

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 1356

S.P. 444

In Senate, March 13, 2003

### An Act To Provide Fair Hearing Procedures in the Department of Human Services

(EMERGENCY)

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by President DAGGETT of Kennebec.  
Cosponsored by Representative DUGAY of Cherryfield and  
Senators: BRENNAN of Cumberland, DAVIS of Piscataquis, GAGNON of Kennebec,  
HATCH of Somerset, LEMONT of York, STANLEY of Penobscot, Representative:  
FLETCHER of Winslow.



2 C. Compensation under the contract may reflect the number  
4 of appeals on which recommendations are made by the hearing  
6 officer and may not reflect the substance of the  
recommendations made by the hearing officer.

8 D. The hearing officer shall conduct a hearing de novo on  
10 issues raised in the notice of appeal filed by the service  
12 provider and shall in a timely manner render a written  
14 recommendation based on the record and in accordance with  
16 applicable state and federal law, rule and regulation. The  
hearing officer shall provide a copy of the recommendation  
to the department and to the service provider along with  
notice of the opportunity to submit written comments to the  
commissioner.

18 E. The recommendation of the hearing officer must be  
20 forwarded to the commissioner for a final decision, based on  
22 the record, which must include any written comment submitted  
24 in a timely manner by the service provider and the  
department. The commissioner may adopt, adopt with  
modification or reject the recommendation of the hearing  
officer. The commissioner shall issue a final decision in  
writing, which must include the reasons for any departure  
from the recommendation of the hearing officer and notice of  
the process for appeal pursuant to Title 5, chapter 375,  
subchapter VII 7.

28 F. The department shall reimburse a service provider for  
30 attorney's and related consultant fees incurred for  
32 representation in an appeal of an informal review decision  
34 of any MaineCare payment, recovery, recoupment and cost  
36 report and other audit issues, if the service provider  
38 prevails in the appeal. If the department considers the fee  
to be unreasonable, the department may petition the Superior  
Court for a determination of the reasonable fee. The court  
shall apply the criteria set forth in Maine Bar Rule 3.3(a),  
or its successor. A service provider may file a petition in  
the course of proceedings for judicial review of the  
department's final decision on appeal from an informal  
review decision. If no appeal is timely taken from the  
department's decision but the department does not find the  
associated fee reasonable, the department may file a  
petition for a determination of the fee as an independent  
46 action.

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

50 **Sec. A-2. 22 MRS §48** is enacted to read:

2       **§48. Provider ombudsman**

4           The department shall establish a provider ombudsman to  
6           assist providers in addressing and resolving in a cost-effective  
8           and expeditious fashion any controversies, disagreements or  
10           contests between the department and individual providers or  
12           groups of providers. The provider ombudsman is authorized to  
14           receive and shall investigate complaints and concerns of  
16           providers regarding the administration of the MaineCare program  
18           and payment issues. The provider ombudsman has access to the  
20           commissioner and may bring issues to the attention of the  
          commissioner for prompt resolution. The provider ombudsman shall  
          inform providers of their rights, entitlements and obligations  
          under state and federal laws and shall assist providers in  
          asserting their legal rights. In contested proceedings, the  
          provider ombudsman may advocate for the provider in circumstances  
          where the provider ombudsman determines this advocacy is  
          necessary or appropriate.

**Sec. A-3. Provider ombudsman; funding.** The Department of  
Human Services shall establish the provider ombudsman pursuant to  
the Maine Revised Statutes, Title 22, section 48 using existing  
resources by assigning these duties to existing personnel in an  
office within the department that does not have direct  
enforcement or reimbursement responsibilities with respect to  
providers.

28

**PART B**

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

32

**6. Limitation on actions to recover overpayments.** The  
34           department may not impose any sanction or withhold any payments  
36           from a service provider in order to recover overpayment for  
38           services rendered or goods delivered under the MaineCare program  
40           unless, upon petition to the Superior Court, an order is entered  
          allowing interim sanctions upon a showing by the department of a  
          substantial likelihood that overpayment or fraud has occurred and  
          no harm to the public will occur due to interruption of services.

42           **Sec. B-2. 22 MRSA §1714-A, sub-§5,** as enacted by PL 1991, c.  
44           568, §4, is repealed.

46

**PART C**

48           **Sec. C-1. PL 2001, c. 464, §2** is repealed.

50

PART D

2  
4 **Sec. D-1. 22 MRSA §42, sub-§7, ¶G** is enacted to read:

6 G. In administrative appeals of informal review decisions  
8 of MaineCare payment, recovery, recoupment and cost report  
10 and other audit issues, the department bears the burden of  
12 proving a violation of rule or other law by a preponderance  
14 of the evidence. If the department finds records of goods  
16 or services to be insufficient but has made no finding that  
18 the goods or services affected by the insufficiency were not  
20 provided or delivered as claimed, the department may not  
22 require total recoupment of MaineCare funds associated with  
24 the affected goods or services. In cases where the  
26 department has made such a finding and asserted such a  
28 claim, the department must fulfill the burden of proof set  
30 forth in this paragraph.

32 **Sec. D-2. 22 MRSA §49** is enacted to read:

34 **§49. Interpretation of rules**

36 When implementing the law and applying its rules governing  
38 the MaineCare program, the department shall make determinations  
40 of deviations from acceptable behavior and practices based on  
42 standard practices in the relevant service provider industry.

44 **Sec. D-3. Retroactivity; application to pending proceedings.**  
46 Notwithstanding the Maine Revised Statutes, Title 1, section 302,  
48 this Part applies retroactively to proceedings pending before the  
Commissioner of Human Services on January 1, 2003.

**Emergency clause.** In view of the emergency cited in the  
preamble, this Act takes effect when approved.

**SUMMARY**

Under current law, the Department of Human Services is  
required to use independent, impartial hearing officers to hear  
appeals of informal review decisions of MaineCare payment and  
cost report issues filed by providers of nursing facility  
services and medical and remedial private nonmedical institution  
services. Part A of this bill extends the requirements of that  
appeal process, including the impartial hearing officer  
requirement, to any other informal review decisions that seek to  
impose repayment, recovery or recoupment obligations or sanctions  
or fines on service providers.

2 It also requires the department to pay the legal fees of  
3 providers who prevail after a hearing on alleged overpayment or  
4 fraud. It also establishes an ombudsman to assist providers with  
5 compliance and hearings under the MaineCare program.

6 Part B of this bill removes existing authority for the  
7 department to withhold funds owed to service providers in the  
8 MaineCare program as reimbursement for overpayments to the  
9 provider until after the commissioner has made a final decision  
10 on the overpayments. It also prohibits the department from  
11 withholding funds owed to service providers in the MaineCare  
12 program as reimbursement for overpayments by affiliated providers.

14 Part C of this bill repeals the delayed effective date of  
15 Public Law 2001, chapter 464, which prohibits the department from  
16 paying auditors a commission based on funds received from a  
17 provider after an audit. The repeal of the future effective date  
18 will cause that law to have immediate effect.

20 Part D of this bill places the burden of proof on the  
21 department for showing that a violation of the MaineCare law or  
22 rules has occurred. It also requires the department to use  
23 evidence of standard industry practices when interpreting the  
24 laws and rules for the MaineCare program. This Part applies  
25 retroactively to any proceedings pending before the Commissioner  
26 of Human Services on January 1, 2003.