

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.

Penmor Lithographers
Lewiston, Maine
2004

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.

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

of law or rule by a preponderance of the evidence. If the department proves that existing and available records of goods or services are defective, the department may impose ~~the a fee or~~ sanction of, including total recoupment. Total recoupment for defective records is warranted only when the provider has failed to demonstrate by a preponderance of the evidence that the disputed goods or services were medically necessary, MaineCare-covered goods or services and were actually provided to eligible MaineCare members.

See title page for effective date.

CHAPTER 614

H.P. 1265 - L.D. 1743

An Act To Make Technical Corrections to Maine's Fish and Wildlife Laws

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

Whereas, certain provisions of this bill must take effect immediately to avoid placing an undue economic hardship on certain small businesses and to help secure the public's safety; 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. 1 MRSA §402, sub-§3, ¶L, as amended by PL 2003, c. 392, §2, is further amended to read:

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is

designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure; ~~and~~

Sec. 2. 1 MRSA §402, sub-§3, ¶M, as enacted by PL 2003, c. 392, §3, is amended to read:

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure; and

Sec. 3. 1 MRSA §402, sub-§3, ¶N is enacted to read:

N. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife.

Sec. 4. 12 MRSA §11404, sub-§1, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7, is amended to read:

1. Muzzle-loading-only open season on deer. There is a special muzzle-loading open season on deer immediately following the regular deer hunting season established under section 11401, subsection 1, paragraph A for the purpose of hunting deer only with muzzle-loading firearms as defined in section 10001, subsection 42 and that are 40 caliber or greater and capable of firing only a single charge. The commissioner may terminate this open season at any time in an area if, in the commissioner's opinion, an immediate emergency action is necessary due to adverse weather conditions or severe hunting pressure. The length of the special muzzle-loading season is as follows.

A. The commissioner shall establish by rule the length of the special muzzle-loading season. The commissioner may establish seasons of different lengths in different regions of the State. The season may extend for no more than 12 hunting days in any part of the State.

Sec. 5. 12 MRSA §11451, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7, is repealed.

Sec. 6. 12 MRSA §12553, sub-§2, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7, is amended to read: