

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

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(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health-care decisions unless I mark the following box. If I mark this box [], my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

~~(6) HEALTH INFORMATION AND OTHER MEDICAL RECORDS: In addition to the other powers granted by this document, I grant to my agent the power and authority to serve as my personal representative for all purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq., "HIPAA," and its regulations, 45 Code of Federal Regulations 160-164, during any time that my agent is exercising authority under this document. I intend for my agent to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information and other medical records. This release authority applies to any information governed by HIPAA.~~

~~I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health care provider, any insurance company and any health care clearinghouse that has provided treatment or services to me or that has paid for, or is seeking reimbursement from me for, such services to give, disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any~~

~~past, present or future medical or mental health condition, to include all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.~~

~~The authority given to my agent supersedes any prior agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given to my agent has no expiration date and expires only in the event that I revoke the authority in writing and deliver it to my health care providers.~~

Sec. M-2. Effective date. This Part takes effect 90 days after adjournment of the Second Special Session of the 121st Legislature.

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

Effective May 6, 2004, unless otherwise indicated.

CHAPTER 689

H.P. 1414 - L.D. 1913

An Act To Establish the Department of Health and Human Services

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

Whereas, the establishment of the new Department of Health and Human Services on July 1, 2004 is necessary for the orderly transition of the Department of Human Services and the Department of Behavioral and Developmental Services to the new department; 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:

PART A

Sec. A-1. 22-A MRSA is enacted to read:

TITLE 22-AHEALTH AND HUMAN SERVICESSUBTITLE 1DEPARTMENT OF HEALTH AND HUMAN SERVICESCHAPTER 1DEPARTMENTAL ORGANIZATION AND OPERATIONSUBCHAPTER 1GENERAL PROVISIONS§101. Definitions

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

1. Commissioner. "Commissioner" means the Commissioner of Health and Human Services.

2. Department. "Department" means the Department of Health and Human Services.

3. Seal. The department has an official seal which must be judicially noticed.

SUBCHAPTER 2ORGANIZATION§201. Department established

1. Establishment. The Department of Health and Human Services is established as a cabinet-level department.

2. Bureau and divisions. The department consists of the bureaus and divisions necessary to carry out the work of the department.

§202. Mission; guiding principles

1. Mission. The mission of the department is to provide health and human services to the people of Maine so that all persons may achieve and maintain their optimal level of health and their full potential for economic independence and personal development. Within available funds, the department shall provide supportive, preventive, protective, public health and intervention services to children, families and adults, including the elderly and adults with disabilities. The department shall endeavor to assist individuals in meeting their needs and families in providing for the developmental, health and safety needs of their

children, while respecting the rights and preferences of the individual or family.

2. Guiding principles. The following principles are adopted to guide the department. In the performance of its duties, the department shall strive to:

A. Improve the health and well-being of Maine residents, with this goal guiding all decisions, programs and services of the department;

B. Treat consumers with respect and dignity;

C. Treat service providers with professionalism and collegiality;

D. Value and support department staff as the critical connection to the consumer;

E. Involve consumers, providers, advocates and staff in long-term planning;

F. Use relevant, meaningful data and objective analyses of population-based needs in program planning, decision making and quality assurance; and

G. Deliver services that are individualized, family-centered, easily accessible, preventive, independence-oriented, interdisciplinary, collaborative, evidence-based and consistent with best practices.

§203. Programs and services of department

The department shall, as appropriate to the individual and family and as permitted by the availability of funds, provide programs and services as specified in this section and otherwise by law.

1. Programs and services for adults, children and families. The department shall provide adults, children and families with the following programs and services:

A. Economic assistance and employment support services;

B. Mental health and behavioral health services;

C. Mental retardation and developmental disability services;

D. Physical health services;

E. Public health services; and

F. Substance abuse prevention and treatment services.

2. Additional programs and services for children and families. The department shall provide children and families with additional programs and

services to assist them in meeting their needs, including, but not limited to:

- A. Child welfare services;
- B. Head Start and child care services;
- C. Maternal and child health services, including home visiting programs;
- D. Paternity establishment and child support enforcement services; and
- E. Residential and long-term care services for children with disabilities.

3. Additional programs and services for adults. The department shall provide adults, including the elderly and persons with disabilities, with additional programs and services to assist them in meeting their needs, including, but not limited to:

- A. Adult protective services; and
- B. Long-term care services for the elderly and adults with disabilities.

4. Delivery of programs and services. The department shall deliver programs and services through a coordinated and efficient administrative structure and an integrated delivery system that focuses on meeting the needs of individuals and families. The department shall use a combination of public personnel and contracts with private agencies to deliver programs and services.

§204. Commissioner

The department is under the control and supervision of the Commissioner of Health and Human Services, who reports directly to the Governor.

1. Appointment. The Governor shall appoint the commissioner, subject to review by the joint standing committee of the Legislature having jurisdiction over health and human services matters and confirmation by the Senate. The commissioner serves at the pleasure of the Governor.

2. Vacancy; deputy commissioner. A vacancy in the office of the commissioner must be filled as follows.

- A. Any vacancy of the commissioner's position must be filled in accordance with Title 5, section 1.
- B. The commissioner shall appoint one of the department's deputy commissioners to perform the duties of the commissioner, in addition to the duties of that deputy commissioner, during the commissioner's temporary absence or disability.

§205. Powers and duties of commissioner

The commissioner has all of the powers and duties necessary to carry out the mission and responsibilities of the department.

1. Administration. The commissioner shall administer the department in accordance with the requirements of this Title and shall fulfill the duties prescribed to the commissioner by state and federal law.

2. Rulemaking. The commissioner shall adopt rules to implement this Title. Rules adopted pursuant to this subsection are routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A, unless otherwise specified.

3. Employees. The commissioner may employ personnel as necessary to carry out the work of the department. All personnel of the department are under the immediate supervision, direction and control of the commissioner. Department personnel must be employed subject to the Civil Service Law, except for deputy commissioners, associate commissioners, assistant deputy commissioners, bureau directors, the director of legal affairs, regional directors, the director of Bangor Mental Health Institute and the director of Riverview Psychiatric Center.

4. Appointments. The commissioner may appoint deputy commissioners, associate commissioners, assistant deputy commissioners, bureau directors, the director of legal affairs, regional directors, the director of Bangor Mental Health Institute and the director of Riverview Psychiatric Center, who serve at the pleasure of the commissioner. These positions are unclassified, major policy-influencing positions as specified in Title 5, sections 931 and 946-A. A bureau director appointed pursuant to this subsection must have educational qualifications and professional experience directly related to the functions of and services provided by the bureau.

Sec. A-2. Quarterly report; rulemaking. Beginning October 1, 2004, the Commissioner of Health and Human Services shall provide the joint standing committee of the Legislature having jurisdiction over health and human services matters with a quarterly report that summarizes rule-making activity of the Department of Health and Human Services.

Sec. A-3. Bureau structure; restriction. The Commissioner of Health and Human Services may not establish a bureau structure for the new department until that structure has been approved by the 122nd Legislature.

PART B

Sec. B-1. Transition. Notwithstanding the Maine Revised Statutes, Title 22 and Title 34-B, the following provisions apply to the reassignment of the duties and responsibilities of the Department of Human Services and the Department of Behavioral and Developmental Services to the Department of Health and Human Services.

1. The Department of Human Services and the Department of Behavioral and Developmental Services as heretofore created and established by law are incorporated into the Department of Health and Human Services. All references to, responsibilities of and authority conferred upon the Department of Human Services and the Department of Behavioral and Developmental Services, and those departments' predecessors, throughout the Maine Revised Statutes are deemed to refer to and vest in the Department of Health and Human Services created by this Act, as the successor department. The Department of Health and Human Services is the successor in every way to the powers, duties and functions as assigned in the Maine Revised Statutes, Title 22 to the Department of Human Services and Title 34-B to the Department of Behavioral and Developmental Services, as they pertain to services provided to adults, children and families under this Act.

2. Notwithstanding the provisions of the Maine Revised Statutes, Title 5, all accrued expenditures, assets, liabilities, balances of appropriations, allocations, transfers, revenues or other available funds in an account or subdivision of an account of the Department of Human Services and the Department of Behavioral and Developmental Services that pertain to the duties of the Department of Health and Human Services as set forth in this Act must be transferred to the proper accounts of the Department of Health and Human Services by the State Controller or by financial order upon the request of the State Budget Officer and with the approval of the Governor.

3. All rules of the Department of Human Services and the Department of Behavioral and Developmental Services, as they pertain to the duties of the Department of Health and Human Services as set forth in this Act, that are in effect on the effective date of this Act remain in effect until rescinded, revised or amended.

4. All contracts, agreements and compacts of the Department of Human Services and the Department of Behavioral and Developmental Services, as they pertain to the duties set forth in this Act, that are in effect on the effective date of this Act remain in effect until they expire or are altered by the parties involved in the contracts or agreements. The Department of Health and Human Services is the successor agency

for all federal block grants and programs administered under the United States Social Security Act, as amended, and any other federal programs, grants and contracts.

5. All records of the Department of Human Services and the Department of Behavioral and Developmental Services, as they pertain to the duties set forth in this Act, must be transferred to the Department of Health and Human Services as necessary to implement this Act.

6. All property and equipment of any bureau, division or program of the Department of Human Services and the Department of Behavioral and Developmental Services pertaining to the duties set forth in this Act are transferred to the Department of Health and Human Services as necessary to implement this Act.

7. Notwithstanding the Maine Revised Statutes, Title 22-A, section 204 or any other provision of law, upon the effective date of this Act, the individual holding the position of Commissioner of Human Services becomes the Commissioner of Health and Human Services without the need of appointment or confirmation. The Commissioner of Health and Human Services shall assume and is vested with all of the duties and powers of that office, as well as the duties and powers of the office of the Commissioner of Human Services and the office of the Commissioner of Behavioral and Developmental Services. This provision is intended to change the procedure for appointment and confirmation of the first Commissioner of Health and Human Services.

8. Employees of the Department of Health and Human Services who were employees of the Department of Human Services and the Department of Behavioral and Developmental Services immediately prior to the effective date of this Act retain all their employee rights, privileges and benefits, including sick leave, vacation and seniority, provided under the Civil Service Law or collective bargaining agreements. The Department of Administrative and Financial Services, Bureau of Human Resources shall provide assistance to the affected departments and shall assist with the orderly implementation of this subsection.

9. The Commissioner of Health and Human Services shall consolidate the following functions of the Department of Human Services and the Department of Behavioral and Developmental Services:

A. Administrative components that provide for, without limitation, the following functions: internal auditing; external auditing; financial management; human resources; information technology and data collection and management;

facilities management; contracting; licensing; permitting and inspecting; training; administrative appeals; communications and legislative relations; rate setting; and rulemaking; and

B. Adult protective functions.

10. By January 31, 2005, the Commissioner of Health and Human Services shall submit a report, including recommendations and any necessary legislation, to the Governor and the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the establishment and implementation of the Department of Health and Human Services. The report must include recommendations on the following issues:

A. Bureau structure, including the number, title and functions of bureaus and divisions within bureaus. In the development of recommendations regarding the bureau structure, the commissioner shall consider:

(1) The unique needs of special populations, including, but not limited to, children, the elderly, persons with mental health needs, persons with mental retardation or developmental disabilities and persons affected by substance abuse; and

(2) The possible integration of the functions of the Department of Human Services, Bureau of Family Independence into a new bureau of children and families;

B. Administrative structure and functions, including:

(1) Planning and quality assurance;

(2) Staff training and professional development;

(3) Regional structure and administrative functions; and

(4) The employment status of division directors;

C. Program and service delivery functions, including:

(1) A seamless system of care at the local level;

(2) Information and referral, intake and case management services;

(3) Guardianship and conservatorship services;

(4) Resolution of consumer, provider and public inquiries and complaints;

(5) Advocacy services; and

(6) Long-term care ombuds services;

D. Advisory boards, including:

(1) Integration and consolidation of existing advisory boards, councils and commissions that serve the Department of Human Services and the Department of Behavioral and Developmental Services; and

(2) Opportunities to ensure that advisory bodies to the new department operate efficiently and effectively; and

E. The child welfare ombudsman program established as an independent program within the Executive Department under the Maine Revised Statutes, Title 22, section 4087-A. In developing recommendations regarding this program, the commissioner shall consider:

(1) Program independence and structure; and

(2) The 2003 annual report of the ombudsman submitted pursuant to Title 22, section 4087-A, subsection 10.

Following receipt and review of the report, the joint standing committee of the Legislature having jurisdiction over health and human services matters may report out legislation to the 122nd Legislature.

11. The Commissioner of Health and Human Services shall work with the Commissioner of Education and the Commissioner of Corrections to review the delivery of child development services and juvenile justice services. By January 31, 2006, the Commissioner of Health and Human Services shall submit a report including recommendations and any necessary legislation to the Governor and the joint standing committee of the Legislature having jurisdiction over health and human services matters. Following receipt and review of the report, the committee may report out legislation to the Second Regular Session of the 122nd Legislature.

Sec. B-2. Conflicts and inconsistencies. If the Commissioner of Health and Human Services finds a conflict or inconsistency between provisions in the Maine Revised Statutes, Title 22 and Title 34-B or rules adopted under those titles, the commissioner shall attempt to resolve that conflict or inconsistency by interpreting the laws or rules together to give effect to the intent of the Legislature or agency, as the case may be. If the commissioner determines rulemaking is

required to resolve a conflict or inconsistency, the commissioner may adopt rules as authorized under Title 22-A, section 205, subsection 2. In adopting rules under this section, the commissioner has sole discretion to determine whether an emergency exists. The commissioner shall notify the members of the joint standing committee of the Legislature having jurisdiction over health and human services matters prior to adopting any emergency rule under this section.

Sec. B-3. Legislation; schedule. The Commissioner of Health and Human Services, and designees selected by the commissioner, shall work with the joint standing committee of the Legislature having jurisdiction over health and human services matters and staff from the Office of Policy and Legal Analysis and the Office of the Revisor of Statutes to review those parts of the Maine Revised Statutes governing the Department of Health and Human Services, including but not limited to Titles 22, 22-A and 34-B. The purpose of the review is to develop legislation to consolidate existing law into Title 22-A, to update Title 22-A and to correct any errors and inconsistencies in law that result from this Act. By November 30, 2005 the commissioner and the committee shall agree on the format and organization of Title 22-A. By November 30, 2006 the commissioner shall submit the legislation developed pursuant to this section to the First Regular Session of the 123rd Legislature.

Sec. B-4. Interim meetings; authorized. The joint standing committee of the Legislature having jurisdiction over health and human services matters is authorized to meet as needed, but at least 3 times, during the 2004 legislative interim to carry out its responsibilities to oversee planning, service delivery and implementation issues related to the establishment of the Department of Health and Human Services. At these meetings, the Commissioner of Health and Human Services shall brief the committee on planning issues, progress, challenges and the time line for implementation. The committee shall provide opportunities for consumers, providers and advocates to speak to the committee. The committee may submit legislation to the First Regular Session of the 122nd Legislature based on these meetings.

Sec. B-5. Working groups. During the period from July 2004 through December 2005, the Commissioner of Health and Human Services shall convene advisory working groups to consider planning, service delivery and implementation issues related to the establishment of the Department of Health and Human Services. The working groups shall review the issues identified in Part B, section 1, subsection 10. The working groups must include broad representation from consumers, providers, advocates and members of the public.

Sec. B-6. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Department of Human Services" or "Department of Behavioral and Developmental Services" appear or reference is made to either of those departments with reference to the duties transferred to the Department of Health and Human Services as set forth in this Act, they are amended to read or mean, as the case may be, "Department of Health and Human Services." The Revisor of Statutes shall implement this revision when updating, publishing or republishing statutes.

Sec. B-7. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Commissioner of Human Services" or "Commissioner of Behavioral and Developmental Services" appear or reference is made to either of these positions with reference to the duties transferred to the Commissioner of Health and Human Services as set forth in this Act, they are amended to read or mean, as the case may be, "Commissioner of Health and Human Services." The Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. B-8. Budget. The Department of Administrative and Financial Services, Bureau of Budget shall work with the employees of the Department of Human Services and the Department of Behavioral and Developmental Services with regard to the duties transferred to the Department of Health and Human Services as set forth in this Act to develop the budget for the Department of Health and Human Services.

Sec. B-9. Federal approval. If the Commissioner of Health and Human Services determines that federal approval will not be obtained for any part of this Act that requires federal approval, the commissioner shall notify the joint standing committee of the Legislature having jurisdiction over health and human services matters, the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the Executive Director of the Legislative Council.

PART C

Sec. C-1. 2 MRSA §6, sub-§1, as amended by PL 2003, c. 469, Pt. A, §1, is further amended to read:

1. Range 91. The salaries of the following state officials and employees are within salary range 91:

Commissioner of Transportation;

Commissioner of Conservation;

Commissioner of Administrative and Financial Services;

Commissioner of Education;
 Commissioner of Environmental Protection;
 Executive Director of Dirigo Health;
~~Commissioner of Human Services;~~
~~Commissioner of Behavioral and Developmental Services;~~
 Commissioner of Public Safety;
 Commissioner of Professional and Financial Regulation;
 Commissioner of Labor;
 Commissioner of Agriculture, Food and Rural Resources;
 Commissioner of Inland Fisheries and Wildlife;
 Commissioner of Marine Resources;
 Commissioner of Corrections;
 Commissioner of Economic and Community Development; and
 Commissioner of Defense, Veterans and Emergency Management.

Sec. C-2. 2 MRSA §6, sub-§1-A is enacted to read:

1-A. Range 58. The salaries of the following state officials and employees are within salary range 58:

Commissioner of Health and Human Services.

Sec. C-3. 2 MRSA §6, sub-§2, as amended by PL 2001, c. 708, §1, is further amended to read:

2. Range 90. The salaries of the following state officials and employees are within salary range 90:

Superintendent of Financial Institutions;
 State Tax Assessor;
 Superintendent of Insurance;
 Executive Director of the Maine Consumer Choice Health Plan;
 Associate Commissioner for Programs, Department of Behavioral and Developmental Services;
 Associate Commissioner of Administration, Department of Behavioral and Developmental Services;

Associate Commissioner for Systems Operations, Department of Behavioral and Developmental Services;

Deputy Commissioner, Department of Administrative and Financial Services;

Associate Commissioner for Adult Services, Department of Corrections;

Associate Commissioner for Juvenile Services, Department of Corrections;

Public Advocate;

Director, Bureau of Medical Services, Department of Human Services;

Chief Information Officer; and

Associate Commissioner for Legislative and Program Services, Department of Corrections.

Sec. C-4. 5 MRSA §940, as amended by PL 1995, c. 560, Pt. J, §1, is repealed.

Sec. C-5. 5 MRSA §946, as amended by PL 2001, c. 439, Pt. J, §§1 to 3, is repealed.

Sec. C-6. 5 MRSA §946-A is enacted to read:

§946-A. Department of Health and Human Services

1. Major policy-influencing positions. The following positions are major policy-influencing positions within the Department of Health and Human Services. Notwithstanding any other provisions of law, these positions and their successor positions are subject to this chapter:

A. Deputy commissioners;

B. Associate commissioners;

C. Bureau directors and division directors;

D. Assistant deputy commissioners;

E. Regional directors;

F. Directors of Bangor Mental Health Institute and Riverview Psychiatric Center; and

G. Director of legal affairs.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect July 1, 2004.

Effective July 1, 2004.