

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1037, L.D. 1394, Bill, "An Act to Prohibit the Use of State Funds by Health Care Providers to Influence Union Organizing"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 22 MRSA §1862, sub-§1, ¶B, as enacted by PL 1983, c. 473, is amended to read:

B. Influencing employees respecting unionization, ~~when costs for these activities are disallowed for reimbursement pursuant to Medicare law and regulation.~~

Sec. 2. 22 MRSA §1862, sub-§5 is enacted to read:

5. State funds. "State funds" means all funds received from the State or administered by the State.

Sec. 3. 22 MRSA §1863, as enacted by PL 1983, c. 473, is repealed.

Sec. 4. 22 MRSA §1864, first ¶, as enacted by PL 1983, c. 473, is amended to read:

~~To the extent consistent with Medicare and Medicaid law and regulation, disallowed expenditures shall~~ Unless prohibited by federal law or regulation, the term "disallowed expenditures" does not include amounts paid to any person for services rendered as follows:

2 **Sec. 5. 22 MRSA §1864, sub-§4**, as enacted by PL 1983, c. 473,
is amended to read:

4 **4. Attorneys' fees.** Expenses for attorneys' fees arising
out of a court or agency proceeding or appeal or in preparation
6 ~~therefor~~ for a proceeding or appeal; or

8 **Sec. 6. 22 MRSA §1865, sub-§1**, as enacted by PL 1983, c. 473,
is amended to read:

10 **1. Report.** Each health care institution ~~which~~ that receives
12 funds from the ~~department~~ State shall annually report to the
department the amount paid to any person for the purpose of
14 influencing its employees, respecting unionization, or attempts
to coerce employees to otherwise interfere with or restrain the
16 exercise of employee rights to organize and choose
representatives for the purpose of negotiating the terms and
18 conditions of their employment or other mutual aid or protection.

20 **Sec. 7. 22 MRSA §1865-A** is enacted to read:

22 **§1865-A. Enforcement**

24 **1. Complaint.** A person who believes that a health care
institution has made a disallowed expenditure may file a
26 complaint with the department. The department shall investigate
all such complaints and make a preliminary determination as to
28 whether a disallowed expenditure has been made. The department
shall also make a preliminary determination in response to
30 notification from auditors or department employees charged with
overseeing the institution.

32 **2. Investigation.** The preliminary determination under
34 subsection 1 must be provided to the complaining party and to the
health care institution within 30 days of the complaint. Either
36 party aggrieved by the preliminary determination of the
department may request a hearing before an arbitrator selected by
38 the department, which may be an arbitrator associated with the
Department of Labor or other governmental entity or a private
40 arbitrator knowledgeable in labor law. That arbitrator has the
same powers as arbitrators under Title 26, section 965,
42 subsection 4. The parties shall share equally in the cost of the
arbitrator. The arbitrator's decision is binding upon, and must
44 be adopted as the decision of, the department. That decision may
be appealed as a final agency action pursuant to Title 5, chapter
46 375, subchapter VII.

48 **3. Disallowed expenditures.** If the disallowed expenditure
was made with Medicaid or Medicare funds, the department shall
50 withhold an amount equal to a proportional share of the amount of

2 the disallowed expenditure, according to a schedule determined by
3 the department, from future payments of medical assistance
4 reimbursements to be received by the health care institution.

6 4. Expenditures of non-Medicaid or Medicare funds. If the
7 disallowed expenditure was made with state funds other than
8 Medicaid or Medicare, the department shall notify the state
9 department or agency that provided the funds, which shall recover
10 the disallowed expenditure by withholding that amount from future
11 payments or by an action to recover those funds.

12 5. Withholding stayed pending appeal. If an agency or
13 court determination of a violation is under appeal pursuant to
14 subsection 2, the withholding to recover a disallowed expenditure
15 must be stayed pending a final adverse decision against the
16 health care institution.

18 6. Presumption regarding paid attendance at meetings
19 relating to unionization. If a health care institution requires
20 and pays for attendance at a meeting by employees whose duties
21 are normally paid for in whole or in part by state funds and the
22 meeting relates to the issue of unionization, the institution is
23 presumed to have made a disallowed expenditure in an amount equal
24 to the proportion of the cost of the meeting that is the same as
25 the proportion of state funds paid to that institution during the
26 fiscal year in which the meeting occurs to total revenue.'

28 Further amend the bill by inserting at the end before the
29 summary the following:

32 **FISCAL NOTE**

34 The Department of Human Services will incur some minor
35 additional costs to investigate claims that health care
36 institutions used state funds or state-administered funds to
37 influence unionization and take steps to recover the disallowed
38 expenditure. These costs can be absorbed within the department's
39 existing budgeted resources.'

42 **SUMMARY**

44 This amendment replaces the bill. It amends current law
45 relating to disallowed expenditures by health care institutions
46 to prohibit use of all state funds and state-administered funds
47 to influence unionization, not just Medicaid and Medicare funds.
48 It provides that the Department of Human Services makes an
49 initial decision regarding the expenditure and that determination
50 may be submitted to an arbitrator before being appealed to

2 court. It provides a presumption that disallowed expenditures
3 were made if an institution requires attendance at a meeting
4 regarding unionization during the work time of employees whose
5 salaries are paid in whole or in part by state funds. The amount
6 of the disallowed expenditure for the meeting is a proportion of
7 the cost that is the same as the proportion of state funds to all
8 revenue for the institution. It also adds a fiscal note to the
bill.