

MAINE STATE LEGISLATURE

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HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
SECOND SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1270, L.D. 1748, Bill, "An Act To Amend the Rule-making Authority of the Department of Human Services to Ensure Cost-effective Operation of State Medical Services Programs and Compliance with Federal Requirements"

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

'Sec. 1. 22 MRSA §42, sub-§8 is enacted to read:

8. Adoption of rules with retroactive application. The department is authorized to adopt rules that have a retroactive application for a period not to exceed 8 calendar quarters prior to the date of issuance of the rule in accordance with the provisions of this subsection.

A. The Bureau of Medical Services is authorized to adopt rules that have retroactive application when necessary to maximize available federal revenue sources, specifically regarding the federal Medicaid program, or to conform to the state Medicaid plan as filed with the Federal Government. The Bureau of Family Independence is authorized to adopt rules in the MaineCare, Temporary Assistance for Needy Families and food stamp programs that have retroactive application to comply with federal requirements or to conform to the state Medicaid plan as filed with the Federal Government.

B. With respect to any services that MaineCare providers have rendered prior to the date of adoption of retroactive rules adopted pursuant to this subsection, such rules may

2 not reduce or otherwise negatively affect the reimbursement
3 or other payments that those providers are entitled to
4 receive under the previously applicable rules. The
5 reimbursement or other payments under the amended rules must
6 be equal to or greater than the reimbursement under the
7 rules previously in effect.

8 C. For any benefits or services in the MaineCare, Temporary
9 Assistance for Needy Families or food stamp programs that
10 beneficiaries have received prior to the date of adoption of
11 retroactive rules adopted pursuant to this subsection, such
12 rules may not reduce or otherwise negatively affect the
13 reimbursement or other payments, benefits or services that
14 those beneficiaries are entitled to have covered or paid
15 under the previously applicable rules. The reimbursement or
16 other payments, benefits or services under the amended rules
17 must be equal to or greater than under the rules previously
18 in effect.

19 D. This subsection does not give the department the
20 authority to adopt retroactively any rule that has an
21 adverse financial impact on any MaineCare provider or
22 member, Temporary Assistance for Needy Families program or
23 food stamp recipient or the beneficiary or recipient of any
24 other program administered by the department. Specific
25 statutory authority is required for adoption of a
26 retroactive rule that has an adverse financial impact on any
27 MaineCare provider or member, Temporary Assistance for Needy
28 Families program or food stamp recipient or the beneficiary
29 or recipient of any other program administered by the
30 department.

31 E. Rules adopted pursuant to this subsection are routine
32 technical rules as defined in Title 5, chapter 375,
33 subchapter 2-A; except that, if the underlying statutory
34 rule-making authority for a rule or set of rules specifies
35 that rules adopted pursuant to that authority are major
36 substantive rules, then the related rule or rules adopted
37 under this subsection are major substantive rules.

38 F. This subsection is repealed July 1, 2006.

39 **Sec. 2. Report.** By January 15, 2005 and January 15, 2006, the
40 Department of Human Services shall report to the joint standing
41 committee of the Legislature having jurisdiction over health and
42 human services matters on implementation of this Act and the
43 fiscal impact of implementation on the MaineCare and General Fund
44 budgets and any MaineCare providers, members or beneficiaries or
45 beneficiaries or recipients of other programs administered by the
46 department.'

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SUMMARY

4 This bill provides the authority for 2 bureaus in the
6 Department of Human Services, the Bureau of Medical Services and
8 the Bureau of Family Independence, to adopt rules having
10 retroactive application in certain specific circumstances for a
12 period up to 8 calendar quarters. The Bureau of Medical Services
14 may do so to maximize available federal revenue sources through
16 the federal Medicaid program or to conform to the state Medicaid
18 plan. Both bureaus may make retroactive rules regarding the
20 MaineCare, Temporary Assistance for Needy Families and food stamp
22 programs to comply with federal regulations and to conform to the
24 state plan as filed with the Federal Government. The rules may
26 not reduce or otherwise negatively affect reimbursement or other
28 payments to providers that they are entitled to receive under
30 previously applicable rules. Reimbursement or payment under the
32 new rules must be equal to or greater than reimbursement under
34 the old rules. The rules may not reduce or otherwise negatively
affect reimbursement or other payments, benefits or services that
beneficiaries are entitled to have covered or paid under the old
rules. Reimbursement or other payments, benefits or services
under the amended rules must be equal to or greater than under
the prior rules. The amendment requires legislative approval for
retroactive application of any rule that has an adverse financial
impact on any MaineCare provider or member, Temporary Assistance
for Needy Families program or food stamp recipient or beneficiary
or recipient of any other program administered by the
department. The amendment designates the rules as routine
technical rules unless the underlying statutory authority for the
rule already designates the rule as a major substantive rule.
The amendment requires the department to report on implementation
and the effect of implementation by January 15, 2005 and 2006.
Under the amendment, the authority to adopt rules having a
retroactive application is repealed on July 1, 2006.

FISCAL NOTE REQUIRED
(See attached)

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



LD 1748

An Act To Amend the Rule-making Authority of the Department of Human Services to Ensure Cost-effective Operation of State Medical Services Programs and Compliance with Federal Requirements

LR 2639(02)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Potential current biennium savings - General Fund

Potential current biennium revenue increase - Federal Expenditures Fund

Fiscal Detail and Notes

Authorizing the Department of Human Services to adopt rules in certain circumstances that have retroactive application could result in an increase in federal funding and "savings" in state spending. Whether there are specific rules and "savings" beyond those already assumed in the department's budget appropriations that would be affected by this legislation cannot be determined at this time. Any additional cost to the Department in implementing this legislation can be absorbed within existing budgetary resources.