

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST SPECIAL SESSION**  
**August 21, 2003 to August 22, 2003**

**The General Effective Date For**  
**First Special Session**  
**Non-Emergency Laws Is**  
**November 22, 2003**

**SECOND REGULAR SESSION**  
**January 7, 2004 to January 30, 2004**

**The General Effective Date For**  
**Second Regular Session**  
**Non-Emergency Laws Is**  
**April 30, 2004**

**SECOND SPECIAL SESSION**  
**February 3, 2004 to April 30, 2004**

**The General Effective Date For**  
**Second Special Session**  
**Non-Emergency Laws Is**  
**July 30, 2004**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2004**

of the program on May 31, 2001 minus \$2. Any remaining amount is paid by the recipient. The limits must be set by the commissioner by rule as necessary to operate the program within the program budget;

**Sec. 2. 22 MRSA §3174-R**, as enacted by PL 1997, c. 643, Pt. RR, §5, is amended to read:

**§3174-R. Medicaid drug rebate program**

The department shall enter into a drug rebate agreement with each manufacturer of prescription drugs under the Medicaid program in accordance with Section 1927 of the federal Social Security Act, as long as the agreements are consistent with state and federal law, ~~are approved by the federal Health Care Finance Administration and result in a net increase in rebate revenue available to the Maine Medicaid Program. Individual rebate agreements may vary. The department shall seek to achieve an aggregate rebate amount from all agreements that is at least 6 percentage points higher than the percentage of the total Medicaid drug expenditures that the rebates would otherwise be under Section 1927 of the federal Social Security Act. Any increase in revenue from the Medicaid drug rebate program over accepted estimates as of the effective date of this section that results in a higher percentage of the total Medicaid drug rebates must be reserved to provide coverage pursuant to section 3174-G, subsection 1-A. In the event that the department is not able to achieve the rebate amount required by this section without compromising the best interest of Medicaid recipients and the Medicaid drug rebate program, the department shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs in the next regular session of the 119th Legislature.~~

See title page for effective date.

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**CHAPTER 612**

**H.P. 1270 - L.D. 1748**

**An Act To Amend the Rule-making Authority of the Department of Human Services to Ensure Cost-effective Operation of State Medical Services Programs and Compliance with Federal Requirements**

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

Whereas, the State of Maine needs to ensure that all legislatively mandated deappropriations are

implemented to the fullest extent possible and that all possible revenue sources are used to the maximum extent possible; and

Whereas, if such actions are not taken it may be necessary to implement new service or reimbursement reductions; and

Whereas, the State must comply with federal mandates in the operation of various programs in which the Federal Government provides matching funds, including Medicaid, TANF and food stamps; and

Whereas, the State may not have an opportunity to adopt rules complying with federal requirements until after those requirements are in effect; and

Whereas, the State must conform its Medicaid rules to the state plan filed with the Federal Government; 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 §42, sub-§8** is enacted to read:

**8. Adoption of rules with retroactive application.** The department is authorized to adopt rules that have a retroactive application for a period not to exceed 8 calendar quarters prior to the date of issuance of the rule in accordance with the provisions of this subsection.

A. The Bureau of Medical Services is authorized to adopt rules that have retroactive application when necessary to maximize available federal revenue sources, specifically regarding the federal Medicaid program, or to conform to the state Medicaid plan as filed with the Federal Government. The Bureau of Family Independence is authorized to adopt rules in the MaineCare, Temporary Assistance for Needy Families and food stamp programs that have retroactive application to comply with federal requirements or to conform to the state Medicaid plan as filed with the Federal Government.

B. With respect to any services that MaineCare providers have rendered prior to the date of adoption of retroactive rules adopted pursuant to this subsection, such rules may not reduce or otherwise negatively affect the reimbursement or

other payments that those providers are entitled to receive under the previously applicable rules. The reimbursement or other payments under the amended rules must be equal to or greater than the reimbursement under the rules previously in effect.

C. For any benefits or services in the MaineCare, Temporary Assistance for Needy Families or food stamp programs that beneficiaries have received prior to the date of adoption of retroactive rules adopted pursuant to this subsection, such rules may not reduce or otherwise negatively affect the reimbursement or other payments, benefits or services that those beneficiaries are entitled to have covered or paid under the previously applicable rules. The reimbursement or other payments, benefits or services under the amended rules must be equal to or greater than under the rules previously in effect.

D. This subsection does not give the department the authority to adopt retroactively any rule that has an adverse financial impact on any MaineCare provider or member, Temporary Assistance for Needy Families program or food stamp recipient or the beneficiary or recipient of any other program administered by the department. Specific statutory authority is required for adoption of a retroactive rule that has an adverse financial impact on any MaineCare provider or member, Temporary Assistance for Needy Families program or food stamp recipient or the beneficiary or recipient of any other program administered by the department.

E. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; except that, if the underlying statutory rule-making authority for a rule or set of rules specifies that rules adopted pursuant to that authority are major substantive rules, then the related rule or rules adopted under this subsection are major substantive rules.

F. This subsection is repealed July 1, 2006.

**Sec. 2. Report.** By January 15, 2005 and January 15, 2006, the Department of Human Services shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on implementation of this Act and the fiscal impact of implementation on the MaineCare and General Fund budgets and any MaineCare providers, members or beneficiaries or beneficiaries or recipients of other programs administered by the department.

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

Effective April 9, 2004.

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## CHAPTER 613

S.P. 627 - L.D. 1695

### An Act To Ensure Compliance with Federal Medicaid Requirements

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

**Sec. 1. 22 MRSA §13, sub-§6**, as enacted by PL 2003, c. 419, §1, is amended 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 obtained an order from Superior Court allowing interim sanctions upon showing a substantial likelihood that overpayment ~~or~~ and 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 pursuant to federal regulation and state rule.

C. For the purposes of this subsection, "overpayment" does not include an overestimate made as part of a prospective interim payment, a 3rd-party liability recovery, a departmental administrative error or receivership fees or debt. In addition, this subsection does not apply to routine adjustments of \$2,500 or less that result from claims editing or processing.

**Sec. 2. 22 MRSA §42, sub-§7, ¶H**, as enacted by PL 2003, c. 419, §2, is amended to read:

H. In an administrative appeal of an informal review decision under this subsection, the department bears the burden of proving a violation