

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

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Augusta, Maine
1989

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

1989

I. Burning for the containment or control of spills of gasoline, kerosene, heating oil or similar petroleum product: and

read: **Sec. 11. 38 MRSA §599, sub-§3, ¶J** is enacted to

J. The burning of brush and demolition debris at municipal solid waste disposal facilities.

Sec. 12. 38 MRSA §599, sub-§4, ¶A, as repealed and replaced by PL 1983, c. 504, §7, is amended to read:

A. Residential use of outdoor grills and fireplaces for recreational purposes such as preparing food: and

Sec. 13. 38 MRSA §599, sub-§4, ¶B, as repealed and replaced by PL 1983, c. 504, §7, is repealed.

See title page for effective date.

CHAPTER 175

H.P. 552 - L.D. 749

An Act to Protect the Identity of Complainants Concerning Health Care Facilities and Providers and Certain Financial Information for the Maine Managed Care Insurance Plan Demonstration

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

Sec. 1. 5 MRSA §9057, sub-§6, as enacted by PL 1987, c. 714, §1, is amended to read:

6. Confidential information. Information may be disclosed which is confidential pursuant to Title 22, chapters 958-A and 1071 and ~~section~~ sections 7703 and 1828; and Title 34-A, except for information, the disclosure of which is absolutely prohibited under Title 34-A, section 3003. Disclosure may be only for the determination of issues involving unemployment compensation proceedings relating to a state employee, state agency personnel actions and professional or occupational board licensure, certification or registration.

A. For the purpose of this subsection, "hearing officer" means presiding officer, judge, board chairman, arbitrator or any other person deemed responsible for conducting a proceeding or hearing subject to this subsection. In the case of the Civil Service Appeals Board, the presiding officer shall be the entire board. "Employees of the agency" means employees of a state agency or department or members, agents or employees of a board who are directly related to and whose official duties involve the matter at issue.

B. The confidential information disclosed pursuant to this subsection is subject to the following limitations:

(1) The hearing officer determines that introduction of the confidential information is necessary for the determination of an issue before the hearing officer;

(2) During the introduction of confidential information, the proceeding is open only to the hearing officer, employees of the agency, parties, parties' representatives, counsel of record and the witness testifying regarding the information, and access to the information is limited to these people. Disclosure is limited to information directly related to the matter at issue;

(3) Witnesses shall be sequestered during the introduction of confidential information, except when offering testimony at the proceeding;

(4) The names or identities of reporters of confidential information or of other persons shall not be disclosed, except when disclosure is deemed necessary and relevant by the hearing officer; and

(5) After hearing, the confidential information is sealed within the record and shall not be further disclosed, except upon order of court.

Sec. 2. 22 MRSA §1828 is enacted to read:

§1828. Records; disclosure

1. Confidential information. The following provisions apply to records that are made, acquired or retained by the department in connection with the administration of the Medicaid program and the licensing or certification of hospitals, nursing homes and other medical facilities and entities.

A. Except as provided in Title 5, section 9057 and in subsections 2 and 3, confidential information may not be released without a court order or a written release from the person whose privacy interest is protected by this section.

B. "Confidential information" means any information which directly or indirectly identifies:

(1) Any person who makes a complaint to the department;

(2) A resident or a recipient of services of any facility or provider licensed or certified by the department;

(3) Any recipient of a public welfare program, such as the United States Social Security Act, Title XIX; or

(4) Any medical or personal information concerning the individuals listed in subparagraphs (2) and (3).

2. Optional disclosure. The department may disclose relevant confidential information to the extent allowed by federal law and regulation to the following persons or agencies:

A. Employees of the department and legal counsel for the department in carrying out their official functions;

B. Professional and occupational licensing boards pursuant to chapter 857;

C. An agency or person investigating a report of abuse or neglect when the investigation is authorized by law or by an agreement with the department;

D. A physician treating an individual whom the physician reasonably suspects may have been abused or neglected;

E. The resident or recipient of services on whose behalf the complaint was made; or

F. A parent, guardian, spouse or adult child of a resident or recipient of services or any other person permitted by the resident or recipient to participate in decisions relating to the resident's or recipient's care.

3. Mandatory disclosure. The department shall disclose relevant confidential information to the extent allowed by federal law and regulations to the following:

A. A law enforcement agency investigating a report of abuse or neglect or the commission of a crime by an owner, operator or employee of a facility or provider; or

B. Appropriate state or federal agencies when disclosure is necessary to the administration of the Medicaid program.

4. Further disclosure. Information released pursuant to subsections 2 and 3 shall be used solely for the purpose for which it was provided and shall not be further disseminated.

Sec. 3. 22 MRSA §3188, sub-§4 is enacted to read:

4. Confidentiality of records. The following medical or financial information concerning applicants to the Maine Managed Care Insurance Plan Demonstration shall be considered confidential as follows.

A. All department records that contain information regarding the identity, medical status or financial resources of particular individuals applying for health insurance coverage under the Maine Managed Care Insurance Plan Demonstration are confidential and subject to release only with the written authorization of the applicant.

B. All department records that contain information regarding the identity or financial resources of a business or business owner applying for enrollment in the Maine Managed Care Insurance Plan Demonstration are confidential and subject to release only with written authorization of an authorized representative of the applicant's business.

Sec. 4. 22 MRSA §3291, as enacted by PL 1987, c. 714, §2, is amended to read:

§3291. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Bureau. "Bureau" means the Bureau of Social Services with respect to chapters 958-A and 1071, ~~and~~ the Bureau of Social Services or the Bureau of Medical Services with respect to section 7703 and the Bureau of Medical Services with respect to section 1828.

2. Confidential information. "Confidential information" means information deemed confidential by chapters 958-A and 1071, and ~~section~~ sections 7703 and 1828.

3. Department. "Department" means the Department of Human Services.

4. Director. "Director" means the Director of the Bureau of Social Services with respect to confidential information derived from chapters 958-A and 1071, ~~and~~ the Director of the Bureau of Medical Services or the Director of the Bureau of Social Services with respect to confidential information derived from section 7703 and the Director of the Bureau of Medical Services with respect to confidential information derived from section 1828.

5. Hearing officer. "Hearing officer" means presiding officer, judge, board chairman, arbitrator or any other person deemed responsible for conducting a proceeding or hearing subject to this chapter.

6. Licensing board. "Licensing board" means a professional or occupational licensing board that licenses, certifies or registers a person in a profession or occupation which is included in the list of professional and occupational licensing boards in Title 5, section ~~12004, subsection 1, paragraph A~~ 12004-A.

Sec. 5. 22 MRSA §3292, first ¶, as enacted by PL 1987, c. 714, §2, is amended to read:

Any information derived by the department ~~from the implementation of chapters~~ in the course of carrying out its

~~functions and deemed confidential by chapters chapter 958-A and or 1071 and or section 7703 deemed confidential by these chapters and relating or 1828, which relates to a state employee or a person licensed, certified or registered by a licensing board as defined in section 3291 who is alleged to have engaged in any unlawful activity or professional misconduct, or in conduct in violation of laws or rules relating to a licensing board, may be disclosed to and used by the appropriate state agencies and licensing boards only in accordance with this chapter. The department, other state agencies and licensing boards shall comply with the following.~~

See title page for effective date.

CHAPTER 176

S.P. 196 - L.D. 444

An Act to Prohibit Discrimination Against Persons with the Human Immunodeficiency Virus for Purposes of Insurance Coverage

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

Sec. 1. 24 MRSA §2332-B is enacted to read:

§2332-B. Acquired Immune Deficiency Syndrome

No individual or group hospital, medical or health care service contract delivered or issued for delivery in this State, other than a contract which provides benefits for specific diseases or accidental injuries only, may provide more restrictive coverage for Acquired Immune Deficiency Syndrome or AIDS, AIDS Related Complex (ARC) or HIV related diseases, or for related services, than for any other disease or sickness or exclude coverage for AIDS, ARC or HIV related diseases except through an exclusion under which all diseases and sicknesses are treated the same.

Sec. 2. 24-A MRSA §2159, sub-§§3 and 4 are enacted to read:

3. It shall be an unfair trade practice in the business of insurance for any insurer to discriminate unfairly against any person who has tested positive for the presence of the human immunodeficiency antigen or the presence of an antibody to the human immunodeficiency virus or who has Acquired Immune Deficiency Syndrome or AIDS, AIDS Related Complex (ARC) or HIV related diseases provided that nothing in this subsection prohibits an insurer from treating individuals of different classes and of unequal expectations of life, or essentially different hazards, differently in accordance with subsection 1 or 2.

4. It shall not be unfair discrimination for group life insurance policies or contracts subject to chapter 31 to contain an exclusion or restriction for death caused by Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or HIV related diseases which existed 6 months prior to the individual's effective date of

insurance if an actuarial justification is filed and approved by the superintendent. The exclusion or restriction may run for no longer than the incontestable period of the policy within the meaning of section 2615.

Sec. 3. 24-A MRSA §2526-A is enacted to read:

§2526-A. Acquired Immune Deficiency Syndrome

No individual policy of life insurance delivered or issued for delivery in this State may provide more restrictive coverage for death resulting from Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or HIV related diseases than for death resulting from any other disease or sickness or exclude coverage for death resulting from AIDS, ARC or HIV related diseases. This section shall not apply to death by accident or accidental means.

Sec. 4. 24-A MRSA §2629 is enacted to read:

§2629. Acquired Immune Deficiency Syndrome

No group life insurance policy delivered or issued for delivery in this State may provide more restrictive coverage for death resulting from Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or HIV related diseases than the death resulting from any other disease or sickness or exclude coverage for death resulting from AIDS, ARC or HIV related diseases except through an exclusion under which deaths resulting from all sicknesses and diseases are treated the same or as provided by section 2159, subsection 4. This section shall not apply to death by accident or accidental means.

Sec. 5. 24-A MRSA §2750 is enacted to read:

§2750. Acquired Immune Deficiency Syndrome

No individual or family health insurance policy delivered or issued for delivery in this State may provide more restrictive benefits for sickness or disablement or the related expenses resulting from Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or HIV related diseases than for any other sickness or disabling condition or exclude benefits for AIDS, ARC or HIV related diseases except through an exclusion under which all sickness and diseases are treated the same. This section shall not apply to a policy providing benefits for specific diseases or accidental injury only.

Sec. 6. 24-A MRSA §2846 is enacted to read:

§2846. Acquired Immune Deficiency Syndrome

No group health insurance policy delivered or issued for delivery in this State may provide more restrictive benefits for sickness or disablement or the related expenses resulting from Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or HIV related diseases than for any other sickness or disabling condition or exclude benefits for AIDS, ARC or HIV related diseases except through an exclusion under which all sicknesses and diseases are treated the same. This section shall not apply