

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE

**FIRST SPECIAL SESSION**

October 9, 1987 to October 10, 1987

**SECOND SPECIAL SESSION**

October 21, 1987 to November 20, 1987

and the

**SECOND REGULAR SESSION**

January 6, 1988 to May 5, 1988

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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Twin City Printery  
Lewiston, Maine  
1988

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
FIRST AND SECOND SPECIAL SESSIONS  
and  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
1987

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2. Methods of repayment. Repayment of loans shall be as follows.

A. The Department of Human Services, by rule promulgated in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, shall make the repayment of government student loans for registered nurses a reimbursable cost up to the limits allowed by federal regulation for other health care providers regulated by the department.

B. Hospitals may participate in this plan on a voluntary basis by paying back the government student loans as they accrue on behalf of the participating registered nurses while employed at the facilities. Adjustments shall be made to the hospital's financial requirements pursuant to Title 22, section 396-D.

C. Other health care providers may participate in this plan on a voluntary basis by paying back the government student loans as they accrue on behalf of the participating registered nurses while employed at the facilities. These health care providers shall be reimbursed by the Department of Human Services. The Department of Human Services shall adopt rules to provide for this reimbursement.

§2158. Repeal

This chapter is repealed 3 years after the effective date of this section.

**Sec. 4. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1988-89

HUMAN SERVICES, DEPARTMENT OF

Medical Care — Payments to Providers

All Other \$ 59,796

Provides state match for Medicaid funding associated with the pass-through of the nursing loan repayment program.

**Sec. 5. Allocation.** The following funds are allocated from the Federal Expenditure Fund to carry out the purposes of this Act.

1988-89

HUMAN SERVICES, DEPARTMENT OF

Medical Care — Payments to Providers

All Other \$120,864

Provides funds for the Federal Medicaid portion due to the pass-through of the nursing loan repayment program.

**Sec. 6. Sunset.** Sections 1 and 2 of this Act are repealed 3 years after the effective date of this Act.

Effective August 4, 1988.

CHAPTER 778

H.P. 1821 — L.D. 2496

AN ACT to Provide a Mechanism for Insurance for Foster Care and Respite Care.

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

**Sec. 1.** 5 MRSA §1728-A, sub-§1, as enacted by PL 1983, c. 349, §9, is amended to read:

1. **Duties.** The director shall provide insurance advice and services for the State Government and any department or agency thereof for all forms of insurance, except for those departments or agencies and those types of insurance otherwise provided for by law. The director shall provide insurance advice and services for family foster homes, as defined in Title 22, section 8101, subsection 3, and respite care providers, as defined in Title 34-B, section 6201, subsection 2-A. The director shall be responsible for the acquisition and administration of all insurance purchased by the State, including the authority to purchase, on a competitive bid basis, insurance for the State for automobile, fire, liability and any other type of coverage which may be necessary to protect the State from financial loss. The director may enter into contracts for various types of claims management services in order to insure the most economically advantageous insurance protection in the operation of the state's State's insurance coverage program. In these regards, the director has the following duties:

A. To review annually the entire subject of insurance as it applies to all state property and activities and other persons pursuant to this section, and to provide to the commissioner a statement of its activities during the year ending the preceding June 30th. This report shall include:

- (1) An evaluation of the state insurance program;
- (2) A complete statement of all types and costs of insurance in effect;
- (3) Names of agents and companies of record; and
- (4) Such other matters as the director determines to be appropriate and necessary or as the commissioner may request;

B. To recommend to the commissioner such insurance protection as the director may deem necessary or desirable for the protection of all state property or activities or other insureds under this section;

C. Pursuant to programs approved by the commissioner, to provide insurance protection for state property and liability insurance in accordance with the Maine Tort Claims Act, Title 14, section 8116, and

premises liability, when required by a state lease or private property approved by the Attorney General, by self-insured retention, as provided, or purchase of insurance from companies or agents licensed to do business in this State, or by both, to effect the best possible contracts as to services, coverages and costs. The purchase of insurance under this section normally shall be made upon competitive bidding, except that the director may, in appropriate circumstances, purchase insurance by negotiation.

In the event of the purchase of insurance upon competitive bidding by qualified insurers, the director shall announce the low bid at a meeting advertised for the opening of bids, which, when approved by the commissioner, shall constitute an award of a contract of insurance;

D. To determine and review the values of property in which the State has an insurable or legal interest and recommend limits and types of insurance protection for that property;

E. To establish and promote safety and other loss prevention programs;

F. To receive and, with the assistance of the Attorney General, administer all claims for personal injury and property damage against the State; and

G. With the assistance of the Attorney General, to pursue all claims against 3rd parties in all cases in which the State may be subrogated to the rights of injured employees or where damage to state property may have resulted from the negligence of a 3rd party.

Sec. 2. 22 MRSA §8101, sub-§3, as amended by PL 1983, c. 629, §1, is further amended to read:

3. Family foster home. "Family foster home" means a children's home that is a private dwelling where substitute parental care is provided within a family on a regular, 24-hour a day, residential basis. The total number of children in care may not exceed 6, including the family's legal children under 16 years of age, with no more than 2 of these children under the age of 2. Family foster homes licensed by the Department of Human Services or relatives' homes approved by the Department of Human Services as meeting licensing standards are eligible for insurance pursuant to Title 5, section 1728-A. In any action for damages against a family foster home provider insured pursuant to Title 5, section 1728-A, for damages covered under that policy, the claim for and award of those damages, including costs and interest, shall not exceed \$300,000 for any and all claims arising out of a single occurrence. When the amount awarded to or settled for multiple claimants exceeds the limit imposed by this section, any party may apply to the Superior Court for the county in which the governmental entity is located to allocate to each claimant that claimant's equitable share of the total, limited as required by this section. Any award by the court in excess of the maxi-

imum liability limit shall be automatically abated by operation of this section to the maximum limit of liability. Nothing in this subsection may be deemed to make the operation of a family foster home a state activity nor may it expand in any way the liability of the State or foster parent.

Sec. 3. 34-B MRSA §6201, sub-§2-A is enacted to read:

2-A. Respite care. "Respite care" means temporary care-giving to a child or adult for the purpose of relieving that person's family or another primary caregiver. Persons who have completed the training program for respite care providers through the Department of Human Services or the Department of Mental Health and Mental Retardation are eligible for any insurance provided to family foster home providers pursuant to Title 5, section 1728-A. In any action for damages against a respite care provider insured pursuant to Title 5, section 1728-A, for damages covered under that policy, the claims for and award of those damages, including costs and interest, shall not exceed \$300,000 for any and all claims arising out of a single occurrence. When the amount awarded to or settled for multiple claimants exceeds the limit imposed by this section, any party may apply to the Superior Court for the county in which the governmental entity is located to allocate to each claimant that claimant's equitable share of the total, limited as required by this section. Any award by the court in excess of the maximum liability limit shall be automatically abated by operation of this section to the maximum limit of liability. Nothing in this subsection may be deemed to make respite care a state activity nor may it expand in any way the liability of the State or respite care provider.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1988-89
<u>HUMAN SERVICES, DEPARTMENT OF</u>	
Bureau of Social Services	
All Other	\$67,500
Provides funds for insurance for licensed family foster homes.	
DEPARTMENT OF HUMAN SERVICES	
TOTAL	<u>\$67,500</u>
<u>MENTAL HEALTH AND MENTAL RETARDATION, DEPARTMENT OF</u>	
Bureau of Children with Special Needs	
All Other	\$ 6,000
Provides funds for insurance for licensed respite care providers.	
Bureau of Mental Retardation	

All Other	5,040
Provides funds for insurance for licensed respite care providers.	
DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION	
TOTAL	<u>\$11,040</u>

Effective August 4, 1988.

## CHAPTER 779

H.P. 1915 — L.D. 2614

### AN ACT to Amend the Rehabilitation System under the Workers' Compensation Act.

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Workers' Compensation Act was substantially revised within the past year to bring down the cost of claims for insurers; and

Whereas, in light of these changes injured workers are entitled to an effective rehabilitation system that will meet their needs; and

Whereas, there is no available information regarding some aspects of the rehabilitation system that potentially could be abused; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1.** 39 MRSA §81, first ¶, as enacted by PL 1985, c. 372, Pt. A, §29, is amended to read:

The purpose of this subchapter is restoration of the injured employee to gainful suitable employment, to the maximum extent practicable, consistent with the priorities listed in section 86. To further that purpose, it is the shared responsibility of all parties involved to cooperate in developing a rehabilitation process designed to promote reemployment at a level of earnings commensurate with the employee's ability to perform under present conditions, consistent with the priorities of section 86.

**Sec. 2.** 39 MRSA §82, sub-§3, ¶¶A and E, as enacted by PL 1985, c. 372, Pt. A, §29, are amended to read:

A. The administrator is responsible for the receipt of reports and other information required under this subchapter and may require supplementary informa-

tion needed to fulfill the purposes of this subchapter. The administrator shall collect data on reemployment trends for injured workers.

E. The commission shall not provide direct rehabilitation services. Rehabilitation services under this subchapter shall be provided by private and public rehabilitation counselors, governmental agencies, in-house rehabilitation counselors and others approved by the administrator as qualified to provide rehabilitation services under the commission's rules. The administrator shall consider a rehabilitation counselor's rate of successfully placing rehabilitated employees in jobs relative to the placement rates of other counselors in the State as fundamental in deciding whether to approve the counselor as qualified. The administrator shall compile annually a list of approved providers of rehabilitation services, except that in-house rehabilitation counselors shall not appear on the list, and shall make this list available to the parties.

**Sec. 3.** 39 MRSA §82-A is enacted to read:

#### §82-A. Initial report

Before any rehabilitation services may be provided for an injured worker, the rehabilitation provider must supply the Workers' Compensation Commission with the following:

1. Preliminary information. Preliminary information on the injured worker on forms provided by the commission; and

2. Informed consent. An informed consent form provided by the commission and signed by the injured worker. Before an injured worker can sign the form, the rehabilitation provider must explain to the injured worker:

A. The rehabilitation rights and options available to an injured worker; and

B. Information requested by the Workers' Compensation Commission.

**Sec. 4.** 39 MRSA §83, sub-§8 is enacted to read:

8. Outside services provided. Persons or firms providing services concerning workers injured after January 1, 1986 shall disclose information about services provided in connection with workers' compensation claims upon request of the commission. The commission shall adopt rules under the Maine Administrative Procedure Act, Title 5, chapter 375, to implement this subsection. The commission may collect information to clarify the cost, nature, amount and results of services provided to insurers and injured employees. The commission shall have the power to subpoena information. Information collected under this subsection shall remain confidential and for the use of the commission only.