

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

- A. The Chair of the Board of Registration in Medicine or a designee;
- B. The Chair of the Board of Osteopathic Examination and Registration or a designee;
- C. The President of the Maine Medical Association or a designee;
- D. The President of the Maine Osteopathic Association or a designee;
- E. The President of the Maine Academy of Family Practice Physicians or a designee;
- F. The President of the Maine State Bar Association or a designee;
- G. The President of the Maine Trial Lawyers Association or a designee;
- H. A representative of a tertiary hospital, to be appointed by the Governor;
- I. A representative of an insurer providing medical malpractice insurance in the State, to be appointed by the Governor;
- J. A representative of a profit or nonprofit health insurer, to be appointed jointly by the President of the Senate and the Speaker of the House of Representatives;
- K. The Superintendent of Insurance or a designee; and
- L. Three public members, one to be appointed by the Governor, one to be appointed by the President of the Senate and one to be appointed by the Speaker of the House of Representatives.

The appointing authorities shall make the appointments no later than August 1, 1990, and shall report the names of the members to the Office of the Executive Director of the Legislative Council. The Chair of the Legislative Council shall call the first meeting on or before October 1, 1990.

- 2. The committee shall annually elect a chair from among the members.
- 3. The committee may review Title 24, chapter 21, subchapter IX, consult with interested parties and develop recommendations to be submitted to the Legislature, the Governor and the Executive Director of the Legislative Council concerning the medical liability demonstration project, including the levels of participation and other participation requirements.
- 4. The committee may submit any implementing legislation it prepares pursuant to this section to the Joint Standing Committee on Judiciary and the Office of the

Executive Director of the Legislative Council. The committee members shall serve without legislative staff assistance.

5. All members of the committee shall serve without compensation and are not entitled to reimbursement for expenses.

6. This section is repealed on December 31, 1996.

See title page for effective date.

CHAPTER 932

S.P. 805 - L.D. 2068

An Act Relating to Services to Infants and Young Children, Ages 0 through 5, Who Are Handicapped or at Risk for Developmental Delay

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

Sec. 1. 5 MRSA §12004-G, sub-§8-A is enacted to read:

| | | | | |
|-------------|--------------------|--------------------|-----------------|--------------|
| <u>tion</u> | <u>8-A. Educa-</u> | <u>Interde-</u> | <u>Expenses</u> | <u>20-A</u> |
| | | <u>partmental</u> | <u>Only</u> | <u>MRSA</u> |
| | | <u>Coordinat-</u> | | <u>§7704</u> |
| | | <u>ing Com-</u> | | |
| | | <u>mittee for</u> | | |
| | | <u>Preschool</u> | | |
| | | <u>Handicapped</u> | | |
| | | <u>Children</u> | | |

Sec. 2. 5 MRSA §12004-I, sub-§10, as enacted by PL 1987, c. 786, §5, is repealed.

Sec. 3. 20-A MRSA §7702, sub-§§2 and 10, as enacted by PL 1989, c. 499, §2, are amended to read:

2. At-risk for developmental delay. "At-risk for developmental delay" means infants and children, ages 0 through 5, who are at-risk ~~under at least one of 3 categories: identified, biological or environmental~~ for developmental delay due to environmental risk factors that are defined by rule of the Interdepartmental Coordinating Committee for Preschool Handicapped Children.

10. Handicapped. "Handicapped" means a condition of infants and children, ages 0 through 5, who need early intervention or special education services because ~~they~~ those infants and children:

- A. Are experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

- (1) ~~Cognitive development~~ Vision;

- (2) Physical development Hearing;
- (3) Language and speech development Speech and language;
- (4) Psychosocial development Cerebral or perceptual functions; or
- (5) Self-help skills; or
- (6) Physical mobility functions;
- (7) Behavior; or
- (8) Mental development or maturation; or

B. Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

Sec. 4. 20-A MRSA §7702, sub-§16 is enacted to read:

16. Special education. "Special education" means classroom, home, hospital, institutional or other instruction; educational diagnosis and evaluation; transportation and other supportive assistance, services, activities or programs required by preschool handicapped children and defined by rule of the Interdepartmental Coordinating Committee for Preschool Handicapped Children.

Sec. 5. 20-A MRSA §7704, sub-§1, ¶A, as enacted by PL 1989, c. 499, §4, is amended to read:

A. At least 16 of the members shall represent the public, including a minimum of 3 consumer representatives. Consumer representatives may include parents of infants and children who are handicapped or at-risk for developmental delay, or individuals with disabilities. In accordance with procedures established by the Interdepartmental Coordinating Committee for Preschool Handicapped Children, each local coordinating committee may nominate up to 3 persons for one of the public member ~~slots~~ positions. One of the ~~3~~ nominees by each local coordinating committee shall be selected by the Interdepartmental Coordinating Committee for Preschool Handicapped Children as a public member.

Selection of public members ~~shall~~ must be consistent to ensure balanced representation of professional disciplines, provider and consumer perspectives and geographic distribution.

The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall select a slate of members from those nominated to serve as follows: Beginning with the school year 1990-91, 1/3 of the public members shall be appointed for one year, 1/3 for 2 years and 1/3 for 3 years. In sub-

sequent years, public members shall serve 3-year terms.

Sec. 6. 20-A MRSA §7704-A is enacted to read:

§7704-A. Conflict of interest

Notwithstanding Title 5, section 18, subsection 1, paragraph B, each member of the Interdepartmental Coordinating Committee for Preschool Handicapped Children and each employee, contractor, agent or other representative of the committee is deemed an "executive employee" solely for the purposes of Title 5, section 18. The committee shall provide training to system participants to ensure compliance with conflict of interest requirements. Local coordinating committees, with the assistance of the Interdepartmental Coordinating Committee for Preschool Handicapped Children, may develop conflict of interest policies for local employees or local coordinating committee members.

Sec. 7. 20-A MRSA §7708, sub-§1-A is enacted to read:

1-A. Establishment of central system office. The Executive Director of the Interdepartmental Coordinating Committee for Preschool Handicapped Children has the authority to hire, fire and supervise employees of the central system office. Personnel recruited to fulfill functions at the central system office are covered under the system personnel policies, fringe benefits and retirement plan.

Sec. 8. 20-A MRSA §7710, sub-§§13 and 14, as enacted by PL 1989, c. 499, §9, are amended to read:

13. Acquire property. Acquire by purchase, gift, lease or rent any property, lands, buildings, structures, facilities or equipment necessary to fulfill the purposes of this chapter; ~~and~~

14. Other duties. Fulfill other duties assigned by the Legislature, and to delegate duties and authority, but not responsibility, as necessary for the efficient operation of this chapter, and to do any other acts or things necessary or convenient to carry out the powers expressly granted or reasonably implied in this chapter;

Sec. 9. 20-A MRSA §7710, sub-§§15 and 16 are enacted to read:

15. Dissemination of information. Apply the federal Family Educational Rights and Privacy Act of 1974, Public Law 93-380, as amended by Public Law 93-568, and the federal Education for All Handicapped Children Act of 1975, Public Law 94-142, to the dissemination of information about infants and children, ages 0 through 5, who are handicapped or at-risk for developmental delay who are served through the Child Development Services System; and

16. Rule-making authority. Adopt rules necessary to implement this chapter. Any rule adopted by the

Interdepartmental Coordinating Committee for Pre-school Handicapped Children must be promulgated in conformity with the Maine Administrative Procedure Act.

Sec. 10. 20-A MRSA §§7711 and 7712 are enacted to read:

§7711. Implementation of special education services

The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall ensure:

1. All children 0 through 5. By July 1, 1991, that screening, evaluation and referral services are accessible to all children, ages 0 through 5, at no cost to the family. The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall promulgate rules describing these services;

2. Handicapped children. By July 1, 1991, that preschool handicapped children, ages 3 through 5, have special education available to them at no cost to the family.

A. The Interdepartmental Coordinating Committee for Preschool Handicapped Children shall develop, promulgate and implement rules that address the following issues:

- (1) Least restrictive environment;
- (2) Nondiscrimination;
- (3) Rights of parents;
- (4) Free and appropriate public services;
- (5) Eligibility criteria;
- (6) The federal "child find" program;
- (7) Program development, service descriptors and service delivery;
- (8) Case management;
- (9) The early childhood team;
- (10) The individualized family service plan;
- (11) Statements of assurances;
- (12) Procedural safeguards and appeals processes;
- (13) Due process hearings;
- (14) Confidentiality of information;
- (15) Data collection, reporting and utilization;

(16) Surrogate parents; and

(17) System governance; and

3. Insurer or 3rd-party obligation. Nothing in this chapter relieves an insurer or similar 3rd party from an otherwise valid obligation to provide or pay for services provided.

§7712. Annual report

The Interdepartmental Coordinating Committee for Preschool Handicapped Children and representatives of the local coordinating committees shall report annually by March 1st to the joint standing committee of the Legislature having jurisdiction over education matters on the implementation of this subchapter.

Sec. 11. Implementation. The following provisions apply to the implementation of this Act and Public Law 1989, chapter 499.

1. Employees of the central system office of the Child Development Services System on the effective date of this Act shall continue to be treated as state employees.

2. The selection of the first public members to the Interdepartmental Coordinating Committee for Preschool Handicapped Children for school year 1990-91, as provided in the Maine Revised Statutes, Title 20-A, section 7704, subsection 1, paragraph A, shall be made by an ad hoc committee consisting of the state agency members, appointed in accordance with Title 20-A, section 7704, subsection 1, paragraph B, and one representative chosen by each of the local coordinating committees. Subsequent appointments must be in accordance with the provisions of Title 20-A, section 7704, subsection 1, paragraph A.

3. The local coordinating committees established in Title 20-A, section 7703, subsection 4, continue in existence as they were constituted prior to September 30, 1989, for the purpose of implementing Public Law 1989, chapter 499, and this Act. Title 20-A, section 7703, subsection 4, is retroactive to September 30, 1989.

4. In addition to other subjects covered in its annual report to the joint standing committee of the Legislature having jurisdiction over education matters, the Child Development Services System shall:

A. In 1991, present a detailed schedule of the costs involved in implementing the special education services required by this Act;

B. In 1991, present recommendations, including proposed implementing legislation, if necessary, regarding per diem compensation for public members of the Interdepartmental Coordinating Committee for Preschool Handicapped Children and the local coordinating committees; and

C. In 1992, report on the status of collective bargaining negotiations for the system. The report may include recommendations on whether the municipal employees labor relations laws will continue to apply to the system or whether the state employees labor relations laws should apply. In compiling this portion of its report, the system shall provide for input from employees of the system or, where a bargaining agent has been certified, from that bargaining agent.

See title page for effective date.

CHAPTER 933

H.P. 1841 - L.D. 2512

An Act to Establish Designated Positions Within the Department of Mental Health and Mental Retardation as Unclassified State Positions Subject to the State Employees Relations Act

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

Sec. 1. 34-B MRSA §1204, sub-§2, ¶¶D and E, as enacted by PL 1989, c. 501, Pt. P, §29, are amended to read:

D. The commissioner, with the approval of the Governor, may employ and set the salaries up to the maximum adjusted pay grade for ~~physician I, II and III positions and~~ clinical director positions. Physician I, II and III positions and clinical Clinical director positions shall be are excluded from the definition of state employee under Title 26, section 979-A, subsection 6, and ~~shall~~ are not be subject to the Civil Service Law. Employees in ~~these classifications that classification~~ hired after the effective date of this paragraph shall July 1, 1989 serve at the pleasure of the commissioner and shall, as a condition of continued employment, maintain clinical privileges to practice medicine as determined by the respective medical staff and the superintendent of the facility.

E. Employees in the ~~classifications~~ classification of ~~physician I, II and III and~~ clinical director may elect to retain current bargaining unit and civil service status. Employees so "grandfathered" shall retain salary and benefit entitlement provided for on current pay schedules and collective bargaining agreements.

Sec. 2. 34-B MRSA §1204, sub-§8 is enacted to read:

8. Physicians. Employees in the classifications of physician I, II and III within the Department of Mental Health and Mental Retardation are unclassified state employees, as defined by Title 26, section 979-A, subsec-

tion 6, and are members of bargaining units, subject to Title 26, chapter 9-B. An employee in any of these classifications shall, as a condition of continued employment, maintain necessary clinical privileges to practice medicine in that employee's position as determined by the respective medical staff and the superintendent of the facility. Any termination of employment due to a loss of clinical privileges to practice medicine as referenced under this paragraph is not subject to the grievance procedure under any collective bargaining agreement.

Sec. 3. P&SL 1975, c. 147, Pt. D, §3, SCHEDULE 1b, first ¶, as enacted by PL 1989, c. 501, Pt. P, §33, is amended to read:

Physicians' maximum adjusted pay grade and Clinical Directors, ~~pursuant to the Maine Revised Statutes, Title 34-B, section 1204, subsection 2, paragraph D;~~ for Physician I, Grade 53; Physician II, Grade 56; Physician III, Grade 59; and Clinical Director, Grade 60 shall be as follows.

Sec. 4. P&SL 1975, c. 147, Pt. D, §3, SCHEDULE 1b, last ¶, as enacted by PL 1989, c. 501, Pt. P, §33, is amended to read:

Schedule 1b provides a maximum adjusted pay grade schedule and grades are subject to normal increases ~~authorized by law as provided by appropriate collective bargaining agreements.~~ Employees under these pay grades are authorized the option of a 5% salary increase in lieu of state payment of the employee's individual retirement contribution.

Sec. 5. Negotiations. Notwithstanding any other provision of law, the State and the bargaining agent for physicians employed by the Department of Mental Health and Mental Retardation shall negotiate as to the impact of the implementation of the Maine Revised Statutes, Title 34-B, section 1204, subsections 2 and 8. Negotiations must begin prior to September 1, 1990 and must be conducted in accordance with bargaining procedures set forth in Title 26, chapter 9-B. The negotiations are limited to salaries.

Sec. 6. Transition. The existing salary structure for physicians within the Department of Mental Health and Mental Retardation is in effect without change until the State and the bargaining agent for physicians reach agreement on a new salary structure.

See title page for effective date.

CHAPTER 934

S.P. 909 - L.D. 2312

An Act to Establish the Office of Substance Abuse

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