

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

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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

Sec. 10. 20-A MRSA §15603, sub-§26, ¶D, as enacted by PL 1993, c. 410, Pt. F, §15, is amended to read:

D. Nonsubsidizable costs are not considered in the calculation of the total allocation. "Nonsubsidizable costs" includes the following:

- (1) Community service costs;
- (2) Major capital costs;
- (3) Expenditures from all federal revenue sources, except for amounts received under the United States Code, Public Law 81-874;
- (4) ~~One half of salary and benefit costs for superintendents, assistant superintendents and associate superintendents;~~
- (5) Transportation costs not associated with transporting students from home to school and back home each day; and
- (6) Costs payable to the Maine State Retirement System under Title 5, section 17154, subsections 10 and 11.

See title page for effective date.

CHAPTER 345

H.P. 811 - L.D. 1066

An Act to Protect Children and Incapacitated or Dependent Adults

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

Sec. 1. 10 MRSA §8003-B, sub-§2-A, ¶D, as enacted by PL 1993, c. 552, §1, is amended to read:

D. The disclosure is necessary under Title 22, section ~~4011~~ 4011-A concerning reports of suspected child abuse or neglect; or

Sec. 2. 22 MRSA §3028, sub-§7, as amended by PL 1995, c. 272, §3, is further amended to read:

7. Written report. Upon completing an investigation, the medical examiner shall submit a written report of findings to the Chief Medical Examiner on forms provided for that purpose. The medical examiner shall retain one copy of the report.

If a medical examiner reports suspected abuse, neglect or exploitation to the Chief Medical Examiner, the Chief Medical Examiner, by reporting that information to the department on behalf of the medical examiner,

fulfills the medical examiner's mandatory reporting requirement under section 3477 or ~~4011~~ 4011-A.

Sec. 3. 22 MRSA §3477, sub-§1, as amended by PL 1997, c. 453, §4, is repealed and the following enacted in its place:

1. Report required. The following persons immediately shall report or cause a report to be made to the department when the person suspects that an adult has been abused, neglected or exploited and has reasonable cause to suspect that the adult is incapacitated or dependent:

A. While acting in a professional capacity:

- (1) An allopathic or osteopathic physician;
- (2) A medical intern;
- (3) A medical examiner;
- (4) A physician's assistant;
- (5) A dentist;
- (6) A chiropractor;
- (7) A podiatrist;
- (8) A registered or licensed practical nurse;
- (9) A certified nursing assistant;
- (10) A social worker;
- (11) A psychologist;
- (12) A pharmacist;
- (13) A physical therapist;
- (14) A speech therapist;
- (15) An occupational therapist;
- (16) A mental health professional;
- (17) A law enforcement official;
- (18) A coroner;
- (19) Emergency room personnel;
- (20) An ambulance attendant;
- (21) An emergency medical technician; or
- (22) Unlicensed assistive personnel; or

B. Any other person who has assumed full, intermittent or occasional responsibility for the care or custody of the adult, whether or not the person receives compensation.

Whenever a person is required to report as a member of the staff of a medical, public or private institution, agency or facility, the staff person immediately shall make a report directly to the department.

Sec. 4. 22 MRSA §4011, as amended by PL 1999, c. 300, §§1 and 2, is repealed.

Sec. 5. 22 MRSA §4011-A is enacted to read:

§4011-A. Reporting of suspected abuse or neglect

1. Required report to department. The following adult persons shall immediately report or cause a report to be made to the department when the person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected:

A. When acting in a professional capacity:

- (1) An allopathic or osteopathic physician, resident or intern;
- (2) An emergency medical services person;
- (3) A medical examiner;
- (4) A physician's assistant;
- (5) A dentist;
- (6) A dental hygienist;
- (7) A dental assistant;
- (8) A chiropractor;
- (9) A podiatrist;
- (10) A registered or licensed practical nurse;
- (11) A teacher;
- (12) A guidance counselor;
- (13) A school official;
- (14) A children's summer camp administrator or counselor;
- (15) A social worker;
- (16) A court-appointed special advocate or guardian ad litem for the child;
- (17) A homemaker;
- (18) A home health aide;
- (19) A medical or social service worker;
- (20) A psychologist;

- (21) Child care personnel;
- (22) A mental health professional;
- (23) A law enforcement official;
- (24) A state or municipal fire inspector;
- (25) A municipal code enforcement official;
- (26) A commercial film and photographic print processor;
- (27) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications; or
- (28) A chair of a professional licensing board that has jurisdiction over mandated reporters; or

B. Any other person who has assumed full, intermittent or occasional responsibility for the care or custody of the child, whether or not the person receives compensation.

Whenever a person is required to report in a capacity as a member of the staff of a medical or public or private institution, agency or facility, that person immediately shall notify either the person in charge of the institution, agency or facility or a designated agent who then shall cause a report to be made. The staff also may make a report directly to the department.

2. Required report to district attorney. When, while acting in a professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child, the person immediately shall report or cause a report to be made to the appropriate district attorney's office.

3. Optional report. Any person may make a report if that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected.

4. Mental health treatment. When a licensed mental health professional is required to report under subsection 1 and the knowledge or reasonable cause to suspect that a child has been or is likely to be abused or neglected comes from treatment of a person responsible for the abuse or neglect, the licensed mental health professional shall report to the department in accordance with subsection 1 and under the following conditions.

A. The department shall consult with the licensed mental health professional who has made

the report and shall attempt to reach agreement with the mental health professional as to how the report is to be pursued. If agreement is not reached, the licensed mental health professional may request a meeting under paragraph B.

B. Upon the request of the licensed mental health professional who has made the report, after the department has completed its investigation of the report under section 4021 or has received a preliminary protection order under section 4034 and when the department plans to initiate or has initiated a jeopardy order under section 4035 or plans to refer or has referred the report to law enforcement officials, the department shall convene at least one meeting of the licensed mental health professional who made the report, at least one representative from the department, a licensed mental health professional with expertise in child abuse or neglect and a representative of the district attorney's office having jurisdiction over the report, unless that office indicates that prosecution is unlikely.

C. The persons meeting under paragraph B shall make recommendations regarding treatment and prosecution of the person responsible for the abuse or neglect. The persons making the recommendations shall take into account the nature, extent and severity of abuse or neglect, the safety of the child and the community and needs of the child and other family members for treatment of the effects of the abuse or neglect and the willingness of the person responsible for the abuse or neglect to engage in treatment. The persons making the recommendations may review or revise these recommendations at their discretion.

The intent of this subsection is to encourage offenders to seek and effectively utilize treatment and, at the same time, provide any necessary protection and treatment for the child and other family members.

5. Photographs of visible trauma. Whenever a person is required to report as a staff member of a law enforcement agency or a hospital, that person shall make reasonable efforts to take, or cause to be taken, color photographs of any areas of trauma visible on a child.

A. The taking of photographs must be done with minimal trauma to the child and in a manner consistent with professional standards. The parent's or custodian's consent to the taking of photographs is not required.

B. Photographs must be made available to the department as soon as possible. The department shall pay the reasonable costs of the photographs

from funds appropriated for child welfare services.

C. The person shall notify the department as soon as possible if that person is unable to take, or cause to be taken, these photographs.

D. Designated agents of the department may take photographs of any subject matter when necessary and relevant to an investigation of a report of suspected abuse or neglect or to subsequent child protection proceedings.

Sec. 6. 22 MRSA §4093, 3rd ¶, as enacted by PL 1989, c. 483, Pt. A, §34, is amended to read:

The family support team shall provide a multi-disciplinary approach for suspected child abuse cases that are initially identified in hospital emergency rooms, inpatient pediatric departments and ambulatory clinics. The child protective staff of the Bureau of ~~Social~~ Child and Family Services shall participate on the teams. The team shall report immediately to the department as required in section ~~4014~~ 4011-A.

Sec. 7. 26 MRSA §833, sub-§3, as enacted by PL 1987, c. 782, §4, is amended to read:

3. Reports of suspected abuse. An employee required to report suspected abuse, neglect or exploitation under Title 22, section 3477 or ~~4014~~ 4011-A, shall follow the requirements of those sections under those circumstances. No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee followed the requirements of those sections.

Sec. 8. 32 MRSA §1092-A, sub-§4, ¶D, as amended by PL 1995, c. 65, Pt. A, §131 and affected by §153 and Pt. C, §15, is further amended to read:

D. There is not any privilege under this section as to disclosure of information concerning a patient when that disclosure is required by law and nothing in this section may modify or affect the provisions of Title 22, sections ~~4014~~ 4011-A to 4015 and Title 29-A, section 2405.

Sec. 9. 32 MRSA §7005, 2nd ¶, as amended by PL 1985, c. 736, §5, is further amended to read:

Nothing in this section may prohibit disclosure by a person licensed under this chapter of information concerning a client when that disclosure is required by law and nothing in this section may modify or affect the provisions of Title 22, sections ~~4014~~ 4011-A to 4015.

Sec. 10. 32 MRSA §13862, 2nd ¶, as amended by PL 1989, c. 752, is further amended to read:

Nothing in this section may prohibit disclosure by a person licensed under this chapter of information concerning a client when that disclosure is required by law and nothing in this section may modify or affect Title 22, sections 3477 to 3479-A and ~~4011~~ 4011-A to 4015.

See title page for effective date.

CHAPTER 346

H.P. 209 - L.D. 244

An Act to Continue the Privacy Protection of Health Care Information

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

Sec. 1. 22 MRSA §1711-C, sub-§17, as enacted by PL 1999, c. 512, Pt. A, §5 and affected by §7, is repealed.

See title page for effective date.

CHAPTER 347

H.P. 1256 - L.D. 1703

An Act to Ensure Access to Health Insurance

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

Sec. 1. 24 MRSA §2319-A is enacted to read:
§2319-A. Mandated offer of domestic partner benefits

1. Definition. As used in this section, unless the context otherwise indicates, "domestic partner" means the partner of a subscriber or member who:

- A. Is a mentally competent adult as is the subscriber or member;
- B. Has been legally domiciled with the subscriber or member for at least 12 months;
- C. Is not legally married to or legally separated from another individual;
- D. Is the sole partner of the subscriber or member and expects to remain so; and

E. Is jointly responsible with the subscriber or member for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property.

2. Mandated offer of domestic partner benefits. All individual or group contracts issued by any nonprofit hospital or medical service organization operating pursuant to this chapter must make available to an individual or group policyholder the option for additional benefits for the domestic partner of a subscriber or member, at appropriate rates and under the same terms and conditions as those benefits or options for benefits are provided to spouses of married subscribers or members covered under an individual or group policy.

3. Financial dependency. Financial dependency of a domestic partner on the subscriber or member may not be required as a condition for eligibility for coverage.

4. Evidence of domestic partnership. As a condition of eligibility for coverage, a nonprofit hospital and medical service organization or a group policyholder may require a subscriber or member and the subscriber's or member's domestic partner to sign an affidavit attesting that the subscriber or member and the subscriber's or member's domestic partner meet the definition in subsection 1 and to show documentation of joint ownership or occupancy of real property, such as a joint deed, joint mortgage or joint lease, or the existence of a joint credit card, joint bank account or powers of attorney in which each domestic partner is authorized to act for the other.

5. Preexisting conditions. A domestic partner is subject to the same provisions on coverage of preexisting conditions as any spouse or dependent of a subscriber or member.

6. Termination of domestic partner benefits. A nonprofit hospital and medical service organization may terminate coverage in accordance with other applicable provisions of this Title for the domestic partner of a subscriber or member upon notification by the subscriber or member that the domestic partner relationship has terminated. A subscriber or member may not enroll another individual as a domestic partner under an individual or group contract until 12 months after the termination of coverage for a prior domestic partner.

7. Construction. This section does not prohibit a nonprofit hospital and medical service organization from negotiating a policy providing domestic partner benefits to a policyholder that does not comply with the requirements of this section.