

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2003

Sec. D-6. Department recommendations.

The Department of Inland Fisheries and Wildlife shall develop recommendations to address legal ambiguities and other issues identified by the Office of Policy and Legal Analysis in its work on this recodification. The department shall submit legislation to implement its recommendations to the Second Regular Session of the 121st Legislature no later than December 15, 2003. The department shall seek drafting assistance from the Office of Policy and Legal Analysis in preparing the legislation.

Sec. D-7. Effective date. This Act takes effect 90 days after the adjournment of the Second Regular Session of the 121st Legislature, except that Part D, sections 5 and 6 take effect 90 days after the adjournment of the First Regular Session of the 121st Legislature.

Effective 90 days after adjournment of Second Regular Session of 121st Legislature, unless otherwise indicated.

CHAPTER 415

H.P. 189 - L.D. 234

**An Act To Create a Uniform
Approach to the Determination of
Child Support When Parents Provide
Substantially Equal Care for
Children**

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

Sec. 1. 19-A MRSA §2001, sub-§3-A is enacted to read:

3-A. Enhanced support entitlement. "Enhanced support entitlement" means the basic support entitlement multiplied by a factor of 1.5.

Sec. 2. 19-A MRSA §2001, sub-§§6, 7 and 8, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

6. Parental support obligation. "Parental support obligation" means the portion of total basic or enhanced support obligation a party is ordered to pay in money as child support.

7. Primary residence. "Primary residence" means the residence of a child where that child receives residential care for more than 50% of the time on an annual basis if the parents do not provide substantially equal care as defined in subsection 8-A.

8. Primary residential care provider. "Primary residential care provider" means the party who

provides residential care for a child for more than 50% of the time on an annual basis if the parents do not provide substantially equal care as defined in subsection 8-A.

Sec. 3. 19-A MRSA §2001, sub-§8-A is enacted to read:

8-A. Substantially equal care. "Substantially equal care" means that both parents participate substantially equally in the child's total care, which may include, but is not limited to, the child's residential, educational, recreational, child care and medical, dental and mental health care needs.

Sec. 4. 19-A MRSA §2001, sub-§10, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

10. Total basic support obligation. "Total basic support obligation" means the sum of money determined by adding the basic support entitlement, child care costs ~~and~~ extraordinary medical expenses and health insurance premiums.

Sec. 5. 19-A MRSA §2001, sub-§10-A is enacted to read:

10-A. Total enhanced support obligation. "Total enhanced support obligation" means the sum of money determined by calculating the enhanced support entitlement. "Total enhanced support obligation" does not include child care costs, extraordinary medical expenses and health insurance premiums.

Sec. 6. 19-A MRSA §2005, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§2005. Rebuttable presumption

In a proceeding to establish or modify child support or to establish an award for past support, there is a rebuttable presumption that the parental support obligation derived from the support guidelines is the amount ordered to be paid, unless support is established under section 2006, subsection 5 or section 2007. The court or hearing officer shall review the adequacy of a child support amount agreed to by the parties with reference to the parental support obligation.

Sec. 7. 19-A MRSA §2006, sub-§3, as amended by PL 2001, c. 264, §3, is further amended to read:

3. Total basic support obligation. The total basic support obligation is determined by adding the child care costs, health insurance premiums and

extraordinary medical expenses to the basic support entitlement as follows.

A. When each child is under the age of 12 years, the sums actually being expended for child care costs must be added to the basic support entitlement to determine the total basic support obligation.

B. If a child is incurring extraordinary medical expenses, the future incidence of which is determinable because of the permanent, chronic or recurring nature of the illness or disorder, the sums actually being expended for the medical expenses must be added to the basic support entitlement to determine the total basic support obligation.

C. If a party is paying health insurance premiums, the sums actually being expended for health insurance premiums for the child or children for whom support is being ordered must be added to the basic support entitlement to determine the total basic support obligation. The court shall determine the pro rata share of the health insurance premium actually expended that is attributable to each child.

Sec. 8. 19-A MRSA §2006, sub-§4, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

4. Computation of parental support obligation. The total basic support obligation must be divided between the parties in proportion to their respective gross incomes. The court or hearing officer shall order the party not providing primary residential care to pay, in money, that party's share of the total basic support obligation to the party providing primary residential care. The primary residential care provider is presumed to spend the primary care provider's share directly on each child. If the court or hearing officer determines that the parties provide substantially equal care for a child for whom support is sought, presumptive support must be calculated in accordance with subsection 5, paragraph D-1.

Sec. 9. 19-A MRSA §2006, sub-§5, ¶D, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

D. When the parties have equal annual gross incomes and provide ~~residential~~ substantially equal care ~~equally~~ for each child for whom support is being determined, neither party is required to pay the other a parental support obligation. The parties shall share equally the child care costs, health insurance premiums and uninsured medical expenses.

Sec. 10. 19-A MRSA §2006, sub-§5, ¶D-1 is enacted to read:

D-1. When the parties do not have equal annual gross incomes but provide substantially equal care for each child for whom support is being determined, the presumptive parental support obligation must be determined as follows.

(1) The enhanced support entitlement for each child must be determined.

(2) Using the enhanced support entitlement, a parental support obligation for each child must be determined by dividing the total enhanced support obligation between the parties in proportion to their respective gross incomes.

(3) The party with the higher annual gross income has a presumptive obligation to pay the other party the lower of:

(a) The difference between their parental support obligations as calculated in subparagraph (2); and

(b) The presumptive parental support obligation determined for the payor party using the basic support entitlement under the support guidelines as though the other party provided primary residential care of the child.

(4) The parties shall share the child care costs, health insurance premiums and uninsured medical expenses in proportion to their incomes.

Sec. 11. 19-A MRSA §2006, sub-§7, ¶G, as amended by PL 2001, c. 264, §5, is further amended to read:

G. The parental support obligation of the ~~non-primary care provider~~ party ordered to pay child support; and

Sec. 12. 19-A MRSA §2006, sub-§8, ¶C, as amended by PL 2001, c. 264, §7, is further amended to read:

C. A breakdown of the parental support obligation, including:

(1) The amount for basic support entitlements and the amount for enhanced support entitlements, if applicable;

(2) The amount for child care costs;

(3) The amount for extraordinary medical expenses;

(4) The percentage of the total child care costs and extraordinary medical expenses included in the parental support obligation, if applicable; and

(5) The amount for health insurance premiums;

Sec. 13. 19-A MRSA §2007, sub-§3, ¶A, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed and the following enacted in its place:

A. The application of section 2006, subsection 5, paragraph D or D-1 would be unjust, inequitable or not in the child's best interest;

See title page for effective date.

CHAPTER 416

H.P. 1181 - L.D. 1607

An Act To Implement Regulatory Reforms and To Address Staffing Issues in Long-term Care Facilities

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

Whereas, long-term care facilities and programs operate within a highly regulated system that inflates the cost of care for elderly and disabled persons; and

Whereas, implementation of regulatory reform and staffing changes in long-term care facilities will provide regulatory relief beginning immediately upon implementation; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §334, as enacted by PL 2001, c. 664, §2, is amended to read:

§334. Nursing facility projects

Nursing facility projects that propose to add new nursing facility beds to the inventory of nursing facility beds within the State may be grouped for competitive review purposes consistent with appropriations made available for that purpose by the

Legislature. A nursing facility project that proposes renovation, replacement or other actions that will increase Medicaid costs may be approved only if appropriations have been made by the Legislature expressly for the purpose of meeting those costs, except that the department may approve, without a prior appropriation for the express purpose, projects to reopen beds previously reserved by a nursing facility through a voluntary reduction pursuant to section 333, if the annual total of reopened beds approved does not exceed 100.

Beginning with all applications pending on January 1, 2003, in evaluating whether a project will increase MaineCare expenditures for a nursing facility for the purposes of this section, the department shall:

1. Square footage. Allow gross square footage per licensed bed of not less than 500 square feet unless the applicant specifies a smaller allowance for the project; and

2. Replacement of equipment. Exclude the projected incremental cost associated with replacement of equipment.

Sec. 2. 22 MRSA §1812-C, sub-§6-A, as enacted by PL 1995, c. 670, Pt. B, §1 and affected by Pt. D, §5, is amended to read:

6-A. Shared staffing. The department shall permit staff in nursing facilities to be shared with ~~other~~ levels of facilities licensed to provide assisted living on the same premises services as long as there is a clear, documented audit trail and the staffing in the nursing facilities remains adequate to meet the needs of residents. Staffing to be shared may be based on the average number of hours used per week or month within the assisted living program. In a facility licensed to provide assisted living services under section 7801 in which 2 or more staff are required to be awake and on duty during a night shift, one of the staff may be shared with a nursing facility located in the same building without prior approval from the department, subject to the following provisions.

A. Prior notice must be given to the department.

B. The assisted living program shall maintain its state minimum staffing ratio, and the nursing facility shall maintain its state minimum staffing ratio and its federal licensed nurse staffing requirement.

C. The assisted housing program and the nursing facility shall each post a notice informing the public that, although staffing is shared on the night shift, compliance with the minimum staffing requirements is maintained.