

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**SECOND SPECIAL SESSION**  
**July 29, 2005**

**SECOND REGULAR SESSION**  
**January 4, 2006 to May 24, 2006**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 28, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 23, 2006**

**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**  
**2006**

inform the public that household and agricultural pesticides will be collected.

See title page for effective date.

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## CHAPTER 586

S.P. 843 - L.D. 2102

### An Act To Change the Date for Agency Submission of Provisionally Adopted Major Substantive Rules

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

**Sec. 1. 5 MRSA §8072, sub-§7**, as amended by PL 1997, c. 196, §2, is further amended to read:

**7. Consideration by the Legislature.** No later than 30 days before statutory adjournment of the Legislature as provided in Title 3, section 2 each joint standing committee of the Legislature shall submit to the Secretary of the Senate and the Clerk of the House of Representatives the committee's report on agency rules the committee has reviewed as provided in this section. The report must include a copy of the rule or rules reviewed, the committee's recommendation concerning final adoption of the rule or rules, a statement of the reasons for a recommendation to withdraw or modify the rule or rules and draft legislation for introduction in that session that is necessary to implement the committee's recommendation. A committee may decline to include in its report recommendations covering any rules submitted to it later than ~~45 days before statutory adjournment~~ 5:00 p.m. on the 2nd Friday in January of the year in which the rules are to be considered by the committee. ~~If an adjournment date earlier than required by statute is anticipated, the Legislative Council may establish an earlier deadline for agencies to submit provisionally adopted rules for review, except that any earlier date established by the council may not be more than 75 days before statutory adjournment.~~ If, before adjournment of the session at which a rule is reviewed, the Legislature fails to act on all or part of any rule submitted to it for review in accordance with this section, an agency may proceed with final adoption and implementation of the rule or part of the rule that was not acted on.

See title page for effective date.

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## CHAPTER 587

H.P. 1282 - L.D. 1842

### An Act To Allow Certain End-of-life-care Decision-makers To Consent to Organ and Tissue Donation

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

**Sec. 1. 22 MRSA §2902, sub-§2**, as enacted by PL 1969, c. 193, is amended to read:

**2. Others.** Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent, or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purposes specified in section 2903:

A. The spouse;

A-1. An agent designated by a durable health care power of attorney or an advance health-care directive under Title 18-A, Article 5, Part 8;

A-2. A registered domestic partner, as defined in Title 22, section 2710;

B. An adult son or daughter;

C. Either parent;

D. An adult brother or sister;

E. A guardian of the person of the decedent at the time of ~~his~~ death; or

F. Any other person authorized or under obligation to dispose of the body.

See title page for effective date.

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## CHAPTER 588

H.P. 1368 - L.D. 1951

### An Act To Establish Guidelines and Criteria for Audits Conducted by 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 Department of Health and Human Services' auditing practices affect the dollar amount returned to the State by providers of health care and other community services; and

**Whereas**, this legislation must take effect before the expiration of the 90-day period so that its benefits are realized as soon as possible; 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. 5 MRSA §1660-I, sub-§2, ¶A**, as enacted by PL 1995, c. 402, Pt. C, §2, is amended to read:

A. Adopt rules consistent with the provisions of Title 22, section 41-B establishing accounting and auditing practices for community agencies, including, but not limited to, agreement reporting as part of the annual entitywide financial statement presentation; standards of accountability for community agencies; and audit requirements and standards for the department;

**Sec. 2. 22 MRSA §41-B** is enacted to read:

**§41-B. Auditing and adjusting of health care and community service provider costs**

This section governs the rules of the department and the practices of its auditors in interpreting and applying those rules with respect to payments for providers under the MaineCare program and payments by the department under grants and agreements audited pursuant to the Maine Uniform Accounting and Auditing Practices Act for Community Agencies.

**1. Revised audit interpretations to be applied prospectively.** Whenever the department's auditors revise an interpretation of a rule, agreement, circular or guideline in a manner that would result in a negative adjustment of a provider's or agency's allowable costs, the revised interpretation may be applied only to provider or agency fiscal years beginning after the date of the examination report, audit report or other written notification in which the provider or agency receives direct notice of the revised interpretation. For the fiscal year to which the report containing the revised interpretation applies, and any subsequent fiscal year ending prior to the issuance of the revised interpretation, the cost that is the subject of the revised interpretation must be considered allowable to the extent that it was allowable under the

interpretation previously applied by the Office of Audit for MaineCare and Social Services, referred to in this section as "the office of audit." This subsection does not prohibit the office of audit from applying an adjustment to a fiscal year solely because that cost was not disallowed in a prior year.

**2. Determination of "ordinary," "necessary" and "reasonable" costs.** In making findings concerning whether a cost is "ordinary," "necessary" and "reasonable," the office of audit shall consider the following criteria in conjunction with applicable state and federal rules, regulations, guidelines and agreements:

A. Whether a substantial number of providers of health care or community services in the State incur costs of similar magnitude, frequency, quantity or price level to the costs under review;

B. Whether the expenditure is reasonably incurred to produce, accomplish, facilitate or compensate persons for providing an item or service related to the purpose of a program or activity for which the State has contracted or for which the State otherwise provides payment;

C. Whether the expenditure is comparable to an expenditure made by a department or agency of the State responsible for services or programs similar to those to which the finding applies; and

D. Whether the expenditure is consistent with meeting special needs of the population served through innovative or specialized services offered by a particular provider.

**3. Employee compensation and benefit costs.** In evaluating whether employee wages, salaries and benefits are reasonable and allowable, the department may not disallow the costs of any employee benefits, wages or salaries if the total of those costs is reasonable under the criteria set forth in subsection 2.

**4. Other expenses.** The department shall modify its rules governing MaineCare reimbursement and other reimbursements pursuant to grants, contracts or agreements for health care providers and other agencies providing community services to allow, to the extent permitted by applicable federal law, the costs of employee information publications, health or first-aid clinics or infirmaries, recreational activities, employee counseling services and any other expenses incurred in accordance with the health care provider or other agency's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale and employee performance.

**Sec. 3. 22 MRSA §42, sub-§7, ¶A,** as enacted by PL 2001, c. 666, Pt. C, §1, is amended to read:

A. The department shall allow a provider 60 days after the provider's receipt of an audit report, examination report or other audit determination to seek informal review of that determination. The department shall give to the provider involved in an informal review decision written notice of the informal review decision and of the appeal process and the time period for filing a notice of appeal. The department shall allow an additional 60 days for a provider to request an appeal hearing for review of the department's informal review decision.

**Sec. 4. 22 MRSA §42, sub-§7, ¶F,** as enacted by PL 2003, c. 419, §2, is amended to read:

F. By July 1, 2004 the department shall make available on its publicly accessible ~~site on the Internet~~ website the decisions in all MaineCare provider appeals beginning January 1, 2004, including the recommendations of the hearing officer and the decision of the commissioner. By October 1, 2006 the department shall make available on the same website all decisions issued by the department regarding audit findings, audit reports or examination reports, including final informal review decisions issued as well as decisions on appeal pursuant to the Maine Uniform Accounting and Auditing Practices Act for Community Agencies. The Office of Audit for MaineCare and Social Services also shall include on the website a summary of key interpretations and findings in recent audits that, in the opinion of the office, are to be considered generally by providers in their operations and cost reporting.

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

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

**Sec. 5. Rules; effective date.** The Department of Health and Human Services shall amend its rules governing reimbursement, contracting, grants, payments, cost reports and audits with respect to providers of health and community services to ensure that all of the requirements of this Act are applied to all audits completed on or after the effective date of this Act. Unless the law requiring the department to adopt or amend these rules indicates otherwise, rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A. The department shall complete its rulemaking pursuant to this section no

later than December 15, 2006. From the effective date of this Act until the date the rule amendments adopted pursuant to this section take effect, the department shall apply the requirements and principles established in this Act to all audits conducted under its existing rules. In the event of any conflict between those rules and this Act, the provisions of this Act supersede the rules.

**Sec. 6. Studies and reports; timing of audits; technical assistance; cost reimbursement.** The Department of Health and Human Services, Office of Audit for MaineCare and Social Services shall complete the following studies and reports.

**1. Timing of audits.** The Department of Health and Human Services, Office of Audit for MaineCare and Social Services shall review its procedures and criteria for audit activity for the purpose of identifying means of improving the timeliness of its audit determinations, with the goals of issuing an audit report or examination report within 12 months of the filing of a cost report or financial statement with supporting schedules, as the case may be, and achieving this improvement in timeliness within existing personnel and other resources.

By January 15, 2008, the department shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the department's findings concerning the feasibility of meeting the goals set forth in this subsection. If the department finds that these goals cannot be met, the department shall further report on the period of time within which audits can regularly be completed using existing resources and the estimated additional resources required to achieve the goal of issuing all audit or examination reports within 12 months.

**2. Training and technical assistance for providers.** The Department of Health and Human Services, Office of Audit for MaineCare and Social Services shall review, in consultation with representatives of mental health, mental retardation, substance abuse and long-term care providers, its existing programs of training for providers to determine whether those programs are sufficient to provide complete and current information, on an ongoing basis, regarding the process of auditing cost reports and agreement settlements and the substantive standards and interpretations to be applied in conducting such audits. The office shall identify, with reasonable frequency, the programmatic changes needed to ensure that sufficient training is available to all categories of care providers and to independent public accountants providing services to such providers and that a system is in place to make available to providers, on request, knowledgeable members of its staff to provide such technical assistance as providers may require in order to achieve

compliance with the standards applied by the office. By January 15, 2008, the department shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on its findings and on the dates by which the necessary programmatic changes will be implemented.

**3. Consistency in cost reimbursement.** The Department of Health and Human Services shall review its rules governing cost reimbursement of health care providers to identify the substantial inconsistencies among those rules in the definitions of "ordinary," "necessary" and "reasonable" costs that are allowable and the criteria concerning and the limitations on reimbursement thereof, including the assignment of costs to various rate components. The department shall consult with providers and report to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding methods and procedures that the department may adopt and follow to ensure that consistency among these rules is achieved and maintained as policy changes occur. The department shall complete its review and report by January 1, 2007.

**4. Implementing legislation.** Following its receipt and review of each report described in this section, the joint standing committee of the Legislature having jurisdiction over health and human services matters may report to the Legislature such recommended legislation as may be necessary to accomplish the objectives addressed in the reports.

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

Effective April 14, 2006.

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## CHAPTER 589

S.P. 771 - L.D. 1992

### An Act Regarding Prescription Drug Information Intermediaries

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

**Sec. 1.** 22 MRSA §1711-E is enacted to read:

**§1711-E. Requirements for prescription drug information intermediaries**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Carrier" has the same meaning as in Title 24-A, section 4301-A, subsection 3.

B. "Electronic transmission intermediary" means an entity that provides the infrastructure that connects the computer systems or other electronic devices used by health care practitioners, health care facilities and pharmacy benefit managers to carriers and agents and contractors of those carriers and agents in order to facilitate the secure transmission of an individual's prescription drug order, refill, authorization request, claim, payment or other prescription drug information.

C. "Health care facility" has the same meanings as in section 1711-C, subsection 1, paragraph D.

D. "Health care practitioner" has the same meanings as in section 1711-C, subsection 1, paragraph F.

E. "Health plan" means a health plan providing prescription drug coverage as authorized under the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003, Public Law 108-173.

F. "Individual" means a natural person who is the subject of prescription drug information.

G. "Pharmacy benefits manager" has the same meaning as in section 2699, subsection 1, paragraph F.

H. "Prescription drug information" means information concerning prescription drugs as defined in Title 32, section 13702, subsection 24 and includes prescription drug orders as defined in Title 32, section 13702, subsection 25.

I. "Prescription drug information intermediary" means a person or entity that communicates, facilitates or participates in the exchange of prescription drug information regarding an individual. "Prescription drug information intermediary" includes, but is not limited to, a pharmacy benefits manager, a health plan and an electronic transmission intermediary.

**2. Confidentiality of health care information.**

A prescription drug information intermediary may not sell or exchange for value prescription drug information that identifies directly or indirectly the individual except if expressly permitted under section 1711-C, Title 24, Title 24-A or the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended.

**3. Enforcement.** A violation of this section is a violation of the Maine Unfair Trade Practices Act.

**Sec. 2.** 22 MRSA §2700-A, sub-§4, as enacted by PL 2005, c. 392, §1, is amended to read: