

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

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
2002

that ~~3~~ approximately 1/3 reside in the southern part of the State, ~~3~~ approximately 1/3 in the central part and ~~3~~ approximately 1/3 in the northern part. In the event of a vacancy, a successor must be appointed to complete ~~the~~ a member's unexpired term. Each trustee continues to hold office until a successor is appointed and qualified.

Sec. 2. 37-B MRSA §604, sub-§2, as enacted by PL 1983, c. 460, §3, is amended to read:

2. Meetings. The board shall meet at least 6 times annually. ~~Five~~ Six members ~~shall~~ constitute a quorum.

See title page for effective date.

CHAPTER 677

H.P. 1324 - L.D. 1784

An Act to Address the Health Coverage Crisis for Maine's Small Businesses and Self-employed Persons

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

Sec. 1. 22 MRSA c. 854 is enacted to read:

CHAPTER 854

MAINE SMALL BUSINESS HEALTH COVERAGE PLAN

§3161. Definitions

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

1. Administrator. "Administrator" means any person who, on behalf of the board, receives or collects charges, contributions or premiums for, or adjusts or settles claims on residents of this State in connection with, any type of health benefit provided under the plan as an alternative to insurance as described in by Title 24-A, sections 702 to 704, other than any person listed in Title 24-A, section 1901, subsection 1, paragraphs A to O.

2. Board. "Board" means the board of directors of the Maine Small Business Health Coverage Plan.

3. Charges. "Charges" means any compensation paid by the board for services performed by the administrator.

4. Contribution. "Contribution" means the value of the funds that have been provided or are to be applied by a small employer to fund the plan including any money charged an eligible employer to provide for stop loss or excess insurance coverage to the plan. Contributions include any fees charged to an enrollee for participation in the plan.

5. Eligible employee. "Eligible employee" or "employee" means an individual who:

A. Meets the definition set forth in Title 24-A, section 2808-B, subsection 1, paragraph C;

B. Is self-employed as described in subsection 9, paragraph C; or

C. Is a sole employee of a nonprofit organization that has been determined by the Internal Revenue Service to be exempt from taxation under 26 Internal Revenue Service Code, Section 501(c)(3), (4) or (6) who has a normal work week of at least 20 hours and is not covered under a public or private plan for health insurance or other health benefit arrangement.

6. Enrollee. "Enrollee" means an individual who is enrolled in the plan.

7. Loss ratio. "Loss ratio" means the ratio between the amount of contributions received and the amount of claims paid by the administrator under the plan.

8. Plan. "Plan" means the Maine Small Business Health Coverage Plan established by this chapter.

9. Small employer. "Small employer" or "employer" means a person that:

A. On at least 50% of its working days during the preceding calendar quarter, employed at least 2 but not more than 50 eligible employees, the majority of whom are employed in the State;

B. If an employer was not in existence throughout the preceding calendar year, on at least 50% of the working days during its first year employed at least 2 but not more than 50 eligible employees, the majority of whom are employed in this State;

C. Is a self-employed individual who:

(1) Works and resides in the State; and

(2) Is organized as a sole proprietorship or in any other legally recognized manner that a self-employed individual may organize, a substantial part of whose income derives from a trade or business through which the individual has attempted to earn taxable in-

come, and who has filed the appropriate internal revenue form for the previous taxable year and for whom a copy of the appropriate internal revenue form or forms and schedule has been filed with the plan or its administrator; or

D. Is a nonprofit organization that has been determined by the Internal Revenue Service to be exempt from taxation under 26 Internal Revenue Code, Section 501(c)(3), (4) or (6) and has at least one eligible employee.

§3162. Maine Small Business Health Coverage Plan

1. Plan established. The Maine Small Business Health Coverage Plan is established to provide comprehensive health care coverage at affordable prices to small employers, including self-employed individuals, their employees and dependents on a voluntary basis. The plan operates under the supervision of the board and in coordination with the department.

2. Board. The board of directors is comprised of 11 voting members and one ex officio nonvoting member.

A. Members must be appointed as follows:

(1) The President of the Senate shall appoint 2 members, one of whom is a representative of the self-employed and one of whom is a representative of organized labor;

(2) The Speaker of the House of Representatives shall appoint 2 members, one of whom represents small businesses in this State and one of whom represents health care consumers in this State;

(3) The Governor shall appoint 2 members, one of whom is a health policy expert with expertise in both the public and private health sectors and one of whom represents low-income people in this State; and

(4) The Governor, the President of the Senate and the Speaker of the House of Representatives shall jointly agree on the appointment of a representative of small employers with 20-50 employees, a representative of a nonprofit community development financial institution that assists small businesses in the State, a representative of health care consumers, a health economist and a representative of health care providers.

B. Members shall serve 3-year terms. Members may serve up to 3 consecutive terms. Of the initial appointees, the 5 members appointed by joint agreement of the Governor, the President of the Senate and the Speaker of the House shall serve initial terms of 2 years.

C. The commissioner is an ex officio nonvoting member of the board.

D. Vacancies must be filled by the remaining members of the board for the remainder of the unexpired term. The board shall select a member to fill a vacancy from a list of nominations submitted by the appointing officer of the member whose seat is to be filled.

E. Board members shall elect a chair. All meetings of the board are public meetings within the meaning of Title 1, chapter 13, subchapter I.

F. Board members are entitled to reimbursement for necessary expenses according to the provisions of Title 5, chapter 379.

G. Initial appointments must be made no later than August 15, 2002.

3. Powers and duties. The board may take action in accordance with the following provisions.

A. The board shall design, implement and oversee the plan. The board may design a comprehensive managed care plan or a comprehensive indemnity plan or both that complies with the provisions of this chapter.

B. The board shall contract with a qualified bidder to provide health care coverage or act as administrator for health care coverage under the plan pursuant to subsection 5.

C. The board, in consultation with the department, may establish conditions for enrollment and participation by eligible small employers. These conditions must require employers to offer enrollment to all employees and their spouses and dependents who are not enrolled in another health plan.

D. The board shall negotiate rates with participating providers for health care services rendered under the plan. The rates must be sufficient to ensure adequate access to health care services to those employers and employees enrolled in the plan. The rates may not be less than current reimbursement rates under the Medicaid program.

E. The board shall regularly review rates and benefits provided under the plan and the financial

stability of the plan and shall propose by rule any adjustments considered necessary.

F. The board may contract with qualified 3rd parties for any service necessary to carry out the purposes of this chapter, employ necessary staff and set up a suitable office.

G. Until the board is able to contract or make other arrangements for staffing and services, the board may call upon the department and the Office of Fiscal and Program Review for staffing and services within the department's and the Legislature's current available resources.

H. The board may accept grant funding from any public or private sources identified by the board or department.

I. The board may receive any funds necessary, not to exceed \$1,000,000, as a working capital advance for initial operating expenses in administering the plan. Notwithstanding section 2861, subsection 9, these funds may be transferred from the Maine Rx Dedicated Fund, as established in section 2861, subsection 9, or other sources identified by the department or board and, if transferred, must be repaid no later than 2 years following start-up of the plan.

J. The board may obtain stop loss or excess insurance coverage if necessary. The department shall coordinate its medically needy program under Medicaid so as to maximize Medicaid in a manner that will most effectively reduce the potential liability of the reinsurance plan.

K. The board shall establish a loss ratio for health care coverage through the plan. The board shall increase the loss ratio periodically in order to achieve a maximum level of administrative efficiency.

L. The board shall establish reserves at levels sufficient to protect the enrollees and ensure the fiscal solvency of the plan.

M. The board shall develop a statewide marketing plan. The marketing plan must be designed to inform employers and employees of eligibility requirements under the plan. The marketing plan must use insurance producers, consumer organizations, toll-free help lines, the department and health care providers as well as using other methods to achieve awareness of and participation in the plan to the greatest extent possible.

N. Beginning April 1, 2004, and annually thereafter, the board shall report to the joint standing committee of the Legislature having jurisdiction over health insurance matters and the joint

standing committee of the Legislature having jurisdiction over human services matters on the impact of the plan on the overall small group market. The board shall also report on the extent of coverage, the effect on premiums, the number of covered lives, the number of policies issued or renewed and the amount of premiums earned and claims incurred.

4. Business plan. Before implementation of the plan, the board shall develop a business plan, including an actuarial and marketing analysis describing the request-for-proposal process, implementation of the plan and other customary requirements, that meets the requirements of this subsection.

A. By September 1, 2002, the board shall initiate planning and research for the development of the plan by contracting with health policy and economics experts. The initial planning and research must address, consistent with this chapter, at least the following information:

(1) The potential pool of enrollees in the plan, the cost of providing them health care and proposed participation goals for enrollment;

(2) A sample of potential provider rate schedules designed to control costs and provide access while fairly addressing the costs of providing medical care in the State;

(3) Sample contribution and cost-sharing rate schedules for small employers, employees and their dependents;

(4) The financial savings realized from coordinating with Medicaid and the method of that coordination; and

(5) The level of reserves and amount of stop loss or excess insurance coverage needed.

B. The board, in conjunction with the department, is required to prepare and submit as part of the business plan any federal Medicaid waivers that will be necessary to implement the plan. The department shall submit and pursue any necessary waivers in preparation for the Legislature's review of the business plan.

5. Purchase of health care coverage. The board shall issue a request for proposals that solicits bids from qualified bidders to provide health care coverage or act as administrator for health care coverage for small employers, their employees and dependents enrolled in the plan.

A. At a minimum, the request for proposals must require bids to provide health care coverage for a benefit package actuarially equivalent to the health care plan provided to State employees as of December 31, 2001 pursuant to Title 5, section 285 and any other benefit package designed by the board. The bids must otherwise comply with the requirements of this chapter.

B. The department shall submit a bid to provide health care coverage or act as the administrator of health care coverage under this chapter and include an adequate plan for capitalization.

C. Health insurers, nonprofit hospital and medical service organizations or health maintenance organizations licensed pursuant to Title 24 or Title 24-A may submit bids pursuant to this subsection.

D. The board shall issue the request for proposals under this subsection by August 1, 2003 and make a bid award to a qualifying bidder or bidders no later than October 1, 2003. The initial award must be for a period of 2 years. The board may extend its contract with the winner of the initial bid for an additional 2-year period without a competitive bid process. After one extension, the board shall initiate a competitive bid process for future contracts.

§3163. Contributions; payment for coverage

1. Contributions. The board shall establish contributions for enrolled employers, employees and their dependents. Employers shall pay the cost of the contribution except for that portion, if any, of the contribution permitted by the board to be charged to the employee. Enrolled employers may require that their employees make a contribution toward the cost of coverage under this plan in compliance with the contribution limits set by the board under subsection 2.

2. Maximum employee contributions. The board shall set a maximum employee contribution on a sliding fee scale based on the employee's income, except that:

A. An enrolled employee with family income below 150% of the nonfarm income official poverty line may not be required to pay a contribution for coverage of that employee or dependent, or any other cost sharing in excess of the amount allowable under the Medicaid program;

B. A pregnant woman with income below 200% of the nonfarm income official poverty line may not be required to pay a contribution for coverage of herself, or any other cost sharing in excess of the amount allowable under the Medicaid program;

C. An enrolled employee with income between 150% and 200% of the nonfarm income official poverty line may not be required to pay a contribution in excess of that required by section 3174-T, subsection 5 for a dependent child under 19 years of age; and

D. An enrolled employee with income below 300% of the nonfarm income official poverty line not included in paragraphs A to C may not be required to pay an aggregate contribution for all family members in excess of 5% of the enrolled employee's family income.

§3164. Coordination with Medicaid

The department shall maximize the use of federal funds available through the Medicaid program to provide health care coverage to all individuals enrolled in the plan who are or could become eligible for Medicaid pursuant to 42 United States Code, Sections 1396a (r) (2), 1396u-1 or 1397bb. For enrollees and dependents eligible for Medicaid with income below 200% of the federal nonfarm income official poverty line, health care services provided by Medicaid must continue to be provided in coordination with health care services covered under the plan. The department shall apply for any necessary federal Medicaid waivers to provide health care coverage through the plan or to extend coverage to any individuals who do not meet the categorical eligibility requirements of the Medicaid program but for whom a waiver might reasonably be granted. Contribution payments must be structured and paid in a manner most likely to permit matching those payments with federal dollars.

§3165. Application of insurance laws

Health care coverage offered through the plan must comply with all requirements of Title 24-A applicable to small group health plans, including, but not limited to, mandated benefits, section 2808-B, chapter 36 and chapter 56-A.

§3166. Data collection

The administrator shall report to the board and the Maine Health Data Organization, established under section 8703. The plan is subject to the same reporting requirements as a 3rd-party payor under section 1683.

§3167. Rules

The board may adopt rules necessary to administer the plan. Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§3168. Operation

Health care coverage through the plan must be available to enrolled employers and their employees beginning January 1, 2004.

§3169. Repeal

This chapter is repealed December 31, 2008.

Sec. 2. 22 MRSA §8702, sub-§11, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is amended to read:

11. Third-party payor. "Third-party payor" means a health insurer, nonprofit hospital, medical services organization or managed care organization licensed in the State or the plan established in chapter 854. Third-party payor does not include carriers licensed to issue limited benefit health policies or accident, specified disease, vision, disability, long-term care, nursing home care or Medicare supplement policies.

Sec. 3. Report to Legislature. The Board of Directors of the Maine Small Business Health Coverage Plan shall submit an interim report on the development of the business plan developed pursuant to the Maine Revised Statutes, Title 22, section 3162, subsection 4 to the joint standing committee of the Legislature having jurisdiction over health insurance matters no later than November 30, 2002. The board shall submit its final business plan to the joint standing committee of the Legislature having jurisdiction over health insurance matters no later than December 31, 2002. The joint standing committee shall review and comment on the business plan no later than March 1, 2003. The committee shall report out legislation to the First Regular Session of the 121st Legislature approving the board's business plan and affirming the Legislature's enactment of Title 22, chapter 854. If, before adjournment of the First Regular Session, the Legislature fails to act on the business plan submitted to it for approval, the board may implement the business plan and begin operation of the Maine Small Business Health Coverage Plan pursuant to Title 22, chapter 854.

Sec. 4. Department of Human Services awarded bid. If the Department of Human Services is awarded the bid to provide health care coverage or act as administrator for health care coverage pursuant to the Maine Revised Statutes, Title 22, chapter 854, the Board of Directors of the Maine Small Business Health Coverage Plan shall notify the joint standing committee of the Legislature having jurisdiction over health insurance matters no later than October 1, 2003. The committee may report out legislation to the Second Regular Session of the 121st Legislature to alter or amend the provisions of the Maine Revised Statutes, Title 22, chapter 854.

Sec. 5. Appropriations and allocations. The following appropriations and allocations are made.

HUMAN SERVICES, DEPARTMENT OF

Maine Small Business Health Coverage Plan

Initiative: Provides a base allocation in the event Other Special Revenue funds are received to administer the Maine Small Business Health Coverage Plan.

Other Special Revenue Funds	2001-02	2002-03
All Other	\$0	\$500

See title page for effective date.

CHAPTER 678

S.P. 419 - L.D. 1363

**An Act to Reduce Medical Errors
and Improve Patient Health**

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

Sec. 1. 22 MRSA c. 1684 is enacted to read:

CHAPTER 1684

SENTINEL EVENTS REPORTING

§8751. Sentinel event reporting

There is established under this chapter a system for reporting sentinel events for the purpose of improving the quality of health care and increasing patient safety.

§8752. Definitions

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

1. Division. "Division" means the Division of Licensing and Certification within the Bureau of Medical Services.

2. Health care facility. "Health care facility" or "facility" means a state institution as defined under Title 34-B, chapter 1 or a health care facility licensed by the division, except that it does not include a facility licensed as a nursing facility or licensed under chapter 1665.

3. Major permanent loss of function. "Major permanent loss of function" means sensory, motor, physiological or intellectual impairment that requires continued treatment or imposes persistent major restrictions in activities of daily living.