

MAINE STATE LEGISLATURE

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L.D. 664

DATE: 6/26/95

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HUMAN RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 483, L.D. 664, Bill, "An Act Regarding the Functioning of the Department of Mental Health and Mental Retardation and Several Professional Regulatory Boards"

Amend the bill in Part A by striking out all of section 24 and inserting in its place the following:

'Sec. A-24. 32 MRSA §281, as amended by PL 1995, c. 57, §2, is further amended to read:

§281. Exemptions

1. Charitable, educational, religious or nonprofit organizations. The provisions of this chapter shall do not apply to individuals who conduct a sale or auction for a charitable, educational, religious or other nonprofit organization, provided that the charity retains the total amount of the proceeds with the exception of advertising fees and the person conducting the sale or auction receives no fee for his services.

2. Sheriffs, tax collectors, executors and administrators. This chapter shall does not apply to sheriffs or their deputies, constables, tax collectors, executors, administrators or any other officers authorized to sell property by order of any court.

3. Pedigreed animals. This chapter shall does not prohibit any person employed by the owner of pedigreed animals ~~to sell~~ from selling those animals at public auction.

COMMITTEE AMENDMENT

RWS

2 4. **Foreclosure sales.** This chapter shall ~~shall~~ does not apply to
any individual conducting a foreclosure sale pursuant to a court
order.

4 5. **Tax-acquired property.** This chapter does not apply to
6 the sale by or on behalf of a municipality of any real or
personal property acquired by that municipality for nonpayment of
8 taxes.'

10 Further amend the bill by striking out all of Part B and
inserting in its place the following:

12 **PART B**

14 **Sec. B-1. 5 MRSA §20005-A, sub-§4** is enacted to read:

16 4. **Procedures.** The following procedures apply whenever the
18 director commences a request-for-proposal procedure.

20 A. The director shall hold at least one informational
22 meeting at least 3 months before the due date for submission
24 of the notice of intent to bid. Any informational meeting
26 must be advertised in newspapers of general circulation
28 stating the location, date, time and purpose of the
meeting. At the meeting the director shall provide detailed
information to any interested party about the contract to be
bid or rebid, provide notice of anticipated major changes
from any previous contract and respond to questions.

30 B. The director shall require any interested party to
32 submit a notice of intent to bid at least 3 months before
34 the date bids will be accepted as a precondition to
36 submitting a formal bid. The notice of intent must contain
minimal requirements that demonstrate a prospective bidder's
competence and ability to comply with the requirements of
the contract.

38 C. If only one community service provider submits a notice
40 of intent to bid, the director may enter into negotiations
42 concerning a contract with that provider in accordance with
the procedures established for performance-based contracts.

44 D. For purposes of this section, the director retains the
right to reject any bids submitted and any proposals made
during negotiations pursuant to paragraph C.

46 **Sec. B-2. 22 MRSA §12-A, sub-§4** is enacted to read:

48 4. **Procedures.** The following procedures apply whenever the
50 commissioner commences a request-for-proposal procedure.

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2 A. The commissioner shall hold at least one informational
4 meeting at least 3 months before the due date for submission
6 of the notice of intent to bid. Any informational meeting
8 must be advertised in newspapers of general circulation
10 stating the location, date, time and purpose of the
12 meeting. At the meeting the commissioner shall provide
14 detailed information to any interested party about the
16 contract to be bid or rebid, provide notice of anticipated
18 major changes from any previous contract and respond to
20 questions.

22 B. The commissioner shall require any interested party to
24 submit a notice of intent to bid at least 3 months before
26 the date bids will be accepted as a precondition to
28 submitting a formal bid. The notice of intent must contain
30 minimal requirements that demonstrate a prospective bidder's
32 competence and ability to comply with the requirements of
34 the contract.

36 C. If only one community service provider submits a notice
38 of intent to bid, the commissioner may enter into
40 negotiations concerning a contract with that provider in
42 accordance with the procedures established for
44 performance-based contracts.

46 D. For purposes of this section, the commissioner retains
48 the right to reject any bids submitted and any proposals
50 made during negotiations pursuant to paragraph C.

Sec. B-3. 34-B MRSA §1208-A, sub-§4 is enacted to read:

32 **4. Procedures.** The following procedures apply whenever the
34 commissioner commences a request-for-proposal procedure.

36 A. The commissioner shall hold at least one informational
38 meeting at least 3 months before the due date for submission
40 of the notice of intent to bid. Any informational meeting
42 must be advertised in newspapers of general circulation
44 stating the location, date, time and purpose of the
46 meeting. At the meeting the commissioner shall provide
48 detailed information to any interested party about the
50 contract to be bid or rebid, provide notice of anticipated
 major changes from any previous contract and respond to
 questions.

B. The commissioner shall require any interested party to
 submit a notice of intent to bid at least 3 months before
 the date bids will be accepted as a precondition to
 submitting a formal bid. The notice of intent must contain

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minimal requirements that demonstrate a prospective bidder's competence and ability to comply with the requirements of the contract.

C. If only one community service provider submits a notice of intent to bid, the commissioner may enter into negotiations concerning a contract with that provider in accordance with the procedures established for performance-based contracts.

D. For purposes of this section, the commissioner retains the right to reject any bids submitted and any proposals made during negotiations pursuant to paragraph C.'

Further amend the bill by inserting before the emergency clause the following:

PART C

Sec. C-1. 5 MRSA c. 148-B, as amended, is repealed.

Sec. C-2. 5 MRSA c. 148-C is enacted to read:

CHAPTER 148-C

MAINE UNIFORM ACCOUNTING AND AUDITING PRACTICES ACT FOR COMMUNITY AGENCIES

§1660-C. Short title

This chapter may be known and cited as the "Maine Uniform Accounting and Auditing Practices Act for Community Agencies."

§1660-D. Definitions

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

1. Agreement. "Agreement" means a legally binding written document between 2 or more parties, including, but not limited to, a document commonly referred to as an accepted application, proposal, prospectus, contract, grant, joint or cooperative agreement, purchase of service or state aid.

2. Agreement funds; agreement funding. "Agreement funds" or "agreement funding" means all agreement funds received by a community agency from the department. It includes state and federal pass-through funds.

2 3. Commissioner. "Commissioner" means the Commissioner of
Human Services and the Commissioner of Mental Health and Mental
4 Retardation, who share joint responsibility for the
administration of this chapter.

6 4. Community agency. "Community agency" means any public
or private nonprofit organization, firm, individual, partnership
8 or business corporation operated for profit that:

10 A. Operates a social service program at the community level;

12 B. Receives public funds, either directly or indirectly,
from one or more state departments or agencies;

14 C. Is not an administrative unit of the Federal Government
or State Government; and

18 D. Is not exclusively a health care facility within the
meaning of Title 22, section 382, subsection 6.

20 5. Community agency fiscal year. "Community agency fiscal
22 year" means the fiscal year of a community agency commencing on
or after July 1, 1995.

24 6. Department. "Department" means the Department of Human
26 Services, the Department of Mental Health and Mental Retardation
and the Office of Substance Abuse, as well as other departments
28 and agencies of State Government approved for inclusion in this
chapter by the commissioner.

30 7. Department examination. "Department examination" means
32 actions determined to be necessary by the department's audit
division, including, but not limited to, analyses or testing of
34 reported agreement balances and transactions, provision of
internal control systems and compliance with rules. Examinations
36 conducted by the department may be of a limited scope basis and
need not be done in accordance with government auditing standards.

38 8. Department review. "Department review" means a review
40 by the department of a community agency's submitted annual
financial statement report. Review may include desk or quality
42 control reviews or such other reviews as the department may
establish by rule. Reviews are done for the purpose of accepting
44 or rejecting the audit submission for federal and state
department purposes or for the purpose of financially closing out
46 the agreements for the department.

48 9. Dollar threshold. "Dollar threshold" means a funding
limit that is set to determine how a community agency will be
50 held accountable for agreement receipts of state and federal

1 funds from the department. This term governs the community
2 agency's annual reporting requirements for agreement receipts and
4 it is measured on an entitywide basis based on the community
agency fiscal year.

6 **10. Entitywide financial reporting.** "Entitywide financial
reporting" means financial statements and agreement supplemental
8 schedules of a community agency prepared based on its fiscal
year. At a minimum, the supplemental schedules of the agreements
10 must identify opening and ending balances and receipts and
disbursements for each agreement.

12 **11. Federal audit.** "Federal audit" means an audit made
14 pursuant to the federal Office of Management and Budget Circulars
A-128 or A-133 or any subsequent revisions to these circulars.
16 The federal audit must be conducted by qualified independent
public accountants.

18 **12. Federal funds.** "Federal funds" means all federal funds
20 received by a community agency and not just those agreements
received from the department. It includes federal direct,
22 indirect and pass-through funds from all sources.

24 **13. Generally accepted accounting principles.** "Generally
accepted accounting principles" means uniform minimum standards
26 and guidelines for financial accounting and reporting ordinarily
employed by skilled accountants and agreed upon by authoritative
28 practitioners of recognized professional standing, such as the
American Institute of Certified Public Accountants and other
30 recognized professional bodies.

32 **14. Government auditing standards.** "Government auditing
standards" means auditing standards promulgated by the
34 Comptroller General of the United States.

36 **15. Independent public accountant.** "Independent public
accountant" means a person who complies with government auditing
38 standards and who is one of the following:

40 A. A licensed certified public accountant or person working
for a licensed certified public accounting firm; or

42 B. A public accountant licensed on or before December 31,
44 1970 or a person working for a public accounting firm
licensed on or before December 31, 1970.

46 **16. Nonparticipating department.** "Nonparticipating
48 department" means a department or division of State Government
other than one defined as a department in this section that has

not been approved for inclusion in this chapter by the commissioner.

17. Nonprofit organization. "Nonprofit organization" means any agency, institution or organization that consists of 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.

18. Public. "Public" means a municipal, county or other governmental body that is a political subdivision within the State.

19. Risk pool. "Risk pool" means utilizing and assessing risk factors for determining the need for an examination of an agreement. Such risk factors may include the value of the agreement and the prior and current community agency historical profile.

20. Social service. "Social service" means any social services program funded in whole or in part through an agreement issued by the department. Medicaid funding is excluded unless specifically identified as a social service program in an agreement award.

§1660-E. Report

The commissioner shall report annually to the joint standing committee of the Legislature having jurisdiction over state and local government matters on the implementation of this chapter.

§1660-F. Standard accounting practices

The commissioner shall adopt rules no later than 180 days after the effective date of this section that must contain the requirements for the state report for the department and, at a minimum, the following requirements.

1. Accounting systems and reporting. Community agencies shall maintain an accounting system in accordance with rules adopted by the commissioner. The rules must require annual entitywide financial reporting to the department. The annual reporting requirements and the related dollar thresholds of accountability are as follows.

A. If the community agency receives at least \$25,000 and less than \$300,000 of agreement funding from the department, the agency must have an entitywide compilation of financial statements and agreement supplemental schedules prepared by a qualified independent public accountant.

2 B. If the community agency receives \$300,000 or more of
4 agreement funding from the department, the agency must have
6 an entitywide financial and compliance report, audit or
8 review of the agency's financial statements and agreement
 supplemental schedules prepared by a qualified independent
 public accountant in accordance with the reporting
 requirements for the department.

10 2. Internal control structures. A community agency shall
12 maintain and utilize internal control structures adequate to
14 provide reasonable assurance that federal, state and other funds
 are managed and expended in compliance with applicable laws,
 rules and agreement terms.

16 3. Access to records. A community agency shall permit
18 independent private and governmental auditors to have access to
20 the agency's records and financial statements to ensure
 compliance with applicable laws, rules and agreement terms.

22 4. Record retention. A community agency shall retain
24 accounting and operational records for at least 3 years after
 expiration of the agency's fiscal year or longer if required by
 circumstances such as appeals or litigation.

26 **§1660-G. Standard audit practices**

28 The commissioner shall adopt rules no later than 180 days
30 after the effective date of this section containing at least the
 following requirements for audit practices.

32 1. Federal requirement. All federal audits prepared for
34 agencies to which section 1660-F, subsection 1, paragraphs A and
36 B apply must be performed by qualified independent public
38 accountants. Agencies to which section 1660-F, subsection 1,
 paragraphs A and B apply must obtain audits that satisfy the
 federal audit requirement. Department auditors shall oversee
 these federal audit report submissions.

40 2. Department requirement. A community agency must satisfy
42 the department financial and compliance reporting requirement by
44 either entering a risk pool for review or examination by the
 department or hiring an independent public auditor.

46 A. All community agencies to which section 1660-F,
48 subsection 1, paragraph A applies that do not elect to
 satisfy the reporting requirements of the department by
 utilizing qualified independent public accountants must
50 enter a risk pool. Auditors for the department shall review
 the community agencies' annual entitywide compilation report

of agreement funds to determine the need for additional procedures based on assessment of risk.

B. All community agencies to which section 1660-F, subsection 1, paragraph A applies may utilize and all community agencies to which section 1660-F, subsection 1, paragraph B applies must utilize qualified independent public accountants to satisfy the financial and compliance reporting requirements of the department. The department shall oversee the community agency report submissions.

§1660-H. Rulemaking

The commissioner shall adopt rules, no later than 180 days after the effective date of this section, establishing uniform standards when administering agreements with a community agency. These rules must address the following subjects: community agency accounting, reporting and auditing standards; department program responsibilities; program compliance requirements; entitywide standard cost principles; agreement register; audit responsibilities; standards and procedures for departmental examinations; appeals and resolution process; and sanctions and timetables for accountability.

§1660-I. Responsibilities of parties

The responsibilities of the parties under this chapter are as follows.

1. Community agency. A community agency shall:

A. Maintain accounting records in accordance with department rules;

B. Prepare and submit annual entity financial statements and agreement supplemental schedules in accordance with department rules; and

C. Meet the federal and department audit requirement.

2. Department. The department shall:

A. Adopt rules establishing accounting and auditing practices for community agencies, including, but not limited to, agreement reporting as part of the annual entitywide financial statement presentation; standards of accountability for community agencies; and audit requirements and standards for the department;

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B. Provide community agencies the necessary training concerning the requirements of this chapter;

C. Review federal audits done by qualified independent public accountants in accordance with the applicable and prevailing federal Office of Management and Budget circulars. These reviews must be desk reviews of audit report submissions and quality control reviews of independent public accountant workpapers when necessary;

D. Review state audit reports performed for the department by qualified independent public accountants;

E. Review community agency entitywide compiled financial statement and agreement supplemental schedule submissions and determine the need for department examination;

F. Examine agreement funds based on an assessment of risk factors. These examinations may be limited in scope and need not be performed in accordance with government audit standards. Risk assessment must be the basis for determining the additional procedures to be employed to close out the agreements; and

G. Provide technical advice and act as a liaison between all interested parties.

3. Other. The Office of Substance Abuse and any other agency of State Government utilizing department audit services shall reimburse the department performing their audit services.

§1660-J. Nonparticipating department

A nonparticipating department may not authorize agreement compliance and cost principles to be administered or conduct audits of community agencies unless the department has informed the commissioner that the department will adopt all provisions of this chapter and the department demonstrates the ability to do so. All audits performed in accordance with the provisions of this chapter and rules adopted pursuant to it must satisfy all department requirements.

§1660-K. Emergency provision

The commissioner may utilize the risk pool provisions of section 1660-G for all audits not initiated or completed as of the effective date of this section.

§1660-L. Advisory Committee to the Commissioner

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2 There is established the Advisory Committee to the
3 Commissioner, referred to in this section as the "advisory
4 committee." The advisory committee must be appointed by the
5 commissioner and consists of 7 members. Three members must
6 represent the Department of Human Services, the Department of
7 Mental Health and Mental Retardation and the Office of Substance
8 Abuse. Three members must represent community agencies. One
9 member must represent the independent audit community. The chair
10 must be elected by the committee from its members. All members
11 of the advisory committee serve without compensation or
12 reimbursement for expenses. The advisory committee must prepare
13 an annual written report to the Legislature on the experience of
14 the department with this chapter.

15 **§1660-M. Appeals**

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17 Any person aggrieved under this chapter is entitled to
18 judicial review, as provided in the Maine Administrative
19 Procedure Act. The commissioner shall consult with the Advisory
20 Committee to the Commissioner about additional appeal procedures
21 and may adopt rules providing for such procedures.

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23 **Sec. C-11. 5 MRSA §12004-I, sub-§29, as enacted by PL 1987, c.**
24 **786, §5, is repealed.'**

25 Further amend the bill by striking out all of the fiscal
26 note and inserting in its place the following:

27 **FISCAL NOTE**

	1995-96	1996-97
REVENUES		
Other Funds	\$11,025	(\$3,500)

36
37 Changing the current \$250 biennial licensing fee to an
38 annual \$200 fee will result in a net increase in dedicated
39 revenue to the Acupuncture Licensing Board. In fiscal year
40 1995-96, the estimated increase in dedicated revenue is \$8,750
41 and in fiscal year 1996-97, the estimated reduction in dedicated
42 revenue is \$3,500 for a net increase of \$5,250 in dedicated
43 revenue collected by the board over the biennium.

44
45 Increasing the biennial licensing fee from \$100 to \$125 will
46 result in an increase of \$8,525 in dedicated revenue to the Board
47 of Licensing of Auctioneers in fiscal year 1995-96. This
48 increase in revenues will be offset by the exemption of small
auctioneers from licensing fees, which will decrease dedicated

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2 revenues to the board by an estimated \$6,250 in fiscal year 1995-96 for a net increase in board revenues of \$2,275.

4 The additional costs to hold informational meetings as part of the request-for-proposal process can be absorbed by the Department of Human Services, the Department of Mental Health and Mental Retardation and the Office of Substance Abuse utilizing existing budgeted resources.

10 The Department of Human Services and the Department of Mental Health and Mental Retardation will realize some minor savings from streamlining the audit process. Although the overall amount recalled as a result of the audit is not expected to change, the departments may be able to identify the amounts owed the State sooner under these new provisions.

16 Transferring the responsibility for administrative oversight of state accounting and auditing practices for community agencies will result in minor savings to the Department of Administrative and Financial Services.'

22 **STATEMENT OF FACT**

24 This amendment strikes a section in Part A of the bill to reflect the change made by Public Law 1995, chapter 57, section 2, which added a new subsection to the section. The amendment affects Part B of the bill concerning performance-based contracting. It adds requirements for contracting by the Director of the Office of Substance Abuse, the Commissioner of Human Services and the Commissioner of Mental Health and Mental Retardation. It requires that contracts from these entities that go through the request-for-proposal procedure be advertised and preceded by an informational meeting. It allows a negotiated contract process if only one bidder is interested. It allows the contracting entities to reject any bids and any proposals submitted during negotiations.

38 This amendment updates the Maine Uniform Accounting and Auditing Practices Act for Community Agencies. It brings the State into compliance with federal law and enhances accountability for agreements between state departments and community agencies.

44 It helps prevent duplicative audits of community agencies and overlapping, uncoordinated and contradictory reporting requirements. It strengthens standardized accounting and audit practices.

COMMITTEE AMENDMENT "A" to H.P. 483, L.D. 664

2 The amendment allows a department, as defined in the Maine
Revised Statutes, Title 5, section 1660-D, to utilize the risk
4 pool concept to assess and resolve a backlog of cases that are
currently pending before the department.

6 It replaces the fiscal note to the bill.