

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

D. An employee of the council may return to state employment at any time up to 2 years from the effective date of this section. Employees expressing such a preference must be placed on the appropriate registers maintained by the Department of Administrative and Financial Services, Bureau of Human Resources and must be treated as though on recall in accordance with current collective bargaining provisions.

Sec. 4. Effective date. This Act takes effect September 30, 2003.

Sec. 5. Transfer of funds. The State Budget Officer is authorized to eliminate headcount and transfer funds by financial order in fiscal year 2003-04 from the Department of Behavioral and Developmental Services' Personal Services Federal Expenditures Fund allocations to the All Other line category of the Maine Developmental Disabilities Council to reflect the council as a public instrumentality of the State. The State Budget Officer shall consult with the Commissioner of Behavioral and Developmental Services on the amount to be transferred and may not transfer funds required to support the costs associated with the elimination of state employees and the establishment of the council as an independent advisory agency. Transfers made pursuant to this section are considered adjustments to allocations in fiscal year 2003-04.

Sec. 6. Appropriations and allocations. The following appropriations and allocations are made.

**BEHAVIORAL AND DEVELOPMENTAL SERVICES,
DEPARTMENT OF**

Maine Developmental Disabilities Council 0977

Initiative: Eliminates position count and provides for a line category transfer from Personal Services to All Other to reflect the Maine Developmental Disabilities Council as an independent advisory agency.

Federal Expenditures Fund	2003-04	2004-05
Positions - Legislative Count	(0.000)	(-4.000)
Personal Services	\$0	(\$281,802)
All Other	0	281,802
Federal Expenditures Fund Total	\$0	\$0

Effective September 30, 2003.

CHAPTER 418

H.P. 283 - L.D. 363

**An Act to Ensure Patient Access to
Medical Records**

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

Sec. 1. 22 MRSA §1711, 5th ¶, as amended by PL 1997, c. 793, Pt. A, §1 and affected by §10, is further amended to read:

Reasonable costs incurred by the hospital in making and providing copies of medical records and additions to medical records; must be borne by the requesting person and the hospital may require payment prior to responding to the request. The charge for copies of records may not exceed \$10 for the first page and 35¢ for each additional page.

Sec. 2. 22 MRSA §1711-A, as amended by PL 1997, c. 793, Pt. A, §2, affected by PL 1999, c. 3, §§3 and 5 and affected by c. 512, Pt. A, §6, is further amended to read:

§1711-A. Fees charged for records

Whenever a health care practitioner defined in section 1711-B furnishes requested copies of a patient's treatment record or a medical report or an addition to a treatment record or medical report to the patient or the patient's authorized representative, the charge for the copies or the report may not exceed the reasonable costs incurred by the health care practitioner in making and providing the copies or the report. The charge for copies of records may not exceed \$10 for the first page and 35¢ for each additional page.

See title page for effective date.

CHAPTER 419

S.P. 444 - L.D. 1356

**An Act To Improve Complaint
Resolution and Hearing Procedures
in the Department of Human
Services**

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

Sec. 1. 22 MRSA §13, sub-§6 is enacted to read:

6. Limitation on actions to recover overpayments. The department may impose a sanction or withhold payment from a MaineCare provider in order to recover or impose penalties for an overpayment for services rendered or goods delivered under the MaineCare program as provided in this subsection.

A. The department may impose a sanction or withhold payment when the department has ob-

tained an order from Superior Court allowing interim sanctions upon showing a substantial likelihood that overpayment or fraud has occurred or that substantial harm to the department will result from further delay or when the department has taken final agency action and the provider has waived or exhausted its right to judicial review.

B. Notwithstanding paragraph A, the department may terminate or suspend the participation of a provider in the MaineCare program in lieu of recoupment pending final determination regarding an overpayment as long as 30 days' notice is given.

Sec. 2. 22 MRSA §42, sub-§7, as enacted by PL 2001, c. 666, Pt. C, §1, is amended to read:

7. Appeal process. The department shall amend the rules governing appeals of informal review decisions of ~~Medicaid~~ MaineCare payment and cost report audit and review issues filed by MaineCare providers of nursing facility services and medical and remedial private nonmedical institution services of goods and services or initiated by the department and any other informal review decisions that seek to impose repayment, recovery or recoupment obligations or sanctions or fines on providers as provided in this subsection.

A. The department shall give to the provider involved in an informal review decision written notice of the appeal process and the time period for filing a notice of appeal.

~~B. The department shall contract with a person or persons who are not employees of the department for independent, impartial hearing officer services.~~

C. Compensation under ~~the~~ any contract into which the department enters for hearing officer services may reflect the number of appeals on which recommendations are made by the hearing officer and may not reflect the substance of the recommendations made by the hearing officer.

D. The hearing officer shall conduct a hearing de novo on issues raised in the notice of appeal filed by the provider and shall in a timely manner render a written recommendation based on the record and in accordance with applicable state and federal law, rule and regulation. The hearing officer shall provide a copy of the recommendation to the department and to the provider along with notice of the opportunity to submit written comments to the commissioner.

E. The recommendation of the hearing officer must be forwarded to the commissioner for a fi-

nal decision, based on the record, which must include any written comment submitted in a timely manner by the provider and the department. The commissioner may adopt, adopt with modification or reject the recommendation of the hearing officer. The commissioner shall issue a final decision in writing, which must include the reasons for any departure from the recommendation of the hearing officer and notice of the process for appeal pursuant to Title 5, chapter 375, subchapter ~~VII~~ 7. If the commissioner deviates from a prior decision cited in the course of a proceeding, the final decision must include an explanation of the reason that the prior decision was not followed.

F. By July 1, 2004 the department shall make available on its publicly accessible site on the Internet the decisions in all MaineCare provider appeals beginning January 1, 2004, including the recommendations of the hearing officer and the decision of the commissioner.

(1) The site must include a search feature allowing users to obtain information on specific issues of interest.

(2) The site must protect information that is personal or confidential.

G. In lieu of the appeal procedure provided in this subsection, the parties may choose arbitration by a qualified arbitrator or panel of arbitrators as provided in this paragraph. By January 1, 2004, the department shall adopt rules to implement this paragraph that are consistent with federal law and regulation. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

(1) The arbitrator or panel of arbitrators must be selected and compensated as agreed by the parties.

(2) Arbitration under this paragraph is available only when the amount in controversy is \$10,000 or less and the subject matter in controversy is assessments, recovery or recoupment orders, sanctions or administrative fines.

(3) A provider choosing arbitration under this paragraph may waive any right of appeal.

H. In an administrative appeal of an informal review decision under this subsection, the department bears the burden of proving a violation of law or rule by a preponderance of the evidence. If the department proves that records of goods or services are defective, the department

may impose the sanction of total recoupment only when the provider has failed to demonstrate by a preponderance of the evidence that the disputed goods or services were actually provided to eligible MaineCare members.

The department shall provide funding for contractual services under this subsection from within existing resources.

Sec. 3. 22 MRSA §48 is enacted to read:

§48. Provider relations

Department personnel assigned to MaineCare provider relations shall assist MaineCare providers in addressing and resolving in a cost-effective and expeditious manner any disagreements between the department and providers or groups of providers. Provider relations personnel shall receive and investigate complaints and concerns from providers regarding the MaineCare program and the MaineCare reimbursement prior to informal review or administrative hearing. In performing their duties under this subsection, the provider relations personnel must have access to the Director of the Bureau of Medical Services. The department shall implement the provisions of this section within existing resources.

Sec. 4. 22 MRSA §1714-A, sub-§2, as amended by PL 2001, c. 596, Pt. B, §4 and affected by §25, is further amended to read:

2. Establishment of debt. A debt is established by the department when it notifies a provider of debt that the provider owes the department pursuant to a final reconciliation decision and order that constitutes final agency action. A debt is collectible by the department 31 days after exhaustion of all administrative appeals and any judicial review available under Title 5, chapter 375.

Sec. 5. 22 MRSA §1714-A, sub-§5, as enacted by PL 1991, c. 568, §4, is amended to read:

5. Department may offset. The department may offset against current reimbursement owed to a provider or any entity related by ownership or control to that provider any debt it is owed by that provider after the debt becomes collectible. The department shall adopt rules that implement this subsection and define the ownership or control relationships that are subject to an offset under this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. Complaint resolution and informal hearing process recommendations. By January 5, 2004, the Department of Human Services and the Department of Behavioral and Developmental

Services, in conjunction with their duties with regard to merger of the 2 departments under Public Law 2003, chapter 20, Part K, section 18, shall report to the Joint Standing Committee on Health and Human Services recommendations to improve the MaineCare complaint resolution and informal hearing process that ensure that MaineCare providers receive fair and impartial complaint resolution procedures and informal hearings.

See title page for effective date.

CHAPTER 420

S.P. 49 - L.D. 126

An Act to Amend the Membership of the Propane and Natural Gas Board

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

Sec. 1. 32 MRSA §14803, sub-§1, as enacted by PL 1995, c. 389, §4, is amended to read:

1. Membership; appointment. The board consists of ~~8~~ 9 members who serve for 3-year terms, except that of the initial appointees 3 of the members serve a 3-year term, 2 of the members serve a 2-year term and 2 of the members serve a one-year term. With the exception of the member representing fire chiefs, the member representing a labor organization and the public member, all members must have at least 10 consecutive years of active experience in the propane or the natural gas industry immediately preceding appointment. Industry members must hold a valid license at the time of appointment, except that the initial industry member appointees must be licensed on or before July 1, 1997. The Governor shall appoint all industry and public members. The propane and natural gas industries in this State may make recommendations to the Governor concerning these appointments. Membership is as follows:

A. Five members representing industry, 3 of whom represent the propane industry, one of whom is a mechanical contractor and one of whom represents the natural gas industry;

B. One member representing Maine fire chiefs, who may be recommended to the Governor by the Maine Fire Chiefs Association;

C. One member representing the general public who is ~~unrelated~~ not related, either directly or indirectly, to either the natural gas industry or the propane industry; ~~and~~