

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

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
2001

recorded, the name of the debtor and the secured party and the information specified in section 9-1502, subsection (2);

Sec. 8. 11 MRSA §9-1519, sub-§(6), ¶(a), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(a) To retrieve a record by the name of the debtor and:

(i) If the filing office is the county registry of deeds, by the file number assigned to book and page at which the initial financing statement to which the record relates ~~and the date and time that the record was recorded~~; or

(ii) If the filing office is the office of the Secretary of State, by the file number assigned to the initial financing statement to which the record relates; and

Sec. 9. 11 MRSA §9-1522, sub-§(1), ¶(a), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(a) If the record was recorded in the county registry of deeds, by using the file number assigned to book and page at which the initial financing statement to which the record relates ~~and the date and time that the record was recorded~~; or

Sec. 10. 11 MRSA §9-1523, sub-§(7), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(7) The requirements of this section do not apply to information obtained from the registry ~~to~~ of deeds.

Sec. 11. 11 MRSA §9-1525, sub-§(1), ¶(a) and (b), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, are amended to read:

(a) ~~Twenty~~ Fifteen dollars if the record is communicated in writing and consists of one or 2 pages;

(b) ~~Forty~~ Thirty dollars if the record is communicated in writing and consists of more than 2 pages; and

Sec. 12. 11 MRSA §9-1525, sub-§(2), ¶(b), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(b) ~~Sixty~~ Forty dollars if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

Sec. 13. 11 MRSA §9-1525, sub-§(4), ¶(b), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(b) ~~Ten~~ Twelve dollars if the request is communicated by another medium authorized by filing-office rule.

Sec. 14. 11 MRSA §9-1702, sub-§(2), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(2) Except as otherwise provided in subsection ~~(e)~~ (3) and sections 9-1703 to 9-1709:

(a) Transactions and liens that were not governed by former Article 9, were validly entered into or created before this Article takes effect and would be subject to this Article if they had been entered into or created after this Article takes effect and the rights, duties and interests flowing from those transactions and liens remain valid after this Article takes effect; and

(b) The transactions and liens may be terminated, completed, consummated and enforced as required or permitted by this Article or by the law that otherwise would apply if this Article had not taken effect.

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

Effective May 25, 2001.

CHAPTER 287

H.P. 877 - L.D. 1156

An Act to Update the Maine Consumer Credit Code Regarding Rental-purchase Agreements

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

Sec. 1. 9-A MRSA §11-104, sub-§2, as enacted by PL 1991, c. 787, is amended to read:

2. The consumer is a resident of this State at the time the merchant, wherever located, offering the rental-purchase agreement solicits the rental-purchase agreement or modification of the rental-purchase agreement in this State, whether the solicitation is made personally, by mail or by telephone.

For the purposes of this Article, the residence of the consumer is the address given by the consumer as the consumer's residence in any writing signed by the consumer in connection with the rental-purchase

agreement. Unless the consumer notifies the merchant of a new or different residence address, the given residence address is presumed to be unchanged.

Sec. 2. 9-A MRSA §11-105, sub-§§2 and 3, as enacted by PL 1991, c. 787, are amended to read:

2. "Advertisement" means a commercial message in any medium that directly or indirectly aids, promotes or assists a rental-purchase agreement, but does not include in-store merchandising aids such as window signs and ceiling banners.

3. "Cash price" means the price for which the merchant would sell the property to the consumer for cash on the date of the rental-purchase agreement. The "cash price" cash price must be reasonably related to the fair market value of the property. The cash price of new merchandise is reasonably related to fair market value if it is equal to or less than the amounts determined under the formula set forth in paragraph A.

A. The cash price of new merchandise may not exceed the amount produced by multiplying the merchant cost by the applicable factor set forth below. For purposes of this paragraph, "merchant cost" means the bona fide actual cost, including freight charges, of the rental property paid by the merchant to a wholesaler, distributor, manufacturer or other provider, net of volume rebates, discounts or other incentives received by the merchant at the time the merchant purchased the item. The maximum cash price must be computed as follows:

(1) For appliances, the applicable factor is 1.75;

(2) For electronics having merchant cost less than \$150, the applicable factor is 1.75;

(3) For electronics having merchant cost greater than or equal to \$150, the applicable factor is 2.00;

(4) For furniture and jewelry, the applicable factor is 2.50; and

(5) For items not listed in subparagraphs (1) to (4), the applicable factor is 2.00.

B. The cash price of used merchandise offered for rental may not exceed the maximum permitted cash price of the property when new and must be adjusted for other relevant factors. Other relevant factors include:

(1) The duration of prior rentals and whether the item has been repaired one or more times;

(2) Whether the consumer price of the general class of items to which the item belongs has decreased or increased since the merchant originally purchased it; and

(3) The condition of the item.

Sec. 3. 9-A MRSA §11-105, sub-§§5-A, 5-B, 6-A to 6-C, 8 and 9 are enacted to read:

5-A. "Debt" means an obligation or alleged obligation of a consumer to surrender or return rental property or pay money arising out of a rental-purchase agreement.

5-B. "Location information" means a consumer's place of residence and the consumer's telephone numbers at that location and at the consumer's place of employment.

6-A. "Periodic payment" means the total payment the consumer will make for a specific rental period, including the rental payment, any administrative fees or delivery charges, taxes and fees or charges for optional products and services.

6-B. "Rental payment" means a payment to be made by a consumer for the right of possession and use of rental property for a specific rental period, but does not include taxes imposed on such payment.

6-C. "Rental period" means a week, month or other specific period of time during which the consumer has a right to possess and use the property after making the rental payment and applicable tax payment for such period.

8. "Rental-purchase cost" means the total of charges payable by the consumer and imposed by the merchant as a condition of entering into and acquiring ownership of property under a rental-purchase agreement. "Rental-purchase cost" includes rental payments and any initial administrative fees, but does not include taxes, delivery charges, late charges, payment pick-up fees or any optional charges or fees that meet the requirements of section 11-111, subsection 4.

9. "Total of payments to acquire ownership" means the total of all charges payable by the consumer to acquire ownership of the rental property. "Total of payments to acquire ownership" includes any initial administrative fee, the total of all rental payments and taxes, but does not include delivery charges, late charges, payment pick-up fees or any optional charges or fees that meet the requirements of section 11-111, subsection 4.

Sec. 4. 9-A MRSA §11-107, sub-§3, as enacted by PL 1991, c. 787, is amended to read:

3. The disclosure must be made clearly and conspicuously, in a clear and coherent manner, in writing, in type size not less than 8-point standard type and appropriately divided and captioned by various sections. A copy of the rental-purchase agreement must be provided to the consumer. If more than one consumer executes a rental-purchase agreement, the merchant shall provide a copy of the agreement to each consumer. The disclosure required under section 11-108 must be made on the face of the contract above the line for the consumer's signature. If disclosures are made on more than one page, the contract complies with this subsection if the consumer signs each page of the contract.

Sec. 5. 9-A MRS §11-107, sub-§5 is enacted to read:

5. A merchant may disclose information that is not required by this Article if the additional information is not stated, used or placed in a manner that contradicts, obscures or distracts attention from the required information.

Sec. 6. 9-A MRS §11-108, sub-§1, ¶¶A and B, as enacted by PL 1991, c. 787, are repealed.

Sec. 7. 9-A MRS §11-108, sub-§1, ¶C, as enacted by PL 1991, c. 787, is amended to read:

C. A statement that the consumer is responsible for the fair market value, remaining rent, early purchase option amount or cost of repair of the property, whichever is least, if, and as of the time, it is lost, stolen, damaged or destroyed;

Sec. 8. 9-A MRS §11-108, sub-§1, ¶F, as enacted by PL 1991, c. 787, is repealed.

Sec. 9. 9-A MRS §11-108, sub-§1, ¶¶G and L, as enacted by PL 1991, c. 787, are amended to read:

G. A statement that the total ~~amount~~ of payments to acquire ownership does not include other charges the consumer may incur, such as late-payment ~~and~~ payment pick-up fees and charges or fees for optional products or services. Late-payment ~~and~~ payment pick-up fees and charges or fees for optional products or services must be separately disclosed in the agreement;

L. A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property to the merchant in good repair upon or before the expiration of any rental term period along with any past due rental payments;

Sec. 10. 9-A MRS §11-108, sub-§2 is enacted to read:

2. To the extent applicable, the following information must be disclosed and grouped together in each rental-purchase agreement:

A. The amount of the payment required at or before consummation of the agreement or delivery of the property, whichever is later, using the term "initial payment." The merchant shall itemize each component of the initial payment by type and amount, including any initial administrative fee, delivery charge, rental payment, taxes and charges or fees for optional products or services;

B. The amount of the "regular periodic payment," using that term. The merchant shall itemize each component of the regular periodic payment by type and amount, including the rental payment, taxes and charges or fees for optional products or services. If the final periodic payment is less than or equal to the regular periodic payment, the components of the final periodic payment need not be itemized;

C. The "total of payments to acquire ownership," using that term and a brief description, such as "the total amount you will have paid, including any initial administrative fee, the total of all rental payments and taxes, if you acquire ownership of the property by making all scheduled payments, but not including late charges or payment pick-up fees you may incur or charges or fees for optional products or services you may elect to purchase";

D. A statement in substantially the following form in no less than 8-point boldface type: "YOU WILL BE RENTING THE PROPERTY. YOU WILL NOT ACQUIRE EQUITY OR OWNERSHIP RIGHTS IN THE PROPERTY UNLESS YOU MAKE ALL PAYMENTS NECESSARY TO ACQUIRE OWNERSHIP.";

E. The following statement: "Other important terms. See your rental-purchase agreement for additional important information on termination, purchase option, reinstatement rights, warranties, maintenance responsibilities, late charges and payment pick-up fees and your liability for loss, theft, damage or destruction of the property."; and

F. The "payment schedule," using that term, and a description of the number, amount and due dates or periods of payments scheduled under the agreement. A merchant may also disclose alternative periodic payments and payment schedules.

Sec. 11. 9-A MRS §11-110, as enacted by PL 1991, c. 787, is amended to read:

§11-110. Calculation of late charges

Any late charge assessed pursuant to section 11-109, subsection 8 may not exceed the greater of 5% of the delinquent payment amount or \$2 ~~§3~~. Only one late charge may be assessed on any delinquent payment, regardless of how long the payment remains unpaid.

Sec. 12. 9-A MRSA §11-111, as enacted by PL 1991, c. 787, is amended to read:

§11-111. Allowable charges

In addition to rental payments, a merchant may contract for and receive the following charges or fees.

1. An initial administrative fee not to exceed \$15 may be assessed ~~only once per consumer regardless of the number of rental purchase agreements entered into by the consumer and~~ but the fee must be refunded to the consumer if the rental agreement is not consummated. If a consumer enters into more than one rental-purchase agreement with a merchant on the same day, only one initial administrative fee may be assessed.

2. An optional delivery charge may not exceed ~~\$20~~ \$30 for 3 or fewer items actually delivered or ~~\$40~~ \$60 for 4 or more items actually delivered.

3. An optional payment pick-up fee may not exceed ~~\$5~~ \$7.50 and may be assessed only once per payment.

4. A liability damage waiver fee may be contracted for and received pursuant to section 11-115.

Sec. 13. 9-A MRSA §11-113, as enacted by PL 1991, c. 787, is amended to read:

§11-113. Reinstatement

1. A consumer who fails to make a timely rental payment but has returned or surrendered the ~~merchandise, made arrangements for its return or surrendered the property upon the~~ rental property to the merchant within 7 days after missing a payment or within 2 business days of the merchant's request, whichever comes later, may reinstate the agreement without losing any rights or options that exist under the agreement by payment of:

- A. All past due rental charges; and
- B. Other charges expressly provided in this Article, except any initial administrative fee.

~~2. Whenever a consumer has paid less than 1/3 of the total of payments necessary to acquire ownership and is in default or the property has been returned other than through order of the court, the consumer may reinstate the agreement during a period of not less~~

~~than 45 days after the date of the default or the return of the property.~~

~~3. Whenever a consumer has paid more than 1/3 but less than 2/3 of the total of payments necessary to acquire ownership and is in default or the property has been returned other than through order of the court, the consumer may reinstate the agreement during a period of not less than 90 days after the date of the default or the return of the property.~~

4. Whenever a consumer has paid more than 2/3 of the total of payments necessary to acquire ownership and is in default or the property has been returned ~~other than through order of the court, the consumer~~ Δ consumer who has returned or surrendered the rental property within the reinstatement period set forth in subsection 1 may reinstate the agreement during a period of not less than 180 days after the date of the default or the return of the property missed payment.

5. Nothing in this section prevents a merchant from attempting to repossess property during the reinstatement period, but such a repossession does not affect the consumer's right to reinstate.

6. Upon reinstatement, the merchant shall provide the consumer with the same property or substitute property of comparable quality and condition.

Sec. 14. 9-A MRSA §11-115, first ¶, as enacted by PL 1991, c. 787, is amended to read:

In addition to the other charges permitted by this Article, the parties may contract for a liability damage waiver. The fee for the liability damage waiver may not exceed the greater of 5% of any periodic rental payment due or ~~\$2~~ \$3 in the case of any rental-purchase agreement with ~~weekly or biweekly~~ renewal dates periods more frequent than monthly or the greater of 5% of any periodic rental payment due or ~~\$5~~ \$7.50 in the case of any rental-purchase agreement with monthly renewal dates. The selling or offering for sale of a liability damage waiver pursuant to this Article is subject to the following prohibitions and requirements.

Sec. 15. 9-A MRSA §11-115, sub-§3, as enacted by PL 1991, c. 787, is amended to read:

3. The liability damage waiver agreement must include a statement of the total charge for the liability damage waiver and must display in 8-point boldface type the following notice or a notice in a substantially similar form:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE

LIABILITY DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR HOMEOWNERS OR CASUALTY INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL PROPERTY AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED.

Sec. 16. 9-A MRSA §11-115, sub-§4 is enacted to read:

4. A liability damage waiver may not be a factor in the approval by the merchant of the rental-purchase transaction and the contract may take effect only after the consumer has signed or initialed an affirmative request to purchase the liability damage waiver after written disclosure of the cost of the liability damage waiver.

Sec. 17. 9-A MRSA §11-118, as enacted by PL 1991, c. 787, is amended to read:

§11-118. Advertising and point-of-sale disclosure

1. An advertisement for a rental-purchase agreement that refers to or states the dollar amount of any payment for a specific item must state clearly and conspicuously:

- A. That the transaction advertised is a rental-purchase agreement;
- B. ~~The total amount of payments, including any initial fee, necessary to acquire ownership~~ rental-purchase cost; and
- C. That the consumer does not acquire ownership rights ~~if until~~ the total ~~amount necessary of~~ payments to acquire ownership is ~~not~~ paid.

~~2. If For any item of property is displayed or offered for rent with a point of sale rental-purchase, the merchant shall display a point-of-rental placard that refers to or states the amount of any weekly or monthly payment, the point of sale. The point-of-rental placard must state, disclose the rental payment amount and, in numerals and lettering at least as prominent as the rental payment price amount, the following:~~

- A. The number of ~~weekly or monthly~~ rental payments necessary to acquire ownership of the item and the rental period; ~~and~~
- B. ~~The total amount of payments necessary to acquire ownership~~ rental-purchase cost of the item; ~~and~~
- C. Whether the item is new or used.

Labeling a new item as used is not a violation of this Article.

3. An owner or the personnel of a medium in which an advertisement appears or through which an advertisement is disseminated is not liable under this section.

4. A merchant may make the disclosures required by subsection 2 in the form of a list or catalog that is readily available to the consumer if the property is not displayed in the merchant's showroom or if displaying a point-of-rental placard would be impractical due to the size of the property.

This section does not apply to an advertisement that does not refer to or state the amount of any payment.

Sec. 18. 9-A MRSA §11-119, as enacted by PL 1991, c. 787, is repealed and the following enacted in its place:

§11-119. Collection activity

The following provisions govern the debt collection practices of merchants under this Article.

1. A merchant communicating with any person other than the consumer for the purpose of acquiring location information about the consumer may:

- A. Identify the merchant and state that the merchant is confirming or correcting location information concerning the consumer;
- B. Not state that the consumer owes any debt;
- C. Not communicate with any such person more than once, unless requested to do so by that person or unless the merchant reasonably believes that the earlier response of that person was erroneous or incomplete and that the person now has correct or complete location information;
- D. Not communicate by postcard;
- E. Not use language or a symbol on an envelope or in the contents of a communication effected by the mails or by telegram that indicates that the communication relates to the collection of a debt; and
- F. After the merchant knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, that attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the merchant.

2. Without the prior consent of the consumer given directly to the merchant or the express permission of a court of competent jurisdiction, a merchant may not communicate with a consumer in connection with the collection of any debt:

A. At an unusual time or place or a time or place known or that should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a merchant shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer's location;

B. If the merchant knows that the consumer is represented by an attorney with respect to that debt and has knowledge of, or can readily ascertain, that attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the merchant or unless the attorney consents to direct communication with the consumer; or

C. At the consumer's place of employment if the merchant knows or has reason to know that the consumer's employer prohibits the consumer from receiving a communication.

3. Except as provided in subsection 1, without the prior consent of the consumer given directly to the merchant or the express permission of a court of competent jurisdiction, or except as reasonably necessary to effectuate a post-judgment judicial remedy, a merchant may not communicate, in connection with the collection of a debt, with a person other than the consumer, the consumer's attorney, a consumer reporting agency if otherwise permitted by law or the attorney of the merchant.

4. A merchant may not engage in conduct the natural consequence of which is to harass, oppress or abuse a person in connection with the collection of a debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of a person;

B. The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

C. The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of Title 10, chapter 210;

D. The advertisement for sale of a debt to coerce payment of the debt;

E. Causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass a person at the called number;

F. Except as provided in subsection 1, the placement of telephone calls without meaningful disclosure of the caller's identity; and

G. The use of "shame cards," "shame automobiles" or similar devices, except that delivery vehicles used by the merchant in the ordinary course of business may not be considered "shame automobiles."

5. A merchant may not use a false, deceptive or misleading representation or means in connection with the collection of a debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The false representation or implication that the merchant is vouched for, bonded by or affiliated with the United States or any state, including the use of any badge, uniform, seal, insignia or facsimile;

B. The false representation of the character, amount or legal status of a debt;

C. The false representation or implication that an individual is an attorney or that a communication is from an attorney;

D. The representation or implication that non-payment of a debt will result in the arrest or imprisonment of a person or the seizure, garnishment, attachment or sale of property or wages of a person, unless that action is lawful and the merchant intends to take that action;

E. The threat to take an action that may not legally be taken or that is not intended to be taken;

F. The false representation or implication that a sale, referral or other transfer of any interest in a debt will cause the consumer to:

(1) Lose a claim or defense to payment of the debt; or

(2) Become subject to a practice prohibited by this Article;

G. The false representation or implication that the consumer committed a crime or other conduct in order to disgrace the consumer;

H. Communicating or threatening to communicate to any person credit information that is known or that should be known to be false, including the failure to communicate that a disputed debt is disputed;

I. The use or distribution of a written communication that simulates or is falsely represented to be a document authorized, issued or approved by a court, official or agency of the United States or any state, or that creates a false impression as to its source, authorization or approval;

J. The use of a false representation or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer;

K. The false representation or implication that accounts have been turned over to innocent purchasers for value;

L. The false representation or implication that documents are legal process;

M. The use of a business, company or organization name other than the true name of the merchant's business, company or organization;

N. The false representation or implication that documents are not legal process forms or do not require action by the consumer; or

O. The false representation or implication that a merchant operates or is employed by a consumer reporting agency, as defined by Title 10, section 1312, subsection 4.

6. A merchant may not use unfair or unconscionable means to collect or attempt to collect a debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The collection of an amount, including any interest, fee, charge or expense incidental to the principal obligation, unless the amount is expressly authorized by the agreement creating the debt or permitted by law;

B. The solicitation by a merchant of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

C. Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on the check or instrument;

D. Causing charges to be made to a person for communications by concealment of the true purpose of the communication. These charges in-

clude, but are not limited to, collect telephone calls and telegram fees;

E. Communicating with a consumer regarding a debt by postcard;

F. Using language or a symbol, other than the merchant's address and business name, on an envelope when communicating with a consumer in connection with a debt; or

G. Using or employing notaries public, constables, sheriffs or any other officer authorized to serve legal papers in the collection of a debt.

See title page for effective date.

CHAPTER 288

H.P. 216 - L.D. 251

An Act to Define "Medically Necessary Health Care" and Clarify its Application by Health Plans and Managed Care Plans

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

Sec. 1. 24-A MRSA §4301-A, sub-§6, as enacted by PL 1999, c. 742, §3, is amended to read:

6. Health care treatment decision. "Health care treatment decision" means a decision regarding diagnosis, care or treatment when medical services are provided by a health plan, or a benefits decision involving ~~issues of medical necessity~~ determinations regarding medically necessary health care, preexisting condition determinations and determinations regarding experimental or investigational services.

Sec. 2. 24-A MRSA §4301-A, sub-§10, as enacted by PL 1999, c. 742, §3, is repealed.

Sec. 3. 24-A MRSA §4301-A, sub-§10-A is enacted to read:

10-A. Medically necessary health care. "Medically necessary health care" means health care services or products provided to an enrollee for the purpose of preventing, diagnosing or treating an illness, injury or disease or the symptoms of an illness, injury or disease in a manner that is:

A. Consistent with generally accepted standards of medical practice;

B. Clinically appropriate in terms of type, frequency, extent, site and duration;