

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## SECOND SPECIAL SESSION-2004

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Legislative Document

No. 1913

H.P. 1414

House of Representatives, March 9, 2004

### An Act To Establish the Department of Health and Human Services

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative KANE of Saco. (GOVERNOR'S BILL)  
Cosponsored by Senator MARTIN of Aroostook and  
Representatives: Speaker COLWELL of Gardiner, MILLETT of Waterford, O'BRIEN of  
Augusta, PERRY of Calais, Senators: CATHCART of Penobscot, DAVIS of Piscataquis,  
TURNER of Cumberland, WESTON of Waldo.

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

4 **PART A**

6 **Sec. A-1. 5 MRSA §12004-J, sub-§14** is enacted to read:

8 14. Health and Expenses 22-A MRSA  
Adults, Human Only §301  
10 Children and Services  
Families Advisory  
12 Board

14 **Sec. A-2. 22-A MRSA** is enacted to read:

16 **TITLE 22-A**

18 **HEALTH AND HUMAN SERVICES**

20 **SUBTITLE 1**

22 **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

24 **CHAPTER 1**

26 **DEPARTMENTAL ORGANIZATION AND OPERATION**

28 **SUBCHAPTER 1**

30 **GENERAL PROVISIONS**

32 **§101. Definitions**

34 As used in this Title, unless the context otherwise  
36 indicates, the following terms have the following meanings.

38 1. Commissioner. "Commissioner" means the Commissioner of  
Health and Human Services.

40 2. Department. "Department" means the Department of Health  
42 and Human Services.

44 **SUBCHAPTER 2**

46 **ORGANIZATION**

48 **§201. Department established**

50 1. Establishment. The Department of Health and Human  
Services is established as a cabinet-level department.

2           2. Bureau and divisions. The department consists of the  
4           bureaus and divisions necessary to carry out the work of the  
            department.

6           §202. Mission

8           So that all persons may attain their full potential for  
10           independence and personal development, the department shall  
12           aspire to provide programs and services to adults, children and  
14           families, while respecting the rights and preferences of the  
16           individual and family and within the limitations of available  
18           funds. The department shall endeavor to provide supportive,  
            preventive, protective, public health and intervention services  
            that protect the public health and assist persons in meeting  
            their own needs and that assist families in providing for the  
            developmental, health and safety needs of their children.

20           §203. Programs and services of the department

22           The department shall, as appropriate to the individual and  
24           family and as permitted by the availability of funds, provide the  
            following programs and services to eligible individuals and  
            families as provided in this section and otherwise by law.

26           1. Programs and services for children and families. The  
28           department shall provide children and families with programs and  
30           services to assist families in meeting the needs of their  
            children, including, but not limited to:

32           A. Home visiting services for families with newborn  
            children;

34           B. Mental health and behavioral health services;

36           C. Mental retardation and developmental disability services;

38           D. Substance abuse prevention and treatment services;

40           E. Maternal and child health services;

42           F. Head Start and child care services;

44           G. Child welfare services;

46           H. Physical health services;

48           I. Establishment of paternity and child support;

2 J. Economic assistance to needy families, TANF, and  
employment-related services, ASPIRE;

4 K. Residential and long-term care services for children  
with disabilities;

6 L. Health planning for children's services; and

8 M. Health data and program management.

10 2. Programs and services for adults. The department shall  
12 provide adults with programs and services, including, but not  
14 limited to:

16 A. Physical health programs;

18 B. Public health and health engineering;

20 C. Long-term care services for adults;

22 D. Adult protective services;

24 E. Mental health and behavioral health services for adults;

26 F. Mental retardation and developmental disability services  
for adults;

28 G. Health data and program management;

30 H. Assistance services, including, but not limited to,  
32 general assistance, food stamps and disability  
determination; and

34 I. Substance abuse prevention and treatment services.

36 3. Programs and services delivery. The department shall  
38 accomplish the delivery of programs and services through a  
centralized and efficient administrative structure and an  
40 integrated delivery system that focuses on meeting the needs of  
individuals and families. The department shall utilize a  
42 combination of public personnel and contracts with private  
agencies.

44 **§204. Commissioner**

46 The department is under the control and supervision of the  
48 Commissioner of Health and Human Services.

50 1. Appointment. The Governor shall appoint the  
commissioner, subject to review by the joint standing committee

2 of the Legislature having jurisdiction over health and human  
3 services matters and confirmation by the Senate. The  
4 commissioner serves at the pleasure of the Governor.

6 2. Vacancy; deputy commissioner. A vacancy in the office  
7 of the commissioner must be filled as follows.

8 A. Any vacancy of the commissioner's position must be  
9 filled in accordance with Title 5, section 1.

10 B. The commissioner shall appoint one of the department's  
11 deputy commissioners to perform the duties of the  
12 commissioner during the commissioner's temporary absence or  
13 disability, in addition to the duties of that deputy  
14 commissioner.

16 **§205. Powers and duties of the commissioner**

18 The commissioner has all of the powers and duties necessary  
19 to carry out the mission and purposes of the department.

22 1. Employees. The commissioner may employ personnel as  
23 necessary to carry out the work of the department. All personnel  
24 of the department are under the immediate supervision, direction  
25 and control of the commissioner. Department personnel must be  
26 employed subject to the Civil Service Law, except for deputy  
27 commissioners, associate commissioners, bureau and division  
28 heads, assistant deputy commissioners, the director of legal  
29 affairs, regional directors and directors of state mental health  
30 and mental retardation institutions.

32 2. Administration. The commissioner shall administer the  
33 department in accordance with the requirements of this Title and  
34 shall fulfill the duties prescribed by state and federal law.

36 3. Seal. The department is a cabinet-level department and  
37 has an official seal, which must be judicially noticed.

38 **§206. Rulemaking**

40 The department shall adopt rules to implement this Title.  
41 Rules adopted pursuant to this section are routine technical  
42 rules, as defined in Title 5, chapter 375, subchapter 2-A, unless  
43 otherwise specified.

46 **SUBCHAPTER 3**

48 **ADVISORY GROUPS**

50 **§301. Health and Human Services Advisory Board**

2           1. Definitions. As used in this section, unless the  
4           context otherwise indicates, the following terms have the  
          following meanings.

6           A. "Board" means the Health and Human Services Advisory  
          Board.

8  
10           2. Establishment. In order to provide advice to the  
12           Commissioner of Health and Human Services, the Health and Human  
          Services Advisory Board is established pursuant to Title 5,  
          section 12004-J, subsection 14.

14           3. Composition. The board consists of 9 members appointed  
16           by the Governor, 2 of whom must be consumers of the services of  
18           the department, 2 of whom must be providers of services of the  
          department and 5 of whom must be members of the general public.

20           A. The 2 consumer appointees serve 3-year terms, except  
22           that of the initial 2 appointees, the first appointee serves  
          a 3-year term and the 2nd appointee serves a 2-year term;

24           B. The 2 provider appointees serve 3-year terms, except  
26           that of the initial 2 appointees, the first appointee serves  
          a 3-year term and the 2nd appointee serves a 2-year term; and

28           C. The 5 public member appointees serve 3-year terms, except  
30           that of the initial 5 appointees, the first 3 appointees  
          serve 3-year terms and the remaining initial 2 appointees  
          serve 2-year terms.

32           A vacancy on the board must be filled by a person from the  
34           constituency represented by the original appointment.

36           4. Chair. From the 9 members of the board, the Governor  
38           shall appoint a chair to schedule, set the agendas for and  
40           preside at meetings of the board. The member serving as chair  
          serves in that position until the conclusion of the term for  
          which the member was appointed originally.

42           5. Meetings; public proceedings. The board may meet as  
44           often as necessary for the performance of its duties but shall  
46           meet at least 4 times per year. Meetings of the board are public  
          meetings and the records of the board are public records unless  
          designated confidential by state or federal laws, rules or  
          regulations.

48           6. Staffing. The board may use department staff to provide  
50           necessary assistance.

2 7. Duties. The board shall advise the commissioner and  
3 assist the commissioner in long-term planning on an ongoing basis  
4 regarding state policy relating to services and programs for  
5 adults, children and families. The board shall establish  
6 committees as needed to assist in its work.

8 8. Reporting. The board shall report annually to the  
9 Governor and the committee of the Legislature having jurisdiction  
10 over health and human services matters.

## 12 PART B

14 **Sec. B-1. Transition.** Notwithstanding the Maine Revised  
15 Statutes, Title 22 and Title 34-B, the following provisions apply to  
16 the reassignment of the duties and responsibilities of the  
17 Department of Human Services and the Department of Behavioral and  
18 Developmental Services to the Department of Health and Human  
19 Services.

20  
21 1. The Department of Human Services and the Department of  
22 Behavioral and Developmental Services as heretofore created and  
23 established by law are incorporated into the Department of Health  
24 and Human Services. All references to, responsibilities of and  
25 authority conferred upon the Department of Human Services and the  
26 Department of Behavioral and Developmental Services, and those  
27 departments' predecessors, throughout the Maine Revised Statutes  
28 are deemed to refer to and vest in the Department of Health and  
29 Human Services created by this Act, as the successor department.  
30 The Department of Health and Human Services is the successor in  
31 every way to the powers, duties and functions as assigned in the  
32 Maine Revised Statutes, Title 22 to the Department of Human  
33 Services and Title 34-B to the Department of Behavioral and  
34 Developmental Services, as they pertain to services provided to  
35 adults, children and families under this Act.

36  
37 2. Notwithstanding the provisions of the Maine Revised  
38 Statutes, Title 5, all accrued expenditures, assets, liabilities,  
39 balances of appropriations, allocations, transfers, revenues or  
40 other available funds in an account or subdivision of an account  
41 of the Department of Human Services and the Department of  
42 Behavioral and Developmental Services that pertain to the duties  
43 of the Department of Health and Human Services as set forth in  
44 this Act must be transferred to the proper accounts of the  
45 Department of Health and Human Services by the State Controller  
46 or by financial order upon the request of the State Budget  
47 Officer and with the approval of the Governor.

48  
49 3. All rules of the Department of Human Services and the  
50 Department of Behavioral and Developmental Services as they



2           pertain to the duties of the Department of Health and Human  
3           Services as set forth in this Act that are in effect on the  
4           effective date of this Act remain in effect until rescinded,  
5           revised or amended.

6           4. All contracts, agreements and compacts of the Department  
7           of Human Services and the Department of Behavioral and  
8           Developmental Services as they pertain to the duties set forth in  
9           this Act in effect on the effective date of this Act remain in  
10          effect until they expire or are altered by the parties involved  
11          in the contracts or agreements. The Department of Health and  
12          Human Services is the successor agency for all federal block  
13          grants and programs administered under the United States Social  
14          Security Act, as amended, and any other federal programs, grants  
15          and contracts.

16          5. All records of the Department of Human Services and the  
17          Department of Behavioral and Developmental Services as they  
18          pertain to the duties set forth in this Act must be transferred  
19          to the Department of Health and Human Services as necessary to  
20          implement this Act.

21          6. All property and equipment of any bureau, division or  
22          program of the Department of Human Services and the Department of  
23          Behavioral and Developmental Services pertaining to the duties  
24          set forth in this Act are transferred to the Department of Health  
25          and Human Services as necessary to implement this Act.

26          7. Notwithstanding the Maine Revised Statutes, Title 22-A,  
27          section 204 or any other provision of law, upon the effective  
28          date of this Act, the individual holding the position of  
29          Commissioner of Human Services becomes the Commissioner of Health  
30          and Human Services without the need of appointment or  
31          confirmation. The Commissioner of Health and Human Services  
32          shall assume and is vested with all of the duties and powers of  
33          that office, as well as the duties and powers of the predecessors  
34          of that office, including the office of the Commissioner of Human  
35          Services and the office of the Commissioner of Behavioral and  
36          Developmental Services.

37          8. Employees of the Department of Human Services and the  
38          Department of Behavioral and Developmental Services who are  
39          transferred to the Department of Health and Human Services  
40          pursuant to this Act retain those positions from which they are  
41          transferred and retain all their employee rights, privileges and  
42          benefits, including sick leave, vacation and seniority, provided  
43          under the Civil Service Law or collective bargaining agreements.  
44          The Department of Administrative and Financial Services, Bureau  
45          of Human Resources shall provide assistance to the affected  
46          employees.

2 departments and shall assist with the orderly implementation of  
3 this subsection.

4 9. The Department of Health and Human Services is composed  
5 of the following 5 primary bureaus through which programs and  
6 services are delivered: the Bureau of Adult Services; the Bureau  
7 of Children and Families; the Bureau of Family Independence; the  
8 Bureau of Public Health; and the Bureau of Medical Services.

10 10. The Commissioner of Health and Human Services shall  
11 consolidate:

12 A. Administrative components in the department to provide  
13 for, without limitation, the following functions: financial  
14 management; internal and external auditing; human resources;  
15 information technology and data collection and management;  
16 facilities management; contracting; licensing; permitting  
17 and inspecting; training; administrative appeals;  
18 communications and legislative relations; ratesetting; and  
19 rulemaking; and

22 B. Adult protective, guardianship and conservatorship  
23 functions formerly in the Department of Human Services and  
24 the Department of Behavioral and Developmental Services.

26 11. The Commissioner of Health and Human Services shall  
27 submit an interim report with recommendations to the Governor and  
28 the joint standing committee of the Legislature having  
29 jurisdiction over health and human services matters on other  
30 recommendations contained in the Report of the Advisory Council  
31 for the Reorganization and Unification of the Department of Human  
32 Services and the Department of Behavioral and Developmental  
33 Services, including, but not limited to, regional administrative  
34 functions; program and service delivery functions such as  
35 information and referral, intake and case management; functions  
36 relating to a seamless system of care and resolution of consumer,  
37 provider and public inquiries and complaints; planning and  
38 quality assurance; and ombudsman and advocacy services. The  
39 report and recommendations must include a recommendation on the  
40 format and organization of the new Maine Revised Statutes, Title  
41 22-A and must be submitted to the First Regular Session of the  
42 122nd Legislature by January 31, 2005.

44 12. The Commissioner of Health and Human Services shall  
45 work with the Commissioner of Education and the Commissioner of  
46 Corrections to formulate recommendations, if any, relating to  
47 child development services and juvenile justice. The report and  
48 recommendations must include a recommendation on the format and  
organization of the new Maine Revised Statutes, Title 22-A and

2 must be submitted to the Second Regular Session of the 122nd  
3 Legislature by January 31, 2006.

4 **Sec. B-2. Maine Revised Statutes amended; revision clause.**

5 Wherever in the Maine Revised Statutes the words "Department of  
6 Human Services" or "Department of Behavioral and Developmental  
7 Services" appear or reference is made to either of those  
8 departments with reference to the duties transferred to the  
9 Department of Health and Human Services as set forth in this Act,  
10 they are amended to read or mean, as the case may be, "Department  
11 of Health and Human Services." The Revisor of Statutes shall  
12 implement this revision when updating, publishing or republishing  
13 statutes.

14 **Sec. B-3. Maine Revised Statutes amended; revision clause.**

15 Wherever in the Maine Revised Statutes the words "Commissioner of  
16 Human Services" or "Commissioner of Behavioral and Developmental  
17 Services" appear or reference is made to either of these  
18 positions with reference to the duties transferred to the  
19 Commissioner of Health and Human Services as set forth in this  
20 Act, they are amended to read or mean, as the case may be,  
21 "Commissioner of Health and Human Services." The Revisor of  
22 Statutes shall implement this revision when updating, publishing  
23 or republishing the statutes.

24 **Sec. B-4. Budget.**

25 The Department of Administrative and  
26 Financial Services, Bureau of Budget shall work with the  
27 employees of the Department of Human Services and the Department  
28 of Behavioral and Developmental Services with regard to the  
29 duties transferred to the Department of Health and Human Services  
30 as set forth in this Act to develop the budget for the Department  
31 of Health and Human Services.

32 **Sec. B-5. Transitional activities.**

33 If the Commissioner of Health  
34 and Human Services determines that federal approval will not be  
35 obtained for any part of this Act that requires federal approval,  
36 the commissioner shall notify the joint standing committee of the  
37 Legislature having jurisdiction over health and human services  
38 matters, the joint standing committee of the Legislature having  
39 jurisdiction over appropriations and financial affairs and the  
40 Executive Director of the Legislative Council.

41 **Sec. B-6. Conflicts and inconsistencies.**

42 If the Commissioner of  
43 Health and Human Services finds a conflict or inconsistency  
44 between provisions in the Maine Revised Statutes, Title 22 and  
45 Title 34-B or rules adopted under those titles, then the  
46 commissioner shall attempt to resolve that conflict or  
47 inconsistency by reading the laws or rules together to give  
48 effect to the intent of the Legislature or agency, as the case  
49 may be. If the conflict or inconsistency can not be resolved, then  
50

2 the commissioner may adopt an emergency rule to resolve the  
3 conflict. After the effective date of any such emergency rule,  
4 all laws or rules in conflict with the emergency rule are of no  
5 further force or effect. The commissioner shall submit  
6 legislation to any session of the Legislature to address any  
7 conflict or inconsistency that can not be resolved.

8 **Sec. B-7. Legislation; schedule.** The Commissioner of Health and  
9 Human Services, and designees selected by the commissioner, shall  
10 work with the joint standing committee of the Legislature having  
11 jurisdiction over health and human services matters and staff  
12 from the Office of Policy and Legal Analysis and the Office of  
13 the Revisor of Statutes to review the Maine Revised Statutes  
14 governing the department, including, but not limited to, the  
15 Maine Revised Statutes, Title 22 and Title 34-B, with a goal of  
16 submitting legislation to further implement this Act by:

18 1. Consolidating existing law into and updating Title 22-A;

20 2. Correcting any errors and inconsistencies that result  
21 from this Act; and

22 3. Transferring any remaining departmental duties from the  
23 Department of Behavioral and Developmental Services and the  
24 Department of Human Services to the Department of Health and  
25 Human Services, as required by this Act.

28 By November 30, 2005 the commissioner and the committee  
29 shall agree on the format and organization of the new Title 22-A.  
30 The commissioner shall submit the legislation developed pursuant  
31 to this section to the First Regular Session of the 123rd  
32 Legislature by November 30, 2006.

34 **PART C**

36 **Sec. C-1. 2 MRSA §6, sub-§1,** as amended by PL 2003, c. 469,  
37 Pt. A, §1, is further amended to read:

40 **1. Range 91.** The salaries of the following state officials  
41 and employees are within salary range 91:

42 Commissioner of Transportation;

44 Commissioner of Conservation;

46 Commissioner of Administrative and Financial Services;

48 Commissioner of Education;

50

2 Commissioner of Environmental Protection;  
4 Executive Director of Dirigo Health;  
6 ~~Commissioner of Human Services;~~  
8 ~~Commissioner of Behavioral and Developmental Services;~~  
10 Commissioner of Public Safety;  
12 Commissioner of Professional and Financial Regulation;  
14 Commissioner of Labor;  
16 Commissioner of Agriculture, Food and Rural Resources;  
18 Commissioner of Inland Fisheries and Wildlife;  
20 Commissioner of Marine Resources;  
22 Commissioner of Corrections;  
24 Commissioner of Economic and Community Development; and  
26 Commissioner of Defense, Veterans and Emergency Management.

28 **Sec. C-2. 2 MRSA §6, sub-§1-A** is enacted to read:

30 1-A. Range 58. The salaries of the following state  
officials and employees are within salary range 58:

32 Commissioner of Health and Human Services.

34 **Sec. C-3. 2 MRSA §6, sub-§2**, as amended by PL 2001, c. 708,  
36 §1, is further amended to read:

38 **2. Range 90.** The salaries of the following state officials  
and employees are within salary range 90:

40 Superintendent of Financial Institutions;

42 State Tax Assessor;

44 Superintendent of Insurance;

46 Executive Director of the Maine Consumer Choice Health Plan;

48 Associate Commissioner for Programs, Department of  
Behavioral and Developmental Services;

50

2 Associate Commissioner of Administration, Department of Behavioral and Developmental Services;

4 Associate Commissioner for Systems Operations, Department of Behavioral and Developmental Services;

6 Deputy Commissioner, Department of Administrative and Financial Services;

10 Associate Commissioner for Adult Services, Department of Corrections;

12 Associate Commissioner for Juvenile Services, Department of Corrections;

16 Public Advocate;

18 Director, Bureau of Medical Services;

20 Chief Information Officer; and

22 Associate Commissioner for Legislative and Program Services, Department of Corrections.

24 **Sec. C-4. 5 MRSA §940**, as amended by PL 1995, c. 560, Pt. J, §1, is repealed.

28 **Sec. C-5. 5 MRSA §946**, as amended by PL 2001, c. 439, Pt. J, §§1 to 3, is repealed.

30 **Sec. C-6. 5 MRSA §946-A** is enacted to read:

32 **§946-A. Department of Health and Human Services**

34 **1. Major policy-influencing positions.** The following positions are major policy-influencing positions within the Department of Health and Human Services. Notwithstanding any other provisions of law, these positions and their successor positions are subject to this chapter.

40 A. Deputy commissioners;

42 B. Associate commissioners;

44 C. Bureau directors and division directors;

46 D. Assistant deputy commissioners;

48 E. Regional directors;

50

2 F. Directors of state mental health and mental retardation  
3 institutions; and

4 G. Director of legal affairs.

6  
8 **SUMMARY**

10 This bill reorganizes the delivery of services to adults,  
11 children and families by the major state departments providing  
12 health, welfare and family support services, the Department of  
13 Human Services and the Department of Behavioral and Developmental  
14 Services, establishing the new Department of Health and Human  
15 Services. The goals of the reorganization are to improve  
16 services, increase programs and fiscal efficiency and improve  
17 relations with consumers and community organizations. Objectives  
18 include ensuring coordinated family services; improving services  
19 for consumers through easy access and better coordination;  
20 reducing administrative costs; improving fiscal and program  
21 accountability; reducing duplicative administrative burdens  
22 affecting community providers; developing a long-term, systematic  
23 approach to service delivery; improving internal and external  
24 communications; increasing revenue from federal and private  
25 sources through stronger partnerships with community  
26 organizations and other state agencies; implementing conflict  
27 resolution and problem-solving alternatives; and fostering a  
28 culture of respect for consumers and partnering organizations.

30 1. The bill establishes the Department of Health and Human  
31 Services. The department assumes the duties of the current  
32 Department of Human Services and the Department of Behavioral and  
33 Developmental Services. Services and programs that are delivered  
34 to children through the new Department of Health and Human  
35 Services include home visiting services for families with newborn  
36 children; mental health and behavioral health services; mental  
37 retardation and developmental disability services; substance  
38 abuse prevention and treatment services; maternal and child  
39 health services; Head Start and child care services; child  
40 welfare services; physical health services; establishment of  
41 paternity and child support; economic assistance to needy  
42 families, TANF, and employment-related services, ASPIRE;  
43 residential and long-term care services for children with  
44 disabilities; health planning for children's services; and health  
45 data and program management.

46  
47 Services and programs that are to be delivered to adults through  
48 the new Department of Health and Human Services include physical  
49 health programs; public health and health engineering; long-term  
50 care services for adults; adult protective services; mental

2 health and behavioral health services for adults; mental  
retardation and developmental disability services for adults;  
4 health data and program management; assistance services,  
including, but not limited to, general assistance, food stamps,  
6 and disability determination; and substance abuse prevention and  
treatment services.

8 2. This bill establishes a Health and Human Services  
Advisory Board to advise the commissioner of the department. The  
10 board membership consists of 9 members appointed by the Governor.

12 3. This bill provides transition language to enable the  
affected departments to plan for an orderly transition to the new  
14 Department of Health and Human Services.