

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTH LEGISLATURE
AT THE

SECOND REGULAR SESSION

January 4, 1978 to April 6, 1978

FIRST SPECIAL SESSION

(No laws enacted)

September 6, 1978 to September 15, 1978

SECOND SPECIAL SESSION

October 18, 1978

THIRD SPECIAL SESSION

December 6, 1978

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inclusive, it shall be unlawful to use a purse seine. This subsection shall not prohibit the seining of mackeral or the use of a purse seine to remove the fish caught in a weir or stop seine.

Sec. 7. 12 MRSA § 6623, sub-§ 2, as enacted by PL 1977, c. 661, § 5, is repealed and the following enacted in its place:

2. Special license for dredging. The commissioner may issue a special license, as provided under section 6074, to operate a hydraulic or mechanical soft shell clam dredge, provided the dredge design is approved by the commissioner. A transportation permit shall not be required to ship, transport or sell soft shell clams harvested under this special license. The dredge shall only be operated below low water. The operation of the dredge shall not substantially interfere with commercial digging and shall not be used for taking any marine worms, lobsters or other crustaceans.

Sec. 8. 12 MRSA § 6751, sub-§ 2, as enacted by PL 1977, c. 661, § 5, is amended to read:

2. Licensed activity. The holder of a marine worm digger's license may fish for or take marine worms or possess, ship, transport or sell within the State, ~~at retail or to the holder of a marine worm dealer's license,~~ worms he has taken.

Sec. 9. Effective date. This Act shall become effective on January 1, 1979.

Effective January 1, 1979

CHAPTER 714

AN ACT Concerning the Catastrophic Illness and Medically Needy Programs.

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

Sec. 1. 22 MRSA § 3172, sub-§ 1-A is enacted to read:

1-A. Application. "Application" is the action by which an individual indicates in writing to the department his desire to receive or to be recertified for assistance under this chapter. An application is distinguished from an inquiry, which is simply a request for information about eligibility requirements for assistance.

Sec. 2. 22 MRSA § 3173, as amended by PL 1977, c. 582, § 2, is repealed and the following enacted in its place:

§ 3173. Powers and duties of department

The department is authorized to administer programs of aid, medical or remedial care and services for medically indigent persons. It is empowered to employ, subject to the Personnel Law, such assistants as may be necessary to carry out this program and to coordinate their work with that of the other work of the department.

The department is authorized and empowered to make all necessary rules and regulations consistent with the laws of the State for the administration of these programs including, but not limited to, establishing conditions of eligibility and types and amounts of aid to be provided, and defining the term "medically indigent," and the type of medical care to be provided. In administering programs of aid, the department shall, among other services, emphasize developing and providing financial support for preventive health care and home health care in order to assure that a comprehensive range of health care services is available to Maine citizens. Preventive health services shall include, but need not be limited to, programs such as early periodic screening, diagnosis and treatment; public school nursing services; child and maternal health services; and dental health education services. To meet the expenses of emphasizing preventive health care and home health care, the department is authorized to expend for each type of care no less than 1.5% of the total sum of all funds available to administer medical or remedial care and services eligible for participation under the United States Social Security Act, Title XIX and amendments and successors to it.

The department shall provide all applicants for aid under this chapter with information in written form, and verbally as appropriate or if requested, about coverage, conditions of eligibility, scope of programs, existence of related services and the rights and responsibilities of applicants for and recipients of assistance under this chapter.

All applications for aid under this chapter shall be acted upon and a decision made as soon as possible, but in no case shall the department fail to notify the applicant of its decision within 45 days after receipt of his application. Failure of the department to meet the requirements of this 45-day time standard, except where there is documented noncooperation by the applicant or the source of his medical information, shall lead to the immediate and automatic issuance of a temporary medical card which shall be valid only until such time as the applicant receives actual notice of a departmental denial of his application or he receives a replacement medical card. Notwithstanding an applicant's appeal of a denial of his application, the validity of the temporary medical card shall cease immediately upon receipt of the notice of denial. Any benefits received by the applicant during the interim period when he has actual use of a valid, temporary medical card shall not be recoverable by the department in any legal or administrative proceeding against the applicant.

Whenever an applicant is determined by the department to be ineligible for a program for which he has applied, he shall be immediately so notified in writing.

Any notification of denial shall contain a statement of the denial action, the reasons for denial, the specific regulations supporting the denial, an explanation of the applicant's right to request a hearing and a recommendation to the applicant of any other program administered by the department for which he may be eligible. Whenever an individual's application for Aid to Families with Dependent Children is denied by the department, the notice of this denial shall also include, in a clear and conspicuous manner, a statement that the applicant is likely to be eligible for medical assistance and shall include information about the availability of applications for the program upon request to the department either in writing or through a toll-free telephone number.

Any applicant for benefits under the medically needy program whose countable income exceeds the applicable state protected income level maximum shall be eligible for the program when his incurred medical expenses are found to exceed the difference between his countable income and the applicable state maximum. Whenever the applicant incurs sufficient medical expenses to be eligible for the medically needy program and provides reasonable proof thereof to the department, a medical card shall be issued within 10 days of the presentation of proof that eligibility has been met. Failure of the department to meet the requirements of this 10-day time standard, except where there is documented noncooperation by the applicant or the source of his medical information, shall lead to the immediate and automatic issuance of a temporary medical card which shall be valid only until such time as the applicant receives actual notice of a departmental denial of his application or he receives a replacement medical card. Any benefits received by the applicant during the interim period when he has actual use of a valid temporary medical card shall not be recoverable by the department in any legal or administrative proceeding against the applicant.

In all situations where prior authorization of the department is required before a particular medical service can be provided, the department shall authorize or deny the request for treatment within 30 days of the completion and presentation of the request to the department. The department's response to such a request shall be supplied to both the provider and the recipient. Whenever the provider is unable or unwilling to provide the service requested within a reasonable time after approval of the request by the department, the recipient shall have the right to locate another approved provider whose sole duty shall be to notify the department of his intention to provide the service subject to the original approval. It shall be the duty of the department to vigorously assist any recipient in his search for an approved provider of a necessary medical service where, through reasonable effort, the recipient has been unable to locate a provider on his own.

No time standard established by this section shall be used as a waiting period before granting aid, or as a basis for denial of an application or for terminating assistance.

The department shall make and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the department. The use of those records, papers, files and

communications by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished and by the law under which they may be furnished.

The department shall initiate and monitor ongoing efforts performed cooperatively with other public and private agencies, religious, business and civic groups, pharmacists and other medical providers, professional associations, community organizations, unions, news media and other groups, organizations and associations to inform low-income households eligible for programs under this chapter of the availability and benefits of these programs and to insure the participation of eligible households which wish to participate by providing those households with reasonable and convenient access to the programs.

All moneys made available to fund programs authorized by this chapter shall be expended under the direction of the department, and the department is empowered to direct the expenditures therefrom of those sums which may be necessary for purposes of administration.

Relating to the determination of eligibility for medical care to be provided to a beneficiary of state or federal supplemental income for the blind, disabled and elderly, the department may enter into an agreement with the Secretary of the United States Department of Health, Education and Welfare, whereby the secretary shall determine eligibility on behalf of the department.

Sec. 3. 22 MRSA § 3174, as enacted by PL 1973, c. 790, § 2, is amended by inserting before the first paragraph the following:

Medical indigency and eligibility for assistance under this chapter are to be defined and determined in manners consistent with the requirements for the receipt of federal matching funds under Title XIX, or its successors, of the Social Security Act.

An applicant shall be an adult who requires care and assistance, an adult legally responsible for the care of another or an adult who is legally responsible for the care of, and is applying on behalf of, one or more dependent minor children. Applications may be made on behalf of those applicants by their legal representatives.

The income factor of eligibility shall be met if, after reducing all income received by or available to the applicant by the liabilities for the kinds of goods and services provided for in this section, the residual income does not exceed 133⅓% of an amount equal to the Aid for Families with Dependent Children payment standards applicable to the applicant.

The application of any available insurance, other 3rd party liabilities or other benefits to which the applicant may be entitled or the determination of other eligibility factors shall be in accordance with federal matching requirements.

Sec. 4. 22 MRSA § 3179, as enacted by PL 1973, c. 790, § 2, is amended by adding at the end the following new paragraph to read:

Any recipient of aid under this chapter whose categorical assistance benefits are terminated by the department shall be sent a separate, timely and adequate notice of the effect that that termination will have on his medical assistance. The department shall develop procedures to assure the continuation, without interruption, of medical assistance to persons who, despite the termination of their categorical assistance benefits, are eligible for continuing coverage through any program under this chapter.

Sec. 5. 22 MRSA § 3185 is enacted to read:

§ 3185. Medical expenses for catastrophic illness

The Department of Human Services is authorized to provide financial assistance to, or on behalf of, families or individuals residing in Maine whose costs, wherever incurred, for hospital inpatient or outpatient care, physicians' services, drugs, appliances and other related services, including skilled nursing home care as defined by the department and as determined by the department to be necessary, cannot be met from their own or other sources, when those costs are of such magnitude as to constitute a financial catastrophe for those families or individuals, or when it can be determined that medical indigency exists. Skilled nursing home care shall be an eligible service only when the patient is admitted to a skilled nursing facility within 7 days of discharge from a general hospital, following a minimum inpatient stay of at least 5 days. Eligibility for payment for skilled nursing home care shall be for a maximum of 60 days in any one year, or in association with any one illness episode. For the purposes of this chapter, "hospital" shall include a nursing institution conducted by and for the adherents of a recognized church or religious denomination who depend exclusively upon spiritual means through prayer for the treatment of illness.

Application for assistance through the Catastrophic Medical Expense Fund shall be made by the individual who is, or has been, receiving the care for which financial assistance is being sought, or by a person who is legally responsible for those costs, or by a legal representative of that individual. Assistance shall be available through this fund only on behalf of specific individuals, and only for those who are not eligible for aid through federally matched medical care programs as administered in Maine, and it shall terminate when any similar federal program becomes effective. The Governor shall determine by proclamation when that federal program has become effective.

Eligibility for, and aid through, this fund shall be on a year-to-year basis, and eligibility and amount of aid shall be determined only after the full application to the costs of medical care in any 12-month period of all applicable health care insurance benefits, other 3rd party payer benefits legally provided for or liability benefits identified as being for medical or rehabilitative care. From all net income before taxes received by the applicant or those legally responsible for the

applicant's care, 20% will be assumed to be applicable to the liabilities for the care for which assistance is being sought. Where an individual is legally responsible for the medical liabilities of more than one applicant in a given year, no more than a total of 20% of his net income before taxes shall be assumed to be applicable to these liabilities. If the applicant has, or those legally responsible for the applicant's care have, or they jointly have, a net worth in excess of \$20,000, and the excess net worth includes cash or readily cashable assets, then 10% of that cash or cashable assets shall be assumed to be applicable to the liabilities for care. If, after the application of all of the above resources, the residual liability, in any one year, for which assistance is being sought is less than \$1,000, no payment shall be made from this fund and only that amount in excess of \$1,000 shall be paid. No reimbursements shall be made for bills already paid. Payments from this fund shall only be made directly to the vendors or providers of care. This section shall not be deemed to create any rights or causes of action against the State in such a vendor or provider of care, his heirs or assigns. When eligibility has been established, the department may make payments from this fund, during the remainder of the year of eligibility, for those goods and services provided for in this section.

In addition to other payments authorized by this section, the department shall, upon receipt of an accounting as authorized under Title 37-A, section 207-A, transfer to the Department of Defense and Veterans Services a sum not to exceed \$10,000 from money appropriated pursuant to this section as reimbursement for costs of rendering emergency medical services, including, but not limited to, the costs of liability insurance.

The Department of Human Services shall adopt and promulgate the additional rules and regulations which may be necessary for proper, equitable and effective administration of this section.

The adoption, amendment or repeal of any rules or regulations governing this section are subject to the requirements of the Maine Administrative Procedure Act.

Any balances of funds appropriated for medical expenses under this section shall not lapse, but shall be carried forward from year to year to be expended for the same purpose.

Sec. 6. 22 MRSA § 3283, as last amended by PL 1975, c. 679, § 2, is repealed.

Effective July 6, 1978

CHAPTER 715

AN ACT to Provide a \$250,000 Grant to the New England College of Osteopathic Medicine.