

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

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
1993

(2) The provider has failed to correct deficiencies cited by the department;

(3) The provider is inefficient or ineffective in the delivery of services and is unable or unwilling to improve its performance within a reasonable time; or

(4) The provider can not or will not respond to a reconfiguration of service delivery requested by the department.

Sec. 3. 34-B MRSA §6203, sub-§1, ¶¶J and K, as enacted by PL 1991, c. 452, §4, are amended to read:

J. Require that any new contract for mental health services be awarded through a request-for-proposal procedure and any contract for mental health services of ~~\$150,000~~ \$500,000 per year or more that is renewed be awarded through a request-for-proposal procedure at least every ~~6~~ 8 years; ~~and~~, except for the following.

(1) Renewal contracts for a provider are not subject to the request-for-proposal procedure requirement if all contracts executed with that provider under this subsection are performance-based contracts.

(2) Notwithstanding subparagraph (1), the department shall subject a contract to a request-for-proposal procedure when necessary to comply with paragraph L;

K. Establish a procedure to obtain assistance and advice from consumers of mental health services regarding the selection of contractors when requests for proposals are issued for mental health services; and

Sec. 4. 34-B MRSA §6203, sub-§1, ¶L is enacted to read:

L. Require that a contract under this subsection that is subject to renewal be awarded through a request-for-proposal procedure if the department determines that:

(1) The provider has breached the existing contract;

(2) The provider has failed to correct deficiencies cited by the department;

(3) The provider is inefficient or ineffective in the delivery of services and is unable or unwilling to improve its performance within a reasonable time; or

(4) The provider can not or will not respond to a reconfiguration of service delivery requested by the department.

Sec. 5. PL 1991, c. 452, §5 is repealed.

Sec. 6. Phase-in period. Notwithstanding the Maine Revised Statutes, Title 34-B, section 3604, subsection 3, paragraph E and section 6203, subsection 1, paragraph J, the Commissioner of Mental Health and Mental Retardation shall establish a schedule to ensure that, of the contracts subject to those provisions, 1/2 are subject to the request-for-proposal process in calendar year 1994, 1/4 in calendar year 1996 and 1/4 in calendar year 1998.

Sec. 7. Effect on current requests for proposals. Notwithstanding sections 1 to 6 of this Act, requests for proposals issued by the Department of Mental Health and Mental Retardation under Public Law 1991, chapter 452 that are in progress on the effective date of this Act are subject to the following provisions.

1. The Department of Mental Health and Mental Retardation shall complete the request-for-proposal process for those contracts that are for \$500,000 or more per year.

2. The Department of Mental Health and Mental Retardation shall cancel the request-for-proposal process for those contracts that are for less than \$500,000 per year.

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

Effective April 7, 1994.

CHAPTER 625

S.P. 663 - L.D. 1831

An Act Regarding Maine's Comprehensive Early Intervention System for Infants and Children, from Birth to under Age Six

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

Whereas, this Act requires that early intervention services be available by July 1, 1994; 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 preserva-

tion of the public peace, health and safety; now, therefore,

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

Sec. 1. 20-A MRSA c. 307-A, first 3 lines are repealed and the following enacted in their place:

CHAPTER 307-A

INFANTS AND CHILDREN, FROM BIRTH TO UNDER AGE 6, WITH DISABILITIES

Sec. 2. 20-A MRSA §7724, sub-§1, as enacted by PL 1991, c. 843, §3, is amended to read:

1. Establishment. The Child Development Services System is established for the purpose of maintaining a coordinated service delivery system for the provision of childfind activities for children, ~~ages 0 to school age 5 from birth to under age 3, early intervention services for eligible children, from birth to under age 3,~~ and free, appropriate and public education services for eligible children, ~~ages 3 to school age 5 from age 3 to under age 6,~~ who have a disability. The Child Development Services System consists of ~~16~~ regional sites organized as intermediate ~~education~~ educational units or as private nonprofit corporations, one ~~state-level~~ state-level intermediate ~~education~~ educational unit and the Interdepartmental Coordinating Council for Early Intervention advisory board. The Child Development Services System shall ensure application of the provisions of this chapter statewide through a contractual or grant relationship between the Department of Education and each regional site.

Sec. 3. 20-A MRSA §§7725 and 7727, as enacted by PL 1991, c. 843, §3, are amended to read:

§7725. Definitions

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

1. Child Development Services System. "Child Development Services System," or "CDS," means ~~16~~ regional sites, a ~~state-level~~ state-level intermediate ~~education~~ educational unit and the Interdepartmental Coordinating Council for Early Intervention established to ensure the provision of childfind activities, early intervention services and free, appropriate and public education services to eligible children.

2. Childfind. "Childfind" means the identification, location and evaluation, at no cost to the family, of children, ~~ages 0 to school age 5 from birth to under age 6,~~ with disabilities.

3. Departments. "Departments" means 2 or more of the participating state agencies, the Department of Education, the Department of Human Services and the Department of Mental Health and Mental Retardation.

4. Disability. "Disability" means:

A. A condition of children, ~~ages 0 to school age 5 from birth to under age 6,~~ who are in need of early intervention or special education services due to a delay in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development; or

B. For children, ~~ages 0 to 2 from birth to under age 3,~~ a diagnosed, established condition or biological factors that have a high probability of resulting in developmental delay.

4-A. Early intervention services. "Early intervention services" means services that are ~~designed to meet the developmental needs of each child, from birth to under age 3, eligible under the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., and the needs of the family related to enhancing the child's development that are provided under public supervision by qualified providers and that are made available by use of 3rd-party resources or a system of payments by families, including a schedule of sliding fees.~~

5. Free, appropriate public education services. "Free, appropriate public education services," or "FAPE," means those services that are designed to meet the developmental needs of eligible children, ~~ages 3 to school age 5 from age 3 to under age 6,~~ who have a disability. These services include:

- A. Early identification, screening and assessment services;
- B. Medical services for diagnostic or evaluation purposes only;
- C. Occupational therapy;
- D. Parent counseling and training;
- E. Physical therapy;
- F. Psychological services;
- G. Special instruction;
- H. Speech pathology and audiology; and
- I. Transportation.

6. Council. "Council" means the Interdepartmental Coordinating Council for Early Intervention established in section 7733.

7. Intermediate educational unit. "Intermediate educational unit," as defined in the federal Public Law 94-142 Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., means any public authority, other than a local educational agency, under the general supervision of a state educational agency, that is established for the purpose of providing free public education on a regional basis and that provides special education and related services to handicapped children within the State.

8. Regional site. "Regional site" means ~~one of the 16~~ locally governed regional intermediate educational units or private nonprofit corporations established to ensure provision of services to infants and children under this chapter.

§7727. Department of Education

1. Responsibility. The department is designated as the state education agency responsible for carrying out the State's obligations under the federal Individuals with Disabilities Education Act ~~of 1991, Public Law 101-476~~ 20 United States Code, Section 1400 et seq.

2. Plan. The department shall submit the State's plan for meeting the requirements of the federal Public Law 101-476 Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., to the Federal Government.

2-A. Administration of federal funds. The department is the entity responsible for assigning financial responsibility among appropriate agencies under 34 Code of Federal Regulations, Section 303.143, July 1993 and in accordance with 34 Code of Federal Regulations, Section 303.523, July 1993.

3. Rule-making authority. The commissioner may adopt rules necessary to implement this chapter in accordance with the Maine Administrative Procedure Act.

4. Contracts. The department may enter into contracts, leases and agreements and any other instruments and arrangements that are necessary, incidental or convenient to the performance of its duties and the execution of its powers under this chapter.

The department shall contract with the board of directors of a private nonprofit corporation for no fewer than 3 years and approve an annual entitlement plan with the board of directors of a regional intermediate ~~education~~ educational unit for the purpose of

assuring ensuring coordinated service delivery in each region of the State.

Contracts with boards of directors of private nonprofit corporations or plans of regional intermediate ~~education~~ educational units must ensure:

A. That screening, evaluation and referral services, at no cost to the family, are accessible to all children, ~~ages 0 to school age 5~~ from birth to under age 6; ~~and~~

B. That preschool children with disabilities, ~~ages 3 to school age 5~~ from age 3 to under age 6, have free, appropriate public education services available to them at no cost to the family; ~~and~~

C. That infants and toddlers, from birth to under age 3, have early intervention services available to them by July 1, 1994 through 3rd-party payment or through a system of payments by families, including a schedule of sliding fees.

5. Implementation of early intervention and of free, appropriate public education services. The department, through the Child Development Services System, shall ensure:

A. That screening, evaluation and referral services, at no cost to the family, are accessible to all children, ~~ages 0 to school age 5.~~ The commissioner shall adopt rules describing these services from birth to under age 6;

B. That preschool children with disabilities, ~~ages 3 to school age 5~~ from age 3 to under age 6, have free, appropriate public education services available to them at no cost to the family; ~~and~~

C. That rules are developed, adopted and implemented describing minimum standards for the following:

- (1) Least restrictive environment;
- (2) Nondiscrimination;
- (3) Rights of parents;
- (4) Free and appropriate public services;
- (5) Eligibility criteria;
- (6) The federal "childfind" program;
- (7) Program development, service descriptors and service delivery;
- (8) Early childhood team;
- (9) Individualized family service plan;
- (10) Statements of assurances;

- (11) Procedural safeguards and appeals processes;
- (12) Due process hearings;
- (13) Confidentiality of information;
- (14) Data collection, reporting and utilization; ~~and~~
- (15) Surrogate parents; and
- (16) Payment for and provision of early intervention services; and

D. That infants and toddlers, from birth to under age 3, have early intervention services available to them by July 1, 1994 through 3rd-party payment or through a system of payments by families, including a schedule of sliding fees.

6. Regional site compliance. The department, in consultation with regional sites and the Interdepartmental Coordinating Council for Early Intervention, shall develop an action plan with timelines to achieve compliance for regional sites that are not in compliance with federal or state law. The department may assume temporary responsibility for operations at a site that fails to meet compliance requirements.

Sec. 4. 20-A MRSA §7728, sub-§1, as enacted by PL 1991, c. 843, §3, is amended to read:

1. Federal obligations. Develop and adopt statewide policies and rules for carrying out the provisions of this chapter to meet federal obligations under the federal Individuals with Disabilities Education Act of 1991, Public Law 101-476, Part B, Section 619 and Part H, 20 United States Code, Section 1400 et seq. These obligations must include but are not limited to:

- A. Personnel standards;
- B. Comprehensive system of personnel development;
- C. Program monitoring;
- D. Data collection;
- E. Interagency agreements at the state level; and
- F. Public awareness;

Sec. 5. 20-A MRSA §7728, sub-§5, as enacted by PL 1991, c. 843, §3, is repealed.

Sec. 6. 20-A MRSA §7728, sub-§11, as enacted by PL 1991, c. 843, §3, is amended to read:

11. 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~~ Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., to the dissemination of information about infants and children, ~~ages 0 to school age 5 from birth to under age 6,~~ with disabilities who are served by the Child Development Services System.

Sec. 7. 20-A MRSA §7729, as enacted by PL 1991, c. 843, §3, is amended to read:

§7729. Regional site governance; choice

Boards of directors of the ~~local coordinating committees under former chapter 307,~~ regional sites established to ensure childfind activities for children, ~~ages 0 to 5 from birth to under age 6,~~ to coordinate early intervention services for eligible children, from birth to under age 6, and to coordinate free, appropriate public education services for eligible children ages 3 to 5 who have a disability from age 3 to under age 6 shall organize, at the discretion of each board, as a private nonprofit corporation or an intermediate ~~education~~ educational unit. Regional site boards of directors may take formal action, in accordance with their regional bylaws, to dissolve or to consolidate with another regional site board that has agreed to the consolidation. The process of dissolution and any decisions to consolidate are subject to the approval of the Department of Education.

Sec. 8. 20-A MRSA §7731, sub-§11, as enacted by PL 1991, c. 843, §3, is amended to read:

11. 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 ~~Individuals with Disabilities Education Act of 1991, Public Law 101-476~~ 20 United States Code, Section 1400 et seq., to the dissemination of information about infants and children, ~~0 to school age 5 from birth to under age 6,~~ with disabilities who are served through the regional site.

Sec. 9. 20-A MRSA §7732, as enacted by PL 1991, c. 843, §3, is repealed.

Sec. 10. 20-A MRSA §7732-A is enacted to read:

§7732-A. Regional site; duties and obligations

The board of directors of a private nonprofit corporation or a regional local intermediate educational unit shall:

1. Childfind. Ensure provision of childfind activities as required by the federal Individuals with

Disabilities Education Act, 20 United States Code, Section 1400 et seq.;

2. Childcount. Ensure provision of childcount activities as required by the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.;

3. Part H. Ensure appropriate data collection, training, staff development and direct service provision to eligible children, from birth to under age 3, in accordance with Part H of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.;

4. Early intervention services. Ensure that eligible children, from birth to under age 3, receive early intervention services, in accordance with the payment provisions established by the State;

5. Free, appropriate public education. Ensure that eligible children, from age 3 to under age 6, receive free, appropriate public education services;

6. Individual family service plan. Coordinate development of individual family service plans with eligible families;

7. Service providers. Contract, whenever possible, with providers of early intervention services approved by the Bureau of Medical Services within the Department of Human Services;

8. Designate personnel for training. Designate local personnel for training to commit funds for free, appropriate public education. Personnel who commit funds for free, appropriate public education must be trained and certified by the state intermediate educational unit. The board of directors shall determine which trained and certified personnel may commit funds; and

9. Targeted case management. Following certification by the Bureau of Medical Services within the Department of Human Services, seek reimbursement, whenever feasible, for targeted case management.

Sec. 11. 20-A MRSA §7733, first 2 paragraphs, as enacted by PL 1991, c. 843, §3, are amended to read:

The Interdepartmental Coordinating Council for Early Intervention, as established in Title 5, section 12004-G, subsection 8-A, is established as an advisory body to the commissioner regarding the coordination of policies and programs aimed at implementing the federal Public Law 99-457 Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq. and 34 Code of Federal Regulations, 303.650 to 303.654, July 1993.

Membership of the council must be in keeping with the federal Public Law 101-476, Subparts F and G Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., contingent upon state participation in ~~these programs~~ the federal Individuals with Disabilities Education Act, Parts B and H. Appointments to the council must be made by the Governor for terms defined in rules adopted by the commissioner. The council shall meet at least quarterly.

Sec. 12. 20-A MRSA §7733, sub-§2, ¶¶C to E, as enacted by PL 1991, c. 843, §3, are amended to read:

C. Childfind activities and methods as required by the federal Public Law 101-476 as amended Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.;

D. Public awareness as required by the federal Public Law 101-476, as amended Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.; and

E. Contemporary research;

Sec. 13. 20-A MRSA §7733, sub-§2, ¶¶F to N, as enacted by PL 1991, c. 843, §3, are repealed.

Sec. 14. 20-A MRSA §7733, sub-§§9 and 10, as enacted by PL 1991, c. 843, §3, are repealed and the following enacted in their place:

9. Voting. The council shall adopt bylaws that define a quorum for the purpose of conducting business of the council.

10. Dispute resolution. The council shall assist the lead agency in dispute resolution in a manner consistent with 34 Code of Federal Regulations, Section 303.524, July 1993.

Sec. 15. 20-A MRSA §7734, as corrected by RR 1993, c. 1, §47, is repealed.

Sec. 16. 20-A MRSA §§7734-A, 7734-B and 7734-C are enacted to read:

§7734-A. Distribution of funds to school administrative units

In addition to the programs authorized in this chapter, the commissioner may authorize expenditures to school administrative units for services for infants and children, from birth to under age 6, who are disabled, in a manner consistent with section 15603, subsection 22, paragraph D.

1. Governance and financial responsibility. The school board responsible for operating the pre-school service shall assume the financial responsibil-

ity for the program. The school board is entitled to receive the state subsidy for the program and may charge tuition for costs that exceed expenditures made for those programs in the base year.

2. Dedication of funds. Funds generated under the school subsidy formula through expenditures for programs for infants and children, from birth to under age 6, who are disabled, must be committed to continue to fund programs and services for the target population at the local level.

3. Coordination of services and resource development activities. School administrative units shall coordinate their program and service activities for infants and children, from birth to under age 6, who are disabled, with their local regional sites to avoid duplication and maximize the use of rules as adopted by the department.

§7734-B. Annual recommendation

Prior to December 15th of each year, the council and the boards of directors of the regional sites shall provide to the commissioner a joint recommendation for funding level computations and requested funding level for operating and program costs. The commissioner shall act on the recommendation no later than April 1st. In order to develop this recommendation, the state-level intermediate educational unit and the boards of directors of the regional sites, in consultation with regional site coordinators, shall review all state and federal funding sources and federal statutory requirements for disbursement. The state-level intermediate educational unit and the boards of directors of the regional sites shall propose a funding formula to ensure equitable distribution of resources.

§7734-C. Annual report

The council shall provide the joint standing committee on educational matters a yearly report on the Child Development Services System.

Sec. 17. 20-A MRSA §15603, sub-§22, ¶D, as amended by PL 1987, c. 767, §2, is further amended to read:

D. Starting in 1986-87 for expenditures in the base year 1984-85, the following preschool handicapped services:

- (1) The salary and benefit costs of certified professional, assistants and aides or persons contracted to perform preschool handicapped services ~~which that~~ have been approved by the commissioner; and
- (2) The cost of tuition to other schools for programs ~~which that~~ have been approved by the commissioner; .

Federal and state grants awarded to school administrative units to initiate these services must be considered local funds in computing the units' educational costs;

Sec. 18. PL 1991, c. 843, §5 is repealed.

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

Effective April 7, 1994.

CHAPTER 626

H.P. 1363 - L.D. 1842

An Act Relating to Retirement Benefits for the State Police

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

Sec. 1. 5 MRSA §17852, sub-§4, ¶C-2 is enacted to read:

C-2. A person qualifying under section 17851, subsection 4, paragraph B, may elect to retire before reaching the age of 55 without reduction for retirement before that age if, prior to the effective date of the person's retirement, the person has paid to the retirement system by an increased employee contribution, by single or periodic payment of a lump sum or by a combination thereof, the amount that equals the full actuarial cost of that person's preage 55 retirement, plus any applicable interest. "Full actuarial cost" means that the person's payment or payments must fully offset any unfunded liability that would or does result from retirement prior to age 55 and must fully fund the cost of the person's retirement prior to age 55 so that an additional employer contribution is not required. If the person makes the election provided by this paragraph at any time after the date on which the person is first employed as a state police officer, the payment must include interest at a rate to be set by the board not to exceed regular interest by 5 or more percentage points, applied as of the date upon which the person was first employed as a State Police officer to the contributions that the person would have paid or had picked up by the employer had the person elected this option at the date of first employment.

This paragraph takes effect July 1, 1995. Election to retire under this paragraph is a one-time irrevocable election. A person first hired as a