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STATE OF MAINE

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J.S. McCarthy Company
Augusta, Maine
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~~superintendent~~ commissioner with information required by the ~~superintendent~~ commissioner on forms that the ~~superintendent~~ commissioner specifies. At a minimum, employee leasing companies shall provide the following information:

A. The name or names under which the registrant conducts business;

B. The address of the principal place of business of the employee leasing company and the address of each office it maintains in this State;

C. The employee leasing company's taxpayer or employer identification number;

D. A list by jurisdiction of each name under which the employee leasing company has operated in the preceding 5 years, including any alternative names, names of predecessors and, if known, successor business entities;

E. A list of all persons or entities that own a 5% or greater interest in the employee leasing company at the time of application and a list of persons who formerly owned a 5% or greater interest in the employee leasing company~~,~~ or its predecessors in the preceding 5 years; and

F. A list of the cancellations or nonrenewals of workers' compensation insurance issued to the employee leasing company or its predecessors in the preceding 5 years. The list must include the policy or certificate numbers, names of insurers or other providers of coverage, dates of cancellation and reasons for cancellation. If coverage has not been canceled or has been renewed, the registration must include a sworn affidavit signed by the chief executive officer of the employee leasing company attesting to that fact.

2. Renewal. Prior to January 31st of each year or any other time fixed by the ~~superintendent~~ commissioner, each registrant shall renew its registration by notifying the ~~superintendent~~ commissioner of any changes in the information previously provided pursuant to this section.

3. List. The ~~superintendent~~ commissioner shall maintain a list of employee leasing companies registered under this chapter.

4. Forms. The ~~superintendent~~ commissioner may prescribe forms necessary to promote the efficient administration of this section.

~~**5. Existing companies.** Any employee leasing company doing business in this State prior to the effective date of this section shall register with the superintendent within 30 days of the effective date of this section.~~

Sec. 21. 32 MRSA §14055, sub-§1, ¶A, as enacted by PL 1991, c. 468, §4, is repealed and the following enacted in its place:

A. A registered employee leasing company qualifies as an "other group" within the meaning of Title 24-A, sections 2612-A and 2808 for purposes of procurement of group life and health insurance with respect to employees leased to a client company. A registered employee leasing company qualifies as an eligible group within the meaning of Title 24-A, section 2884 for purchase of group legal services insurance. Any employee welfare plan or benefit, other than workers' compensation insurance, provided to employees leased to a client company on less than a fully insured basis may be provided only subject to and in accordance with Title 24-A, chapter 81.

Sec. 22. 32 MRSA §14055, sub-§5, as enacted by PL 1991, c. 468, §4, is amended to read:

5. Disclosure. The employee leasing company shall disclose to client companies services to be rendered, including costs, and the respective rights and obligations of the parties prior to entering into or receiving a leasing arrangement. This disclosure must include a statement that the client company may take complaints to the ~~Bureau of Insurance~~ Department of Labor.

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

Effective April 8, 1996.

CHAPTER 619

S.P. 635 - L.D. 1643

An Act to Clarify Certain Provisions Relating to Workers' Compensation Self-insurance

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

Whereas, the Legislature adopted the Workers' Compensation Residual Market Deficit Resolution and Recovery Act on June 23, 1995; and

Whereas, the definition of "successor self-insured employer" and the applicable surcharge of a successor entity are unclear; and

Whereas, the Legislature wishes to clarify its intent regarding a successor self-insured employer; and

Whereas, the Legislature intends that this legislation be retroactive to June 23, 1995, when the Workers' Compensation Residual Market Deficit Resolution and Recovery Act was approved; 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:

Sec. 1. 24-A MRSA §2392, sub-§§22-A and 22-B are enacted to read:

22-A. Succession transaction. "Succession transaction" means an asset sale, merger, consolidation, reorganization or restructuring that creates a successor self-insured employer.

22-B. Successor self-insured employer. "Successor self-insured employer" means any self-insured employer that is a successor entity to another employer or employers doing business in this State. A successor self-insured employer includes any entity that purchases all or a portion of the assets of an employer or the surviving entity in any other merger, consolidation, reorganization or restructuring.

Sec. 2. 24-A MRSA §2393, sub-§2, ¶D, as enacted by PL 1995, c. 289, §11, is amended by amending subparagraph (2), division (c) to read:

(c) ~~Each~~ Except for a successor self-insured employer, each self-insured employer shall pay surcharges relating to only that portion of the policy years 1988 to 1992 in which the self-insured employer insured its workers' compensation obligations. The surcharge factor, as determined by the board under this chapter, must be adjusted to take into consideration the policy years or portions of policy years 1988 to 1992 in which a self-insured employer was self-insured.

The self-insured employer adjustment is determined as follows. The surcharge factor must be multiplied by the factor attributed to each of the years 1988 to 1992, as set forth in the table below. If a self-insured employer was insured only during a portion of a policy year, then the factor for that year is prorated based on the ratio of the number of days in the policy year during which the self-insured employer was insured to 365 days.

Policy Year	Factor
1988	28.48%
1989	30.70%
1990	23.26%
1991	11.55%
1992	6.01%

Sec. 3. 24-A MRSA §2393, sub-§2, ¶D, as enacted by PL 1995, c. 289, §11, is amended by enacting subparagraph (2), division (d), subdivision (iv) to read:

(iv) Upon the request of a self-insured employer, including a successor self-insured employer or an administrator of a self-insurance group, the board may determine whether there was a factual inaccuracy in the information underlying a surcharge billing issued by the board for the fresh start period or whether the surcharge calculated by the board is consistent with the provisions of this subparagraph. The request must be filed within 180 days from the date on which the final payment is due and must be in writing, including a statement of the reason for the request and the amount, if known, of the alleged overcharge. If an appeal based upon an alleged overcharge is sustained, the board shall refund the overcharge, together with any investment earnings on those amounts. If a self-insured employer is aggrieved by the final action or decision of the board, or if the board does not act on the written request within 60 days, the self-insured employer may appeal to the superintendent within 60 days of such action or decision of the board. Notwithstanding a pending appeal, a self-insured employer must pay any surcharge billing issued by the board.

Sec. 4. 24-A MRSA §2393, sub-§2, ¶D, as enacted by PL 1995, c. 289, §11, is amended by

repealing subparagraph (2), division (g) and enacting the following in its place:

(g) A successor self-insured employer is subject to surcharge on the same basis as the predecessor employer would be if still actively doing business and self-insured. If a self-insured employer is the successor to more than one employer, then the successor employer's self-insured employer adjustment is the sum of each predecessor employer's self-insured employer adjustment multiplied by the ratio of the employer's surchargeable premium for the 12-month period immediately preceding the succession transaction to the combined surchargeable premium of all predecessor employers for that 12-month period.

(i) If one or more of the predecessor employers was insured at the time of the succession transaction, its self-insured employer adjustment is calculated pursuant to division (c), (h) or (i) as if it had become self-insured at the time of the succession transaction.

(ii) If business operations that were covered under a single workers' compensation policy or certificate of self-insurance authority are subsequently separately owned by virtue of any succession tranaction, dissolution, reincorporation or other transaction or series of transactions, for purposes of this subparagraph each business is treated as a distinct employer, subject to surcharge as either an insured employer or a self-insured employer.

(iii) If substantial changes in operations during the 12-month period immediately preceding the succession transaction make the 12-month surchargeable premium an inappropriate measure of a predecessor employer's workers' compensation exposure prior to the transaction, the board may adopt procedures for calculating an annualized premium in a manner consistent with the intent of this subparagraph.

Sec. 5. 24-A MRSA §2393, sub-§2, ¶D, as enacted by PL 1995, c. 289, §11, is amended by repealing subparagraph (2), division (h), subdivision (i).

Sec. 6. 24-A MRSA §2393, sub-§2, ¶D, as enacted by PL 1995, c. 289, §11, is amended by enacting subparagraph (2), division (i) to read:

(i) Except for any successor self-insured employer, self-insured employers that commence operations in the State on or after July 1, 1995 are subject to surcharge under this subparagraph on the same basis as self-insured employers that secured compensation under the Workers' Compensation Act by the purchase of an insurance policy throughout the entire fresh start period.

Sec. 7. 39-A MRSA §403, sub-§3, ¶C, as enacted by PL 1995, c. 398, §2, is amended to read:

C. A self-insurer may establish an actuarially determined fully funded trust, funded at a level sufficient to discharge those obligations incurred by the employer pursuant to this Act as they become due and payable from time to time, as long as the Superintendent of Insurance requires that the value of trust assets be at least equal to the present value of ultimate expected incurred claims and claims settlement costs, plus required safety margins and, if determined necessary by the superintendent, administrative costs for the operation of the plan of self-insurance. For the purpose of determining whether an actuarially determined fully funded trust has a surplus of funds in excess of that required by this subsection, the superintendent shall consider, based upon the group's audit for all completed plan years, only the following assets held outside the trust account: cash up to $10,000; accounts receivable, limited to amounts collected and deposited in the trust account by the date of the surplus distribution; accrued interest on trust account assets that will be collected and deposited in the trust account within 6 months from the date of the surplus determination; tangible assets that will be converted to cash and deposited in the trust account prior to the distribution date of any surplus; and a letter of credit to be used to partially fund the trust to the extent allowed under this section and rules adopted by the superintendent, as supported in the actuarial review.

The superintendent shall consider cash held outside the trust account in excess of $10,000 if the self-insurer provides, to the superintendent's satisfaction, documentation regarding why the money is being held outside the trust account. An actuarially determined fully funded trust must be funded as follows, as determined by the superintendent.

(1) For individual and group self-insurers, the amount of security must be determined based upon an actuarial review. The actuarial review must take into consideration the use by a group self-insurer of any irrevocable standby letter of credit. Except as provided in subparagraph (3), initial funding for each plan year must be maintained at the 90% or higher confidence level. Funding after the completion of the initial plan year may be established no lower than the 75% confidence level if the following has occurred:

(a) A year considered for reduction is completed;

(b) The supporting actuarial ~~report~~ review includes an evaluation of the completed year experience with claims evaluated not less than 6 months from the end of the plan year, or in the case of a group self-insurer in existence for at least 36 months, not less than 4 months from the end of the plan year; and

(c) ~~Prior~~ For individual self-insurers, prior approval from the superintendent is obtained.

For the purposes of determining the confidence level, all completed years at the same confidence level may be aggregated. ~~Funds~~ For individual self-insurers, funds may not be released from the trust or transferred between years except as approved by the superintendent. The governing body of a group self-insurer may at any time declare a surplus of funds above the required confidence level, but may only release funds after the completion of any plan year. The superintendent may request information regarding any such declaration. Any distribution of surplus must be based upon an actuarial review of all outstanding obligations for all completed plan years, an audited financial statement of the group for all completed plan years and a surplus distribution worksheet for all completed plan years on a form approved by the superintendent. The group self-insurer must provide the required information within 10 days after the distribution. Any surplus declared or distributed pursuant to this paragraph is subject to adjustment after review by the superintendent within 60 days of the receipt of the required information. Any deficit below the required confidence level, as determined by the superintendent, that results from a distribution under this paragraph must be funded within 45 days from the date of the notice by the superintendent.

(2) A group self-insurer may elect to fund at a higher confidence level through the use of cash, marketable securities or reinsurance. If a member of a group self-insurer terminates membership in the group for any reason, that member shall fund the member's proportionate share of the liabilities and obligations of the trust to the 95% confidence level. If for any reason the departing member fails to fund the member's proportionate share of the trust's exposure to the 95% level of confidence, the remaining members of the group shall make the additional contribution no later than the anniversary date of the program as required to fund the departing member's exposure in accordance with this provision.

(3) Depending upon the financial condition of the self-insurer, and if approved by the superintendent, a self-insurer that has maintained an actuarially determined fully funded trust for a period of 5 or more consecutive years may fund all years, including the prospective fund year, in the aggregate at the 75% or higher confidence level.

(4) Trust assets must consist of cash or marketable securities of a type and risk character as specified in subsection 9. The trustee shall submit a report to the superintendent not less frequently than quarterly that lists the assets comprising the corpus of the trust, including a statement of their market value and the investment activity during the period covered by the report. The trust must be established and maintained subject to the condition that trust assets may not be transferred or revert in any manner to the employer except to the extent that the superintendent finds that the value of the trust assets exceeds the present value of incurred claims and claims settlement costs with an actuarially indicated margin for future loss development. In all other respects, the trust instrument, including

terms for certification, funding, designation of trustee and payout, must be as approved by the superintendent, except that the value of the trust account must be actuarially calculated at least annually by a casualty actuary who is a member of the American Academy of Actuaries and adjusted to the required level of funding.

Sec. 8. Retroactivity. Those sections of this Act that amend the Maine Revised Statutes, Title 24-A, sections 2392 and 2393 apply retroactively to July 1, 1995.

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

Effective April 8, 1996.

CHAPTER 620

H.P. 1303 - L.D. 1784

An Act to Amend the Home Health Laws

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

Sec. 1. 22 MRSA §2144, sub-§4, ¶D is enacted to read:

D. The department may petition the Superior Court to appoint a receiver to operate a home health agency in accordance with chapter 1666-A.

Sec. 2. 22 MRSA §2146, as amended by PL 1991, c. 591, Pt. J, §3, is further amended to read:

§2146. Fees

Each application for a license under this chapter must be accompanied by the fee established by the department. ~~No such fee may be refunded~~ The fee is not refundable. ~~The department shall establish such fees on the basis of a sliding fee scale reflecting variations in size and scope of operations, but in no event may the fee exceed $300. The department shall charge a nonrefundable fee of $25 for any change to a license requiring reissuance of the full license during the term of the license. The change in status of a license to a provisional or conditional license requires an additional fee of $100 payable at the time of issuance of such license.~~ All fees received by the department under this chapter must be paid into the State Treasury to the credit of the department for the purpose of reducing the costs of carrying out this chapter.

Sec. 3. 22 MRSA §2150-B is enacted to read:

§2150-B. Staff; hiring; policy

A home health agency must develop and implement written policies and procedures that prohibit abuse, neglect or misappropriation of client's property. Prior to hiring a certified nursing assistant or home health aid, the home health agency must verify with the Maine Registry of Certified Nursing Assistants that the individual is listed on the registry. The agency may not employ an individual who:

1. Court. Has been found guilty in a court of law of abuse, neglect or misappropriation of the property of an individual, corporation or entity in a health care setting; or

2. State survey agency. Has been found by the state survey agency to have abused, neglected or misappropriated the property of an individual, corporation or entity in a health care setting.

Sec. 4. 22 MRSA §7931, as enacted by PL 1983, c. 454, is amended to read:

§7931. Policy

It is the purpose of this chapter to develop a mechanism ~~whereby~~ by which the concept of receivership can be utilized for the protection of residents in long-term care facilities and clients of home health care providers. It is the intent of the Legislature that receivership ~~shall~~ be a remedy of last resort when all other methods of remedy have failed or when the implementation of other remedies would be futile.

Sec. 5. 22 MRSA §7932, sub-§§1-A and 3-A are enacted to read:

1-A. Client. "Client" means a person who receives services from a home health agency.

3-A. Home health care provider. "Home health care provider" means any business entity or subdivision of a business entity, whether public or private, proprietary or nonprofit, that is engaged in providing acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing or another therapeutic service, such as physical therapy, home health aids, nurse assistants, medical social work, nutritionist services or personal care services, either directly or through contractual agreement, in a client's place of residence. This term does not apply to any sole practitioner providing private duty nursing services or other restorative, rehabilitative, maintenance, preventive or health promotion services in a client's place of residence or to municipal entities providing health promotion services in a client's place of residence. This term does not apply to a federally