

MAINE STATE LEGISLATURE

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DATE: 5-22-03

(Filing No. S-233)

HEALTH AND HUMAN SERVICES

Reported by: *Majority*

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**STATE OF MAINE
SENATE
121ST LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 444, L.D. 1356, Bill, "An Act To Provide Fair Hearing Procedures in the Department of Human Services"

Amend the bill by striking out the title and substituting the following:

'An Act To Improve Complaint Resolution and Hearing Procedures in the Department of Human Services'

Further amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

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

Sec. 1. 22 MRSA §13, sub-§6 is enacted to read:

6. Limitation on actions to recover overpayments. The department may impose a sanction or withhold payment from a MaineCare provider in order to recover or impose penalties for an overpayment for services rendered or goods delivered under the MaineCare program as provided in this subsection.

A. The department may impose a sanction or withhold payment when the department has obtained an order from Superior Court allowing interim sanctions upon showing a substantial likelihood that overpayment or fraud has occurred or that substantial harm to the department will result from further delay or when the department has taken final agency action and the provider has waived or exhausted its right to judicial review.

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2 B. Notwithstanding paragraph A, the department may
3 terminate or suspend the participation of a provider in the
4 MaineCare program in lieu of recoupment pending final
5 determination regarding an overpayment as long as 30 days'
6 notice is given.

7 **Sec. 2. 22 MRSA §42, sub-§7, as enacted by PL 2001, c. 666,**
8 **Pt. C, §1, is amended to read:**

9 **7. Appeal process.** The department shall amend the rules
10 governing appeals of informal review decisions of Medicaid
11 MaineCare payment and cost report audit and review issues filed
12 by MaineCare providers of nursing facility services and medical
13 ~~and remedial private nonmedical institution services~~ of goods and
14 services or initiated by the department and any other informal
15 review decisions that seek to impose repayment, recovery or
16 recoupment obligations or sanctions or fines on providers as
17 provided in this subsection.

18 A. The department shall give to the provider involved in an
19 informal review decision written notice of the appeal
20 process and the time period for filing a notice of appeal.

21 ~~B. The department shall contract with a person or persons~~
22 ~~who are not employees of the department for independent,~~
23 ~~impartial hearing officer services.~~

24 C. Compensation under the any contract into which the
25 department enters for hearing officer services may reflect
26 the number of appeals on which recommendations are made by
27 the hearing officer and may not reflect the substance of the
28 recommendations made by the hearing officer.

29 D. The hearing officer shall conduct a hearing de novo on
30 issues raised in the notice of appeal filed by the provider
31 and shall in a timely manner render a written recommendation
32 based on the record and in accordance with applicable state
33 and federal law, rule and regulation. The hearing officer
34 shall provide a copy of the recommendation to the department
35 and to the provider along with notice of the opportunity to
36 submit written comments to the commissioner.

37 E. The recommendation of the hearing officer must be
38 forwarded to the commissioner for a final decision, based on
39 the record, which must include any written comment submitted
40 in a timely manner by the provider and the department. The
41 commissioner may adopt, adopt with modification or reject
42 the recommendation of the hearing officer. The commissioner
43 shall issue a final decision in writing, which must include
44 the reasons for any departure from the recommendation of the
45

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2 hearing officer and notice of the process for appeal
3 pursuant to Title 5, chapter 375, subchapter VII 7. If the
4 commissioner deviates from a prior decision cited in the
5 course of a proceeding, the final decision must include an
6 explanation of the reason that the prior decision was not
7 followed.

8 F. By July 1, 2004 the department shall make available on
9 its publicly accessible site on the Internet the decisions
10 in all MaineCare provider appeals beginning January 1, 2004,
11 including the recommendations of the hearing officer and the
12 decision of the commissioner.

13 (1) The site must include a search feature allowing
14 users to obtain information on specific issues of
15 interest.

16 (2) The site must protect information that is personal
17 or confidential.

18 G. In lieu of the appeal procedure provided in this
19 subsection, the parties may choose arbitration by a
20 qualified arbitrator or panel of arbitrators as provided in
21 this paragraph. By January 1, 2004, the department shall
22 adopt rules to implement this paragraph that are consistent
23 with federal law and regulation. Rules adopted pursuant to
24 this paragraph are routine technical rules as defined in
25 Title 5, chapter 375, subchapter 2-A.

26 (1) The arbitrator or panel of arbitrators must be
27 selected and compensated as agreed by the parties.

28 (2) Arbitration under this paragraph is available only
29 when the amount in controversy is \$10,000 or less and
30 the subject matter in controversy is assessments,
31 recovery or recoupment orders, sanctions or
32 administrative fines.

33 (3) A provider choosing arbitration under this
34 paragraph may waive any right of appeal.

35 H. In an administrative appeal of an informal review
36 decision under this subsection, the department bears the
37 burden of proving a violation of law or rule by a
38 preponderance of the evidence. If the department proves
39 that records of goods or services are defective, the
40 department may impose the sanction of total recoupment only
41 when the provider has failed to demonstrate by a
42 preponderance of the evidence that the disputed goods or
43 services are defective.

2 services were actually provided to eligible MaineCare
members.

4 The department shall provide funding for contractual services
 under this subsection from within existing resources.

6 **Sec. 3. 22 MRSA §48** is enacted to read:

8 **§48. Provider relations**

10 Department personnel assigned to MaineCare provider
 12 relations shall assist MaineCare providers in addressing and
 14 resolving in a cost-effective and expeditious manner any
 16 disagreements between the department and providers or groups of
 18 providers. Provider relations personnel shall receive and
 20 investigate complaints and concerns from providers regarding the
 22 MaineCare program and the MaineCare reimbursement prior to
informal review or administrative hearing. In performing their
duties under this subsection, the provider relations personnel
must have access to the Director of the Bureau of Medical
Services. The department shall implement the provisions of this
section within existing resources.

24 **Sec. 4. 22 MRSA §1714-A, sub-§2**, as amended by PL 2001, c.
 596, Pt. B, §4 and affected by §25, is further amended to read:

26 **2. Establishment of debt.** A debt is established by the
 28 department when it notifies a provider of debt that the provider
 owes the department pursuant to a ~~final-reconciliation~~ decision
 30 and order that constitutes final agency action. A debt is
 collectible by the department 31 days after exhaustion of all
 32 administrative appeals and any judicial review available under
 Title 5, chapter 375.

34 **Sec. 5. 22 MRSA §1714-A, sub-§5**, as enacted by PL 1991, c.
 568, §4, is amended to read:

38 **5. Department may offset.** The department may offset
 against current reimbursement owed to a provider or any entity
 40 related by ownership or control to that provider any debt it is
 owed by that provider after the debt becomes collectible. The
 42 department shall adopt rules that implement this subsection and
define the ownership or control relationships that are subject to
 44 an offset under this subsection. Rules adopted pursuant to this
 46 subsection are routine technical rules as defined in Title 5,
chapter 375, subchapter 2-A.

48 **Sec. 6. Complaint resolution and informal hearing process**
recommendations. By January 5, 2004, the Department of Human
 50 Services and the Department of Behavioral and Developmental

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2 Services, in conjunction with their duties with regard to merger
of the 2 departments under Public Law 2003, chapter 20, Part K,
4 section 18, shall report to the Joint Standing Committee on
Health and Human Services recommendations to improve the
6 MaineCare complaint resolution and informal hearing process that
ensure that MaineCare providers receive fair and impartial
complaint resolution procedures and informal hearings.'

10 **SUMMARY**

12 This amendment replaces the bill. It removes the emergency
provisions, reimbursement of the service provider for attorney's
14 and consultant's fees, the MaineCare provider ombudsman,
retroactivity provisions and the requirement of a showing of no
16 harm to the public before imposition of sanctions or withholding
of payments. It provides limitations on the authority of the
18 Department of Human Services to recover overpayments, amends the
informal appeal process, allows arbitration and restricts the
20 sanction of total recoupment. It requires MaineCare provider
relations personnel to assist MaineCare providers in addressing
22 and resolving disagreements and corrects outdated language. It
requires rulemaking to define the ownership and control
24 relationships that apply in MaineCare offset situations. It
requires a report from the Department of Human Services and the
26 Department of Behavioral and Developmental Services on
recommendations regarding complaint resolution and the hearing
28 process.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT

Approved: 05/20/03 *MAC*

**121st Maine Legislature
Office of Fiscal and Program Review**



LD 1356

**An Act to Improve Complaint Resolution and Hearing Procedures in the
Department of Human Services**

LR 1441(02)

Fiscal Note for Bill as Amended by Committee Amendment "A" S-233

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Department of Human Services and the Department of Behavioral and Developmental Services can be absorbed by the departments utilizing existing resources.