LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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
1997

July 1, 1998. For purposes of this Act, all policies are deemed to be renewed no later than the next yearly anniversary of the policy date.

Sec. 53. Decals issued for 1999. Intrastate fuel decals issued for 1999 are valid until June 30, 2000. Notwithstanding the Maine Revised Statutes, Title 29-A, section 525, subsection 5, the fee for the transition period for intrastate decals is $7.50.

Sec. 54. Allocation. The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

1998-99

SECRETARY OF STATE, DEPARTMENT OF THE

Administration - Motor Vehicles

All Other $32,280

Allocates funds for materials and manufacturing costs associated with replacing dealer plates.

See title page for effective date.

CHAPTER 777

H.P. 1595 - L.D. 2225

An Act to Implement the Recommendations of the Maine Commission on Children's Health Care

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

Whereas, approximately 34,440 children in Maine are without health coverage and periodically require health care treatment for preventive, diagnostic, therapeutic, rehabilitative and acute care purposes; and

Whereas, the State is committed to finding a way to make health coverage available to uninsured Maine children and expressed that commitment by establishing the Maine Commission on Children's Health Care in Public Law 1997, chapter 560 and setting aside approximately $8,000,000 to fund health coverage; and

Whereas, the Federal Government has made funding available to the State of approximately $61,500,000 over the next 5 years for a children's health program under the federal Balanced Budget Act of 1997; 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:

PART A

Sec. A-1. 22 MRSA §3174-G, sub-§1, as enacted by PL 1989, c. 502, Pt. A, §72, is amended to read:

1. Delivery of services. The department shall provide for the delivery of federally approved Medicaid services to qualified pregnant women up to 60 days following delivery and infants up to one year of age when the woman's or child's family income is below 185% of the nonfarm income official poverty line ~~and children under 5 years of age and~~, qualified elderly and disabled persons~~,~~ when the ~~child's or~~ person's family income is below 100% of the nonfarm income official poverty line and children one year of age or older and under 19 years of age when the family income is below 150% of the nonfarm income official poverty line. The official poverty line ~~shall be~~ is that applicable to a family of the size involved, as defined by the Federal Office of Management and Budget and revised annually in accordance with the United States Omnibus Budget Reconciliation Act of 1981, Section 673, Subsection 2. ~~These services shall be effective October 1, 1988.~~

Sec. A-2. 22 MRSA §3174-R is enacted to read:

§3174-R. Cub Care program

1. Program established. The Cub Care program is established to provide health coverage for low-income children who are ineligible for benefits under the Medicaid program and who meet the requirements of subsection 2. The purpose of the Cub Care program is to provide health coverage to as many children as possible within the fiscal constraints of the program budget and without forfeiting any federal funding that is available to the State for the State Children's Health Insurance Program through the federal Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251, referred to in this section as the Balanced Budget Act of 1997.

2. Eligibility; enrollment. Health coverage under the Cub Care program is available to children one year of age or older and under 19 years of age whose family income is above the eligibility level for Medicaid under section 3174-G and below the maximum eligibility level established under paragraphs A and B, who meet the requirements set forth in paragraph C and for whom premiums are paid under subsection 5.

A. The maximum eligibility level, subject to adjustment by the commissioner under paragraph B, is 185% of the nonfarm income official poverty line.

B. If the commissioner has determined the fiscal status of the Cub Care program under subsection 8 and has determined that an adjustment in the maximum eligibility level is required under this paragraph, the commissioner shall adjust the maximum eligibility level in accordance with the requirements of this paragraph.

(1) The adjustment must accomplish the purposes of the Cub Care program set forth in subsection 1.

(2) If Cub Care program expenditures are reasonably anticipated to exceed the program budget, the commissioner shall lower the maximum eligibility level set in paragraph A to the extent necessary to bring the program within the program budget.

(3) If Cub Care program expenditures are reasonably anticipated to fall below the program budget, the commissioner shall raise the maximum eligibility level set in paragraph A to the extent necessary to provide coverage to as many children as possible within the fiscal constraints of the program budget.

(4) The commissioner shall give at least 30 days' notice of the proposed change in maximum eligibility level to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters.

C. All children resident in the State are eligible except a child who:

(1) Is eligible for coverage under the Medicaid program;

(2) Is covered under a group health insurance plan or under health insurance, as defined in Section 2791 of the federal Public Health Service Act, 42 United States Code, Section 300gg(c) (Supp. 1997);

(3) Is a member of a family that is eligible under Title 5, section 285 for health coverage under the state employee health insurance program;

(4) Is an inmate in a public institution or a patient in an institution for mental diseases; or

(5) Within the 3 months prior to application for coverage under the Cub Care program, was insured or otherwise provided coverage under an employer-based health plan for which the employer paid 50% or more of the cost for the child's coverage, except that this subparagraph does not apply if:

(a) The cost to the employee of coverage for the family exceeds 10% of the family's income;

(b) The parent lost coverage for the child because of a change in employment, termination of coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, COBRA, of the Employee Retirement Income Security Act of 1974, as amended, 29 United States Code, Sections 1161 to 1168 (Supp. 1997) or termination for a reason not in the control of the employee; or

(c) The department has determined that grounds exist for a good-cause exception.

D. Notwithstanding changes in the maximum eligibility level determined under paragraph B, the following requirements apply to enrollment and eligibility:

(1) Children must be enrolled for 6-month enrollment periods. Prior to the end of each 6-month enrollment period the department shall redetermine eligibility for continuing coverage; and

(2) Children of higher family income may not be covered unless children of lower family income are also covered. This subparagraph may not be applied to disqualify a child during the 6-month enrollment period. Children of higher income may be disqualified at the end of the 6-month enrollment period if the commissioner has

lowered the maximum eligibility level under paragraph B.

E. Coverage under the Cub Care program may be purchased for children described in subparagraphs (1) and (2) for a period of up to 18 months as provided in this paragraph at a premium level that is revenue neutral and that covers the cost of the benefit and a contribution toward administrative costs no greater than the maximum level allowable under COBRA. The department shall adopt rules to implement this paragraph. The following children are eligible to enroll under this paragraph:

(1) A child who is enrolled under paragraph A or B and whose family income at the end of the child's 6-month enrollment term exceeds the maximum allowable income set in that paragraph; and

(2) A child who is enrolled in the Medicaid program and whose family income exceeds the limits of that program. The department shall terminate Medicaid coverage for a child who enrolls in the Cub Care program under this subparagraph.

3. Program administration; benefit design. With the exception of premium payments under subsection 5 and any other requirements imposed under this section, the Cub Care program must be integrated with the Medicaid program and administered with it in one administrative structure within the department, with the same enrollment and eligibility processes, benefit package and outreach and in compliance with the same laws and policies as the Medicaid program, except when those laws and policies are inconsistent with this section and the Balanced Budget Act of 1997. The department shall adopt and promote a simplified eligibility form and eligibility process.

4. Benefit delivery. The Cub Care program must use, but is not limited to, the same benefit delivery system as the Medicaid program, providing benefits through the same health plans, contracting process and providers. Copayments and deductibles may not be charged for benefits provided under the program.

5. Premium payments. Premiums must be paid in accordance with this subsection.

A. Premiums must be paid at the beginning of each month for coverage for that month according to the following scale:

(1) Families with incomes between 150% and 160% of the nonfarm income official poverty line pay premiums of 5% of the benefit cost per child, but not more than 5% of the cost for 2 children;

(2) Families with incomes between 160% and 170% of the nonfarm income official poverty line pay premiums of 10% of the benefit cost per child, but not more than 10% of the cost for 2 children; and

(3) Families with incomes between 170% and 185% of the nonfarm income official poverty line must pay premiums of 15% of the benefit cost per child, but not more than 15% of the cost for 2 children.

B. When a premium is not paid at the beginning of a month, the department shall give notice of nonpayment at that time and again at the beginning of the 6th month of the 6-month enrollment period if the premium is still unpaid, and the department shall provide an opportunity for a hearing and a grace period in which the premium may be paid and no penalty will apply for the late payment. If a premium is not paid by the end of the grace period, coverage must be terminated unless the department has determined that waiver of premium is appropriate under paragraph D. The grace period is determined according to this paragraph.

(1) If nonpayment is for the first, 2nd, 3rd, 4th or 5th month of the 6-month enrollment period, the grace period is equal to the remainder of the 6-month enrollment period.

(2) If nonpayment is for the 6th month of the 6-month enrollment period, the grace period is equal to 6 weeks.

C. A child whose coverage under the Cub Care program has been terminated for nonpayment of premium and who has received coverage for a month or longer without premium payment may not reenroll until after a waiting period that equals the number of months of coverage under the Cub Care program without premium payment, not to exceed 3 months.

D. The department shall adopt rules allowing waiver of premiums for good cause.

6. Incentives. In the contracting process for the Cub Care program and the Medicaid program, the department shall create incentives to reward health plans that contract with school-based clinics, community health centers and other community-based programs.

7. Administrative costs. The department shall budget 2% of the costs of the Cub Care program for outreach activities. After the first 6 months of the

program and to the extent that the program budget allows, the department may expend up to 3% of the program budget on activities to increase access to health care. Administrative costs must include the cost of staff with experience in health policy administration equal to one full-time equivalent position.

8. Quarterly determination of fiscal status; reports. On a quarterly basis, the commissioner shall determine the fiscal status of the Cub Care program, determine whether an adjustment in maximum eligibility level is required under subsection 2, paragraph B and report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters on the following matters:

A. Enrollment approvals, denials, terminations, reenrollments, levels and projections. With regard to denials, the department shall gather data from a statistically significant sample and provide information on the income levels of children who are denied eligibility due to family income level;

B. Cub Care program expenditures, expenditure projections and fiscal status;

C. Proposals for increasing or decreasing enrollment consistent with subsection 2, paragraph B;

D. Proposals for enhancing the Cub Care program;

E. Any information the department has from the Cub Care program or from the Bureau of Insurance or the Department of Labor on employer health coverage and insurance coverage for low-income children;

F. The use of and experience with the purchase option under subsection 2, paragraph D; and

G. Cub Care program administrative costs.

9. Provisions applicable to federally recognized Indian tribes. After consultation with federally recognized Indian nations, tribes or bands of Indians in the State, the commissioner shall adopt rules regarding eligibility and participation of children who are members of a nation, tribe or band, consistent with Title 30, section 6211, in order to best achieve the goal of providing access to health care for all qualifying children within program requirements, while using all available federal funds.

10. Rulemaking. The department shall adopt rules in accordance with Title 5, chapter 375 as required to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

Sec. A-3. Children's Health Reserve Account; lapsed balances. Notwithstanding any other provision of law, $3,382,199 in fiscal year 1998-99, $4,478,437 in fiscal year 1999-2000 and $139,364 in fiscal year 2000-01 from available balances in the Children's Health Reserve Account, Other Special Revenue, established by Public Law 1997, chapter 560, Part C lapse to the General Fund.

Sec. A-4. Legislative intent. It is the intent of the Legislature that the new or expanded programs authorized in this Act be included in the Governor's current services recommendations for the 2000-2001 biennium. If the Governor submits legislation setting forth appropriations and allocations for the new or expanded programs authorized in this Act that differ from the full budget request submitted by the Department of Human Services for the 2000-2001 biennium, the Governor must simultaneously submit a report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters explaining why the Governor's legislation differs from the Department of Human Services' budget submission.

Sec. A-5. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1998-99

HUMAN SERVICES, DEPARTMENT OF

Bureau of Family Independence - Regional

Positions - Legislative Count	(7.000)
Personal Services	$229,299
All Other	56,800
TOTAL	$286,099

Provides funds to support the additional eligibility determination costs of extending Medicaid and Cub Care coverage to additional children, including funds for 7 Income Maintenance Specialist positions and related costs.

Bureau of Medical Services

Positions - Legislative Count	(1.000)
Personal Services	48,272
All Other	2,500
TOTAL	$50,772

Provides funds to support one Social Services Program Manager position and related costs.

Bureau of Medical Services

All Other	$77,894

Provides funds to support the state share of outreach costs.

Medical Care - Payments to Providers

All Other	$1,166,062

Provides funds for the state share of the costs of expanding Medicaid coverage to children whose family incomes are below 150% of the federal poverty level.

Medical Care - Payments to Providers

All Other	$633,589

Provides funds for the state share of the costs associated with the Cub Care program.

Medical Care - Payments to Providers

All Other	$1,134,743

Provides funds for the state share of the additional Medicaid benefit costs due to outreach efforts.

OMB Operations - Regional

Positions - Legislative Count	(1.000)
Personal Services	25,890
All Other	7,150
TOTAL	$33,040

Provides funds to support the additional eligibility determination costs of extending Medicaid coverage to additional children, including funds for one Clerk Typist II position and related costs.

DEPARTMENT OF HUMAN SERVICES TOTAL $3,382,199

Sec. A-6. Allocation. The following funds are allocated from the Federal Expenditures Fund to carry out the purposes of this Act.

1998-99

HUMAN SERVICES, DEPARTMENT OF

Bureau of Family Independence - Regional

Positions - Legislative Count	(6.000)
Personal Services	$196,542
All Other	42,900
TOTAL	$239,442

Provides funds to support the additional eligibility determination costs of extending Medicaid and Cub Care coverage to additional children, including funds for 6 Income Maintenance Specialist positions and related costs.

Medical Care - Payments to Providers

All Other	$2,233,447

Provides funds for the federal share of the additional Medicaid benefit costs due to outreach efforts.

OMB Operations - Regional

Positions - Legislative Count	(1.000)
Personal Services	$25,890

All Other	7,150
TOTAL	$33,040

Provides funds to support the additional eligibility determination costs of extending Medicaid coverage to additional children, including funds for one Clerk Typist II position and related costs.

DEPARTMENT OF HUMAN SERVICES TOTAL	$2,505,929

Sec. A-7. Allocation. The following funds are allocated from the Federal Block Grant Fund to carry out the purposes of this Act.

1998-99

HUMAN SERVICES, DEPARTMENT OF

Bureau of Family Independence - Regional

Positions - Legislative Count	(8.000)
Personal Services	$262,056
All Other	50,450
TOTAL	$312,506

Provides funds to support the additional eligibility determination costs of extending Medicaid and Cub Care coverage to additional children, including funds for 8 Income Maintenance Specialist positions and related costs.

Bureau of Medical Services

All Other	$249,803

Provides funds to support the federal share of outreach costs.

Medical Care - Payments to Providers

All Other	$3,739,541

Provides funds for the federal share of the costs of expanding Medicaid coverage to children whose family incomes are below 150% of the federal poverty level.

Medical Care - Payments to Providers

All Other	$2,031,910

Provides funds for the federal share of the costs associated with the Cub Care program.

DEPARTMENT OF HUMAN SERVICES TOTAL	$6,333,760

Sec. A-8. Retroactivity. Section 3 of this Part applies retroactively to December 15, 1997.

PART B

Sec. B-1. 24 MRSA §2332-A, sub-§2, as enacted by PL 1993, c. 666, Pt. B, §1, is amended to read:

2. Medicaid and Cub Care programs. Nonprofit service organizations may not consider the availability or eligibility for medical assistance under 42 United States Code, Section 13969, referred to as "Medicaid," or Title 22, section 3174-R, referred to as the "Cub Care program," when considering coverage eligibility or benefit calculations for subscribers and covered family members.

A. To the extent that payment for coverage expenses has been made under the Medicaid program or the Cub Care program for health care items or services furnished to an individual, the State is considered to have acquired the rights of the covered subscriber or family member to payment by the nonprofit service organization for those health care items or services. Upon presentation of proof that the Medicaid program or the Cub Care program has paid for covered items or services, the nonprofit service organization shall make payment to the Medicaid program or the Cub Care program according to the coverage provided in the contract or certificate.

B. A nonprofit service organization may not impose requirements on a state agency that has been assigned the rights of an individual eligible for Medicaid or Cub Care coverage and covered by a subscriber contract that are different from

requirements applicable to an agent or assignee of any other covered individual.

Sec. B-2. 24-A MRSA §2808-B, sub-§1, ¶E, as enacted by PL 1995, c. 332, Pt. D, §1, is amended to read:

E. "Late enrollee" means an eligible employee or dependent who requests enrollment in a small group health plan following the initial minimum 30-day enrollment period provided under the terms of the plan, except that, an eligible employee or dependent is not considered a late enrollee if the eligible employee or dependent meets the requirements of section 2849-B, subsection 3, paragraph A, B, ~~C~~ C-1 or D.

Sec. B-3. 24-A MRSA §2844, sub-§2, as enacted by PL 1993, c. 666, Pt. B, §2, is amended to read:

2. Medicaid and Cub Care programs. Insurers may not consider the availability or eligibility for medical assistance under 42 United States Code, Section 13969, referred to as "Medicaid," or Title 22, section 3174-R, referred to as the "Cub Care program," when considering coverage eligibility or benefit calculations for insureds and covered family members.

A. To the extent that payment for coverage expenses has been made under the Medicaid program or the Cub Care program for health care items or services furnished to an individual, the State is considered to have acquired the rights of the insured or family member to payment by the insurer for those health care items or services. Upon presentation of proof that the Medicaid program or the Cub Care program has paid for covered items or services, the insurer shall make payment to the Medicaid program or the Cub Care program according to the coverage provided in the contract or certificate.

B. An insurer may not impose requirements on a state agency that has been assigned the rights of an individual eligible for Medicaid or Cub Care coverage and covered by a subscriber contract that are different from requirements applicable to an agent or assignee of any other covered individual.

Sec. B-4. 24-A MRSA §2848, sub-§1-B, ¶A, as enacted by PL 1997, c. 445, §20 and affected by §32, is amended to read:

A. Health benefits or coverage provided under any of the following:

(1) An employee welfare benefit plan as defined in Section 3(1) of the federal Employee Retirement Income Security Act of 1974, 29 United States Code, Section 1001, or a plan that would be an employee welfare benefit plan but for the "governmental plan" or "nonelecting church plan" exceptions, if the plan provides medical care as defined in subsection 2-A, and includes items and services paid for as medical care directly or through insurance, reimbursement or otherwise;

(2) Benefits consisting of medical care provided directly, through insurance or reimbursement and including items and services paid for as medical care under a policy, contract or certificate offered by a carrier; ~~or~~

(3) Part A or Part B of Title XVIII of the Social Security Act, Medicare;

(4) Title XIX of the Social Security Act, Medicaid, other than coverage consisting solely of benefits under Section 1928 of the Social Security Act or a state children's health insurance program under Title XXI of the Social Security Act;

(5) The Civilian Health and Medical Program for the Uniformed Services, CHAMPUS, 10 United States Code, Chapter 55;

(6) A medical care program of the federal Indian Health Care Improvement Act, 25 United States Code, Section 1601 or of a tribal organization;

(7) A state health benefits risk pool;

(8) A health plan offered under the federal Employees Health Benefits Amendments Act, 5 United States Code, Chapter 89;

(9) A public health plan as defined in federal regulations authorized by the federal Public Health Service Act, Section 2701(c)(1)(I), as amended by Public Law 104-191; or

(10) A health benefit plan under Section 5(e) of the Peace Corps Act, 22 United States Code, Section 2504(e).

Sec. B-5. 24-A MRSA §2849-B, sub-§3, ¶C, as amended by PL 1995, c. 332, Pt. F, §5, is repealed.

Sec. B-6. 24-A MRSA §2849-B, sub-§3, ¶C-1 is enacted to read:

C-1. That person was covered by the Cub Care program under Title 22, section 3174-R, and the

request for replacement coverage is made while coverage is in effect or within 30 days from the termination of coverage; or

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect July 1, 1998.

Effective July 1, 1998.

CHAPTER 778

H.P. 1543 - L.D. 2170

An Act to Implement the Recommendations of the Commission to Determine the Adequacy of Services to Persons with Mental Retardation

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

Sec. 1. 20-A MRSA §7258, sub-§§1-A and 1-B are enacted to read:

1-A. Care manager. Within 2 years before the date that a student with mental retardation, serious emotional disturbance or other developmental disabilities will graduate or finish school, the Department of Mental Health, Mental Retardation and Substance Abuse Services, in consultation with the pupil evaluation team of the school administrative unit, shall designate a case manager to participate in transition planning for that student. The case manager shall convene an adult services transition team, ensure interagency coordination and access to adult services, serve as a single contact person for the student transitioning into the adult services and attend pupil evaluation team meetings or provide relevant information to the pupil evaluation team for transition planning purposes.

1-B. Annual report. Beginning January 1, 1999 and annually thereafter, the department, in conjunction with the Department of Mental Health, Mental Retardation and Substance Abuse Services, shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters and to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs regarding transition planning for the adult services system and the number of persons 16 years of age or older on waiting lists for services for persons with autism or mental retardation provided by or under the authority of the department and the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Sec. 2. Management information system. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall continue to develop and improve its management information system that collects data on persons receiving services, persons on waiting lists for services, persons making the transition from school-based services to adult services and the ages of persons receiving those services and on the waiting lists. The information collected must be distributed so that it is accessible and understandable to consumers, their families, service providers and policymakers. The management information system must provide families with information regarding planning, service options and support resources. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall report its progress to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 1, 1999.

Sec. 3. Report on planning and budgeting. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall report on the implementation of adopting person-centered planning, in which services and supports are based on individual needs, choices and circumstances, as applied to all adult clients of the department requiring mental retardation services, and budgeting in accordance with those determinations. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall submit its report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 1, 1999.

Sec. 4. Improve public information and education. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall develop a plan to improve public information and provide a community education program concerning persons with mental retardation that includes information on grievance procedures. The department shall report its progress to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 1, 1999.

Sec. 5. Encouraging fair compensation. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall take all necessary steps to encourage fair compensation for direct care workers employed by community mental retardation services providers, other than intermediate care facilities. The department shall study reimbursement methods for community mental retardation services providers, other than intermediate care facilities, including methods that provide cost-based reimbursement or cost-of-living increases. The department shall report its actions to encourage fair compensation for direct care workers and the results of its findings and any recommendations for action on cost-based