

# 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

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
SEPTEMBER 30, 1989

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

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J.S. McCarthy Company  
Augusta, Maine  
1989

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
FIRST REGULAR SESSION  
of the  
ONE HUNDRED AND FOURTEENTH LEGISLATURE  
1989

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## CHAPTER 567

## H.P. 505 - L.D. 685

**An Act to Provide the Reasonable Costs of Wages Paid to Employees of Long-term Care Facilities**

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

Whereas, nursing homes are facing a financial crisis due to the labor shortage in health care occupations; and

Whereas, reimbursement under the Medicaid program for services provided to eligible patients has fallen far behind the costs of staffing to provide those services; 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:**

**22 MRSA §1708, sub-§2**, as repealed and replaced by PL 1975, c. 365, §1, is amended to read:

**2. Compensation for nursing homes.** A nursing home, as defined under section 1812-A, or any portion of a hospital or institution operated as a nursing home, when the State is liable for payment for care, shall be reimbursed at a rate established by the Department of Human Services pursuant to this subsection. The department shall not establish a so-called "flat rate." ~~The department shall establish for each nursing home a payment rate or payment rates relating to various types of care provided in a nursing home. Such rate or rates shall be based on the operating costs attributable to each nursing home as determined by such accounting and auditing standards and procedures as the department may establish. The provisions of this subsection shall apply to all funds, including federal funds, paid by any agency of the State to a nursing home for patient care. The provisions of this subsection shall apply, notwithstanding any other provisions of law.~~

A. The department shall establish for each nursing home a payment rate or payment rates relating to various types of care provided in a nursing home. The rate or rates shall be based on the operating costs attributable to each nursing home as determined by such accounting and auditing standards and procedures as the department may establish.

B. Except as provided in this subsection, the department shall adjust the payment rate for each nursing home consistent with the changes to the principles of reimbursement for long-term care facilities adopted by the department on March 31, 1989. For fiscal years beginning on or after January 1, 1990, the department shall reinstitute the "prospective rate"

based payment system for variable costs including wages and fringe benefits, using as a base year the preceding fiscal year.

C. The department shall not establish a maximum limit on the reimbursement of wages and benefits of individual categories of staff, nor shall the department establish a so-called "flat rate."

D. The department shall use the "skilled nursing facility" market basket forecasts published quarterly by Data Resources, Inc., to determine the annual increase in the variable rate to each nursing home, except that the wage component of the "DRI" increase will be replaced by a component which reflects the wage proxy values established by the Maine Health Care Finance Commission to forecast the appropriate changes in wages and benefits for employees of hospitals.

E. The department shall amend the state health plan and any applicable state regulation to rescind its election to apply the cost limits established under Medicare pursuant to 42 Code of Federal Regulations, Section 447.252 (c). Prior to the resumption of the "prospective rate" system under paragraph B, the department may limit the rate paid to a facility to the greater of the Medicare cost limit or 120% of the mean allowable routine service costs incurred by facilities in the region in which the facility is located. The department may estimate the mean allowable routine service costs incurred by facilities for the purpose of calculating appropriate interim rates. For the purpose of this paragraph the region shall be the region defined by the Maine Health Care Finance Commission for hospitals. The department may waive these limits for extraordinary staffing requirements or such other good cause as the department may determine.

F. Notwithstanding any other provision of this subsection, the department may limit payments to facilities if projections indicate that Medicaid payments to nursing homes in the aggregate will exceed the Medicare upper limit. The department may adopt rules implementing these limits to be effective for fiscal years beginning on or after January 1, 1990.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective July 11, 1989.

## CHAPTER 568

## S.P. 246 - L.D. 576

**An Act Concerning Transportation Expenses for Former AMHI Patients**

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

Sec. 1. 34-B MRSA §3863, sub-§4, 1B, as amended by PL 1985, c. 815, is repealed and the following enacted in its place:

B. The Department of Mental Health and Mental Retardation shall be responsible for any transportation expenses under this section, including return from the hospital if admission is declined. The department shall utilize any 3rd-party payment sources which are available.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1990-91

MENTAL HEALTH AND MENTAL RETARDATION, DEPARTMENT OF

Mental Health Services - Community

All Other \$44,651

Provides funds to pay for the cost of transporting individuals to a mental health hospital.

Sec. 3. Effective date. This Act shall become effective on February 1, 1991.

Effective February 1, 1991.

CHAPTER 569

H.P. 426 - L.D. 591

An Act to Clarify Parties Which May Petition the Board of Environmental Protection for a Water Level Hearing

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

Sec. 1. 38 MRSA §840, sub-§1, as amended by PL 1987, c. 402, Pt. A, §205, is further amended to read:

1. Power. The board may on its own motion and shall at the request of the owner, lessee or person in control of a dam, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors or from a water utility having the right to withdraw water from the body of water for which the water level regime is sought, conduct an adjudicatory hearing for the purpose of establishing a water level regime for the body of water impounded by any dam that is neither:

A. Licensed by the Federal Energy Regulatory Commission;

B. Authorized under the Federal Power Act, Section 23;

C. Used to store water for a downstream facility licensed by the Federal Energy Regulatory Commission or authorized under the Federal Power Act, Section 23, provided that the owner of the downstream facility possessed a majority ownership of the upstream dam as of January 1, 1983; nor

D. Operating with a permit setting water levels issued under the ~~great ponds laws, sections 391 to 394; the alteration of coastal wetlands laws, sections 471 to 478; protection of natural resources laws, sections 480-A to 480-S;~~ the site location of development laws, sections 481 to 490; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; ~~the stream alteration laws, sections 425 to 430;~~ or any other statute regulating the construction or operation of dams.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1989-90 1990-91

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Land Quality Control

All Other \$3,000 \$3,000

Provides funds for anticipated expenses for additional water level hearings.

See title page for effective date.

CHAPTER 570

S.P. 517 - L.D. 1413

An Act to Establish a State Arbitration Program for Lemon Motor Vehicles

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

Sec. 1. 10 MRSA §1161, sub-§5 is enacted to read:

5. State-certified arbitration. "State-certified arbitration" means the informal dispute settlement procedure administered by the Department of the Attorney General which arbitrates consumer complaints dealing with new motor vehicles that may be so defective as to qualify for equitable relief under the Maine lemon laws.