

MAINE STATE LEGISLATURE

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L.D. 1888

Date: 4-10-12

MINORITY

(Filing No. S-543)

HEALTH AND HUMAN SERVICES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

125TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" to S.P. 665, L.D. 1888, Bill, "An Act To Strengthen the State's Ability To Investigate and Prosecute Misuse of Public Benefits"

Amend the bill by striking out all of section 9 and inserting the following:

'Sec. 9. 22 MRSA §1714-D is enacted to read:

§1714-D. Credible allegations of fraud; provider payment suspensions

If the department determines that there is a credible allegation of fraud by a provider under the MaineCare program, the following procedures apply.

1. Suspension of payments. The department shall suspend payment in whole or in part to a MaineCare provider when a suspension is necessary to comply with Section 6402(h)(2) of the federal Patient Protection and Affordable Care Act of 2010, Public Law 111-148 and 42 Code of Federal Regulations, Part 455.

2. Administrative appeal; scope. A MaineCare provider may administratively appeal the department's decision to suspend payment under subsection 1.

3. No stay during administrative appeal. A suspension of payments under subsection 1 may not be stayed during an administrative appeal of the department's decision to suspend payment. The department shall provide a fair opportunity for appropriate expedited relief from a suspension of payments consistent with federal law.

4. Final determination; offset. Upon a final determination that fraud has occurred and that money is owed by the MaineCare provider to the department, and 31 days after exhaustion of all administrative appeals and any judicial review available under Title 5, chapter 375, the department may retain and apply as an offset to amounts determined to be owed to the department any payments to the provider that were suspended by the department pursuant to this section. The amount retained pursuant to this subsection may not exceed the amount determined finally to be owed.

5. Confidentiality. Except as necessary for purposes of the investigation of fraud or the administration of the MaineCare program, the department's records regarding a determination of a credible allegation of fraud are confidential until the relevant

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1 MaineCare provider has been given notice of a suspension of payments under subsection
2 1.

3 **6. Rules.** The department shall adopt rules to implement this section, including rules
4 to define "credible allegation of fraud" and to provide exception, expedited relief and
5 appeal procedures as required by and in accordance with the requirements of federal law
6 and regulations. Rules adopted pursuant to this subsection are routine technical rules as
7 defined in Title 5, chapter 375, subchapter 2-A.'

8 Amend the bill by striking out all of section 11 and inserting the following:

9 '**Sec. 11. 22 MRSA §3811, sub-§3,** as amended by PL 1997, c. 466, §27 and
10 affected by §28, is further amended to read:

11 **3. Overpayment.** "Overpayment" means program benefits ~~that an individual or~~
12 ~~assistance unit receives~~ that exceed the amount of program benefits for which ~~the an~~
13 individual or assistance unit is eligible when the department or a court has determined
14 that the benefits were ~~received~~ provided as a result of an intentional program violation, an
15 unintentional error by the individual or household or an error by the department.
16 "Overpayment" ~~includes any overpayment made before or after the effective date of this~~
17 ~~subsection~~ does not include an overpayment for medical services by the department
18 pursuant to chapter 855 or municipal general assistance pursuant to chapter 1161, if the
19 overpayment occurred due to an unintentional error by the individual or household or an
20 error by the department or by the municipality in the case of municipal general assistance
21 under chapter 1161.'

22 Amend the bill by inserting after section 12 the following:

23 '**Sec. 13. Emergency rules.** Notwithstanding the Maine Revised Statutes, Title 5,
24 section 8054, the department may adopt emergency rules to implement Title 22, section
25 1714-D without the necessity of demonstrating that immediate adoption is necessary to
26 avoid a threat to public health or safety or the general welfare, if notice is given through a
27 MaineCare provider list and 5 days or more are allowed for comment prior to adoption of
28 the rules.'

29 Amend the bill by striking out all of section 13 and inserting the following:

30 '**Sec. 13. Appropriations and allocations.** The following appropriations and
31 allocations are made.

32 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)**

33 **Office for Family Independence Z020**

34 Initiative: Provides funding for 8 Fraud Investigator positions and 2 Office Associate
35 positions and related All Other costs funded 50% from the General Fund and 50% from
36 Other Special Revenue Funds in the Office for Family Independence.

37	GENERAL FUND	2011-12	2012-13
38	Personal Services	\$0	\$313,011
39	All Other	\$0	\$19,643

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COMMITTEE AMENDMENT "B" to S.P. 665, L.D. 1888

1			
2	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$332,654</u>
3	OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
4	POSITIONS - LEGISLATIVE COUNT	0.000	10.000
5	Personal Services	\$0	\$313,011
6	All Other	\$0	\$28,837
7			
8	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$0</u>	<u>\$341,848</u>
9			

10 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
11 section number to read consecutively.

12 **SUMMARY**

13 This amendment is the minority report of the committee. The amendment removes
14 from the bill a provision regarding the scope of administrative hearings with regard to
15 appeals of suspensions of payments for credible allegations of fraud. The amendment
16 adds a provision on confidentiality. The amendment requires the Department of Health
17 and Human Services to provide a fair opportunity for appropriate expedited relief from a
18 suspension of payments consistent with federal law. The amendment revises the
19 requirement on adoption of rules and requires rules to define "credible allegation of
20 fraud" and to provide exception, expedited relief and appeal procedures as required by
21 and in accordance with the requirements of federal law and regulations. The amendment
22 narrows the definition of "overpayment" with respect to certain public assistance program
23 benefits.

24 **FISCAL NOTE REQUIRED**

25 (See attached)



125th MAINE LEGISLATURE

LD 1888

LR 2801(03)

An Act To Strengthen the State's Ability To Investigate and Prosecute Misuse of Public Benefits

Fiscal Note for Bill as Amended by Committee Amendment "B" **S-543**

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Net Cost (Savings)				
General Fund	\$0	\$332,654	\$342,045	\$351,717
Appropriations/Allocations				
General Fund	\$0	\$332,654	\$342,045	\$351,717
Other Special Revenue Funds	\$0	\$341,848	\$351,239	\$360,911

Correctional and Judicial Impact Statements

Establishes new Class D crimes.

The collection of additional fines may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Provides a General Fund appropriation of \$332,654 and an Other Special Revenue Funds allocation of \$341,848 in 2012-13 for 8 Fraud Investigator positions and 2 Office Associate positions and related costs for the Office of Family Independence in the Department of Health and Human Services to strengthen the department's ability to investigate and prosecute the misuse of public benefits. The additional costs to the Department of the Attorney General can be absorbed utilizing existing budgeted resources.