

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

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

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
July 14, 1990

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

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

B. Whether calls are to be made from within the State; and

C. If calls are to be made from within the State:

- (1) The name, address and telephone number of the local manager or representative;
- (2) The address and telephone number of the location from which the calls are made;
- (3) Whether the equipment to be used is a type approved by the Federal Communications Commission;
- (4) The number of lines used;
- (5) The projected duration of the calling program;
- (6) The days of the week and hours of operation; and
- (7) The name, address and telephone number of a Maine-based legal representative of the calling organization.

Changes to the registration information or discontinuance of the calling program must be reported to the Secretary of State within 30 days.

The automated telephone calling device used for making the calls subject to this chapter must be of a type approved by the Federal Communications Commission.

The Secretary of State may charge a fee sufficient to cover the cost of registration. The Secretary of State shall, pursuant to Title 5, chapter 375, adopt rules to carry out the purposes of this chapter, including the period for which registration is valid.

8. Penalty. Violation of this section, including the provision of false registration information, is an unfair trade practice as prohibited by Title 5, section 207.

See title page for effective date.

CHAPTER 776

S.P. 806 - L.D. 2069

An Act to Allow the Maine State Employees Health Insurance Program to Self-insure Health or Dental Insurance

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

Sec. 1. 5 MRSA §285, as amended by PL 1989, c. 443, §6; c. 483, Pt. A, §8; and c. 502, Pt. A, §12, is further amended to read:

§285. Group health plan

~~Group accident and sickness or~~ A group health insurance plan is available to state employees, subject to the following provisions:

1. Eligibility; generally. The following persons are eligible for a group ~~accident and sickness or~~ health insurance plan:

A. Each appointed or elective officer or employee of the State who is eligible for membership in the Maine State Retirement System, Maine Legislative Retirement System or the State Police Retirement System;

B. Any member of the judiciary or workers' compensation ~~commissioner~~ commission;

D. Any employee of the Maine State Employees Association;

E. Any employee of Council 74 of the American Federation of State, County and Municipal Employees;

F. Any employee of the Maine Turnpike Authority;

F-1. Any employee of the Maine Technical College System;

F-2. Any employee of the Maine Maritime Academy; and

G. Subject to subsection 1-A, employees in any of the categories denominated in paragraphs A to F-1 who:

(1) On April 26, 1968, have retired and who were covered under group health plans of ~~insurance~~ which by virtue of Public Law 1967, chapter 543, were terminated;

(2) After April 26, 1968, retire and who on the date of their retirement are currently enrolled in this group ~~accident and sickness or~~ health ~~insurance~~ plan as an employee;

(3) After December 2, 1986, and after reaching normal retirement age, cease to be members of the Legislature and are recipients of retirement allowances from the Maine State Retirement System based upon creditable service as teachers, as defined by section 17001, subsection 42. This paragraph shall also apply to former members who were members on December 2, 1986; or

(4) After December 2, 1986, and not yet normal retirement age, cease to be members of the Legislature and are recipients of retirement allowances from the Maine State

Retirement System based upon creditable service as teachers, as defined by section 17001, subsection 42. This paragraph also applies to former members who were members on December 2, 1986.

1-A. Eligibility; retirees. Any person otherwise eligible pursuant to subsection 1, paragraph G, must in addition, in order to be eligible under this section:

A. If retiring on a disability retirement, have participated in the group ~~accident and sickness or health insurance~~ plan immediately prior to retirement;

B. If not retiring on a disability retirement, have participated, as an employee, in the group ~~accident and sickness or health insurance~~ plan for at least one year immediately prior to retirement; or

C. If eligibility is based upon subsection 1, paragraph G, subparagraph (3), have participated in the group ~~accident and sickness or health~~ plan for at least one year immediately prior to ceasing to be a member of the Legislature.

1-B. Ineligibility. Eligibility under this section shall not be extended to include members of the Maine Municipal Association or the Maine Teachers Association or employees of counties and municipalities and instrumentalities thereof, including quasi-municipal corporations.

2. Coverage. Each state employee to whom this section applies shall be eligible for a group ~~accident and sickness or health insurance~~ plan as provided in Title 24-A, sections 2802 to 2812, including major medical benefits or through a self-funded alternative. The provisions of ~~these~~ the group insurance policy or policies or the self-funded alternative shall be determined, insofar as the provisions are not inconsistent with terms and conditions contained in collective bargaining agreements negotiated pursuant to Title 26, chapter 9-B, by the State Employee Health Commission as provided in section 285-A. The master policy for the group ~~insurance~~ health plan shall be held by the Commissioner of Administration.

3. Enrollment. Any employee eligible under this section may join within the first 60 days of employment or during a declared open enrollment period. The filing of necessary applications shall be the responsibility of the employer. Effective dates under this section shall be at the discretion of the commission.

5. Purchase of policies. The commission shall purchase, by competitive bidding, from one or more insurance companies or, nonprofit organizations, 3rd-party administrators or both any organization necessary to administer and provide a health plan, a policy or policies of group ~~accident and sickness or health insurance, including major medical insurance~~ or contract, to provide the benefits specified by this section. The purchase of policies by the commission shall be accomplished by use

of a written contract which shall be fully executed within 90 calendar days of notification of bid acceptance from the commission to the insurer. In extenuating circumstances, the Commissioner of Administration may grant a waiver to that 90-day limit. Notwithstanding this subsection, with the consent of the policyholder and of the insurer and at the sole discretion of the commission, existing policies of insurance covering at least 1,000 of the employees defined as eligible by this section may be amended to provide the benefits specified by this section and assigned to the Commissioner of Administration for the benefit of all those eligible under this section. The company or companies or nonprofit organizations must be licensed under the laws of the State, when applicable. The policy provisions shall be subject to and as provided for by the insurance laws of this State, when applicable.

6. Master policy and certificates. The insurance company or, companies or nonprofit organizations; or ~~both the Commissioner of Administration~~, shall furnish the usual master policy and certificates. Each ~~insured~~ employee covered participant shall receive a certificate setting forth the benefits to which ~~he~~ the participant is entitled, to whom payable, to whom claims shall be submitted, and summarizing the provisions of the policy principally affecting the employee participant.

7. Payment by State. Except as otherwise provided in this subsection, the State, through the commission, shall pay 100% of only the employee's share of this ~~insurance~~ health plan, except for Legislators ~~where, for whom~~ the State shall pay 50% of the ~~Legislators' health insurance plan~~ premium for dependent coverage. For any person appointed to a position after November 1, 1981, who is employed less than full time, the State shall pay a share of the employee's share reduced pro rata to reflect the reduced number of work hours.

8. Payment by Maine State Retirement System. The Maine State Retirement System shall pay 100% of only the retiree's share of the premiums for this ~~insurance~~ health plan for persons who were previously eligible for this ~~insurance~~ health plan pursuant to subsection 1, paragraph A and who have subsequently become eligible pursuant to subsection 1, paragraph G.

9. Restrictions on self-insured programs. The following restrictions apply to self-insured group health or dental plans.

A. To the extent that the State assumes the risk with respect to any program provided for in this section, the State shall maintain a reserve at least equal to the sum of:

(1) An amount estimated to be necessary to pay claims and administrative costs for the assumed risk for 2 1/2 months; and

(2) The amount determined annually by a qualified actuary to be necessary to fund the unpaid portion of ultimate expected losses, including incurred but not reported claims,

and related expenses incurred in the provision of benefits for eligible participants, less any credit, as determined by a qualified actuary, for excess or stop-loss insurance.

The reserve must be maintained in the fund provided for in section 286. If the State self-insures for more than one program, a reserve meeting the requirements of this paragraph must be maintained for each program.

B. The State may purchase excess or stop-loss insurance for any program, with attachment levels and limits as recommended by a qualified actuary.

C. Paragraph A does not apply to a program in the first 2 years after the program is changed from a fully insured program to a fully or partially self-insured program. Before a program may begin its first year of operation:

(1) The reserve fund must contain a reserve at least equal to the amount estimated to be necessary to pay the claims and administrative costs with respect to the assumed risk for one full month; and

(2) The rate structure of the program, as certified by a qualified actuary, must be designed to enable the fund to attain the following reserve levels:

(a) By the end of the first year of the program, the reserve required by paragraph A, subparagraph (2), and an amount estimated to be necessary to pay claims and administrative costs for the assumed risk for 2 full months; and

(b) By the end of the 2nd year of the program, the reserve required by paragraph A, subparagraph (2), and an amount estimated to be necessary to pay claims and administrative costs for the assumed risk for 2 1/2 full months.

If the State purchases stop-loss or excess insurance with respect to the risk, the required reserve is reduced by the credit specified in paragraph A. A self-insurance program may not continue if the reserve fund with respect to that program does not contain the amounts set forth in subparagraph (2) by the time limits established.

D. For purposes of paragraphs A, B and C, a "qualified actuary" is an actuary who is a member of the American Academy of Actuaries qualified as to health reserving methodologies.

E. The commission may not enter into a contract with a 3rd-party administrator that has not demonstrated compliance with all applicable state laws, and that is not, at the time of entering into the

contract, administering a health plan or providing health care coverage for a total number of lives equal to the number that would be covered by the state contract.

F. This paragraph is effective only if no other applicable state law requires bonding of 3rd-party administrators.

(1) Every applicant to provide service as a 3rd-party administrator for this program shall file with the proposal, and shall maintain in force while representing the state program, a fidelity bond in favor of the Treasurer of State executed by a surety company for the benefit of the State or beneficiaries of the program. The bond must be continuous in form and in one of the following amounts:

(a) For an administrator that collects contributions and premiums for the program but does not administer or pay claims, the greater of \$50,000 or 5% of contributions and premiums projected to be received or collected for the following plan year from the State or from persons covered by the program, but not to exceed \$1,000,000;

(b) For an administrator that administers and pays claims, but does not collect premiums and contributions, the greater of \$50,000 or 5% of the claims and claim expenses projected to be held for the following year to pay claims and claim expenses for persons covered by the program, but not to exceed \$1,000,000; or

(c) For an administrator that collects premiums and contributions and administers and pays claims, the greater of the amounts determined under division (a) or (b), but not to exceed \$1,000,000.

G. Any contract entered into by the State must provide for coverage that meets the same level of benefits as those that would be required by state law if the coverage was provided by a health insurance plan governed by Title 24 or Title 24-A.

10. Commission not insurer. The commission or other entity operating any self-funded plan pursuant to this section is not an insurer, reciprocal insurer, or joint underwriting association under the laws of the State. The administration of such a program by the director of the employees health insurance program does not constitute doing the business of insurance.

Sec. 2. 5 MRSA §285-A, sub-§1, as amended by PL 1989, c. 483, Pt. A, §9, is further amended to read:

1. Establishment. The State Employee Health Commission is established to serve as trustees of the group ~~accident and sickness~~ or health insurance plan in this subchapter and to advise the director of the state employee health insurance program on health insurance issues and the Director of the Bureau of State Employee Health on issues concerning employee health and wellness, the State Employee Assistance Program and the use of the State Employee Health Internal Service Fund Account, section 956.

Sec. 3. 5 MRSA §286, as repealed and replaced by PL 1987, c. 731, §7, is amended by adding at the end 2 new paragraphs to read:

A reserve fund, administered by the director of the state employees health insurance program with approval of the Commissioner of Administration, is created to protect the program from unexpected losses and self-insured losses and related expenses incurred in the provision of health and dental benefits for the eligible participants. The fund is a continuing fund and may not lapse. The Treasurer of State shall invest the fund. All proceeds of these investments accrue to the fund.

The reserve fund is capitalized by money from premium payments and by legislative appropriation, payments from state departments and agencies and by such other means as the Legislature may approve. All money in the fund is deemed to be the commingled assets of all the covered employees and must be used only for the purposes of this section.

See title page for effective date.

CHAPTER 777

H.P. 1521 - L.D. 2106

An Act to Authorize the Department of Human Services to Impose Civil Penalties on Vendors Who Violate the Requirements of the Women, Infants and Children Special Supplemental Food Program

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

22 MRSA §3107 is enacted to read:

§3107. Women, Infants and Children Special Supplemental Food Program vendor penalties

The department may assess a penalty against a vendor under the Women, Infants and Children Special Supplemental Food Program of the federal Child Nutrition Act of 1966 who the department determines, after an opportunity for a hearing in accordance with Title 5, chapter 375, subchapter IV, has violated the rules of the department that apply to that program. The amount of the penalty may not exceed the amount that may be

assessed against a vendor under the food stamp program pursuant to 7 Code of Federal Regulations, Section 278.6(f) and (g).

See title page for effective date.

CHAPTER 778

H.P. 1540 - L.D. 2125

An Act to Clarify the Laws Regarding Recovery of Medicaid Payments from Liable Third Parties

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

Sec. 1. 22 MRSA §14, sub-§1, as amended by PL 1981, c. 698, §92, is repealed and the following enacted in its place:

1. Recovery procedures. When benefits are provided or will be provided to a beneficiary under the Medicaid program administered by the department pursuant to the United States Social Security Act, Title XIX, for the medical costs of injury, disease, disability or similar occurrence for which a 3rd party is, or may be, liable, the commissioner shall have the right to recover from that party the reasonable value of the benefits provided. The Medicaid program is the payor of last resort and should provide medical coverage only when there are no other available resources. The Attorney General, or counsel for any fiscal intermediary with the permission of the Attorney General, may, to enforce this right, institute and prosecute legal proceedings against the 3rd party or, pursuant to this subsection, against the recipient, in the appropriate court, either in the name of the commissioner or in the name of the injured person, beneficiary, guardian, personal representative, estate or survivor.

If a recipient of medical assistance receives a settlement or award from a 3rd party, the settlement or award is subject to disbursement as provided in subsection 2-F.

The commissioner may compromise, or settle and execute a release of, any claim or waive any claim, in whole or in part, if the commissioner determines the collection will not be cost-effective.

In any case in which 3rd-party liability is found under this section, the commissioner shall be subrogated to the rights of the individual for whom medical assistance was made available.

Sec. 2. 22 MRSA §14, sub-§2-F, as enacted by PL 1987, c. 621, is amended to read:

2-F. Disbursement. No A disbursement of any award, judgment or settlement may not be made to a recipient without the recipient or the recipient's attorney first providing at least 10 days' written notice to the department of the award, judgment or settlement or obtaining from the department a release of any obligation