychologist and who practices clinical psychology.

46 **4. Likelihood of serious harm.** "Likelihood of serious  
48 harm" means:

50 **A.** A substantial risk of physical harm to oneself as  
manifested by evidence of recent threats of, or attempts at,  
suicide or serious bodily harm to oneself and, after  
consideration of less restrictive treatment settings and  
modalities, a determination that community resources for the  
person's care and treatment are unavailable;

**B.** A substantial risk of physical harm to other persons as  
manifested by recent evidence of homicidal or other violent  
behavior or recent evidence that others are placed in  
reasonable fear of violent behavior and serious physical

2 harm to them and, after consideration of less restrictive  
4 treatment settings and modalities, a determination that  
6 community resources for the person's care and treatment are  
8 unavailable; or

10 **C.** A reasonable certainty that severe physical or mental  
12 impairment or injury will result to the person alleged to be  
14 mentally ill as manifested by recent evidence of the  
16 person's actions or behavior that demonstrate the person's  
18 inability to avoid or protect the person from such  
20 impairment or injury, and, after consideration of less  
22 restrictive treatment settings and modalities, a  
24 determination that suitable community resources for the  
26 person's care are unavailable.

28 **5. Mental illness.** "Mental illness" means a psychiatric or  
30 other disease that substantially impairs the person's mental  
32 health, including suffering from the effects of the use of drugs,  
34 narcotics, hallucinogens or intoxicants, including alcohol, but  
36 not including mental retardation or sociopathic conditions.

38 **6. Nonstate mental health institution.** "Nonstate mental  
40 health institution" means a public institution, a private  
42 institution or a mental health center, that is administered by an  
44 entity other than the State and that is equipped to provide  
46 inpatient care and treatment for persons with mental illness.

48 **7. Patient.** "Patient" means a person under observation,  
care or treatment in a hospital or residential care facility  
pursuant to this chapter.

**8. Residential care facility.** "Residential care facility"  
means a licensed or approved boarding care, nursing care or  
foster care facility that supplies supportive residential care to  
individuals due to their mental illness.

**9. State mental health institute.** "State mental health  
institute" means the Augusta Mental Health Institute or the  
Bangor Mental Health Institute.

40 **§16452. Commissioner's powers**

42 The commissioner may:

44 **1. Rules.** Adopt rules, not inconsistent with this chapter,  
46 that the commissioner finds to be reasonably necessary for proper  
48 and efficient hospitalization of persons with mental illness;

2 2. Investigation. Investigate, by personal visit,  
3 complaints made by any patient or by any person on behalf of a  
4 patient;

5 3. Visitation. Visit each hospital or residential care  
6 facility regularly to review the commitment procedures of all new  
7 patients admitted between visits;

8 4. Reports. Require reports from the chief administrative  
9 officer of any hospital or residential care facility relating to  
10 the admission, examination, diagnosis, release or discharge of  
11 any patient; and

12 5. Forms. Prescribe the form of applications, records,  
13 reports and medical certificates provided for under this chapter  
14 and prescribe the information required to be contained in them.

15 §16453. Patient's rights

16 A patient in a hospital or residential care facility under  
17 this chapter has the following rights.

18 1. Civil rights. Every patient is entitled to exercise all  
19 civil rights, including, but not limited to, the right to civil  
20 service status, the right to vote, rights relating to the  
21 granting, renewal, forfeiture or denial of a license, permit,  
22 privilege or benefit pursuant to any law, the right to enter into  
23 contractual relationships and the right to manage one's own  
24 property, unless:

25 A. The chief administrative officer of the hospital or  
26 residential care facility determines that it is necessary  
27 for the medical welfare of the patient to impose  
28 restrictions on the exercise of these rights and, if  
29 restrictions are imposed, the restrictions and the reasons  
30 for them must be made a part of the clinical record of the  
31 patient;

32 B. A patient has been adjudicated incompetent and has not  
33 been restored to legal capacity; or

34 C. The exercise of these rights is specifically restricted  
35 by other statute or rule, but not solely because of the fact  
36 of admission to a hospital or residential care facility.

37 2. Humane care and treatment. Every patient is entitled to  
38 humane care and treatment and, to the extent that facilities,  
39 equipment and personnel are available, to medical care and  
40 treatment in accordance with the highest standards accepted in  
41 medical practice.

2 3. Restraints and seclusion. Restraint, including any  
3 mechanical means of restricting movement, and seclusion,  
4 including isolation by means of doors that can not be opened by  
5 the patient, may not be used on a patient, unless the chief  
6 administrative officer of the hospital or residential care  
7 facility or the chief administrative officer's designee  
8 determines that either is required by the medical needs of the  
9 patient.

10 A. The chief administrative officer of the hospital or  
11 facility shall record and make available for inspection  
12 every use of mechanical restraint or seclusion and the  
13 reasons for its use.

14 B. The limitation of the use of seclusion in this section  
15 does not apply to maximum security installations.

16 4. Communication. Patient communication rights are as  
17 follows.

18 A. Every patient is entitled to communicate by sealed  
19 envelopes with the department, a member of the clergy of the  
20 patient's choice, the patient's attorney and the court that  
21 ordered the hospitalization, if any.

22 B. Every patient is entitled to communicate by mail in  
23 accordance with the rules of the hospital.

24 5. Visitors. Every patient is entitled to receive visitors  
25 unless definitely contraindicated by the patient's medical  
26 condition, except that the patient may be visited by a member of  
27 the clergy of the patient's choice or the patient's attorney at  
28 any reasonable time.

29 6. Sterilization. A patient may not be sterilized except  
30 in accordance with chapter 109.

31 §16454. Habeas corpus

32 Any person detained pursuant to this chapter is entitled to  
33 the writ of habeas corpus, upon proper petition by the person or  
34 by a friend to any justice generally empowered to issue the writ  
35 of habeas corpus in the county in which the person is detained.

36 §16455. Prohibited acts; penalty

37 1. Unwarranted hospitalization. A person is guilty of  
38 causing unwarranted hospitalization, if the person willfully

causes the unwarranted hospitalization of any other person under this chapter.

2. Denial of rights. A person is guilty of causing a denial of rights if the person willfully causes the denial to any other person of any of the rights accorded to the other person by this chapter.

3. Penalty. Causing unwarranted hospitalization or causing a denial of rights is a Class C crime.

#### SUBCHAPTER II

#### VOLUNTARY HOSPITALIZATION

##### §16501. Admission

A hospital for the mentally ill may admit on an informal voluntary basis for care and treatment of a mental illness any person desiring admission or the adult ward of a legally appointed guardian, subject to the following conditions.

1. Availability of accommodations. Except in cases of medical emergency, voluntary admission is subject to the availability of suitable accommodations.

2. Standard hospital information. Standard hospital information may be elicited from the person if, after examination, the chief administrative officer of the hospital determines the person suitable for admission, care and treatment.

3. Persons under 18 years of age. Any person under 18 years of age must have the consent of the person's parent or guardian.

4. State mental health institute. Any person under 18 years of age must have the consent of the commissioner for admission to a state mental health institute.

5. Adults under guardianship. An adult ward may be admitted on an informal voluntary basis only if the adult ward's legally appointed guardian consents to the admission and the ward makes no objection to the admission.

##### §16502. Freedom to leave

1. Patient's right. A patient admitted under section 16501 is free to leave the hospital at any time after admission without undue delay following examination by a licensed physician or a licensed clinical psychologist, except that admission of the

person under section 16552 is not precluded, if at any time such an admission is considered necessary in the interest of the person and of the community.

2. Notice. The chief administrative officer of the hospital shall cause every patient admitted under section 16501 to be informed, at the time of admission, of the patient's

A. Status as an informally admitted patient; and

B. Freedom to leave the hospital under this section.

#### SUBCHAPTER III

#### INVOLUNTARY HOSPITALIZATION

##### §16550. Reception of involuntary patients

1. Nonstate mental health institution. The chief administrative officer of a nonstate mental health institution may receive for observation, diagnosis, care and treatment in the institution any person whose admission is applied for under any of the procedures in this chapter.

A. The institution, any person contracting with the institution and any of its employees when admitting, treating or discharging a patient under the provisions of sections 16552 and 16553 under a contract with the department, for purposes of civil liability, is deemed to be a governmental entity or an employee of a governmental entity under the Maine Tort Claims Act, Title 14, chapter 741.

B. Patients with a diagnosis of mental illness or psychiatric disorder in nonstate mental health institutions that contract with the department under this subsection are entitled to the same rights and remedies as patients in state mental health institutes as conferred by the constitution, laws, regulations and rules of this State and of the United States.

C. Before contracting with and approving the admission of involuntary patients to a nonstate mental health institution, the department shall require the institution to:

(1) Comply with all applicable rules;

(2) Demonstrate the ability of the institution to comply with judicial decrees as those decrees relate to services already being provided by the institution; and



2 (3) Coordinate and integrate care with other  
3 community-based services.

4 D. The capital, licensing, remodeling, training and  
5 recruitment costs associated with the start-up of beds  
6 designated for involuntary patients under this section must  
7 be reimbursed, within existing resources, by the department.

8 2. State mental health institute. The chief administrative  
9 officer of a state mental health institute:

10 A. May receive for observation, diagnosis, care and  
11 treatment in the hospital any person whose admission is  
12 applied for under section 16501 or 16552; and

13 B. May receive for observation, diagnosis, care and  
14 treatment in the hospital any person whose admission is  
15 applied for under section 16553 or is ordered by a court.

16 Any person contracting with a state mental institute when  
17 admitting, treating or discharging a patient, within the state  
18 institute, under the provisions of sections 16552 and 16553 under  
19 a contract with the department for purposes of civil liability is  
20 deemed to be an employee of a governmental entity under the Maine  
21 Tort Claims Act, Title 14, chapter 741.

22 **§16551. Protective custody**

23 1. Law enforcement officer's power. If a law enforcement  
24 officer has reasonable grounds to believe, based upon the  
25 officer's personal observation, that a person has mental illness  
26 and that due to that condition the person presents a threat of  
27 imminent and substantial physical harm to self or to other  
28 persons, the officer:

29 A. May take the person into protective custody; and

30 B. If the officer does take the person into protective  
31 custody, shall deliver the person immediately for  
32 examination by an available licensed physician or licensed  
33 clinical psychologist, as provided in section 16552.

34 2. Certificate not executed. If a certificate relating to  
35 the person's likelihood of serious harm is not executed by the  
36 examiner under section 16552, the officer shall:

37 A. Release the person from protective custody and, with the  
38 person's permission, return the person to the person's

39 place of residence, if within the territorial jurisdiction  
40 of the officer;

41 B. Release the person from protective custody and, with the  
42 person's permission, return the person to the place where  
43 the person was taken into protective custody; or

44 C. If the person is also under arrest for a violation of  
45 law, retain the person in custody until the person is  
46 released in accordance with the law.

47 3. Certificate executed. If the certificate is executed by  
48 the examiner under section 16552, the officer shall undertake to  
49 secure the endorsement of a judicial officer under section 16552  
50 and may detain the person for a reasonable period of time, not to  
51 exceed 18 hours, pending that endorsement.

52 4. Transportation costs. The costs of transportation under  
53 this section must be paid in the manner provided under section  
54 16552.

55 **§16552. Emergency procedure**

56 A person may be admitted to a mental hospital on an  
57 emergency basis according to the following procedures.

58 1. Application. Any health officer, law enforcement  
59 officer or other person may make a written application to admit a  
60 person to a mental hospital, subject to the prohibitions and  
61 penalties of section 16455, stating:

62 A. The officer's belief that the person has mental illness  
63 and, because of the person's illness, poses a likelihood of  
64 serious harm; and

65 B. The grounds for this belief.

66 2. Certifying examination. The written application must be  
67 accompanied by a dated certificate, signed by a licensed  
68 physician or a licensed clinical psychologist, stating:

69 A. The physician or licensed clinical psychologist has  
70 examined the person on the date of the certificate, but not  
71 more than 3 days before the date of admission to the  
72 hospital; and

73 B. The physician or licensed clinical psychologist is of  
74 the opinion that the person has mental illness and, because  
75 of the illness, poses a likelihood of serious harm.

2 3. Judicial review. A Justice of the Superior Court, Judge  
3 of the District Court, Judge of Probate or a justice of the peace  
4 shall review the application and accompanying certificate.

5 A. If the judge or justice finds the application and  
6 accompanying certificate to be regular and in accordance  
7 with the law, the judge or justice shall endorse them.

8 B. No person may be held against that person's will in the  
9 hospital under this section, whether informally admitted  
10 under section 16501 or sought to be involuntarily admitted  
11 under this section, unless the application and certificate  
12 have been endorsed by a judge or justice, except that a  
13 person for whom an examiner has executed the certificate  
14 under subsection 2 may be detained in a hospital for a  
15 reasonable period of time, not to exceed 18 hours, pending  
16 endorsement by a judge or justice, if:

17 (1) For a person informally admitted under section  
18 16501, the chief administrative officer of the hospital  
19 undertakes to secure the endorsement immediately upon  
20 execution of the certificate by the examiner; and

21 (2) For a person sought to be involuntarily admitted  
22 under this section, the person or persons transporting  
23 the person to the hospital undertake to secure the  
24 endorsement immediately upon execution of the  
25 certificate by the examiner.

26 4. Custody and transportation. Custody and transportation  
27 under this section are governed as follows.

28 A. Upon endorsement of the application and certificate by  
29 the judge or justice, any health officer, law enforcement  
30 officer or other person designated by the judge or justice  
31 may take the person into custody and transport the person to  
32 the hospital designated in the application.

33 B. The department is responsible for any transportation  
34 expenses under this section, including return from the  
35 hospital if admission is declined. The department shall  
36 utilize any 3rd-party payment sources that are available.

37 5. Continuation of hospitalization. If the chief  
38 administrative officer of the hospital recommends further  
39 hospitalization of the person, the chief administrative officer  
40 shall determine the suitability of admission, care and treatment  
41 of the patient as an informally admitted patient, as described in  
42 section 16501.

2 A. If the chief administrative officer of the hospital  
3 determines that admission of the person as an informally  
4 admitted patient is suitable, the chief administrative  
5 officer shall admit the person on this basis, if the person  
6 desires.

7 B. If the chief administrative officer of the hospital  
8 determines that admission of the person as an informally  
9 admitted patient is not suitable, or if the person declines  
10 admission as an informally admitted patient, the chief  
11 administrative officer of the hospital may file an  
12 application for the issuance of an order for hospitalization  
13 under section 16553.

14 (1) The application must be made to the District Court  
15 having territorial jurisdiction over the hospital.

16 (2) The application must be filed within 5 days from  
17 the admission of the patient under this section,  
18 excluding the day of admission and any Saturday, Sunday  
19 or legal holiday.

20 C. If neither readmission nor application to the District  
21 Court is effected under this subsection, the chief  
22 administrative officer of the hospital shall discharge the  
23 person forthwith.

24 6. Notice. Upon admission of a person under this section,  
25 and after consultation with the person, the chief administrative  
26 officer of the hospital shall mail notice of the fact of  
27 admission to the person's:

28 A. Guardian, if known;

29 B. Spouse;

30 C. Parent;

31 D. Adult child; or

32 E. Next of kin or a friend, if none of the listed persons  
33 exists.

34 7. Post-admission examination. Every patient admitted to a  
35 hospital must be examined as soon as practicable after the  
36 patient's admission.

37 A. The chief administrative officer of the hospital shall  
38 arrange for examination by a staff physician or licensed

2 clinical psychologist of every patient hospitalized under  
3 this section.

4 B. The examiner may not be the certifying examiner under  
5 this section or under section 16553.

6 C. If the post-admission examination is not held within 24  
7 hours after the time of admission, or if a staff physician  
8 or licensed clinical psychologist fails or refuses after the  
9 examination to certify that, in the staff physician's or the  
10 licensed clinical psychologist's opinion, the person has  
11 mental illness and due to the mental illness poses a  
12 likelihood of serious harm, the person must be immediately  
13 discharged.

14 §16553. Judicial procedure and commitment

15 1. Application. An application to the District Court to  
16 admit a person to a mental hospital, filed under section 16552,  
17 subsection 5, paragraph B, must be accompanied by:

18 A. The emergency application under section 16552,  
19 subsection 1;

20 B. The accompanying certificate of the physician or  
21 psychologist under section 16552, subsection 2; and

22 C. The certificate of the physician or psychologist under  
23 section 16552, subsection 7, that:

24 (1) The physician or psychologist has examined the  
25 patient; and

26 (2) It is the physician's or psychologist's opinion  
27 that the patient has mental illness and, because of the  
28 illness, poses a likelihood of serious harm.

29 2. Detention pending judicial determination.  
30 Notwithstanding any other provisions of this chapter, no person,  
31 with respect to whom proceedings for judicial hospitalization  
32 have been commenced, may be released or discharged during the  
33 pendency of the proceedings, unless:

34 A. The District Court orders release or discharge upon the  
35 application of the patient, the patient's guardian, parent,  
36 spouse or next of kin;

37 B. The District Court orders release or discharge upon the  
38 report of the chief administrative officer of the hospital  
39 that the person may be discharged with safety; or

2 C. A court orders release or discharge upon a writ of  
3 habeas corpus under section 16454.

4 3. Notice of receipt of application. The giving of notice  
5 of receipt of application under this section is governed as  
6 follows.

7 A. Upon receipt by the District Court of the application  
8 and accompanying documents specified in subsection 1, the  
9 court shall cause written notice of the application:

10 (1) To be given personally or by mail to the person  
11 within a reasonable time before the hearing, but not  
12 less than 3 days before the hearing; and

13 (2) To be mailed to the person's guardian, if known,  
14 and to the person's spouse, the person's parent or one  
15 of the person's adult children or, if none of these  
16 persons exist or if none of them can be located, to one  
17 of the person's next of kin or a friend.

18 B. A docket entry is sufficient evidence that notice under  
19 this subsection has been given.

20 4. Examination. Examinations under this section are  
21 governed as follows.

22 A. Upon receipt by the District Court of the application  
23 and the accompanying documents specified in subsection 1,  
24 the court shall immediately cause the person to be examined  
25 by 2 examiners.

26 (1) Each examiner must be either a licensed physician  
27 or a licensed clinical psychologist.

28 (2) One of the examiners must be a physician or  
29 psychologist chosen by the person or by the person's  
30 counsel, if the chosen physician or psychologist is  
31 reasonably available.

32 (3) Neither examiner appointed by the court may be the  
33 certifying examiner under section 16552, subsection 2  
34 or 7.

35 B. The examination must be held at the hospital or at any  
36 other suitable place not likely to have a harmful effect on  
37 the mental health of the person.

2 C. If the report of the examiners is to the effect that the  
4 person does not have mental illness or does not pose a  
6 likelihood of serious harm, the application must be ordered  
8 discharged immediately.

10 D. If the report of the examiners is to the effect that the  
12 person has mental illness or poses a likelihood of serious  
14 harm, the hearing must be held on the date, or on the  
16 continued date, that the court has set for the hearing.

18 5. Hearing. Hearings under this section are governed as  
20 follows.

22 A. The District Court shall hold a hearing on the  
24 application not later than 15 days from the date of the  
26 application.

28 (1) On a motion by any party, the hearing may be  
30 continued for cause for a period not to exceed 10  
32 additional days.

34 (2) If the hearing is not held within the time  
36 specified, or within the specified continuance period,  
38 the court shall dismiss the application and order the  
40 person discharged forthwith.

42 (3) In computing the time periods set forth in this  
44 paragraph, the Maine Rules of Civil Procedure apply.

46 B. The hearing must be conducted in as informal a manner as  
48 is consistent with orderly procedure and in a physical  
50 setting not likely to have harmful effect on the mental  
health of the person.

C. The court shall receive all relevant and material  
evidence that is offered in accordance with accepted rules  
of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to  
whom notice is required to be sent are afforded an  
opportunity to appear at the hearing to testify and to  
present and cross-examine witnesses.

(2) The court may, in its discretion, receive the  
testimony of any other person and may subpoena any  
witness.

D. The person is afforded an opportunity to be represented  
by counsel, and, if neither the person nor others provide  
counsel, the court shall appoint counsel for the person.

2 E. In addition to proving that the patient has mental  
4 illness, the applicant shall show:

6 (1) By evidence of the patient's actions and behavior,  
8 that the patient poses a likelihood of serious harm; and

10 (2) That, after full consideration of less restrictive  
12 treatment settings and modalities, inpatient  
14 hospitalization is the best available means for the  
16 treatment of the person.

18 F. In each case, the applicant shall submit to the court,  
20 at the time of the hearing, testimony indicating the  
22 individual treatment plan to be followed by the hospital  
24 staff, if the person is committed under this section, and  
26 shall bear any expense for witnesses for this purpose.

28 G. A stenographic or electronic record must be made of the  
30 proceedings in all judicial hospitalization hearings.

32 (1) The record and all notes, exhibits and other  
34 evidence are confidential.

36 (2) The record and all notes, exhibits and other  
38 evidence must be retained as part of the District Court  
40 records for a period of 2 years from the date of the  
42 hearing.

44 H. The hearing must be confidential and no report of the  
46 proceedings may be released to the public or press, except  
48 by permission of the person or the person's counsel and with  
50 approval of the presiding District Court Judge, except that  
the court may order a public hearing at the request of the  
person or the person's counsel.

6. Court findings. Procedures dealing with the District  
Court's findings under this section are as follows.

A. The District Court shall state in the record, if it  
finds upon completion of the hearing and consideration of  
the record:

(1) Clear and convincing evidence that the person has  
mental illness and that the person's recent actions and  
behavior demonstrate that the illness poses a  
likelihood of serious harm;

(2) That inpatient hospitalization is the best  
available means for treatment of the patient; and

2 (3) That it is satisfied with the individual treatment  
4 plan offered by the hospital.

6 B. If the District Court makes the findings described in  
8 paragraph A, subparagraphs 1 and 2, but is not satisfied  
10 with the individual treatment plan as offered, it may  
12 continue the case for not longer than 10 days, pending  
14 reconsideration and resubmission of an individual treatment  
16 plan by the hospital.

18 7. Commitment. Upon making the findings described in  
20 subsection 6, the court may order commitment to a mental hospital  
22 for a period not to exceed 4 months in the first instance and not  
24 to exceed one year after the first and all subsequent hearings.

26 A. The court may issue an order of commitment immediately  
28 after the completion of the hearing, or it may take the  
30 matter under advisement and issue an order within 24 hours  
32 of the hearing.

34 B. If the court does not issue an order of commitment  
36 within 24 hours of the completion of the hearing, it shall  
38 dismiss the application and order the patient discharged  
40 immediately.

42 8. Continued involuntary hospitalization. If the chief  
44 administrative officer of the hospital determines that continued  
46 involuntary hospitalization is necessary for a person who has  
48 been ordered by the District Court to be committed, the chief  
administrative officer shall, not later than 30 days prior to the  
expiration of a period of commitment ordered by the court, make  
application in accordance with this section to the District Court  
for the area where the hospital is located for a hearing to be  
held under this section.

9. Transportation. Unless otherwise directed by the court,  
the sheriff of the county in which the District Court has  
jurisdiction and in which the hearing takes place shall provide  
transportation to any hospital to which the court has committed  
the person.

10. Expenses. With the exception of expenses incurred by  
the applicant pursuant to subsection 5, paragraph F, the District  
Court is responsible for any expenses incurred under this  
section, including fees of appointed counsel, witness and notice  
fees and expenses of transportation for the person.

2 11. Appeals. A person ordered by the District Court to be  
4 committed to a hospital may appeal from that order to the  
6 Superior Court.

8 A. The appeal is on questions of law only.

10 B. A finding of fact of the District Court may not be set  
12 aside unless clearly erroneous.

14 C. The order of the District Court remains in effect  
16 pending the appeal.

18 D. The Maine Rules of Civil Procedure apply to the conduct  
20 of the appeals, except as otherwise specified in this  
22 subsection.

24 §16554. Hospitalization by federal agency

26 If a person ordered to be hospitalized under section 16553  
28 is eligible for hospital care or treatment by any agency of the  
30 United States, the court, upon receipt of a certificate from the  
32 agency showing that facilities are available and that the person  
34 is eligible for care or treatment in the facilities, may order  
36 the person to be placed in the custody of the agency for  
38 hospitalization.

40 1. Rules and rights. A person admitted under this section  
42 to any hospital or institution operated by any agency of the  
44 United States, inside or outside the State, is subject to the  
46 rules of the agency, but retains all rights to release and  
48 periodic court review granted by this chapter.

2. Powers of chief administrative officer. The chief  
administrative officer of any hospital or institution operated by  
a federal agency in which the person is hospitalized has, with  
respect to the person, the same powers as the chief  
administrative officer of hospitals or the commissioner within  
this State with respect to detention, custody, transfer,  
conditional release or discharge of patients.

3. Court jurisdiction. Every order of hospitalization  
issued under this section is conditioned on the retention of  
jurisdiction in the courts of this State to, at any time:

42 A. Inquire into the mental condition of a person  
44 hospitalized; and

46 B. Determine the necessity for continuance of the person's  
48 hospitalization.  
50

2 §16555. Members of the Armed Forces

4 1. Admission to hospital. Any member of the Armed Forces  
6 of the United States who was a resident of the State at the time  
8 of induction into the service and who is determined by a federal  
10 board of medical officers to have a mental disease not incurred  
12 in line of duty must be received, at the discretion of the  
14 commissioner and without formal commitment, at either of the  
16 state mental health institutes, upon delivery at the hospital  
18 designated by the commissioner of:

20 A. The member of the Armed Forces; and

22 B. The findings of the board of medical officers that the  
24 member has mental illness.

26 2. Status. After delivery of the member of the Armed  
28 Forces at the hospital designated by the commissioner, the  
30 member's status is the same as if the member had been committed  
32 to the hospital under section 16553.

34 §16556. Transfer from out-of-state institutions

36 1. Commissioner's authority. The commissioner may, upon  
38 request of a competent authority of the District of Columbia or  
40 of a state that is not a member of the Interstate Compact on  
42 Mental Health, authorize the transfer of a patient with mental  
44 illness directly to a state mental health institute in Maine, if:

46 A. The patient has resided in this State for a consecutive  
48 period of one year during the 3-year period immediately  
50 preceding commitment in the other state or the District of  
Columbia;

B. The patient is currently confined in a recognized  
institution for the care of persons with mental illness as  
the result of proceedings considered legal by that state or  
by the District of Columbia;

C. A duly certified copy of the original commitment  
proceedings and a copy of the patient's case history is  
supplied;

D. The commissioner, after investigation, considers the  
transfer justifiable; and

E. All expenses of the transfer are borne by the agency  
requesting it.

2 2. Receipt of patient. When the commissioner has  
4 authorized a transfer under this section, the superintendent of  
6 the state mental health institute designated by the commissioner  
8 shall receive the patient as having been regularly committed to  
10 the mental health institute under section 16553.

12 §16557. Transfer to other institutions

14 1. To other hospitals. The commissioner may transfer, or  
16 authorize the transfer of, a patient from one hospital to  
18 another, either inside or outside the State, if the commissioner  
20 determines that it would be consistent with the medical needs of  
22 the patient to do so.

24 A. Whenever a patient is transferred, the commissioner  
26 shall give written notice of the transfer to the patient's  
28 guardian, the patient's parents or spouse or, if none of  
30 these persons exists or can be located, to the patient's  
32 next of kin or friend.

34 B. In making all transfers under this subsection, the  
36 commissioner shall give due consideration to the  
38 relationship of the patient to the patient's family,  
40 guardian or friends, in order to maintain relationships and  
42 encourage visits beneficial to the patient.

44 2. To federal agency. Upon receipt of a certificate of an  
46 agency of the United States that facilities are available for the  
48 care or treatment of any involuntarily hospitalized person and  
50 that the person is eligible for care and treatment in a hospital  
or institution of the agency, the chief administrative officer of  
the hospital may cause the person's transfer to the agency of the  
United States for hospitalization.

A. Upon making a transfer under this subsection, the chief  
administrator of the hospital shall notify the court which  
ordered hospitalization and the persons specified in  
subsection 1, paragraph A.

B. A person may not be transferred to an agency of the  
United States if the person is confined pursuant to  
conviction of any felony or misdemeanor or if the person has  
been acquitted of the charge solely on the ground of mental  
illness, unless before the transfer the court originally  
ordering confinement of the person enters an order for  
transfer after appropriate motion and hearing.

C. A person transferred under this section to an agency of  
the United States is deemed to be hospitalized by the agency  
pursuant to the original order of hospitalization.

2 §16558. Return from unauthorized absence

4 If a patient committed under section 16553 leaves the  
6 grounds of the hospital without authorization of the chief  
8 administrative officer of the hospital or the chief  
10 administrative officer's designee, or refuses to return to the  
12 hospital from a community pass when requested to do so by the  
14 chief administrative officer or the chief administrative  
16 officer's designee, law enforcement personnel of the State or of  
18 any of its subdivisions may, upon request of the chief  
20 administrative officer or the chief administrative officer's  
22 designee, assist in the return of the patient to the hospital.

16 §16559. Convalescent status

18 1. Authority. The chief administrative officer of a state  
20 mental health institute may release an improved patient on  
22 convalescent status when the chief administrative officer  
24 believes that the release is in the best interest of the patient.

22 A. Release on convalescent status may include provisions  
24 for continuing responsibility to and by the state mental  
26 health institute, including a plan of treatment on an  
28 outpatient or nonhospital basis.

28 B. Before release on convalescent status under this  
30 section, the chief administrative officer of a state mental  
32 health institute shall make a good faith attempt to notify,  
34 by telephone, personal communication or letter, of the  
36 intent to release the patient on convalescent status and of  
38 the plan of treatment, if any:

34 (1) The parent or guardian of a minor patient;

36 (2) The legal guardian of an adult incompetent  
38 patient, if any is known; or

40 (3) The spouse or adult next of kin of an adult  
42 competent patient, if any is known, unless the patient  
44 requests in writing that the notice not be given.

42 C. The state mental health institute is not liable when  
44 good faith attempts to notify parents, spouse or guardian  
46 have failed.

46 2. Reexamination. Before a patient has spent a year on  
48 convalescent status, and at least once a year thereafter, the  
50 chief administrative officer of the state mental health institute

2 shall reexamine the facts relating to the hospitalization of the  
4 patient on convalescent status.

4 3. Discharge. Discharge from convalescent status is  
6 governed as follows.

6 A. If the chief administrative officer of the state mental  
8 health institute determines that, in view of the condition  
10 of the patient, convalescent status is no longer necessary,  
12 the chief administrative officer shall discharge the patient  
14 and make a report of the discharge to the commissioner.

14 B. The chief administrative officer shall terminate the  
16 convalescent status of a voluntary patient within 10 days  
18 after the day the chief administrative officer receives from  
20 the patient a request for discharge from convalescent status.

18 4. Rehospitalization. Reprehospitalization of patients under  
20 this section is governed as follows.

22 A. If, prior to discharge, there is reason to believe that  
24 it is in the best interest of an involuntarily committed  
26 patient on convalescent status to be rehospitalized, the  
28 commissioner or the chief administrative officer of the  
30 state mental health institute may issue an order for the  
32 immediate rehospitalization of the patient.

28 B. If the order is not voluntarily complied with, and if  
30 the order is endorsed by a District Court Judge or justice  
32 of the peace in the county in which the patient has legal  
34 residence or is present, any health officer or police  
36 officer may take the patient into custody and transport the  
38 patient to:

36 (1) The state mental health institute, if the order is  
38 issued by the chief administrative officer of the state  
40 mental health institute; or

40 (2) A hospital designated by the commissioner, if the  
42 order is issued by the commissioner.

42 5. Notice of change of status. Notice of the change of  
44 convalescent status of patients is governed as follows.

46 A. If the convalescent status of a patient in a state  
48 mental health institute is to be changed, either because of  
50 a decision of the chief administrative officer of the state  
mental health institute or because of a request made by a  
voluntary patient, the chief administrative officer of the  
state mental health institute shall immediately make a good

2 faith attempt to notify, by telephone, personal  
3 communication or letter, of the contemplated change;

4 (1) The parent or guardian of a minor patient;

6 (2) The guardian of an adult incompetent patient, if  
7 any is known; or

8 (3) The spouse or adult next of kin of an adult  
9 competent patient, unless the patient requests in  
10 writing that the notice not be given.

12 B. If the change in convalescent status is due to the  
13 request of a voluntary patient, the chief administrative  
14 officer of the state mental health institute shall give the  
15 required notice within 10 days after the day the chief  
16 administrative officer receives the request.

18 C. The state mental health institute is not liable when  
19 good faith attempts to notify parents, spouse or guardian  
20 have failed.

22 **§16560. Discharge**

24 1. Examination. The chief administrative officer of a  
25 state mental health institute shall, as often as practicable, but  
26 no less often than every 12 months, examine or cause to be  
27 examined every patient to determine the patient's mental status  
28 and need for continuing hospitalization.

30 2. Conditions for discharge. The chief administrative  
31 officer of a state mental health institute shall discharge, or  
32 cause to be discharged, any patient when:

34 A. Conditions justifying hospitalization no longer remain;

36 B. The patient is transferred to another hospital for  
37 treatment for the patient's mental or physical condition;

39 C. The patient is absent from the state mental health  
40 institute unlawfully for a period of 90 days;

42 D. Notice is received that the patient has been admitted to  
43 another hospital, inside or outside the State, for treatment  
44 for a mental or physical condition; or

46 E. Although lawfully absent from the state mental health  
47 institute, the patient is admitted to another hospital,  
48 inside or outside the State, for treatment of a mental or  
49 physical condition, except that, if the patient is directly  
50

2 admitted to another hospital and it is the opinion of the  
3 chief administrative officer of the state mental health  
4 institute that the patient will directly reenter the state  
5 mental health institute within the foreseeable future, the  
6 patient need not be discharged.

8 3. Discharge against medical advice. The chief  
9 administrative officer of a state mental health institute may  
10 discharge, or cause to be discharged, any patient even though the  
11 patient is mentally ill and appropriately hospitalized in the  
12 state mental health institute, if:

14 A. The patient and either the guardian, spouse or adult  
15 next of kin of the patient request the patient's discharge;  
16 and

18 B. In the opinion of the chief administrative officer of  
19 the hospital, the patient does not pose a likelihood of  
20 serious harm due to mental illness.

22 4. Reports. The chief administrative officer of a state  
23 mental health institute shall send a report of the discharge of  
24 any patient to the commissioner.

26 5. Notice. Notice of discharge is governed as follows.

28 A. When a patient is discharged under this section, the  
29 chief administrative officer of the state mental health  
30 institute shall immediately make a good faith attempt to  
31 notify, by telephone, personal communication or letter, that  
32 the discharge has taken or will take place:

34 (1) The parent or guardian of a minor patient;

36 (2) The guardian of an adult incompetent patient, if  
37 any is known; or

38 (3) The spouse or adult next of kin of an adult  
39 competent patient, if any is known, unless the patient  
40 requests in writing that the notice not be given or  
41 unless the patient was transferred from or will be  
42 returned to a state correctional facility.

44 B. The state mental health institute is not liable when  
45 good faith attempts to notify parents, spouse or guardian  
46 have failed.

48 **§16561. Treatment of dually diagnosed persons**



2 In the case of a patient who has been admitted to a state  
3 mental health institute on a voluntary or involuntary basis and  
4 who has also been diagnosed as mentally retarded, the chief  
5 administrative officer of the state mental health institute  
6 shall, after the patient has been a resident for a period of no  
7 more than 6 months, determine whether the patient is capable of  
8 giving informed consent to continued hospitalization.

9 If at that time the chief administrative officer of the  
10 state mental health institute determines that the patient is not  
11 capable of giving informed consent to continued hospitalization,  
12 the patient may be admitted for extended care and treatment only  
13 after judicial certification pursuant to the procedures contained  
14 in section 18651.

15 For the purpose of this section the state mental health  
16 institutes are considered facilities under section 18501,  
17 subsection 5.

#### 20 CHAPTER 1611

#### 22 MEDICAL TREATMENT OF PSYCHOTIC DISORDERS

#### 24 §16661. Medical treatment of psychotic disorders

26 1. Definitions. As used in this chapter, unless the  
27 context otherwise indicates, the following terms have the  
28 following meanings.

30 A. "Attending physician" means the physician who has  
31 primary responsibility for the treatment and care of the  
32 patient.

34 B. "Declarant" means a person suffering from a psychotic  
35 condition who has executed a declaration while in a state of  
36 remission in accordance with the requirements of subsection  
37 2.

38 C. "Declaration" means a written document voluntarily  
39 executed by the declarant in accordance with the  
40 requirements of subsection 2 regardless of form.

42 D. "Health care facility" includes any program,  
43 institution, place, building or agency or portion thereof,  
44 private or public, whether organized for profit or not,  
45 used, operated or designed to provide medical diagnosis,  
46 treatment or rehabilitative or preventive care to any  
47 person. "Health care facility" includes, but is not limited  
48 to, facilities that are commonly referred to as hospitals,  
49 outpatient clinics, organized ambulatory health care  
50 facilities, emergency care facilities and centers, health

2 maintenance organizations and other facilities providing  
3 similarly organized services regardless of nomenclature.

4 E. "Health care provider" means a person who is licensed,  
5 certified or otherwise authorized or permitted by law to  
6 administer health care in the ordinary course of business or  
7 practice of a profession.

8 F. "Incompetent person" means a person who suffers from a  
9 psychotic condition who is temporarily impaired by reason of  
10 having lapsed into that psychotic condition to the extent  
11 that while temporarily impaired, the person lacks sufficient  
12 understanding or capacity to make or communicate responsible  
13 decisions concerning the person's health care.

14 G. "Physician" means an individual licensed to practice  
15 medicine.

16 H. "Psychotic condition" means any disease, illness or  
17 condition commonly referred to by the medical profession  
18 according to ordinary standards of current medical practice  
19 as any disorder characterized by psychotic tendencies or  
20 manic-depressive behavior or schizophrenia or other similar  
21 condition that, without the administration of appropriate  
22 medical treatment, including the use of psychotropic drugs,  
23 would constitute a danger to the patient or to others and  
24 would result in a patient being gravely disabled.

25 2. Execution of declaration. Any person 18 years of age or  
26 older who suffers from a psychotic condition but is competent and  
27 in a state of remission at the time of execution may execute a  
28 declaration directing that medical treatment, including the  
29 administration of psychotropic drugs, be provided at a time when  
30 the person has lapsed and is not able to make decisions regarding  
31 medical treatment.

32 3. Declaration requirements. A declaration made pursuant  
33 to this chapter must:

34 A. Be in writing;

35 B. Be signed by the person making the declaration or by  
36 another person in the declarant's presence and at the  
37 declarant's expressed direction;

38 C. Be dated;

39 D. Be signed in the presence of 2 or more witnesses who  
40 are;

2 (1) At least 18 years of age;

4 (2) Not related to the declarant by blood, marriage or  
6 adoption; and

8 (3) Not, at the time the declaration is executed,  
10 attending physicians, employees of the attending  
12 physicians or employees of a health care facility in  
14 which the declarant is a patient; and

16 E. Have all signatures notarized at the same time.

18 4. Declaration sample form. The following declaration  
20 sample form may be copied and used by filling in the blanks or  
22 may be changed to add more individualized instructions or an  
24 entirely different format may be used to provide health care  
26 instructions.

28 DECLARATION

30 I. Statement of Declarant

32 Declaration made this ..... day of ..... (month,  
34 year). I, ....., being of sound mind,  
36 willfully and voluntarily make known my desire that medical  
38 treatment as outlined below, including the administration of  
40 \*psychotropic drugs if necessary, be provided to me under the  
42 circumstances set forth below, and do hereby declare:

44 If at any time I should lapse into a psychotic condition as  
46 determined by 2 physicians who have personally examined me, one  
48 of whom is my attending physician and the physicians have  
50 determined that I am unable to make decisions concerning my  
medical treatment, and that without medical treatment my  
condition will result in my being gravely disabled and in my  
posing a serious danger to myself or to others and when medical  
treatment would serve to remedy the condition and prevent  
potential or further harm to myself or to others, I direct that  
the following personal medical treatment plan, including the  
elements checked below, be provided to me and be carried out:

..... (....) Psychotropic drugs (specify) .....  
.....

..... (....) Hospitalization if necessary

..... (....) Counseling

..... (....) Therapy involving my family members or friends

2 (....) (Other treatment) .....  
4 .....

6 In the absence of my ability to give directions regarding  
8 the provision of medical treatment, it is my intention that this  
10 declaration be honored by my family and physician(s) as my legal  
12 informed consent to receive medical treatment.

14 My instructions must prevail even if they create a conflict  
16 with the desires of my relatives. This declaration controls in  
18 all circumstances.

20 I understand the full import of this declaration and declare  
22 that I am emotionally and mentally competent at this time to make  
24 this declaration.

26 Signed .....

28 Address .....

30 II. Statement of Witnesses

32 I am at least 18 years of age and am not related to the  
34 declarant by blood, marriage or adoption or the attending  
36 physician, an employee of the attending physician or an employee  
38 of the health care facility in which the declarant is a patient.

40 The declarant is personally known to me and I believe the  
42 declarant to be of sound mind at this time of execution.

44 Witness .....

46 Address .....

48 Witness .....

..... Address .....

50 III. Notarization

Subscribed, sworn to and acknowledged before me by  
....., the declarant, and subscribed and  
sworn to before me by ....., and  
..... witnesses, this .....  
day of ....., 19,...

52 (SEAL) Signed .....

54 .....  
56 (official capacity of officer)

58 5. Presumed validity of declaration. If a patient is  
incompetent at the time of the decision to give medical

2 treatment, a declaration executed in accordance with subsection 2  
3 is presumed valid.

4 For the purpose of this chapter, a physician or health care  
5 facility may presume, in the absence of actual notice to the  
6 contrary, that a person who executed a declaration was of sound  
7 mind when the declaration was executed.

8 Execution of a declaration may not be considered an indication of  
9 a declarant's mental incompetence.

12 6. Patient's wishes supersede declaration. The wishes of a  
13 declarant, at all times when the declarant is in a state of  
14 remission and is competent, supersede the declaration.

16 7. Declaration becomes part of medical records. The  
17 declarant shall provide for delivery of the notarized declaration  
18 to the attending physician. If the declarant is comatose,  
19 incompetent or otherwise mentally or physically incapable after  
20 executing the declaration, any other person may deliver the  
21 notarized declaration to the physician. An attending physician  
22 who is notified under this subsection shall promptly make the  
23 declaration a part of the declarant's medical records.

24 8. Duty to deliver. A person who has a declaration of  
25 another in that person's possession and who becomes aware that  
26 the declarant is in circumstances under which the terms of the  
27 declaration may become applicable shall deliver the declaration  
28 to the declarant's attending physician or to the health care  
29 facility in which the declarant is a patient.

32 9. Written certification. An attending physician who has  
33 been notified of the existence of a declaration executed under  
34 this chapter shall make all reasonable efforts to obtain the  
35 notarized declaration and shall ascertain without delay whether  
36 the declarant's current condition corresponds to the condition  
37 under which the declaration would take effect.

38 If a patient's condition corresponds to the condition described  
39 in the patient's declaration, a written certification of the  
40 declarant's condition must be made a part of the declarant's  
41 medical record and must be substantially in the following form:

44 CERTIFICATION OF CONDITION SPECIFIED IN PATIENT'S DECLARATION

46 I certify that, in my professional opinion, (name of  
47 patient) ..... is not able to  
48 participate in decisions concerning medical treatment to be  
49 administered and has the following condition:  
50 (diagnosis) .....

2 According to the declaration, (name of patient)  
3 ..... wishes to receive medical  
4 treatment according to a personal medical treatment plan as  
5 specified in the patient's declaration under these circumstances.

8 Signed .....  
9 Attending Physician

10 Signed .....  
11 Second Attending Physician

12 10. Identification of declarant. All inpatient health care  
13 facilities shall develop a system to visibly identify a patient's  
14 chart that contains a declaration as set forth in this chapter.

16 11. Transfer to another physician. An attending physician  
17 and any other physician under the attending physician's direction  
18 or control who possesses the patient's declaration or knows that  
19 the declaration is part of the patient's record in the health  
20 care facility in which the declarant is receiving care shall  
21 follow as closely as possible the terms of the declaration.

24 An attending physician who, because of personal beliefs or  
25 conscience, refuses or is unable to certify a patient or who is  
26 unable to comply with the terms of the patient's declaration  
27 shall make the necessary arrangements to transfer the patient and  
28 the appropriate medical records without delay to another  
29 physician. A physician who transfers the patient without  
30 unreasonable delay or who makes a good faith attempt to do so is  
31 not subject to criminal prosecution or civil liability and may  
32 not be found to have committed an act of unprofessional conduct  
33 for refusal to comply with the terms of the declaration.  
34 Transfer under these circumstances does not constitute  
35 abandonment.

36 Failure of an attending physician to transfer in accordance with  
37 this section constitutes professional misconduct.

38 12. Revocation. At any time the declarant is in a state of  
39 remission and is competent, the declaration may be revoked by:

42 A. Canceling, defacing, obliterating, burning, tearing or  
43 otherwise destroying by the declarant or by some person in  
44 the declarant's presence and at the declarant's direction:

46 B. A written revocation signed and dated by the declarant  
47 expressing the declarant's intent to revoke. The attending  
48 physician shall record in the patient's medical record the  
49 time and date when the physician received notification of  
50 the written revocation:

2 C. A declarant's unambiguous verbal expression in the  
4 presence of 2 adult witnesses of an intent to revoke the  
6 declaration. The revocation becomes effective upon  
8 communication to the attending physician by the declarant or  
10 by both witnesses. The attending physician shall record in  
12 the patient's medical record the time, date and place of the  
14 revocation and the time, date and place, if different, at  
16 which the attending physician received notification of the  
18 revocation; or

12 D. A declarant's unambiguous verbal expression of an intent  
14 to revoke the declaration to an attending physician.

16 13. Health care or health insurance. A person or entity  
18 may not require any person to execute a declaration as a  
20 condition for being insured for or for receiving insurance  
22 benefits or health care services.

22 14. Criminal penalties. A person who threatens, directly  
24 or indirectly, coerces or intimidates any person to execute a  
26 declaration commits a Class C crime.

24 A person who willfully conceals, cancels, defaces, obliterates or  
26 damages another's declaration without the declarant's consent or  
28 who falsifies or forges a declarant's revocation of declaration  
30 with the intent to create the false impression that the declarant  
32 has directed that no medical treatment be given commits a Class E  
34 crime.

32 A physician who willfully fails to record a statement of  
34 revocation according to the requirements of subsection 12 commits  
36 a Class C crime.

36 15. Health personnel protections. In the absence of actual  
38 notice of the revocation of a declaration, a health care  
40 provider, health care facility, physician or other person acting  
42 under the direction of an attending physician is not subject to  
44 criminal prosecution or civil liability and may not be deemed to  
46 have engaged in unprofessional conduct as a result of the  
48 provision of medical treatment to a declarant in accordance with  
50 this chapter unless the absence of actual notice resulted from  
the negligence of the health care provider, physician or other  
person.

46 16. Petition for guardianship. A person may petition the  
48 court for appointment of a guardian for a declarant if that  
50 person has good reason to believe that the provision of medical  
treatment in a particular case:

2 A. Is contrary to the most recent expressed wishes of a  
4 declarant who was in remission and was competent at the time  
6 of expressing the wishes;

6 B. Is being proposed pursuant to a declaration that has  
8 been falsified, forged or coerced; or

8 C. Is being considered without the benefit of a revocation  
10 that has been unlawfully concealed, destroyed, altered or  
12 cancelled.

12 17. Procedure in absence of declaration. In the absence of  
14 a declaration, ordinary standards of current medical practice  
16 must be followed. Nothing in this chapter requires a declaration  
18 in order for medical treatment to be given. If there is no  
20 declaration, a verbal statement made by the patient to either a  
22 physician or to the patient's friend or relative may be  
24 considered by the physician in deciding whether the patient would  
26 want the physician to provide medical treatment. Unambiguous  
28 verbal statements by the patient or reliable reports of these  
30 statements must be documented in the patient's medical record.

24 The provision of medical treatment pursuant to this subsection is  
26 not grounds for any civil or criminal action and does not  
28 constitute professional misconduct.

28 18. Preservation of existing rights. Nothing in this  
30 chapter impairs or supersedes any legal right or legal  
32 responsibility that a person has to provide medical treatment in  
34 a lawful manner. In this respect, the provisions of this chapter  
36 are cumulative.

34 19. No presumption. This chapter does not create a  
36 presumption concerning the intention of a person who has revoked  
38 or has not executed a declaration to receive medical treatment.

38 20. Declaration executed before effective date. The  
40 declaration of any patient executed prior to the effective date  
42 of this chapter must be given effect as provided in this chapter.

42 21. Recognition of document executed in another state. A  
44 document executed in another state is valid for purposes of this  
46 chapter if the document and the execution of the document  
48 substantially comply with the requirements of this chapter.

46 22. Effect of multiple documents. Medical treatment  
48 instructions contained in a declaration executed in accordance  
with this chapter supersede:

2 A. A contrary or conflicting instruction given by a proxy  
3 or an attorney for health care decisions unless the proxy  
4 appointment or the power of attorney expressly provides  
5 otherwise; and

6 B. Instructions in a prior declaration.

8 **CHAPTER 1613**

10 **INTERSTATE COMPACT ON MENTAL HEALTH**

12 **§16761. Purpose--Article I**

14 The party states find that the proper and expeditious  
15 treatment of persons with mental illness and persons with mental  
16 deficiency can be facilitated by cooperative action, to the  
17 benefit of the patients, their families and society as a whole.  
18 The party states find that the necessity of and desirability for  
19 furnishing care and treatment bears no primary relation to the  
20 residence or citizenship of the patient, but that, on the  
21 contrary, the controlling factors of community safety and  
22 humanitarianism require that facilities and services be made  
23 available for all who are in need of them. Consequently, it is  
24 the purpose of this compact and of the party states to provide  
25 the necessary legal basis for the institutionalization or other  
26 appropriate care and treatment of the persons with mental illness  
27 and persons with mental deficiency under a system that recognizes  
28 the paramount importance of patient welfare and to establish the  
29 responsibilities of the party states in terms of such welfare.

30 **§16762. Definitions--Article II**

32 As used in this compact, unless the context otherwise  
33 indicates, the following terms have the following meanings.

34 1. Aftercare. "Aftercare" means care, treatment and  
35 services provided a patient on convalescent status or conditional  
36 release.

37 2. Institution. "Institution" means any hospital or other  
38 facility maintained by a party state or political subdivision  
39 thereof for the care and treatment of mental illness or mental  
40 deficiency.

41 3. Mental deficiency. "Mental deficiency" means mental  
42 deficiency as defined by appropriate clinical authorities to the  
43 extent that a person so afflicted is incapable of self-management  
44 and the management of that person's own affairs, but does not  
45 include mental illness.

2 4. Mental illness. "Mental illness" means mental disease  
3 to the extent that a person so afflicted requires care and  
4 treatment for that person's own welfare or the welfare of others  
5 or of the community.

6 5. Patient. "Patient" means any person subject to or  
7 eligible, as determined by the laws of the sending state, for  
8 institutionalization or other care, treatment or supervision  
9 pursuant to this compact.

10 6. Receiving state. "Receiving state" means a party state  
11 to which a patient is transported pursuant to the compact or to  
12 which it is contemplated that a patient may be sent.

13 7. Sending state. "Sending state" means a party state from  
14 which a patient is transported pursuant to the compact or from  
15 which it is contemplated that a patient may be sent.

16 8. State. "State" means any state, territory or possession  
17 of the United States, the District of Columbia and the  
18 Commonwealth of Puerto Rico.

20 **§16763. Care and treatment--Article III**

21 1. Eligibility. Whenever a person physically present in  
22 any party state is in need of institutionalization by reason of  
23 mental illness or mental deficiency, the person is eligible for  
24 care and treatment in an institution in that state irrespective  
25 of the person's residence, settlement or citizenship  
26 qualifications.

27 2. Transfer. Subsection 1 to the contrary notwithstanding,  
28 any patient may be transferred to an institution in another state  
29 whenever there are factors based upon clinical determinations  
30 indicating that the care and treatment of the patient would be  
31 facilitated or improved thereby. Any such institutionalization  
32 may be for the entire period of care and treatment or for any  
33 portion or portions thereof. The factors referred to in this  
34 subsection include the patient's full record with due regard for  
35 the location of the patient's family, character of the illness  
36 and probable duration thereof, and other factors that are  
37 considered appropriate.

38 3. Duties of receiving and sending states. No state is  
39 obliged to receive any patient pursuant to subsection 2 unless  
40 the sending state has given advance notice of its intention to  
41 send the patient; furnished all available medical and other  
42 pertinent records concerning the patient; given the qualified  
43 medical or other appropriate clinical authorities of the  
44 receiving state an opportunity to examine the patient if those  
45 authorities request such an opportunity.

authorities wish; and unless the receiving state agrees to accept the patient.

4. Priorities. If the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact receives the same priority as a local patient and is taken in the same order and at the same time that the patient would be taken if the patient were a local patient.

5. Review and further transfer. Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

#### §16764. Aftercare--Article IV

1. Investigation. Whenever, pursuant to the laws of the state in which a patient is physically present, it is determined that the patient should receive aftercare or supervision, that care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient aftercare in the receiving state, and the investigation must be made with all reasonable speed. The request for investigation must be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and any other documents that are pertinent.

2. Aftercare in receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

3. Standards. In supervising, treating or caring for a patient on aftercare pursuant to the terms of this Article, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

#### §16765. Escape--Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, the patient must be detained in the state where found pending disposition in accordance with law.

#### §16766. Transportation of patient--Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, are permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

#### §16767. Costs; reciprocal agreements--Article VII

1. Patient at only one institution. A person may not be a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state has the effect of making the person a patient of the institution in the receiving state.

2. Costs. The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any 2 or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

3. Internal relationships not affected. No provision of this compact may be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

4. Asserting rights for costs. Nothing in this compact may be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible, pursuant to any provision of this compact.

5. Reciprocal agreements not invalidated. Nothing in this compact may be construed to invalidate any reciprocal agreement

2 between a party state and a nonparty state relating to  
3 institutionalization, care or treatment of persons with mental  
4 illness or persons with mental deficiency, or any statutory  
5 authority pursuant to which such agreements may be made.

6 **§16768. Guardians--Article VIII**

8 1. Supplemental or substitute guardian. Nothing in this  
9 compact may be construed to abridge, diminish or in any way  
10 impair the rights, duties and responsibilities of any patient's  
11 guardian on the patient's own behalf or in respect of any patient  
12 for whom the guardian may serve, except that, where the transfer  
13 of any patient to another jurisdiction makes advisable the  
14 appointment of a supplemental or substitute guardian, any court  
15 of competent jurisdiction in the receiving state may make such  
16 supplemental or substitute appointment and the court that  
17 appointed the previous guardian shall, upon being duly advised of  
18 the new appointment, and upon the satisfactory completion of such  
19 accounting and other acts as such court may by law require,  
20 relieve the previous guardian of power and responsibility to  
21 whatever extent is appropriate in the circumstances. In the case  
22 of any patient having settlement in the sending state, the court  
23 of competent jurisdiction in the sending state has the sole  
24 discretion to relieve a guardian appointed by it or continue the  
25 guardian's power and responsibility, whichever it deems  
26 advisable. The court in the receiving state may, in its  
27 discretion, confirm or reappoint the person or persons previously  
28 serving as guardian in the sending state in lieu of making a  
29 supplemental or substitute appointment.

30 2. Guardian defined. The term "guardian" as used in  
31 subsection 1 includes any guardian, trustee, legal committee,  
32 conservator or other person or agency however denominated who is  
33 charged by law with power to act for or have responsibility for  
34 the person or property of a patient.

35 **§16769. Incarceration in penal or correctional**  
36 **institution--Article IX**

37 1. Application. No provision of this compact except  
38 Article V applies to any person institutionalized while under  
39 sentence in a penal or correctional institution or while subject  
40 to trial on a criminal charge, or whose institutionalization is  
41 due to the commission of an offense for which, in the absence of  
42 mental illness or mental deficiency, the person would be subject  
43 to incarceration in a penal or correctional institution.

44 2. Policy not to jail. To every extent possible, it is the  
45 policy of states party to this compact that no patient must be  
46 placed or detained in any prison, jail or lockup, but a patient

2 must, with all expedition, be taken to a suitable institutional  
3 facility for mental illness or mental deficiency.

4 **§16770. Compact administrators--Article X**

6 1. Duties. Each party state shall appoint a "compact  
7 administrator" who, on behalf of the compact administrator's  
8 state, shall act as general coordinator of activities under the  
9 compact in the compact administrator's state and shall receive  
10 copies of all reports, correspondence and other documents  
11 relating to any patient processed under the compact by the  
12 compact administrator's state either in the capacity of sending  
13 or receiving state. The compact administrator or the compact  
14 administrator's duly designated representative is the official  
15 with whom other party states deal in any matter relating to the  
16 compact or any patient processed thereunder.

18 2. Rules and regulations. The compact administrators of  
19 the respective party states have power to promulgate reasonable  
20 rules and regulations to carry out more effectively the terms and  
21 provisions of this compact.

22 **§16771. Supplementary agreements--Article XI**

24 The duly constituted administrative authorities of any 2 or  
25 more party states may enter into supplementary agreements for the  
26 provision of any service or facility or for the maintenance of  
27 any institution on a joint or cooperative basis whenever the  
28 states concerned find that such agreements will improve services,  
29 facilities or institutional care and treatment in the fields of  
30 mental illness or mental deficiency. No such supplementary  
31 agreement may be construed so as to relieve any party state of  
32 any obligation which it otherwise would have under other  
33 provisions of this compact.

34 **§16772. Effective date of compact--Article XII**

36 This compact enters into full force and effect as to any  
37 state when enacted by it into law and that state is thereafter a  
38 party thereto with any and all states legally joining therein.

39 **§16773. Withdrawal from compact--Article XIII**

41 1. Procedure; effective date; effect. A state party to  
42 this compact may withdraw therefrom by enacting a statute  
43 repealing the same. Such withdrawal takes effect one year after  
44 notice thereof has been communicated officially and in writing to  
45 the governors and compact administrators of all other party  
46 states. The withdrawal of any state does not change the status

of any patient who has been sent to that state or sent out of that state pursuant to the compact.

2. Costs and supplementary agreements. Withdrawal from any agreement permitted by Article VII, subsection 2, as to costs or from any supplementary agreement made pursuant to Article XI must be in accordance with the terms of such agreement.

#### §16774. Constitutionality--Article XIV

This compact must be liberally construed so as to effectuate the purposes thereof. The provisions of this compact are severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance is not affected thereby. If this compact is held contrary to the constitution of any state party thereto, the compact remains in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

### PART 6

#### MENTAL RETARDATION

#### CHAPTER 1801

#### GENERAL PROVISIONS

#### §18001. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

1. Autism. "Autism" means a developmental disorder characterized by a lack of responsiveness to other people, gross impairment in communicative skills and unusual responses to various aspects of the environment, all usually developing within the first 30 months of age.

2. Bureau. "Bureau" means the Bureau of Adults in Need of Special Services within the department.

3. Chief administrative officer. "Chief administrative officer" means the head of a state institution or the head of any other facility licensed or funded by the department to provide services.

4. Client. "Client" means a person receiving or requesting services pursuant to this Part from the department or from any agency licensed or funded by the department to provide services.

5. Day facility. "Day facility" means any nonresidential facility owned, operated, licensed or funded, in whole or in part, by the department or the Department of Children and Families.

6. Director. "Director" means the director of the bureau.

7. Express and informed consent. "Express and informed consent" means consent voluntarily given with sufficient knowledge and comprehension of the subject matter involved to enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion.

8. Facility. "Facility" means a day facility or a residential facility.

9. Habilitation. "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills that enable the individual to cope with the demands of the individual's person and environment, to raise the level of the individual's physical, mental and social efficiency and to improve the individual's sense of well-being, including, but not limited to, programs of formal, structured education and treatment.

10. Incapacitated person. "Incapacitated person" means any person who is impaired by reason of mental retardation to the extent that the person lacks sufficient understanding or capacity to make, communicate or implement responsible decisions concerning self or property.

11. Mental retardation. "Mental retardation" means a condition of significantly subaverage intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period.

12. Normalization. "Normalization" means the principle of assisting a person to obtain an existence as close to normal as possible and making available to that person patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

13. Person receiving services. "Person receiving services" means a person with mental retardation or autism receiving



services from the bureau or from an agency or facility licensed or funded to provide services to persons with mental retardation or autism except that "person receiving services" does not include a person who is serving a criminal sentence of incarceration.

14. Protective services. "Protective services" means services that will separate incapacitated adults from danger, including, but not limited to:

A. Social, medical and psychiatric services necessary to preserve the incapacitated adult's rights and resources and to maintain the incapacitated adult's physical and mental well-being; and

B. Seeking guardianship or a protective order under Title 18-A, Article 5.

15. Region. "Region" means a service delivery region established in section 107.

16. Resident. "Resident" means a person receiving services in a state institution or in any other residential facility.

17. Residential facility. "Residential facility" means a facility providing 24-hour residential services for persons with mental retardation or autism that is owned, operated, licensed or funded, in whole or in part, by the department or the Department of Children and Families.

18. Seclusion. "Seclusion" means the solitary placement of a person in a locked room for any period of time.

19. Supportive services. "Supportive services" means services to make it possible for an incapacitated person to become rehabilitated or self-sufficient to the maximum extent possible, including but not limited to:

A. Counseling;

B. Transportation;

C. Assistance in obtaining adequate housing;

D. Medical and psychiatric care; and

E. Nutritional services.

20. Supports. "Supports" are those actions or that assistance that permits a person with mental retardation or autism to carry out life activities as the person desires.

21. Treatment. "Treatment" means the prevention, amelioration or cure of physical and mental disabilities or illness of a person receiving services.

22. Ward. "Ward" means a person for whom the bureau has been appointed guardian under Title 18-A, article V, Part 6.

#### §18002. Maine Advisory Committee on Mental Retardation

The Maine Advisory Committee on Mental Retardation, as established by Title 5, section 12004-I, subsection 61, must be appointed as follows.

1. Composition. The committee consists of 11 members appointed as follows:

A. One member from the House of Representatives appointed by the Speaker of the House of Representatives;

B. One member from the Senate appointed by the President of the Senate; and

C. Nine representative citizens appointed by the Governor.

2. Chair. The Governor shall designate the chair of the committee.

3. Duration of appointments. The duration of appointments is as follows.

A. Gubernatorial appointments are for terms of 3 years, plus the time period until a successor is appointed.

B. Legislative appointments are for the legislative term of office of the person appointed.

4. Compensation. Members of the committee are eligible for reimbursement of expenses in accordance with Title 5, chapter 379.

5. Duties. The committee shall act in an advisory capacity to the commissioner in assessing present programs, planning future programs and developing means to meet the needs of the persons with mental retardation in Maine.

#### §18003. Consumer Advisory Board

1. Responsibilities. The Consumer Advisory Board, as established by the Pineland Consent Decree, functions as an independent body which carries out responsibilities pursuant to appendices A and B of the consent decree and subsequent agreements approved by the United States District Court for the District of Maine.

2. Maine Tort Claims Act. The Consumer Advisory Board members and staff act as employees of the State, as defined in Title 14, section 8102, subsection 1, when engaged in official duties specified in the consent judgment or assigned by the board.

**§18004. Matching funds for Medicaid mental retardation services**

The commissioner shall establish a General Fund account to provide the General Fund match for mental retardation Medicaid eligible services. Any unencumbered balances of General Fund appropriations remaining at the end of each fiscal year must be carried forward to be used for the same purposes.

**§18005. Adaptive equipment**

The department, through the bureau and its other agents, may operate an adaptive equipment program. Reimbursement for materials utilized in the manufacture of this equipment may be received and must be retained for use within the adaptive equipment program.

**§18006. Payment of burial expenses for state wards**

The department shall pay burial expenses for deceased persons who die while wards of the bureau as defined in section 18001, subsection 22, and who have no known survivors. The department may first apply to the cost of burial any funds that are available as part of a mortuary trust or any other funds of the ward remaining at the time of the ward's death that are available for this purpose.

**CHAPTER 1803**

**MENTAL RETARDATION SYSTEM**

**§18101. Policy**

1. Services. It is the policy of the State to provide education, training and habilitative services to persons with mental retardation who need those services, except that nothing in this Part replaces or limits the right of any person with mental retardation to treatment by spiritual means alone, through

prayer, if that treatment is requested by the person or by the person's next of kin or guardian.

2. Setting. It is the policy of the State that the setting for the services described in subsection 1 must, consistent with adequate care and treatment:

A. Impose the fewest possible restrictions on the liberty of persons with mental retardation; and

B. Be as close as possible to the patterns and norms of the mainstream of society.

**§18102. System of care for persons with mental retardation**

The Legislature declares that the system of care, through which the State provides services to and programs for persons with mental retardation, must be designed not only to protect the integrity of the legal and human rights of persons with mental retardation, but also to meet their needs.

**§18103. Responsibilities of department**

1. Responsibilities of commissioner. To facilitate the development of a system that meets the needs of adults with mental retardation, the commissioner, through the bureau, shall:

A. Provide a mechanism for the identification, evaluation, treatment and reassessment of and the provision of services to adults with mental retardation, including an habilitation program for every client receiving services;

B. Divert persons with mental retardation from institutional care, whenever professional diagnosis and evaluation, the personal preference of the client or the client's legal guardian, and the availability of appropriate services indicate that these persons should be placed in community environments and programs;

C. Provide programs, to the extent resources permit, for the proper habilitation and treatment of adults with mental retardation that include, but are not limited to, comprehensive medical care, education, recreation, physical therapy, training, social services and habilitation and rehabilitation services suited to the needs of the individual regardless of age, degree of mental retardation, handicapping condition or ability to pay;

D. Work toward effectuating the normalization principle through the establishment of community services for adults

2 with mental retardation as a viable and practical  
4 alternative to institutional care at each stage of  
6 individual life development. If care in an institutional  
8 facility becomes necessary, it should be in the least  
10 restrictive setting, consistent with the proper care of the  
12 person with mental retardation;

8 E. Eliminate its own duplicative and unnecessary  
10 administrative procedures and practices in the system of  
12 care for adults with mental retardation, encourage other  
14 departments to do the same and clearly define areas of  
16 responsibility in order to utilize present resources  
18 economically;

16 F. Strive toward having a sufficient number of personnel  
18 who are qualified and experienced to provide treatment that  
20 is beneficial to adults with mental retardation;

20 G. Encourage other departments to provide to persons with  
22 mental retardation those services that are required by law,  
24 and inform the joint standing committee of the Legislature  
26 having jurisdiction over human resource matters about areas  
28 where increased cooperation by other departments is  
30 necessary in order to improve the delivery of services to  
32 persons with mental retardation; and

28 H. Report annually to the joint standing committee of the  
30 Legislature having jurisdiction over human resource matters  
32 on the activities of the Consumer Advisory Board established  
34 by the Pineland Consent Decree to oversee compliance with  
36 the terms of that decree. The commissioner or the  
38 commissioner's designee shall appear in person before the  
40 committee and shall provide the committee with the most  
42 recent annual audit of decree standards and the corrective  
44 action plans required by the audit. The members of the  
46 Consumer Advisory Board may attend the commissioner's  
48 presentation and provide an independent report of its  
activities to the committee.

42 2. Plan. The commissioner, through the bureau, shall  
44 prepare a plan, subject to the following provisions.

44 A. The plan must indicate the most effective and efficient  
46 manner in which to implement services and programs for  
48 persons with mental retardation, while safeguarding and  
respecting the legal and human rights of these persons.

48 B. The plan must be prepared once every 2 years and must be  
submitted to the joint standing committee of the Legislature

2 having jurisdiction over human resource matters by no later  
4 than January 15th of every odd-numbered year.

4 C. The joint standing committee shall study the plan and  
6 make recommendations to the Legislature with respect to  
8 funding improvements in programs and services to persons  
10 with mental retardation or autism.

10 D. The plan must describe the system of mental retardation  
12 services in each region and statewide.

12 E. The plan must include both existing service resources  
14 and deficiencies in the system of services.

14 F. The plan must include a report on efforts to plan for  
16 and develop social and habilitative services for persons who  
18 have autism and other pervasive developmental disorders.

18 G. The plan must include an assessment of the roles and  
20 responsibilities of mental retardation agencies, human  
22 service agencies, health agencies and involved state  
24 departments and suggest ways in which these departments and  
26 agencies can better cooperate to improve the service  
28 systems. In particular, the plan must describe ways in which  
30 the department coordinates its services for adults with  
32 mental retardation or autism with the services offered by  
34 the Department of Children and Families for children with  
36 mental retardation or autism.

30 H. The plan must be made public within the State in a  
32 manner that facilitates public involvement.

34 I. The commissioner shall ensure that the development of  
36 the plan includes the participation of community mental  
38 retardation service providers, consumer and family groups  
40 and other interested persons or groups in annual statewide  
42 hearings, as well as informal meetings and work sessions.

38 J. The commissioner shall consider community service needs,  
40 relate these identified needs to biennial budget requests  
42 and incorporate necessary service initiatives into a  
44 comprehensive planning document.

44 **CHAPTER 1805**

46 **BUREAU RESPONSIBILITIES**

48 **§18201. General responsibilities**

2        The department shall carry out the purposes of this Part  
3        through the bureau. The bureau is responsible for:

4        1. Services to adults. Providing services, directly or  
5        through contractors, to adults with mental retardation:

6        2. Adult institutional programs. The supervision of adult  
7        mental retardation programs in the state institutions:

8        3. Statewide system. The planning, promotion, coordination  
9        and development of a complete and integrated statewide system of  
10       mental retardation services:

11       4. Liaison. Serving as liaison, coordinator and consultant  
12       to state departments in order to develop the statewide system of  
13       mental retardation services:

14       5. Community-based services. Ensuring that adults with  
15       mental retardation residing in community residential facilities,  
16       including nursing homes, boarding homes, foster homes, group  
17       homes or halfway houses licensed by the department are provided,  
18       to the extent possible, with residential accommodations and  
19       access to habilitation services appropriate to their needs; and

20       6. Protective and supportive services. Providing  
21       protective and supportive services, in accordance with section  
22       18202, to incapacitated persons who, with some assistance, are  
23       capable of living and functioning in society.

24       **§18202. Protective and supportive services**

25       1. Bureau authority. The bureau may provide protective or  
26       supportive services in response to complaints concerning and  
27       requests for assistance from or on behalf of all incapacitated  
28       persons under the following conditions.

29       A. Except for seeking the appointment of a guardian,  
30       protective or supportive services may be initiated only:

31       (1) With the acquiescence of the incapacitated person;  
32       and

33       (2) After consultation, to the extent possible, with  
34       the family or the guardian of the incapacitated person.

35       B. The role of the bureau must be primarily that of  
36       supervision and coordination.

37       2. Payment for services. Payment for services under this  
38       section is governed as follows.

39       A. The bureau may pay for protective and supportive  
40       services to incapacitated persons from its own resources, by  
41       mobilizing available community resources or by purchase of  
42       services from voluntary or state agencies.

43       B. To the extent that assets are available to incapacitated  
44       persons or wards, the cost of services must be borne by the  
45       estate of persons receiving the services.

46       C. The department, through the bureau and its other agents,  
47       may receive as payee any benefits from social security,  
48       veterans' administration, railroad retirement or any other  
49       like benefits paid on behalf of any incapacitated person,  
50       and shall apply those benefits toward the care and treatment  
51       of the incapacitated person.

52       3. Rules. Adoption, amendment and appeal of rules under  
53       this section are governed as follows.

54       A. The bureau shall adopt rules governing the  
55       administration of this section, in accordance with the Maine  
56       Administrative Procedure Act, Title 5, chapter 375.

57       B. The bureau shall hold a public hearing before adopting,  
58       amending or repealing the rules, and shall give notice of  
59       the public hearing in accordance with the Maine  
60       Administrative Procedure Act, Title 5, chapter 375.

61       **§18203. Services for people with autism**

62       1. Intent. It is the intent of the Legislature that social  
63       and habilitative services directed at adults with autism or other  
64       pervasive developmental disorders be developed and planned for,  
65       to the extent that resources permit, by the department through  
66       the bureau, and that social and habilitative services directed at  
67       children with autism or other pervasive developmental disorders  
68       be developed and planned for, to the extent that resources  
69       permit, by the Department of Children and Families.

70       2. Rules. The bureau shall adopt rules governing the  
71       definition of autism and other pervasive developmental disorders  
72       in accordance with the Maine Administrative Procedure Act, Title  
73       5, chapter 375.

74       **CHAPTER 1807**

75       **RIGHTS OF PERSONS WITH MENTAL**  
76       **RETARDATION OR AUTISM**

2 §18301. Purpose

4 It is the intent of the Legislature to guarantee individual  
6 dignity, liberty, pursuit of happiness and the protection of the  
8 civil and legal rights of persons with mental retardation or  
10 autism and to articulate rights of persons with mental  
12 retardation or autism, so that these rights may be exercised and  
14 protected.

16 §18302. Entitlement

18 Each person with mental retardation or autism is entitled to  
20 the rights enjoyed by citizens of the State and of the United  
22 States, unless some of these rights have been suspended as the  
24 result of court guardianship proceedings.

26 §18303. Maximum independence

28 The Legislature finds and declares that the rights of  
30 persons with mental retardation or autism can be protected best  
32 under a system of services that operates according to the  
34 principles of normalization and full inclusion and that the  
36 State's system of services must operate according to these  
38 principles with the goals of:

40 1. Community-based services. Continuing the development of  
42 community-based services that provide reasonable alternatives to  
44 institutionalization in settings that are least restrictive to  
46 the person receiving services; and

48 2. Independence and productivity. Providing habilitation,  
50 education and other training to persons with mental retardation  
or autism that will maximize their potential to lead independent  
and productive lives and that will afford opportunities to leave  
institutions.

§18304. Rights and basic protections of a person with mental  
retardation or autism

A person with mental retardation or autism is entitled to  
the following rights and basic protections.

1. Humane treatment. A person with mental retardation or  
autism is entitled to dignity, privacy and humane treatment.

2. Practice of religion. A person with mental retardation  
or autism is entitled to religious freedom and practice without  
any restriction or forced infringement on that person's right to  
religious preference and practice.

2 3. Communications. A person with mental retardation or  
4 autism is entitled to private communications.

6 A. A person with mental retardation or autism is entitled  
8 to receive, send and mail sealed, unopened correspondence. A  
10 person who owns or is employed by a day facility or a  
12 residential facility may not delay, hold or censor any  
14 incoming or outgoing correspondence of any person with  
16 mental retardation or autism, nor may any such  
18 correspondence be opened without the consent of the person  
20 or the person's legal guardian.

22 B. A person with mental retardation or autism in a  
24 residential facility is entitled to reasonable opportunities  
26 for telephone communication.

28 C. A person with mental retardation or autism is entitled  
30 to an unrestricted right to visitations during reasonable  
32 hours, except that nothing in this provision permits  
34 infringement upon others' rights to privacy.

36 4. Work. A person with mental retardation or autism  
38 engaged in work programs that require compliance with state and  
40 federal wage and hour laws is entitled to fair compensation for  
42 labor in compliance with regulations of the United States  
44 Department of Labor.

46 5. Vote. A person with mental retardation or autism may  
48 not be denied the right to vote for reasons of mental illness, as  
50 provided in the Constitution of Maine, Article II, Section 1,  
unless under guardianship.

6. Personal property. A person with mental retardation or  
autism is entitled to the possession and use of that person's own  
clothing, personal effects and money, except that, when necessary  
to protect the person or others from imminent injury, the chief  
administrator of a day facility or a residential facility may  
take temporary custody of clothing or personal effects, which the  
administrator shall immediately return when the emergency ends.

7. Nutrition. A person with mental retardation or autism  
in a residential facility is entitled to nutritious food in  
adequate quantities, and meals may not be withheld for  
disciplinary reasons.

8. Medical care. A person with mental retardation or  
autism is entitled to receive prompt and appropriate medical and  
dental treatment and care for physical and mental ailments and  
for the prevention of any illness or disability, and medical  
treatment must be consistent with the accepted standards of

2 medical practice in the community, unless the religion of the  
3 person with mental retardation or autism so prohibits.

4 A. Medication may be administered only at the written order  
5 of a physician.

6 B. Medication may not be used as punishment, for the  
7 convenience of staff, as a substitute for a habilitation  
8 plan or in unnecessary or excessive quantities.

9 C. Daily notation of medication received by each person  
10 with mental retardation or autism in a residential facility  
11 must be kept in the records of the person with mental  
12 retardation or autism.

13 D. Periodically, but no less frequently than every 6  
14 months, the drug regimen of each person with mental  
15 retardation or autism in a residential facility must be  
16 reviewed by the attending physician or other appropriate  
17 monitoring body, consistent with appropriate standards of  
18 medical practice.

19 E. All prescriptions must have a termination date.

20 F. Pharmacy services at each residential facility operated  
21 by the department must be directed or supervised by a  
22 professionally competent pharmacist licensed according to  
23 the provisions of Title 32, chapter 41.

24 G. Prior to instituting a plan of experimental medical  
25 treatment or carrying out any surgical procedure, express  
26 and informed consent must be obtained from the person with  
27 mental retardation or autism, unless the person has been  
28 found to be legally incompetent, in which case the person's  
29 guardian may consent.

30 (1) Before making a treatment or surgical decision,  
31 the person must be given information, including, but  
32 not limited to, the nature and consequences of the  
33 procedures, the risks, benefits and purposes of the  
34 procedures and the availability of alternate procedures.

35 (2) The person or, if legally incompetent, that  
36 person's guardian may withdraw express and informed  
37 consent at any time, with or without cause, before  
38 treatment or surgery.

39 H. Notwithstanding the absence of express and informed  
40 consent, emergency medical care or treatment may be provided  
41 to any person with mental retardation or autism who has been  
42 injured or who is suffering from an acute illness, disease  
43 or condition if delay in initiation of emergency medical  
44 care or treatment would endanger the health of the person.

45 I. Notwithstanding the absence of express and informed  
46 consent, emergency surgical procedures may be provided to  
47 any person with mental retardation or autism who has been  
48 injured or who is suffering from an acute illness, disease  
49 or condition if delay in initiation of emergency surgery  
50 would substantially endanger the health of the person.

1 9. Sterilization. A person with mental retardation or  
2 autism may not be sterilized, except in accordance with chapter  
3 109.

4 10. Social activity. A person with mental retardation or  
5 autism is entitled to suitable opportunities for behavioral and  
6 leisure time activities that include social interaction.

7 11. Physical exercise. A person with mental retardation or  
8 autism is entitled to opportunities for appropriate physical  
9 exercise, including the use of available indoor and outdoor  
10 facilities and equipment.

11 12. Discipline. Discipline of persons with mental  
12 retardation or autism is governed as follows.

13 A. The chief administrative officer of each facility shall  
14 prepare a written statement of policies and procedures for  
15 the control and discipline of persons receiving services  
16 that is directed to the goal of maximizing the growth and  
17 development of persons receiving services.

18 (1) Persons receiving services are entitled to  
19 participate, as appropriate, in the formulation of the  
20 policies and procedures.

21 (2) Copies of the statement of policies and procedures  
22 must be given to each person receiving services and, if  
23 the person has been adjudged incompetent, to that  
24 person's parent or legal guardian.

25 (3) Copies of the statement of policies and procedures  
26 must be posted in each residential and day facility.

27 B. Corporal punishment or any form of inhumane discipline  
28 is not permitted.

29 C. Seclusion is not permitted.

2 13. Behavior modification. Behavior modification of  
3 persons receiving services is governed as follows.

4 A. A person receiving services may not be subjected to a  
5 treatment program to eliminate bizarre or unusual behavior  
6 without first being examined by a physician to rule out the  
7 possibility that the behavior is organically caused.

8 B. Treatment programs involving the use of noxious or  
9 painful stimuli may be used only to correct behavior more  
10 harmful to the person receiving services than is the  
11 treatment program.

12 (1) On the recommendation of a physician or  
13 psychologist; and

14 (2) With the approval, following a case-by-case  
15 review, of the chief administrative officer of the  
16 residential facility and an advocate of the department.

17 14. Physical restraints. Persons with mental retardation  
18 or autism are entitled to be free from physical restraints, which  
19 include totally enclosed cribs and barred enclosures, but  
20 physical restraints may be employed only in emergencies to  
21 protect the person from imminent injury to that person or others.

22 A. Physical restraints may not be used as punishment, for  
23 the convenience of the staff or as a substitute for  
24 habilitative services.

25 B. Physical restraints may impose only the least possible  
26 restrictions consistent with their purpose and must be  
27 removed when the emergency ends.

28 C. Physical restraints may not cause physical injury to the  
29 person receiving services and must be designed to allow the  
30 greatest possible comfort.

31 D. Mechanical supports used in normative situations to  
32 achieve proper body position and balance are not considered  
33 restraints, but mechanical supports must be prescriptively  
34 designed and applied under the supervision of a qualified  
35 professional with concern for principles of good body  
36 alignment, circulation and allowance for change of position.

37 E. Daily reports on the use of restraints must be made to  
38 the appropriate chief administrative officer of the facility.

39 (1) The reports must summarize all cases involving the  
40 use of restraints, the type of restraints used, the  
41 duration of usage and the reasons for the usage.

42 (2) A monthly summary of the reports must be relayed  
43 to the Office of Advocacy.

44 15. Records. All records of persons receiving services are  
45 confidential as provided in section 701.

46 A. The person with mental retardation or autism or, if the  
47 person is incompetent, a parent or guardian is entitled to  
48 have access to the records upon request.

49 B. The commissioner is entitled to have access to the  
50 records of a day facility or a residential facility if  
51 necessary to carry out the statutory functions of the  
52 commissioner's office.

#### 53 §18305. Violations

54 1. Report and investigation. Any alleged violation of the  
55 rights of a person receiving services who is an adult must be  
56 reported immediately to the Office of Advocacy of the department  
57 and to the Attorney General's office. Any alleged violation of  
58 the rights of a person receiving services who is a child must be  
59 reported immediately to the Office of the Advocate in the  
60 Department of Children and Families and to the Attorney General's  
61 office.

62 A. The Office of Advocacy shall conduct an investigation  
63 pursuant to section 301 of each allegation it receives. The  
64 Office of the Advocate in the Department of Children and  
65 Families shall conduct an investigation pursuant to section  
66 Title 22-A, section 2208 of each allegation it receives.

67 B. The Office of Advocacy shall submit a written report of  
68 the findings and results of each investigation it conducts  
69 to the chief administrative officer of the facility in which  
70 the rights of the person receiving services were allegedly  
71 violated and to the commissioner within 2 working days after  
72 the day of the occurrence or discovery of the alleged  
73 incident. The Office of the Advocate shall submit a written  
74 report of the findings and results of each investigation it  
75 conducts to the chief administrative officer of the facility  
76 in which the rights of the person receiving services were  
77 allegedly violated and to the Commissioner of Children and  
78 Families within 2 working days after the day of the  
79 occurrence or discovery of the alleged incident.

2 2. Civil liability. Any person who violates or abuses any  
3 rights or privileges of persons receiving services granted by  
4 this chapter is liable for damages as determined by law.

5 A. Civil damages may be awarded for negligent or  
6 intentional violations of this chapter.

7 B. Good-faith compliance with the provisions of this  
8 chapter in connection with evaluation, admission,  
9 habilitation programming, education, treatment or discharge  
10 of a person receiving services is a defense to a civil  
11 action under this chapter.

12 3. Prohibited acts; penalty; defense. A person is guilty  
13 of violation of the rights of a person with mental retardation or  
14 autism if the person intentionally violates or abuses any rights  
15 or privileges of persons receiving services granted by this  
16 chapter.

17 A. Violation of the rights of a person with mental  
18 retardation or autism is a Class E crime.

19 B. Good-faith compliance with the provisions of this  
20 chapter in connection with evaluation, admission,  
21 habilitation programming, education, treatment or discharge  
22 of a person receiving services is a defense to prosecution  
23 under this chapter.

#### 24 §18306. Notice of rights

25 The commissioner shall provide a written copy of this  
26 chapter and of section 701 to each person receiving services and,  
27 if the person receiving services has been adjudged incompetent,  
28 to the parent or guardian of the person receiving services.

29 1. Prompt notification. Each person receiving services  
30 must be promptly informed in clear language of that person's  
31 legal rights.

32 2. Posting requirement. A copy of this chapter must be  
33 posted in each residential and day facility.

#### 34 §18307. Government

35 Upon request of a person receiving services, the chief  
36 administrative officer of a residential facility shall initiate  
37 and develop a program of government to hear the views and  
38 represent the interests of all persons receiving services at the  
39 facility.

2 1. Composition. The government of the persons receiving  
3 services must be comprised of residents elected by other  
4 residents and staff advisors skilled in the administration of  
5 community organizations.

6 2. Duties. The government of the persons receiving  
7 services shall work closely with the bureau and the Office of  
8 Advocacy to promote the interests and welfare of all residents in  
9 the facility.

### 10 CHAPTER 1809

#### 11 SERVICES FOR PERSONS WITH MENTAL RETARDATION

#### 12 SUBCHAPTER I

#### 13 COMMUNITY-BASED SERVICES

#### 14 §18401. Purpose

15 The purpose of this subchapter is to assist in the  
16 establishment and expansion of community-based mental retardation  
17 services and programs for persons with mental retardation  
18 residing in the community and in privately-operated residential  
19 facilities.

#### 20 §18402. Commissioner's duties

21 The commissioner shall:

22 1. Community participation. Encourage persons in local  
23 communities to participate in the provision of supportive  
24 services for persons with mental retardation, so that persons in  
25 the community have a better understanding of the need for those  
26 services;

27 2. Financial assistance. When offering assistance to  
28 community-based programs, follow the procedures set forth in this  
29 subchapter; and

30 3. Rules. Adopt rules, according to the Maine  
31 Administrative Procedure Act, Title 5, chapter 375, relating to  
32 the administration of the services authorized by this subchapter.

#### 33 §18403. Commissioner's powers

34 The commissioner may:

35 1. Financial aid. Allocate money for the development of  
36 group homes, capital construction, purchase of buildings.



2 supportive services and for other activities, but only those  
3 applicants for funds whose programs provide for adequate  
4 standards of professional service qualify for funds from the  
5 department:

6 2. Services and programs. Provide and help finance mental  
7 retardation services and programs throughout the State for  
8 persons with mental retardation residing in the community and in  
9 privately-owned residential facilities:

10 3. Cooperation. Cooperate with other state agencies,  
11 municipalities, other governmental units, unincorporated  
12 associations and nonstock corporations in order to provide and  
13 help finance services and programs for persons with mental  
14 retardation:

15 4. Available funds. Receive and use for the purpose of  
16 this subchapter money appropriated by the State, grants by the  
17 Federal Government, gifts from individuals and money from any  
18 other sources; and

19 5. Transitional services coordination projects. Participate in the  
20 coordination of services for persons with mental retardation with  
21 local transitional services coordination projects for handicapped  
22 youths, as established in Title 20-A, chapter 308, assigning  
23 appropriate regional staff and resources as available and  
24 necessary in each region to be served by a  
25 project.

26 **§18404. Municipalities and other governmental units**

27 1. Authorization. A municipality or other governmental  
28 unit, such as a county, school district or health district,  
29 through its local board of health or other town or governmental  
30 agency approved by the commissioner, may adopt and carry out a  
31 program of mental retardation services established or approved by  
32 the commissioner and appropriate money for that purpose.

33 2. Joint ventures. A municipality or other governmental  
34 unit may join with another municipality or governmental unit to  
35 carry out such a program.

36 3. Grants. Upon application to the department by a  
37 municipality or other governmental unit, the commissioner may  
38 grant to the applicant money to be used for carrying out its  
39 mental retardation services, including any necessary capital  
40 expenditures or purchase of buildings.

41 **§18405. Nongovernmental units**

42 1. Department grants. Upon application to the department  
43 by an unincorporated association or nonstock corporation  
44 organized for the improvement of community health and welfare,  
45 the commissioner may grant to the applicant money to be used for  
46 carrying out its mental retardation services, including any  
47 necessary capital expenditures or purchase of buildings.

48 2. Bureau grants. The bureau may make grants to nonprofit  
49 corporations for amounts that are reasonable, relative to the  
50 quantity and quality of services to be provided by the grantee.

A. The bureau may request a display of effort on the part  
of the grantee that appropriate local governmental and other  
funding sources have been sought to assist in the financing  
of the services for which the bureau is making the grant.

B. The bureau shall consider the ability of the  
municipality or governmental unit to support the mental  
retardation services, as reflected by the State's evaluation  
of the component communities.

C. In making grants to unincorporated associations or  
nonstock corporations, the bureau shall take into account  
all income and resources.

**§18406. Fees**

1. Authority. Fees may be charged for services provided  
directly to individuals by any program authorized by the  
department, if the individual is financially able to pay.

2. Use. Fees received by a municipality, governmental  
unit, unincorporated association or nonstock corporation must be  
used by each entity in carrying out its programs approved under  
this subchapter.

**§18407. Contingency fund**

The bureau shall establish a contingency fund for use by  
community-based intermediate care facilities for persons with  
mental retardation and persons receiving services residing in  
licensed boarding or foster homes or intermediate care facilities  
or participating in appropriate day treatment programs. This  
fund must be used in accordance with the following provisions.

1. Approval of disbursements. Disbursements must be  
approved by the commissioner or the commissioner's designee.

2. List of approved usages. The commissioner or the  
commissioner's designee and representatives of community-based

2 facilities shall develop a list of approved usages of contingency  
3 funds. Approved usages of contingency funds must include, but  
4 are not limited to, the following:

5 A. Payment for special client assessment and treatment  
6 services not reimbursed through the principles of  
7 reimbursement for intermediate care facilities for persons  
8 with mental retardation;

9 B. Payment for special client needs, such as eyeglasses and  
10 wheelchairs and nonreimbursable medications; or

11 C. Payment for special staff needs to ensure appropriate  
12 client treatment.

13 3. Disbursement not to be approved. No disbursement for  
14 client needs may be approved for any service or activity unless  
15 it is recommended by an interdisciplinary team or necessary to  
16 comply with rules or regulations. No disbursement may be made  
17 unless evidence is provided that the expense is not reimbursable  
18 by Medicaid. It is the intent of the Legislature that the  
19 contingency fund established in this section be the funding  
20 source of last resort.

21 §18408. Habilitation and vocational rehabilitation services

22 1. Habilitation services. The department, through the  
23 bureau, and the Department of Education, through the Bureau of  
24 Rehabilitation, shall provide, to the extent of the resources  
25 available, habilitation and vocational rehabilitation services,  
26 defined in Title 22, section 3054, subsection 8; and any other  
27 service, including, but not limited to, supported employment  
28 including work in rehabilitation facilities and work centers, as  
29 defined in Title 5, chapter 155, subchapter II; job coaching;  
30 transportation, recreational and leisure services; and respite or  
31 day programs designed in consultation with an interdisciplinary  
32 team to persons receiving services when services are otherwise  
33 not obtainable, in the following order of priority.

34 A. Those persons receiving services who are living at home  
35 or in unsubsidized foster care who are 20 years of age or  
36 older and under 26 years of age and who are not receiving  
37 any day program have first priority.

38 B. All other persons receiving services who are 20 years of  
39 age or older and under 26 years of age and who are not  
40 receiving an appropriate day program have 2nd priority.

41 2. Payment for service. The bureau shall establish a  
42 voucher system to allow the interdisciplinary team to incorporate

2 only those services determined critical and otherwise unavailable  
3 into a program, including work, habilitation and other services  
4 designated in subsection 1, when appropriate. The bureau shall  
5 establish a limit on the amount of transitional services  
6 available to an individual under this section.

7 3. Continuation. Notwithstanding subsection 1, any person  
8 served under this program prior to that person's 26th birthday  
9 must be allowed to continue to receive services through the  
10 voucher system established by subsection 2.

11 4. Interdisciplinary team. For purposes of this section,  
12 an interdisciplinary team includes the person receiving services  
13 and a member of the person's family or the guardian of the person  
14 receiving services.

15 5. Rules. The bureau shall adopt rules in accordance with  
16 the Maine Administrative Procedure Act to implement this section.

17 **SUBCHAPTER II**

18 **STATE-OPERATED FACILITIES**  
19 **FOR PERSONS WITH MENTAL RETARDATION**

20 **§18451. Maintenance of facilities**

21 The department shall maintain the following 2 residential  
22 facilities for the care and treatment of persons with mental  
23 retardation:

24 1. Pineland Center. Pineland Center; and

25 2. Aroostook Residential Center. Aroostook Residential  
26 Center.

27 **§18452. Pineland Center**

28 1. Establishment. There is established the Pineland Center  
29 at New Gloucester in Cumberland County, which:

30 A. Must be maintained for the training, education,  
31 treatment and care of persons with mental retardation; and

32 B. May be maintained for the training, education, treatment  
33 and care of persons between the ages of 3 and 16 who are  
34 mentally ill.

35 2. Applicable laws. The provisions of chapter 1811, in all  
36 relevant aspects, apply to the mentally ill persons described in  
37 subsection 1, paragraph B.

2 3. Superintendent. The chief administrative officer of the  
4 Pineland Center is the superintendent.

6 A. The commissioner shall, with the advice of the Maine  
8 Advisory Committee on Mental Retardation, appoint and set  
10 the salary for the superintendent.

12 B. The appointment is for an indefinite term and until a  
14 successor is appointed and qualified. The superintendent  
16 serves at the pleasure of the commissioner.

18 C. In making the appointment, the commissioner and the  
20 committee shall give due consideration to the appointee's  
22 qualifications and experience in mental retardation matters.

24 D. In order to qualify for appointment as superintendent, a  
26 person must have sufficient training and experience to deal  
28 with the problems of persons with mental retardation, and  
30 must be either a psychiatrist, hospital administrator, and  
32 psychologist or a person with a master's degree in  
34 education, social work, public administration, public health  
36 or rehabilitation.

4. Duties of the superintendent. The superintendent:

28 A. Is responsible for the training, education, treatment  
30 and care of all persons received into Pineland Center;

32 B. Is responsible for the discharge of all persons, except  
34 those placed in Pineland Center under Title 15, section 101  
36 or 103; and

38 C. Has direct supervision, management and control of the  
40 grounds, buildings, property, officers and employees of  
42 Pineland Center, subject to the approval of the director.

38 § 18453. Mental Retardation Trainer Apprenticeship Program

40 A Mental Retardation Trainer Apprenticeship Program is  
42 established at the Pineland Center to provide education and skill  
44 development for direct care staff to allow them to become  
46 knowledgeable and experienced in the mental retardation field.  
48 This program must be designed to provide individuals with  
50 sufficient knowledge to work as paraprofessionals in a multitude  
of disciplines, including, but not limited to, physical therapy,  
occupational therapy, recreation therapy and speech therapy.

§18454. Pineland Center Board of Visitors

2 1. Members. The Governor shall appoint a board of 5  
4 visitors, as authorized by Title 5, section 12004-I, subsection  
6 60-A, for Pineland Center.

8 A. The term of the visitors is for one year.

10 B. Visitors are eligible for reappointment at the  
12 expiration of their terms.

14 C. No member of the Legislature may serve as a visitor.

16 D. Visitors are entitled to reimbursement for expenses  
18 according to the provisions of Title 5, chapter 379.

20 2. Powers. Visitors may inspect Pineland Center and may  
22 make recommendations on the management of the institution to the  
24 commissioner, the director and the superintendent.

26 3. Duties. The board of visitors has the following duties.

28 A. The board of visitors shall send copies of all  
30 recommendations to the members of the joint standing  
32 committee of the Legislature having jurisdiction over human  
34 resource matters.

36 B. The board of visitors shall appear before the joint  
38 standing committee of the Legislature having jurisdiction  
40 over human resource matters upon request.

42 §18455. Aroostook Residential Center

44 1. Establishment. There is established the Aroostook  
46 Residential Center at Presque Isle in Aroostook County, which:

48 A. Must be maintained for the training, education,  
treatment and care of persons with mental retardation; and

B. May provide living accommodations for persons with  
mental retardation in order that they may attend educational  
and training programs.

2. Center director. The chief administrative officer of  
the Aroostook Residential Center is called the center director.

A. The commissioner shall, with the advice of the Maine  
Advisory Committee on Mental Retardation, appoint and set  
the salary for the center director.

2 B. The appointment is for an indefinite term and until a  
3 successor is appointed and qualified. The center director  
4 serves at the pleasure of the commissioner.

5 C. In order to qualify for appointment as the center  
6 director, a person must have sufficient education and  
7 experience to administer a facility providing services to  
8 persons with mental retardation.

9 3. Duties of the center director. The center director:

10 A. Is responsible for the training, education, treatment  
11 and care of all persons received into or receiving services  
12 from the Aroostook Residential Center;

13 B. Is responsible for the discharge of all persons received  
14 into the Aroostook Residential Center; and

15 C. Has direct supervision, management and control of the  
16 grounds, buildings, property, officers and employees of the  
17 Aroostook Residential Center, subject to the approval of the  
18 director.

19 CHAPTER 1811

20 PROCEDURES FOR OBTAINING MENTAL RETARDATION SERVICES

21 SUBCHAPTER I

22 PROCEDURES GENERALLY

23 §18501. Definitions

24 As used in this chapter, unless the context otherwise  
25 indicates, the following terms have the following meanings.

26 1. Advocate. "Advocate" means a person:

27 A. Who is familiar with the procedures involved both in  
28 admitting persons with mental retardation to a facility and  
29 in providing services to those persons; and

30 B. Who is capable of advocating solely on behalf of a  
31 person with mental retardation.

32 2. Client. "Client" means a person asking the department  
33 for mental retardation services or the person for whom those  
34 services are asked.

35 3. Community. "Community" means the municipality or other  
36 area in which the client resides when applying for services.

37 4. Comprehensive evaluation. "Comprehensive evaluation"  
38 means a comprehensive set of evaluations that:

39 A. Results in the distinguishing of mental retardation from  
40 other conditions;

41 B. Determines the severity of disability resulting from  
42 mental retardation and other conditions; and

43 C. Estimates the degree to which mental retardation and  
44 other conditions can be ameliorated.

45 5. Facility. "Facility" means a residential facility  
46 operated by the department for persons with mental retardation.

47 6. Interdisciplinary team. "Interdisciplinary team" means  
48 a team of persons, including at least one professional, that is  
49 established and conducted in accordance with professional  
50 standards for the purpose of evaluating clients with mental  
retardation and recommending services for them.

7. Likelihood of serious harm. "Likelihood of serious  
harm" means:

A. A substantial risk of physical harm to self as  
manifested by evidence of recent threats of, or attempts of,  
suicide or serious bodily harm to self, and after  
consideration of less restrictive treatment settings and  
modalities, a determination that community resources for the  
person's care and treatment are unavailable;

B. A substantial risk of physical harm to other persons as  
manifested by recent evidence of violent behavior or recent  
evidence that others are placed in reasonable fear of  
serious physical or emotional harm to them and, after  
consideration of less restrictive treatment settings and  
modalities, a determination that community resources for the  
person's care and treatment are unavailable; or

C. A reasonable certainty that severe physical or mental  
impairment or injury will result to the person with mental  
retardation as manifested by recent evidence of the person's  
actions or behavior that demonstrates the person's inability  
to avoid or protect the self from that impairment or injury  
and, after consideration of less restrictive treatment  
settings and modalities, a determination that suitable  
community resources for the person's care are unavailable.

2 8. Person in need of institutional services. "Person in  
3 need of institutional services" means a person who, because of  
4 mental retardation and other severely disabling conditions, is  
5 unable to provide self-care and to avoid or protect the self from  
6 severe physical or psychological impairment, and who needs  
7 habilitation in an institutional setting designed to improve the  
8 person's ability to provide self-care and self-protection.

10 9. Prescriptive program plan. "Prescriptive program plan"  
11 means a detailed written plan, formulated by an appropriately  
12 constituted interdisciplinary team, outlining a person with  
13 mental retardation's specific needs for education, training,  
14 treatment and habilitation services, along with the methods to be  
15 utilized in providing treatment, education and habilitation to  
16 the person.

18 10. Professional. "Professional" means:

20 A. A person possessing appropriate licensure, certification  
21 or registration to practice the person's discipline in the  
22 State; or

24 B. Where licensure, certification or registration is not  
25 required, a person possessing a master's degree in the  
26 appropriate discipline or a person possessing a bachelor's  
27 degree in the appropriate discipline and 3 years' experience  
28 in treating persons with mental retardation or 3 years'  
29 experience in a related human services field.

30 11. Service plan. "Service plan" means an annual written  
31 plan for the delivery and coordination of specific services to a  
32 client when the following conditions exist:

34 A. The client or guardian has waived the prescriptive  
35 program plan process;

37 B. The prescriptive program plan process unnecessarily  
38 restricts the client's own ability to make decisions;

40 C. Another type of formal written program plan exists; or

42 D. The client has either a single service need or routine  
43 service coordination needs.

45 12. Service agreement. "Service agreement" means a written  
46 form in which the persons designated in section 18555 agree to  
47 the type of services and programs for and the manner of providing  
48 services to the client.

## 2 §18502. Procedure policies

3 1. Steps. It is the policy of the State that, in order to  
4 ensure that persons with mental retardation receive needed  
5 services, to the extent possible, the following steps must be  
6 taken for each person found by the department to have mental  
7 retardation and to need services:

8 A. An assessment of the person's needs;

10 B. The development of a plan for the delivery and  
11 coordination of services to the person through a:

12 (1) Prescriptive program plan;

14 (2) Service plan; or

16 (3) Both;

18 C. A determination of the suitability and quality of needed  
19 services that are available to the person, first in the  
20 community and 2nd in a facility; and

22 D. To the extent possible, obtaining high quality and  
23 suitable services for the person.

24 2. Persons involved with procedures. It is the policy of  
25 the State that:

27 A. To the extent possible, the person with mental  
28 retardation and the person's guardian or next of kin be  
29 involved with the steps specified in subsection 1; and

31 B. An advocate be available to the person with mental  
32 retardation throughout the steps specified in subsection 1.

## 33 §18503. Advocate

34 1. Entitlement. Each client who receives services under  
35 subchapter II or III is entitled to have access to an advocate.

37 2. List. The commissioner shall develop a list of  
38 advocates for each region.

## 39 §18504. Notice

40 The commissioner shall provide the client, if the client is  
41 competent, the client's next of kin or guardian, if any exists,  
42 and the client's advocate with timely written notice in advance  
43 of procedures and actions to be taken with respect to the  
44

development, implementation and assessment of prescriptive program plans.

#### §18505. Correspondence and reports

The commissioner shall provide the client, if the client is competent, the client's next of kin or legal guardian, if any exists, and the client's advocate with access to copies of correspondence and reports concerning the client, in accordance with section 701.

#### §18506. Rules

1. Duty. The commissioner shall adopt rules in accordance with Title 5, chapter 375 for the effective implementation of this chapter.

2. Requirements. The rules must include, but need not be limited to, information on:

A. The membership, functions and procedures of the interdisciplinary teams;

B. The procedures to be used in developing prescriptive programs and service agreements;

C. The rights of clients while at a facility or while in departmental programs; and

D. The rights and procedures for administrative review if there is dissatisfaction with any step of the process of receiving services specified in this chapter or if there is any grievance arising during the course of voluntary admission to or treatment in any facility, including provisions for the development of regional committees to review any grievance or dissatisfaction.

3. Review. The joint standing committee of the Legislature having jurisdiction over human resource matters shall review all rules adopted by the department pursuant to this chapter by no later than March of each year.

### SUBCHAPTER II

#### PRELIMINARY PROCEDURES

#### §18551. Application and preliminary procedures

1. Application. An application for mental retardation services, on a form provided by the commissioner, must be initiated at or referred to a regional office of the bureau.

2. Preliminary procedures. Within 10 work days from the day of application, the department shall:

A. Observe the client in the client's current environment;

B. Obtain a brief family survey;

C. Make a preliminary assessment of the client's abilities and needs and of the relevant services presently available to the client; and

D. Ensure the client's access to an advocate throughout the process of mental retardation services under subchapters II and III.

#### §18552. Evaluation

After completing the tasks specified in section 18551, the commissioner shall immediately cause to be conducted a comprehensive evaluation of the client, including a consideration of physical, emotional, social and cognitive factors.

1. Location. The comprehensive evaluation must be conducted locally, except where resources required to carry out the evaluation are not available.

2. Comprehensive evaluation. The comprehensive evaluation must be conducted by a person who is a licensed physician, licensed clinical psychologist or licensed psychological examiner and who has had training and experience in the diagnosis and treatment of persons with mental retardation.

#### §18553. Report

Within 30 days of the day of the application made under section 18551, the department shall obtain a report of the comprehensive evaluation, that must state specifically in the report whether the client has mental retardation.

1. Client does not have mental retardation. If the comprehensive evaluation concludes that the client does not have mental retardation, the department shall deny the application for services, care and treatment, but shall make appropriate referrals in cases where clear needs of the client exist.

2 2. Client does have mental retardation. If the  
3 comprehensive evaluation concludes that the client does have  
4 mental retardation and needs services:

5 A. The department, through a regional office, shall develop  
6 a prescriptive program plan or service plan, or both; and

7 B. If a prescriptive program plan is to be developed, the  
8 department, through the interdisciplinary team, shall  
9 develop and begin to implement a prescriptive program plan  
10 for the client within 60 days of the application made under  
11 section 18551.

12 **§18554. Prescriptive program plan**

13 1. Individually tailored plan. Each prescriptive program  
14 plan must be individually tailored to the client's age, sex,  
15 condition, abilities, experiences and needs.

16 2. Contents of plan. Each prescriptive program plan must:

17 A. Define the projection of client growth and needs without  
18 regard to service availability;

19 B. Define habilitation goals and objectives for the client  
20 with regard to service availability;

21 C. Define necessary services to meet the client's  
22 habilitation goals and objectives;

23 D. Recommend the optimal course of action; and

24 E. Include plans for the active and continued exploration  
25 of suitable program alternatives based on client need.

26 3. Implementation. Implementation of all parts of a  
27 prescriptive program plan must occur at the earliest possible  
28 time and are governed by section 18555, subsection 4.

29 4. Agreement. All parts of a prescriptive program plan  
30 must be agreed to, prior to implementation, by the client, if the  
31 client is able, and by the next of kin or legal guardian, if that  
32 person exists and is available.

33 5. Recommendations of plan. Each prescriptive program plan  
34 must recommend that the client be admitted to a facility, receive  
35 services in the community under the supervision of a regional  
36 office or cease to receive services from the department.

37 6. Recommendation of admission. If admission to a facility  
38 is recommended by an interdisciplinary team, the prescriptive  
39 program plan must include the following:

40 A. A written report prepared by the interdisciplinary team  
41 supporting the following conclusions:

42 (1) The client has mental retardation;

43 (2) The client requires treatment, education and  
44 habilitation of an intensive nature;

45 (3) The client can benefit from programs at the  
46 facility; and

47 (4) Appropriate programs for treatment, education and  
48 habilitation are not presently available in the  
49 community or the facility is the treatment setting of  
50 the client's choice;

B. Plans for preparing the client for admission, including,  
unless specifically contraindicated, a preadmission visit to  
the facility; and

C. Plans to facilitate, at the earliest possible time, the  
client's return to the community.

7. Major changes. Any major changes in a client's  
prescriptive program plan may be made only in accordance with  
section 18555, subsection 6.

**§18555. Service agreements**

1. Service agreement required. Each prescriptive program  
plan must be carried out pursuant to a written service agreement.

2. Signatures. Each service agreement must be signed and  
dated by at least:

A. The client, if the client is able;

B. The client's guardian or next of kin, if that person  
exists and is available;

C. A client advocate, if the client has no guardian;

D. The individual program plan coordinator of the  
interdisciplinary team that developed the individual program  
plan for the client;

2 E. The chief administrative officer of the appropriate  
4 regional office, if a client is being admitted to or  
6 discharged from a facility or if a client is under the  
8 supervision of the regional office;

10 F. The chief administrative officer of the facility or the  
12 chief administrative officer's agent, if a client is being  
14 admitted to, treated in or discharged from a facility; and

16 G. The chief administrative officer, or the chief  
18 administrative officer's agent, of other public or private  
20 agencies or groups that agree to provide services to the  
22 client.

24 3. Contents. Each service agreement must include at least  
26 the following information.

28 A. It must specify the respective responsibilities, where  
30 applicable, of the client, the family or guardian of the  
32 client, the regional office, the facility, and each public  
34 and private agency that intends to provide services to the  
36 client.

38 B. It must identify by job classification or other  
40 description each individual who is responsible for carrying  
42 out each part of the prescriptive program plan.

44 C. It must specify the date on which the review required in  
46 subsection 5 will occur.

48 4. Implementation of prescriptive program plan.  
Implementation of a prescriptive program plan is governed as  
follows.

A. No part of a prescriptive program plan may be  
implemented until each person required to sign the service  
agreement under subsection 2 has signed it, except that if a  
client is to be admitted to a facility, the service  
agreement need not be completed until 5 days after the date  
of admission.

B. Any existing prescriptive program plan is considered to  
be in effect until all persons required to sign under  
subsection 2 have signed the new service agreement.

C. No prescriptive program plan may be in effect longer  
than one year and 2 weeks from the day on which the last  
person signed the service agreement for the plan.

2 5. Review. At least 30 days prior to the termination of a  
4 service agreement, an interdisciplinary team shall meet to assess  
6 the present prescriptive program plan and, if further services  
8 are recommended, to prepare a new plan.

10 6. Amendment. Any major changes in a client's prescriptive  
12 program plan may occur only after the service agreement has been  
14 amended and signed by the persons specified in subsection 2.

### SUBCHAPTER III

#### ADMISSIONS TO FACILITIES

##### §18601. Preadmission visit

Any client may be detained by a facility up to 48 hours, if  
the purpose of the detention is a preadmission visit solely to  
observe and evaluate the client.

##### §18602. Voluntary admissions

1. Respite care. Respite care may be provided to any  
client by a facility without full compliance with the procedures  
for admission by judicial certification under section 18651, if  
it is recommended by an interdisciplinary team and a service  
agreement has been completed.

A. The purpose of the respite care is evaluation, diagnosis  
or other clearly stated and broadly defined therapeutic  
purposes of the client or the client's family.

B. Respite care may be provided, upon application to a  
regional office of the bureau by the client, guardian or  
parent, for not more than 21 days at a time and not more  
than 60 days during any 12-month period.

C. Continuing placement in the facility beyond the time  
periods stated in paragraph B, if indicated, may be  
accomplished only upon full compliance with procedures  
described by this chapter.

2. Regular admission. A client may be admitted for  
extended treatment and care if the following steps have been  
complied with.

A. An application for admission has been made by the  
client, a representative of the client's choice, the  
client's guardian, the client's next of kin or any other  
responsible person.



2 B. The director of a regional office or the regional  
4 director's designee has certified that the regional director  
6 believes that the compelling needs of the client are not  
8 being met and has stated the factual basis of that belief.

10 C. An initial prescriptive program plan has been developed  
12 according to section 18554.

14 D. The requirements of informed consent under subsection 3  
16 or of judicial certification under section 18651 have been  
18 met.

20 3. Admission by informed consent. The client may be  
22 admitted to a facility by informed consent if the chief  
24 administrative officer of the facility or the chief  
26 administrative officer's designee has determined that:

28 A. The client has been informed of and understands both the  
30 nature, purpose and proposed duration of the admission, and  
32 the provisions of section 18702 regarding the client's right  
34 to leave and the limitations on that right; and

36 B. The client voluntarily consents to the proposed  
38 admission.

40 4. Medical admission to the Benda Hospital at Pineland  
42 Center. Any person with mental retardation requiring medical or  
44 dental treatment, including post-operative care, may be admitted  
46 to the Benda Hospital only if, and as long as, a signed consent  
48 to admission is given and remains unrevoked by the client, a  
parent or a legal guardian.

A. The consent is consent to admission only.

B. The consent is not a substitute for informed consent  
under subsection 3.

#### §18603. Involuntary admissions

1. Admission by judicial certification or judicial  
commitment. If the chief administrative officer of a facility or  
the chief administrative officer's designee has determined that  
the client is not capable of giving informed consent to  
admission, a client may be admitted for extended care and  
treatment only after judicial certification under section 18651  
or after judicial commitment under section 18652.

2. Emergency admission. When immediate detention of a  
person believed to have mental retardation is necessary, the

2 person may be temporarily restrained in accordance with section  
4 18653.

#### SUBCHAPTER IV

#### JUDICIAL PROCEDURES

#### §18651. Judicial certification procedures

10 If the chief administrative officer of a facility or the  
12 chief administrative officer's designee, or the center director  
14 of the Elizabeth Levinson Center or the center director's  
16 designee, has determined that a client is not capable of giving  
informed consent to admission, the client may be admitted for  
extended care and treatment only after judicial certification  
pursuant to the following procedures.

18 1. Petition. A petition to admit a client by judicial  
20 certification may be filed in the District Court for the area  
where the client is residing.

22 A. Only a chief administrative officer of a regional office  
24 or facility may file the petition.

26 B. The petition may not be filed by the chief  
28 administrative officer of a regional office until the chief  
30 administrative officer of the facility has approved the  
32 admission under rules adopted by the commissioner under  
34 section 402, subsection 3.

36 C. Any party may file a motion with the court where the  
38 petition is filed alleging that a court in another location  
40 would be more convenient, and the court may order a change  
42 in venue if justice so requires.

44 2. Prehearing duties of the court. Upon receipt by the  
46 District Court of the petition, the court shall:

48 A. Schedule a certification hearing to be held as soon as  
50 practicable, except that if the client is being detained  
under section 18653, subsection 4, the hearing must be held  
no later than 15 days from the day the petition was filed,  
unless the court, for cause shown, grants a continuance of  
not more than 10 additional days;

B. Cause written notice of the petition and hearing to be  
given personally or by mail to the client who is the subject  
of the proceeding and to the client's guardian, spouse,  
parent or adult child, if any is known.

2 (1) If none of these persons is known or if none can  
4 be located, the notice must be given to one of the  
6 client's next of kin or to a next friend.

8 (2) A docket entry is sufficient evidence that the  
10 notice has been given:

12 C. Unless waived by a client and the client's counsel,  
14 cause the client who is the subject of the proceeding to be  
16 examined by a professional.

18 (1) The client or the client's counsel may choose the  
20 professional, if the professional chosen is reasonably  
22 available.

24 (2) The professional may not be the same one who  
26 performed any part of the evaluation required under  
28 section 18552 or who participated in the development of  
30 the prescriptive program plan.

32 (3) Upon completion of the examination, the  
34 professional shall report to the court whether the  
36 client has mental retardation and therefore requires  
38 treatment and the professional's reasons for the  
40 conclusions in the report:

42 D. Appoint counsel for any indigent client not already  
44 represented:

46 E. Furnish counsel with copies of the petition and the  
48 reports of the court-appointed examiner; and

50 F. Cancel the certification hearing if a parent or guardian  
having legal custody of the person of the client so requests.

3. Certification hearing. The certification hearing is  
governed as follows.

A. The certification hearing must be conducted in  
accordance with the Maine Rules of Evidence and in an  
informal manner consistent with orderly procedure.

B. The certification hearing must be confidential and must  
be electronically or stenographically recorded.

C. No report of the certification hearing proceedings may  
be released to the public or press, except by permission of  
the client or the client's counsel and with the approval of  
the court.

2 D. The court may order a public hearing at the request of  
4 the client or the client's counsel.

6 4. Certification. The court shall certify the client's  
8 eligibility for admission only if the petitioner proves, by clear  
10 and convincing evidence, that:

12 A. The client is a person in need of institutional services;

14 B. The needed services are available at the facility named  
16 in the application; and

18 C. Either:

20 (1) There is no less restrictive alternative to the  
22 care provided by the facility, consistent with the best  
24 interest of the client; or

26 (2) There is not currently available an opening in a  
28 less restrictive alternative to the care provided by  
30 the facility, consistent with the best interest of the  
32 client.

34 5. Effect of certification. The certification of a  
36 client's eligibility for admission may not be construed as a  
38 judicial commitment of the client, but only empowers the chief  
40 administrative officer of the facility to admit the client as a  
42 resident for treatment, education or habilitation, subject to the  
44 provisions for discharge of section 18702.

46 6. Period of certification. If the court finds that the  
48 petitioner has proved eligibility in accordance with subsection  
50 4, paragraph C, subparagraph (1), the court shall order the  
certification to remain in effect for a period of not more than 2  
years from the day the certification order was issued.

If the court finds that the petitioner has proved eligibility in  
accordance with subsection 4, paragraph C, subparagraph (2), the  
court shall order the certification to remain in effect only  
until an opening exists in a facility providing a less  
restrictive alternative consistent with the best interest of the  
client, at which time the client must be placed in that  
alternative setting, or for not more than 6 months from the day  
the certification order was issued, whichever first occurs. If  
the client is not placed in an alternative setting by the time  
this certification expires, no subsequent petition may be filed  
unless it contains a written report of the commissioner detailing  
the actions taken by the department to find or develop an  
alternative setting for that client.

2 7. Expenses. The District Court is responsible for any  
4 expenses incurred under this section, including fees of appointed  
6 counsel, witness fees and the expenses resulting from a  
8 court-appointed examiner.

10 8. Appeals. A client certified under this section may  
12 appeal the certification order to the Superior Court.

14 A. The appeal is limited to questions of law.

16 B. No finding of fact of the District Court may be set  
18 aside unless clearly erroneous.

20 C. The order of the District Court remains in effect  
22 pending the appeal.

24 D. The Maine Rules of Civil Procedure apply to the conduct  
26 of the appeals, except as otherwise specified in this  
28 subsection.

30 9. Exceptions. This section does not apply to the  
32 Aroostook Residential Center.

34 §18652. Judicial commitment

36 Any client recommended for admission to a facility pursuant  
38 to section 18554 may be admitted by judicial commitment according  
40 to the following procedures.

42 1. Application to the District Court. If the chief  
44 administrative officer of the facility determines that the  
46 admission of the client pursuant to section 18602, subsection 2,  
48 is not suitable, or if the client declines admission pursuant to  
section 18602, subsection 2, the chief administrative officer may  
apply to the District Court for the area where the facility is  
located for the issuance of an order of judicial commitment.

2. Time of application. The chief administrative officer  
shall file the application within 5 days from the day of  
admission of the client under this section, excluding Saturdays,  
Sundays and legal holidays.

3. Accompanying documents. The application must be  
accompanied by:

A. A written application, subject to the prohibitions and  
penalties of section 16455 and made by any health officer,  
law enforcement officer or other person, stating:

(1) The person's belief that the client has mental  
retardation and poses a likelihood of serious harm; and

(2) The grounds for this belief;

B. A dated certificate, signed by a private licensed  
physician or a private licensed clinical psychologist,  
stating that:

(1) The physician or psychologist has examined the  
client on the date of the certificate, which may not be  
more than 3 days before the date of admission to the  
facility; and

(2) The physician or psychologist is of the opinion  
that the client has mental retardation and poses a  
likelihood of serious harm; and

C. A certificate of the facility's examining physician or  
psychologist, stating that the physician or psychologist has  
examined the client and is of the opinion that the client  
has mental retardation and poses a likelihood of serious  
harm. This paragraph is subject to the following provisions.

(1) The examiner may not be the certifying examiner  
under paragraph B; and

(2) If the examination is not held within 24 hours  
after the time of admission or if the facility's  
examining physician or psychologist fails or refuses to  
make the required certification, the client must be  
immediately discharged.

4. Notice of receipt of application. Notice of receipt of  
application under this section is governed as follows.

A. Upon receipt by the District Court of the application  
and accompanying documents specified in this section, the  
court shall cause written notice of the application:

(1) To be given personally or by mail to the client  
within a reasonable time before the hearing, but not  
less than 3 days before the hearing; and

(2) To be mailed to the client's guardian, if known,  
and to the client's spouse, parent or adult child, or  
if none of these persons exist or if none of them can  
be located, to the next of kin or an advocate.

2 B. A docket entry is sufficient evidence that notice under  
3 this subsection has been given.

4 5. Examination. Examinations under this section are  
5 governed as follows.

6 A. Upon receipt by the District Court of the application  
7 and the accompanying documents specified in this section,  
8 the court shall immediately cause the client to be examined  
9 by 2 examiners.

10 (1) Each examiner must be either a licensed physician  
11 or a licensed clinical psychologist.

12 (2) One of the examiners must be a physician or  
13 psychologist chosen by the client or by the client's  
14 counsel, if the chosen physician or psychologist is  
15 reasonably available.

16 (3) Neither examiner appointed by the court may be the  
17 certifying examiner under subsection 3, paragraph B or  
18 C.

19 B. The examination must be held at the facility or at any  
20 other suitable place not likely to have a harmful effect on  
21 the well-being of the client.

22 C. If the unanimous reports of the examiners are to the  
23 effect that the client does not have mental retardation or  
24 does not pose a likelihood of serious harm, the application  
25 must be dismissed and the client must be ordered discharged  
26 immediately.

27 D. If the report of either or both of the examiners is to  
28 the effect that the client does have mental retardation and  
29 poses a likelihood of serious harm, the hearing must be held  
30 on the date, or on the continued date, that the court has  
31 set for the hearing.

32 6. Hearing. Hearings under this section are governed as  
33 follows.

34 A. The District Court shall hold a hearing on the  
35 application not later than 15 days from the date of the  
36 application.

37 (1) On a motion by any party, the hearing may be  
38 continued for cause for a period not to exceed 10  
39 additional days.

2 (2) If the hearing is not held within the time  
3 specified, or within the specified continuance period,  
4 the court shall dismiss the application and order the  
5 client discharged immediately.

6 (3) In computing the time periods set forth in this  
7 paragraph, the Maine Rules of Civil Procedure apply.

8 B. The hearing must be conducted in as informal a manner as  
9 is consistent with orderly procedure and in a physical  
10 setting not likely to have a harmful effect on the  
11 well-being of the person.

12 C. The court shall receive all relevant and material  
13 evidence that may be offered in accordance with accepted  
14 rules of evidence and accepted judicial dispositions.

15 (1) The client, the applicant and all other persons to  
16 whom notice is required to be sent must be afforded an  
17 opportunity to appear at the hearing to testify.

18 (2) The client and the applicant must be afforded the  
19 opportunity to cross-examine witnesses.

20 (3) The court may, in its discretion, receive the  
21 testimony of any other person and may subpoena any  
22 witness.

23 D. The client must be afforded an opportunity to be  
24 represented by counsel and, if neither the client nor others  
25 provide counsel, the court shall appoint counsel for the  
26 client.

27 E. In addition to proving that the client has mental  
28 retardation, the applicant must show:

29 (1) By evidence of the client's actions and behavior,  
30 that the client poses a likelihood of serious harm; and

31 (2) That after full consideration of less restrictive  
32 treatment settings and modalities, judicial commitment  
33 to a mental retardation facility is the best available  
34 means for the treatment or security of the client.

35 F. In each case, the applicant shall submit to the court,  
36 at the time of the hearing, testimony indicating the  
37 individual treatment plan to be followed by the facility's  
38 staff, if the client is committed under this section, and  
39 shall bear any expense for this purpose.

2 G. A stenographic or electronic record must be made of the  
3 proceedings in all judicial commitment hearings.

4 (1) The record, all notes, exhibits and other evidence  
5 are confidential.

6 (2) The record, all notes, exhibits and other evidence  
7 must be retained as part of the District Court records  
8 for a period of 2 years from the date of the hearing.

9 H. The hearing is confidential. No report of the  
10 proceedings may be released to the public or press, except  
11 with permission of the client, or the client's counsel and  
12 with approval of the presiding District Court Judge, except  
13 that the court may order a public hearing if requested by  
14 the client or the client's counsel.

15 7. Court findings. Procedures dealing with the District  
16 Court's findings under this section are as follows.

17 A. The District Court shall state in the record, if it  
18 finds upon completion of the hearing and consideration of  
19 the record:

20 (1) Clear and convincing evidence that the client has  
21 mental retardation and that the client's recent actions  
22 and behavior demonstrate that the client poses a  
23 likelihood of serious harm;

24 (2) That judicial commitment to the facility is the  
25 best available means for treatment or security of the  
26 client; and

27 (3) That it is satisfied with the individual treatment  
28 plan offered by the facility.

29 B. If the District Court makes the findings described in  
30 paragraph A, subparagraphs (1) and (2), but is not satisfied  
31 with the individual treatment plan offered, it may continue  
32 the case for not longer than 10 days, pending  
33 reconsideration and resubmission of an individual treatment  
34 plan by the facility.

35 8. Commitment. Upon making the findings described in  
36 subsection 7, the court may order commitment of the client to the  
37 facility for a period not to exceed 4 months in the first  
38 instance and not to exceed one year after the first and all  
39 subsequent hearings.

2 A. The court may issue an order of commitment immediately  
3 after the completion of the hearing or it may take the  
4 matter under advisement and issue an order within 24 hours  
5 of the hearing.

6 B. If the court does not issue an order of commitment  
7 within 24 hours of the completion of the hearing, it shall  
8 dismiss the application and shall order the person  
9 discharged immediately.

10 9. Continued judicial commitment. If the chief  
11 administrative officer of the facility determines that continued  
12 judicial commitment is necessary for a person who has been  
13 ordered by the District Court to be committed, the chief  
14 administrative officer shall, not later than 30 days prior to the  
15 expiration of a period of commitment ordered by the court, make  
16 application in accordance with this section to the District Court  
17 for the area where the facility is located for a hearing to be  
18 held under this section.

19 10. Transportation. Unless otherwise directed by the court,  
20 the sheriff of the county in which the District Court has  
21 jurisdiction and in which the hearing takes place shall provide  
22 transportation to any facility to which the court has committed  
23 the person.

24 11. Expenses. With the exception of expenses incurred by  
25 the applicant pursuant to subsection 6, paragraph F, the District  
26 Court is responsible for any expenses incurred under this  
27 section, including fees of appointed counsel, witness and notice  
28 fees and expenses of transportation for the person.

29 12. Appeals. A person ordered by the District Court to be  
30 committed to the facility may appeal from that order to the  
31 Superior Court.

32 A. The appeal is limited to questions of law.

33 B. No finding of fact of the District Court may be set  
34 aside unless clearly erroneous.

35 C. The order of the District Court remains in effect  
36 pending the appeal.

37 D. The Maine Rules of Civil Procedure apply to the conduct  
38 of the appeals, except as otherwise specified in this  
39 subsection.

40 13. Rules. The commissioner may adopt rules for the  
41 effective implementation of this section.

2 §18653. Emergency procedures

4 1. Protective custody. If a law enforcement officer has  
6 reasonable grounds to believe, based upon personal observation,  
8 that a person may have mental retardation, that the person  
presents a threat of imminent and substantial physical harm to  
self or to other persons and that an emergency exists requiring  
immediate residential placement:

10 A. The officer may take the person into protective custody;  
12 and

14 B. If the officer does take the person into protective  
16 custody, the officer shall deliver the person immediately,  
18 within 18 hours, for examination by an available licensed  
physician or licensed psychologist as provided in subsection  
4.

20 2. Certificate not executed. If a certificate relating to  
22 the person's likelihood of serious harm is not executed by the  
examiner under subsection 4, the officer shall:

24 A. Release the person from protective custody and, with the  
26 person's permission, return the person immediately to the  
28 person's place of residence, if within the territorial  
jurisdiction of the officer;

30 B. Release the person from protective custody and, with the  
32 person's permission, return the person to the place where  
taken into protective custody; or

34 C. If the person is also under arrest for violation of law,  
36 retain the person in custody until released in accordance  
with the law.

38 3. Certificate executed. If the certificate is executed by  
40 the examiner under subsection 4, the officer shall undertake,  
42 within 18 hours, to obtain the endorsement by a judicial officer  
under subsection 4 and may detain the person for as long as  
necessary to obtain the endorsement.

44 4. Admission. A person may be admitted to a facility after  
46 the facility has received an application and certificate  
according to the following procedures.

48 A. Any health officer, law enforcement officer or other  
50 person may make a written application to admit a person to a  
facility, subject to the prohibitions and penalties of  
section 16455, stating:

2 (1) A belief that the person is in need of  
4 institutional services;

6 (2) That an emergency exists requiring immediate  
8 placement in a facility; and

10 (3) The grounds for this belief.

12 B. The written application must be accompanied by a dated  
14 certificate, signed by a licensed physician or a licensed  
16 clinical psychologist, stating that the physician or  
18 psychologist:

20 (1) Has examined the person on the date of the  
22 certificate, but not more than 3 days before the date  
24 of admission to the facility; and

26 (2) Is of the opinion that the person in need of  
28 institutional services.

30 C. The application and accompanying certificate must be  
32 reviewed by a Justice of the Superior Court, a Judge of the  
34 District Court, a Judge of Probate or a justice of the peace.

36 (1) If the judge or justice finds the application and  
38 accompanying certificate to be regular and in  
40 accordance with the law, the judge or justice shall  
42 endorse them.

44 (2) No person may be held against the person's will in  
46 the facility under this subsection unless the  
48 application and certificate have been endorsed by a  
50 judge or justice, except that a person for whom an  
examiner has executed the certificate provided for  
under this subsection may be detained in a facility for  
as long as is necessary to obtain the endorsement by a  
judge or justice, if the person or persons transporting  
the person to the facility undertake to secure the  
endorsement immediately upon execution of the  
certificate by the examiner.

D. Upon endorsement by the judge or justice of the  
application and certificate, any health officer, police  
officer or other person designated by the judge or justice  
may take the person into custody and transport the person to  
the facility designated in the application.

E. The county in which the person is found is responsible  
for any expenses of transportation for the person under this

subsection, including return from the facility if admission is declined.

F. Under this subsection, a facility may admit the client for no longer than 5 days, but if a petition for judicial certification or judicial commitment is filed, the facility may admit the client for an additional period not to exceed 25 days from the date of application.

#### §18654. Continuation of treatment in a facility

1. Authority to continue treatment. A client who has been admitted to a facility by judicial certification, or who has been retained in a facility pursuant to this section, may continue extended care and treatment in that facility for an additional period, not to exceed 2 years, only after judicial certification under section 18603 or after waiver of that process as provided in this section, except that waiver of the judicial certification process is not permitted for any person with mental retardation under public guardianship.

2. Appointment of counsel. The District Court shall appoint counsel for any indigent client not already represented.

3. Waiver of judicial certification. A petition to waive judicial certification under section 18651 may be filed in District Court by the client's counsel, who may waive judicial certification under the following conditions.

A. A prescriptive program plan, as provided in section 18554, has been agreed to by the superintendent of the facility and the guardian;

B. The guardian has been informed of and understands the nature, purpose and proposed duration of the admission and the provisions of section 18702 regarding the client's right to leave and the limitations on that right;

C. The guardian has consented to the continued extended care and treatment of the client in the facility; and

D. Continued care and treatment is necessary and there is no less restrictive alternative to the care and treatment provided by the facility, consistent with the best interest of the client.

#### SUBCHAPTER V

#### POST-ADMISSION REQUIREMENTS

#### §18701. Post-admission responsibilities of the department

1. Provision of care and treatment. Post-admission care and treatment in a facility is governed as follows.

A. An initial service agreement for services to be received in the facility must be executed within 5 days of admission and must include a date, within 30 days of the client's admission to the facility, for a meeting of the persons who signed the agreement to assess and, if necessary, refine the client's prescriptive program plan.

B. While residing in the facility, the client must receive care, treatment and services only according to the procedures set forth in this section and in sections 18554 and 18555.

2. Preparation for discharge. Preparation for a client's discharge from a facility is governed as follows.

A. When an interdisciplinary team finds that the client may be ready for discharge and determines that temporary placement of the client in the community is required to assist in its evaluation of the client, the team may recommend that placement and shall develop a prescriptive program plan and service agreement which must include provisions to ensure that:

(1) The client's money is adequately managed;

(2) The client has a legal representative, if required;

(3) The client receives needed services in the community; and

(4) The client's parent or guardian, if available, continues to be involved with the client.

B. The chief administrative officer of the facility may release the client pursuant to such a recommendation for community placement through a regional office.

3. Role of the regional office. The role of the regional office under this section is as follows.

A. The regional office that will have responsibility for the client must be included in the preparation of the prescriptive program plan and service agreement specified in subsection 2.

2 B. The regional office is responsible for implementing the  
3 client's release.

4 C. The regional office shall, along with the other members  
5 of the interdisciplinary team, evaluate the success of the  
6 client's reintegration into the community and shall assist  
7 in obtaining the client's discharge when assured that the  
8 provisions of the prescriptive program plan and service  
9 agreement have been met.

10 §18702. Client's right to leave facility

11 1. Client's request. Any client admitted by informed  
12 consent may leave the facility at the client's own request,  
13 subject only to section 18653, subsection 4.

14 2. Discharge. When a judicially certified client is  
15 prepared for discharge, under section 18701, subsection 2, the  
16 client must be discharged if the regional office and the  
17 interdisciplinary team recommend.

18 3. Parent or guardian. A parent or guardian having legal  
19 custody over the person of the client, except a client judicially  
20 committed under section 18652, may, at any time, obtain discharge  
21 of the client.

22 TITLE 22-B

23 PART 7

24 BIRTHS, MARRIAGES AND DEATHS

25 CHAPTER 2001

26 GENERAL PROVISIONS

27 §20001. Duties of department

28 The department shall maintain a statewide system for the  
29 registration of vital statistics.

30 1. Registrar. The commissioner shall appoint a State  
31 Registrar of Vital Statistics, who must be qualified in  
32 accordance with the standards of education and experience  
33 prescribed by the Bureau of Human Resources within the Department  
34 of Administrative and Financial Services.

35 2. Supervision. The state registrar is responsible for  
36 keeping the statewide system for registration of vital statistics  
37 and for maintaining and preserving those certificates, records  
38 and other reports.

39 The state registrar shall preserve all  
40 certificates, records and other reports returned to the state  
41 registrar under this Title. The state registrar has general  
42 supervision of this Title and the rules of the department  
43 relating to the registration of vital statistics. The state  
44 registrar shall direct, supervise and control the activities of  
45 all persons when they are engaged in activities pertaining to the  
46 operation of the system of vital statistics. The state registrar  
47 shall conduct training programs to promote uniformity of policy  
48 and procedures throughout the State in matters pertaining to the  
49 system of vital statistics. The state registrar shall monitor  
50 the accuracy, completeness and validity of all information  
51 returned to the state registrar under this Title.

52 3. Forms and reports. The state registrar shall prescribe  
53 and furnish forms and issue instructions necessary to the  
54 administration of the vital statistics system. The state  
55 registrar shall prepare and publish annual reports of vital  
56 statistics and other reports requested by the department.

57 4. Uniformity. The forms of certificates, records and  
58 other reports required by the laws governing the registration of  
59 vital statistics must be designed with due consideration for  
60 national uniformity in vital statistics and record service.

61 5. Deputy State Registrar. The state registrar may  
62 designate an employee of the statewide system for the  
63 registration of vital statistics to represent the statewide  
64 system for the registration of vital statistics. The  
65 representative is known as the Deputy State Registrar of Vital  
66 Statistics and has the authority of the registrar in the  
67 registrar's absence.

68 6. Facsimile signature. The state registrar may use a  
69 facsimile signature for purposes of making certifications. The  
70 facsimile signature and seal of the state registrar on a  
71 certification has the same force and effect as the state  
72 registrar's holographic signature.

73 §20002. Duties of municipal clerks

74 The clerk of each municipality shall keep a chronological  
75 record of all live births, marriages, deaths and fetal deaths  
76 reported to the clerk under this Title. The record must be kept  
77 as prescribed by the state registrar.

78 1. Enforce law and regulations. Each municipal clerk in  
79 this State shall enforce, so far as comes within the municipal  
80 clerk's jurisdiction, this Title and the regulations of the  
81 department relating to the registration of vital statistics.



2 2. Transmittal of certificates to state registrar. Between  
3 the 10th and 15th days of each month, the clerk of each  
4 municipality shall transmit to the state registrar each original  
5 certificate of live birth, death and fetal death received by the  
6 clerk under this Title during the previous calendar month. Each  
7 clerk shall transmit the state copy of each certificate of  
8 marriage issued by the clerk as directed by the State Registrar  
9 of Vital Statistics and returned to the clerk under this Title  
10 during the previous calendar month. However, the clerk in any  
11 municipality with a population over 25,000 shall transmit this  
12 information to the state registrar no later than the 25th day of  
13 each month. If a municipal clerk has received no original  
14 certificates during the month for which certificates or records  
15 are to be transmitted, the clerk shall notify the state registrar  
16 that there are no licenses or records to transmit.

18 3. Transmittal of certificates to other municipalities.  
19 When the parents of any child born are residents of any other  
20 municipality in this State, or when any deceased person was a  
21 resident of any other municipality in this State, the clerk of  
22 the municipality where that live birth or death occurred shall,  
23 between the 10th and the 15th of the month following the live  
24 birth or death, transmit a certified copy of the certificate of  
25 the live birth or death to the clerk of the municipality where  
26 the parents reside, or where the deceased was a resident.

28 **§20003. Duties to furnish information**

30 Any person having knowledge of the facts shall furnish the  
31 information as that person may possess regarding any birth,  
32 death, spontaneous fetal death, abortion, marriage, divorce or  
33 annulment, upon demand of the state registrar.

34 **§20004. Birth, marriage or death in unincorporated place**

36 When a birth, marriage or death occurs in an unincorporated  
37 place, it must be reported to the town clerk in the town that is  
38 nearest to the place at which the birth, marriage or death took  
39 place, and the town clerk shall record to whom the report is  
40 made. All the reports and records must be made and recorded and  
41 returned to the state registrar.

42 **§20005. Registration of births and deaths at Veterans**  
43 **Administration Center**

44 Certificates of live births, deaths and fetal deaths  
45 occurring at the Veterans Administration Center at Togus must be  
46 filed directly with the state registrar. The state registrar  
47 shall forward copies of all the certificates of live birth, death  
48 and fetal death to the clerk of the municipality where the  
49 parents of the child reside or where the deceased was a resident  
50 or was buried.

2 and fetal death to the clerk of the municipality where the  
3 parents of the child reside or where the deceased was a resident  
4 or was buried.

4 **§20006. Amendment of vital statistics records**

6 Except as otherwise provided by this Title, a certificate or  
7 record filed under this chapter or chapters 2003, 2005, 2007 or  
8 2009 may be altered or amended only in accordance with rules  
9 adopted by the department to protect the integrity of vital  
10 statistics records.

12 1. Amended certificate. A certificate that has been  
13 altered or amended after its filing must be marked "amended," and  
14 the date on which the certificate or record was amended and a  
15 summary description of the evidence submitted in support of the  
16 correction must be endorsed on the record or permanently attached  
17 to it. Any certified copies of certificates or records amended  
18 under this section must be marked "amended." Notwithstanding  
19 this subsection, administrative correction of clerical errors  
20 within one year after the date of filing does not cause the  
21 certificate or record to be considered altered or amended.

24 2. Incomplete certificates. Incomplete certificates and  
25 records may be completed from a supplementary form within one  
26 year after the date of filing without being considered altered or  
27 amended.

28 3. Amendment by department. The department has the  
29 exclusive power to amend, alter or complete any certificate or  
30 record of birth, marriage, death or fetal death filed under this  
31 chapter or chapters 2003, 2005, 2007 or 2009.

34 When a certificate or record of birth, marriage, death or fetal  
35 death has been altered, amended or completed by the department,  
36 the department shall transmit a corrected copy to the clerk of  
37 any municipality in which a certified copy or original  
38 certificate has been recorded under this chapter or chapters  
39 2003, 2005, 2007 or 2009.

42 4. Amendment by the Office of the Chief Medical Examiner.  
43 Completions or amendments to certificates of death in medical  
44 examiner cases, as defined in section 20414, must be as provided  
45 in section 20231, subsection 4.

46 5. Amendment following adoption or legitimation. Amendment  
47 of a certificate following adoption or legitimation is governed  
48 by section 20065, subsection 4.

50 **§20007. Disclosure of vital records**

2 Custodians of certificates and records of birth, marriage  
4 and death may permit inspection of records, or issue certified  
6 copies of certificates or records, or any parts thereof, when  
8 satisfied that the applicant therefor has a direct and legitimate  
interest in the matter recorded. The decision of the state  
registrar or the clerk of a municipality is subject to review by  
the Superior Court, under the limitations of this section.

10 1. Illegitimacy. A state official may not permit  
12 inspection, or issue a certified copy of any certificate or  
14 record of birth disclosing illegitimacy. Such a record may be  
16 disclosed or a certified copy issued upon request of the  
illegitimate person, the illegitimate person's parent or the  
illegitimate person's legal guardian or counsel or of petitioners  
for adoption or in response to court process.

18 2. Statistical research. The state registrar may permit  
20 the use of data contained in vital records for purposes of  
22 statistical research. The data may not be used in a manner that  
will identify any individual.

24 3. National statistics. The national agency responsible  
26 for compiling national vital statistics may be furnished copies  
28 or data it requires for national statistics. The State must be  
reimbursed for the cost of furnishing the copies or data, and the  
data may not be used in a manner that will identify any  
individual, except as authorized by the state registrar.

30 4. Unlawful disclosure of data. It is unlawful for any  
32 employee of the State or of any municipality in the State to  
34 disclose data contained in vital records, except as authorized in  
36 this section and except that a clerk of a municipality may cause  
38 to be printed in the annual town report the deaths reported  
within the year covered by the said report, by date of death,  
name, age and location by city or town where death occurred. All  
other details of death may not be available to the general public.

40 5. Persons own records disclosed. Vital records of a  
42 person must be made available at any reasonable time upon that  
44 person's request or to that person's duly designated attorney or  
46 agent or attorney for an agent designated by the person or by a  
court having jurisdiction over the person whether the request be  
made in person, by mail, telephone or otherwise, provided the  
registrar is satisfied as to the identity of the requester, and  
if an attorney or agent, provided the registrar is satisfied as  
to the attorney's or agent's authority to act as an agent or  
attorney. If the agent or attorney has been appointed by a court  
of competent jurisdiction, or the agent's or attorney's  
appearance for the person is entered in the court, the registrar

2 shall upon request ascertain that status by telephone call to the  
4 register, clerk or recorder of the court, and this is sufficient  
6 justification to compel compliance with the request for the  
8 record. The state registrar shall, as soon as possible, designate  
persons in the statewide system for the registration of vital  
statistics who may act in the state registrar's absence, or in  
case of the state registrar's disqualification, to carry out the  
intent of this subsection.

10 §20008. Adoption contact files

12 1. File. The state registrar shall maintain files of the  
14 names and addresses of adopted persons and their adoptive and  
biological parents who have registered under this section.

16 2. Registration. This subsection governs participation in  
18 the adoption registry.

20 A. The following persons may register their names and  
22 addresses with the state registrar and request contact:

24 (1) A person who is 18 years of age or older and:

26 (a) Who was adopted;

28 (b) Whose adoption was annulled;

30 (c) Whose adoptive parents surrendered and  
released parental rights to that person or had  
their parental rights terminated; or

32 (d) Who was freed for adoption but was never  
subsequently adopted;

34 (2) An adoptive parent if:

36 (a) The adopted person is under 18 years of age;

38 (b) The adopted person is deceased; or

40 (c) The adopted person is at least 18 years of  
42 age and is determined by a court to be  
incapacitated; and

44 (3) The legal custodian or guardian of:

46 (a) A person whose adoption was annulled, who was  
48 surrendered and released by that person's adoptive  
parents or whose adoptive parents' parental rights  
were terminated;

2 (b) An adopted person under 18 years of age who:

4 (i) Has been removed from the custody or  
6 guardianship of that person's adoptive  
8 parents by order of a court; or

8 (ii) Was freed for adoption but was never  
10 subsequently adopted; or

12 (c) An adopted person who is at least 18 years of  
14 age and has been determined by a court to be  
16 incapacitated.

16 B. The following persons may register their names and  
18 addresses with the state registrar and request contact with  
20 an adopted person or a person freed for adoption as  
22 specified in paragraph A:

24 (1) A biological parent of an adopted person or of a  
26 person freed for adoption but not subsequently adopted;

28 (2) The legal custodian or guardian of a person under  
30 18 years of age whose full sibling or half-sibling is  
32 an adopted person or a person freed for adoption;

34 (3) If a biological parent of an adopted person or a  
36 person freed for adoption is deceased, a biological  
38 mother, legal father, grandparent, sibling,  
40 half-sibling, aunt, uncle or first cousin of the  
42 deceased biological parent; and

44 (4) A biological sibling or half-sibling, who is at  
46 least 18 years of age, of an adopted person or a person  
48 freed for adoption.

50 C. At the time of registration, each registrant shall  
indicate with which of the persons specified in paragraphs A  
and B contact is desired.

D. A registrant may withdraw from the adoption registry at  
any time by submitting a written request to the state  
registrar.

E. When an adopted person reaches 18 years of age and has  
not been determined by a court to be incapacitated, the  
state registrar, after mailing notice to the registrant,  
shall delete from the adoption registry any prior  
registration under paragraph A, subparagraph (2), division  
(a), or subparagraph (3), division (b).

2 3. Certification of identity and relationship. The state  
4 registrar shall require each person registering or requesting  
6 contact to provide certification of the registrant's identity and  
8 relationship to the person with whom contact is desired and any  
additional information that is necessary to ensure accurate  
identification of the registrant and assist in identifying the  
other party.

10 4. Providing information about available counseling. The  
12 state registrar shall provide information about sources of  
counseling to any person registering or requesting contact.

14 5. Reviewing departmental files. The state registrar may  
16 review both public and confidential departmental files to assist  
18 in identifying or verifying the identification of the other  
20 party. If both parties have registered, the state registrar may  
22 release those names and addresses even if the relationship was  
identified or verified by the use of confidential departmental  
files. The state registrar may charge a fee for the assistance  
that must reasonably reflect the cost of providing it.

24 6. Request for contact. When the state registrar has  
26 requests for contact from a person specified in subsection 2,  
28 paragraph A, and a person specified in subsection 2, paragraph B,  
30 that are related to the same adoption and both persons indicated  
32 at the time of registration that contact with the other person  
34 was desired, the state registrar shall notify each party of the  
name and address of the other party and of sources of counseling.  
If a biological parent, an adoptive parent or an adopted person  
registered under this section has made a request for contact and  
the party being sought died in the State, the state registrar  
shall disclose to the requesting party the fact that the  
biological parent, adoptive parent or the adopted person has died.

36 7. Confidentiality. Except as provided in subsection 6,  
38 the files established under this section are confidential and not  
open to public inspection.

40 8. Public information. The state registrar shall, by  
42 appropriate means, make known to the public the existence of the  
44 adoption contact files, the assistance the department may offer  
46 and the purposes of those files.

**§20009. Evidentiary character of vital records**

48 Any certificate or record of any live birth, marriage, death  
50 or fetal death filed under this Title, or a copy thereof duly  
certified by its official custodian, is prima facie evidence of  
the fact of the birth, marriage, death or fetal death, if not

2 "amended" or "delayed." The judicial or administrative body or  
3 official before whom the certificate is offered in evidence shall  
4 determine the probative value of "amended" or "delayed" records.

6 **§20010. Penalties**

8 1. Willful falsification. A person who willfully  
9 falsifies, willfully provides false information, makes or alters  
10 any certificate or certified copy except as provided for in this  
11 Title, or who knowingly possesses and uses any false or altered  
12 certified copy, or knowingly possesses and uses as that person's  
13 own, any certificate or certified copy pertaining to another  
14 person, is guilty of a misdemeanor that upon conviction is  
15 punishable by a fine of not less than \$100 and not more than  
16 \$1,000 or by imprisonment for not more than one year, or by both.

18 2. General. A person who knowingly transports or accepts  
19 for transportation, interment or other disposition a dead body  
20 without an accompanying permit issued in accordance with this  
21 Title; a person who refuses to provide information required by  
22 this Title having to do with the registration of vital statistics  
23 or neglects or refuses to perform any of the duties imposed upon  
24 the person by this Title, having to do with the registration of  
25 vital statistics, on first offense commits a Class E crime and on  
26 2nd and subsequent offenses commits a Class D crime.

28 **§20011. Duty of registrar when law violated**

30 When the State Registrar of Vital Statistics believes that,  
31 in any place in this State, the certificates or records of live  
32 births, marriages, deaths or fetal deaths are not made or kept as  
33 is provided by law, or that any person neglects or fails to  
34 perform any duty required in the law relating to the registration  
35 of vital statistics, the state registrar may visit places and  
36 make investigations as the state registrar deems necessary, and  
37 all records, blanks and papers of town clerks relating to live  
38 births, marriages, deaths or fetal deaths must be open to the  
39 state registrar's examination. A person who refuses to permit or  
40 hinders the examination or investigation commits a civil  
41 violation for which a forfeiture of not less than \$25 nor more  
42 than \$50 may be adjudged.

44 When the state registrar knows, or has good reason to  
45 believe, that any penalty or forfeiture under the law relating to  
46 vital statistics has been incurred, the state registrar shall  
47 give notice of the violation, in writing, to the district  
48 attorney of the county in which the penalty or forfeiture has  
49 occurred. The notice must state as near as may be the time of  
50 the neglect, the name of the person or persons incurring the

2 penalty or forfeiture, and other facts relating to the default of  
3 duty the state registrar has learned, and upon receipt of the  
4 notice the district attorney shall prosecute the defaulting  
5 person or persons.

6 **CHAPTER 2003**

8 **BIRTH RECORDS**

10 **§20061. Registration of live births**

12 A certificate of each live birth that occurs in this State  
13 must be filed with the clerk of the municipality in which the  
14 live birth occurred within 14 days after the date of birth.

16 1. Certificate from hospital. When the live birth occurs  
17 in a hospital or related institution, the person in charge of the  
18 institution is responsible for entering information on the  
19 certificate, for securing signatures required on the certificate,  
20 and for filing the certificate with the clerk of the municipality.

22 2. Date of birth. On each certificate, the physician in  
23 attendance shall verify or provide the date of birth and medical  
24 information required within 7 days after birth.

26 3. Certificate prepared and filed. Except as provided in  
27 this section, the certificate must be prepared and filed by one  
28 of the following persons in order of priority stated:

30 A. The physician or other person in attendance on the birth;

32 B. The father;

34 C. The mother; or

36 D. The person in charge of the premises where the live  
37 birth occurred.

38 4. Illegitimate child. Except as otherwise provided in  
39 this subsection, in the case of a child conceived and born out of  
40 wedlock, the name of the putative father may not be entered on  
41 the certificate without his written consent and that of the  
42 mother. The signature of the putative father on the written  
43 consent must be acknowledged before an official authorized to  
44 take oaths. The signature of the mother on her written consent  
45 must also be acknowledged before an official authorized to take  
46 oaths. If a determination of paternity has been made by a court  
47 of competent jurisdiction, then the name of the father as  
48 determined by the court must be entered on the birth certificate  
49 without the father's or the mother's consent. If the putative  
50 father's name is entered on the certificate without the father's or the mother's consent, the certificate is void.

2 father executes an acknowledgement of paternity with the  
3 department and the putative father is either named in writing by  
4 the mother as the father or is presumed to be the father based on  
5 the results of blood or tissue-typing tests, the name of the  
6 father must be entered on the birth certificate without the  
7 father's or the mother's consent.

8 5. Certificate signed by father and mother. In every case,  
9 the father or mother of the child shall sign the certificate and  
10 shall attest to the accuracy of the personal data entered thereon  
11 in time to permit its filing within the 14 days prescribed. If  
12 the father and mother are unable to sign, then no signature is  
13 required.

14 6. Disclosure of social security number. In connection  
15 with the preparation and issuance of a birth certificate pursuant  
16 to this section, section 20064 or section 20065, each parent  
17 shall furnish the social security account number, or numbers if  
18 the parent has more than one number, issued to the parent unless  
19 the State Registrar of Vital Statistics, in accordance with  
20 regulations prescribed by the Secretary of the United States  
21 Department of Health and Human Services, finds good cause for not  
22 requiring the furnishing of those numbers. The state registrar  
23 shall make numbers furnished under this subsection available to  
24 the department in its capacity as the state agency administering  
25 the State's plan under the United States Social Security Act,  
26 Title IV, Part D. Except as required by federal law, those  
27 numbers may not be recorded on the birth certificate in such a  
28 manner that the numbers would appear on a certified copy of the  
29 certificate. Except as required by federal law, the department  
30 may not use any social security number, obtained with respect to  
31 the issuance of a birth certificate, for any purpose other than  
32 for the administration of the State's plan under the United  
33 States Social Security Act, Title IV, Part D. The department  
34 shall adopt rules to implement this subsection.

35 **§20062. Baptismal records in lieu of birth certificates**

36 Any Indian whose birth is not recorded pursuant to this  
37 Title relating to the registration of live births may, in lieu of  
38 a birth certificate, present an official copy of the baptismal  
39 record from the files of the mission where the Indian was  
40 baptized, and the baptismal record has the same evidentiary  
41 character as an unamended and undelayed birth certificate under  
42 section 20009.

43 **§20063. Birth certificates of foundlings; report**

2 Whoever assumes the custody of a child of unknown parentage  
3 shall immediately report to the local town or city clerk in  
4 writing:

5 1. Date and place of finding. The date and place of  
6 finding or assumption of custody:

7 2. Sex, color, age. The sex; color or race; and  
8 approximate age of the child:

9 3. Name and address of custodian. The name and address of  
10 the person or institution with whom the child has been placed for  
11 care; and

12 4. Name. The name given to the child by the finder or  
13 custodian.

14 The place where the child was found or custody assumed is  
15 known as the place of birth and the date of birth is determined  
16 by approximation. The report constitutes the certificate of  
17 birth. If the child is thereafter identified, the record of birth  
18 made in compliance with this section and any certificate issued  
19 under this section are null and void and so recorded.

20 **§20064. Delayed birth registration**

21 In order to provide an official record of statements  
22 concerning births that have occurred in this State, the state  
23 registrar shall accept a registration of any birth of which no  
24 record can be found in either the files of the state registrar or  
25 the clerk of the municipality where the birth occurred, provided  
26 the registration is filed in accordance with this section.

27 1. Certificate of live birth. A certificate of live birth  
28 on the prescribed form must be filed with the clerk of the  
29 municipality where the birth occurred if the date of filing is  
30 more than 7 days but not more than 7 years after the date of  
31 birth. The state registrar may prescribe the evidence of the  
32 facts of birth to be presented in the event none of the persons  
33 specified in section 20061 are available to sign the certificate.

34 2. Delayed registration of birth. When the birth occurred  
35 more than 7 years prior to the date of filing, it must be  
36 registered on a form entitled "Delayed Registration of Birth."  
37 The form provides for the following information and other data  
38 required by the department:

39 A. A statement by the applicant including the name and sex  
40 of the person whose birth is to be registered, the place and

2. date of birth, the name and birthplace of the father, and the maiden name and birthplace of the mother;

4. B. The signature of the registrant, or a parent or guardian if the registrant is under 15 years of age or is mentally incompetent;

8. C. The signature of the registrant which must be acknowledged before an official authorized to take oaths;

12. D. A description of each document submitted in support of the delayed birth registration; and

14. E. The date of filing.

16. 3. Description of evidence completed and filed. The state registrar shall complete the description of evidence required on the delayed registration of birth and accept and file the certificate, provided the following evidence is submitted in support of the facts of birth.

22. A. If the birth occurred more than 7 but less than 15 years prior to the date of filing, the facts of birth stated by the applicant must be supported by at least 2 documents, only one of which may be an affidavit of personal knowledge.

26. B. If the birth occurred more than 15 years prior to the date of filing, the date and place of birth must be supported by at least 3 documents, only one of which may be an affidavit of personal knowledge, and the names of the parents must be supported by at least one document, which may be any one of the 3 submitted in evidence of the place and date of birth.

30. C. Any document accepted as evidence, other than the affidavit of personal knowledge, must be at least 5 years old, or must be a copy or abstract of a record made at least 5 years prior to the date of filing and certified as a true and correct copy by the custodian of the record.

34. 4. Deficiencies. When the applicant does not submit documentation as specified in subsections 2 and 3 in support of the applicant's statements, or when the state registrar finds reason to question the adequacy of the documentation, the state registrar may not sign or accept the delayed registration of birth, but shall advise the applicant of its deficiencies and request that further documentation be submitted.

42. 5. Certified copy to municipality. After the delayed birth registration has been accepted, the state registrar shall forward

2. a certified copy to the clerk of the municipality where the birth occurred.

4. 6. Form. Any certified copy of a delayed birth registration filed under this section must be issued on a form that indicates that it is a copy of a delayed birth registration, and must contain a description of the documents submitted in evidence.

8. §20065. New certificate of birth following adoption or legitimation

12. 1. New certificate of birth. The state registrar shall establish a new certificate of birth for a person born in this State when the state registrar receives the following:

16. A. A certificate of adoption as provided in Title 19, section 533, or a certified copy of the decree of adoption along with the information necessary to identify the original certificate and establish the new certificate of birth, except that a new certificate may not be established if so requested by the adopting parents or the adopted person if the adopted person is at least 18 years of age; or

20. B. A request that a new certificate be established and evidence the department requires by rule proving that the person has been legitimated.

24. 2. Persons born in a foreign country. The state registrar shall establish a Maine certificate of birth for a person born in a foreign country and for whom a decree of adoption has been entered in a court of competent jurisdiction in Maine when the registrar receives the following:

28. A. A certificate of adoption as provided in Title 19, section 533; and

32. B. A request that a new certificate be established. A Maine certificate of birth may not be established, if so requested by the court decreeing the adoption, the adoptive parents or the adopted person, if the adopted person is 18 years of age or older.

36. 3. Content of certificate. Any birth certificate issued under subsection 2 must show the true or probable foreign country of birth and must indicate that the certificate is not evidence of United States citizenship for the child for whom it is issued or for the adoptive parents.

2 4. Certificate after adoption or legitimation. This  
3 subsection governs birth certificates after adoption or  
4 legitimation.

5 A. When a new birth certificate is established after  
6 adoption pursuant to subsection 1, paragraph A, or  
7 subsection 2, the actual place and date of birth, the names  
8 and personal data of the adoptive parents at the time of the  
9 child's birth and the name of the child after adoption must  
10 be entered on the new birth certificate.

11 (1) At the request of an adopted person who is at  
12 least 18 years of age or of the adoptive parents of an  
13 adopted child under 18 years of age, the new  
14 certificate must carry a notation that it has been  
15 amended, all items that have been revised pursuant to  
16 the adoption decree must be identified, and the  
17 notation "court action" and the date of the adoption  
18 decree must be shown on the new certificate.

19 (2) If the birth certificate has been annotated  
20 pursuant to subparagraph (1), the annotation may be  
21 deleted in accordance with department rules at the  
22 request of an adopted person who is at least 18 years  
23 of age or of the adoptive parents of an adopted child  
24 under 18 years of age.

25 B. When a new certificate is established after legitimation  
26 pursuant to subsection 1, paragraph B, the actual place and  
27 date of birth, the name of the child and the names and  
28 personal data of both parents at the time of birth must be  
29 shown. Notwithstanding section 20006, the new certificate  
30 may not be marked "amended." The new certificate must be  
31 filed with all other birth certificates and is not subject  
32 to the provisions of section 20007, subsection 1, or section  
33 20061, subsection 4.

34 C. When a new certificate of birth is established following  
35 adoption or legitimation, it must be substituted for the  
36 original certificate of birth. After that substitution, the  
37 original certificate of birth and the evidence of adoption  
38 or legitimation are not subject to inspection except upon  
39 order of the Probate Court or the Superior Court.

40 5. Original certificate restored. Upon receipt of notice  
41 of an annulment or revocation of adoption, the original  
42 certificate must be restored to its place in the files and the  
43 new certificate and evidence of adoption may not be subject to  
44 inspection except upon order of a probate court or the Superior  
45 Court.

2 6. Delayed birth registration. If no certificate of birth  
3 is on file for the person for whom a new certificate is to be  
4 established under this section, a delayed birth registration must  
5 be filed as provided by law before a new certificate of birth is  
6 established.

7 7. Copies of original certificate. When the new  
8 certificate of birth is established, the state registrar shall  
9 provide each municipal clerk who is required by law to have a  
10 copy of the certificate of birth on file with a copy of the new  
11 certificate of birth. In the case of a Maine certificate of birth  
12 established for a person born in a foreign country, the clerk of  
13 the municipality where the adoptive parents resided on the date  
14 of the adoption shall provide and shall maintain a copy of the  
15 certificate on file. All copies of the original certificate in  
16 the custody of any municipal clerk must be sealed from inspection  
17 or surrendered to the state registrar as the state registrar  
18 directs.

#### 20 §20066. Statement of birth parents' identity

21 A person 18 years of age or older, born and adopted in this  
22 State, may apply to the state registrar for a statement  
23 identifying the person's birth parents. The adoptee shall submit  
24 to the state registrar the following:

25 1. Proof. Proof that the birth parents are deceased;

26 2. Affidavit. An affidavit from a blood relative who is  
27 not a sibling and who is at least 10 years older than the  
28 adoptee, verifying that the adoptee lived with the birth parents  
29 for 5 years; and

30 3. Order. An order from the Probate Court or Superior  
31 Court authorizing the state registrar to open the original birth  
32 certificate to verify the identity of the birth parents.

33 Upon verification of the information in this section, the  
34 state registrar shall prepare a form identifying the birth  
35 parents of the adoptee. This form must be attached to the new  
36 certificate of birth established pursuant to section 20065. A  
37 copy of the form must be attached to an abstract of birth issued  
38 by the statewide system for the registration of vital statistics  
39 and must be provided to the adoptee.

40 A statement of identification of the birth parents may not  
41 affect the rights of inheritance and descent. The form must  
42 contain the following words in a conspicuous place: "This  
43 document is a statement of identification of the birth parents of  
44 the adoptee, as provided for in section 20066 of the Maine  
45 Statutes Annotated, and is not to be used for any other purpose.  
46 "

statement may not affect the rights of inheritance and descent of the adoptee."

## CHAPTER 2005

### MARRIAGE RECORDS AND LICENSES

#### §20121. Issuance of marriage certificates to nonresidents: divorce certificate

Before issuing a marriage certificate to a person who resides and intends to continue to reside in another state, the town or city clerk shall satisfy the town or city clerk by requiring affidavits or otherwise that the person is not prohibited to marry by the laws of the state where the person resides.

Persons filing notice of intention to marry, either of whom has been previously married, shall submit with the notice a certificate or certified copy of the divorce decree or annulment of the last marriage or the death record of the last spouse. If both have been previously married, both shall file a certificate or record. The clerk shall make a notation on the reverse side of the marriage intention form showing the title and location of the courts, the names of the parties to the proceeding for the divorces or annulments and the date when the decrees became absolute. In the case of a death, the clerk shall show the name of the deceased, along with the date and place of death.

#### §20122. Copy of record of marriages

Every person authorized to unite persons in marriage shall make and keep a record of every marriage solemnized by that person in conformity with the forms and instructions prescribed by the State Registrar of Vital Statistics. That person shall return each original certificate or certificates to the clerk who issued the same within 7 working days following the date on which a marriage is solemnized by that person. If the marriage was solemnized in a town other than the place or places where the parties to the marriage reside, that person shall return a copy of the certificate, or of either certificate if 2 were issued, to the clerk of the town where the marriage was solemnized. Each certificate and copy so returned must contain a statement giving the names of the parties united in marriage, place and date of the marriage, the signature of the person by whom the marriage was solemnized and the names of the 2 witnesses. The person who solemnized the marriage shall add the title of the office by virtue of which marriage was solemnized and the date ordained or authorized by a religious faith to perform marriages, the date a

notary public's commission expires or the date a lawyer was admitted to the Maine Bar and the residence of the person who solemnized the marriage. The clerk who receives all certificates or copies shall record them.

#### §20123. Records of divorces and annulments

The clerk of the Superior Court in each county and the clerk of the District Court in each judicial division shall file with the State Registrar of Vital Statistics a record of each divorce judgment or annulment issued in the clerk's jurisdiction within 45 days after judgment.

The record must contain the names and residences of the parties and name of the person to whom judgment was issued, the date and place of the marriage, the date of and legal grounds for the judgment and the names and ages of the minor children. The registrar shall furnish the forms.

The record of divorce prepared for the state registrar may not become a part of the official record of the court.

#### §20124. Index

The Registrar of Vital Statistics shall prepare and keep an alphabetical index, by the names of both parties, of all annulments and divorces reported. When requested, the registrar shall cause a search to be made of the registrar's files for the record of any divorce or annulment and shall furnish a copy thereof. The fee for such search and copy must reasonably reflect the cost of the service, as specified in section 708.

## CHAPTER 2007

### UNIFORM DETERMINATION OF DEATH ACT

#### §20175. Determination of death

An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

#### §20176. Uniformity of construction and application

This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.



2 §20177. Short title

4 This chapter may be cited as the Uniform Determination of  
6 Death Act.

8 CHAPTER 2009

10 DEATHS AND BURIALS

12 §20230. Registration of fetal deaths

14 Except as authorized by the department or as required under  
16 section 5109, a certificate of each death of a fetus of 20 or  
18 more weeks of gestation which occurs in this State must be filed  
20 with the clerk of the municipality where the delivery occurred  
22 within 14 days after delivery and prior to removal of the fetus  
24 from the State.

26 1. Certificate filed by funeral director. The funeral  
28 director or other authorized person in charge of the disposition  
30 of the dead fetus or its removal from the State is responsible  
32 for filing the certificate. In the absence of such a person, the  
34 physician or other person in attendance at or after the delivery  
36 is responsible for filing the certificate. The person  
38 responsible shall obtain the personal data from the best  
40 qualified person or source available and shall present the  
42 certificate to the person responsible for completing the medical  
44 certification of the cause of death.

46 2. Medical certificate by physician. The physician in  
48 attendance at or after the delivery shall complete and sign the  
medical certification within 5 days after delivery, except when  
an inquiry as to the cause of fetal death is required by law.

3. Medical certificate by medical examiner. When the fetal  
death occurs without medical attendance upon the mother at or  
after delivery, or when inquiry as to the cause of fetal death is  
required by law, the medical examiner shall complete and sign the  
medical certification within 5 days after delivery. A  
certification need not be completed before the remains are ready  
for release.

§20231. Registration of deaths

Except as authorized by the department, a certificate of  
each death that occurs in this State must be filed with the clerk  
of the municipality where death occurred within a reasonable  
period of time, as specified by department rule, after the day on

2 which death occurred and prior to the removal of the body from  
4 the State.

6 1. Certificate filed by funeral director. The funeral  
8 director or other authorized person in charge of the disposition  
10 of the dead human body or its removal from the State is  
12 responsible for filing the certificate. The responsible person  
14 shall obtain the personal data from the best qualified person or  
16 source available and that person shall present the certificate to  
18 the physician or medical examiner responsible for completing the  
20 medical certification of the cause of death.

22 2. Medical certificate by physician. A physician  
24 authorized to practice in the State who has knowledge of the  
26 patient's recent medical condition, in accordance with department  
28 rules and other laws detailing who can certify and in what time  
30 frame, shall complete and sign in a timely manner the medical  
32 certification of the cause of death, except when the death falls  
34 under the jurisdiction of the medical examiner as provided in  
36 section 20414. If the patient was a resident of a nursing home  
38 licensed under section 8802 at the time of death and if the  
40 physician in charge of the patient's care or another physician  
42 designated by the physician in charge had not examined the  
44 patient within 48 hours prior to death, or within 2 weeks prior  
46 to death in the case of a terminally ill patient, the physician  
48 in charge or another physician designated by the physician in  
50 charge shall examine the body prior to completing the  
certification of death process. The State Registrar of Vital  
Statistics of the department shall report to the Board of  
Registration in Medicine or the Board of Osteopathic Examination  
and Registration, whichever is appropriate, any physician who  
fails to complete the medical certification of the cause of death  
fully and in a timely manner, or who fails to examine the body of  
a nursing home resident prior to certifying cause of death as  
required by this section.

For the purposes of this subsection, the following terms have the  
following meanings.

A. "Life-sustaining procedure" means any medical procedure  
or intervention that, when administered to a qualified  
patient, serves only to prolong the dying process and does  
not include nutrition and hydration.

B. "Terminally ill patient" means a patient who has been  
diagnosed as having an incurable or irreversible condition  
that, without the administration of life-sustaining  
procedures, will, in the opinion of the attending physician,  
result in death within a short time.

3. Medical certificate by medical examiner. When a death occurs under circumstances that make it a medical examiner case as defined in section 20414, or when inquiry as to the cause of death is required by law, the medical examiner shall complete and sign the medical certification. A certification need not be completed before the remains are ready for release.

The medical examiner is responsible for the identity of the deceased and the time, date, place, cause, manner and circumstances of death on the death certificate. Entries may be left "pending" if further study is needed; or, at the specific direction of the Attorney General relative to cases under investigation by the Attorney General's office, entries must be left "withheld" until such time as the Attorney General, in the Attorney General's sole discretion, determines that any criminal investigation and prosecution will not be harmed by public disclosure of the information. Notwithstanding section 20007, subsection 4, unless directed otherwise by the Attorney General as specified in this subsection, this information for which the medical examiner is responsible may be made available to the general public by the Office of Chief Medical Examiner.

4. Correction of errors on death statistic records filed under chapter 2015. Certificates of death in medical examiner cases, as defined in section 20414, may be completed or amended at any time by means of forms provided by the department to the Office of Chief Medical Examiner. Either the Chief Medical Examiner or the medical examiner assigned to the case may sign the forms. The medical examiner assigned shall submit the form to the Office of the Chief Medical Examiner for filing with the State Registrar of Vital Statistics. These forms may be filed at any time after death and need not include a summary description of the evidence in support of the completion or amendment.

**§20232. Identification of dead human bodies with communicable diseases**

The department shall adopt rules providing for notification to funeral directors or other authorized agents in charge of the disposition of dead human bodies in cases when the body has been diagnosed as having a communicable disease.

Notification pursuant to this section is not a violation of this Title or Title 5, chapter 501.

**§20233. Permits for final disposition of dead human bodies**

Except as authorized by the department, no dead human body may be buried, cremated or otherwise disposed of or removed from the State until a funeral director or other authorized person in

charge of the disposition of the dead human body or its removal from the State has obtained a permit from the clerk of the municipality where death occurred or where the establishment of a funeral director having custody of the dead human body is located. The permit is sufficient authority for final disposition in any place where dead human bodies are disposed of in this State, provided that the requirements of Title 32, section 1405, are met in appropriate cases. No permit may be issued to anyone other than a funeral director until the clerk of the municipality receives a medical certificate that has been signed by a physician or medical examiner that indicates that the physician or medical examiner has personally examined the body after death. The authorized person may transport a dead human body only upon receipt of this permit.

A municipal clerk may issue a permit for final disposition by cremation, burial at sea, use by medical science or removal from the State only upon receipt of a certificate of release by a duly appointed medical examiner as specified in Title 32, section 1405.

A municipal clerk may issue a burial-transit permit to a funeral director who presents a report of death and states that the funeral director has been unable to obtain a medical certification of the cause of death. The funeral director shall name the attending physician or medical examiner who will certify to the cause of death and present assurances that the attending physician or medical examiner has agreed to do so. The funeral director shall exercise due diligence to secure the medical certification and file the death certificate as soon as possible.

1. Permit for transportation. Each dead human body transported into this State for final disposition must be accompanied by a permit issued by the duly constituted authority at the place of death. The permit is sufficient authority for final disposition in any place where dead human bodies are disposed of in this State.

2. Permit for disinterment or removal. No dead human body may be disinterred or removed from any vault or tomb until the person in charge of the disinterment or removal has obtained a permit from the clerk of the municipality where the dead human body is buried or entombed. The permit must be issued upon receipt of a notarized application signed by the next of kin of the deceased who shall verify that the next of kin is the closest surviving known relative and, where other family members of equal or greater legal or blood relationship also survive, that they are aware of, and do not object to, the disinterment or removal. Nothing contained in this subsection precludes a court of competent jurisdiction from ordering or enjoining disinterment or

removal pursuant to section 20421 or in other appropriate circumstances.

3. Permit for burial. The person in charge of each burying ground or crematory in this State shall endorse each permit with which that person is presented, and return it to the clerk of the municipality in which the burying ground or crematory is located within 7 days after the date of disposition. If there is no person in charge of the burying ground, an official of the municipality in which the burying ground is located shall endorse each permit, and present it to the clerk of the municipality. The funeral director or authorized person shall present a copy of each permit, after endorsement, to the clerk of the municipality where death occurred and to the clerk who issued the permit.

4. Records. Each municipality shall maintain a record of any endorsed permit received pursuant to subsection 3. These records must be open to public inspection.

#### §20234. Subregistrars

The town or city clerk may appoint one or more suitable and proper persons in the municipality as subregistrars, who are authorized to issue permits for transportation and final disposition of dead human bodies in the same manner as is required of the town or city clerk. Permits may be issued by a subregistrar only when the town or city clerk or deputy clerk is not available. The completed death certificate or report of death, upon which the permit is issued, together with a copy of the burial-transit permit must be forwarded to the town clerk at the earliest opening of the municipal office after the date of issue, and all permits by whomsoever issued must be returned to the town clerk as required by section 20233. The appointment of subregistrars must be made with reference to locality, so as to best suit the convenience of the inhabitants of the town, and the appointment must be in writing and recorded in the office of the town or city clerk. The subregistrars in any town hold office at the pleasure of the town clerk.

#### §20235. Certificate of death typewritten or printed

Any death certificate required to be filed by this chapter must be typewritten or printed prior to filing.

#### §20236. Authorized person

For the purposes of this chapter, the "authorized person" responsible for obtaining or filing a permit or certificate means a member of the immediate family of the deceased, a person authorized in writing by a member of the immediate family of the

deceased if no member of the immediate family of the deceased wishes to assume the responsibility, or in the absence of immediate family, a person authorized in writing by the deceased.

### CHAPTER 2011

#### DISPOSAL OF DEAD BODIES

##### §20290. Indian bones

From October 3, 1973 and thereafter all Indian skeletons and bones that come into the possession of any person, state department or organization, whether public or private, must be transferred to appropriate Indian Tribes in Maine for reburial.

Prior to the time of transferral to the Indian Tribes, any Indian bones or skeletons found may be subjected to scientific study by persons skilled in the anthropological and archaeological fields, but in no instance may the study continue longer than one year from the time of the bones' discovery, before the bones are transferred to the Indian Tribe.

##### §20291. Delivery to physician for scientific purposes

If any resident of the State requests or consents that after death the resident's body may be delivered to a regular physician or surgeon for the advancement of anatomical science, it may be used for that purpose, unless some kindred or family connection makes objection.

##### §20292. Collection, distribution and delivery

The professors of anatomy, the professors of surgery and the demonstrators of anatomy in the medical schools of the State that are now or may hereafter become incorporated by Act of the Legislature are constituted a board for the collection, distribution and delivery of dead human bodies to and among any persons as under this chapter are entitled to receive them. When no medical schools of the State are in active operation, the Superintendent of the Bangor Mental Health Institute, the Superintendent of the Augusta Mental Health Institute, the Superintendent of the Eastern Maine Medical Center, the Superintendent of the Maine Medical Center and the Superintendent of the Central Maine Medical Center constitute the board. The board has full power to establish rules for its government and to appoint and remove officers, and shall keep full and complete minutes of its transactions. Under the board's direction records must be kept of all bodies received and distributed by the board and of the persons to whom the bodies are distributed. The minutes and records must be open at all times to the inspection

of each member of the board, the Attorney General and the district attorney of any county within the State.

**§20293. Deaths in almshouses, prisons and institutions**

All public officers, agents and servants of every county and municipality, and of every almshouse, prison, morgue, hospital or any other public institution having charge or control over dead human bodies required to be buried at the public expense are required to notify immediately the board of distribution, or the person or persons designated by the board, or its duly authorized officer or agent, whenever any body or bodies come into their possession, charge or control, and shall, without fee or reward, deliver the body or bodies to the board or its duly authorized officer or agent, and permit the board or its agents, or the physicians and surgeons designated by it or them, who comply with this chapter, to take and remove any body to be used within the State for the advancement of medical education. No notice need be given and no body may be delivered if any person, satisfying the authorities in charge of the body that the person is a member of the family or next of kin to the deceased, claims the body for burial, but it must be surrendered to the person for interment, and no notice may be given and no body delivered to the board or its agents if the deceased person was a traveler and not a vagabond, who died suddenly, in which case the body must be buried. No notice may be given and no body delivered to the board or its agents by the Department of Corrections if, at its option, the department assumes responsibility for the expenses of burial. The option may be exercised by the Department of Corrections regardless of whether the body is claimed by a member of the family or next of kin, but in such a case it may only be exercised with the agreement of the person making the claim. The superintendents and medical staffs of the Augusta Mental Health Institute, the Bangor Mental Health Institute and Pineland Center, having charge or control over dead human bodies required to be buried at public expense, when no person satisfies the superintendent of either hospital for the mentally ill or the Pineland Center, and the commissioner that the person is a member of the family of, or has some family connection or is next of kin to the deceased, and wishes to claim the body for burial, may for the advancement of science hold an autopsy and examine the body of the deceased person, notwithstanding any provisions of this chapter.

Notwithstanding the availability of lump sum death benefits under the United States Social Security Act, the term "buried at public expense" as used in this section includes the unclaimed dead bodies of all indigent persons otherwise within the intendment of this section.

**§20294. Distribution of bodies**

The board or its duly authorized agent may take and receive the bodies, delivered under the provisions of section 20293, and shall upon receiving them after 7 days from the date of decease distribute and deliver them to the schools, physicians and surgeons in the following manner: Those schools needing bodies for lectures and demonstrations must first be supplied as fast as practicable, the number assigned to each to be based upon the number of students in actual attendance. Each school shall report to the board when directed the number of students in actual attendance. The board of distribution may designate physicians or surgeons who must receive the bodies, applications to be considered in the order of their receipt by the board. Subject to this chapter, it is lawful for the University of Maine System, Colby College, Bates College and Bowdoin College or any recognized medical school in New England to receive the bodies for the promotion of medical education, which includes nursing training and premedical education.

**§20295. Enclosed from public view; carriers to obtain receipts**

The board may employ a carrier or carriers for the conveyance of the bodies. The bodies must be well enclosed within a suitable encasement and carefully deposited free from public observation. The carrier shall obtain receipts by name or, if the deceased is unknown, by a description for each body delivered by the carrier. The receipt must state the source from which the body was received, and the carrier shall deposit the receipts with the secretary of the board.

**§20296. Bond for proper disposal; traffic outside of State**

A school, college, university, or any recognized medical school in New England, physician or surgeon may not be allowed or permitted to receive any body or bodies under this chapter until a bond is given to the Treasurer of State by the physician or surgeon, or by and in behalf of the school, college, university or any recognized medical school in New England, to be approved by a justice of a court of record in the county in which the physician or surgeon resides, or in which the school, college, university or any recognized medical school in New England is situated. The bond must be in the penal sum of \$1,000, conditioned that all the bodies that the physician or surgeon or the school, college, university or any recognized medical school in New England receive thereafter may be used only for the promotion within the state of medical education, which includes nursing training and premedical education, and when no longer needed for educational purposes must be decently buried. The Treasurer of State shall examine the bond annually in the month

2 of December, and the Treasurer of the State shall certify in  
4 writing upon each bond in the Treasurer's of State possession the  
6 Treasurer's of State approval of the bond. In case any bond is  
8 not approved by the Treasurer of State, the Treasurer of State  
10 shall immediately notify the party giving the bond, who shall  
12 immediately file a new bond. A person who sells or buys a body or  
bodies, or in any way traffics in bodies, or transmits or conveys  
a body or bodies to any place outside of the State, or causes the  
same to be done, except as provided in section 20294, is  
punishable by a fine of not more than \$200 or by imprisonment for  
not more than 11 months.

#### §20297. Expenses

Neither the State nor any county or municipality, nor any  
officer, agent or servant of the state, a county or municipality  
is required to pay for the delivery or distribution of any body  
under this chapter. Those receiving the bodies in the manner  
specified by the board of distribution shall pay all the expenses  
of delivery or distribution.

#### §20298. Neglect to discharge duties

A person having a duty under this chapter who neglects,  
refuses or omits to perform the duty as required by this chapter,  
on conviction thereof, is punishable by a fine of not less than  
\$100 nor more than \$500, for each offense.

### CHAPTER 2013

#### UNIFORM ANATOMICAL GIFT ACT

#### §20350. Definitions

1. Bank or storage facility. "Bank or storage facility"  
means a facility licensed, accredited or approved under the laws  
of any state for storage of human bodies or parts thereof.

2. Decedent. "Decedent" means a deceased individual and  
includes a stillborn infant or fetus.

3. Donor. "Donor" means an individual who makes a gift of  
all or part of that individual's body.

4. Hospital. "Hospital" means a hospital licensed,  
accredited or approved under the laws of any state and includes a  
hospital operated by the United States Government, a state or a  
subdivision thereof, although not required to be licensed under  
state laws.

5. Part. "Part" includes organs, tissues, eyes, bones,  
arteries, blood, other fluids and other portions of a human body,  
and "part" includes "parts".

6. Person. "Person" means an individual, corporation,  
government or governmental subdivision or agency, business trust,  
estate, trust, partnership or association or any other legal  
entity.

7. Physician or surgeon. "Physician" or "surgeon" means a  
physician or surgeon licensed or authorized to practice under the  
laws of any state.

8. State. "State" includes any state, district,  
commonwealth, territory, insular possession, and any other area  
subject to the legislative authority of the United States of  
America.

#### §20351. Persons who may execute an anatomical gift

1. Individuals. A individual of sound mind and at least 16  
years of age may give all or any part of that individual's body  
for any purposes specified in section 20352, the gift to take  
effect upon death.

2. Others. Any of the following persons, in order of  
priority stated, when persons in prior classes are not available  
at the time of death, and in the absence of actual notice of  
contrary indications by the decedent, or actual notice of  
opposition by a member of the same or a prior class, may give all  
or any part of the decedent's body for any purposes specified in  
section 20352:

A. The spouse;

B. An adult son or daughter;

C. Either parent;

D. An adult brother or sister;

E. A guardian of the person of the decedent at the time of  
the decedent's death;

F. Any other person authorized or under obligation to  
dispose of the body.

3. Notice to donee. If the donee has actual notice of  
contrary indications by the decedent, or that a gift by a member  
of a class is opposed by a member of the same or a prior class,

2 the donee may not accept the gift. The persons authorized by  
3 subsection 2 may make the gift after death or immediately before  
4 death.

6 4. Examination. A gift of all or part of a body authorizes  
7 any examination necessary to assure medical acceptability of the  
8 gift for the purposes intended.

10 5. Rights. The rights of the donee created by the gift are  
11 paramount to the rights of others, except as provided by section  
12 20356, subsection 4.

14 §20352. Persons who may become donees, and purposes for which  
15 anatomical gifts may be made

16 The following persons may become donees of gifts of bodies  
17 or parts thereof for the purposes stated:

19 1. Medical. Any hospital, surgeon or physician, for  
20 medical or dental education, research, advancement of medical or  
21 dental science, therapy or transplantation;

23 2. School. Any accredited medical or dental school,  
24 college or university for education, research, advancement of  
25 medical or dental science or therapy;

27 3. Storage facility. Any bank or storage facility, for  
28 medical or dental education, research, advancement of medical or  
29 dental science, therapy or transplantation; or

31 4. Specified individuals. Any specified individual for  
32 therapy or transplantation needed by the individual.

34 §20353. Manner of executing anatomical gifts

36 1. Will. A gift of all or part of the body under section  
37 20351, subsection 1 may be made by will. The gift becomes  
38 effective upon the death of the testator without waiting for  
39 probate. If the will is not probated, or if it is declared  
40 invalid for testamentary purposes, the gift, to the extent that  
41 it has been acted upon in good faith, is nevertheless valid and  
42 effective.

44 2. Other documents. A gift of any part of the body under  
45 section 20351, subsection 1, may be made by document other than a  
46 will. The gift becomes effective upon the death of the donor and  
47 upon acceptance by the donee. The document, which may be a card  
48 designed to be carried on the person, must be signed by the  
49 donor, in the presence of 2 witnesses who must sign the document  
50 in the donor's presence. If the donor cannot sign, the document

2 may be signed for the donor at the donor's direction and in the  
3 donor's presence, and in the presence of 2 witnesses who must  
4 sign the document in the donor's presence. Delivery of the  
5 document of gift during the donor's lifetime is not necessary to  
6 make the gift valid.

8 3. Donee. The gift may be made to a specified donee or  
9 without specifying a donee. If the latter, the gift may be  
10 accepted by the attending physician as donee upon or following  
11 death. If the gift is made to a specified donee who is not  
12 available at the time and place of death, the attending  
13 physician, upon or following death in the absence of any  
14 expressed indication that the donor desired otherwise, may accept  
15 the gift as donee. The physician who becomes a donee under this  
16 subsection may not participate in the procedures for removing or  
17 transplanting a part.

18 4. Designee. Notwithstanding section 20356, subsection 2,  
19 the donor may designate in the donor's will, card or other  
20 document of gift the surgeon or physician to carry out the  
21 appropriate procedures; provided that eye enucleations may also  
22 be performed by a person who has successfully completed a course  
23 of training either taught by an ophthalmologist, or given by the  
24 New England Eye Bank, and that the person is then examined and  
25 certified as qualified to perform eye enucleations by an  
26 ophthalmologist licensed to practice in Maine. The course must  
27 include instruction and practice in anatomy and physiology of the  
28 eye, maintaining a sterile field during the procedure, use of the  
29 appropriate instruments and sterile procedures for removing the  
30 corneal button and preserving it in a preservative fluid. In the  
31 absence of a designation, or if the designee is not available,  
32 the donee or other person authorized to accept the gift may  
33 employ or authorize any surgeon or physician for the purpose.

34 5. How made. Any gift by a person designated in section  
35 20351, subsection 2 must be made by a document signed by that  
36 person, or made by that person's telegraphic, recorded telephonic  
37 or other recorded message.

39 This subsection includes, but is not limited to, gifts made  
40 pursuant to section 20359. Any gift pursuant to section 20359,  
41 by a person designated in section 20351, subsection 2, must be  
42 made by a document signed by that person, by a telegraphic,  
43 recorded telephonic or other recorded message, or by a telephonic  
44 message witnessed by at least 2 people in which case the  
45 witnesses shall document the telephonic message in writing.

48 §20354. Delivery of document of gift

2 If the gift is made by the donor to a specified donee, the  
3 will, card or other document, or an executed copy thereof, may be  
4 delivered to the donee to expedite the appropriate procedures  
5 immediately after death, but delivery is not necessary to the  
6 validity of the gift. The will, card or other document, or an  
7 executed copy thereof, may be deposited in any hospital, bank or  
8 storage facility or registry office that accepts them for  
9 safekeeping or for facilitation of procedures after death. On  
10 request of any interested party upon or after the donor's death,  
11 the person in possession shall produce the document for  
12 examination.

14 **§20355. Amendment or revocation of the gift**

16 1. Amendment. If the will, card or other document or  
17 executed copy thereof has been delivered to a specified donee,  
18 the donor may amend or revoke the gift by:

20 A. The execution and delivery to the donee of a signed  
21 statement;

23 B. An oral statement made in the presence of 2 persons and  
24 communicated to the donee;

26 C. A statement during a terminal illness or injury  
27 addressed to an attending physician and communicated to the  
28 donee; or

30 D. A signed card or document found on the donor's person or  
31 in the donor's effects.

33 2. Revocation. Except as provided in subsection 4, any  
34 document of gift that has not been delivered to the donee may be  
35 revoked by the donor in the manner set out in subsection 1 or by  
36 destruction, cancellation or mutilation of the document and all  
37 executed copies of the document.

39 3. Other methods. Any gift made by a will may also be  
40 amended or revoked in the manner provided for amendment or  
41 revocation of wills, or as provided in subsection 1.

43 4. Driver's license. A gift on an organ donor card  
44 pursuant to Title 29, section 540-C may be revoked by destroying,  
45 cancelling or mutilating the organ donor card and pouch.

47 **§20356. Rights and duties at death**

49 1. Accepted or rejected. The donee may accept or reject  
50 the gift. If the donee accepts a gift of the entire body, the  
donee may, subject to the terms of the gift, authorize embalming

2 and the use of the body in funeral services. If the gift is of a  
3 part of the body, the donee, upon the death of the donor and  
4 prior to embalming, shall cause the part to be removed without  
5 unnecessary mutilation. After removal of the part, custody of the  
6 remainder of the body vests in the surviving spouse, next of kin  
7 or other persons under obligation to dispose of the body.

8 2. Time of death. The time of death must be determined by  
9 a physician who attends the donor at the donor's death, or, if  
10 none, the physician who certifies the death. This physician may  
11 not participate in the procedures for removing or transplanting a  
12 part.

14 3. Good faith. A person who acts in good faith in accord  
15 with the terms of this chapter, or under the anatomical gift laws  
16 of another state or a foreign country, is not liable for damages  
17 in any civil action or subject to prosecution in any criminal  
18 proceeding for that person's act.

20 4. Applicability of other laws. This chapter is subject to  
21 the laws of this State prescribing powers and duties with respect  
22 to autopsies and to the provisions of chapter 2015, the Medical  
23 Examiner Act.

24 **§20357. Uniformity of interpretation**

26 This chapter must be so construed as to effectuate its  
27 general purpose to make uniform the law of those states that  
28 enact it.

30 **§20358. Short title**

32 This chapter may be cited as the Uniform Anatomical Gift Act.

34 **§20359. Request for consent required to an anatomical gift**

36 1. Request for consent required. When a death occurs in a  
37 hospital, a request for consent to an anatomical gift must be  
38 made in accordance with the following provisions.

40 A. When, based upon accepted medical standards, a decedent  
41 who has not made an anatomical gift is a suitable candidate  
42 for organ or tissue donation, the attending physician, or if  
43 the attending physician is unavailable or if the attending  
44 physician made the determination of death, the hospital  
45 administrator, or the hospital administrator's designated  
46 representative, shall at the time of death request the  
47 person designated in section 20351, subsection 2, to consent  
48 to the gift of all or any part of the decedent's body as an  
49 anatomical gift for any or all of the purposes expressed in  
50

2 section 20352. This request is subject to all the  
3 provisions of this chapter.

4 B. Persons who will make requests for anatomical gifts must  
5 be given training in the appropriate procedures for making  
6 the request. A person who determined the death of the  
7 decedent may not make the request for that decedent.

8 2. Medical records. When a request for an anatomical gift  
9 is made pursuant to this section, the request and its disposition  
10 must be noted in the decedent's medical record.

11 3. Interhospital agreements. Hospitals shall develop and  
12 implement interhospital agreements among themselves that  
13 establish protocols for the retrieval and transportation of all  
14 or any part of a body found suitable for transplantation and for  
15 the costs associated with transplantation.

16 4. Annual reports. Hospitals shall report annually to the  
17 commissioner the number of requests for anatomical gifts made and  
18 the number of organs retrieved pursuant to this section and the  
19 overall impact of this section. This report may not contain any  
20 information that can identify the decedents or any person to whom  
21 a request for an anatomical gift was made.

22 5. Rules. The commissioner shall establish rules  
23 concerning the training of persons who will perform the request  
24 for an anatomical gift pursuant to this section and may establish  
25 other rules necessary to implement this section. The  
26 commissioner shall appoint a committee of medical and hospital  
27 representatives to make recommendations regarding rules  
28 concerning the interhospital agreements pursuant to subsection 3.

29 **CHAPTER 2015**  
30 **MEDICAL EXAMINER ACT**

31 **§20410. Title**

32 This chapter is known and may be cited as the Medical  
33 Examiner Act.

34 **§20411. Office of Chief Medical Examiner**

35 1. Appointment and qualifications of the Chief Medical  
36 Examiner. There is created, in the Department of the Attorney  
37 General, the Office of Chief Medical Examiner for the State. The  
38 Governor shall appoint the Chief Medical Examiner for a term of 7  
39 years and until the Chief Medical Examiner's successor is  
40 appointed and qualified. The Chief Medical Examiner must possess  
41 a degree of doctor of medicine or doctor of osteopathy, be  
42

43 licensed to practice in the State and be expert in the specialty  
44 of forensic pathology. Expertise in the specialty of forensic  
45 pathology may be established either by certification in forensic  
46 pathology by the American Board of Pathology or the American  
47 Osteopathic Board of Pathology or by successful completion of an  
48 examination to test expertise in forensic pathology designed for  
49 the State by acknowledged experts in the field selected by the  
50 Governor. The Governor shall fill by appointment any vacancy in  
the Office of Chief Medical Examiner for a full term of 7 years.  
The Chief Medical Examiner may hire, subject to the Civil Service  
Law, necessary office and laboratory personnel to carry out the  
proper functioning of the Chief Medical Examiner's office.

1 2. Appointment and qualifications of the Deputy Chief  
2 Medical Examiner. The Chief Medical Examiner may select one or  
3 more of the medical examiners to serve as deputy chief medical  
4 examiners. The Deputy Chief Medical Examiner serves at the  
5 pleasure of the Chief Medical Examiner and, if salaried, is  
6 unclassified. In the event of the Chief Medical Examiner's  
7 temporary absence, the Chief Medical Examiner or, if the Chief  
8 Medical Examiner is unavailable, the Attorney General may  
9 designate one of the deputy chief medical examiners to serve as  
10 acting Chief Medical Examiner. The acting Chief Medical Examiner  
11 has all of the powers and responsibilities of the Chief Medical  
12 Examiner.

13 3. Certification and completion of reports of deaths. The  
14 Office of Chief Medical Examiner is responsible for certification  
15 and completion of reports of deaths identified as medical  
16 examiner cases by section 20414. This must be accomplished by  
17 examination of bodies and useful objects and by investigation and  
18 inquiry into the circumstances surrounding the deaths. The  
19 Office of Chief Medical Examiner may compile and preserve records  
20 and data relating to criminal prosecution, public health, public  
21 safety and vital statistics, as these relate to the Chief Medical  
22 Examiner's responsibilities.

23 4. Judgments of the medical examiners. Judgments of the  
24 medical examiners as to the identity of the deceased and the  
25 cause, manner, date, time and place of death must be made with  
26 reasonable care based on a preponderance of the evidence.

27 5. Custodian of records. The Chief Medical Examiner is the  
28 custodian of the records of the Office of Chief Medical  
29 Examiner. Copies of those records not declared confidential in  
30 subsection 8 are available upon written request.

31 6. Certificate as evidence. Notwithstanding any other  
32 provision of law or rule of evidence, the certificate of the  
33 Chief Medical Examiner, under seal of the State, must be received  
34



2 in any court as prima facie evidence of any fact stated in the  
3 certificate or documents attached to the certificate. The  
4 certificate under the seal must be presumed to be that of the  
5 Chief Medical Examiner. A facsimile of the signature of the  
6 Chief Medical Examiner imprinted on any certificate described in  
7 this subsection has the same validity as the Chief Medical  
8 Examiner's written signature and is admissible in court.

9 7. Medical records provided. In any medical examiner case,  
10 upon oral or written request of the medical examiner, any  
11 individual, partnership, association, corporation, institution or  
12 governmental entity that has rendered treatment pertaining to the  
13 medical examiner case shall as soon as practicable provide the  
14 medical examiner with all medical records pertaining to the  
15 person and the treatment provided. No individual, partnership,  
16 association, corporation, institution, governmental entity or  
17 employee or agent of a governmental entity may be criminally or  
18 civily responsible for furnishing any medical records in  
19 compliance with this subsection.

20 8. Certain information confidential. When in the custody  
21 of a medical examiner, reproductions of medical reports and  
22 reports compiled by the police incorporated into the file,  
23 communications with the Department of the Attorney General, death  
24 certificates and any amendments made to the certificates, except  
25 for the information for which the medical examiner is  
26 responsible, as listed in section 20231, subsection 3, and not  
27 ordered "withheld" by the Attorney General, and reports  
28 pertaining to cases under investigation by the Department of the  
29 Attorney General are confidential.

30 9. Release of medical examiner's reports. State, county  
31 and local agencies and institutions, public and private, in  
32 possession of reports of the Office of Chief Medical Examiner may  
33 not release them, but shall refer all the requests to the Office  
34 of Chief Medical Examiner. The Office of Chief Medical Examiner  
35 need not release medical examiner reports to the public until a  
36 next of kin has been contacted.

37 10. Cooperation with research requests. The Office of  
38 Chief Medical Examiner shall cooperate with research requests by  
39 supplying abstracted data and copies of reports to interested  
40 persons and agencies consistent with the available resources of  
41 the office.

42 11. Written or recorded material expressing suicidal  
43 intent. Written or otherwise recorded communications that  
44 express or are evidence of suicidal intent held by the Office of  
45 Chief Medical Examiner pursuant to section 20417, subsections 4  
46 and 5, are not subject to public access.

## 2 §20412. Medical examiners; appointment; jurisdiction

3 The Chief Medical Examiner shall appoint medical examiners  
4 who have statewide jurisdiction and serve at the pleasure of the  
5 Chief Medical Examiner and subject to the Chief Medical  
6 Examiner's control and the rules adopted by the Chief Medical  
7 Examiner. The medical examiners must be learned in the science of  
8 medicine and anatomy, licensed as physicians in this State and  
9 bona fide residents of this State. Each medical examiner before  
10 entering upon the duties of the medical examiner's office must be  
11 duly sworn to the faithful performance of the medical examiner's  
12 duty.

13 The Chief Medical Examiner may in the Chief Medical  
14 Examiner's discretion make temporary appointments when the Chief  
15 Medical Examiner deems it is in the public interest. Temporary  
16 medical examiners serve on a case-by-case basis and must be  
17 persons who are licensed as physicians by the State, but do not  
18 need to be residents of the State nor take an oath of office.

19 The Chief Medical Examiner may retain official consultants  
20 to serve the various needs of the office. These consultants must  
21 possess a high degree of integrity and be learned in their  
22 fields. They need not reside within the State nor take an oath of  
23 office. They serve at the pleasure of the Chief Medical Examiner.

## 24 §20413. Salaries; fees; expenses

25 The Governor shall set the salary of the Chief Medical  
26 Examiner of the State of Maine. Other nonsalaried medical  
27 examiners must, upon the submission of their completed report to  
28 the Chief Medical Examiner, be paid a fee of \$45 for an  
29 inspection and view and must receive travel expenses to be  
30 calculated at the mileage rate currently paid to state employees  
31 pursuant to Title 5, section 8. An additional fee of \$20 may be  
32 authorized by the Chief Medical Examiner for payment to other  
33 nonsalaried medical examiners for visits to death scenes other  
34 than hospitals.

35 The fees for autopsies performed by pathologists, at the  
36 request of a medical examiner or the Chief Medical Examiner, must  
37 be set by the Chief Medical Examiner at a level that provides  
38 reasonable payment for necessary costs and a reasonable fee in  
39 light of prevailing rates for the services of a pathologist in  
40 Maine.

41 The Chief Medical Examiner, using the Chief Medical  
42 Examiner's discretion, may in an unusual circumstance, to be  
43 determined by the Chief Medical Examiner, prescribe a special fee  
44 for autopsies performed by pathologists.

2 for the service of a medical examiner or for any consultant  
3 service which the Chief Medical Examiner deems necessary.

4 The Chief Medical Examiner, using the Chief Medical  
5 Examiner's discretion, may authorize any other expenses necessary  
6 to carry out the Chief Medical Examiner's duties.

8 All compensation and expenses authorized by this chapter  
9 must be paid from the funds of the State appropriated by the  
10 Legislature for this purpose.

12 If the Chief Medical Examiner or employees of the Chief  
13 Medical Examiner's office, at their discretion, provide expert  
14 opinion or testimony relating to Maine medical examiner cases on  
15 behalf of private litigants, the Chief Medical Examiner may, at  
16 the Chief Medical Examiner's discretion, set a reasonable fee for  
17 these services, preparation leading to them and expenses incurred  
18 in providing them. All fees, charges or other receipts must be  
19 credited to the General Fund. Medical examiners and consultants  
20 who serve the State on a fee per case basis are excluded from  
21 this paragraph and may make private arrangements for these  
22 services.

24 §20414. Medical examiner case

26 1. Circumstances of death constituting medical examiner  
27 case. A medical examiner case exists when remains are found that  
28 may be human and raise suspicion that death has occurred under  
29 any of the following circumstances:

30 A. Violence or poisoning:

32 B. Suddenly when the person is in apparent good health and  
33 has no specific natural disease sufficient to explain death:

34 C. During diagnostic or therapeutic procedures under  
35 circumstances indicating gross negligence or when clearly  
36 due to trauma or poisoning unrelated to the ordinary risks  
37 of those procedures:

38 D. Death when the person is in custody pursuant to an  
39 arrest, confined in a state correctional facility, county  
40 institution, facility or local lockup, unless clearly  
41 certifiable by an attending physician as due to specific  
42 natural causes:

43 E. Death while the person is a patient or resident of a  
44 facility of the Department of Mental Health and Mental  
45 Retardation or residential care facility maintained or

2 licensed by the department, unless clearly certifiable by an  
3 attending physician as due to specific natural causes:

4 F. Death suspected of being due to a threat to the public  
5 health when the authority of the medical examiner is needed  
6 to adequately study the case for the protection of the  
7 public health:

8 G. Death suspected of not having been certified, including,  
9 but not limited to, bodies brought into the State and any  
10 buried remains uncovered other than by legal exhumation:

11 H. Deaths suspected of being medical examiner cases that  
12 may have been improperly certified or inadequately examined,  
13 including, but not limited to, bodies brought into the State  
14 under those circumstances:

15 I. Sudden infant death syndrome deaths and all other deaths  
16 of children under the age of 18 unless clearly certifiable  
17 by an attending physician as due to specific natural causes  
18 unrelated to abuse or neglect:

19 J. Whenever human or possibly human remains are discovered  
20 not properly interred or disposed of, for which the  
21 responsibility to do so cannot be readily determined; or

22 K. Any cause when there is no attending physician capable  
23 of certifying the death as due to natural causes. When a  
24 person dies who is under the care of a religious  
25 practitioner who uses prayer and spiritual means of healing,  
26 the fact that the deceased has been under such religious  
27 care does not warrant suspicion of foul play or  
28 investigation beyond that warranted by the other facts of  
29 the case.

30 2. Attendance by physician. A medical examiner case exists  
31 whenever the death is wholly or in part ascribable to violence or  
32 poisoning, regardless of whether the deceased had been attended  
33 by a physician, was a patient in a hospital, survived for  
34 considerable time or died with the terminal natural causes  
35 consequent to and following from the injury or poisoning.

36 3. Transplant operations. No operation for the transplant  
37 of an organ or a portion of any organ may take place, when the  
38 donor's death occurs under circumstances indicating a medical  
39 examiner case, without approval of the medical examiner. Any  
40 doctor performing a transplant operation when the donor has died  
41 under these circumstances shall note the condition of the vital  
42 organs in the region of surgery and shall include this notation  
43 in a written report of the operation and manner in which death  
44 occurred.

2 was pronounced, with the report to be given to the medical  
3 examiner upon the medical examiner's request. The medical  
4 examiner may choose to be present during the removal of the  
5 donated organ.

6 4. Questionable cases and cases which may constitute  
7 exceptions. All questionable cases must be reported. Acceptance  
8 of any questionable case is to be determined by the Chief Medical  
9 Examiner unless acceptance is specifically ordered by the  
10 Attorney General or district attorney having jurisdiction.

11 Deaths due to the consequences of long-term alcohol use,  
12 long-term exposure to environmental or occupational toxins or  
13 long-term exposure to carcinogens must be reported, but need not  
14 be accepted.

15 Sudden natural deaths in the elderly who have not had previous  
16 specific symptoms or who were not under treatment by a physician  
17 for the specific natural cause that is considered to be the cause  
18 of death must be reported to the Office of the Chief Medical  
19 Examiner. Those cases may be referred back to the attending  
20 physician by the Chief Medical Examiner for certification of the  
21 death, even though the attending physician has not treated the  
22 patient for the specific natural disease that the attending  
23 physician will enter as the attending physician's diagnosis.

24 5. Delayed reports. When a death has occurred that falls  
25 under this law as a medical examiner case and the body has  
26 already been released for final disposition, the case may be  
27 accepted and the body ordered held for examination by a medical  
28 examiner, but no exhumation may take place when the body has been  
29 finally interred, except pursuant to section 20421.

#### 30 §20415. Reports of death

31 1. Persons suspecting medical examiner case. Any person  
32 who has become aware of a suspected medical examiner case shall  
33 immediately notify a law enforcement officer, medical examiner or  
34 the Office of the Chief Medical Examiner.

35 2. Medical examiners suspecting medical examiner case. Any  
36 medical examiner who has become aware of a death involving  
37 violence, or in which violence is suspected, shall immediately  
38 notify the appropriate law enforcement agency. The agency shall  
39 notify the district attorney for the district in which the body  
40 is located.

41 3. Cases involving criminal violence. Any law enforcement  
42 officer or medical examiner who has become aware of a death  
43 involving criminal violence, or in which criminal violence is  
44 suspected, other than by motor vehicle, shall immediately notify  
45 the Attorney General and the Chief Medical Examiner.

46 §20416. Procedure at scene of death

47 1. Authority required to move or alter body. Except as  
48 otherwise provided in this section:

49 A. In any medical examiner case a person may not move or  
50 alter the body or any objects at the scene of death prior to  
51 the arrival, or without the express authorization, of the  
52 medical examiner or Office of the Chief Medical Examiner;

53 B. In any medical examiner case in which noncriminal  
54 violence is suspected, or in which any violence by motor  
55 vehicle is suspected, a person may not move or alter the  
56 body or any objects at the scene of death prior to the  
57 arrival, or without the express authorization, of the  
58 district attorney for the district in which the body is  
59 located or the district attorney's authorized  
60 representative; and

61 C. In any medical examiner case in which criminal violence  
62 other than by motor vehicle is suspected, a person may not  
63 move or alter the body or any objects at the scene of death  
64 prior to the arrival, or without the express authorization,  
65 of the Attorney General or the Attorney General's authorized  
66 representative.

67 2. Preservation or removal of body. In any medical  
68 examiner case where the body is in danger of being destroyed or  
69 lost, or the location of the body renders it a serious threat to  
70 the safety or health of others, a person may take whatever steps  
71 are reasonably necessary for the retention or preservation of the  
72 body prior to the arrival or authorization of the medical  
73 examiner or Office of the Chief Medical Examiner, provided that  
74 the person shall first, whenever practicable, exactly mark the  
75 location and position of the body.

76 In any medical examiner case where criminal violence other than  
77 by motor vehicle is not suspected, and the presence of the body  
78 is likely to cause hardship or outrage, and a medical examiner or  
79 the Office of the Chief Medical Examiner can not be reached in a  
80 reasonable period of time, the district attorney for the district  
81 in which the body is located, or the district attorney's  
82 authorized representative, may authorize removal of the body by  
83 the law enforcement officer in charge of the scene, provided that  
84 the officer shall first, whenever practicable, exactly mark the  
85 location and position of the body.

2 A. When death occurs in a medical facility such as a  
4 hospital or an ambulance, the body may be removed to a  
6 mortuary under the following conditions:

8 (1) The incident causing the death did not occur in  
10 the medical facility;

12 (2) The body is transported to a secure place in the  
14 same condition as when death occurred; and

16 (3) The only alterations are the disconnecting of  
18 fixed medical equipment.

20 3. Procedures. Before removal of the body as provided in  
22 subsection 2, the law enforcement officer shall whenever possible  
24 arrange for photographs, measurements and a record of the  
26 location and position of the body.

28 Where the death is suspected of involving criminal violence other  
30 than by motor vehicle, the procedure in this subsection must be  
32 undertaken with the supervision of an authorized representative  
34 of the Attorney General.

36 In all medical examiner cases in which criminal violence other  
38 than by motor vehicle is suspected, the procedure in this  
40 subsection may be waived concurrently by the Chief Medical  
42 Examiner and the Attorney General or the Chief Medical Examiner's  
44 and Attorney General's authorized representative.

46 In all other medical examiner cases the procedure in this  
48 subsection may be waived concurrently by the medical examiner and  
50 the district attorney for the district in which the body is  
located or the medical examiner's and the district attorney's  
authorized representative.

**§20417. Investigation; autopsy**

1. Authority to conduct investigation. The medical  
examiner has authority to conduct an investigation and inquiry  
into the cause, manner and circumstances of death in a medical  
examiner case. The medical examiner shall, if deemed necessary,  
immediately proceed to the scene and, subject to the authority of  
the Attorney General, assume custody of the body for the purposes  
of the investigation, and shall retain custody until the  
investigation has been completed or until the Chief Medical  
Examiner has assumed charge of the case.

2. Investigation by law enforcement officer. When death is  
not suspected to be the result of criminal violence, the medical  
examiner may elect not to proceed to the scene, or the Chief

2 Medical Examiner may elect not to dispatch a medical examiner to  
4 the scene. If the medical examiner elects not to proceed to the  
6 scene, or the Chief Medical Examiner elects not to dispatch a  
8 medical examiner to the scene, the law enforcement officer in  
10 charge of the scene shall:

12 A. Investigate and photograph the scene as directed by the  
14 medical examiner or Office of the Chief Medical Examiner;

16 B. Take possession of all objects that in the opinion of  
18 the medical examiner or Office of the Chief Medical Examiner  
20 may be useful in establishing the cause, manner and  
22 circumstances of death;

24 C. Remove the body in accordance with the instructions of  
26 the medical examiner or Office of the Chief Medical  
28 Examiner; and

30 D. Make a report of the investigation available to the  
32 medical examiner or Office of the Chief Medical Examiner.

34 3. Assistance of law enforcement agency. The medical  
36 examiner, or the pathologist as described in subsection 8, may  
38 request the assistance and use of the facilities of the law  
40 enforcement agency having jurisdiction over the case for the  
42 purposes of photographing, fingerprinting or otherwise  
44 identifying the body. That agency shall provide the medical  
46 examiner or pathologist with a written report of the steps taken  
in providing the assistance.

4. Possession of useful objects. Except as otherwise  
directed by the Attorney General, the Attorney General's deputies  
or assistants, the medical examiner or Office of the Chief  
Medical Examiner may direct that a law enforcement officer at the  
scene make measurements, take photographs and take possession of  
all objects that in the opinion of the medical examiner or Office  
of the Chief Medical Examiner may be useful in establishing the  
cause, manner and circumstances of death.

5. Requests for objects. Any person having possession of  
any object or objects, as described in subsection 4, shall at the  
request of the medical examiner give that object or objects to a  
law enforcement officer. Original written or recorded material  
that might express suicidal intent must be sent to the Office of  
the Chief Medical Examiner. The Chief Medical Examiner may elect  
to accept copies in place of originals.

6. Examination of body. In all cases except those  
requiring a report on a body already disposed of and not to be

exhumed for examination, the medical examiner shall conduct a thorough examination of the body.

7. Written report. Upon completing the medical examiner's investigation, the medical examiner shall submit a written report of the findings to the Chief Medical Examiner on forms provided for that purpose. The medical examiner shall retain one copy of the report.

8. Autopsy. If, in any medical examiner case, in the opinion of the medical examiner, the Chief Medical Examiner, the district attorney for the district in which the death has occurred or the Attorney General, it is advisable and in the public interest that an autopsy be made, the autopsy must be conducted by the Chief Medical Examiner or by a physician that the medical examiner, with the approval of the Chief Medical Examiner, may designate. The medical examiner, with the approval of the Chief Medical Examiner, may elect to perform the autopsy. The person who performs the autopsy shall make a complete report of the findings of the autopsy and shall transmit the report to the medical examiner and the Office of the Chief Medical Examiner, retaining one copy of the report.

9. Autopsy of child. In the case of a child under the age of 3 years, when death occurs without medical attendance or, if attended, without a specific natural cause, the medical examiner shall order an autopsy. The autopsy may be waived by the Chief Medical Examiner, provided the Chief Medical Examiner includes the reason for the waiver in the record.

10. Chief Medical Examiner; jurisdiction. The Chief Medical Examiner may assume jurisdiction over a medical examiner case, and may recertify the death, when the Chief Medical Examiner finds that it is in the public interest for the Chief Medical Examiner to do so. The Chief Medical Examiner shall include the Chief Medical Examiner's reasons for so doing in the record.

11. Final release of body. In any medical examiner case the body may not be finally released for embalming or burial except by order of the medical examiner in charge of the case, or by the Chief Medical Examiner. A medical examiner may not release a body without first ensuring that the case has been reported to the Office of the Chief Medical Examiner.

**§20418. Disposal of unidentified remains**

Whenever unidentified human skeletal remains are recovered, the Chief Medical Examiner may store the remains, release them to an educational institution, inter them in an appropriate resting

place or have them cremated. Ashes of remains cremated may be disposed of in any appropriate manner. Human skeletal remains uncovered in a cared-for cemetery or known to be Indian remains are excluded from the operation of this section.

**§20419. Retention of body fragments and body fluids**

A medical examiner or a medical examiner's designated pathologist may retain body fragments or body fluids for evidence, further study or documentation.

**§20420. Disposal of nonsubstantial fragments and fluids; disposal of substantial fragments**

1. Disposal of nonsubstantial body fragments and body fluids. Body fragments or body fluids retained for evidence, further study or documentation, or those that have been recovered after the body has been released from the custody of the medical examiner, may be disposed of according to the practices of the laboratory responsible for analysis, by the Office of the Chief Medical Examiner, or by the medical examiner or pathologist retaining those fragments or fluids, unless claimed in writing by the person responsible for burial.

2. Disposal of substantial body fragments. The Chief Medical Examiner may dispose of substantial fragments of bodies that have been retained for evidence, further study or documentation or that have been recovered after the rest of the body has been finally released, in accordance with section 20418, unless claimed by the person responsible for burial.

**§20421. Body buried without inquiry**

1. Notification of district attorney or Attorney General. The medical examiner shall notify the district attorney for the district in which the body was found or the Attorney General if in any medical examiner case:

A. The body is buried:

(1) Without inquiry or examination by the medical examiner;

(2) Before the inquiry or examination has been completed to the satisfaction of the medical examiner; or

(3) Without an autopsy if such was advisable pursuant to section 20417; and

2 B. The body is required for that inquiry, examination,  
3 completion or autopsy.

4 2. Petition for order of exhumation. The district attorney  
5 or Attorney General may, under the circumstances enumerated in  
6 subsection 1, and if the district attorney or Attorney General  
7 finds it to be in the public interest, petition a Justice of the  
8 Superior Court for an order of exhumation.

9 3. Report of findings. The medical examiner, Chief Medical  
10 Examiner or pathologist who completes the inquiry, examination or  
11 autopsy shall report the findings to the justice and to the  
12 Office of the Chief Medical Examiner.

13 §20422. Facilities and services available to medical examiners

14 The facilities of all laboratories, under the control of any  
15 state agency or department, and the services of the professional  
16 staffs of those laboratories must be made available to the Chief  
17 Medical Examiner with the cooperation of the head of the agency  
18 involved.

19 §20423. Rules

20 The Chief Medical Examiner is authorized and empowered to  
21 carry into effect this chapter, and in pursuance thereof, to make  
22 and enforce such reasonable rules consistent with this chapter as  
23 the Chief Medical Examiner may deem necessary. A copy of the  
24 rules and any amendments thereto must be filed in the office of  
25 the Secretary of State.

26 §20424. Limitation on liability of medical examiners and  
27 pathologists

28 Notwithstanding any other provision of law, a medical  
29 examiner may not be held liable for damages for any injury or  
30 damage that results from the exercise and discharge of any of the  
31 medical examiner's official duties, unless it can be shown that  
32 the injury or damage resulted from gross negligence on the part  
33 of the medical examiner. Notwithstanding any other provision of  
34 law, a pathologist, performing an autopsy at the request of a  
35 medical examiner or the Chief Medical Examiner, may not be held  
36 liable for damages for any injury or damage that results from the  
37 performance of the autopsy, unless it can be shown that the  
38 injury or damage resulted from the gross negligence of the  
39 pathologist. Notwithstanding any other provision of law, a  
40 professional consultant, who at the request of the medical  
41 examiner or Chief Medical Examiner conducts an examination and  
42 renders a report as part of the record, may not be held liable  
43 for damages for any injury or damage that results from the  
44 performance of the examination unless it can be shown that the  
45 injury or damage resulted from the gross negligence of the  
46 consultant.

47 performance of the examination unless it can be shown that the  
48 injury or damage resulted from the gross negligence of the  
49 consultant.

50 §20425. Missing persons

1 1. Files; information. The Office of the Chief Medical  
2 Examiner shall maintain files on missing persons sufficient for  
3 the purpose of identification when there is reason to suspect  
4 that those persons may not be found alive. These files may  
5 include such material as medical and dental records and  
6 specimens, details of personal property and physical appearance,  
7 samples of hair, fingerprints and specimens that may be useful  
8 for identification. The Chief Medical Examiner may require  
9 hospitals, physicians, dentists and other medical institutions  
10 and practitioners to provide information, samples and specimens.  
11 A person participating in good faith in the provision of the  
12 information, samples or specimens under this section is immune  
13 from any civil or criminal liability for that act or for  
14 otherwise cooperating with the Chief Medical Examiner.

15 2. Confidentiality; disclosure. All information and  
16 materials gathered and retained pursuant to this section must be  
17 used solely for the purposes of identification of deceased  
18 persons and persons found alive who are unable to identify  
19 themselves because of mental or physical impairment. The files  
20 and materials are confidential, except that compiled data that  
21 does not identify specific individuals may be disclosed to the  
22 public. Upon the identification of a deceased person, those  
23 records and materials used for the identification may become part  
24 of the records of the Office of the Chief Medical Examiner and  
25 may then be subject to public disclosure as pertinent law  
26 provides.

27 3. Reporting of missing persons. Missing persons may be  
28 reported directly to the Office of the Chief Medical Examiner by  
29 interested parties. Law enforcement agencies or other public  
30 agencies that receive reports of missing persons, or that gain  
31 knowledge of missing persons, shall report that information to  
32 the Office of the Chief Medical Examiner. Law enforcement  
33 agencies shall report all attempts to locate missing persons to  
34 the Office of the Chief Medical Examiner. All absences without  
35 leave by individuals from state institutions must also be  
36 reported to the Office of the Chief Medical Examiner when there  
37 exists a reasonable possibility of harm to that individual.

38 4. Cooperation. All state and law enforcement agencies and  
39 public and private custodial institutions shall cooperate with  
40 the Office of the Chief Medical Examiner in reporting,

investigating, clearing and gathering further information and materials on missing persons.

Sec. A-4. 34-B MRSA, as amended, is repealed.

Sec. A-5. Effective date. This Part takes effect July 1, 1995.

## PART B

Sec. B-1. 5 MRSA c. 437 is enacted to read:

### CHAPTER 437

#### INTERDEPARTMENTAL COUNCIL

##### §19111. Interdepartmental Council

1. Establishment. The Interdepartmental Council, referred to in this chapter as the "council," is established.

2. Membership. The council is composed of 6 members: the Commissioner of Corrections; the Commissioner of Education; the Commissioner of Children and Families; the Commissioner of Health and Developmental Services; the Director of the Office of Substance Abuse; and the chair, who is appointed by the Governor pursuant to subsection 3.

3. Chair. The Governor shall appoint a chair from among the staff within the Office of the Governor, who serves as chair at the pleasure of the Governor.

##### §19112. Goals of the council

The goals of the council are:

1. Encourage coordinated system. To encourage a statewide system of coordinated services that are responsive to the current needs of children and families and that are delivered by a partnership of public, private and nonprofit, state-level and community-based agencies and to promote access to services by all children and their families who are in need of these services;

2. Evaluate allocation of resources. To evaluate on a continuing basis the allocation of resources to ensure the availability of quality services delivered in a coordinated and efficient manner that is consistent with the needs of children and families; and

3. Develop coordinated policy. To continue the development of a comprehensive and coordinated approach to initiation and revision of policy affecting services to children and families.

##### §19113. Powers and duties

1. Duties. The council shall:

A. Meet on a regular basis; and

B. Report annually by January 15th to the Legislature on its progress in meeting the goals cited in section 19112 and its proposals for implementing those goals in the forthcoming year. A copy of the report must be submitted to the Executive Director of the Legislative Council.

2. Powers. The council may:

A. Appoint subcommittees to carry out its work. Subcommittee membership may include representatives of public and private agencies that serve youth and families and other persons with special knowledge of, responsibility for or interest in an area related to the goals of the council; and

B. Accept funds from the Federal Government, from any political subdivision of the State or from any individual, foundation or corporation and may expend these funds for purposes that are consistent with this section.

##### §19114. Children's Residential Treatment Committee

1. Establishment. There is established within the council the Children's Residential Treatment Committee, referred to in this section as the "committee," to jointly develop and coordinate the State's role in contracting for the placement and treatment of children in residential treatment centers. The committee is composed of the members of the council or their designees.

2. Responsibilities. The responsibilities of the committee are as follows.

A. The committee, in consultation with the Residential Treatment Centers Advisory Group, shall develop overall state policies for placement of children in need of treatment in residential treatment centers.

B. The committee shall develop a plan to implement those policies. The plan must include a determination of the

2 current and projected need for placement of children in  
4 residential treatment centers. The plan must also determine  
6 the number of children to be served in residential treatment  
8 centers.

10 C. The committee shall develop, in consultation with the  
12 Residential Treatment Centers Advisory Group, contract  
14 procedures for the provision of these services by  
16 community-based provider agencies consistent with the  
18 following requirements.

20 (1) Residential treatment centers desiring to provide  
22 services to children in need of placement shall submit  
24 the necessary budget data to the committee on or before  
26 May 15th of each year.

28 (2) The committee shall prepare for the State a  
30 contract to offer to the residential treatment centers  
32 by July 1st of each year that states:

34 (a) The reason for the number of children being  
36 contracted for;

38 (b) The rate established for payment for those  
40 services; and

42 (c) The basis for that rate.

44 (3) The committee shall develop an interim rate  
46 procedure that is consistent with subparagraph (4).

48 (4) If a residential treatment center has  
substantially complied with subparagraph (1) and if the  
State has not offered, in good faith, a contract to a  
residential treatment center by July 1st of each year,  
services that are currently being provided by that  
residential treatment center must be paid at a rate  
equal to the rate established immediately prior to July  
1st of each year, increased or decreased by the annual  
inflation rate as measured by the most recent Consumer  
Price Index for all Urban Consumers (CPI-U) All Items,  
published by the United States Department of Labor.  
This interim rate remains in effect for a residential  
treatment center until the State offers that  
residential treatment center a contract. The rate must  
then return to the level established immediately prior  
to July 1st of each year until a negotiated contract  
has been signed by both parties.

2 (5) The committee shall, in establishing rates, take  
4 into account the importance of recruiting and retaining  
6 qualified child care staff in the current labor  
8 market. The rates established by the committee must  
10 provide funds adequate to meet increased staff costs,  
including increased base salaries for residential child  
care staff. The Department of Health and Developmental  
Services shall increase Medicaid ceiling levels for the  
following facilities to allow adequate funding of staff  
costs to meet competitive wages statewide:

12 (a) Intermediate care facilities for persons with  
14 mental retardation; and

16 (b) Waiver homes, as approved by the Division of  
18 Mental Retardation.

20 The minimum wage reimbursement must be based on an  
22 average starting wage of \$5.25 per hour in areas with  
24 an unemployment rate of 5% or less.

26 D. The committee shall adopt rules to carry out the purpose  
28 of this section.

30 E. The committee shall establish guidelines and policies  
32 for their departments that encourage, to the maximum extent  
34 feasible, the placement of Maine children in treatment  
36 programs located within the State.

38 3. Residential Treatment Centers Advisory Group. The  
40 Residential Treatment Centers Advisory Group, as established by  
42 section 12004-I, subsection 65, consists of a representative from  
44 each residential treatment center in the State, 2 members who  
46 represent community mental health services and additional members  
48 at the discretion of the committee. All members must be selected  
annually by July 1st by the committee. The committee shall meet  
with the advisory group at least 4 times each year to review rate  
and placement policies and procedures.

#### §19115. Administration

All funds received by the council must be administered by  
the Office of the Governor. Any funds appropriated for the  
council must be appropriated to the Office of the Governor.

Sec. B-2. 5 MRSA §20005-A is enacted to read:

#### §20005-A. Auditing contracts



2           The Department of Health and Developmental Services shall  
3 perform all financial audits of the office's contractors that  
4 otherwise would have been performed by the office.

5           Sec. B-3. 5 MRSA §20044-A is enacted to read:

6           **§20044-A. Voluntary restraints**

7           1. Commitment. A person alleged to be suffering from the  
8 effects of the use of an opiate, cocaine, chloral hydrate, other  
9 narcotic, barbiturate or the excessive use of alcohol may be  
10 committed to the care of any hospital, including any state mental  
11 health institute, or any legally qualified physician having not  
12 less than 5 years' actual practice for treatment. The medical  
13 authorities of the hospital or the physician to whom the patient  
14 is committed may restrain the patient if necessary for the  
15 patient's protection for a period of not more than 90 days,  
16 subject to the provisions of subsection 2.

17           2. Agreement for personal restraint. Before any restraint  
18 may be imposed under subsection 1, a voluntary agreement must be  
19 made in writing and signed by the patient authorizing the  
20 hospital or physician to restrain the patient's actions, if  
21 necessary. The agreement must be witnessed by the patient's  
22 spouse, parent or one of the municipal officers of the city or  
23 town in which the patient resides and approved, after reasonable  
24 notice, by a Justice of the Superior Court or the judge of  
25 probate in the county where the patient resides.

26           3. Progress investigation. Any Justice of the Superior  
27 Court or the judge of probate in the county where the patient  
28 resides may require, at the court's discretion, the office to  
29 investigate the progress of the patient and, upon the  
30 certification by the office that further restraint is  
31 unnecessary, may annul that restraint agreement. If the  
32 agreement is annulled, the patient restrained must be immediately  
33 released upon the order of the court.

34           Sec. B-4. 17 MRSA §1636 is enacted to read:

35           **§1636. Posing as Indian in vending**

36           A person who is not a member of the Passamaquoddy Tribe or  
37 the Penobscot Nation and who represents oneself to be such a  
38 member while engaged in the vending of goods and wares is  
39 punishable by a fine of not more than \$250.

40           Sec. B-5. 30-A MRSA c. 201-A is enacted to read:

41           **CHAPTER 201-A**

43           **MAINE INDIAN HOUSING AUTHORITY**

44           **§4995. Create respective tribal housing authorities**

45           The Passamaquoddy Tribe, the Penobscot Nation and the  
46 Houlton Band of Maliseet Indians are authorized by Title 5,  
47 section 12004, subsection 10 to create respective tribal housing  
48 authorities. The respective tribe, nation or band shall prescribe  
49 the manner of selection of the members, their terms and grounds  
50 for removal. Except as otherwise provided in this chapter or  
clearly indicated otherwise, the Maine Housing Authorities Act  
applies to the tribal housing authorities referred to in this  
chapter as "authority" or "authorities." The power of tribal  
housing authorities may be exercised only within the Indian  
territory of the respective tribe or nation or the trust land of  
the Houlton Band of Maliseet Indians. Tribal housing authorities  
are in substitution for any tribal housing authority previously  
existing under the laws of the State and assume all the rights  
and obligations of those predecessor housing authorities. The  
presently constituted tribal housing authority of the respective  
tribe or nation continues in existence and may exercise all the  
authority previously vested by law until the respective tribe or  
nation creates the tribal housing authority authorized by this  
section.

          Sec. B-6. 32 MRSA §87-B is enacted to read:

**§87-B. Trauma-incidence registry**

          The board shall collect trauma data as follows.

          1. Registry. The board shall maintain a statewide  
trauma-incidence registry that meets the requirements of the  
federal Trauma Care Systems Planning and Development Act of 1990,  
Public Law 101-590, Section 1, 104 Stat. 2915. The board shall  
adopt rules to define trauma.

          2. Reporting by physicians and hospitals. Physicians and  
hospitals may report trauma information to the board as follows.

          A. A hospital may report to the board information regarding  
persons diagnosed as suffering from trauma. Trauma reports  
should be made no later than 30 days from the date of  
diagnosis or the date of discharge from the hospital,  
whichever is later.

          B. A physician, upon request of the board, may report to the  
board any further information requested by the board

concerning any person now or formerly under that physician's care who was diagnosed as having suffered from trauma.

C. A physician or hospital that reports in good faith in accordance with this section is not liable for any civil damages for making the report.

3. Confidentiality. Any information provided to the board under this section is confidential if the information identifies or permits the identification of a trauma patient or a member of that patient's family. A person who releases information that is confidential under this section commits a civil violation for which a forfeiture not to exceed \$1,000 per violation may be adjudged.

**Sec. B-7. Transition.** Employees assigned to the Interdepartmental Council who are transferred to the Office of the Governor as a result of this Act retain their employee rights, privileges and benefits, including sick leave, vacation and seniority. The Bureau of Human Resources shall assist with the orderly implementation of this section.

**Sec. B-8. Effective date.** This Part takes effect July 1, 1995.

## PART C

**Sec. C-1. Juvenile Corrections Review Group.** The Juvenile Corrections Review Group, referred to in this Part as the "group," is established to review the location of juvenile corrections services. The group consists of:

1. Four Legislators, appointed jointly by the President of the Senate and the Speaker of the House of Representatives, 2 of whom must serve on the Joint Select Committee on Corrections, one of whom must serve on the Joint Standing Committee on Human Resources and one of whom must serve on the Joint Standing Committee on Judiciary. Two of the Legislators appointed under this subsection must be members of the majority party and 2 must be members of the minority party;

2. Two parents of children receiving correctional services, one of whom is appointed by the Governor and one of whom is appointed jointly by the President of the Senate and the Speaker of the House of Representatives;

3. Two representatives from community advocacy organizations involved in juvenile corrections issues, one of

whom is appointed by the Governor and one of whom is appointed jointly by the President of the Senate and the Speaker of the House of Representatives;

4. One representative from the Juvenile Justice Advisory Group, appointed by the Chair of the Juvenile Justice Advisory Group;

5. One educator who has experience teaching adjudicated youth, appointed by the Governor;

6. One representative from the Department of Corrections, appointed by the Commissioner of Corrections;

7. One representative from the Department of Children and Families, appointed by the Commissioner of Children and Families; and

8. One representative from the Department of Education, appointed by the Commissioner of Education.

All appointments must be made by August 1, 1995. The Executive Director of the Legislative Council must be notified by the appointing authorities when appointments are made.

**Sec. C-2. First meeting; chair.** The Executive Director of the Legislative Council shall call the first meeting by September 1, 1995. The first order of business must be to select a chair by majority vote of the group.

**Sec. C-3. Task.** The group shall meet as often as it considers necessary to review the location within State Government of juvenile corrections services. The group shall consider the criteria set forth in "Determination and Recommendations to the Health and Social Services Transition Team Regarding Juvenile Correctional Services," Juvenile Corrections Task Force, November 4, 1993, and other juvenile corrections study reports in its review. After conducting its review, the group shall recommend whether:

1. Juvenile corrections services should be moved to a new and separate cabinet-level Department of Juvenile Corrections;

2. Juvenile corrections services should be moved to the Department of Children and Families and, if so, whether a Bureau of Juvenile Corrections should be created within that department; or

3. Juvenile corrections services should remain in the Department of Corrections.

2 The group may also make recommendations regarding improved  
3 delivery of juvenile corrections services. For the purposes of  
4 this Part, "juvenile corrections services" includes juvenile  
5 detention, probation and parole, the Maine Youth Center and  
6 community-based juvenile corrections programs.

8 **Sec. C-4. Report.** The group shall submit its report, along  
9 with any necessary implementing legislation, to the Legislature  
10 by November 1, 1995. A copy of the report must be submitted to  
11 the Executive Director of the Legislative Council.

12 **Sec. C-5. Staff.** The Legislative Council may provide staff to  
13 the group upon request.

14 **Sec. C-6. Compensation.** Members of the group are not  
15 eligible for any expenses or compensation.

16 **Sec. C-7. Effective date.** This Part takes effect July 1, 1995.

#### 20 PART D

22  
24 **Sec. D-1. Consolidation of homeless services.** The Interagency  
25 Task Force on Homelessness and Housing Opportunities, referred to  
26 in this Part as "task force," shall develop a plan to consolidate  
27 services for people who are homeless into a single agency or as  
28 few agencies as practicable. In developing the plan, the task  
29 force shall include participants representing consumers, service  
30 providers, the Department of Children and Families, the  
31 Department of Health and Developmental Services, the Department  
32 of Education, the Maine State Housing Authority and the Office of  
33 Substance Abuse. The task force shall present its findings,  
34 along with any necessary implementing legislation, to the  
35 Legislature by November 1, 1996. A copy of the report must be  
36 submitted to the Executive Director of the Legislative Council.  
37 Upon request, the Legislative Council may provide assistance to  
38 the task force in preparing legislation.

40 **Sec. D-2. Effective date.** This Part takes effect July 1, 1995.

#### 42 PART E

44  
46 **Sec. E-1. Convene chairs.** At least 2 times each year, the  
47 Commissioner of Health and Developmental Services and the  
48 Commissioner of Children and Families shall each convene the

2 chairs of the boards and committees advising that commissioner's  
3 department to foster the development of coordinated policy  
4 discussion among the various boards and committees.

6 **Sec. E-2. Review membership.** By January 1, 1996, the  
7 Commissioner of Health and Developmental Services and the  
8 Commissioner of Children and Families shall each review the  
9 membership of the boards and committees advising that  
10 commissioner's department to ensure that representation and  
11 composition of the boards and committees reflect the department's  
12 responsibilities.

14 **Sec. E-3. Consider consolidation.** By July 1, 1996, the  
15 Commissioner of Health and Developmental Services and the  
16 Commissioner of Children and Families shall each review whether  
17 the boards and committees advising that commissioner's department  
18 should be consolidated into a single board for that department.

20 **Sec. E-4. Report.** By November 1, 1996, the Commissioner of  
21 Health and Developmental Services and the Commissioner of  
22 Children and Families shall each submit a report to the Joint  
23 Standing Committee on Human Resources. Each report must specify  
24 the commissioner's activities under this Part, along with  
25 recommendations and any necessary implementing legislation. A  
26 copy of the report must be submitted to the Executive Director of  
27 the Legislative Council.

28 **Sec. E-5. Effective date.** This Part takes effect July 1, 1995.

#### 30 PART F

32 **Sec. F-1. Transition.** The following provisions apply to the  
33 reassignment of the duties and responsibilities of the Department  
34 of Human Services and the Department of Mental Health and Mental  
35 Retardation.

36  
38 1. The Department of Health and Developmental Services is  
39 the successor in every way to the powers, duties and functions of  
40 the following bureaus, divisions and programs of the Department  
41 of Human Services: the Bureau of Medical Services; the Bureau of  
42 Elder and Adult Services; the Bureau of Health; the Office of  
43 Data, Research and Vital Statistics; the Office of Health  
44 Planning and Development; and Disability Determination Services.  
45 The Department of Health and Developmental Services is the  
46 successor in every way to the powers, duties and functions of the  
47 following bureaus, divisions and programs of the Department of  
48 Mental Health and Mental Retardation: the Division of Mental  
Health; those parts of the Division of Mental Retardation that  
provide services to adults; the Augusta Mental Health Institute;

2 the Bangor Mental Health Institute; the Pineland Center; the  
Aroostook Residential Center; and the Office of Advocacy.

4 2. The Department of Children and Families is the successor  
in every way to the powers, duties and functions of the following  
6 bureaus, divisions and programs of the Department of Human  
Services: the Bureau of Child and Family Services; the Bureau of  
8 Income Maintenance; and the Division of Purchased and Support  
Services. The Department of Children and Families is the  
10 successor in every way to the powers, duties and functions of the  
following bureaus, divisions and programs of the Department of  
12 Mental Health and Mental Retardation: the Bureau of Children  
with Special Needs; and those parts of the Division of Mental  
14 Retardation that provide services to children.

16 3. Notwithstanding the provisions of the Maine Revised  
Statutes, Title 5, all accrued expenditures, assets, liabilities,  
18 balances or appropriations, allocations, transfers, revenues or  
other available funds in an account or subdivision of an account  
20 of the Department of Human Services or the Department of Mental  
Health and Mental Retardation must be transferred to the proper  
22 accounts by the State Controller upon the request of the State  
Budget Officer and with the approval of the Governor.

24 4. All rules of the Department of Human Services and the  
26 Department of Mental Health and Mental Retardation in effect on  
July 1, 1995 remain in effect until rescinded, revised or amended  
28 by the Department of Children and Families or the Department of  
Health and Developmental Services.

30 5. All contracts, agreements and compacts of the Department  
32 of Human Services and the Department of Mental Health and Mental  
Retardation in effect on July 1, 1995 remain in effect until they  
34 expire or are altered by the parties involved in the contracts or  
agreements.

36 6. All records of the Department of Human Services and the  
38 Department of Mental Health and Mental Retardation must be  
transferred to the Department of Children and Families or the  
40 Department of Health and Developmental Services, as appropriate.

42 7. All property and equipment of any bureau, division or  
44 program of the Department of Human Services or the Department of  
Mental Health and Mental Retardation are transferred to the  
46 successor agency.

48 8. Employees of the Department of Human Services or the  
50 Department of Mental Health and Mental Retardation who hold  
positions that are transferred to the Department of Children and  
Families, the Department of Health and Developmental Services or

2 another state department retain those positions in the  
3 departments to which they are transferred and retain all their  
4 employee rights, privileges and benefits, including sick leave,  
vacation and seniority, provided under the Civil Service Law or  
6 collective bargaining agreements. The Bureau of Human Resources  
within the Department of Administrative and Financial Services  
8 shall assist with the orderly implementation of this subsection.

10 **Sec. F-2. Commissioners.** Notwithstanding the Maine Revised  
Statutes, Title 22-A, section 103, the Commissioner of Human  
12 Services becomes the Commissioner of Children and Families on  
July 1, 1995 and serves at the pleasure of the Governor.  
14 Notwithstanding Title 22-B, section 103, the Commissioner of  
Mental Health and Mental Retardation becomes the Commissioner of  
16 Health and Developmental Services on July 1, 1995 and serves at  
the pleasure of the Governor.

18 **Sec. F-3. Revision clause.** Wherever in the Maine Revised  
Statutes references to the Department of Human Services, the  
20 Department of Mental Health and Mental Retardation or any bureau,  
division or program of either department appear, the Revisor of  
22 Statutes may correct the references for consistency with this Act  
when updating, publishing or republishing the statutes.

24 **Sec. F-4. Effective date.** This Part takes effect July 1, 1995.

## 26 PART G

28 **Sec. G-1. 22 MRSA §6-B** is enacted to read:

### 30 §6-B. Joint location of services

32 In cooperation with the Bureau of General Services and the  
34 Department of Mental Health and Mental Retardation, the  
36 department shall locate its service delivery sites jointly with  
38 those of the Department of Mental Health and Mental Retardation,  
subject to the following provisions.

40 1. Leases. Joint location must occur as leases expire,  
42 except as provided in subsection 2. A lease may be renegotiated  
or extended on a short-term basis in order to make its expiration  
date coincide with those of other relevant leases.

44 2. Exceptions. Joint location is not required if the costs  
46 of joint location as estimated by the Bureau of General Services  
substantially exceed the benefits of joint location as estimated  
48 by the Bureau of General Services. In estimating benefits, the  
Bureau of General Services shall consider, but is not limited to,  
the following:

2 A. Monetary savings expected from leasing fewer but larger  
4 spaces;

6 B. Administrative savings expected by either the department  
8 or the Department of Mental Health and Mental Retardation  
10 from sharing regional administrative functions;

12 C. Improved access expected for customers; and

14 D. Improved coordination and quality of services expected  
16 from greater interaction of staff across departments.

18 3. Other departments. This section does not prohibit the  
20 Bureau of General Services from including other state agencies at  
22 a joint location site. Other state agencies include, but are not  
24 limited to, the Department of Labor, the Department of the  
26 Secretary of State and the Department of Education.

28 4. Reports. The Bureau of General Services shall submit  
30 progress reports regarding the implementation of this section to  
32 the joint standing committee of the Legislature having  
34 jurisdiction over human resources matters by the following dates:

36 A. January 1, 1996;

38 B. January 1, 1998; and

40 C. January 1, 2000.

42 Sec. G-2. 34-B MRSA §1201-B is enacted to read:

44 §1201-B. Joint location of services

46 In cooperation with the Bureau of General Services and the  
48 Department of Human Services, the department shall locate its  
50 service delivery sites jointly with those of the Department of  
Human Services, subject to the following provisions.

1. Leases. Joint location must occur as leases expire,  
except as provided in subsection 2. A lease may be renegotiated  
or extended on a short-term basis in order to make its expiration  
date coincide with those of other relevant leases.

2. Exceptions. Joint location is not required if the costs  
of joint location as estimated by the Bureau of General Services  
substantially exceed the benefits of joint location as estimated  
by the Bureau of General Services. In estimating benefits, the  
Bureau of General Services shall consider, but is not limited to,  
the following:

2 A. Monetary savings expected from leasing fewer but larger  
4 spaces;

6 B. Administrative savings expected by either the department  
8 or the Department of Human Services from sharing regional  
10 administrative functions;

12 C. Improved access expected for customers; and

14 D. Improved coordination and quality of services expected  
16 from greater interaction of staff across departments.

18 3. Other departments. This section does not prohibit the  
20 Bureau of General Services from including other state agencies at  
22 a joint location site. Other state agencies include, but are not  
24 limited to, the Department of Labor, the Department of the  
26 Secretary of State and the Department of Education.

28 4. Reports. The Bureau of General Services shall submit  
30 progress reports regarding the implementation of this section to  
32 the joint standing committee of the Legislature having  
34 jurisdiction over human resources matters by the following dates:

36 A. January 1, 1996;

38 B. January 1, 1998; and

40 C. January 1, 2000.

42 Sec. G-3. 34-B MRSA §5201, as amended by PL 1993, c. 410,  
44 Pt. CCC, §28, is further amended to read:

46 §5201. Establishment

48 There is established within the Department of Mental Health  
50 and Mental Retardation the Division of Mental Retardation, which  
is responsible for:

1. Institutional programs. The supervision of adult mental  
retardation programs in the state institutions;

2. Statewide system. The planning, promotion, coordination  
and development of a complete and integrated statewide system of  
mental retardation services for adults;

3. Liaison. Serving as liaison, coordinator and consultant  
to the several state departments in order to develop the  
statewide system of mental retardation services;

2 4. Community-based services. Ensuring that mentally  
retarded persons adults with mental retardation residing in  
community residential facilities, including nursing homes,  
4 boarding homes, foster homes, group homes or halfway houses  
licensed by the Department of Human Services are provided,  
6 insofar as possible, with, residential accommodations and access  
to habilitation services appropriate to their needs; and

8 5. Protective and supportive services. Providing  
10 protective and supportive services, in accordance with section  
5203, to incapacitated persons who, with some assistance, are  
12 capable of living and functioning in society.

14 Sec. G-4. 34-B MRSA §5204, as amended by PL 1993, c. 410,  
Pt. CCC, §31, is repealed.

16 Sec. G-5. 34-B MRSA §6201, sub-§2, as enacted by PL 1985, c.  
18 503, §12, is amended to read:

20 2. Child in need of treatment. "Child in need of  
22 treatment" means:

24 ~~A. A child age 0 to 5 years who is developmentally disabled  
or who demonstrates developmental delays; and~~

26 B. A child age 6 to 20 years 17 years of age or younger who  
has treatment needs related to mental illness, mental  
28 retardation, autism, developmental disabilities or emotional  
or behavioral needs that are not under current statutory  
30 authority of existing other state agencies; or

32 C. A person 18 years of age or older and under 21 years of  
age who has treatment needs related to mental illness,  
34 mental retardation, autism, developmental disabilities or  
emotional or behavioral needs if the department has  
36 determined that it is in the interest of that person to  
receive treatment through the bureau.

38 Sec. G-6. 34-B MRSA §6205 is enacted to read:

40 §6205. Services for juveniles committed to the Maine Youth Center

42 I. Bureau authority. The bureau may provide consultation  
44 services to any juvenile with mental retardation committed to the  
Maine Youth Center if those services are requested by the  
46 Commissioner of Corrections. Consultation services may include  
participation by appropriate bureau professionals on the Clinical  
48 Services Committee of the Maine Youth Center in order to assist  
in the design of individual treatment plans to provide

2 habilitation, education and skill training to juveniles with  
mental retardation in residence at the Maine Youth Center.

4 2. Support services. Whenever a program has been designed  
for a juvenile with mental retardation by the Clinical Services  
6 Committee of the Maine Youth Center and the clinical services  
committee has included participation by the bureau professionals,  
8 the bureau shall provide, insofar as possible, support services  
to implement that program.

10 3. Case management. The bureau may provide case management  
12 services to juveniles with mental retardation who are released  
from the Maine Youth Center.

14 Sec. G-7. Administrative hearings. The Attorney General and the  
16 Commissioner of Human Services shall establish jointly a planning  
group to examine the feasibility of having the Department of the  
18 Attorney General provide administrative hearings that are  
currently provided by the Department of Human Services. The  
20 planning group may include representatives from other  
departments. The planning group may explore the broader option of  
22 consolidating in the Department of the Attorney General the  
administrative hearings from several departments. The study must  
24 include an examination of the consistency of decisions made by  
hearing officers, and must recommend minimum qualifications for  
26 hearing officers.

28 By January 1, 1995, the Attorney General and the  
30 Commissioner of Human Services shall submit a joint report to the  
joint standing committee of the Legislature having jurisdiction  
over human resources matters. If the Attorney General and the  
32 commissioner have found that it is feasible for the Department of  
the Attorney General to provide administrative hearings that are  
34 currently provided by the Department of Human Services, the  
report must include all legislation necessary to implement that  
36 transfer of responsibility.

38 Sec. G-8. Food safety. The President of the Senate and the  
Speaker of the House of Representatives shall establish jointly a  
40 process through which the joint standing committees of the  
Legislature having jurisdiction over human resources matters,  
42 agriculture matters and marine resources matters study the issue  
of food safety and present a plan to the 117th Legislature. The  
44 plan must address, but is not limited to, the following.

46 1. The plan must standardize food and beverage safety rules  
48 across agencies wherever appropriate.

2 2. The plan must reduce duplication and clarify the  
3 respective responsibilities of the various public agencies  
4 involved in food and beverage safety.

6 3. The plan must recommend reallocation of staff and  
7 resources among agencies as appropriate.

8 The process established by the President of the Senate and  
9 the Speaker of the House of Representatives must require the plan  
10 to be presented to the 117th Legislature, along with implementing  
11 legislation, by January 1, 1995.

12 **Sec. G-9. Effective date.** This Part takes effect when approved.

14  
16 **PARTH**

18 **Sec. H-1. Definition.** As used in this Part, "commissioner"  
19 means the Commissioner of Human Services until that position is  
20 abolished. When the position of Commissioner of Human Services  
21 is abolished, "commissioner" means the Commissioner of Children  
22 and Families.

24 **Sec. H-2. Single point of access.** By October 1, 1995, the  
25 commissioner shall develop a single point of access system for  
26 customers of health and social services. The system must include  
27 all services provided by or through the Department of Children  
28 and Families and the Department of Health and Developmental  
29 Services and may include the services offered by or through other  
30 agencies, including, but not limited to, the Department of Labor,  
31 the Department of Education, the Department of Corrections and  
32 the Office of Substance Abuse. The goals of the system are:

34 1. To improve the quality and consistency of information  
35 provided to customers;

36 2. To reduce the amount of time needed for customers to  
37 identify needed services;

38 3. To reduce the number of intake workers and the number of  
39 offices that a customer must visit in order to receive needed  
40 services;

41 4. To allow information from customers to be provided more  
42 efficiently with as few duplicate requests as possible made of  
43 the customer;

44 5. To provide a single access point that is geographically  
45 and financially accessible and that is acceptable to customers;

2 6. To encourage ongoing collaboration among state agencies  
3 and between state and private agencies; and

4 7. To enhance efficiency and reduce costs and duplication in  
5 State Government.

8 The commissioner shall submit an interim report by January  
9 1, 1995 and a final report by October 1, 1995 to the joint  
10 standing committee of the Legislature having jurisdiction over  
11 human resources matters. The reports must include an assessment  
12 of progress made toward the goals described in this section and  
13 any legislation needed to implement the system.

14 **Sec. H-3. Unified case coordination.** By March 1, 1996, the  
15 commissioner shall develop a unified case coordination system for  
16 customers of health and social services who have multiple needs.  
17 The system must include all services provided by or through the  
18 Department of Children and Families and the Department of Health  
19 and Developmental Services and may include the services offered  
20 by or through other agencies, including, but not limited to, the  
21 Department of Labor, the Department of Education, the Department  
22 of Corrections and the Office of Substance Abuse. The goals of  
23 the system are:

24 1. To provide comprehensive, interdisciplinary services to  
25 customers;

26 2. To reduce the barriers presented by categorical funding  
27 streams;

28 3. To allow information from customers to be provided more  
29 efficiently with as few duplicate requests as possible made of  
30 the customer;

31 4. To encourage ongoing collaboration among state agencies  
32 and between state and private agencies; and

33 5. To enhance efficiency and reduce costs and duplication in  
34 State Government.

35 The commissioner shall submit an interim report by November  
36 1, 1995 and a final report by March 1, 1996 to the joint standing  
37 committee of the Legislature having jurisdiction over human  
38 resources matters. The reports must include an assessment of  
39 progress made toward the goals described in this section and any  
40 legislation needed to implement the system.

41 **Sec. H-4. Process.** The commissioner shall establish a process  
42 to implement this Part that incorporates the principles

of total quality management. The commissioner shall attempt to have 2 process action teams chartered by the Maine Quality Management Council, one to work on the single point of access system and the other to work on the unified case coordination system. In the event that the council does not charter the process action teams recommended by the commissioner, the commissioner shall establish 2 process action teams separate from the council. In either event, the process action teams must include the participation of the Department of Children and Families, the Department of Health and Developmental Services, the Department of Labor, the Department of Administrative and Financial Services, the Office of Substance Abuse, consumers of health and social services, consumer advocates, private providers of health and social services and members of charitable and research organizations interested in case management and single point of entry systems.

**Sec. H-5. Cooperation.** The Department of Health and Developmental Services, the Department of Administrative and Financial Services, the Department of Labor, the Interdepartmental Council, the Office of Substance Abuse and any other state agency requested shall cooperate fully with the commissioner in carrying out this Part.

**Sec. H-6. Effective date.** This Part takes effect when approved.

## PART I

**Sec. I-1. Resolve 1993, c. 36** is repealed.

**Sec. I-2. Preparation of biennial budget.** The Bureau of the Budget shall ensure that the biennial budget submitted to the Legislature for fiscal years 1995-96 and 1996-97 reflects the departmental reorganization embodied in this Act. The Bureau of the Budget shall work with the Department of Human Services and the Department of Mental Health and Mental Retardation to develop the initial budgets for the Department of Children and Families and the Department of Health and Developmental Services. The following provisions apply to the development of the initial budgets.

1. It is the intent of the Legislature that, when the Medicaid program is prepared to conduct its own data processing functions and is certified to do so by the federal Health Care Finance Administration, Medicaid management information system positions related to data entry and data processing will be transferred from the Department of Children and Families to the Department of Health and Developmental Services. It is the

intent of the Legislature that these transfers occur by July 1, 1996 and earlier if appropriate.

2. It is the intent of the Legislature that one Advocate position will be transferred from the Office of Advocacy within the Department of Mental Health and Mental Retardation to the Department of Children and Families on July 1, 1995. It is the intent of the Legislature that the remaining positions in the Office of Advocacy be assigned to the Office of Advocacy within the Department of Health and Developmental Services.

3. It is the intent of the Legislature that all positions assigned by any department to the Interdepartmental Council in fiscal year 1994-95 be transferred to the Office of the Governor on July 1, 1995 for assignment to the Interdepartmental Council.

4. It is the intent of the Legislature that funds administered by the Department of Mental Health and Mental Retardation in fiscal year 1994-95 for the activities of the Interdepartmental Committee on Transition pursuant to the Maine Revised Statutes, Title 20-A, chapter 308, be transferred to the Department of Education as of July 1, 1995, and that the Department of Education be the fiscal agent for the Interdepartmental Committee on Transition.

5. It is the intent of the Legislature that all existing auditing capacity in the Department of Human Services and the Department of Mental Health and Mental Retardation will be reallocated to the Department of Health and Developmental Services and that the Department of Health and Developmental Services shall perform all financial audits for contractors doing business with itself, the Department of Children and Families and the Office of Substance Abuse if those audits would otherwise have been conducted by the Department of Health and Developmental Services, the Department of Children and Families or the Office of Substance Abuse. It is the intent of the Legislature that, beginning July 1, 1995, funds that would otherwise have been appropriated to the Office of Substance Abuse must be appropriated to the Department of Health and Developmental Services in an amount adequate to fund 2 Auditor II positions who will have as their first priority the responsibility of performing audits of Office of Substance Abuse contractors.

6. It is the intent of the Legislature that resources previously allocated to the Division of Regional Administration within the Department of Human Services must be reallocated to the Department of Children and Families, and that the Department of Children and Families shall provide regional administration functions for itself and for the Department of Health and Developmental Services, except that the Department of Health and



2 Developmental Services shall maintain its own capacity to perform  
3 regional bill payment and payroll.

4 7. It is the intent of the Legislature that the Department  
5 of Children and Families shall develop and maintain federal cost  
6 allocation plans for itself and for the Department of Health and  
7 Developmental Services.

8 **Sec. I-3. Transitional activities.** With the approval of their  
9 respective commissioners, personnel from the Department of Human  
10 Services and the Department of Mental Health and Mental  
11 Retardation may engage in any activities necessary to implement  
12 this Act in a timely manner. The Commissioner of Human Services  
13 shall make any executive branch decisions regarding the  
14 Department of Children and Families that must be made prior to  
15 July 1, 1995. The Commissioner of Mental Health and Mental  
16 Retardation shall make any executive branch decisions regarding  
17 the Department of Health and Developmental Services that must be  
18 made prior to July 1, 1995.

19 The Commissioner of Human Services and the Commissioner of  
20 Mental Health and Mental Retardation shall cooperate to ensure  
21 that any federal approval required to implement any part of this  
22 Act is requested and received. If either commissioner determines  
23 that federal approval will not be obtained for any part of this  
24 Act, that commissioner shall immediately notify the joint  
25 standing committee of the Legislature having jurisdiction over  
26 human resources matters and the Executive Director of the  
27 Legislative Council.

28 **Sec. I-4. Committee bill.** By November 1, 1994, the Joint  
29 Standing Committee on Human Resources shall submit legislation to  
30 correct errors, inconsistencies and unintended policy changes  
31 that result from this Act. The Legislative Council shall provide  
32 staff assistance to the committee for the preparation of the bill.

33 **Sec. I-5. Appropriation.** The following funds are appropriated  
34 from the General Fund to carry out the purposes of this Part.

35 **1994-95**

36 **EDUCATION, DEPARTMENT OF**

37 **Division of Finance**

38 Personal Services	\$22,354
39 All Other	750
40 Capital Expenditures	2,300

2 Provides for the appropriation of funds for  
3 one Project Management Analyst II position  
4 and related expenses through December 1994  
5 to develop a cost allocation plan.

6 **DEPARTMENT OF EDUCATION**  
7 **TOTAL**

\$25,404

8 **HUMAN SERVICES, DEPARTMENT OF**

9 **Administration - Human Services**

10 Personal Services

\$49,037

11 Provides for the appropriation of funds  
12 including 2 Project Accountant II positions  
13 and one Project Systems Analyst position  
14 from December 1994 to May 1995 to develop  
15 cost allocation plans.

16 **DEPARTMENT OF HUMAN SERVICES**  
17 **TOTAL**

\$49,037

18 **TOTAL APPROPRIATIONS**

\$74,441

19 **Sec. I-6. Allocation.** The following funds are allocated from  
20 the Federal Expenditure Fund to carry out the purposes of this  
21 Part.

**1994-95**

22 **HUMAN SERVICES, DEPARTMENT OF**

23 **Administration - Human Services**

24 Personal Services

\$47,693

25 Provides for the allocation of funds  
26 including one Project Management Analyst II  
27 position, one Project Systems Programmer  
28 position and one Project Clerk Typist II  
29 position from December 1994 to May 1995  
30 to develop cost allocation plans.

31 **DEPARTMENT OF HUMAN SERVICES**  
32 **TOTAL**

\$47,693

2 **Sec. I-7. Effective date.** This Part takes effect when approved.

4 **Emergency clause.** In view of the emergency cited in the  
6 preamble, this Act takes effect when approved, unless otherwise  
8 indicated.

10 **STATEMENT OF FACT**

12 This bill is presented by the Health and Social Services  
14 Transition Team in accordance with Resolve 1993, chapter 36. As  
16 of July 1, 1995, it abolishes the Department of Human Services  
and the Department of Mental Health and Mental Retardation and  
creates 2 new departments: the Department of Children and  
Families and the Department of Health and Developmental Services.

18 Part A repeals the Maine Revised Statutes, Title 22 and  
Title 34-B and enacts 2 new Titles: Title 22-A and Title 22-B.

20 Part B makes amendments to other Titles of the Maine Revised  
22 Statutes.

24 Part C includes the transition team's recommendations in the  
area of juvenile corrections.

26 Part D includes the transition team's recommendations in the  
28 area of homeless services.

30 Part E includes the transition team's recommendations in the  
area of advisory boards.

32 Part F includes transitional items necessary to ensure a  
34 smooth transition from the existing departments to the new ones.

36 Part G includes statutory amendments that the transition  
38 team is recommending for immediate enactment. It also includes  
the team's recommendations in the areas of administrative  
hearings and food safety.

40 Part H requires the development of single point of access  
42 and unified case coordination systems. Part H takes effect  
immediately, allowing work on those systems to begin immediately.

44 Part I includes transitional items that must take effect  
immediately in order to prepare for the new departments. Part I

2 includes appropriations and allocations needed to prepare new  
4 federal cost allocation plans for the new departments and for the  
6 Department of Education.

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12 This document has not yet been reviewed to determine the  
need for cross-reference, stylistic and other technical  
amendments to conform existing law to current drafting standards.